



U.S. Department of Justice

United States Attorney  
District of New Jersey

402 East State Street, Room 430  
Trenton, New Jersey 08540

609/989-2354

September 3, 2006

Mr. William J. Hughes, Jr.  
Cooper Levenson Law Offices  
1125 Atlantic Avenue, 3rd Floor  
Atlantic City, NJ 08401

Re: United States v. Albert Poet  
Crim. No. 06-643 (AET)

Dear Mr. Hughes:

This letter provides discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure and the Court's Standing Discovery Order, and seeks reciprocal discovery.

Disclosure By the Government

1. I am enclosing copies of the following:
  - a. Signed Proffer Agreement between the United States and Dr. Albert Poet, June 6, 2005;
  - b. Memorandum of Interview with Dr. Poet, June 6, 2005;
  - c. April 27, 2005 letter and statement from Dr. Poet to Office of the United States Attorney;
  - d. Criminal History for Albert Poet;
  - e. Toxin Research International brochure;
  - f. Records of advertisements placed in Sandpaper Newspaper
  - g. Handwritten notes re: hours of operation, provided to FDA by employees of Shore Laser during an initial inquiry on January 21, 2005;
  - h. Copy of business card and product brochures obtained

during FDA inquiry at Shore Laser on January 21, 2005;

- i. November 17, 2004 letter from Allergan, Inc. to Albert Poet, M.D., with attachments;
- j. Botox Cosmetic Product Information;
- k. Botox Cosmetic web information re: injection technique;
- l. American Society of Plastic Surgeons & American Society for Aesthetic Plastic Surgery, Inc. Advisory, July 2005;
- m. American College of Surgeons, Statement on Issues to be Considered Before New Surgical Technology is Applied to the Care of Patients;
- n. United Parcel Service Records of Deliveries to 96 East Bay Avenue, Manahawkin, NJ and 44 Fairfield Street, Montclair, NJ;
- o. Invoices for purchases from Toxin Research International, Inc. provided by Dr. Albert Poet
- p. Print-outs of computerized invoices for purchases from Toxin Research International, Inc. obtained from Toxin Research International, Inc.
- q. FDA chemical testing of samples of the Botulinium Toxin Type A product produced by Toxin Research International.

2. Please be advised the United States intends to call Dr. Marc Walton of the Food and Drug Administration, Center for Biologic Evaluation and Research to testify regarding the role of the FDA; the nature of the FDA approval process generally and for Botox® including approval of package labeling, inserts, and similar material; nature and risks of Botulinium Toxin Type A; lack of approval or submission for approval of Botulinium Toxin Type A produced by Toxin Research International; meaning of the terms "off-label" and "generic" in the context of FDA regulation of pharmaceuticals. A more complete summary of the expected testimony and a copy of Dr. Walton's curriculum vitae will follow under separate cover.

3. In addition, the following voluminous records are available for inspection. Please let me know if you wish to inspect these items, and I will make the necessary arrangements.
- a. Sample vial from Toxin Research International, Inc. Botulinium Toxin Type A product;
  - b. Verizon phone records for 96 East Bay Avenue, Manahawkin, NJ;
  - c. Allergan, Inc. shipping records for Botox® and Botox® Cosmetic to Dr. Albert Poet;
  - d. Records provided by Dr. Albert Poet pursuant to subpoena as described more fully in the attached letters from Dr. Poet's counsel dated March 3, 2005, April 27, 2005, May 2, 2005, May 12, 2005, and July 2005.

The Government recognizes its obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny. To date, the Government is unaware of any Brady material regarding your client, but will provide timely disclosure if any such material comes to light. The Government will provide potential impeachment material, if any, at the time it provides prior statements of witnesses pursuant to Title 18, United States Code, Section 3500.

#### Disclosure by the Defendant

The Government hereby requests reciprocal discovery under Fed. R. Crim. P. 16(b). Specifically, we request that you allow inspection and copying of: (1) any books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items that are in the defendant's possession, custody, or control and which the defendant intends to use in the defendant's case-in-chief at trial; and (2) any results or reports of any physical or mental examination and of any scientific test or experiment that is in the defendant's possession or control and which the defendant intends to use in the defendant's case-in-chief at trial or which was prepared by a witness whom the defendant intends to call at trial. We further request that you disclose a written summary of

testimony you intend to use under Fed. R. Evid. 702, 703 and 705 as evidence at trial. This summary should describe the opinions of the witness, the bases and reasons therefore, and the witness's qualifications.

Pursuant to Fed. R. Crim. P. 26.2, the Government also requests that the defendant disclose prior statements of witnesses the defendant will call to testify. We request that such material be provided on the same basis upon which we agree to supply the defendant with Section 3500 material relating to Government witnesses.

We wish to remind you that Fed. R. Crim. P. 12.2(a) & (b) requires you to provide the Government with written notice if the defendant intends to rely on the defense of insanity at the time of the alleged crime or intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offenses charged.


Sentence Reduction for Acceptance of Responsibility

This Office will not move for the additional one-point reduction under the Sentencing Guidelines available for defendants who plead prior to the Government's initiation of trial preparations, U.S.S.G. § 3E1.1(b), in the event your client has not entered a plea of guilty before the filing of pre-trial motions.

Please contact me at your earliest convenience concerning the possible disposition of this matter or any further discovery which you may request.

Very truly yours,

CHRISTOPHER J. CHRISTIE  
United States Attorney

  
By: EUGENIA A. P. COWLES  
Assistant U.S. Attorney