

GOVERNMENT LAW CENTER OF ALBANY LAW SCHOOL  
**GOVERNMENT LAW ONLINE**

---

**NOT ALL THAT IT'S CRACKED UP TO BE**

**AUGUST 16, 2004**



80 New Scotland Avenue  
Albany, NY 12208  
[www.als.edu](http://www.als.edu)

GOVERNMENT LAW ONLINE publications are available at [www.governmentlaw.org](http://www.governmentlaw.org)

# **NOT ALL THAT IT'S CRACKED UP TO BE**

**Bennett Liebman, Esq.  
Coordinator/Staff Attorney  
Racing and Gaming Law Program**

**AUGUST 16, 2004**

These materials are copyright by Albany Law School (ALS) on behalf of its Government Law Center or ALS licensors and may not be reproduced in whole or in part in or on any media or used for any purpose without the express, prior written permission of Albany Law School or the licensor. Neither Albany Law School, the Government Law Center or any licensor is engaged in providing legal advice by making these materials available and the materials should, therefore, not be taken as providing legal advice.

All readers or users of these materials are further advised that the statutes, regulations and case law discussed or referred to in these materials are subject to and can change at any time and that these materials may not, in any event, be applicable to a specific situation under consideration. The information provided in these materials is for informational purposes only and is not intended to be, nor should it be considered to be, a substitute for legal advice rendered by a competent licensed attorney or other qualified professional. If you have any questions regarding the application of any information provided in these materials to a particular situation, you should consult a qualified attorney or seek advice from the government entity or agency responsible for administering the law applicable to the particular situation in question.

## Not All that It's Cracked Up to Be

When it comes to gambling, the terms “crack cocaine” and “video crack” have become the most overused terms in the vocabulary of opponents of gambling. When in doubt, for over a decade, gambling opponents have called some form of gambling “crack cocaine.” The crack cocaine/gambling has become the ad hominem argument of choice for opponents of gambling expansion. While Samuel Johnson may have believed that patriotism was the last vestige of a scoundrel, the crack cocaine argument has frequently become the last vestige of gambling opponents.

The “gambling as crack cocaine” analogy originated in 1992 when Dr. Robert Hunter, a psychologist at Las Vegas’ Charter Hospital, described video poker as the crack cocaine of gambling. The point of Dr. Hunter’s assertion was that video gambling, and most especially video poker, were causing players to bottom out far quicker than more traditional forms of gaming such as table games or horse race wagering.<sup>1</sup> According to Hunter, the four elements that made video poker so dangerous were: “Players know the result of the game immediately, they have the ability to increase the amount of the bet, there is the perception of skill and players can lose themselves and use the game as a method of escape.”<sup>2</sup> Dr. Hunter has also been quoted at other times articulating slightly different formulations on the addictive elements of video poker, but the general theme has been that speed of play/immediate results, continued ability to play, skill, and the hypnotic nature of the game itself are the key elements in making gambling addictive.<sup>3</sup>

While the notion of gambling as crack cocaine was initially applied to video poker,<sup>4</sup> it was soon applied to a variety of video forms of gambling. Video gaming, in general, became compared to crack cocaine.<sup>5</sup> Ditto for video lottery terminals.<sup>6</sup> While these games do not have the perception of skill involved in video poker, they do possess

---

<sup>1</sup> David Plotz, “Busted Flush,” Harper’s Magazine, August 1, 1999; Tyler Bridges, “Lawmakers Urge State to Hedge Its Bets Video Gaming,” Miami Herald, June 29, 1997, Pg. 6B; David Zisso, “Video Gambling Questioned Activists Fear Electronics ‘Highly Addictive,’” Daily Oklahoman, July 20, 1992, Pg. 1.

<sup>2</sup> Dan Turner, “Video Poker – Ins and Outs,” Shreveport Times, October 10, 1999, Pg. 1A.

