

What was their real crime?

U.S. Imprisons Mollie Fry, MD, and Dale Schafer

By O’Shaughnessy’s News Service

Marian “Mollie” Fry, MD, and her husband Dale Schafer, an attorney, turned themselves in to U.S. marshals on May 2 and were taken to the Sacramento County jail to await transfer to federal prisons.

Mollie was sent to the Federal Correctional Facility in Dublin, which is in visiting distance for her children and grandchildren. Dale, who has severe medical problems, was held for weeks in the county jail, then shipped to two prisons in rapid succession. He is supposed to wind up in Taft (California).

They are serving five-year terms — ostensibly for the crime of Cannabis cultivation (growing plants), but actually for the crime of political organizing (educating people).

Mollie Fry is a founding member of the Society of Cannabis Clinicians, the group organized by Tod Mikuriya, MD, in 2000 to enable doctors entering the field to share findings and defend themselves against persecution. Law enforcement at the state and federal levels had loudly opposed Proposition 215, the measure enacted by voters in 1996, and has curtailed its implementation ever since.

Fry, 54, is a breast cancer survivor. Schafer, 57, is a hemophiliac with painful, blood-swollen joints. He was taking high doses of morphine and other analgesics prior to incarceration. We asked Dale how he was going to be spending his last week-end of freedom. He said, “Hugging my family.”

Mollie and Dale raised five kids who are now grown-ups —Heather, 35, and Jeremy, 34, from Dale’s first marriage, and Jeffrey, 24, Carol, 20, and Tyler, 18, from their union. Heather and Jeremy have kids, 10 and 11. Carol is going to have a baby in October. The extended family, minus mama and papa —which is what the grandkids call Mollie and Dale— are living together in the house in the foothills west of Auburn.

“We’ve got to keep paying the bills while our parents are gone,” says Heather. “The government took all their savings, everything but the house.” An insurance policy has been paying the mortgage (\$3,500/month) since 2007, when Mollie stopped practicing due to disability. Dale doesn’t think the company will use her imprisonment as an excuse to stop paying, but he lined up a lawyer just in case.

Jeffrey is working at the CannaCare dispensary in Sacramento, and feels grateful to have a job. Jeremy is going to be traveling with a country-jazz band, Dale told O’Shaughnessy’s on the eve of his imprisonment. “They’ve got a big bus and gigs lined up throughout the south,” according to Dale. “He can’t get wait to hit the road. I told him, ‘If that’s your dream, man, jump on it and do it. If you don’t do it right now...’”

Background

Mollie Fry says proudly that there have been doctors in her family since the Civil War. Her mother, a research psychiatrist, died of breast cancer at age 42. Mollie, then 13, started using cannabis to deal with her grief. It didn’t impair her academically. She graduated from UC Irvine School of Medicine in 1985 and did an internship at UC Davis in psychiatry. She switched to family practice when she began practicing in Lodi in ‘87. It wasn’t until 1999 that she became a cannabis consultant —a decision stemming from her own illness.

In December 1997, an exploratory procedure (which Mollie had insisted on against



MARIAN FRY, MD, IN 2002.

the advice of an oncologist) revealed a malignancy that had spread to three lymph nodes. Her breasts were removed and she underwent extensive radiation treatment. She used cannabis to deal with the nausea and anxiety. “It was hard to get,” Dale says, which is why he grew a few plants in their garden in the summer of ‘98.

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Dale had observed the medical use of marijuana first-hand when he was in the Navy, a lanky 19-year old assigned to Oak Knoll Hospital. He has indelible memories of assisting surgeons trying to “perfect” the stumps of sailors whose limbs had been amputated en route from Vietnam. “People who were in radiation therapy would go down the back hallway to smoke,” he remembered. “We knew that it was the only thing that helped.”

Dale worked in Kaiser emergency rooms to put himself through college and law school. “I wasn’t naïve, I knew that marijuana had medical benefits,” he says, “But it wasn’t until Mollie got cancer that I really started digging into what Prop 215 was all about.”

