

Bitter Pills

A Tale of Sex, Drugs and Deception [the Rottschaefer Trials]

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It's safe to say that medicine is in Bernard Rottschaefer's blood. His great-grandfather was a country doctor in rural Wrightsville, Pa. An uncle and several cousins were also in practice, while an aunt spent her life as a medical missionary in India.

Rottschaefer too was always fascinated by medicine. After graduating in 1971 from the University of Pittsburgh School of Medicine, he spent nearly 35 years working as a doctor, 30 of which he spent building a practice in Oakmont. All of this despite being "deathly afraid" of needles as a child, he says.

Perhaps it was the pills he should have worried about.

One day in 2000, Rottschaefer's practice — his world — was rocked. Federal agents raided his office, seized his files and, later, accused him of trading prescriptions for powerful narcotics for sex.

Rottschaefer was buried under 208 counts of illegally distributing prescription drugs. The charges were based on the testimony of five women, four of whom said Rottschaefer gave them unnecessary prescriptions for painkillers in exchange for sex in his office. In March 2004, Rottschaefer was convicted on 153 counts, and sentenced to more than six years in federal prison.

And then came a turn of events straight out of a made-for-TV movie. Mountains of evidence suddenly appeared that strongly suggest a key witness in the trial, Jennifer Riggle, lied on the stand ... and confessed to it repeatedly in 528 pages' worth of letters she wrote to an ex-boyfriend. At the very least, Rottschaefer expected a new trial.

Imagine his relief.

And then imagine his horror when it didn't seem to make any difference. No one seemed to give a damn — not the prosecutors, not the appeals court, no one. No one gave a damn that a key witness admitted lying on the stand to get a lighter sentence for herself.

Rottschaefter is 63 today. For a man that age, six-and-a-half years in prison could be a life sentence. For the past two years, Rottschaefter has been living at his Plum Borough home, out on bail as he appeals his conviction. But now all that stands between him and a prison cell is the U.S. Supreme Court ... and the hope that someone will care that something with his case just isn't right.

Because in this drama of drug use, it's not entirely clear who was using whom.

"I loved practicing medicine," Rottschaefter wrote in an e-mail interview — the only method permitted by his attorney. (Rottschaefter would not answer specific questions about the case because of the ongoing appeal.) "I was as fond of it in the early days as I was up until the last day of my trial when I closed my practice of 30 years.

"I miss practicing very much."

The federal Drug Enforcement Agency began investigating Rottschaefter in 2000 when his then-office manager Diane Wisniewski called the DEA. As she would later testify in court, Wisniewski became suspicious of Rottschaefter's interaction with a few of his female patients: He would be in the exam room — behind a locked door — with certain patients for as long as 30 minutes, instead of what she described as the standard quarter-hour. While Wisniewski never caught the doctor in a sex act with a patient, she testified that she heard ruffling of the paper on the exam table, and a belt buckle being unclasped.

Rottschaefter diagnosed the women who later testified against him with bad backs. He provided them with prescriptions for drugs like Oxycontin, Xanax, and Duragesic. Xanax is a sedative that is prescribed to deal with depression and anxiety. Oxycontin and Duragesic (also known as fentanyl) are opioid painkillers that can be addictive; Oxycontin gained notoriety after conservative radio talk-show host Rush Limbaugh confessed his own addiction to the medication.

U.S. Attorney Mary Beth Buchanan, whose office prosecuted Rottschaefter's case, says Rottschaefter flagrantly broke the law — and that his records confirm it.

A review of the charts, Buchanan says, showed no legitimate medical reason for the high number of prescriptions. During Rottschaefter's 2004 trial, Douglas Clough, whom the prosecution called on as a standard-of-care expert, testified that nothing in the women's charts indicated a need for the powerful narcotics. In his testimony about Rottschaefter's treatment of one patient, for example, Clough said records showed "no legitimate reason to continue her on the Oxycontin and later the Duragesic without attempting to determine whether or not the pain medication ... was needed for her pain. Especially in view of the

fact that she exhibited drug-seeking behavior and was later found to be a known alcohol abuser with an addictive personality.”

DEA agent Louis Colosimo, meanwhile, testified that files showed the women often claimed they lost or misplaced pills only to receive new prescriptions. Colosimo described that as “drug-seeking behavior,” court records show.

Rottschaefer’s Oregon-based attorney, Eli Stutsman, specializes in defending doctors in criminal cases. He and his client maintain that there was no sex involved, that Rottschaefer was treating the pain of his patients, and that he’s being punished because he didn’t know they were addicts trying to get narcotics. Even if Rottschaefer should have conducted different tests or prescribed different medications, Stutsman says, that’s a question of medical malpractice — a matter that should be decided in a civil suit rather than with a federal drug charge.

