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GAMBLING AND THE LAW—SLOT MACHINES

John Drzazga

This article continues the presentation of material dealing with various kinds of gambling that are prevalent in different parts of the country. Sgt. Drzazga has had extensive service with the New York City Police Department and during 1939 to 1941 was actively engaged in gambling investigations. He has continued his interest in this phase of police work. Sgt. Drzazga is a graduate of Blackstone College of Law.—EDITOR.

The various types of slot machines which are classed as gambling devices are merely implements designed to part the needy from their hard earned money and the children from their pennies. The different types of slot machines are designed with only one purpose in mind, that is to separate the unwary from their money. The average slot machine is adjusted to retain from twenty-five per cent to seventy-five per cent of the receipts deposited therein.

Where the machines are placed in clubs, stores, or other business establishments, the profits are usually split equally between the owner or distributor of the machine and the keeper. The latest machines have meters concealed inside to record the amount of money deposited in them, and the amount paid out, or the amount which would be paid out by the keeper where the machine is not equipped with the pay-off tube. Prior to the use of meters, some of the lessee's would pick the lock or obtain a duplicate key and help themselves to a part of the receipts without the distributor's knowledge. They would also make records of false pay-offs, which the operator or distributor could not disprove.

The slot machine racket is one of the most lucrative and profitable gambling rackets in existence. Children of school age are the 'main victims of the slot machines. Often they will steal and squander the money playing these machines in a desperate effort to recover their original investment. The operators' and distributors' being well aware that these machines will fascinate children and excite the gambling instinct in them, try to install their wares in the vicinity of schools or other places wherein large groups of children are in the habit of congregating.

SLOT MACHINES USED AS GAMBLING DEVICES

The Mills Star or Owl Type Machine. This antiquated and cumbersome forerunner of the one-armed bandit, is practically extinct at the present time. It consisted of a rectangular box holding the mechanism, and a circular face with colors, designs, or numbers. There were as

many as fifty different combinations. The odds on the high combination were twenty to one or one dollar for a nickel. The machines were usually named after the star, owl, or other object pictured thereon, and were known by many different names. They all operated on the same principle with very slight variations. The coin slot appeared at the top of the machine, the operating lever or handle in front of the machine or on the side of the machine, and the pay-off receptacle at the base of the mechanism. The jackpot and high paying combinations on this machine and similar machines could be so fixed that the player would not be able to hit them. This was done by merely plugging the winning holes in back of the face, so that the ratchet projectors would pass over the holes. This machine was very popular about forty years ago.

The Watling Roulette Machine. This machine appeared on the market about the same time as the last described slot machine. The game of this slot machine was located on the top of the machine and consisted of a roulette wheel and a ball. After inserting a coin in the slot, and as the result of the application of physical force to the handle or lever by the player, the wheel would be set in a revolving motion, causing the ball to spin on the outer rim. If the ball fell into a winning pocket, the machine would automatically pay off the player. Any attempt to tilt the roulette machine so as to cause the ball to roll into the winning pocket or hole, would automatically lock the mechanism, in the same manner as the mechanism of the modern pin-ball or bagatelle machine is locked when it is tilted. The number of pockets or of spaces varied on the different machines. This machine could be plugged or controlled so as to lessen the player's chances of winning. Some were fitted with only a five-cent slot, while others had three slots, for nickels, quarters, and half-dollars. The winning prizes on the nickel slot range from ten cents to two dollars; on the quarter slot, from fifty cents to ten dollars; and in similar proportion on the half-dollar slot.

This machine was the product of a Chicago manufacturer, with branch offices in San Francisco and Philadelphia. Chicago has the distinction of being the slot machine manufacturing center of the country.

Mills Crap Shooter. This machine first appeared on the market in or about 1909. There are many variations of it manufactured at the present time, and this machine is by no means obsolete. The early counterpart of this gambling device, had six coin slots, one for quarters,

two for dimes, and three for nickels. It operated on the same principle as the Roulette slot machine, but was much smaller in size. A different field was used instead of a roulette wheel, and dice instead of a ball. Dice used were so loaded as to favor the operator. The payoff consisted of forty cents for a ten cent play on seven or eleven; one dollar for a twenty-five cent play on seven or eleven. Some machines appeared with slight modifications and different winning combinations. The recent "E. Z. Smoker" is a small model with three dice, but operates on the same principle.

