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THE PINBALL PROBLEM—ALTERNATIVE SOLUTIONS

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Both the technical and important distinctions between "amusement" and "gambling" pinball machines and the host of problems engendered by current attempts to regulate the manufacture and use of the devices are explored in this article. The authors offer alternative legislative solutions for the consideration of state and local law-making bodies and include model legislation developed after considerable law enforcement experience in this area.—EDITOR.

I. AMUSEMENT AND GAMBLING PINBALL MACHINES

A pinball machine is a coin-operated electronic device. The player propels a ball or balls by means of a spring plunger to the top of an inclined playing surface, the lowest point of the playing surface being closest to the player. By gravity, the ball proceeds down the surface and strikes electronic bumpers or falls into holes in the playing surface. The activation of the bumpers or holes by a ball causes points or numbers to register on an illuminated score board. If the player attains a specified score he is entitled to replays.

Since slot machines have been effectively suppressed as a source of gambling income, other devices and techniques have been sought by the criminal element to replace them. The original, simple, pinball machines—once designed for amusement purposes only—have been completely changed by the addition of sophisticated electronic equipment which allow them to serve as a replacement for slot machines.¹

Today's modern pinball machines are a major source of gambling revenue. They are capable of constant and surreptitious use as gambling devices when the owner or lessee of a pinball machine elects to reward the player with cash in place of

the replays he has won. The owner or lessee then automatically erases the replays from the machine.

When a cash payoff is observed by the police, there is no problem of classifying the pinball machine as a gambling device. However, it is impossible to station a police officer in every place having a pinball machine in order to conduct a surveillance of possible pinball machine gambling. Further, it is unlikely that the machine will be used for gambling purposes when an officer is present.

Traditionally, the pinball industry has consisted of manufacturers, wholesalers, retailers, owners or lessors of machines and lessees. The ultimate owner is usually a person who leases his machine to a person operating a business such as a candy store, tavern, lunch room or bowling alley. Although a person could own the machine in his premises, for the purpose of analysis only the terms "lessor" and "lessee" will be used herein.

Although classic gambling equipment and machinery is readily identifiable as such pinball machines present unique problems for police, prosecutors and drafters of legislation. For example, a child can accurately identify a slot machine, roulette table, pair of dice or deck of cards. In contrast, the outward appearance of a pinball machine does not necessarily indicate whether it is being used for gambling or amusement purposes. The very same outer machinery shell can house entirely different mechanisms. For the purpose of analysis, let us assume that we have two identical machinery

¹ See King, *The Rise and Decline of Coin-Machine Gambling*, 55 J. CRIM. L., C. & P. S. 199 (1964) for a good general background of the history of pinball machines and related federal legislation. See also Annot., 89 A. L. R. 2d 815 (1963).

shells. Into the first shell we shall put the elements of an "amusement" pinball machine. Into the second shell we shall put the elements of a "gambling" pinball machine.

The adjectives "amusement" and "gambling" are not technically correct, for both machines appeal to the gambling instinct of man. Both amusement and gambling pinball machines allow the player to win replays. If pinball machines did not offer any possibility of the player winning replays, it is doubtful that they would be played at their present frequency.

Amusement pinball machines have certain standard characteristics. They allow the player to win replays if he attains a certain score. The machine has a meter which registers the number of coins placed in the machine to play it. These coins fall into a single receptacle. The machine also has a "tilt" mechanism which prevents the player from vigorously guiding the path of the ball by moving the machine from side to side or up and down. If the machine is tilted, the game being played is eliminated and a coin must be inserted to play another game. The tilt mechanism can be adjusted so no jostling whatsoever by the player is permitted without the machine being "tilted." Replays won are indicated on a drum or wheel type indicator with the edge of the wheel or drum indicating the total replays won or left to play. The score that is required to win replays may be adjusted upward or downward when a player is not playing the machine. Only one coin may be inserted in the machine to play one game. The retail selling price of a single player machine is approximately \$450, and a lessee can expect to make a net profit of approximately \$30 per week.

A gambling pinball machine has quite different features. Its retail cost is approximately \$1,300, and a lessee can expect to make a net profit of approximately \$150 per week. There are good reasons for the increased cost and income-producing ability of a gambling pinball machine. The machinery inside the shell makes the difference. First, a large number of free games can be won. The maximum number of free replays that can theoretically be won is 999. The significance of the large number of replays that can be won is readily seen when a dime per replay won is paid by the lessee to the player. Thus, a player could conceivably win \$99.90 by successfully winning replays. This is an amount which exceeds the payoff of any comparable slot machine.

After a payoff is made by the lessee, he elimi-

nates the replays which were the basis of the payoff. A number of means are available to eliminate replays. They range from a "knock off button" on the machine, which the lessee presses, to merely unplugging the electrical cord of the machine which causes electrical circuits to eliminate the replays. In any event, the replays eliminated are recorded on counters *inside* the machinery shell. In addition, two other counters are present. There is a counter for the number of coins inserted by players and a counter for the total number of replays won. The accounting system resulting from the combination of the three counters enables the lessee and lessor to use the pinball machine as a gambling device. For example, if one hundred coins are inserted to play the machine, ten replays are won and five are eliminated by the lessee because of payoffs made for them, the lessor reimburses the lessee for the payoffs made for five replays and they split the profits. If all three counters were not present, the lessor would have no independent way of checking on the lessee's representations concerning payoffs made. Thus, lessors using machines without counters have been driven out of business by dishonest lessees who lie to them about the number of payoffs made. In the operation of gambling pinball machines, trust is not an ingredient entering into the business arrangement. The impartial arbiters, i.e. the counters, are one of the keys to the success of a gambling pinball machine.

