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THE RISE AND DECLINE OF COIN-MACHINE GAMBLING

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In the following article Mr. King traces the competing histories of coin-machine gambling and legal efforts to suppress it in the United States. The author documents in detail the legislative acts which have served to thwart coin-machine gambling and which sometimes have served to promote it. He also appraises current indicia regarding the future prospects for coin-machine gambling in the United States.—EDITOR.

The forbears of automated gambling, coin-operated vending machines, made their appearance on the American scene early in the nineteenth century. For pennies or nickels they delivered candy, told fortunes, freed turnstiles, weighed people, or regaled their patrons with marvelously complicated piano-and-orchestra discordances.

In the 1890's two men, Charles Fey of San Francisco and Herbert Stephen Mills of Chicago, began the first important production of coin gambling devices. Their machines, by adding an element of chance and cash pay-outs to what had theretofore been simple vending transactions, brought the gambling-house proprietor into the five-and-dime market. Their products won the sobriquet "one-armed bandit," for the lure of their fruit-laden reels proved irresistible. "No other machine was ever invented from which the profits derived were so fabulous on so small an investment, and with so little effort."¹ Great fortunes were founded by those early connected with the manufacture and operation of these devices.

Vending machines always have two functions, akin to the traditional concept of bargain and sale: they take the patron's coin as consideration and, like the sales clerk behind his counter, they deliver something in return. What they deliver is of equal value each time,² be it amusement (a

juke box record or an arcade game), service (a shoeshine or a telephone call), or merchandise (a pack of cigarettes, etc.). Gambling machines always have three functions: they receive the consideration from the patron (who is now putting up a stake, *qua* player); they apply some determinative element of chance in each transaction; and they pay out, or control the paying out of, winnings. Hence all gambling machine operations embrace the three classic elements of the generic definition of gambling, namely, consideration, chance, and prize.³

By the turn of the twentieth century most American jurisdictions had reacted to variously bitter experiences with lotteries and lottery variants.⁴ Over half the states had written anti-lottery provisions directly into their constitutions,⁵ while Congress had been induced to take its first fling into local law-enforcement provinces with a postal ban on lottery tickets in 1890⁶ and a com-

thing of value for the same consideration upon each operation thereof." Cf. N.C. GEN. STAT. §14-296 (1943); *Calcutt v. McGeachy*, 213 N.C. 1, 195 S.E. 49 (1938).

³ *Johnson v. Phinney*, 218 F.2d 303 (5th Cir. 1955); *State v. One "Jack and Jill" Pinball Machine*, 224 S.W.2d 854 (Mo. App. 1949); *Boies v. Bartell*, 82 Ariz. 217, 310 P.2d 834 (1957); *State v. Ricciardi*, 32 N.J. Super. 204, 108 A.2d 111 (1954); *Williams v. State*, 65 Ga. App. 843, 16 S.E.2d 769 (1941).

⁴ *Blanche, Lotteries Yesterday, Today and Tomorrow*, 269 ANNALS 71 (1950). *Horner v. United States*, 147 U.S. 449 (1893); *Ballock v. State*, 73 Md. 1, 20 Atl. 184 (1890).

⁵ See, e.g., MD. CONST. art. III, §33 (1867); FLA. CONST. art. 3, §23 (1868); NEV. CONST. art. IV, §24 (1869); CALIF. CONST. art. 4, §26 (1879).

⁶ Act of Sept. 19, 1890, 26 Stat. 465, 18 U.S.C. §1302.

¹ Anonymous, *Slot Machines and Pinball Games*, 269 ANNALS 62 (1950).

² See *White v. Hesse*, 48 F.2d 1018 (D.C. Cir. 1931). This provides, incidentally, one of the best and most foolproof tests of gambling. Section 2(4) of the MODEL ANTI-GAMBLING ACT (Nat'l Conf. of Commissioners on Uniform State Laws, 1952) defines a gambling device as "any device or mechanism which, when operated for a consideration, does not return the same value or

merce-clause prohibition in 1895.⁷ Most states also enacted general anti-gambling statutes in this era, aimed at repressing other flourishing operations such as the "common gambling house," the bucket shop, and the Victorian card sharp.⁸

So the products of Fey and Mills and their imitators began almost from the outset to encounter difficulties with state legislatures and local law enforcement agencies—though for most of the ensuing half century they frequently had the better of their public adversaries. Sometimes they prospered because no one troubled to observe the magnitude of their five-cent-per-play operations. With great ingenuity they kept ahead, step by step as we shall see, of clumsy efforts to draft new laws describing their devices with too much particularity.⁹ Sometimes they benefited from simple confusion between themselves and the operators of vending or amusement machines. But often their operations were the subject of "arrangements" with local authorities, to whom gambling money has never been as tainted as the fruits of other vice enterprises.

And there was plenty of money to take care of everyone. Once established in a populous territory the slots could pull enough tribute from their patronage to satisfy all who had their palms out—and still leave handsome profits. Odds on the classic machines usually were set at 60-40 in favor of the operator, though they could be adjusted merely by blocking teeth in their ratchets and would produce nearly as well in good locations at 75-25 or even 85-15. Active slots will take upwards of twenty nickels (or dimes, or dollars) per minute.

