

# SCRATCHING THE SURFACE

The headline says it all: “22-year-old suburban kid gets 25 years for selling pot.”<sup>1</sup>

Or does it?

Seth Michael Ferranti was a kid from Northern Virginia who, as various Internet Web sites characterize his plight,<sup>2</sup> fell victim to the government’s draconian drug laws after he got busted near St. Louis with some marijuana. The state of Missouri extradited him to Virginia, where the Feds stepped in and put him away for two dozen years.

“I’m a prisoner in the war on drugs,” Ferranti told *Rolling Stone* magazine.<sup>3</sup> In an essay posted on the Internet by a group called the November Coalition, Ferranti expresses dismay at his incarceration: “I was from the suburbs,” he writes. “What was I doing in jail with a plastic mattress, no pillow, no sheets, no nothing? I thought America was the land of opportunity, the land of the free. But it isn’t.”<sup>4</sup>

Clearly, this should not be the fate of a law-abiding young man who simply made a mistake. As it turns out, though, Ferranti was not exactly a law-abiding young man. This was not his first “mistake,” and it involved much more than a few bags of marijuana.

**Shortly before his sentencing, and despite the deal he struck with prosecutors, Ferranti faked his own suicide and vanished.**

From 1989 to 1991, Ferranti ran a drug-trafficking network that distributed more than 100,000 doses of LSD to high school and college kids in Fairfax County, Virginia. Arrested and charged, he pled guilty to the crime of engaging in a continuing criminal enterprise—a felony—and was released on his own recognizance pending trial. To reduce his sentence, he agreed to testify against one of his fellow drug gang members. Shortly before his sentencing, however, and despite the deal he struck with prosecutors, he faked his own suicide and vanished.

Ferranti spent several years on the run, distributing and transporting significant quantities of marijuana across state lines, and eventually earning a spot on the U.S. Marshals Service’s “15 Most Wanted” list. In September 1993, he was arrested in St. Charles County, Missouri, for possession of marijuana. By then, Ferranti was hiding his true identity behind false driver’s licenses, state ID cards, check-cashing ID cards, birth certificates, and voter registration cards. The arresting officers, unaware of the outstanding warrants against him, let him go.

It was another month before U.S. Marshals tracked Ferranti to St. Louis. They finally nabbed him there, along with his phony IDs and 18 pounds of marijuana. The Marshals brought him back to Virginia, where the court sentenced him to 12 months in prison for failing to appear at his sentencing and for mail fraud while he was a fugitive. The judge also ordered Ferranti to serve out his original term of 24 years and 3 months without the possibility of parole—not for marijuana, but for selling LSD.<sup>5</sup>

## The same old story

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Ferranti's tale is one of many tough-luck stories that are recounted by marijuana advocates and drug-law critics to show how an overzealous judicial system targets small-time marijuana offenders. As a result of this allegedly brutal and unjust crackdown, the advocates say, our nation's prisons are teeming with nonviolent non-criminals whose only offense was possessing small amounts of marijuana.

The idea that people are rotting away behind bars for nothing more than simple possession of marijuana has gained considerable currency in recent popular opinion. An article posted on the Internet by a well-known online magazine is a case in point. In the course of attacking what it describes as uneven drug-law enforcement in this country, the article states that "thousands of people languish in jails and prisons across America, serving long sentences for nothing more than simple possession of marijuana."<sup>6</sup>

It's hardly an isolated accusation. Variations on this theme are common among those arguing for looser marijuana laws. For example:

- "A marijuana smoker is arrested every 45 seconds in America."<sup>7</sup>
- "Unfortunately, the bulk of our nation's current anti-drug efforts and priorities remain fixated on arresting and jailing drug consumers—particularly recreational marijuana smokers."<sup>8</sup>
- "We're also a nation overrun with robbers, rapists, murderers, wife beaters, child molesters. We say we're petrified of them. Yet we're releasing them first from overcrowded jails so dope smokers can take their cells."<sup>9</sup>
- "Four million Americans were arrested for marijuana violations, the vast majority for simple possession, during [President Bill] Clinton's reign."<sup>10</sup>
- "Though there aren't enough cells for violent criminals, marijuana smokers and small-time dealers are going to prison by the thousands—sometimes for life."<sup>11</sup>

Such allegations paint a horrific picture of the criminal justice system, conjuring visions of jack-booted officers kicking down doors to arrest recreational users peacefully puffing marijuana in their living rooms. Untold quantities of ink and energy are devoted to perpetuating this image of harmless marijuana smokers as victims of government persecution. Meanwhile, special-interest groups and activists with a pro-marijuana agenda cloud the issue further by mixing and matching half-truths, citing statistics out of context, and making emotional appeals about the benefits of so-called “medical marijuana.”