The One Armed Bandit. Nearly every one is familiar with the appearance of this machine. This slot machine first appeared as a merchandise vending machine, which gave prizes consisting of merchandise, such as candy, cigars, et cetera, instead of cash or tokens. The original machines had five wheels, containing twenty symbols consisting of pictures of cards, dice, fruit, animals, etc. A different model had been put on the market with ten wheels. The latest machines have been manufactured with only three wheels, each with twenty symbols, one half of the symbols being genuine, the remainder dummies. Each wheel has two bars, only one bar being honest, and the player must get three bars in line in order to win the jackpot consisting of twenty coins or slugs which are redeemable for cash or merchandise.

Some small models have been manufactured without the pay off tube, leaving the matter of paying off the player for a winning score to the discretion of the keeper or lessee. There is also on the market a curved metal plate which is attachable to the middle wheel so as to prevent the jackpot lever from tripping. It is usually removed for a day or two so that the players will not be discouraged.

The Gum Ball Slot Machine. This is a penny machine, and almost exclusively a children's machine. The machine is a legitimate vending machine, but is classed as a slot machine only when the player is awarded a prize for a marked ball or a ball of a certain color. It consists of a glass jar at the top holding the gum balls, with the one-cent slot and mechanism below.

The Pin Ball or Bagatelle Machine. This machine consists of a playing field with a rectangular box underneath to hold the mechanism, and a backboard to record the score. The coin slot appears on the left side and the plunger on the right side. The insertion of a coin into the coin slot releases a certain number of metal balls, usually five, which the player can propel, one at a time, by pulling the plunger on the right side away from the machine and then releasing it. The

plunger strikes the ball causing it to run over the field. When the ball strikes a collar, a spring, or passes over a contact plate, a score is registered on the backboard. The score is automatically tabulated as the machine is played. For certain scores, the player may be awarded free plays, tokens, cash, or checks. Where the machine does not automatically pay off, the keeper usually awards the prize if a winning score is registered on the backboard.

The following machines are only some of the machines of this type on the market: Follies, Scoop, Powerhouse, Commodore, Brite Spot, Vogue, Super Six, Rotation, Lead Off, 5th Inning, Double Feature, Twinkle, Polo, Fantasy, Spitfire, Dude Ranch, Yatch Club, Champion, Home Run, Big Town, Hold Over, Blondie, Big League, Landslide, Vacation, Duplex, Big Chief, Zombie, Scorecard, Roxy, Speedy, Leader, Variety, Stars, Sport Parade, Sluggers, O'Boy, Dixie, Four Roses, Broadcast, Double Play, Chubbie, Mr. Chips, Mascot, and Snappy.

The Bingo Slot Machine. A penny slot machine designed to attract children, there are five drops, each labeled with one letter of the word "Bingo" in their proper sequence. A penny will release five small rubber balls, which fall on the striking rod, one at a time. When an outside button is pushed, or the projecting part of the striking rod is hit, the ball bounces up and falls into one of the drops. In order to win, one ball must fall into each of the five drops. The prize is usually five cents in cash or merchandise.

The Punch Ball Slot Machine. An upright machine with ball catching rings projecting onto the playing field. There may be five rings or there may be more rings with numbers. The pay off is based on placing a rubber ball on each ring or on the score. Five rubber balls are released when the coin is inserted. A padded projecting rod is struck with the closed hand to propel the rubber ball.

Penny Catching Slot Machines. Upright machines with pins or slots and a receptacle at the bottom for catching the coin, are among the less common slot machines. The number of these machines that are considered gambling devices under such statutes as the one in New York State is so large, that it is impossible to go into details as to how each such machine operates. "Play Ball" scales which in addition to showing weight, give the player a game whereby he can recover his coin or a prize, might well be mentioned here as being among devices prohibited by law.

The Poker Slot Machine. Commonly known as "Pokerino," this is a machine which releases five rubber balls when a nickel is inserted

into the slot. These balls are rolled one at a time, and fall into five different holes. Upon falling into a hole, they make electrical contact and register the score on the backboard, which simulates a hand in a poker game. Where prizes are awarded, or checks or tokens given which are redeemable for prizes, the machine would apparently be within the purview of a statute such as Section 982 of the Penal Law of the State of New York, although no test case appears to have been made under this section.