The gambling pinball machine has other features the amusement machine does not normally possess. More than one coin can be inserted to play one game. The insertion of many coins theoretically increases the odds of a player to win replays, but in fact the odds in favor of the player never really substantially increase. Only the player's manual dexterity and his funds limit the amount of money he can pour into a gambling pinball machine, a distinct improvement over slot machines which only provided for one play for one coin. In addition, the multiple coin insertion feature is also used to give the player extra balls or provide him with special features and so-called advantages. Both supposedly allow him to increase his chances of winning replays but in fact do not.

A player can never "beat" a gambling pinball machine. As he wins more replays, the odds against him winning more replays are automatically raised by the intricate and elaborate odds adjusting mechanism inside the machine.

All of the foregoing features of a gambling pin-

ball machine are placed inside the shell of the machine with the exception of the "replays won" indicator. This too can be concealed by using an indicator which is wired to the machine but placed behind a bar or other place not visible to the public.

Thus, we can have two identical looking machines. One is an "amusement" pinball machine, the other a "gambling" pinball machine. It is little wonder that law enforcement officers have had problems distinguishing between amusement and gambling pinball machines. The normal police method of identifying gambling equipment, i.e. a visual inspection, cannot be used with pinball machines. Only a detailed inspection of the working parts inside the machinery shell reveals the true nature of a pinball machine.

Because of their income-producing ability and external, innocent-appearing facade, gambling pinball machines are ideal sources of income for organized crime.

II. ARREST, SEARCH AND SEIZURE PROBLEMS

The lack of a readily ascertainable visual test to determine whether a pinball machine is used for gambling or amusement purposes is only one-half of the problem. The other half is the law of arrest and search and seizure.

Traditionally, an officer may make an arrest if he has probable cause to believe that a crime has been committed in his presence or that the person in question has committed a crime.² Likewise a court may issue an arrest or search warrant if it has probable cause to believe a person committed an offense or there are articles subject to seizure.³ Finally, an officer may make a valid incidental search if the arrest, with or without warrant, is lawful.⁴

The key to the areas of arrest, search and seizure is the concept of "probable cause". Does the officer have probable cause to believe an offense has been committed, thus allowing a valid arrest and a lawful search?

Since the states must adhere to federal standards of search and seizure,⁵ a review of the federal standard is necessary. The leading case is *Henry v. United States*.⁶ There, the defendant was convicted of unlawfully possessing radios which had been stolen from an interstate shipment. The issue was

whether there was probable cause for the arrest leading to the search which produced the stolen radios.

Following a theft of an interstate shipment of whiskey, officers of the F.B.I. received information linking defendant with the theft. They followed defendant's car to a residential district where he got out, entered a residential premises and returned with some cartons. The officers lost track of defendant's car but later saw it at a tavern. Defendant went back to the same place and obtained more cartons. The officers could not determine the size, number or contents of the cartons. As defendant drove off he was arrested. Two hours after the arrest, the officers learned that the radios were stolen. In reversing defendant's conviction, the court said:

"The statutory authority of FBI officers and agents to make felony arrests without a warrant is restricted to offenses committed 'in their presence' or to instances where they have 'reasonable grounds to believe that the person to be arrested has committed or is committing' a felony. 18 U.S.C. Sec. 3052. The statute states the constitutional standard, for it is the command of the Fourth Amendment that no warrants for either searches or arrests shall issue except 'upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.'***The police must have reasonable grounds to believe that the particular package carried by the citizen is contraband. Its shape and design might at times be adequate. The weight of it and the manner in which it is carried might at times be enough. But there was nothing to indicate that the cartons here in issue probably contained liquor. The fact that they contained other contraband appeared only some hours after the arrest. What transpired at or after the time the car was stopped by the officers, is, as we have said, irrelevant to the narrow issue before us. To repeat, an arrest is not justified by what the subsequent search discloses. Under our system suspicion is not enough for an officer to lay hands on a citizen. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest."

⁷ 361 U.S. at 100, 104 (1959).

² Eg. Ch. 38, §107-2 ILL. REV. STAT. (1963).

³ Eg. Ch. 38, §107-9, 108-3 ILL. REV. STAT. (1963).

⁴ Eg. Ch. 38, §108-1 ILL. REV. STAT. (1963).

⁵ *Mapp v. Ohio*, 367 U.S. 643 (1961).

⁶ 361 U.S. 98 (1959).

An analogous factual situation is presented by concealed weapons cases. Police officers often arrest suspicious persons or known hoodlums for no other reason than because of what they suspect about them. These arrests are often made without a warrant and upon observation. At times, concealed weapons have been found on them. Prosecutions have been brought for violations of statutes prohibiting the carrying of concealed weapons. The convictions resulting from these prosecutions have been reversed because the police officers had no probable cause to make an arrest.⁸

The similarity between the *Henry* case and the concealed weapons cases on the one hand and our possible pinball machine factual situation on the other is striking. In the *Henry* case, the officers did not know, but only suspected, that the boxes the defendant had in his possession contained stolen merchandise. Only *after* the boxes were opened was that fact determined. The search was declared illegal. In the concealed gun cases, the officers arrested the defendants without probable cause and after the illegal arrest discovered the concealed weapons. The evidence of the weapons was suppressed.