“The bottom line is, Dr. Rottschaefer was judged under a civil standard and not a [criminal] standard,” Stutsman says. “That standard combined with a case where the doctor is accused of trading sex for drugs, there’s not going to be a lot of sympathy for him.”

There certainly isn’t much sympathy on Buchanan’s part.

“Instead of this doctor performing appropriate medical diagnostic testing, he engaged in sexual activity and then prescribed narcotics,” Buchanan says. “This has nothing to do with malpractice or medical standards. To prescribe narcotics without a legitimate medical purpose is against the law. Once a doctor does that, they’re no different than a drug dealer, no different [than] someone selling drugs on the street.

“This isn’t a case of a doctor who exercised poor judgment or made a wrong decision,” she adds. “This is a case of a doctor who prescribed for no medical reason dangerous narcotics which caused his patients to become addicted. ... This wasn’t a close call at all.”

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Arguably, though, it might have a closer call — if the jury had seen letters in which a key witness confessed:

*“I think they want to subpoena (sic) me to a grand jury about the doctor I was seeing. They’re saying he was bribing patients with sex for pills, but that never happened to me. DEA said they will cut me a deal for good testimony. Everyone else is testifying against him. Please don’t let nobody see this.”

* “They’ll give me a copy of my last statement I made, which is good. ... As long as I get a copy of my old statement, I can look at it and go over it. ... I just feel so guilty, you know.”

* “You know that big secret I told you about the doctor? Well my dumb ass told someone about it way back and I’m scared to death that she will reveal it and I’d never go home. ... That was dumber than selling those drugs and I kick myself every fucking day about it. If anyone finds out my secret I will fucking murder someone and if I’m locked up I will put a hit out on them. I fucking swear, babe. I know it would never be you to reveal anything, so don’t think I’m referring to you. Babe, maybe you should burn this letter to be on the safe side, please do that for me.”

Former Rottschaefer patient and accuser Jennifer Riggle wrote the letters between August 2001 and February 2004 to her then-boyfriend, Barron Shelton. At the time, Shelton was incarcerated on a four-and-a-half to nine-and-a-half year prison sentence for aggravated assault with a deadly weapon. For some of that period, Riggle herself was incarcerated in the Westmoreland County Jail for selling Oxycontin.

Repeatedly in the correspondence, Riggle admits to lying, professes her guilt about it, and asks Shelton to destroy the letters. But she also maintains that Rottschaefer deserved prosecution because, she believed, he was handing out the drugs improperly.

“The doctor is still in the wrong for not wanting to see Xrays of my back before prescribing those pills,” Riggle wrote on Dec. 2, 2002. “All he did was have me bend over, feel my back and decide I was in a lot of pain.” In an earlier letter, she charged, “He has ruined many lives.”

Despite Riggle’s repeated entreaties, Shelton didn’t destroy her letters. And in 2004, Riggle began a relationship with another man. She dumped Shelton seven months before he was due to be released from prison ... and when Shelton was paroled in September 2004, he turned the letters over to Rottschaefer’s attorneys.

Attempts to reach Riggle through calls to her civil attorney, Catherine Conley, were not returned. (Riggle and the other witnesses are suing Rottschaefer, and the various drug companies, for allegedly making them addicts.)

Repeated attempts to reach Shelton also failed. Calls to a number related to him in New Kensington were answered by an elderly woman identifying herself as Shelton’s mother. She said she hadn’t seen her son in some time and he usually stopped by frequently. In a final call shortly before publication, she informed City Paper that she learned her son’s parole had been violated; he had been returned to prison, where he could not be reached for comment by press time.

But Rottschaefer is using the letters in a bid to stay out of prison himself. In June, he is due to file a request to have his case heard before the U.S. Supreme Court. It will be the last chance he has to avoid prison: Two weeks ago, the Third Circuit Court of Appeals in Philadelphia denied Rottschaefer’s appeal.

“The prosecution acted well within the law when it defined Rottschaefers crimes in terms of prescribing narcotics for ‘no legitimate medical reason,’” the justices wrote. “The crime for which Rottschaefers was convicted was not, as he claims, trading drugs for sex. Rather, he was convicted of unlawfully distributing controlled substances outside the course of professional practice.

“If anything, Riggle’s letters reinforce other evidence that Rottschaefers prescription practices fell outside of the bounds of ordinary professional practice. Furthermore, ... we note that [the letters] would not ‘probably produce an acquittal.’”

Key to the ruling was the fact that the jury at his criminal trial had some clue Riggle might have been lying. During the original trial, the defense produced a jailhouse informant who testified that Riggle admitted to lying about having sex with Rottschaefers. The judges held that the letters, then, were merely “cumulative” — additional support for a contention already made at trial.