In their race to keep ahead of sheriffs and legislative draftsmen, slots designers evolved subterfuges to conceal each of the three gambling functions their machines had to perform. The standard procedure, when each innovation reached the market—and if and when local "arrangements" broke down—was to apply to the local courts for injunctions against seizure, and then to flood the territory with the questioned device while slots

lawyers dragged out each step of appellate review.¹⁰

As might thus be expected, there is a great accumulation of judicial literature on this subject,¹¹ and some of the older opinions are remarkably obscure. Courts were split long ago, for example, on whether attaching a small mint vendor to the side of a one-armed bandit, so it would vend candy every time it was played, effectively converted it into a bona fide vending machine (since it then returned *some* consideration for each coin).¹²

In lieu of cash pay-offs the machines were designed to give tokens (conspicuously marked, "not redeemable");¹³ the tokens were adapted to fit the coin chute so it could be argued they were merely free replays "for amusement only";¹⁴ some models issued tickets or checks on which were printed pay-off values (so it could be insisted the paper itself was not a "thing of value");¹⁵ mints and gum from the vendor adaptation were delivered in variously colored wrappers keyed to pay-offs;¹⁶ and one type merely *indicated* how

¹⁰ For the chronicle of one "active" state, see *Griste v. Burch*, 112 S.C. 369, 99 S.E. 703 (1919); *Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66, *appeal dismissed*, 279 U.S. 822, 824, 876 (1929); *Durant v. Bennett*, 54 F.2d 634 (W.D.S.C. 1931); *State v. Kizer*, 164 S.C. 383, 162 S.E. 444 (1932); *Alexander v. Martin*, 192 S.C. 176, 6 S.E.2d 20 (1939); *Alexander v. Hunnicut*, 196 S.C. 364, 13 S.E.2d 630 (1941); *Cannon v. Odom*, 196 S.C. 371, 13 S.E.2d 633 (1941); *Ingram v. Beardon*, 212 S.C. 399, 47 S.E.2d 833 (1948); *Ringstaff v. Evans*, 212 S.C. 411, 47 S.E.2d 838 (1948); *Holliday v. Governor of South Carolina*, 78 F. Supp. 918 (W.D.S.C.), *aff'd*, 335 U.S. 803 (1948); *State v. Langley*, 236 S.C. 583, 115 S.E.2d 308 (1960).

¹¹ See, e.g., Annotations at 38 A.L.R. 73, 60 A.L.R. 343, 81 A.L.R. 177, 730, 85 A.L.R. 622, 101 A.L.R. 1126, 132 A.L.R. 1004, 135 A.L.R. 104, 138 A.L.R. 834, 19 A.L.R.2d 1238.

¹² *Gardner v. Daugherty*, 10 F.2d 373 (D. Mich. 1925); *White v. Hesse*, 48 F.2d 1018 (D.C. Cir. 1931); *Mills Novelty Co. v. United States*, 50 F.2d 476 (Ct. Cl. 1931), *cert. denied*, 285 U.S. 547 (1932); *Boynton v. Ellis*, 57 F.2d 665 (10th Cir. 1932); *Mills Novelty Co. v. Farrell*, 64 F.2d 476 (2d Cir. 1933); *Davies v. Mills Novelty Co.*, 70 F.2d 424 (8th Cir. 1934).

¹³ *Colbert v. Sup. Confection Co.*, 154 Okla. 28, 6 P. 2d 791 (1932); *Kirk v. Morrison*, 108 Fla. 144, 146 So. 215 (1933).

¹⁴ *State ex rel. Manchester v. Marvin*, 211 Iowa 462, 233 N.W. 486 (1930); *State v. Mint Vending Machine No. 195084*, 85 N.H. 22, 154 Atl. 224 (1931); *Painter v. State*, 163 Tenn. 627, 45 S.W.2d 46 (1932); *Rankin v. Mills Novelty Co.*, 182 Ark. 561, 32 S.W.2d 161 (1930).

¹⁵ *Moberly v. Deskin*, 169 Mo. App. 672, 155 S.W. 842 (1913); *United States v. Brown*, 267 Ky. 602, 102 S.W.2d 382 (1936); *Harvey v. United States*, 214 F. Supp. 80 (D. Ore. 1962).

¹⁶ See *Ad-Lee Co. v. Meyer*, 294 Pa. 498, 144 Atl. 540 (1929); *Drzazga, Gambling and the Law—Slot Machines*, 43 J. CRIM. L., C. & P.S. 114, 116 (1952).

⁷ Act of March 2, 1895, 28 Stat. 963, 18 U.S.C. §1301. See *France v. United States*, 164 U.S. 676 (1897); *Francis v. United States*, 188 U.S. 375 (1903).

⁸ *Bauman & King, A Critical Analysis of the Gambling Laws*, in ABA COMM'N ON ORGANIZED CRIME, ORGANIZED CRIME AND LAW ENFORCEMENT 75-112 (1952).

⁹ See, e.g., *Franklin, J.*, dissenting in *McCall v. State*, 161 Pac. 893, 899 (Ariz. 1916).

much the player had won, requiring deposit of the next coin to drop his winnings (to ground the contention that there was no chance since the value to be received for each coin was determined before it was inserted).¹⁷ Sometimes the pay-off code was concealed in colored cards bearing horoscopes, humorous sayings, etc.,¹⁸ and sometimes the machine simulated vendors by paying in cigars, cigarettes, golf balls, and other merchandise items.¹⁹

Machines were marketed with no coin slot: the player paid the location owner²⁰ to push a remote control, setting up his plays (to defeat the application of statutes which specified "coin-operated" devices).²¹ And pay-off games appeared in various guises in connection with mechanisms requiring modest skill to operate, to provoke solemn deliberations on the question whether they thus ceased to incorporate the prohibited chance principle.²² (Bona fide awards for *skill*, as in the classic turkey shoot and its coin-operated simulations, are not gambling;²³ but if skill actually determines the

outcome, the machine cannot pay off in money, as it would be emptied by the first skillful patron who happened upon it.)

Despite all its ingenious proliferations, the traditional slot machine was clearly on the wane by the 1930's,²⁴ and slot gambling might not have survived World War II²⁵ on any large scale had not a newcomer made its appearance: the "marble table" or pinball game.

The first pinballs, marketed around 1930, were simple penny versions of the ancient parlor game of bagatelle, allowing the player to shoot steel balls into a glass-covered labyrinth where they could drop into numbered holes indicating a cumulative score. They proved popular, soon appearing in more complicated table models, and with the advent of electrification they evolved into the still-familiar amusement machine characterized by an illuminated backboard, complex play features, and a surfeit of clanging bells, flashing lights, and bright paint. This innovation also founded a substantial industry, centering, as does most of the manufacture of coin devices, in the Chicago area.