<sup>3</sup> In Time Magazine, Dr. Hunter was quoted as saying the four elements that made video poker so addictive were the speed of the game where a good player could go through as many as 12 hands a minute; the built-in ability to keep playing; the perception that skill is involved; and the game’s hypnotizing effect. “It’s like a trip to the twilight zone,” says Hunter. Viveca Novak, “They Call It Video Crack,” Time Magazine, June 1, 1998. In another article Hunter was quoted as saying the addictive features involved “the frequency at which players can make bets, the immediate feedback they get and the false perception there is a skill component.” Greg Garland, “Gambling Addicts Beginning to Surface,” Baton Rouge Advocate, January 31, 1994, Pg. 1A. See also Charles Walston, “Video Lottery Terminals,” Atlanta Journal and Constitution, January 25, 1993, Pg. B1; John Larrabee, Video: Gambling’s High-Tech Seduction, USA Today, October 8, 1992, Pg 6A.

<sup>4</sup> To a certain extent, video poker still is considered the crack cocaine standard. See remarks of Illinois Governor Rod Blagojevich in Eric Krol, “Governor Rules Out VP Spot,” Chicago Daily Herald, January 12, 2004, Pg. 1; Dave Shifflet, “Video Poker, Flushed: Or, The Rotting Of A ‘Fruit Machine,’” National Review, July 1, 2002.

<sup>5</sup> Matt Neufield, “Video Games Addictive, Gambling Foes Warn,” Washington Times, September 18, 1992, Pg. A8.

<sup>6</sup> “Gambling’s Crack Cocaine,” Washington Post, June 13, 2004, Pg.B6.

certain attributes that might make them more alluring under the Dr. Hunter scale. The games can be fast, offer immediate results, and the video aspect of the games can pose a hypnotic effect. Thus, very soon after the introduction of the connection between crack cocaine and gambling, video gaming and video lottery terminals began to be compared to crack cocaine. For example in 1994, a gambling expert was saying that “the video lottery terminals that have sprouted up like mushrooms in Manitoba are the crack cocaine of gambling.”<sup>7</sup> Video gaming in general was called crack cocaine by 1992.<sup>8</sup>

What has happened since that time is that gambling opponents have almost reflexively called all developing forms of gambling crack cocaine. There are numerous other examples of various forms of gambling being described as crack cocaine. Slot machines have regularly been described as crack cocaine.<sup>9</sup> Internet gaming has often been called crack cocaine, especially by Senator Jon Kyl of Arizona.<sup>10</sup> Powerball,<sup>11</sup> casinos in general,<sup>12</sup> bell jar tickets,<sup>13</sup> the lottery,<sup>14</sup> and keno<sup>15</sup> have been termed crack cocaine. It might simply be easier simply to list pari-mutuel wagering and table games as the few gambling games not linked to crack cocaine. The time may soon come where crack cocaine is termed the video poker of drugs.

While under Dr. Hunter’s formulation, there arguably might be some reasons to include video forms of gaming within the crack cocaine rubric, one game that has no business being compared to crack cocaine is Instant Keno. In New York State, Quick Draw - the Instant Keno game – has regularly been called “video crack” or crack cocaine by gambling opponents.<sup>16</sup> Yet, no aspect of Quick Draw fits within the elements of crack

---

<sup>7</sup> Western Regional News, Canadian Press, August 16, 1994.

<sup>8</sup> Karl Vick, “These Video Games a Gamble,” St. Petersburg Times, December 26, 1992, Pg. 1A; Matt Neufeld, “Video Games Addictive, Gambling Foes Warn,” Washington Times, September 18, 1992, Pg. A8.

<sup>9</sup> In 2003, the New York Times in an editorial called video poker the “crack cocaine” of gambling. “A Bad Bet,” New York Times, January 3, 2003, Section A, Pg. 20. In 2004, the Times called slot machines the “crack cocaine of gambling.”, “Lemons In a Row,” New York Times, July 13, 2004, Section A, Pg. 18. See statement of Maryland Governor Paris Glendening in Charles Babington, “Glendening Defends Tactic on School Aid,” Washington Post, August 17, 1997, Pg. B01; Jake Tapper, “World News Tonight with Peter Jennings,” July 5, 2004.

<sup>10</sup> Max Pappas, “Betting on IT,” Foreign Policy, July 1, 2003; Jon Kyl, “Not a Safe Bet,” Press Release, August 17, 2001; Charles Coon, “Super Bowl Brings Out Bets,” Elmira Star-Gazette, January 28, 2001, Pg. 1A; Janis Carr, “Super Bets Soar Online,” Orange County Register, January 20, 2001; Wayne Coffey, “An Offshore Thing,” New York Daily News, March 26, 2000, Pg. 102.