But hearing such an argument from a jailhouse witness, Stutsman contends, is a lot different from hearing an admission in a persons own words. “We have the most extensive evidence of perjury that any lawyer will ever see,” he says.

And his questions about the case go beyond Riggle.

“Four of the five women had priors and were facing their own prosecutions, convictions and incarceration. They all reached plea agreements and they also changed their testimony, at first denying sex for drugs and then changing their testimony to help the government and get the agreements they wanted.” (One witness in the case, Corey Schlemmer, never testified that sex ever took place between her and the doctor.)

And Stutsman notes Riggle knew two of the other women who testified against Rottschaefers: Pam Miller and Sue Leskovic. Riggle was introduced to the doctor by Miller, and testified that she shared her pills with Miller after Miller coached her on a false story to justify the pain medication.

If such lies were intended to fool Rottschaefers, as his attorney claims, he may have been the only one they deceived. According to a 2003 Post-Gazette article, local pharmacists told investigators that they refused to fill Rottschaefers prescriptions because they suspected the women were addicts. During the trial, Wisniewski, Rottschaefers office assistant, testified that office staff often referred to some patients as Rottschaefers “little playmates and druggies.”

But was Rottschaefers preying on these druggies, or were they preying on him? Or both?

According to news coverage of Rottschaefers original trial, attorney Irving Green got Riggle to acknowledge that she initially pledged to testify in Rottschaefers defense. (She did it, she told the court, to protect her drug supply.) For her part, Miller had previously told a grand jury that, while she and Rottschaefers had sex, drugs weren’t involved. She

also acknowledged hatching a blackmail plot to ensure a steady supply of prescriptions, though she testified that she abandoned the scheme.

And in the wake of Riggle's letters, some have asked whether the feds themselves were being used. In a January 2006 piece about the Riggle letters, New York Times columnist John Tierney argued that law-enforcement officials must have been duped, just as Rottschaefer claimed to have been. (Unless, Tierney speculated, the feds wanted Riggle to commit perjury.) The feds, Tierney wrote, "are supposed to be experts at detecting liars. ... Yet they apparently weren't careful enough or shrewd enough to see through Riggle's story. If they don't deserve prison time for that mistake, neither does her doctor."

In any case, making deals for testimony is the government's bread and butter, says Steven B. Duke, a law professor at Yale University and an expert on federal criminal law.

"Much of the testimony against defendants in federal criminal prosecutions is purchased by the government — or if you prefer, extorted — by exchanging prison terms, money and other consideration with criminals in return for their testimony," Duke says. "It is not limited to drug cases. It is a major source of convictions of the innocent."

When told about Rottschaefer's conviction and Riggle's letters, Duke says the government's unwillingness to reconsider its position isn't surprising.

"That is the common prosecutorial position: to protect a verdict or other decision earlier made and to resist reconsideration," Duke says. "In this case, if the witness says she lied, that her testimony against the doctor was knowingly false, the government should reconsider or allow the court to hold a hearing on the issue."

Buchanan contends that the appellate court's ruling has provided all the hearing that's needed; since the Third Appeals Court soundly dismissed Rottschaefer's argument, she says, the case isn't worth the Supreme Court's time.

Not surprisingly, Stutsman sees things differently:

"I went over this case with a colleague who is a former prosecutor and she told me, 'I can't tell you if he did it or he didn't do it, based on the evidence.' She's right, and that's why this case deserves to be done over."

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Rottschaefer's case has attracted attention for another reason: Some see the prosecution as evidence that the "War on Drugs" has gone awry. As Tierney wrote in his January column, "[I]t shouldn't be the job of federal law enforcement officials to decide what constitutes proper medical practice."

“Clearly, some doctors are drug dealers — prescribing drugs to make money rather than to treat illnesses,” says Duke. “But many others are hounded and abused by narcs, and many, many more are deterred from legitimately treating their patients for pain by the fear of criminal prosecution.

“Drug agents are interfering with the practice of medicine in their zeal to discourage or punish doctors who are abusing their licenses to prescribe.”

Siobhan Reynolds, the founder of the Internet-based Pain Relief Network (painreliefnetwork.org), contends the government is cruelly targeting doctors and people in pain. That’s why she has posted a full-page tribute to Rottschaefer, whom she calls “an angel,” on her Web site.

“They are putting good medicine and good doctors on trial,” says Reynolds, who is a family member of a chronic pain sufferer. “It’s a pretty sad state that the government is setting medical standards instead of the doctors.

“And it takes a toll on the patients, many of whom have either learned to live with the pain, or end their own lives because relief is not an option. ... It’s a shame that trying to find someone to relieve your severe pain or the severe pain of someone you love has become an illicit transaction in this country.”