In 1935 amusement pinball designers came up with the invention which was to give gambling manufacturers the new lease on life they sorely needed. It was a simple invention, an adaptation of the coin-receiving chute which reactivates the game without another coin if the player achieves a sufficiently high score, etc., so the machine can automatically give one or more "free games" as a play incentive.²⁶ And it was an instant success. The possibility of winning an extra game or two—thus extending the "amusement" feature of the play—soon put the pinball game ahead of all its competitors in the coin-operated amusement categories. Most courts, confronted with the question whether a free game thus awarded was, per se, a "thing of value," found in the negative, holding the value to be de minimis or to be merely part of the play given for the initial coin-consideration.²⁷

²⁴ *State v. Busch*, 59 R.I. 382, 195 Atl. 487 (1937); *Miller v. Chicago & N.W.R.R.*, 153 Wis. 431, 141 N.W. 263 (1913); *Territory v. Jones*, 14 N.M. 579, 99 Pac. 338 (1908); *Meyer v. State*, 112 Ga. 20, 37 S.E. 96 (1900).

²⁵ Because coin-machine manufacture requires unusually high standards of quality and durability, the industry won a creditable profusion of production "E's" when it switched, early and completely, to supporting the national war effort in 1940-1945.

²⁶ See, *Chicago Patent Corp. v. Genco, Inc.*, 124 F.2d 725 (7th Cir. 1941).

²⁷ See, e.g., *Washington Coin Machine Ass'n v. Callahan*, 142 F.2d 97 (D.C. Cir. 1944); *Gayer v.*

Cf. Tooley v. United States, 134 F. Supp. 162 (D. Nev. 1955).

¹⁷ *Gardner v. Daugherty*, 10 F.2d 373 (D. Mich. 1925); *Zaft v. Milton*, 96 N.J. Eq. 576, 126 Atl. 29 (1924); *Commonwealth v. McClintock*, 257 Mass. 431, 154 N.E. 264 (1926); *State v. Apodaca*, 32 N.M. 80, 251 Pac. 389 (1926).

¹⁸ *United States v. Brown*, 156 F. Supp. 121 (N.D. Iowa 1957). See *Rouse v. Sisson*, 190 Miss. 276, 199 So. 777 (1941).

¹⁹ *Ex parte Pierotti*, 43 Nev. 243, 184 Pac. 209 (1919); *Ex parte Williams*, 87 P.2d 565 (Cal. 1906); *State v. Sparks*, 48 Ga. App. 498, 173 S.E. 216 (1934); and, during World War II, in ration tokens! *State v. Rand*, 238 Iowa 250, 25 N.W.2d. 800 (1947).

²⁰ It is important to bear in mind that virtually all coin-operated devices—gambling, amusement, vending, etc.—are owned by operators, who then place them in locations where the public has access, splitting the profits with the location owner on an agreed basis which is almost always 50-50 of the net. This arrangement is dictated by the relatively high capital investment in modern machines, by the greater economies of maintenance and servicing on a "route," and in the case of amusement devices, by the need to rotate them among locations to preserve novelty appeal.

²¹ *Hannifin v. United States*, 248 F.2d 173 (9th Cir. 1957); *United States v. Asani*, 240 F.2d 216 (7th Cir.), cert. denied, 353 U.S. 936 (1957); *United States v. Three Gambling Devices Known As Jokers*, 161 F. Supp. 5 (D. Pa. 1958).

²² *Hoke v. Lawson*, 175 Md. 246, 1 A.2d 77 (1938); *Robey v. Mantell*, 175 Md. 690, 1 A.2d 82 (1938); *Boies v. Bartell*, 82 Ariz. 217, 310 P.2d 834 (1957); *Adams v. Antonio*, 88 S.W.2d 503 (Tex. Civ. App. 1935); *State v. Paul*, 43 N.J. Super. 396, 128 A.2d 737 (1957).

²³ See, e.g., *Town of Centerville v. Burns*, 174 Tenn. 435, 126 S.W.2d 322 (1939); *State v. Abbott*, 218 N.C. 470, 11 S.E.2d 539 (1940).

So the free game amusement machine was generally acceptable to law enforcement agencies.

But the gamblers were not far behind. Most of the attempted subterfuges noted in the foregoing review had aimed at concealing the pay-off in one way or another (i.e., of the three classic elements it was easier to mask the prize than the consideration or the chance), and now an adaptation of the free game feature accomplished this with unparalleled efficiency and accuracy. Into the machine was built a "knock-off" circuit, activated by a concealed button or some other hard-to-detect control.²⁸ The player *could* still play off the games he won (and the sheriff could be shown that this was a bona fide amusement feature); but if the player elected to be paid off, the location owner gave him cash and "knocked off" the games, *which simultaneously recorded each game thus removed on a meter locked inside the machine, beside the cash box.*²⁹ And observe what this accomplishes: the machine now gives nothing directly (coin, token, ticket, merchandise, etc.) which can be labeled a thing of value; yet when the cash box is opened the location owner is reimbursed according to the meter, before the net profit is divided; so the machine itself is thus *still controlling pay-offs*, as accurately as if it had dropped the winnings directly into each player's hand.³⁰

While amusement models give only one or two

free games per play, and accumulate no more than ten or fifteen (at most, on any current model, 26), the gambling versions will award, typically, up to 600 per play and will accumulate the limit of a three-digit indicator, i.e., 999. And observe again: this is no longer small-time gambling; on a 10¢ machine 999 games represent a pay-off of \$99.90, and the "win" on a single game can be \$60.00.