It’s difficult to picture now —now that doctors willing to issue cannabis recommendations are advertising in the media— but when Prop 215 passed there was only one physician proclaiming his willingness to approve cannabis use for conditions other than AIDS or cancer: Tod Mikuriya, a Berkeley-based psychiatrist. As of 1999 the number was not in double digits, although demand was enormous.

Most pot smokers were embarrassed or afraid to ask their regular doctors for letters of approval, and most doctors were unwilling to write them. Some were afraid of getting in trouble with the medical board or the DEA and jeopardizing their livelihoods. Others were too conscientious to recommend use of a medicine they had learned nothing about in medical school and couldn’t discuss in terms of proper dosage, side effects, etc..

Bobby Eisenberg, an acquaintance whose son played on a Little League team that Dale coached, put him in touch with Tod. “Mollie called him and he invited us to visit him.” Dale recounted. “We saw his office, then visited him at home. I started reading everything I could find on medical marijuana because I wanted to know how to advise people to do it right. And the cops wouldn’t tell me.

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“Nobody will tell you to this day how to do it right. That’s the problem. They want you to go out and fuck up and then come and arrest you. Every other law that the government passes, they tell you how to make it work. They won’t tell you how to make Prop 215 work. They want to keep it that way, they want everybody to be afraid, to be afraid that if there’s a slight change, they could go down.”

In the summer of ‘99, Dale and Mollie opened adjoining offices in a small foothills town called Cool. She did Cannabis consultations, he advised patients of their rights. They were growing 20 plants on their property when two El Dorado County Sheriff’s deputies paid a visit. The next day, Dale says, “Mollie called the head narcotics detective, Tim McNulty. She told him, ‘Don’t waste your money snooping around. I’ve had cancer, I’m growing pot, and we want to talk to you about it. Get up here.’”

“McNulty came to the house and I took him up to the garden. I used to represent cops. I thought they trusted me. I talk their language pretty well. He took a look at our paperwork and said it looked fine. He even said I was a good grower! But he made a request that Mollie wasn’t willing to grant. He said, ‘You should help us separate the 18-year-old skateboarders from the people with cancer.’ Mollie said ‘I’m a doctor, not a cop. I’m willing to see people and determine if they’re qualified. I’ll do my job, you do yours.’”

Dale and Mollie felt confident that their medical/legal practices were appropriate under Prop 215. In addition to seeing patients in Cool, they leased space in Oakland and Lake Tahoe to conduct one-day-a-week clinics (again following Mikuriya’s practice model).

In Tahoe they met a young couple, Paul Maggy and Tracy Coggins, who came to work for them as office managers. Maggy was facing a cultivation charge from a 900-plant grow —which is not something Mollie and Dale held against him. During the seven months he would work for them, Maggy helped them grow marijuana (they grew 43 plants in 2000) and in distributing the surplus to patients of Mollie’s.

In this period Mollie encountered Attorney General Bill Lockyer at a VFW fundraiser and told him about her practice. “Lockyer said ‘Okay, go for it,’” according to Mollie, “but be low-key.” He said something to imply, not that I should hide, but that I should be discreet. Maybe that was the word he used... But the problem was, I had staff and office rents, and how do you let patients know that you’re available without advertising?”

Dale arranged a meeting with Dave De Alba, the senior assistant AG whom Lockyer had put in charge of medical marijuana cases. He wanted to confirm that Mollie’s procedures were legal under state law. The only thing DeAlba advised doing differently, Dale says, was to “stay the hell away from Tod. He said that Tod is targeted, and that Tod is a problem. We ignored that, of course, because we liked and respected Tod.”

As for federal law, Dale was relying on a 1999 ruling by the 9th Circuit Court of Appeals in the *U.S. v. Oakland Cannabis Buyers Co-op* case that made “medical necessity” a possible defense for marijuana

distribution. Dale says he told the deputies who inspected his grow in 2000 and again in 2001 that any surplus would go to patients, and they told him that as long as the plant total was below 100, the feds would not take notice.

