

Los Angeles Times

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PART I

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## Stress lines show at the Botox trial

By GINA PICCALO  
*Times Staff Writer*

Stephen Fraser, the younger, more energetic attorney on dermatologist Arnold Klein's legal team, paced around the courtroom like the leading man on opening night.

"Let's do this thing!" he shouted. "Let's get this show on the road!"

It was Week 5 of the so-called Botox trial — the first time Allergan's miracle wrinkle cure has been the subject of a lawsuit — and closing arguments were imminent.

Allergan stacked its side of the audience with well-dressed allies until the room grew stuffy with them. Klein's nurses filed into the back row, not a frown line among them, while their boss shuffled to the front.

And Irena Medavoy, the Hollywood socialite suing the drug company and the doctor for a months-long illness she says was the result of Botox poison-

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# Numerous wrinkles to the Botox trial

[Botox, from Page E1] ing, offered a wan smile to her small cadre of supporters.

It has been a memorable trial, particularly for those with an appreciation of the absurd. (Although there were weeks of medical testimony, so much that even the judge struggled to stay awake.) There was the time Medavoy's attorney Jeff Benice mistakenly called her "Mrs. Prozac" in front of the jury, and that unforgettable shouting match between Klein and Los Angeles Superior Court Judge Victor Chavez, and the claim by one psychiatrist that Saddam Hus-

sein and his infamous "weapons of mass destruction" were indirectly to blame for Medavoy's illness.

The jury began deliberating the case Wednesday. And at this point it's a toss-up as to which has been worse for Medavoy: the four-month migraine she says started after a March 2002 Botox treatment and cost her \$92,000 in medical bills, or the merciless scrutiny she has endured in court.

For weeks, the jury has studied nearly every one of her life crises of the last 25 years (the deaths of immediate family

members, her divorces, her career struggles, the pending sale of the Medavoy's \$15-million mansion in Beverly Park) and their resulting physical and emotional manifestations (herpes outbreaks, digestive problems, anxiety and depression).

It's possible that such intimate study has helped humanize Medavoy. She may be rich and beautiful and count Denzel Washington and Bill Clinton as friends, but she takes antidepressants just like everyone else. Sure, she can afford to have them delivered to her house, but the multitudes of have-nots can still cling to the notion that money can't buy happiness.

And as Klein proved on the stand, it can't buy humility, either. He's a world renowned Botox expert, self-proclaimed master of "the perfect lip" and highly paid Allergan consultant who was so reluctant to reschedule a European lecture tour that he showed up a week and a half into the trial. During his testimony, Klein often wrangled control of the court from the judge to lecture on his own infallibility.

All that bluster disappeared on the last day of trial, however, when the fallibility of being human finally caught up with him.

But first, there were the closing arguments, perhaps the emotional climax of the 18 months since Medavoy filed her suit, telling anyone who'd listen ("NBC Dateline," Vanity Fair etc.) that the dermatologist she'd been seeing for two decades had misled her on the risks of Botox and overdosed her with the world's sexiest poison derivative. The accusations threatened Klein's personal and professional lifeblood: his credibility. And as his lawyer Howard Weitzman would later explain, this stress took a profound toll.

Klein listened intently, leaning forward on his cane, as Medavoy's attorney Benice called

him a liar, an irresponsible doctor and nothing more than an Allergan pitch man whose loyalty shifted from his patient to the pharmaceutical company after her condition worsened.

Then his attorneys Weitzman and Fraser split time before the jury, saying it was Medavoy who lied about her symptoms, who was party-hopping when she said she was housebound, whose medical problems began long before Botox. Fraser nearly shouted as he told the jury that Klein "knows more about Botox than any other person on the face of the Earth. . . . All he did was try to help her headaches. *How wrong of the man!*"

And then, as the jury filed out for a break, Klein lost control of his bladder. The conspicuous pooling down the center aisle of the courtroom drew stares.

In that moment, he was no longer the celebrity dermatologist whose 15,000 Botox injections have never resulted in serious side effects. He was human, just like Medavoy, just like everyone else.

Fraser and two Allergan staffers got down on their hands and knees to mop up the puddles with paper towels. As he worked, Fraser couldn't help noting, "This trial has it all, doesn't it?"

Klein didn't return to court after the break, but the next day, as the jury deliberated, Weitzman told a reporter: "Everyone deals with stress and anxiety in different ways."