Soon after this pay-off scheme, there came another clever innovation designed to enlarge the consideration, or "stake," that could be hazarded on a single game. After the first coin drops the balls, clears the preceding game score, lights the backboard, and readies the machine for the pinball play, so the player *could* proceed as if he were patronizing an amusement game, he has another option: he can drop additional coins—any number of additional coins, one by one—to try to increase his odds in the event he wins. For example on the standard "bingo" type, which pays off for lighting 3, 4, or 5 numbers in a row on a simulated bingo card, the initial odds would be 75 (for 5 in a row), 16 (for 4), and 4 (for 3); dropping an additional coin *might or might not* cause the odds to advance to 75-20-6, or 96-24-8, and so forth. Each coin so dropped activates an electrical chance mechanism, precisely akin in function to the old slot machine reels,³¹ which never reduces the odds already set but may or may not increase them. A standard bingo odds spread progresses like this:

75	75	96	96	200	300	450	600
16	20	24	50	96	144	240	480
4	6	8	16	32	64	120	192

And each play of the odds-determining mechanism is very fast. So once more observe: now the player is invited to drop dozens or even hundreds of nickels or dimes on a single play (in much less time than he could play them through an old one-armed bandit), for a chance to win at highest odds. He may also, of course, gamble back the "free games" he has already accumulated, one by one, in the same manner.

Gambling operations on this scale made it economically possible—if not essential—to equip the machines with another feature that is now characteristic, an expensive and complicated device known as a "reflex unit," which operates constantly to adjust the odds (unbeknownst to the player) to protect the "house." After a series of

³¹ United States v. Five Gambling Devices, 252 F.2d 210 (7th Cir. 1958).

Whelan, 59 Cal. App. 2d 255, 138 P.2d 763 (1943); *In re Wigton*, 151 Pa. Super. 337, 30 A.2d 352 (1943); *State v. Waite*, 156 Kan. 143, 131 P.2d 708 (1942).

²⁸ On some later models disconnecting the line cord trips the circuit, or the button is connected by inconspicuous wiring from some point away from the machine; or touching a coin or key to two bolt-heads on its side or back serves the same purpose.

²⁹ A recent substitute for the meter (which is sometimes disguised by use of two meters recording all games won and all games played off, etc.) is the so-called coin divider, which gives the location owner his share of pay-offs by means of a separate cash box to which he has access. *In re Three Pinball Machines*, 192 A.2d 240 (Pa. Super. 1963).

³⁰ It must be noted that amusement pinball machines, or any game or device operating with an element of chance (see note 34 *infra*), may be used for betting between two players or player and owner, and this is indisputably gambling. But this does not make the machine a *gambling device* or establish that it is *designed* for gambling; if it did, Uncle Sam's heads-and-tails coins would also fall under the stigma. The correct test is always whether the machine somehow *controls the pay-off*, as is being explained at this point in the text. See, *Johnson v. Phinney*, 218 F.2d 303 (5th Cir. 1955); *Stoutamire v. Pratt*, 148 Fla. 690, 5 So. 2d 248 (1941); cf. *State v. One 5¢ Fifth Inning Baseball Machine*, 241 Ala. 455, 3 So. 2d 27 (1941).

pay-offs the unit begins to disconnect circuits in the odds-fixing mechanism, to reduce the chance of increasing the odds with each coin; after a period of slow play the unit reverses and reopens circuits to make it progressively easier to win larger amounts again.³²

When these features are understood it is not hard to see why the gambling manufacturers, although desiring to simulate the *appearance* of amusement pinball games, actually eschewed the complex and time-consuming play aspects of the amusement counterpart, and sought to minimize them. This produced first the "one-ball" machine, scourge of law enforcement in the early 'forties, wherein the pinball play in each game was limited to shooting a single ball. When one-balls began to invoke judicial disapproval,³³ the gambling industry shifted to the bingo types, requiring the shooting of five balls onto a simple play board containing 25 numbered holes, and this latter characteristic—the 25-hole board without any play features except pegs, spring bumpers, and some bright paint—still identifies current gambling models. While it takes two to three minutes to play a game on an amusement machine, the five-ball number determination, i.e., the pinball play, on a gambling pinball game can be accomplished in a few seconds.³⁴

It has been generally acknowledged in contemporary studies of organized crime that the proceeds of gambling play a large part in financing America's criminal overlords and their empires.³⁵ But most of the investigators have tended to concentrate their attention on race-wire services, horse parlors,

³² *In re Trombetta*, 188 Pa. Super. 480, 149 A.2d 483 (1959); *People v. Twelve Pinball Machines*, Cir. Ct. Stephenson Co., Ill., No. 59-160, Jan., 1960.

³³ *State v. Kilburn*, 111 Mont. 400, 109 P.2d 113 (1941); *State v. Coats*, 158 Ore. 122, 74 P.2d 1102 (1938); *People v. Gravenhorst*, 32 N.Y.S.2d 760 (1942); *State v. Livingston*, 135 Me. 323, 196 Atl. 407 (1938). See *Johnson v. Phinney*, 218 F.2d 383 (5th Cir. 1955).

³⁴ It should be noted in passing that although the point has often been argued, no American court has ever been persuaded to hold that the gravity-motivated descent of steel balls on a glass-covered incline can be controlled solely by skill; though "gunching" and "hulaing" may be conceded some effect, all such games have an element of chance sufficient to categorize them as gambling if the other components (consideration and prize) are present. Some courts have noted the presence of the "tilt" device, actually built in to protect the machines from destructive abuse, as evidence of the manufacturer's intent to minimize skill. See, e.g., *In re Three Pinball Machines*, 192 A.2d. 240 (Pa. Super., 1963).