An officer looking at a pinball machine is in much the same position as the officers in the *Henry* and concealed weapons cases. He might suspect the pinball machine is a gambling machine but the only way he can find out is to break the machine apart to look for the counters and other gambling features. If the officer finds illegal features in the machine after taking it apart, this evidence would not justify the illegal search. Moreover even the illegal search might not reveal the features for they could be in a separate mechanism behind a bar or lunch counter.

The police officer is, therefore, in a dilemma. The appearance of both gambling and amusement pinball machines can be the same. He has no reasonable grounds to believe that a particular pinball machine is equipped with gambling features unless he tears open the machine and examines the machinery. Thus, any criminal prosecution based upon evidence uncovered by the search, i.e. an examination of the internal parts of a pinball machine, must fail because the search is illegal.

Moreover, even if, as a matter of common knowledge, a certain manufacturer exclusively

manufactured gambling pinball machines, it is highly doubtful that this knowledge alone would furnish an officer with a legal basis for a valid arrest, search and seizure.⁹

III. EXISTING PINBALL LEGISLATION

We have concluded that all prior legislative drafting attempts on the state level have failed to produce a statute which clearly allows amusement pinball machines while outlawing gambling pinball machines. Prior draftsmen have concentrated on the physical features of existing machines, the element of skill required to play a game or the return of value for the successful playing of the machine. They have not tried to explain and isolate the essential attributes of amusement and gambling pinball machines and bring them, together with the problems faced by the police, to the attention of legislators. Illinois' pinball legislation is an example of poorly drafted pinball statutes.¹⁰

IV. ALTERNATIVE SOLUTIONS TO THE PROBLEM

Prohibition of All Pinball Machines

The most obvious solution to the difficulty is the banning of all pinball machines. The advantages of such an approach are considerable. First, the job of the legislative draftsman is very simple. Secondly, a total ban is easy to enforce. A visual inspection is all that is needed, as in the case of slot machines.

The disadvantages of a total ban are almost entirely economic. Manufacturers of machines might suffer unless they, using their existing personnel and equipment, could find alternative products to manufacture and sell. Wholesalers and retailers would have similar problems. The owners and lessees of machines would be deprived of the income received from pinball machines.

The only non-economic disadvantage of a prohibition of pinball machines would be that certain segments of our society would be deprived of any possible amusement attained through playing the machines.

Inspectional Statute

The only other alternative to a complete ban is a statute *with inspectional privileges for the police*.

⁹ Cf. *Lawson v. United States*, 9 F.2d 746 (7th Cir. 1925).

¹⁰ See the problems examined in such cases as *People v. One Pinball Machine*, 316 Ill. App. 161 (1942); *People v. One Mechanical Device*, 11 Ill. 2d 151, 142 N.E.2d 98 (1957); *White v. Ogilvie*, 51 Ill. App.2d 181, 201 N.E.2d 122 (1964).

⁸ *People v. Mirbelle*, 276 Ill. App. 533 (1934); *People v. Humphreys*, 353 Ill. 340, 187 N.E. 446 (1933); *People v. McGurn*, 341 Ill. 632, 173 N.E. 754 (1930); *People v. Fischetti*, 273 Ill. App. 215 (1933).

Getting back to our prior analysis, the appearances of gambling and amusement pinball machines can be the same. What is *inside* makes the difference. How to legally get inside the machines to check for gambling features (which can be inserted at the pinball machine factory, at the lessor's warehouse, or at the machine's eventual location by a lessee) is the problem facing the police.

A classic approach to the problem of inspection has been the licensing of the activity with a prerequisite to the license being the right of public officials to make inspections. If the licensee refuses to give the officials a right of inspection, the license is either not issued or revoked. Thus licensing legally allows inspections. This, we believe, is the solution to legally searching for gambling features placed inside a pinball machine.

Legislation providing for inspections is quite common in areas other than pinball machines.¹¹

The leading case is *Mansbach Scrap Iron Company v. City of Ashland*.¹² There the Supreme Court of Kentucky considered a mandamus action brought by an owner of a junk yard. The Kentucky statute in question provided that the city had the power to "license, tax and regulate junk dealers and secondhand dealers. . . ." The City provided in an application for a junk yard license, which the plaintiff would not sign, that ". . . any member of the police department shall have permission to visit and inspect and search the place of business at any time". The defendant refused to sign the consent and alleged that this procedure constituted an unreasonable search and seizure under the Kentucky Constitution. The court held that it was a reasonable regulation of the business and sustained the city's denial of a license to the plaintiff.

Who should be licensed? As a practical matter, the lessors and lessees enter the pinball scheme at the easiest point of regulation. Manufacturers are not going to make prohibited machines which they cannot sell. Lessors and lessees, however, might let the prospects of the high earnings of gambling pinball machines overcome their lawful instincts and insert mechanisms which convert amusement machines into gambling machines. In the first part of this article, the elements of a gambling pinball machine were set forth. These elements should be

prohibited. In addition, certain features should be required in pinball machines to make it easier for the police to determine whether the machine is legal or illegal. The less time an officer spends on pinball machines, the more time he has to devote to the more serious crimes that take place in the community.

Information and good law enforcement go hand in hand. It is essential that the police know who is the owner and lessee of a machine, its location, its manufacturer, its serial and its model numbers. This information can be procured in a license application and supplements thereto. In addition, the law ought to require that the pinball machine license be placed in a visible spot. A metal plate with the manufacturer's name and the machine model and serial numbers should be affixed to the exterior of the machine. A metal tag indicating the machine has been initially inspected by the police should be attached to the exterior of the machine. Both the plate and the tag should be affixed in a way so that their removal can only be accomplished by destroying or defacing the tag or plate. Finally, the manufacturer's name and the machine's model and serial numbers should be stamped on a metal part inside the machine.