Medavoy, according to the defense attorneys, consulted specialists to deal with hers. One expert even tallied up the number of doctors she's seen since the early 1980s (45) and the number of sophisticated medical tests she's received (48). In 2002 alone, he said, Medavoy's doctors ordered three CAT scans, an MRI, X-rays, two ultrasounds, two endoscopic procedures, blood tests and an EKG. They tested her for botulinum toxin



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antibodies, a sure sign of Botox in the blood. None of the tests fully explained her condition.

About 20 doctors testified — five neurologists, three rheumatologists, two psychologists, two infectious disease specialists, three internists, a psychiatrist, a pulmonologist, an emergency room physician and a chiropractor — and every one of them analyzed Medavoy's medical records in excruciating detail. They spoke the language of science, not of laypeople, prompting repeated complaints from Judge Chavez. "We're all trying to keep up with you specialists," he said.

They wondered about Medavoy's Disneyland visit with Sylvester Stallone's family the day after her March 4, 2002, injections. Did the toxin migrate? Was Mr. Toad's Wild Ride to blame? Or was it the Mad Hatter's Teacups?

They broke down Botox to the molecular level. They struggled to decipher their own handwriting. They wrestled with a natural inclination toward condescension. They second-guessed one another.

Mitchell Brin, a senior vice president of development at Allergan and a neurologist who has studied the drug for about 20 years, repeatedly denied any correlation between Botox and headaches, citing company studies that show headaches occur more often in saline-injected patients than they do in Botox-injected patients and that doses far larger than what Medavoy received — 86 units — have been used to successfully treat everything from head and neck spasms to cerebral palsy.

But during cross-examination, Brin was forced to admit that the company's product insert states that the risks of Botox as a wrinkle treatment are unknown in doses higher than 20 units, that the drug can spread to other areas of the body, affecting neuromuscular transmission and that Allergan's own clinical studies suggest Botox may be associated with headaches, sinusitis, pain, flu-like symptoms and respiratory problems.

One particularly unorthodox theory from Santa Monica psychiatrist James High linked Medavoy's symptoms to the terror attacks. "She is quite suggestible," he testified. After Sept. 11, 2001, Medavoy was coordinating a community effort to prepare for further attacks. And at the time, High notes, there was a lot of talk about Saddam Hussein's weapons of mass destruction. And botulinum toxin was one of those WMDs. And therefore, he concluded, "I think all of that . . . at least contributed to flare-ups of her problems."

Several diagnosed Medavoy with fibromyalgia, a fancy name for mysterious musculoskeletal pain and fatigue. Three blamed her illness, at least in part, on Botox. Two diagnosed her with somatization disorder, a chronic psychiatric condition in which no scientific evidence can explain a patient's health problems. And in the hopes of making Medavoy's burden of proof more burdensome, Klein's attorneys presented a few other possibilities: cerebral venous thrombosis, carotid artery dissection or viral meningitis.

Some of the doctors noted her depression and anxiety, but none of them — not even Allergan's experts — thought she was faking her symptoms. So the testimony of clinical psychologist Judith Armstrong, an expert hired by Klein, was especially surprising.

A petite woman in a gray suit and a brunet bob, she began by saying, "You can't diagnose someone just based on a test." And then went on to do just that.

She chronicled Medavoy's emotional dysfunction — depression, shame, hypochondria and holier-than-thou-ness — according to five personality tests. Medavoy, she said, presented herself "as so virtuous . . . that she was literally too good to be true." After all, she said, referring to Medavoy's answers on the tests, who among us "never feels like swearing," "never wishes she had more money" and "always tells the truth"?

"Everybody lies," Armstrong said.

Even personality tests lie. A computer analysis of Medavoy's results stated that she "may have had to take the test against her will," prompting answers that were "self-protective" and possibly invalid.

All things considered, Medavoy is doing just fine. Her case has warranted calls from the New York Times, USA Today and the Washington Post. And it has attracted a following of Botox-backlashers, women who blame the drug for months of pain and paralysis and want Medavoy to write a "how to cope" book based on her experience.

"Somebody is going to push through," she says.

But this round isn't over just yet. While the jury will rule on Medavoy's claims of medical malpractice, products liability and negligence, Judge Chavez will decide the last claim of the suit — whether Allergan and Klein, a company consultant, falsely advertised Botox by misleading the public on its risks. Testimony in that trial is scheduled to begin as early as today.



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latimes.

