

XS: PG, NFO's, D.O's

**In prison for pot**

# Up in Smoke

**Four case histories of people whose lives have been ruined by unjust marijuana laws**

**By Maryanne Vollers, Robert Wallace and Jay Merritt**

**I**F YOU ARE ONE OF AMERICA'S 16.2 MILLION regular marijuana smokers, you probably are not fearful of going to prison for the rest of your life if you're caught. However, smoking marijuana is still regarded as a serious felony in some states, and there are places in the country where, for possession or distribution of even a small amount of marijuana, you can land in jail with a stiff sentence.

Marijuana laws are not standardized. So even though most states have drastically reduced pot-related penalties, local police and prosecutors can still single you out for maximum sentences if they want to make an example of you.

ROLLING STONE located four people whose lives have been shattered by the severe prison terms they received under archaic regional marijuana laws. "These cases are exceptional—but harsh penalties are still occurring in every state in the country," says Peter Meyers, chief counsel for the National Organization for the Reform of Marijuana Laws (NORML). "But as long as laws are still on the books—people are getting screwed."

According to FBI reports, since 1970 there have been almost 3 million marijuana arrests. In 1977, the number of pot busts reached an all-time high of 457,600—over seventy percent of all drug arrests.

The stories that follow illustrate the urgent need for across-the-board decriminalization of marijuana.

## Jerry Mitchell



**W**EST PLAINS, population 7,100, is a farming community and live stock marketing center that watches the world go by from its perch on the beautiful Ozark Plateau in south-central Missouri. Porter Wagoner, the country-western star, was born there and worked as a clerk in a local store before leaving for fame and fortune. The town rewarded his industry by naming its main street after him. Perhaps Wagoner was thinking about West Plains when he recorded his country hit, "The Green, Green Grass of Home."

Jerry Mitchell also comes from West Plains. In 1975, the year of his graduation from high school, he was busted there for selling five dollars worth of marijuana. Sentenced to seven years, he now lives in Alton prison outside of Jefferson City, Missouri.

Mitchell wasn't a link in an international drug ring, just a kid who occasionally likes to get high on Missouri Mud, the marijuana that is grown all over the state. In the summer of 1975, a neighborhood friend introduced Mitchell to a third party, to whom Jerry sold some locally grown weed. As it turned out, Mitchell's friend was a drug informant and the purchaser was an undercover highway patrolman. Jerry was charged with supplying the agent with a pound of marijuana, but the charge was dropped when he agreed to plead guilty to selling one

MARYANNE VOLLERS, ROBERT WALLACE and JAY MERRITT are the ROLLING STONE research staff.

third of an ounce for five dollars.

The guilty plea was risky because under Missouri law the maximum sentence one can receive for selling marijuana is the same as for selling heroin—life. But Mitchell, his family and lawyers felt that certain mitigating factors would be taken into consideration. After all, they reasoned, he was nineteen and had never been arrested before; he had an excellent scholastic record and was just starting his first year of college at Southwest Missouri State University in Springfield, majoring in philosophy and political science. Then too, Mitchell was an only child whose parents were both blind and living on Social Security and a pension.

After taking these facts into consideration, Circuit Judge Winston Buford (who was removed from the bench this year pending a hearing on judicial misconduct) sentenced Jerry Mitchell on June 13th, 1976, to twelve years in confinement. What weighed against Mitchell was that he was the first person ever busted in the county for selling pot. "It's a conservative area here," says Jerry's father, Roy. "They wanted to make an example of him, that's why they took him away from us."

Judge Buford's reaction to the sale of a small amount of marijuana seemed representative of prevailing attitudes in West Plains. At the time, he was quoted as saying, "Most crimes are one on one, one person robbing, killing or assaulting another... a pusher has the means to poison the whole community."

Tears streaming down his face, Mitchell begged the court to grant him probation—if not for his own sake, then for his blind parents. Judge Buford responded that he should have thought of them before getting into marijuana.

The severity of the sentence aroused a storm of protest. NORML and other groups opposing criminal penalties for violation of marijuana laws mounted a campaign on his behalf, maintaining that if Mitchell had been arrested in Kansas City or St. Louis he would have been let off with a fifty-dollar fine. Judge Buford agreed to review his verdict, and the following July he reduced Jerry's sentence to seven years.

Released from prison pending appeal, Jerry returned to college. "It wasn't easy," says Roy Mitchell, "but he was so sure that the appeal would work."