Various methods have been devised to beat the slot machines. Use of slugs is one of the most common methods used. Magnets can be used to control metal balls, wheels, or pointers. Some one armed bandits will take a penny instead of a nickel, if the slot machine is tipped forward when the coin is inserted. Drilling a small hole in the side of some slot machines, will help to beat them. This method had been used frequently on pin ball or bagatelle games. A small hole is drilled on the side of the machine near a bumper collar or spring. A piece of wire is inserted into the hole, and the player bumps the collar or spring with the wire, and thereby causing it to register points toward the winning score. This method had also been used on the one armed bandit to trip the jackpot dog or lever. Blowing air through a rubber hose had been used on the old antiquated machine to trip the coin dog and make the machine available for playing.

LAWS PERTAINING TO SLOT MACHINES

This section deals with the laws pertaining to the slot machines, the different types of machines, and the law applicable to them. Special emphasis is laid on the New York statute.

The Penal Law (Section 982) of the State of New York, defines a slot machine as:

any machine, apparatus or device that is adapted, or one that may readily be converted into one that is adapted, for use in such a way, that, as the result of the insertion of any piece of money or coin or other object such machine or device is caused to operate or may be operated, and by reason of any element of chance, or other outcome of such operation unpredictable by the player, the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance or thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; irrespective of whether it may, apart from any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment or other thing of value.

This statute is probably one of the best drawn anti-slot machine laws in this country, and declares it be a misdemeanor for any person to:

- (a) manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or
- (b) offer to sell, rent, lease, rent on shares, lend or give away,
- (c) permit the operation of,
- (d) permit to be placed, maintained, used or kept in any room, space or building under control of such person, any slot machine.

Paragraph (b) of subdivision 1, of this statute prohibits any and all agreements in respect to any slot machine. The agreement in respect to such machine, must be made by the keeper or by someone who received permission to make it on his behalf in order to constitute a violation of this provision. An employee of the owner or keeper cannot be guilty of making such an agreement unless he has received such permission.¹

A slot machine may consist of a device which automatically ejects something of intrinsic value, such as money or merchandise; or of a device by which a player may become entitled to receive a slug or token exchangeable for something of value. "Crane" type machines, in which the element of chance predominates, have been held to be gambling devices, despite claim that its primary purpose was the sale of merchandise.² Pinball machines have also been held to be gambling devices within the meaning of the statute.³ Gum ball slot machines are also gambling devices within the meaning of the statute, if they contain marked balls which are redeemable for a cash prize or merchandise. This rule also applies where an award is made for a ball of a certain designated color. The latter machines are designed mainly to attract children with their pennies and to induce them to gamble on the machines.

In 1942, the courts have held that proof of actual gambling need not be shown in view of the "adapted for use" phrase incorporated into Section 982 of the Penal Law of the State of New York.⁴ In the same decision the court held that "thing of value" included amusement when applied to a pin ball machine, since such term may be anything affording necessary lure to indulge in gambling instinct. A legal machine which becomes a gambling device by the removal of a cotter

1. *Peo. v. Mills*, 160 Misc. 730, 290 N.Y.S. 48 (1936).

2. *International MR Co. v. Valentine*, 286 NYS 806 *aff'd* 271 N.Y. 622 (1936).

3. *Peo. v. Gargiulo*, 164 Misc. 39, 298 NYS 951 (1937).

4. *Peo. v. Gravenhorst*, 32 NYS2d 760 (1942).

pin is illegal under the New York statute.⁵ Where a machine is manufactured for the purpose of doing what the statute declares illegal, the fact that a wire is so attached that it must be removed before the machine will work, does not make the machine a legal one.⁶

A machine operated by the player after placing money therein, which gives the player a package of mints, and a check redeemable in trade is a gambling device.⁷ A slot machine issuing metal disks which are understood by both the possessor of the machine and by those who may use it to call for money in exchange for the disks, is deemed to be a gambling device under this statute.⁸ Also a machine in which tokens are inserted, tokens issued therefrom, and they are changeable or may be exchanged for money, the possession of such machine is in violation of statute.⁹

Under the New York statute, pinball games which may be converted into free game machines are unlawful.¹⁰ The statute is also violated where the player is given a free opportunity to play because he attained a certain winning score.¹¹ This does not mean that the player must be accorded a reward of a full game; it is sufficient if he secures additional rights or chances to use the machine.¹² Foreign court decisions differ from those of New York. In the province of Ontario, the court held that a pin ball machine, which furnishes nothing more than amusement, afforded in playing it the possibility of further amusement from free plays upon obtaining a winning score is a service vending machine.¹³