³⁵ Senate Special Comm. To Investigate Organized Crime in Interstate Commerce, *Third Interim Report*, S. REP. No. 307, 81st Cong. 2-4 (May 1951).

the numbers racket, and other aspects, to the exclusion of coin-machine operations.³⁶ This was an important oversight, particularly with reference to the pinball operations of the 'forties and 'fifties. A gambling pinball machine in a good location will average \$200-\$300 profit per week (while its amusement counterpart at the same spot would produce only \$15-\$25). Constructing loosely from known production rates and an assumed average machine life of five years, there have been something like 100,000 such machines operating at any one time, until very recently, in the United States—a profit volume of, say, \$20 million per week, or \$1 billion per year.³⁷ Moreover, coin devices of this type, which automatically extract large profits from the patronage attracted by someone else's enterprise, lend themselves uniquely to "muscle" tactics in placing machines and protecting routes and territories.³⁸

A few state jurisdictions recognized the gambling pinball machine for what it was and outlawed it forthwith.³⁹ In some, the courts identified the free game feature per se as the source of evil, and as a result both gambling and amusement types were proscribed.⁴⁰ But here and there the machines are operating as this is being written, in areas of "tolerance" or quasi-legality, confused with their amusement prototypes or openly accepted by local law enforcers.⁴¹

³⁶ *Id.*, *Final Report*, S. REP. No. 725, 82nd Cong. (Aug. 1951); Senate Comm. on Government Operations, *Gambling and Organized Crime*, S. REP. No. 1310, 87th Cong. (March 1962).

³⁷ *Cf.* Anonymous, *supra* note 1, at 64-65, 66, 69.

³⁸ House Comm. on Interstate and Foreign Commerce, *Prohibiting the Transportation of Gambling Devices in Interstate Commerce*, H.R. REP. No. 1828, 87th Cong. 16-18 (June 1962) (1962 U.S. CODE CONGRESSIONAL SERVICE at 3809).

³⁹ *In re Sutton*, 148 Pa. Super. 101, 24 A.2d 756 (1942); *Hunter v. Mayor, etc., of Teaneck Twp.*, 128 N.J.L. 164, 24 A.2d 553 (1942); *Krause v. Cleveland*, 135 Ohio St. 43, 19 N.E.2d 159 (1939); *Henry v. Kunney*, 280 Mich. 188, 273 N.W. 442 (1937); *Commonwealth v. Bowman*, 267 Ky. 602, 102 S.W.2d 382 (1936); *People v. Gravenhorst*, 32 N.Y.S.2d 760 (1942).

⁴⁰ *Farina v. Kelly*, 147 Conn. 444, 162 A.2d 517, (1959); *Westerhaus v. City of Cincinnati*, 165 Ohio St. 327, 135 N.E.2d 318 (1956); *Baeder v. Caldwell*, 156 Neb. 489, 56 N.W.2d 706 (1953); *Middlemas v. Strutz*, 71 N.D. 186, 299 N.W. 589 (1941); *Giomis v. Chase*, 97 N.M. 22, 132 P.2d 715 (1942); *Steely v. Commonwealth*, 291 Ky. 554, 164 S.W.2d 977 (1942).

⁴¹ In Maryland, for instance, there are more federal gambling device stamps outstanding in Baltimore County (1571) on these devices than in Maryland's four slot machine counties on slot machines (1127); and Baltimore is *not* one of the counties exempted in any way from the state's anti-gambling laws. See *Brown v. State*, 210 Md. 301, 123 A.2d 324 (1956); *Hunter v.*

The most effective curbs on coin gambling machines⁴² have been imposed by Congress and the federal government,⁴³ but this is a long story, with most of the action centered in recent chapters. A federal stamp tax was first laid on coin-operated devices in 1941, at the rate of \$10 on amusement types and \$50 on gambling machines, the latter described as, "so-called 'slot' machines which operate by means of insertion of a coin, token, or similar object and which, by operation of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise or token."⁴⁴ This immediately struck at conventional slot machines, and since the gambling-device returns were public records,⁴⁵ local law enforcement agencies were often embarrassed, though not always goaded into taking action.⁴⁶

At the outset the federal stamp tax (increased to \$100 in 1942, to \$150 in 1950, and to \$250 in 1951, see Act of Oct. 20, 1951, 65 Stat. 528) was assessed against gambling pinball machines only when revenue agents happened to observe an actual payoff being made,⁴⁷ and since, as has been explained, pay-offs were controlled by the location owner, such cases were few. Besides, until the question was resolved in 1957, in *United States v. Korpan*,⁴⁸ doubt existed whether bingo pinball machines fell within the definition, "so-called 'slot' machines," anyway.⁴⁹ But after *Korpan*, the IRS became more aggressive, insisting successfully that gambling-

adapted pinball machines were gambling devices per se,⁵⁰ and winning significant test cases in the federal courts.⁵¹ A loophole in the statute, existing by reason of the limitation to machines *literally* operated by the insertion of a coin (which accounted for a flood of remote-control "trade booster" attachments from the industry),⁵² was closed in 1958.⁵³

Meanwhile Congress had also brought the interstate commerce powers of the federal government into play. One of the important antecedents of the Kefauver Crime Committee was an Attorney General's Conference on Organized Crime, convened by Attorney General McGrath in February, 1950.⁵⁴ This study, though eclipsed when the Senate Committee appeared in the limelight, made important findings about the bookmaking wire services and about coin machine gambling, which resulted in two bills, S. 3357 and S. 3358, introduced in the 81st Congress by Senator Edwin Johnson. The wire-service bill (S. 3358) got nowhere; S. 3357, however, after emasculating revision by the House Interstate and Foreign Commerce Committee, passed as P. L. 906-81, and became known as the Johnson Act.⁵⁵ As originally introduced, this measure would have banned *all* coin gambling devices from interstate commerce, except when shipped to jurisdictions where they were lawful to operate.⁵⁶ When the House got through with the Senate bill, the controlling definition of "gambling device" emerged as follows:

"(1) any so-called 'slot machine' or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application

State, 193 Md. 596, 69 A.2d 505 (1949). Cf. *Zumbrun, Maryland: A Law Enforcement Dilemma*, 347 ANNALS 58 (1963).

⁴² Since the early 'forties one substantial segment of the manufacturing industry has limited production to bona fide amusement devices and has been conducting an aggressive campaign to dissociate itself and its products from the other.

