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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA .	Case No. 06-643
.	.
.	402 East State Street
v.	Trenton, New Jersey 08608
.	.
ALBERT POET, MD,	.
.	.
Defendant.	May 14, 2007
.	.
.....	9:50 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE ANNE E. THOMPSON
UNITED STATES DISTRICT COURT

APPEARANCES:

For the Government:	By: GENIE COWLES, ESQ. JAMES LYNCH, ESQ.
For the Defendant:	Cooper Levenson April Niedelman & Wagenheim, P.A. By: WILLIAM J. HUGHES, JR., ESQ. JEROME BALLAROTTO, ESQ. 1125 Atlantic Avenue Atlantic City, NJ 08401

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1 following the rules. We were following our instructions, your
2 rules. And we didn't -- we were prohibited from arguing, from
3 stressing that point, from driving that point home. They
4 didn't. They closed on it. They talked about the
5 unreasonableness creating the impression in front of the jury
6 that the mere use of a non-FDA approved drug in and of itself
7 is unreasonable regardless of whether you tell your patients
8 about it or not.

9 And this is not a crime about what they were getting.
10 This is not a crime about what they thought they were getting.
11 The patients. That's only part of it. Profit -- they don't
12 have to prove motive, but they certainly have to prove a
13 purpose. And this purpose that they pledged that they were
14 going to prove was for money or profit. And any evidence, any
15 evidence which would have negated that, that the purpose that
16 he was giving it to his patients was he actually thought he was
17 giving them a better product. Which, by the way, is evidenced
18 by the fact that several of these products which were identical
19 to that are now in the FDA pipeline which, you know, he didn't
20 testify to. But any evidence, you know, tending to show that
21 his purpose was not money or profit, but the quality, he was
22 giving them something better, negates one of the elements that
23 they are required to prove. Our hands were tied. Of course we
24 didn't put on --

25 THE COURT: Well, your hands were tied because your

1 client had gone in and given a proffer early on.

2 MR. HUGHES: Your Honor, our hands were tied because
3 we were not permitted to present the full evidence that we
4 should have been permitted to present at this trial regarding
5 the quality of the substance. Now, I submit to you, Your
6 Honor, this is a flawed conviction. Now, whether Your Honor
7 does or whether the Third Circuit does it I submit and I
8 suggest that this case is going to be tried again. And I
9 submit that it should be done sooner rather than later. Thank
10 you.

11 THE COURT: All right. Thank you very much. I
12 appreciate the zeal with which you have presented your client's
13 cause. And I am not unsympathetic with your client. Quite
14 frankly he is clearly favored by his patients, by the people
15 who work for him. I don't know the doctor, but clearly he must
16 have a persona that has endeared him to the people he works
17 with and the people whom he has treated. And otherwise this
18 defendant would appear to have no transgressions that the Court
19 knows of that would not make him an honorable person.

20 However, based on the facts and the law of this case
21 I would deny this defense motion based on the Rules of Court,
22 Rule 29, Rule 33. I would not find that the interest of
23 justice would require the granting of a new trial, nor do I
24 think the defense was unfairly prejudiced. The defense had a
25 tight rope around it. This defendant had given a proffer to

1 the government prior to -- long before trial. He was held
2 within that proffer. He did not testify, he's not required to,
3 but there are certain things that you cannot communicate, like
4 state of mind, without testifying effectively.

5 I'm not going through an encyclopedia of all the
6 times in which good faith might be shown, but it's very
7 difficult to show good faith if you don't take the stand and
8 testify. And this defendant had already given a proffer, and
9 the government was in a position to cross examine him on his
10 good faith if he did so testify. He can't put on other
11 witnesses to testify as to his good faith. There's no way
12 around it. The defense may be creative, and they were. They
13 were long on creativity and ingenuity. But there was no way to
14 get around almost a lock box in which they found themselves.

15 I don't believe that this was an unfair trial at all.
16 The closest question as I see it was that error in the grand
17 jury. That was a problem. And I thought about that very, very
18 carefully. But the thrust of this prosecution was not flowing
19 from that error given in the grand jury. And this case
20 presented free of that error of information. presented to this
21 jury of 12, resulted in a conviction. A unanimous conviction.
22 Fraud, a scheme to defraud. That's what this case was about.
23 The jury evidently found the elements. I gave the elements to
24 the jury, nobody disagreed with the elements. It was up to the
25 jury to see if those elements were here. To put them together