The laws of the various states are not uniform in the matter of slot machines. The Kansas Supreme Court in 1942 decided that a free play machine did not violate the Kansas statute¹⁴ which provides as follows:

Every person who shall set up or keep in any room where merchandise is sold or kept for sale, hotel, office, clubroom, saloon, joint, gambling house, brothel or other public or private place any slot machine or gambling device, devised or designed for the purpose of playing any game of chance for money or property, and shall induce, entice or permit any person to bet or wager any money or other things of value thereon, shall on conviction thereof be guilty of a misdemeanor

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5. *Triangle Mint Corp. v. Mulrooney*, 248 NYS 880 aff'd 257 N.Y. 200 (1931).

6. *Peo. v. Wertheimer*, 152 Misc. 733, 274 NYS 90 (1934).

7. *Peo. v. Spitzig*, 133 Misc. 508, 233 NYS 228 (1929).

8. *Peo. v. Kopper*, 253 N.Y. 83 (1930).

9. *Peo. v. Brown*, 151 Misc. 712, 273 NYS 560 (1934).

10. *Peo. v. Boxer*, 24 NYS2d 628 (1940).

11. *Peo. v. Cerniglia*, 11 NYS2d 5 (1939).

12. *Peo. v. Raziano*, 268 A.D. 798, 49 NYS2d 236 (1944).

13. *Rex v. Levine*, 4 Dominion Law Rep. 368.

14. G.S. 1935, 21-1508.

The court held that a strict construction must be placed on a criminal statute and because of our fundamental concepts of human rights, it should not be extended to embrace acts or conduct not clearly within the prohibitions of the statute. The privilege of playing additional games was held not to be "property" within the meaning of the statute.¹⁵ The Kansas statute does not contain a specific prohibition against machines granting free plays, whereas, the New York statute does.

A California statute outlaws slot machines,¹⁶ but is silent on the free play machines. Tennessee has a general law which prohibits the possession of gambling devices,¹⁷ but does not go into specific details as do the statutes of some of the other states. In some instances local authorities have attempted to regulate slot machines by ordinances. In one such case, a miniature mechanical baseball game, which could be operated only after inserting a five cent coin, and where the player with the highest score for the day was awarded a prize of two dollars was held not to be a gambling device within the meaning of the city ordinance.¹⁸ Despite the stringent state law, New York City Council had enacted a local law in 1948, making it a misdemeanor for any person to possess or operate any gaming device.¹⁹

In recent years, some states have enacted legislation licensing slot machines, as a means of regulating this evil, but the results have been far from satisfactory. The State of Idaho has a statute²⁰ making it lawful to own or operate slot machines by non-profit corporations and unincorporated associations organized solely for fraternal, benevolent, educational, athletic, or social purpose and defined by the statute as "clubs." The possession of slot machines is legal only upon filing an application for and receiving a license from The Department of Law Enforcement. The license fee is one hundred dollars per annum for each machine. Licenses expire June 30th of each year. In addition to the state license, the law permits a city, town, or village wherein the club is located, to impose a license fee of not more than fifty dollars. If such club is located outside the territorial limits of a city, town, or village, the license fee may be imposed by the county. The State of Montana has a similar law permitting slot machines in clubs. These

15. *State v. Waite*, 131 P.2d 708.

16. California Penal Code, Sec. 330a.

17. Tenn. Code, Sec. 5250.

18. *Centerville vs. Burns*, (Tenn.) 126 S.W.(2) 322.

19. New York City Administrative Code, Chapter 18, Sec. 436-8.0 (L.L. 1948 No. 45, June 30).

20. Idaho Code Annotated, Sec. 17-2301.

laws are as hypocritical as the laws which make it legal to gamble at a race track, but illegal outside the track. In this instance, slot machines are legal inside of "clubs" but illegal outside.