⁴³ Though special notice should be given a few states which have tied their licensing powers (over taverns, restaurants, etc.) to the control of gambling and gambling devices, e.g., WIS. STAT. §176.90 (1949); ILL. REV. STAT. ch. 43, §185 (1955). Gaynor, *Indirect Control of Organized Crime Through Liquor License Procedure*, 49 J. CRIM. L., C. & P.S. 65 (1958).

⁴⁴ Act of Sept. 20, 1941, 55 Stat. 722, 26 U.S.C. §§4461-2.

⁴⁵ I.R.C., 1939, §3275; I.R.C., 1954, §6107.

⁴⁶ One weakness which still inheres in this law is that the tax and registration requirements fall on the location owner, and seldom bring to light the machine owner or operator who is actually the promoter of all such coin-machine operations. See note 20 *supra*.

⁴⁷ *United States v. One Bally, etc., Machine*, 144 F. Supp. 930 (D. Tenn. 1953).

⁴⁸ 354 U.S. 271.

⁴⁹ See *United States v. Korpan*, 237 F.2d 676 (7th Cir. 1956), *reversed*, 354 U.S. 271 (1957).

⁵⁰ Rev. Ruls. 59-294, 60-102, 61-28.

⁵¹ *United States v. Nine Gambling Devices*, 59-2 U.S.T.C. ¶15,275 (S.D. Ill. 1957); *Turner v. United States*, 62-1 U.S.T.C. ¶15,402 (D. Kan. 1962); *Harvey v. United States*, 214 F. Supp. 80 (D. Ore. 1962); *United States v. One Bally "Barrel-O-Fun" Coin-Operated Gambling Device*, 224 F. Supp. 794 (D. Pa. 1963).

⁵² See note 21 *supra*.

⁵³ Act of Sept. 2, 1958, 72 Stat. 1304.

⁵⁴ See Senate Comm. on Interstate and Foreign Commerce, *Transmission of Gambling Information, Hearings on S. 3358*, 81st Cong. 7-46 (April 17, etc., 1950).

⁵⁵ Act of Jan. 2, 1951, 64 Stat. 1134, 15 U.S.C. §1171 ff.

⁵⁶ See 1950 U.S. CODE CONGRESSIONAL SERVICE, 81st Cong. at 4240.

of an element of chance, any money or property; or

(2) any machine or mechanical device designed and manufactured to operate by means of insertion of a coin, token, or similar object and designed and manufactured so that when operated it may deliver, as the result of the application of an element of chance, any money or property⁵⁷

Here again, the conventional one-armed bandit, with its drums or reels and insignia, was struck (the draftsman might almost as well have said "cherries, lemons and bells"); but the language invited evasion. It, too, required machines in category "(2)" to be *literally* coin-operated,⁵⁸ and electric slot machines of the "console" type were easily modified to substitute a disc-wiper-finger arrangement in lieu of the forbidden drums.⁵⁹

And the Johnson Act left a clear "out" for gambling pinball machines. With no drums or reels, they fell outside category "(1)"; and note that category "(2)," which otherwise grounds on an impeccable generic definition of gambling, requires the machine to "deliver . . . money or property." By omitting the additional phrase "by the operation of which a person may become entitled to receive" in this latter definition, the 1951 congressional draftsmen virtually wrote a licensing provision for all machines which made use of the free game pay-off subterfuge. There were also technical deficiencies in the record and registration sections of the 1951 Act which made it cumbersome and very difficult to apply.⁶⁰

The chief weakness in this law—the omission of indirect pay-offs in category "(2)" was perceived at once, and a remedial amendment was among the Kefauver Committee's legislative proposals (S. 1624, 82nd Congress),⁶¹ endorsed as early as 1951 by the American Bar Association

⁵⁷ 15 U.S.C. §1172.

⁵⁸ Cf. *United States v. 24 Digger Merchandising Machines*, 202 F.2d 647 (8th Cir.), *cert. denied*, 354 U.S. 998 (1953); *United States v. Three Trade Boosters*, 135 F. Supp. 24 (D. Pa. 1955).

⁵⁹ *United States v. Five Gambling Devices*, 252 F.2d 210 (7th Cir. 1958); *Hannifin v. United States*, 248 F.2d 173 (9th Cir. 1957); *United States v. One Electronic Pointmaker*, 149 F. Supp. 427 (D. Ind. 1957); *United States v. McManus*, 138 F. Supp. 164 (D. Wyo. 1956).

⁶⁰ *United States v. Five Gambling Devices*, 346 U.S. 441 (1953); *United States v. Asani*, 240 F.2d 216 (7th Cir.), *cert. denied*, 353 U.S. 936 (1957); *United States v. Five Gambling Devices*, 119 F. Supp. 641 (D. Ga. 1954).

⁶¹ *Final Report*, *supra* note 36, at 89.

and other groups.⁶² But it failed of passage. Bills for the same purpose were introduced in every subsequent Congress,⁶³ including, after 1958, administration-sponsored amendments to the registration sections.⁶⁴ But these seldom moved even as far as the hearing stage.

In 1959 the McClellan Committee rekindled interest in coin-machine gambling when it began exposing tie-ins with labor racketeers⁶⁵ and in 1961 an effective revision of the Johnson Act became one of Attorney General Kennedy's important anti-crime proposals,⁶⁶ introduced by Senator Eastland as S. 1658, 87th Congress, and enacted October 18, 1962.⁶⁷ Supporting the bill, Assistant Attorney General Miller stated:

"The slot machine and pinball machine gambling industry remains one of the mainstays of organized crime. Racketeers have infiltrated to a greater or lesser extent all phases of the industry, including manufacturing, distribution, ownership of the machines, and ownership of the locations where the machines are placed. Primarily because of the inhibitory effect of the Johnson Act on the interstate distribution of slot machines, the racketeers have focussed their efforts largely upon developing pinball machines as gambling devices. That the conversion from slot machines to pinball machines has been successful can be inferred from the statement of many racketeers themselves that the play on pinball machines is faster and more profitable than it was on slot machines."⁶⁸

Attorney General Kennedy pointed out:

"Some 'pinball' machines now in use afford players an opportunity to register greater numbers of free games and on which they can manipulate odds and numbers of free games to be scored. If certain combinations are achieved, free games can be played off or eliminated from the register by pressing a button or lever. The pay-off is then made indirectly."⁶⁹

⁶² 76 A.B.A. REP. 386, 408 (1951).