Mitchell's lawyers challenged Judge Buford's ruling on two constitutional points. First, that the seven-year sentence was cruel and unusual punishment under the Eighth Amendment and secondly, that Missouri's law requiring the same punishment for the sale of marijuana as for hard drugs such as heroin violated the equal protection clause of the Fourteenth Amendment.

On March 13th this year, the Missouri Supreme Court ruled on Jerry Mitchell's appeal. It voted five to two to uphold Judge Buford's decision. The court held that Mitchell's sentence was not cruel and unusual because it did not "shock the moral sense of all reasonable men as to what is right and proper under the circumstances." Jerry was arrested and immediately sent to prison.

The long process of federal appeals is under way, while Mitchell spends his days working in the mail room at Algoa. According to his father, Jerry is disappointed that the prison system has refused his request to let him continue his education. "He

reads as much as he can in his spare time," says Roy Mitchell sadly.

"Jerry has a great deal of bitterness, but he is handling it in a nondestructive way," comments Steve Gladstone, one of Mitchell's lawyers. "He feels like the world has been pulled out from under him."

## Stan Pickard



**T**HIS whole ordeal has been one big nightmare, like something right out of the *Twilight Zone*," said Stan Pickard, 28, in an interview in *Bars and Stripes*, the inmate newsletter for Nevada State Prison. Pickard has been there since the summer of 1977, when he was sentenced to life in prison for allegedly giving an ounce of marijuana to a sixteen-year-old dealer. "When I tell other cons I'm doing life," says Pickard, "they usually ask who I killed or raped. When I tell them I'm here for giving a lid away, they don't believe it."

Stan Pickard was arrested in Hawthorne, Nevada, where he'd lived since his divorced mother moved there from Texas when he was four years old. Stan got married while in high school, and the only time he had spent away from the desert community of 5000 was the three years he served in the army between 1968 and 1971. After he got back from the service, Pickard tried to settle down with his wife, but the marriage didn't last. Stan rented a room in downtown Hawthorne and worked on and off as a carpenter. Sometimes he'd drive twenty or thirty miles, across the California border, looking for work.

It's unfortunate that Pickard wasn't busted in California, where the laws are less severe. In Nevada, where there are no laws against gambling and prostitution, giving marijuana to a minor is punishable with life imprisonment. Pickard had been in jail three times before the marijuana bust, never for a felony. In 1974 he spent a few days in jail for drunk driving, and later that year he got ten days for littering. Stan Pickard's most serious prior offense was a gross misdemeanor for assault on a police officer with a deadly weapon in December 1974. His record was clean from then until the morning of November 19th, 1976, when Mineral County police broke down his door and dragged him off to jail. He was charged with giving marijuana to Wayne Hawkins (not his real name), a local high-school kid, on four different occasions. Hawkins claimed that Stan Pickard wanted him to sell the pot and give Pickard the money.

Pickard maintains that he first met Wayne Hawkins on November 13th, 1976, at Pete's Bar, where the sixteen-year-old gave him a shoeshine for fifty cents. According to Pickard, Hawkins followed him home, invited himself into Pickard's apartment and started drinking beer with Pickard's friends. They asked the kid to leave. The only other time Pickard says he saw Hawkins was when the teenager woke him up at eight a.m. on November 18th. Pickard

says he told Hawkins to "get the hell out," and went back to bed. Pickard insists he never gave Hawkins any dope. No evidence of drugs was found in Pickard's apartment at the time of his arrest.

Wayne Hawkins, it turned out, had been busted for dealing to his fellow high-school students the day before Pickard's arrest. He readily named his customers and told the cops that Pickard was his supplier.

John S. Hill, the D.A. who prosecuted Stan Pickard, offered to switch the charge to possession if Pickard would plead guilty. Pickard refused. "The tragedy of the case," says Hill, "is that Pickard probably would have been given probation if he had pleaded guilty to the lesser charge, which would have carried a sentence of six years."

But Stan Pickard stuck to his plea throughout the trial, where eight high-school students took the stand to name Pickard as the source of their marijuana, although none had met Stan outside the courtroom. "As the trial went on," Pickard wrote in his presentencing statement, "I became very worried. I suddenly realized I was on trial for my life, and everything was going wrong. But I thought, 'It's only in my mind, they wouldn't find me guilty, they just couldn't.'"

Wayne Hawkins' testimony was so weak that the court discounted three of the four instances when Hawkins claims Pickard gave him dope. But the jury took the teenager's word over Pickard's on the fourth allegation and found Stan Pickard guilty.