The suppression of slot machines has been highly successful because of the ease of making a visual inspection to determine their presence. Similarly, if a pinball statute aids an officer in making an adequate visual inspection, his job will be less burdensome.

With the features set forth above, an officer can make a fairly good visual inspection. A list can then be published from the applications for license giving the names of the lessees, the location of machines, their manufacturer, their serial and model numbers and the license number or date of the license. Armed with this information, an officer can visit a location where a pinball machine is located and compare his information with the metal plate on a pinball machine, the metal police inspection tag and the license which should be in the premises. This visual inspection would tell him if the machine was licensed. In addition, to make a rough check to see whether the insides of a licensed machine had been changed, he could remove the cover and compare the manufacturer's name and the machine's model and serial numbers stamped on a metal part of the machine with the information on his list. If manufacturers would cooperate and stamp this information on an essential part which

¹¹ 29 AM. JUR., *Inspection Laws* (1960); *People v. Munziato*, 24 Ill.2d 432, 182 N.E.2d 199 (1962).

¹² 235 Ky. 265, 30 S.W.2d 968 (1930). See also, *McQUILLIN, MUNICIPAL CORPORATIONS*, §§26.71, 26.08; 33 AM. JUR., *Licenses*, §52; *Frank v. Maryland*, 359 U.S. 360 (1959); *Eaton v. Price*, 364 U.S. 263 (1960).

is not readily removable, the inspection would be more effective.

A clock face type of "replays won indicator" should also be required on the machine. This is important for the reason that in the present drum type of replay-won indicator, only the edge of the drum with a single number or set of numbers is visible. A lessee could adjust the drum-type indicator to prevent an advance past a certain number of replays while an officer is present, and then, after the officer leaves, the drum indicator could be released to tally a great many more replays. A clock-face type indicator, on the other hand, would show the entire possible number of replays that could be won. In addition, a pin could be placed at the beginning position so the replay dial could not revolve more than 360 degrees.

The visual inspection of a pinball machine, however, is not sufficient. Machinery with gambling features can be inserted inside a pinball machine or used at a separate location with wiring connected to the pinball machine. As a result, a thorough inspection of the interior of the machine and attached apparatus is necessary.

The police department of the political subdivision approving the use of permissible pinball machines should have the primary responsibility of making inspections. This would mean city or village police for a city or village and sheriff's police for unincorporated areas and those cities and villages not having a police force. In addition, as a check upon local police enforcement, the sheriff's police should be allowed to inspect any pinball machine in their county regardless of whether it was in an incorporated or unincorporated area. Finally, the State Highway Police should have the authority to inspect any pinball machine in their state. The secondary inspections by Sheriff's police and the State Highway Police should be discretionary.

Before a license is granted, pinball machines should be inspected to see if prohibited features are contained therein. If the prohibited features are not present, a metal tag of initial inspection can be affixed by the police. However, this is only the beginning. Any good mechanic can insert or wire the prohibited features into a pinball machine once it is placed in its location. Thus random re-inspections, at the discretion of the police, are necessary to see that prohibited features are not added after the initial inspection. And since sophisticated immobile electronic testing equipment might be necessary to determine whether a

pinball machine, or attached apparatus used in connection with it, has prohibited features, the police should be empowered to remove a pinball machine and apparatus from its location to make tests.

A major disadvantage of an inspectional statute is the necessity for trained personnel to conduct the inspection of the machine's workings. Only an electrical engineer or a person otherwise specially trained can tell whether the circuits in a pinball machine or the apparatus used with it are wired to give the effect of prohibited features. Needless to say, police are not electrical engineers.

There are a number of possible solutions. First, a legitimate manufacturer of amusement machines could furnish an expert when needed. For example, if the police suspect that a certain pinball machine has prohibited features they may walk into the premises and call the manufacturer to send out his expert for an on the premises inspection. If the circuits or machinery used are too sophisticated for an on the premises inspection, the machine could be taken to a factory or other place containing testing equipment.

Having factory representatives do the testing creates problems. Would these factory representatives be available to make inspections and testify at the convenience of the prosecution? Could the police rely upon their integrity?

Another alternative is to train police personnel to make pinball inspections. An economical solution would be to train one or two men in the larger police municipal or county departments and make their services available to other departments. The state police could also provide such a service on a state-wide basis. The salaries and expenses of these police experts could be paid from pinball license fees collected or an inspectional fee could be charged.

Finally, as a prerequisite to obtaining a license for a pinball machine, both the lessor and lessee should sign a written consent authorizing the police to inspect the machine on or off the lessee's premises.

The problem of appropriate sanctions for violations remains. Typically, the normal lessee is the owner of a candy shop, coffee shop, bowling alley, tavern or restaurant. He is usually acquainted with a good number of people in the community, including the police who possibly patronize his place of business. Owners are persons of like social standing. Neither owners or lessees are considered "criminals" and it is unlikely that substantial fines

and jail sentences will ordinarily be imposed on lessees or owners for violating a pinball statute.

Two penalties other than fines and jail sentences are available. The first is the loss of the privilege of keeping pinball machines. The second is the forfeiture and destruction of prohibited machines.

