

Features

Concern growing over head shops, paraphernalia

United Press International
When is a pipe a bong? Answering this question creates a challenge to states with laws curbing drug paraphernalia sales.

Scene 1: A high school student wanders into a downtown shop, glances at the T-shirts and posters for sale, then buys a pipe and walks out.

Scene 2: A college professor ambles into a shopping center store, looks over the aromatic tobaccos and fancy humidors, then buys a pipe and walks out.

In which scene has an illegal act taken place?

In an increasing number of states and locales, the high school student and the merchant have broken laws against the sale of "drug paraphernalia." The pipe is a "bong," and is meant to be used with marijuana.

Efforts to curb the spread of so-called "head shops," which specialize in items designed for use with illegal drugs, have led to laws outlawing the actual items.

Some laws apply only to juveniles, others to everyone. Some offenses are punishable by fines, others by jail terms.

But the laws are being challenged in every part of the United States. Opponents insist the statutes are unconstitutionally vague because they prohibit items which have other legal uses. Supporters are equally vocal in maintaining that the laws are aimed at clearly definable instruments.

At least four U.S. Circuit courts are considering cases which deal with the paraphernalia, and the U.S. Supreme Court is expected to get a case soon from the 6th Circuit involving a statute in some Cleveland suburbs.

The Federal Drug Enforcement Administration has drafted a model act against drug paraphernalia which is now being utilized in most places. Prior to the writing of this model, the laws were enacted haphazardly and in most cases were thrown out by courts as being unconstitutional.

Harry Myers, the DEA attorney who drafted the model act, is positive that his work is constitutional and enforceable.

He bases his belief on similar federal paraphernalia statutes such as those which outlaw equipment used to build a still, to print counterfeit money or to conduct an illegal gambling operation.

Myers notes that in each of these cases the equipment itself is not illegal, but the intent to use that equipment in an illegal activity is.

"Hey! It's not a new problem, is it?" he said. "It became clear that from the entire structure of federal law that a statute can be drafted for the outlawing of drug paraphernalia. We have a definition at least as precise as 110 other federal statutes."

"Simple possession of paraphernalia is not a crime, it must be combined with a provable intent to violate the drug law," Myers said.

Attorney Fred Joseph, repre-

senting the Mid-Atlantic Accessory Trade Association, a group of accessory dealerships, maintains the "intent" portions of the law are not adequate protection of constitutional rights.

"In essence, this is a (law) aimed at ridding the community of

safeguards are not adequate," he said. "I have been in one case where a magazine was considered paraphernalia. An Annapolis police officer testified that it was. It's called 'High Times.' There was a picture of a marijuana leaf on it, therefore it's paraphernalia. And they tried to say a popcorn scooper was paraphernalia in another case."

In contrast, others say that "High Times" often includes instructions on growing and smoking marijuana, and is thus comparable to instructions on how to construct a Molotov cocktail.

If the drug paraphernalia issue was simply the use of certain instruments, it's unlikely it would cause such an uproar. But where drugs are concerned, politicians, like their constituents, react with emotion.

It's quite easy, and politically expedient, for a state legislator to vote to outlaw drug paraphernalia and let law enforcement officials worry about the practicalities. Not that some don't consider possible constitutional problems, but complex legal issues make poor campaign platforms.

"I think that politicians view this as an issue that will gain them nothing but support," Joseph said.

When a paraphernalia bill was debated in Arkansas this year, legislators were reminded of earlier statutes that had been struck down as vague, but Rep. Henry Osterloh, D-Little Rock, summed up most of their feelings.

"It's the kind of bill you just can't vote against," he said.

Arkansas Gov. Frank White let the bill become law without his signature because he had questions about its constitutionality. Shortly after, attorneys for five shops filed suit in federal court.

In legislature after legislature, backers of the "ban the bong" bills have shown up at hearings and dumped armloads of strange-looking pipes and devices on lawmakers' desks.

Arriving at a hearing with a tableful was a Louisiana District Attorney, Ossie Brown, who has crusaded against pornographic movies and sale of cold beer at convenience stores as well as paraphernalia.

"We're telling young people it's against the law to use drugs yet we're providing them with things to violate the law," he said. "I just thought we were being hypocritical."

Many of the exotic smoking de-

VICES are aimed at the young, including so-called "power hitters" which force smoke deep into the lungs, and frisbees with hidden compartments for marijuana smoking which can be flown back and forth as each participant takes a "hit."

During a debate on a watered-down version of a drug paraphernalia ban, which eventually failed to pass, an Illinois legislator said he wanted to take away the "legal glamorization" of the use of drugs.

"Right now you can buy Mickey Mouse roach clips and Donald Duck waterpipes," he said.

The paraphernalia is extremely varied. At a Maryland hearing witnesses displayed a "concert kit" containing rolling papers, a roach clip, matches and a compartment for the "stash" of marijuana.

