What was their real crime?

Imprisoned: 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, where, despite her severe medical problems, was held for weeks in the county jail, before being 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 organizing to distribute medical marijuana (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 national and federal levels had loudly opposed Proposition 215, which had been pushed by voters in 1996, and has curated its implementation ever since.

Fry, 54, is a breast cancer survivor. Schafer, 57, is a hemiplegic with painful, blood-swollen joints. He was taking high doses of opioid painkillers 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, 33, from their 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 — what is 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 kids are in college,” Mollie said. “The government took all their savings, everything but the house. An insurance policy has been paying the mortgage ($3500/month) since we started practicing without doing 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. Jeffrey is going to be traveling with a country-jazz band. He said that he has been doing as much as he can to help out. Dale arranged a meeting with Dave DeAlba, an attorney, to talk about how to do it right. That’s the problem. They want you to go out and just use and then come and arrest you.”

“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 doctor knows how 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 you to go out and do it to be afraid that there’s a slight change, they could go down.”

In the summer of ’99, Dale and Mollie opened a medical office in a small foot-hills town called Cool. She did Cannabis consults, 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 snipping around. I’ve had cancer, I’m growing pot, and we want to talk to you about it. Get out.’”

“McNulty came to the house and I took him up to the garden. I used to represent cops. I thought they knew me and that I could talk to me like a person. He looked at the garden and said, ‘You have cancer?’ And I go, ‘Of course, I’m doing this?’ 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 Oak- land 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 there as office managers. Maggy was facing a cultivation charge from a previous grow — it was not something Dale and Mollie had against him. He said, ‘You should help us separate the fact that I’m growing marijuana from the fact that I’m competent.’”

Neither Mollie nor Dale was indicted at the time of the September 2001 raid, but the DEA notified Fry that her prescription-writing practice was illegal under federal law. “It is inconsistent with the public interest for a DEA registered practitioner to be in a practice 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 prac- tice registered to DEA.”

It was until June 22, 2005 — two weeks after the U.S. Supreme Court ruled in 2001 that any such grow would have to use marijuana as medicine under California law was superseded by the federal prohibition — that Fry and Schafer were incorporated as SAGA (Self-Administrated Grow — “manufacture”) and distribute mari- juana between August ‘99 and September ’01. Because they had grown more than 1000 grams, they are 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

would have meant 18 months in prison for Schafer and no prison time for Fry. “But if she could have talked and I was as she said, “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 overturned the 9th Circuit’s recognition of “medical necessity” as a defense in the Oakland Covenant case.

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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 lighting, plant nutrition and clones.

According to Bobby Eisenberg, whose account of the trial is trustworthy, “Several dispatches were brought in to testify that they’d purchased marijuana from Dr. Fry or her staff. Jody Bollinger testified that she purchased a half ounce of medicine in February 2001, and that she had 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 he had been organized by Laurence Lichter. “He spoke with Schafer on the phone,” Teshera testified, “and he asked the defense if he was able to wafterly, to avoid prosecution.”

“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 2001, counting 20 plants and in 2002 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,” Ashworth told the jury that he had been organized by Fry and Schafer after Paul Maggy had been hired. Jake wanted to testify that he and his wife had been unwell to testify that the report was for Fry and Schafer. Jake wanted to testify that the report was true and told a nurse at the hospital, “You’re a paramedic for the fire department in Redding. It would mean 18 months in prison for Fry. But if we were to go to trial, we would have enough to be my kids. Many are here because of meth (“ice” as they call it here) and face sentences from 10 to 20 years. You can kill someone and get less time than that. You know how the system is structured. They have no idea of the prison time a single sentence will bring about. See the government is prejudiced, the government doesn’t care if you have a child. They want to make examples of people and ruin their life and their families’ lives. There is absolutely no compassion in anybody whose life depends on the prison system. There are some things which we can’t discuss, and let us do things that don’t smear 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 facts, done research and taught people about their cases. I’m not allowed to do formal legal work, but I’ve helped a lot of people 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 of the ground. They are slowly getting Doc Fry shirts into dispensaries and Heather is looking for money 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 thinking about the medical aspects of the drug. Can I eat a meal when I feel I know what type of meat is it? I do get commissary. I would also like to get a copy of The West Coast Leaf.

The one worst of all is our food. We are given mystery meat that I swear is not very good and many have no idea of the food, including those who are very sick and have lost their appetite. I tend to eat meat only when I feel I know what type of meat is it. I do get commissary that allows me to order some of the foods I like. I would like 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.

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