The advantages of the forfeiture proceeding are many. First, no criminal penalty is imposed on the lessee or owner. Moreover, since the action is a civil one, the state will be accorded the important advantages of the rights of pre-trial discovery and appeal from an adverse decision.¹³

The use of the doctrine of forfeiture also makes it more likely that certain segments of the pinball industry would police themselves. Lessors would have a definite interest in seeing to it that the machines they bought did not have prohibited features, thus insuring that manufacturers produced only amusement pinball machines. Lessors would discourage lessees from adding the prohibited features which would subject the pinball machines to confiscation. Indeed, the owner might conduct regular interior examinations to make sure his investment was protected from a greedy lessee who inserted prohibited features in the machine. Lessees would want to be certain that any pinball machine leased was properly licensed to avoid losing the privilege of operating pinball machines.

V. THE LESSOR—LESSEE PROBLEM

There are two basic factual situations in which a pinball machine might be operated with prohibited, i.e., payoff, features. The first is the pinball machine which is unlicensed and uninspected. These machines will be easy to discover as a result of the information contained in license applications and the comparison of this information with the metal tags on the machines. They should be forfeited and destroyed.

The second factual situation concerns pinball machines which were initially inspected and licensed, but have had prohibited features added at a later date. The prohibited features could have been added by a number of different persons. The following are examples:

A. Someone other than the lessor or lessee of a licensed pinball machine could add prohibited fea-

tures to the machine. This is very unlikely because the machine would constantly be in the view of the lessee or his agents, and, for purposes of analysis, this alternative is so remote that it must be rejected.

B. Both the lessor and lessee consent to the insertion of prohibited features in the pinball machine.

C. The lessor, after the machine's initial inspection and the procurement of a license for it, inserts the prohibited features without the knowledge or consent of the lessee. As a practical matter, it is doubtful that the lessor would insert the prohibited features without the cooperation of the lessee because the lessee must make the payoffs for replays eliminated. In addition, a lessee can always check the pinball machine prior to its placement in his premises to make sure that the machine does not contain prohibited features.

D. The lessor has his machine properly licensed and inspected and turns it over to the lessee. Thereupon, the lessee, without the knowledge and consent of the lessor, places prohibited features in the machine. This is the only factual situation with which we should be concerned. The lessor is innocent yet his property is subject to being destroyed. He has no way of protecting himself because the lessee may insert the prohibited features after any inspection the lessor makes. Thus the lessor is in the same position as the police as far as inspections are concerned.

The honest lessor saddled with a crooked lessee needs to be protected. The occurrence of an ascertainable event that would indicate that the lessor's pinball machine might have had prohibited features added would be helpful in giving this protection. Such an event is the removal of the pinball machine from its location in the lessee's premises by the police. The police might remove a pinball machine for two reasons. First, a thorough test of a pinball machine for prohibited features might require the use of equipment located off the lessee's premises. Second, if prohibited features are found in a licensed machine, the machine should be removed from the premises to prevent it from being tampered with prior to a condemnation trial. A statute should require the removal of a pinball machine if a violation was discovered in an on-the-premises inspection. However, the police should not be required to give notice of a violation under any circumstances.

Notice of the removal of a pinball machine by

¹³ *People v. Moore*, 410 Ill. 241, 102 N.E.2d 146 (1951). But though the case is civil in nature, the exclusionary rule which prohibits the establishment of the contraband nature of the goods by the use of illegally seized evidence is applicable. *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965).

the police from a lessee's premises should be given to the lessor and the lessee of the pinball machine by first class mail addressed to their respective addresses as set forth in their license applications. This would put the honest lessor on notice that his machine is possibly in violation of the statute and subject to condemnation.

As a result, an honest lessor should be allowed a certain number of days after a machine is removed to revoke his consent to inspection and thereby get his machine back before it is condemned for having prohibited features.

An honest lessor, after receipt of notice of removal, would undoubtedly contact the lessee to ascertain whether prohibited features had been added to the machine. The lessee could give a number of replies. He could remain mute. This would ordinarily indicate that prohibited features had been added and the lessor should revoke his consent to save his machine. The lessee could tell the truth and state that no prohibited features had been added. The lessor would then not revoke his consent. The lessee could state that he added prohibited features and that the lessor should revoke his consent. The lessor would then revoke his consent. The lessee could lie and state that the machine had no prohibited features although in fact prohibited features had been added by him. If the lessor believed him and did not revoke his consent, his machine would be condemned but he would have a claim against the lessee for damages sustained.

VI. PENALTY PROVISIONS

If an initially inspected and licensed pinball machine is later found to have prohibited features, the machine should be condemned (with the exception of a pinball machine for which the lessor revoked his consent to inspect) and no pinball machines allowed on the premises for one year after the condemnation. The prohibition of pinball machines on a premises for one year is already supported by legal authority. Some liquor licensing statutes provide that when a liquor license is revoked no liquor can be sold on the premises for one year after the date of revocation.¹⁴ This is indeed a severe penalty when one considers the thousands of dollars that may be invested in a building that can be used basically only as a tavern. The removal of a small pinball machine is not going to affect the ultimate use of the premises as is the revocation

of a liquor license. Pinball machines are only ancillary to the usual business of a lessee such as a bowling alley, a restaurant, and a truck stop. And, since the person most directly hurt when a location cannot have pinball machines installed is the lessee, he is the person who is in the best position to protect himself against prohibited machines and to refrain from inserting gambling features in an initially inspected and licensed pinball machine.