There are very few state statutes that prohibit the transportation of slot machines. The New York State law also prohibits such transportation. Under this statute, one need not even have title to the machines in transit, and although they may be invoiced to a corporation, he is considered a principal in this crime, if he had counseled and procured their transportation.²¹

New York State law²² makes it mandatory for every officer authorized to make arrests to seize every machine, apparatus, or device answering to the definition of a slot machine and to arrest the person actually or apparently in possession or control thereof or of the premises in which the same may be found, if any such person be present at the time of such seizure, and to bring the prisoner if there be one before a committing magistrate. The law also provides for the destruction of these machines.²³ The District Attorney of the County wherein the arrest was made is required by law to see that every person held to answer be brought to trial within thirty days after his final examination before the magistrate. The destruction of machines is a mandatory duty regardless of whether the defendant is acquitted or convicted.²⁴ In accordance therewith, machines seized by police may not be replevied, even though leased to third parties and the charges against the lessees were dismissed.²⁵ Slot machines incapable of use for any purpose except in violation of penal provisions of an anti-gambling statute are not property within the meaning and protection of the constitutional provisions as to the depreciation of property without due process of law.²⁶ Slot machines kept for gambling, may be condemned and destroyed though seized without a search warrant.²⁷

Anything inducing men to risk money or property merely to get a given amount for nothing, though receiving something of comparatively trivial value, is gambling. If a machine is so used it is a gambling device. An illustration of this is the slot machine vending balls of chewing gum, containing paper slips with numbers, some of which are good for money or merchandise.²⁸ Also a machine entitling a player

21. *Peo. v. Fitzgibbons*, 33 NYS2d 377 (1942).

22. N.Y. Penal Law, Sec. 983.

23. N.Y. Penal Law, Sec. 985.

24. *Peo. v. Traver*, 171 Misc. 53, 11 NYS2d 588 (1939).

25. *Triangle Mint Corp. v. Horgan*, 133 Misc. 802, 233 NYS 570 (1929).

26. *Mullen v. Mosley (Ida.)* 12 L.R.A. (NS) 394.

27. *State (Minn.) v. Falgren*, 223 N.W. 455 (1929).

28. *Ad-Lee Co. v. Meyer*, 144 A. 540, 294 Pa. 498 (1929).

after depositing a five cent coin, to a package of mints and a chance of obtaining two to twenty trade chips on succeeding play.²⁹

A slot machine that returns to the player value of money in chewing gum does not avoid classification as a gambling device in violation of anti-gambling law.³⁰ The same applies to a candy slot machine, which indicates in advance of each operation, the number of premium checks to be received.³¹ A slot machine, the player of which, if winner, is paid by the man in whose place the machine is operated, and not by the machine itself, is also a gambling device.³²

Very little can be said about the slot machine law of Nevada, except that it imposes a license fee of ten dollars per month for each slot machine operated.

A New York law concerning disorderly persons might well be mentioned here. Subdivision 7 of Section 899 of the Code of Criminal Procedure of the State of New York, provides as follows:

Persons who keep, in a public highway or place, any apparatus or device for the purpose of gaming, or who go about exhibiting tricks or gaming, therewith; are disorderly persons. In one instance, a tavern keeper was convicted under this subdivision, where he kept a billiard table in a tavern, and the loser was permitted to pay for the use of the table.³³ In another case, the keeper of a saloon, where games of pool and bagatelle were played upon terms that the loser should pay for the use of the gaming apparatus or for the drinks, was adjudged a disorderly person.³⁴ Proceedings under this section must be instituted under a warrant issued by a magistrate upon complaint on oath.³⁵

Among the latest victims of the New York statute are the robot ball playing machines. A device in which metal balls were kicked by the robot football kicker, and any ball caught by the robot football catcher dropped back to its original starting point, where it could be kicked again with any other unused ball, thereby giving user of machine additional chances or rights to use it, was held to be a slot machine and a gambling device.³⁶

29. *City of Milwaukee v. Johnson*, 213 N.W. 335 (1927).

30. N. M. Laws, 1921, c. 86; *State v. Apodoca*, 251 P. 389 (1927).

31. *Commonwealth (Mass.) v. McClintock*, 154 N.E. 264 (1927).

32. Mo. Rev. St. 1919, Sec. 3537; *State v. Pollnow*, 14 S.W. (2) 574 (Mo. 1929).

33. *Peo. v. Forbes*, 52 Hun. 30, 4 NYS 757.

34. *Peo. v. Cutler*, 28 Hun. 465, 1 N.Y. Cr. 178.

35. N. Y. Code of Criminal Procedure, Sec. 900.

36. *Peo. v. Raziano*, 49 NYS2d 236, 268 App. Div. 798 (1944).