⁶³ E.g., S. 3190, 9456, 83rd Cong.; H.R. 792, 84th Cong.; H.R. 252, 85th Cong.; S. 2107, 86th Cong.

⁶⁴ E.g., S. 2206, 86th Cong.

⁶⁵ Senate Select Comm. on Improper Activities in the Labor or Management Field, *Investigation, etc., Hearings*, Part 46, at 16511-88 (Feb. 10, etc., 1959).

⁶⁶ Senate Comm. on the Judiciary, *The Attorney General's Program To Curb Organized Crime and Racketeering, Hearings on S. 1653, etc.*, 87th Cong. at 13, 20, 25, 62 *et passim* (June 6, etc., 1961).

⁶⁷ P.L. 87-840, 76 Stat. 1075, 15 U.S.C. §1171-8.

⁶⁸ H. REP. No. 1828, 87th Cong., *supra* note 38 at 16.

⁶⁹ House Comm. on Interstate and Foreign Com-

This measure⁷⁰ has already withstood a constitutional challenge,⁷¹ and promises effectively to restrain interstate traffic in gambling devices of the pinball type as well as other coin-gambling machines.⁷² It contains new registration and record-keeping requirements, expressly proscribes any falsification of record entries, and authorizes the inspection of records by agents of the FBI.⁷³ The "coin-operated" loophole is eliminated,⁷⁴ and indirect pay-offs are caught by the incorporation in subsection (a)(2) of §1171 the phrase, "by the operation of which, etc." formerly appearing only in subsection (a)(1). Amusement-type machines, including specifically bona fide amusement devices in the free game category, are exempted.⁷⁵

The Act excludes manufacture and shipment for export from its prohibitions,⁷⁶ but not from its record-keeping sections. The original Johnson Act exclusion, for any state "which has enacted a law providing for the exemption of such State" is retained (a most unusual drafting device, requiring positive action by state lawmakers to alter the federal pattern—and with which only Nevada⁷⁷ has so far complied). But there is also a new provision exempting transportation of gambling devices:

"... into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State."⁷⁸

And this suggests that pressure may again be generated in state legislatures for innocuous-sounding language⁷⁹ which will fulfill this requirement.⁸⁰

merce, *Gambling Devices, Hearings on H.R. 3024, etc.* 87th Cong. at 10 (Jan. 16, etc., 1962).

⁷⁰ *Gambling Devices Act of 1962*, 15 U.S.C. §1171-8, as amended.

⁷¹ *Lion Mfg. Corp. v. Kennedy*, D.D.C. No. 3891-62, Jan. 11, 1963, *aff'd*, — F.2d — (D.C. Cir. 1964), *leave to file pet. for mandamus denied sub nom. Lion Mfg. Corp. v. Maguire*, 373 U.S. 920 (1963).

⁷² Another of Attorney General Kennedy's anti-crime proposals, the Interstate Travel Act, enacted Sept. 13, 1961 (P.L. 87-228, 75 Stat. 498, 18 U.S.C. §1952) has also proved effective in dealing with gambling devices. See *United States v. Michael Distributing Co.*, W.D. Wash., Crim. No. 50-688 (1963).

⁷³ 15 U.S.C. §1173.

⁷⁴ 15 U.S.C. §1171.

⁷⁵ 15 U.S.C. §1178.

⁷⁶ 15 U.S.C. §1172. *Cf.*, 15 U.S.C. §§1171(d), 1173. and see note 81, *infra*.

⁷⁷ Nevada Laws, 1951, ch. 97, p. 13. *Cf.*, *United States v. 46 Gambling Devices*, 138 F. Supp. 896 (D. Md. 1956); *United States v. Two Hollycrane Slot Machines*, 136 F. Supp. 550 (D. Mass., 1955).

⁷⁸ 15 U.S.C. §1172.

⁷⁹ *Cf.* La. Acts, 1962, No. 361, and Wash. Laws, 1963, ch. 37.

⁸⁰ The power—if not the sound judgment—of gambling proponents in the State of Washington was

Or manufacture and distribution may be decentralized to confine the production of gambling machines to intrastate areas, as happened a few years ago when Maryland became a large enough slot machine market to induce one of the slots companies to forsake Chicago and relocate in a small Maryland town.⁸¹

Typical of the difficulties encountered by state and local jurisdictions in curbing coin-machine gambling is the recent experience of Illinois, where gambling pinball revenues have been estimated to be running as high as \$25-\$30 millions per year.⁸² Under Illinois' 1895 slot machine Act⁸³ it was held, in 1942, that *all* free game machines were illegal.⁸⁴ In 1953 the Illinois General Assembly was induced, for the avowed purpose of legalizing bona fide amusement machines, to amend the law by exempting:

"A coin-in-the-slot operated mechanical device played for amusement which rewards the player with the right to replay such mechanical device, which device is so constructed or devised as to make such result of the operation thereof depend in part upon the skill of the player and which returns to the player thereof *no coins, tokens or merchandise.*" (Emphasis added).⁸⁵

This language was interpreted in 1957 to include,—i.e., to exempt—pay-off pinball machines,⁸⁶ by a Court which did not have a clear description of the features of the machine before it.⁸⁷

Note that the statutory language underscored in the Illinois exemption above is deficient in pre-

demonstrated when 82,955 petition signatures (48,630 required) to put the latter Act to a referendum "vanished" from the State Capitol Building safe. Secretary of State Myers certified the validity of the signatures anyway, and the matter is now pending in the State Supreme Court. *Seattle Post-Intelligencer*, Oct. 29, 1963, p. 5.