In July of 2001 Dale —increasingly convinced that marijuana was safe and effective medicine— announced that he was running for District Attorney of El Dorado County. In September the DEA raided his property, confiscating 34 plants and 6,000 patients’ files. In November he got 15% of the vote for DA.

Mollie recalls the raid: “I was going to bed with a migraine headache and they came running up my driveway with their guns in their riot uniforms. I opened my arms and said, ‘I entirely submit. You are welcome in my home.’ And they still forced me to the ground and handcuffed me for two hours. My hands turned white. I was so cold, my hands were shaking... So they moved me into the trailer. Then I had to change our granddaughter’s shitty diaper while in handcuffs. I couldn’t quite wipe... I said to the agent, ‘It’s so hard having five children and a baby to take care of and cancer...’ And she looked at me and said, ‘You have cancer?’ And I go, ‘Of course I have cancer, why the hell do you think I’m doing this?’

“Not even the staff that raided me and was abusing me knew the truth.”

It used to be that they could convict just about everybody they arrested. Prop 215 changed that, and they took it personally.

Mollie and Dale believed that El Dorado County DA Gary Lacy had sicced the feds on them —not just because Dale had run against him, but because Mollie had been testifying successfully in support of her patients. “Mollie testified in about 25 cases,” according to Dale, “and almost every one resulted in an acquittal. Cops and prosecutors were simply not accustomed to losing marijuana cases. It used to be that they could convict just about everybody they arrested. Prop 215 changed that, and they took it personally. They hated Mollie the way they hated Tod.”

Neither Mollie nor Dale was indicted at the time of the September 2001 raid, but the DEA notified Fry that her prescription-writing privileges would be revoked: “It is inconsistent with the public interest for a DEA registered practitioner to live in a residence wherein large quantities of a controlled substance are being stored, cultivated, manufactured and/or processed for distribution and/or sale. In addition, it is inconsistent with the public interest for a DEA registered practitioner to be engaged in the illegal sale of a Schedule I controlled substance such as marijuana at the practitioner’s registered location.”

It wasn’t until June 22, 2005 —two weeks after the U.S. Supreme Court ruled in the *Raich* case that an individual’s right to use marijuana as medicine under California law was superseded by the federal prohibition— that Fry and Schafer were indicted. The charge was conspiracy to grow (“manufacture”) and distribute marijuana between August ‘99 and September ‘01. Because they had grown more than 100 plants in this period, they were facing five-year mandatory minimums. Dale says he was completely blindsided by the feds basing their charges on a cumulative three-year total.

The U.S. attorney offered a deal that

continued on next page

Fry and Schafer from previous page

would have meant 18 months in prison for Schafer and no prison time for Fry. "But if she couldn't practice and I was gone," Dale says, "we would have gone bankrupt and lost the house. So we said 'Thanks but no thanks.'"

A 10-day trial was held in August 2007. Schafer was represented by Tony Serra, Fry by Laurence Lichter. Opening arguments hadn't concluded before Judge Frank Damrell instructed the jury that any references to the medical use of marijuana were irrelevant under federal law, and that they absolutely had to abide by his instructions. Damrell also forbade the defense from citing their belief that "medical necessity" on the part of patients justified marijuana production and sales. (In 2003 the U.S. Supreme Court had overruled the 9th Circuit's recognition of "medical necessity" as a defense in the Oakland CBC case.)

The star prosecution witness had been released after serving 13 months of a five-year term in exchange for his testimony.

Paul Maggy was the star prosecution witness. He had gone to prison in connection with his earlier grow op, and been released after serving 13 months of a five-year term in exchange for his testimony. Maggy swore that on behalf of Mollie and Dale he had sold processed marijuana, clones, and "starter kits" consisting of lights, plant nutrients and clones.