"It's everything you need to enjoy your rock concert," said mother Joyce Nalepka, one of the leaders of the crusade to outlaw the stuff.

At the same hearing, the president of the University of Maryland

phernalia shops," he said, has since been issued on the

Sacramento County, Cal., posed a total ban on paraphernalia and several businesses face suspension hearings as a result. San Francisco attorney D. Brody, representing those accused of criminal violations, tends the county "selective enforcement" ordinance.

Brody said the sheriff's department "refused to enforce the ordinance" when contacted, that someone had bought a roach clip from a Sears, Roebuck and Co. store and saying it tended to use it for marijuana smoking.

In addition to filing suits challenging the laws, merchants are coping with the paraphernalia ordinances in other ways.

"I sent a letter to the police of Indianapolis and asking them to send some and look over our stock. I could remove anything violated the law," said G. Dunn, who has stores in Indianapolis and Carmel, Ind.

He had no takers but other members of the Contemporary Merchants Association have removed some zines, bongs and metal pipes from their shelves and now sell regular cigarette papers and tobacco pipes.

"Head Shop" labels were placed with "Smokers' Necessities," "Tobacco Supplies" and "Complete Tobacco Boutique."

Other dealers are folding tents and getting out of town. A head shop owner from Ontario, Ore., has moved his shop across the border to some fire from some elements there. Shop owners in Maryland are hopping over to the District of Columbia just a few miles away.

People in towns to which dealers move may object to some jurisdictions which enacted the anti-bong laws have accomplished just what intended.

Lakewood City, Calif., administrator Don Waldie said area's ordinance "has been remarkably successful in getting out of drug paraphernalia." He conceded people can go to town to buy their equipment, the nearest one is eight miles and the ordinance has had effect of getting the paraphernalia out of local record stores.

Gordon Brownell, executive director of the National Organization for the Reform of Marijuana Laws in San Francisco, said group sees all of the drug paraphernalia laws as "a social ban" — striking out at one of the visible signs of illegal drug use.

The McDonald's hamburger chain stopped giving away tiny spoons as coffee stirrers two years ago because they apparently were being used to sniff cocaine.

Fines and prison sentences imposed for possession and/or sale of paraphernalia are as varied as the laws themselves, ranging from misdemeanor fines of a few dollars to several years in jail and several thousand dollars in fines. Ironically, in some states where the paraphernalia statutes have been enacted, the penalty for possession of drug paraphernalia is more severe than for possession of marijuana.

Arrests and prosecutions under the drug paraphernalia laws seem to be moving slowly. Outside a few zealous district attorneys, law enforcement officials seem reluctant to push for convictions, perhaps due to the uncertainty over the laws' constitutionality. Several judges have issued stays of the laws as well, pending appeals.

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student union testified that outlawing manufactured drug equipment would just lead to more creative uses of everyday objects. With that, he pulled an apple out of his pocket, cut two holes in it with a penknife, shaped a bit of aluminum foil and voila! — a perfect pipe.

The model act contains a long list of items that can be outlawed by the bills in various states. Most states have cut the list down. In New York for example, there are eight items banned: Kits used to plant or grow controlled substances, kits used to manufacture or prepare them, kits that increase the potency of drugs, scales used to weigh drugs, substances used to cut drugs, separation chambers (to separate pot from seeds, for example), syringes, and "objects used to ingest or inhale marijuana, cocaine, hashish or hash oil."

Due to publicity about the paraphernalia, several large chain stores have voluntarily stopped selling certain legal items. 7-Eleven convenience stores took rolling papers off their shelves, convinced that the number of tobacco smokers still "rolling their own" was too low for the amount of papers they were selling.

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"I don't expect any mass arrests or massive sweeps of drug para-

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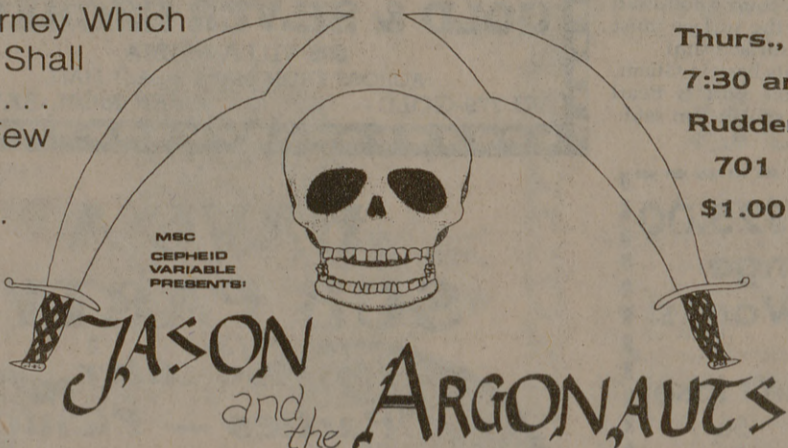
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