

CLERK, U. S. DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
FILED

MAY 2 1983

JESSE E. CLARK, CLERK  
BY DEPUTY: *J. Adams*

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

BURZYNSKI CANCER RESEARCH  
INSTITUTE, a Texas corpora-  
tion, and STANISLAW R.  
BURZYNSKI, M.D., an  
individual,

and

NORTH AMERICAN CONSULTANTS,  
LIMITED, a DIVISION OF  
CAMERON FRYE ENTERPRISES a  
foreign corporation, and  
CAMERON E. FRYE, an  
individual,

Defendants.

Civil Action No. H-83-2069

PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiff, the United States of America, moves this court to enter summary judgment in its favor, granting the relief prayed for in the complaint filed herein on March 30, 1983. As grounds for this motion, plaintiff states that there is no genuine issue as to any material fact in this action and that plaintiff is entitled to judgment as a matter of law, all as more fully set forth in plaintiff's memorandum submitted in support of this motion.

states that permit its use.<sup>2</sup> The government appealed, and on April 4, 1983, the Tenth Circuit entered an order that (1) denied plaintiffs' motion to dismiss the appeal, (2) granted the government's motion for summary reversal of the judgment of the district court, and (3) directed the district court to dismiss the complaint and dissolve all injunctions entered against the United States, its departments, agencies, services, agents, and employees in the case. Rutherford v. United States, No. 81-1737 (10th Cir. April 4, 1983).

If this court declines to grant the injunctive relief sought by the government, thus permitting continued manufacture and distribution of antineoplastons by defendants in violation of the FDC Act, the government would then be obliged to pursue other less efficient remedies, such as actions for seizure and condemnation of the drugs or criminal prosecution of individuals who violated the Act with respect to the drugs. This court would then be faced with ordering the government not to undertake such enforcement actions, if

<sup>2</sup> Laetrile, so far unlike antineoplaston, had gained enough lay popularity to cause some state legislators to explicitly approve its intra-state manufacture and use.

the court truly desired to allow the continued manufacture and distribution of the drugs. But such a course of action has been specifically disapproved by the Supreme Court, and (reversed) by the Tenth Circuit in Rutherford.

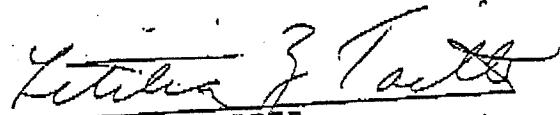
III. CONCLUSION

For all of the foregoing reasons, this court should grant the government's motion for summary judgment and enter the injunction prayed for by the government in its complaint.

Respectfully submitted,

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