According to Bobby Eisenberg, whose account of the trial is trustworthy, "Several patients were brought in to testify that they'd purchased their marijuana from Dr. Fry or her staff. Jody Bollinger testified that she purchased a half ounce of medicine from Mike Harvey with a check made out to Schafer for \$40. Keep in mind the going rate for a half ounce of bud is closer to \$200. Harvey testified that some patients received their medical marijuana for free and in some cases they paid only \$10 as a delivery charge.

"Another patient, Jeff Teshera, a convicted robber, got leniency for testifying that Fry examined him on Nov. 30, 1999, and that she and Heather Schafer then sold him marijuana. It turned out that Heather Schafer had given birth to her daughter on Nov. 29 and that Mollie was with her at UC Davis on the 30th, all day. Dr. Fry had her Physician's assistant, Rob Poseley, working in clinic on the 30th and he testified that he, and not Dr. Fry, had examined Teshera. No marijuana was sold.

"El Dorado County sheriff's deputy Bob Ashworth told the jury that he had deceived Fry and Schafer for over a year and a half leading them to believe that everything they were doing was legal under state law and safe, given federal policies. He observed their marijuana gardens in 1999, counting 20 plants and in 2000 when he counted 43 plants.

"He spoke with Schafer on the phone numerous times, right up until a few days before the raid on September 28, 2001, with assurances that everything was fine. It turned out that El Dorado County deputies were working hand in hand with the DEA and the prosecutor to entrap Fry and Schafer throughout the investigation.

"Jacob DuCharme had been employed by Fry and Schafer just after Paul Maggy had been hired. Jake wanted to testify that he and his wife had been unwilling to work for Fry and Schafer because Maggy and his girlfriend, Coggins, were up to no good. The DuCharmes knew that Maggy and Coggins were out to sell marijuana to Fry's patients without Fry's knowledge. DuCharme was silenced by prosecution objections.

He never got to say that Fry and Schafer

had gone to great lengths to insure that everyone in the office understood and upheld the law in California. The jury never heard the truth."

The Real Crime

Why did federal prosecutors add up plant counts from three years of cultivation to push the total over 100? Why were they so bent on making Mollie Fry and Dale Schafer face mandatory-minimum sentences? Why were Mollie and Dale a much more important target than Maggy, the freed in-former, who had grown 900 plants and had numerous other offenses on his record?

Because unlike Maggy, Mollie and Dale were political organizers.

There's always a person who confirms your inclination to throw in with the group, or convinces you by example or explanation that the cause is in your interests.

Anybody who joins a movement or a party has been organized by another person or persons. Being organized (in the sense we mean it) is not the same as being moved by a speech or a leaflet (no matter how brilliant the orator or writer). It involves a closer, more direct connection. There's always a person who confirms your inclination to throw in with the group, or convinces you by example or explanation that the cause is in your interests.

That's what Mollie Fry and other MDs following Mikuriya's leadership did with their patients —they organized them. They did more than define the patient's pain (emotional and/or physical) in medical terms, they enabled the patient to tell the truth about their illegal drug use, i.e., their subversive behavior. They substantiated the notion that the government lies, the government is prejudiced, the government is not operating in the interests of the American people.

Mollie Fry and her colleagues have helped organize hundreds of thousands of legal medical marijuana users in California. This was the insight of Phil Denney, MD, a neighbor of Mollie's.

In a sense, he had been organized by Mollie. A brief conversation with her at the mailbox in 1999 led Denney to get into the field, too.

Mollie is organizing in prison. In late July, having made an ally at Dublin, she forwarded a letter to the Landa Prison Outreach Project listing "Safety Issues with Dublin Camp Facilities."

Mollie added, "The situation here is good. I am at camp. I am happy & strong. God is here with me."

Two dispatches from Dale are at right. Google the Landa Prison Outreach Project for updates from him and Mollie.

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The Schafer family: Geoffrey, Mollie, Jeremy, Caroline, 21, Tyler (Cody), and Heather.

Notes From Dale

1. July 21 After about two weeks in Sac Co. Jail, I was transferred to San Bernardino County Central Detention Center. The bus trip took over 12 hours without any pain meds. The seats were hard plastic. When I got to San Bernardino, again I got no pain meds for four days I was once again left to withdrawal from morphine. I never saw an MD there. The nurse practitioner prescribed extra-strength vicodin called Norco. It was not strong enough to cover my pain...

