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HEADLINE: 'Lariam Defense' Rejected In Criminal Fraud Trial Following Hearing

DATELINE: PHILADELPHIA -

BODY:

A federal judge on June 3 rejected the "Lariam defense" of a former congressman charged with fraud (United States of America v. Edward M. Mezvinsky, No. 01-156, E.D. Pa.; See 4/5/01, Page 11).

(Memorandum in Section B 28-020620-104Z)

Edward M. Mezvinsky was charged with 69 federal violations stemming from 24 alleged frauds worth \$10.4 million committed over a 12-year period. Mezvinsky filed notice of a mental health defense under Federal Rule of Criminal Procedure 12.2(b).

Bipolar Disorder

Mezvinsky claimed he suffered from bipolar disorder for several decades and that he had frontal lobe organic brain damage revealed by a Positron Emission Tomography (PET) scan and from Lariam-induced encephalopathy. He claimed the last from taking Lariam during trips to Africa over time.

The government moved to exclude that mental health defense.

The U.S. District Court for the Eastern District of Pennsylvania conducted a four-day hearing over two months early this year.

U.S. Judge Stewart Dalzell said that while Mezvinsky suffered some degree of bipolar disorder, his expert testimony could not meet the requirements set forth for such testimony in *United States v. Pohlott* (827 F.2d 889 3rd Cir. 1987 , cert. denied, 484 U.S. 1011 1988). The judge said no experts could state that Mezvinsky did not have the capacity to deceive.

Judge Dalzell also found no evidence that brain abnormalities in Mezvinsky's PET scan "had any pertinence to his capacity to deceive" and were inadmissible under *Pohlott* as to relevance and reliability.

Lariam

Judge Dalzell noted that only Dr. Jonathan Brodie, a psychiatry professor and PET expert, concluded that it was possible that the toxic encephalopathy that may exist in Mezvinsky's brain was somehow related to his ingestion of Lariam for three years in the 1990s.

"Dr. Brodie, however, hastened to admit that his was only a hypothesis as no study exists as to whether Lariam use can in fact cause toxic encephalopathy; indeed, Mezvinsky's is the only PET scan Dr. Brodie has ever seen of someone who has used Lariam," the judge said.

"Both experts on PET confirmed that no study exists about the effect of Lariam on brain activity as it can be detected in PET scans," the judge continued.

During the hearing, Mezvinsky expert Dr. Gary Steven Sacs, a psychiatrist and expert in bipolar disorders, testified that Lariam does not cause bipolar disorder. But plaintiff expert Dr. Mark J. Mills, a forensic psychiatrist who the judge described as a "professional expert witness," suggested that Lariam may make the disorder worse.

But government expert Dr. Hans O. Lobel of the U.S. Centers for Disease Control and Prevention, an expert on malaria epidemiology, testified that no study links Lariam to psychosis, cerebral toxicity or irrational decisions.

"What some research has shown, however" Judge Dalzell wrote, "is that there are certain short-term effects on some travelers, although the causal relationship is, in Dr. Lobel's view, far from established."

Unauthenticated Report

Mills, the judge said, testified solely on the strength of an unauthenticated report by Dr. Ashley Croft, a Lariam critic who did not testify.

"While taking Lariam's psychological effects as more established than Dr. Lobel did, Dr. Mills nevertheless acknowledged that those effects were short-lived and would not continue over a period of years, much less over the twelve at issue here," Judge Dalzell wrote.

In a footnote, the judge noted that Croft declined to appear through a live televised appearance and that his absence "undermines his value as an expert witness. It was clear from a number of witnesses, however, that Dr. Croft is a scientific lone voice regarding Lariam's effects on mental health."

"Again," Judge Dalzell said, "no expert suggested that mefloquine/Lariam had anything to do with the capacity to deceive. To the contrary, Dr. Lobel, by far the most eminent of the experts to testify on this subject, was aware of no reliable evidence that in any way suggested that mefloquine makes anyone more likely to think that the false is true and the true, false. We heard no defense witness contradict Dr. Lobel on this crucial point."

Thomas A. Bergstrom of Malvern, Pa., Mark E. Cedrone of Carroll & Cedrone in Philadelphia, Stephen Lacheen of Philadelphia and Bryant L. Welch of Bryant L. Welch & Associates in Potomac, Md., represent Mezvinsky. Robert A. Zumber of the U.S. Attorney's Office in Philadelphia represents the government.

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