⁸¹ *Cook, Gambling, Inc.—Treasure Chest of the Underworld*, Nation, Oct. 22, 1960, pp. 308-09. The 1962 amendments (15 U.S.C. §§1171(e), 1173) require *registration and records* pertaining to intrastate sales, etc., of gambling devices; but prohibitory controls are not imposed—and might be unconstitutional. See *United States v. Denmark*, 119 F. Supp. 647 (D. Ga.), *aff'd*, 346 U.S. 441 (1953); *United States v. 65 Slot Machines*, 102 F. Supp. 922 (D. La., 1952).

⁸² *Chicago Sun-Times*, March 19, 1963, p. 16.

⁸³ Laws, 1895, p. 156, §1. See *Bobel v. People*, 173 Ill. 19, 50 N.E. 322 (1898).

⁸⁴ *People v. One Pinball Machine*, 316 Ill. App. 161, 44 N.E.2d 950.

⁸⁵ Laws, 1953, p. 929, §1.

⁸⁶ *People v. One Mechanical Device*, 1 Ill. 2d 107, 142 N.E.2d 98 (1957).

⁸⁷ *Cf. People v. Twelve Pinball Machines*, Cir. Ct. Stephenson Co., No. 59-160, Jan. 11, 1960.

cisely the same way as was the Johnson Act, namely, by omitting reference to *indirect* pay-offs. Three efforts were made by the General Assembly to close this loophole: in 1959, when a bill passed nearly unanimously by both Houses was vetoed;⁸⁸ in 1961 when the measure, after passing one House, was scuttled by amendment in the other in the closing hours of a hectic session;⁸⁹ and finally, in 1963, when a bill reached Governor Kerner's desk and was signed.⁹⁰ The loophole-closing amendment, merely substituting "no money, property or right to receive money or property" for the deficient phrase, is now being tested in the Illinois courts (while the gambling machines run on, under an injunction.)⁹¹ Efforts to control the *manufacture* of gambling machines in the Chicago area were never successful,⁹² and the 1962 amendment legalizes the remnants of the manufacturing industry in Illinois⁹³ (on the not unreasonable theory that Chicago need not be deprived of the income, jobs, etc., generated by production, so long as distribution is confined to markets where the machines are not outlawed by local public policy.)⁹⁴

At this writing coin-machine gambling in the United States is doubtless at low ebb. Latest IRS figures (fiscal 1962-1963) show 31,827 federal

⁸⁸ Veto message by Governor Stratton, July 24, 1959: "This Bill would distinguish between coin-operated amusement devices as to the manner in which a replay is permitted, classifying one group as gambling devices and the other not. . . . The objects sought by this Bill can . . . be fully accomplished by local authorities without arbitrarily giving preference to one type of amusement device and banning a similar type."

⁸⁹ 72d G.A., S. 137, S. 138.

⁹⁰ 73d G.A., H.B. 374 (with 27 sponsors) and S. 388 (with 4 sponsors), amending ILL. CRIM. CODE, 1961, §28-2, signed July 8, 1963. Laws, 1963, p. 1413.

⁹¹ *White v. Ogilvie*, Cir. Ct. Cook Co., Ill., No. 63-S-17086 (1963).

⁹² See, *Hershey Mfg. Co. v. Adamowski*, 22 Ill. 2d 36, 174 N.E.2d 200 (1961).

⁹³ See ILL. CRIM. CODE, 1961, §28-1 (Laws, 1961, p. 1983, §35-1) as amended by Laws, 1963, p. 1412.

⁹⁴ Similar considerations prompted Congress to reject Attorney General Kennedy's request for a ban on shipments of gambling devices into foreign markets. See *Hearings*, note 61 *supra*, at 7, and H.R. REP. NO. 1828, *supra* note 38, at 4.

stamps outstanding on coin-gambling devices, and at least half of these are believed to be on "in line" pinball games which will be further restricted by enforcement of the Eastland Act. Even if the new New Hampshire lottery law⁹⁵ and current expressions of the "let's-legalize-all-gambling" sentiment⁹⁶ mark a trend, coin-machines *should* be the last of all commercial gambling operations to be revived, for they are purely exploitative, unsuited to the furtherance of worthy causes, and not even related to improvement in the breeding of horses and dogs. They aim at the meager pocket-money of the poor and have none of the patrician aura sometimes associated with race tracks, Jai Alai emporiums, or plush gambling casinos.

Whether there *will* be a renaissance in this field is not so easy to predict, however. England has recently permitted the operation of slots and other pay-off devices, with certain limitations as to odds and total stakes per play.⁹⁷ Other European countries have developed boom markets, with German and Japanese manufacturers offering the American industry brisk competition. On the home front, the Chicago company which monopolized the production of gambling pinball machines in recent years has changed hands, passing into the control of a New York group and reviving its line of "in line" devices. And if law enforcement is indeed nearly abreast of today's subterfuges, history suggests that we can fairly look for something new tomorrow:

"In no field of reprehensible endeavor has the ingenuity of man been more exerted than in the invention of devices to comply with the letter, but to do violence to the spirit and thwart the beneficent objects and purposes, of the laws designed to suppress the vice of gambling."⁹⁸

⁹⁵ N.H. REV. STAT. ANN. 284:21a-k, Laws 1963, ch. 52.

⁹⁶ See, e.g., Breslin, *In Defense of Gambling*, Sat. Eve. Post, Jan. 5, 1963, p. 12.

⁹⁷ Betting and Gaming Act, 8 Eliz. 2 (1959).

⁹⁸ *Moberly v. Deskin*, 169 Mo. App. 672, 155 S.W.2d 842, 844 (1913).