Other penalty provisions that should be included are the suspension or revocation of a license of an owner or lessee making any misstatement, omission or late filing regarding the information to be furnished pursuant to the statute; a fine for persons removing, altering or defacing the metal plate attached to the exterior of the machine with the manufacturer's name and its serial and model numbers and the metal police inspection tag; a fine for altering the information concerning the manufacturer and the model and serial numbers of the machine which is stamped on a metal part inside the machine and a fine for removing the lessee's license from a place which is clearly visible to a player of a machine. In addition, if the lessee or owner is convicted of gambling or related offenses in which a pinball machine was used, he should lose his license or right to obtain a license, as the case may be, for one year after the date of conviction, and the location in which the pinball machine was placed should not have any machines operating for one year after the date of conviction. Finally, if a prohibited machine is found on any premises or the lessor revokes his consent to inspection after a machine is removed by the police the premises should not have any pinball machines in it for one year thereafter.

The issue of whether replays are to be allowed on pinball machines must also be considered. Amusement machines which do not feature free replays are not played as often as those with replays. A pinball machine with a replay feature is more subject to being used as a gambling device than an amusement machine that does not award replays. Thus if pinball machines are allowed at all, a better approach would be to prohibit replays.

VII. CONCLUSION

Some of today's pinball machines are being used as a replacement for slot machines. These "gambling" type pinball machines feature complex electronic workings which are encased in a machinery shell. Likewise, the "amusement" type pin-

¹⁴ Eg. Ch. 43, §156, ILL. REV. STAT. (1963).

ball machine's workings are enclosed in a machinery shell. There is no way short of taking a pinball machine apart and examining its workings to determine whether it is designed primarily for amusement or gambling purposes. The visual test used for all other types of gambling equipment such as slot machines, dice and roulette is not sufficient. It is also patently impractical to rely on a pay-off being made in an officer's presence.

All pinball statutes which merely ban certain features without providing for an inspection of the machine's workings are doomed to failure. An officer will never have probable cause to make an arrest or search of a pinball machine unless he examines the machine's workings. This he cannot do unless he has probable cause. The officer cannot have probable cause unless he has knowledge of the prohibited features which are inside the machine. Thus in the absence of evidence linking a particular machine to gambling, a motion to suppress the evidence will always be sustained. If there is actual evidence of the pinball machine being used in connection with gambling, there is no need to use a pinball statute because the activity and machine will come within the purview of regular gambling laws.

There are only two approaches to the pinball problem. The first is the total prohibition of pinball machines. The second is the licensing of pinball machines with a condition being the right of the police to inspect the machine.

A licensing statute places a considerable burden on the police at a time when there are serious crimes that demand prevention and solution. In the writers' opinion it is a waste of police manpower and tax dollars to engage in an extensive licensing program to save "amusement" pinball machines, since only two social purposes are served by allowing amusement pinball machines to exist. First, certain segments of society will derive pleasure from playing the machines. Second, there are the economic interests of manufacturers, wholesalers, retailers, lessors and lessees of pinball machines. Neither, in the writers' opinion, are sufficient reasons for a complex system of regulation.

As contrasted with a licensing program, a simple ban on all machines imposes almost no burden on the police because visual inspections would suffice.

In every case, the decision to act or not to act rests with legislative bodies. Since the writers' judgment might not be shared by all legislative bodies, three forms of proposed statutes are pre-

sented in the appendix. The first prohibits all pinball machines, the second is an inspectional statute allowing pinball machines with replays and the third is an inspectional statute allowing pinball machines without replays.

APPENDIX

I. PROPOSED MODEL STATUTE PROHIBITING ALL PINBALL MACHINES

All pinball games or machines, bagatelle, pigeon-hole and any other tables or implements kept for a similar purpose are prohibited and shall be subject to seizure, confiscation and destruction by any municipal or other local authority within whose jurisdiction the same may be found.

II. PROPOSED MODEL INSPECTIONAL STATUTE ALLOWING AMUSEMENT PINBALL MACHINES WITH REPLAY FEATURE

(1) *Definition of Mechanism*

The terms "mechanism" or "mechanisms" as used herein shall mean pinball games or machines, bagatelle, pigeon-hole or any other tables or implements kept for a similar purpose.

(2) *Prohibition of Mechanisms*

All mechanisms are hereby prohibited, except those allowed in Paragraph (3).

(3) *Permissible Mechanisms*

(A) The local governing body of a political subdivision may, by the enactment of an ordinance, license permissible mechanisms to be operated within their jurisdiction.

(B) *Definition of lessee and owner.*

(I) The term "lessee" as used herein shall mean the lessee or licensee of a mechanism or the person or entity who has possession of a mechanism.

(II) The term "owner" as used herein shall mean the ultimate owner of a mechanism not a manufacturer, wholesaler or retailer thereof.

(C) *Definition of Permissible Mechanism.*

(I) If a mechanism possesses one or more of the following features, it is not a permissible mechanism:

- (a) The player or players may win more than three replays.
- (b) More than one coin may be inserted to play one game.