Dr. Jane Orient, executive director of the Association of American Physicians and Surgeons, says the prosecution of these doctors has created a class of desperate individuals living in constant pain. Because doctors are afraid of prosecution, Orient says, they are increasingly reluctant to prescribe the powerful narcotics to patients who need them. They become even more cautious, she adds, with patients whose previous doctors have already been prosecuted.

“Doctors are very suspicious of these patients that try and come over from a doctor who has been convicted,” Orient says. “They don’t want to inherit the legal problems that they know could come along with them. So what we have are patients in severe chronic pain and doctors that are afraid to treat them.”

Orient says there is no set standard in diagnosing and treating pain, because it is a subjective ailment. Without an objective test for evaluating pain, doctors must typically use their subjective judgment, combined with trust in the patient, to determine the course of treatment. Sometimes patients lie, Orient says, and it’s unrealistic for the government to prosecute doctors for not realizing it.

“You’re supposed to have a lie detector in the exam room, I guess,” she says.

It was the threat of such government intrusion that drove New York City-based Dr. Alexander DeLuca out of private practice. An addiction specialist and believer in pain treatment, DeLuca is now an activist for doctors whom he says are being targeted and hounded by prosecutors and DEA agents.

DeLuca says the cases are nearly impossible to win because, in the courtroom, prosecutors can dictate the standard of appropriate care. With more charges being filed, he says, 2006 “could be a very bad year for us.”

It’s hard to track the number of cases precisely. DEA spokesman Steve Robertson says the DEA does not discuss ongoing investigations and so current numbers are not available. He did say, however, that 62 doctors were arrested in 2005, 49 in 2004 and 34 in 2003. That’s out of one million practitioners, Robertson notes. Those numbers include only DEA arrests and do not include state arrests and prosecutions

On its Web site, Orient’s group lists about 30 doctors who have been convicted, indicted or targeted by authorities in drug crimes. Among them:

*Dr. William Hurwitz, 59, of Alexandria, Va., sentenced to 25 years in federal prison on multiple charges of conspiracy to traffic in controlled substances and drug trafficking resulting in death.

*Harry Meyer Katz, 79, of St. Louis was given 16 months in federal prison after being convicted on 176 felony counts of illegal distribution of controlled substances.

*William Nucklos was sentenced to 20 years in prison earlier this year after convictions for drug trafficking. Nucklos’ cause gained the support of the Rev. Jesse Jackson, who asked the court to grant the doctor bail pending the outcome of his appeal.

*Freddie Williams, who received life in prison after prescriptions of Oxycontin resulted in the death of two patients.

*Deborah Bordeaux, who was sentenced to eight years in prison after working in a Myrtle Beach pain clinic for just 57 days. Several other doctors in the clinic were also convicted and sentenced to prison. One committed suicide after pleading guilty.

In Erie, another doctor, Paul Heberle, faces prison time for charges surrounding his treatment of chronic-pain cases. His trial is ongoing and was expected to wrap up this week.

But such prosecutions aren’t always necessary to have a chilling effect, DeLuca says. The government’s M.O., he says, is to have agents raid doctors’ offices and send them target letters. Some doctors stop prescribing the drugs at that point, and the investigations sometimes go away. Others decide, as DeLuca says he did, that they can’t operate under the fear and still treat patients correctly.

“I get e-mails every week, from people begging for my help in finding a doctor,” DeLuca explains. “I got out of my practice because I couldn’t sit across from someone in extreme pain, have the ability to ease their pain [and] do nothing because I was afraid of the government.

“I can’t practice medicine like that and if I’d have stayed in it, I would have been a sitting duck, just like Dr. Rottschafer.”

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Today, Dr. Rottschafer isn’t practicing medicine either. At age 63, he now works in construction as a heavy-equipment operator. His family life has suffered along with his career prospects.

“My youngest summed it up the other day very concisely when he said he lost his parents and gained a case,” he says. “My life is changed and I find it very difficult to keep anger out of my psyche. Because of this conviction, I lost my legacy.”

Buchanan says she’s merely holding a doctor who prescribes narcotics illegally to the same standard as a heroin dealer — and that Rottschafer’s case isn’t worth the high court’s time.

Still, arguably, it’s at least as worthy of a court’s attention as the testimony of someone who wrote:

“I had just prayed to and asked God to give me the confidence to be able to lie about the Dr. just this once. I am not a good liar and I am scared. The only reason I’m doing this is because he’s pretty much already had and he doesn’t deserve to be practicing. Do you think it could come back to haunt me and that was a stupid question to ask God?

“Is there any exception to telling a lie?”

Perhaps. So far, at least, Riggle has not been charged with perjury.

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