Pickard has been in the Nevada State Prison in Carson City since July 1977. His case is being appealed in the Nevada Supreme Court, where Dean Breeze, NORML's state coordinator, wrote a friend-of-the-court brief arguing that Pickard's sentence violates the Eighth Amendment prohibiting cruel and unusual punishment. Breeze argues that "such a sentence for the nonviolent crime of giving away a small quantity of a relatively harmless substance is so excessive that it indeed shocks the conscience."

If he ever gets out of jail, Stan Pickard plans to "find a nice girl and settle down." Meanwhile, he lives in a five by eight foot cell in the maximum-security section of Nevada State Prison, along with rapists and murderers. Pickard feels that his treatment in prison is nothing remarkable: "It seems to run smoothly along the same groove with the rest of my luck—downhill."

## Eve Wilson



**M**OST OF the good folks in Greenfield, Missouri, didn't like Eve Wilson. She was a nineteen-year-old high-school dropout and a divorcee, and her father was known locally as a petty thief. So the people in that tiny Ozark town weren't surprised when the undercover narc Eve had been caught selling him half a lid of marijuana in the spring of 1977. And they weren't shocked by the sentence: five years

in the Renz Prison Farm. As her prosecuting attorney said after the trial, "Most people here feel she got just what she deserved."

The first time Ralph Harper, the arresting officer, laid eyes on Eve Wilson, he could sense she was up to no good. He told Dade County Sheriff Perry Stiles, who had hired Harper to sniff out the local drug scene, that he could tell Eve was a "druggie." The casual way she dressed—jeans, T-shirts—and her "kinky hair" tipped him off. So Stiles told Harper to get acquainted with her, even though she had no police record and Stiles had never suspected her of being involved with drugs.

When the friendly stranger who called himself John Bell drifted into her father's general store, Eve Wilson took to him right away. He had a beard and wore a roach clip around his neck, so when he asked her for a date she had no reason to suspect he was a cop and that his real name was Ralph Harper.

Sheriff Stiles says that Harper had only been with Wilson on two occasions, "a total of one hour and thirty minutes," before he bought dope from her. Eve has a different story. She says they saw each other constantly for three weeks. "I considered the relationship romantic," she later told a reporter. "He said he wanted to be someone I could pour my heart out to."

Wilson trusted Harper, so she didn't think twice about inviting him to a party at a farm where there was a large marijuana patch. And she wasn't surprised when he asked her to get him some dope.

Eve Wilson claims she bought an ounce for fifteen dollars and offered to give Harper half. She says he insisted on paying for his share. Harper says she wanted to sell it to him. According to Wilson's defense attorney, John Watkins, a tape was made of the transaction, but the sheriff's office claims it has lost the tapes.

"I think it was a case of entrapment," says Watkins. "Harper had been buying her booze—which is illegal because she's a minor in Missouri. She didn't have any marijuana, but when he asked for it she got it for him because she wanted to do something nice in return. I think a jury would never have sent her to prison."

But Eve Wilson waived her right to trial by jury. Against her lawyer's advice, Eve pleaded guilty to the felony of selling \$7.50 worth of marijuana. Court officials assured her that if she pleaded guilty she would be set free on probation because it was her first offense. They also told her, according to John Watkins, that she would get off easy if she gave them information about her father—which she did.

While she waited for sentencing, Eve Wilson, then twenty years old, went back to high school. Although she was on the honor roll, word got out that Eve was a bad influence on the younger students. Parents called Sheriff Stiles to ask him how they could keep their children away from her.

The allegation was never mentioned to her lawyer, but the Sheriff believed that Eve had talked about selling or was trying to sell a pound of marijuana after her arrest. Judge Don Kennedy, who presided in the case, was informed of the sheriff's suspicions and subsequently denied Eve Wilson probation.

"You have to go a certain extent on hearsay," Judge Kennedy told a reporter. "You're not always meticulous in observing

the rules of evidence when considering a presentencing report."

Eve Wilson has spent the last year at the Renz Prison Farm, just outside Jefferson City, Missouri. It's a minimum-security prison, so she is allowed to wander around the grounds and take college courses. But the boredom is getting to her, and she's hoping the appeal her lawyer is putting together will have her out soon.

## Roger Davis



**I**N MARCH 1974 a Wytheville, Virginia, jury sent twenty-eight-year-old Roger Davis to prison for forty years and fined him \$20,000. His crime: selling four ounces of grass to a police informant and possessing six more ounces in his home. From a legal standpoint, it would have been better if Davis had been a child molester. Then, by Virginia law, the maximum sentence he could have received would have been five years.