- (c) The odds may be or are changed while a player is operating the mechanism after the insertion of a coin or while playing replays which he has won.
 - (d) Any method of eliminating replays won by a player other than the player playing replays or a tilt mechanism which functions when the mechanism is jarred or jostled.
 - (e) Any system of accounting whereby the number of replays won, replays played, or replays eliminated by tilting or releasing are tallied.
 - (f) Any mechanism which provides for any carry-over of scoring from one game to subsequent games.
 - (g) Any device or means is used in connection with the mechanism which gives the effect of the features set forth in subparagraphs (a) through (f) above.
- (II) Permissible mechanisms shall possess the following features:
- (a) If replays are to be offered, a clock-face type of replays-won counter or indicator which shall be clearly visible to the player of the mechanism. This counter shall be the only one which computes the number of replays won by a player. The hand of the counter or indicator shall not be able to turn more than 360 degrees.
 - (n) A metal plate identifying the manufacturer and the mechanism's model and serial numbers, in clearly visible type and numerals, shall be attached to the mechanism at a place clearly visible to a player and in such a way that the removal of the plate can only be accomplished by destroying or substantially mutilating the plate.
 - (c) The information on the metal plate required in subparagraph (b) above shall be stamped in clearly visible type and numerals on a metal part of the mechanism inside the machinery shell.
- (d) The mechanism cannot return anything of value to the player or any other person except the replays set forth in subparagraph (3) (C) (I) (a).
 - (e) The stamp of inspection provided for in subparagraph (6) (B) shall be attached to the mechanism.
 - (f) The owner and lessee shall have valid existing licenses for the mechanism. The lessee's license shall be displayed so as to be clearly visible to the player of the mechanism.
 - (g) Permissible mechanisms may possess any other features other than those prohibited by subparagraph I above and required by the above subparagraphs of this subparagraph (II).
- (4) *Licensing*
- All lessees and owners of mechanisms shall obtain a license for each permissible mechanism from the political subdivision enacting an ordinance pursuant to Paragraph (3) (A) above prior to keeping a permissible mechanism at any place within the jurisdiction of said political subdivision.
- (5) *Application for License*
- (A) It shall be prerequisite to the issuance of a license that all lessees and owners of mechanisms shall file an application for a license which shall contain the following information and authorization, and it shall further be a prerequisite to the continuing validity of a license that owners and lessees comply with the informational duties set forth below.
- (I) *Owner's Application and Informational Duties*
- (a) The name of the owner.
 - (b) The state of incorporation, if applicable.
 - (c) The names of the principals or

the officers and directors as the case may be. The names of the stockholders owning more than 10 percent (10%) of the outstanding stock.

- (d) The address of the principal place of business of the owner and the residence addresses of persons listed in subparagraph (c) above.
- (e) The manufacturer of the mechanism, its model number and serial number.
- (f) The location at which mechanism is to be kept and the name of the lessee.
- (g) Written consent of the owner, executed by a properly authorized person or persons, authorizing the action set forth in Paragraph (6) for the term of the license.

Informational Duties

- (h) Any changes in the information set forth in the above subparagraphs (a)-(d), inclusive, shall be reported by a supplemental application within three (3) days of the change or changes and the correct information for said subparagraphs supplied. Any change in the information set forth in subparagraph (f) shall be reported by a supplemental application three (3) or more days before said change or changes occur and the correct information supplied.

(II) *Application and Informational Duties of Lessee's Application*

- (a) The name of the lessee.
- (b) The state of incorporation, if applicable.
- (c) The names of the principals or officers and directors, as the case may be. The names of the stockholders owning more than ten per cent (10%) of the outstanding stock.
- (d) The address of the principal place of business of the lessee

and the residence addresses of persons listed in subparagraph (c) above.

- (e) The name and address of each owner of a mechanism to be kept.
- (f) The mechanism's model and serial numbers and the manufacturer thereof.
- (g) The address of the mechanism's location.
- (h) Written consent of the lessee, executed by a properly authorized person or persons, authorizing the action set forth in Paragraph (6) for the term of the license.

Informational Duties

- (i) Any changes in the information set forth in the above subparagraphs (a)-(e) inclusive, shall be reported by supplemental application within three (3) days of the change or changes and the correct information for said subparagraph supplied. Any change in the information set forth in subparagraph (g) shall be reported by a supplemental application three (3) or more days before said change or changes occur and correct information supplied.
- (B) If a person or entity is both a lessee and owner of a mechanism, said person or entity need only file a lessee's application.
- (C) All owners and lessees license applications and supplemental applications shall be open to public inspection.
- (D) All lessees, owners and their agents shall be sworn by the police department of the political subdivision enacting an ordinance pursuant to subparagraph (3) (A), that the information contained in their license application and supplemental applications is true and correct.
- (E) The police department of the political subdivision enacting an ordinance pursuant to subparagraph (3) (A), shall

have the duty of keeping the records required hereunder if said political subdivision has one and if not, then the sheriff's police department of the county in which said political subdivision is located.

(6) *Inspections*

(A) *Duty to make.* The police department of the political subdivision enacting an ordinance pursuant to subparagraph (3) (A) shall make the inspections hereinafter provided and if said political subdivision does not have a police department then the sheriff's police department of the county in which said political subdivision is located shall make said inspections.

(B) *Initial Inspection.* The owners of any mechanism, as a prerequisite to obtaining a licence hereunder, shall submit said mechanism for an inspection by the applicable police department at the time and place designated by said department in order that said mechanism may be examined to see if it contains the objectionable features listed in subparagraphs (3) (C) (I), (a) through (g) inclusive and required features of subparagraphs (3) (C) (II), (a) through (d). If any one or more of said objectionable features are found to exist in any mechanism or any of said required features are missing, then the owner shall not be granted a license for said mechanism. If said mechanism complies with the requirements of said subparagraphs and the owners license application is properly completed, then the owner's license shall be issued and a metal stamp indicating the mechanism's inspection and date thereof shall be affixed by said police department to an exterior portion of the mechanism in a place clearly visible to a player of the mechanism and in such a way that the removal of the stamp can only be accomplished by destroying or substantially mutilating the stamp.