Finding the facts amid all the hyperbole and deception is not a simple task. But if you look beyond the unsubstantiated claims and carefully examine what is really happening, you see that the picture presented by the drug legalizers is wildly out of focus, and that the truth is something they do not want you to know.

## **Looking at the laws**

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To find out who is, and who is not, getting locked up for marijuana offenses, it helps to start with some definitions. “Simple possession” is the term typically used in cases when someone has on his or her person, or available for his or her use, a small amount of an illegal substance for the purpose of consuming or using it but without the intent to sell or give it to anyone else. Specific definitions of “simple possession” vary from state to state.

In federal court, simple possession of marijuana is punishable by up to a year in prison and a \$1,000 fine for a first offense.<sup>12</sup> For offenders possessing an ounce or less of marijuana, federal prosecutors have discretion to charge under the “personal use” statute. Here, possession is treated not as a crime but as a civil offense, much like a traffic ticket, but with a fine of up to \$10,000.<sup>13</sup>

On the matter of terminology, another important point is the distinction between “jail” and “prison.” Although the terms are often used interchangeably in casual discourse, there are actually important differences between the two. In most states, if not all, prison is the federal- or state-run institution where inmates serve sentences of a year or longer for felony crimes. Jails, on the other hand, are detention facilities usually managed by city or county governments and traditionally reserved for individuals awaiting trial and defendants serving less than a year for misdemeanor offenses.<sup>14</sup>

To understand how the drug laws are enforced, it is helpful to look briefly at the laws themselves in the 50 states, the federal system, and the District of Columbia. All 52 jurisdictions divide offenses into two general categories. The more serious of the two encompasses the charges of growing, manufacturing, distributing, and trafficking—all of which, generally, are felonies. The other category deals with possession, and here the specific amount becomes important. In most cases, when the amount possessed is low, the offense is defined as a misdemeanor or a non-

criminal offense.<sup>15</sup> The threshold quantity differs from state to state, but many draw the “small amount” line for marijuana at about an ounce (28.3 grams).<sup>16</sup>

Some states—including Colorado, Maine, Nebraska, New York, and Ohio—have gone so far as to downgrade simple possession of marijuana from a misdemeanor to a civil offense, equating it to a traffic violation. This is not to say that penalties for the simple possession of marijuana have been removed. Indeed, the drug is still considered illegal in all 52 jurisdictions, including those where various “medical marijuana” defenses apply. And in 19 jurisdictions, judges have the discretion of imposing sentences of up to a year in custody for the lowest marijuana-possession offenses.<sup>17</sup>

But judges can, and frequently do, impose other conditions of probation in lieu of incarceration. For example, they can order a fine ranging from a few hundred dollars in some states to several thousand in others. They also have the ability to require offenders to enroll in drug treatment programs or to perform community service instead of doing time behind bars.

Ten jurisdictions—California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, Ohio, and Oregon—have specifically eliminated incarceration as an option for a first offense of simple possession of marijuana. Fines in most of those states range from \$100 to \$300, with Oregon allowing a fine of \$500 to \$1,000 and Nevada authorizing a fine of up to \$5,000.<sup>18</sup>

Although a conviction for marijuana possession can, on rare occasions, result in a prison term, sentences of less than a year are frequently served not in the state penitentiary but in the local jail.

## **Possession vs. trafficking**

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State and federal laws make a significant distinction between possession of small amounts of marijuana and amounts that clearly show that a person is engaged in the manufacture, cultivation, sale, or distribution of the drug. This is because the laws reflect our societal view that small-time users who are either dependent on drugs or at risk of becoming dependent need help to stop their use, and that through education, treatment, and reinforcement, these people can become drug free.

Trafficking, on the other hand, is viewed as a much more serious enterprise, akin to violent crime. It terrorizes communities and destroys lives. That policymakers would require more stringent punishment for trafficking offenses should come as no surprise to anyone who understands the drug trade and the magnitude of the damage it inflicts on our society.