Davis, a black man, grew up in Wytheville, a small manufacturing community in the southwest corner of the commonwealth. He was one of eight children raised by his mother after his father, a railroad worker, was beaten to death by a white man. (The murderer got three years probation.) Following the death of the elder Davis, the family got by on what Mrs. Davis earned as a domestic.

After high school, Davis held a series of jobs, and aside from traffic violations and teenage pranks, he never had any serious run-ins with the law until 1973.

On January 2nd, 1973, Wythe County Sheriff Buford Shockley declared in his annual state-of-the-county message in the *Southwest Virginia Enterprise*, Wytheville's 7000-circulation biweekly newspaper, that "illegal drugs and pornography are the biggest and most important problems in the county." Two weeks later, four Wytheville Community College students were arrested for selling marijuana. On March 20th, ten young people, including Roger Davis, were arrested and charged with selling either marijuana or LSD. Davis pleaded innocent to the felony. Two days after the arrests, the *Enterprise* stated in an editorial that, "Young Americans who smoke grass are of tremendous help to the communists. The *Enterprise* becomes more convinced day by day that this nation can very easily crumble and fall like a tree with a rotten heart destroyed by termites." Meanwhile, Davis was fearful that he could not receive a fair trial in rural Virginia because he was married to a white woman. He filed a motion for a change of venue and it was denied. Davis subsequently received a five-year prison sentence for selling ten dollars worth of acid. (The other eight defendants received sentences of five to ten years; the ninth's was reduced to a year.) While appealing his conviction (the appeal was denied), Davis remained free on bond until his arrest in October of the same year for selling four ounces of grass to

police informant Danny Ray Eads.

"They set me up. There's no way I would have sold marijuana to him," Davis said after the trial. He maintained that Eads was an ex-convict making undercover drug buys for the police in return for an early furlough. Eads testified at Davis' trial that he would have done "anything" to get out of Richmond penitentiary after having been gang-raped by inmates.

Between the arrest of the four Wytheville college students in January 1973 and the first day of Davis' marijuana trial in March 1974, the *Enterprise* ran over fifty front-page stories and editorials on drugs and drug arrests. The newspaper covered Roger Davis' upcoming trial for the marijuana sale with particular vigor, running sixteen front-page articles on the case.

Despite all the pretrial publicity surrounding Davis' October pot arrest, his attorney, John Prosser, did not move for a change of venue. Soon afterward, Davis was tried, found guilty and sentenced to twenty years confinement for possession of marijuana with intent to distribute, and twenty years on a count of actual distribution.

In Virginia, possession of marijuana with intent to distribute and actual distribution each carry a maximum sentence of forty years and a \$25,000 fine. Davis' sentence of twenty years for possession with intent exceeds the current penalty (regardless of the amount possessed for sale) in all but four states. Only eight states provide a maximum penalty longer than the one Davis received for actual distribution.

Davis served three and a half years of his sentences (making him eligible for parole on the LSD conviction) before the marijuana verdict was overruled as cruel and unusual punishment by the U.S. District Court for the Western District of Virginia. The Commonwealth of Virginia has appealed the federal court's decision, and arguments were heard before the court on December 15th, 1977.

District Court Judge John C. Turk noted that the average sentence for possessing, selling or manufacturing marijuana in Virginia between October 31st, 1975, and August 1976 was three years and two months, the minimum was sixty days, the maximum was fifteen years.

Acknowledging the undue severity of the sentencing, Thomas Baird, the prosecuting attorney on the Davis marijuana case, has stated publicly that continued confinement of Davis would be "grossly unjust," but the commonwealth remains unpersuaded.

Davis is working as a counselor with the Total Action Against Poverty Program in Roanoke, Virginia, while he waits to hear if he will have to return to prison to serve the remainder of his forty-year sentence. "I love my job, and the kids [in the program] relate to me a hundred percent better because of my experience—because I can speak their language," he says. "Having this appeal hanging over me is really rough. It's just about as bad as being in prison and not knowing when you're going to get out."

*If you wish to protest these sentences, write: Governor Mike O'Callaghan, Supreme Court Building, Carson City, Nevada 89710; Governor John N. Dalton, State Capitol Building, Richmond, Virginia 23219; or Governor Joseph P. Teasdale, State Capitol Building, Jefferson City, Missouri 65101.—Ed.*