(C) *Reinspections.* The applicable police department may reinspect any initially inspected mechanism placed to see if any of the objectionable features of

subparagraphs (3) (C) (I), (a) through (g), inclusive have been added or any of the required features of subparagraphs (3) (C) (II), (a) through (f) are missing. Said reinspections may take place in the premises where the mechanism is located, or the mechanism may be removed from said premises and inspected elsewhere. Any mechanism removed shall be returned to the premises from whence it was removed within ten (10) calendar days after the date of removal unless a violation is discovered, then the provisions of subparagraph (D) below shall apply.

(D) *Violations discovered during a reinspection.* If an initially inspected mechanism is found, during a reinspection, to have one or more of the objectionable features set forth in subparagraphs (3) (C) (I), (a) through (g), inclusive, or is missing a feature required by subparagraph (3) (C) (II), (a) through (f) then the applicable police department shall remove said mechanism and any device or means used in connection therewith from its location and take possession of it and them. Said police department, when a violation is discovered, shall retain possession of the mechanism and devices and means until consent is revoked pursuant to subparagraph (9) (B) or a final decision has been rendered concerning a violation of this statute by the courts.

(E) *Permissive Reinspections*

(I) The sheriff's police department may at any time conduct a reinspection of any initially inspected mechanism in its county in accordance with the terms of subparagraphs (C) and (D) above.

(II) The State Police may at any time conduct a reinspection of any initially inspected mechanism in accordance with the terms of subparagraphs (C) and (D) above.

(F) *Notice by Police Departments to Owner and Lessee*

Any police department removing an initially inspected mechanism from

its location shall notify the owner and lessee of said mechanism of the date of its removal by first class mail addressed to the addresses given in accordance within subparagraphs (5) (A) (I) (d) and (II) (d) respectively within two (2) calendar days after its removal.

(7) *Licenses*

(A) *Fees.* The owner and lessee of a permissible mechanism shall each pay a license fee of \$250.00 for each permissible mechanism provided, however, that if a person or entity is both an owner and lessee only a \$250.00 license fee for each permissible mechanism shall be paid. License fees shall be paid prior to the issuance of licenses. A license application and supplemental information shall be filed for each permissible mechanism and a license shall be issued for each permissible mechanism.

(B) *Term of License.* The licenses granted hereunder shall be for a term of one (1) year.

(8) *Issuance of Lessee's License*

A lessee shall be issued a license for a permissible mechanism if:

- (A) The owner thereof has been issued a license; and
- (B) The mechanism has had a stamp affixed to it pursuant to subparagraph (6) (B); and
- (C) Lessee has properly completed and filed his license application.

(9) *Revocation of Consent*

(A) An owner or lessee of any initially inspected permissible mechanism may revoke his consent, as provided in subparagraphs (5) (A) (I) (g) and (II) (h) respectively, at any time prior said mechanism's removal from its location by the applicable police department. Said revocation shall be in writing and delivered by registered or certified mail, return receipt requested, or personally delivered to the applicable police department. Upon revocation of such consent said mechanism shall be removed from its location forthwith and shall not be placed in said location

for one (1) year after the date of the revocation of consent.

(B) An owner of any initially inspected permissible mechanism may revoke his consent, as provided in subparagraph (5) (A) (I) (g), within six (6) calendar days after the date of the removal of said mechanism from its location by the applicable police department. Said revocation shall be in writing and delivered by registered or certified mail, return receipt requested, or personally delivered to the applicable police department. If the owner revokes his consent during the foregoing time period, said mechanism will be returned to him upon payment of the reasonable costs of removal and return. An owner revoking his consent during the foregoing time period shall not be able to obtain a license for said mechanism for one (1) year after the date of the removal of said mechanism nor shall any mechanism be allowed to be placed in the location where said mechanism was removed from for one year after the date of said removal.

(10) *Additional Penalties*

- (1) Every mechanism which is not a permissible mechanism and means and device used in connection therewith shall be subject to seizure, confiscation and destruction by any municipal or other local authority within whose jurisdiction the same may be found with the exception of those provided for in subparagraph (9) (B).
- (2) Every location wherein a mechanism has been found which was seized, confiscated, and condemned shall not have any mechanisms in it for a period of one year after the date of condemnation.
- (3) The license of an owner or lessee making any misstatement, omission or late filing regarding the information to be furnished pursuant to subparagraphs (5) (A) (I) (h) and (II) (i) respectively may be revoked or suspended from thirty (30) days to one hundred and eighty (180) days. If a license of a lessee or lessor is revoked,

the mechanism shall not be relicensed for a period of one year after the date of revocation.

- (4) Any person removing, altering or defacing the metal plate, stampings or stamp provided for in subparagraphs (3) (C) (II) (b); (3) (C) (II) (c) or (6) (B) respectively, or removing the lessee's license from the place provided for in subparagraph (3) (C) (II) (f) shall be fined not less than \$25.00 or more than \$200.00.

- (5) Any lessee or owner convicted of gambling or related offenses in which a mechanism was used shall lose his license or right to obtain a license, as the case may be, for one (1) yr after the date of conviction and the location

in which said mechanism was located shall not have any mechanisms in it for one (1) year after the date of conviction

(11) *Partial Invalidity*

The paragraphs and subparagraphs of this section shall be deemed to be separate and the invalidity of any paragraph or subparagraph shall not effect the validity of the remainder.

III. PROPOSED MODEL INSPECTIONAL STATUTE
ALLOWING PINBALL MACHINES WITHOUT
A REPLAY FEATURE

Sections (3) (C) (I) and (II) should be modified slightly to provide that a permissible mechanism cannot offer replays. The remaining portions of the statute would have to be modified accordingly.