## Botox Not Cause of Illnesses, Jury Says

By GINA PICCALO  
*Times Staff Writer*

After a colorful trial that pitted a Hollywood socialite against her longtime celebrity dermatologist, a Los Angeles jury ruled that the Botox treatments she took for migraine headaches did not cause myriad illnesses or the four-month migraine she blamed on the wrinkle cure.

Irena Medavoy, 45, said she suffered the symptoms after Beverly Hills dermatologist Arnold Klein gave her a series of injections of the drug in 2001 and 2002 without warning her that Botox may cause "life-altering headaches."

The high-profile case included testimony from other socialites, Vanna White and a who's who in specialty medicine. Some testimony focused on former model Medavoy's two TV projects, both with provocative titles: "Behind the Gates" and "Trophy Wives," which included a plot line featuring a woman who fakes an illness to get attention.

After a five-week trial in Los Angeles County Superior Court, the jury voted 9 to 3 against her.

With husband Mike Medavoy, co-founder of Orion Pictures and former chairman of Tri-Star Pic-

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# L.A. Jury Rejects Socialite's Botox Claims

[Botox, from Page B1]

tures, at her side, Irena Medavoy said she will appeal the decision and continue her fight to show that Allergan misled the public about Botox's safety.

She said the defense attorneys had unfairly kept the focus on her lifestyle — the fact that she went to star-studded parties when she said she was bedridden — and not on the seriousness of her ordeal.

"It's been such a long road," she told reporters. "Maybe a non-Hollywood person suing a non-Hollywood doctor won't get this kind of dirt thrown at them."

Medavoy filed the medical malpractice suit in January 2003, accusing Klein of negligence. Her lawsuit also accused Botox manufacturer Allergan Inc. of product liability and falsely advertising the drug by misleading the public on its risks. But Superior Court Judge Victor Chavez dismissed the latter claim Friday morning.

Medavoy asked for \$192,000 for medical bills and lost wages from a proposed talk show, and



REED SAXON Associated Press

**DISAPPOINTED:** Irena Medavoy, flanked by her attorney, Jeff Benice, left, and her husband, Hollywood producer Mike Medavoy, says she plans to appeal the jury's decision in her Botox lawsuit.

she left it up to the jury to determine compensation for pain and suffering. She blamed a months-long migraine in 2002 on the drug, which, ironically, Klein

used to treat the migraines she had suffered for years, although it is not FDA-approved for that. She said Klein failed to warn her that the drug may cause "life-altering headaches," primarily because he was a paid consultant to Allergan.

Klein and Allergan said the symptoms that Medavoy claims were Botox-related had plagued her years before she had ever used the drug, and that dozens of studies had proved it was safe in much higher doses than were used to treat her migraines.

The trial included weeks of

medical testimony from about 20 doctors, three of whom blamed Botox for Medavoy's symptoms, including all-over body pain, respiratory problems and fatigue. Several others diagnosed Medavoy with fibromyalgia, a painful musculoskeletal condition with no known cause.

The jury began deliberating on Wednesday, but on Friday morning asked the judge to replace one of its members. The court granted their request without offering an explanation. At 9:30 a.m., the jury began deliberating anew. A verdict was reached in about three hours.

Juror Ronald Jahn said the man who was removed had suffered from fibromyalgia and "he didn't even want to consider any of the expert testimony. He said they were all lying."

Medavoy's attorney, Jeff Benice, said, "But for the removal of that juror, it would have been a mistrial."

In the end, nine jurors didn't believe Medavoy's doctors, Jahn said. "We tried to go through it very logically," he said. "Three national experts said the same thing, that there was zero connection, and the product insert said there were more headaches in placebo [injected] patients than in Botox patients. As far as general cause was concerned, we really didn't have a case there at all."

Allergan's attorneys, Hoot Gibson and Ellen Darling, could hardly contain their joy as they waited their turn before the cameras — perhaps because Botox is in the second of three phases of Federal Drug Administration trials to determine whether it should be approved as a migraine treatment.

Klein was not present for the verdict, but his attorneys, Howard Weitzman and Stephen Fraser, said he was "very grateful" for the decision and "looking forward to returning to his practice" without distraction.

In a statement, the Medavoy's reaffirmed their original intent. "We brought this lawsuit because we felt people should know there can be risks associated with the off-label use of prescription drugs and that the doctors we trust sometimes have financial relationships with drug companies that need to be disclosed. Win or lose, that message is getting out, which in the end is what really matters to us."