After about three weeks at San Bernardino Co., I was bused to Pabrumps Nevada. As usual, they had no pain meds for me when I arrived... After about four days I was awakened at 2 a.m. and told I was being flown to Hawaii... We were not allowed to even stand up for the almost 6 hour flight... Since arriving in Honolulu, it has been a nightmare...

Whenever I feel sorry for myself, I see other prisoners who are worse off than me. The whole system is barbaric. If the nurse announces pill time and you don't hear it, they leave without giving you your meds. There are several diabetics who have missed their insulin because you can't hear the pill-call person. I started whistling when it was time for pill time, but a guard got angry and made me stop the whistling because he didn't like it. I doubt if anyone close to our unit could handle a diabetic in crisis. I am medically trained but I don't want to have to help someone in crisis.

2. August 22 I have been stuck in the Federal Detention Center in Honolulu for going on three months now. I, along with about 120 others, who were designated for Taft, were sent here via con air. The reason that we were given was that the Federal Govt. was in contract negotiations and wanted to keep the census low. Taft is a private Corp. that runs facilities (prisons) for the Feds. We are only supposed to be here 90 days. The latest scuttlebutt is that we will leave on September 9. The transfers are a killer. I don't get any pain meds and I have to sit for almost six hours in hand cuffs and shackles.

Seeing life from the inside is very enlightening. Most of the people here are young enough to be my kids. Many are here because of meth ('ice' as they call it here) and face from 10 to 20 years. You can kill someone and get less time than that. You know how the Feds are. They want to make examples out of people and ruin their life and their families' lives. There is absolutely no compassion in anybody whose life depends on the prison-industrial complex. There are some guards that are nice and let us do things that don't sweat the small stuff. It helps to keep the peace here.

I have befriended several people here that allow for intellectual discussions. Also, I have read files, done research and taught people about their cases. I'm not allowed to do formal legal work while inside, but what most people want is to understand what is happening to them and how much time the Feds can get out of them.

The kids are working hard to get the T-shirt business off the ground. They are slowly getting Doc Fry shirts into dispensaries and Heather is looking for more places to have them available. Any help you can provide to them would be greatly appreciated.

I'm looking for reading material on the endocannabinoid system. If any materials are to be sent, they have to come from either the distributor, book store or book club. I have been reading material on the cell and its kinetics. I didn't learn this in College because it is just now being studied. I'm also reading a book on philosophy. It is very hard to keep all of the people and concepts in my brain. I hope to be able to use some of the information during trial, to help the jury to understand how one person's truth is not someone else's truth, and how the mind can twist around what someone believes they heard or saw.

I've been writing to the Lambda Prison Outreach Project out of Allison Margolin's office. They are putting what I write on their blog.

I would love to get a copy of O'Shaughnessy's but it will need to come from one of the above outlets. I would also like to get a copy of The West Coast Leaf.

One of the worst parts of all of this is the food. We are given mystery meat that I swear was barking or meowing in the very recent past. I tend to eat meat only when I feel I know what type of meat it is. I do get commissary that allows me to order some of the foods I like.

Carol is due in October. She is going to have the baby at home with a water delivery. There will be a midwife and Mollie's former Physician Assistant standing by. I know Rob, Mollie's former PA, has delivered babies and he is a Paramedic for the fire department in case anything goes wrong. However, Carol is healthy as a horse and women have been delivering babies outside of hospitals for thousands of years. The worst thing about all of this is that I can't see my baby girl while she is pregnant or delivering. I won't be able to see my grandson for years, either. They should be able to come visit, but that is not having any part of his upbringing. Absent a pardon from the President, I will be locked up for years.

Please tell every one that they haven't killed me yet, although there have been times when I worried about that.

Bye for now. I'll write again soon. Peace, hope and knowledge. Dale