<sup>11</sup> Marilyn Geewax, “Become A Millionaire Without Powerball,” Cleveland Plain Dealer, August 4, 1998, Pg. 9B.

<sup>12</sup> “Facts Speak For Themselves: Gambling Is No-Win Proposition,” Buffalo News, February 1, 1996, Pg. 2B; Joseph P. Shapiro, Penny Loeb, Kenan Pollack, Timothy M. Ito; Gary Cohen, “America’s Gambling Fever,” U.S. News & World Report, January 15, 1996, Pg. 52.

<sup>13</sup> Steve Bennis, “Instants: Crack For Gamblers,” Dayton Daily News, April 12, 1998, Pg. 13A.

<sup>14</sup> Ellen B. Meacham, “State Lottery a Bad Bet, Officials Say,” Charlestown (S.C.) Post and Courier, August 16, 2000, Section B, Pg. 1.

<sup>15</sup> “Editorial; No, No To Keno,” Louisville Courier-Journal, November 14, 2003, Pg. 10A; “Gambling Is a Loser,” Lancaster Pa. Sunday News, July 28, 2002, Pg. P-2; “When the Wheels Won’t Stop,” The Economist, December 13, 1997, Pg. 22.

<sup>16</sup> A very early use of this term was by State Senator Frank Padavan in Ian Fisher, “Albany Again Debates Keno Gambling Plan,” New York Times, February 4, 1994, Section B, Pg. 5. See also Tom Precious,

cocaine gambling as authored by Dr. Hunter. In Quick Draw, there is a field of 80 numbers, and a player selects from one to ten numbers. The numbers are selected by random drawing, and prizes are determined based on the number of player selections which match the numbers that are drawn.<sup>17</sup> Quick Draw has no elements of skill. All a player does is select numbers. There is no strategy; “it is a blind numbers game.”<sup>18</sup> It is played once every five minutes; while video slots are played once every six seconds.<sup>19</sup> Thus, it is hardly quick, and there are no immediate results. The results are displayed on television monitors in the licensed facility.<sup>20</sup> There is no video display aimed at individuals. Instead, there are communal TV’s displaying the numbers as drawn.<sup>21</sup> It is hardly a hypnotic video display. Additionally, the game is only authorized for thirteen hours per day, and only eight of those thirteen hours can be consecutive.<sup>22</sup> Thus, there is limited ability to continue to play Quick Draw. In short, you have a game without the elements of skill, without continuous play, that is played slowly, without immediate results, and without any of the intensive individual video display that might allow a player to get hooked on a single machine. If any gambling game does not qualify as crack cocaine, it is Quick Draw. It is closer to video Somnifex rather than to video crack.

Even the law has started to recognize the crack cocaine/gambling linkage. Two court decisions have referred to aspects of gambling as crack cocaine.<sup>23</sup> West Virginia Chief Justice Starcher in a concurring opinion in State ex rel. City of Charleston v. W. Va. Econ. Dev. Auth. went so far as calling video machine gambling the crack cocaine of gambling.<sup>24</sup> Close to a score of law reviews have dropped in the crack cocaine/gambling analogy.<sup>25</sup>

So since the crack cocaine gambling analogy has worked its way into the fabric of journalism and the law, what is the problem with the use of the term? I think the answer

---

“Pataki Bets on Losses of Gamblers,” Buffalo News, January 25, 2002, Pg. A1; “The Donald Goes to Court,” New York Post, November 25, 2001, Pg. 28; Jon R. Sorensen, “Quick Draw a Fast Way to Go Broke,” New York Daily News, February 15, 1998, Pg. 40; Graham Rayman, “‘Video Crack’ Or Cash Cow?,” Newsday, February 24, 1995, Pg. A07.

<sup>17</sup> 21 NYCRR §§2835.1 and 2835.2.

<sup>18</sup> Ron Indrisano, “Will Keno Be a Keen Idea?,” Boston Globe, September 5, 1993, Pg. 64.

<sup>19</sup> Gary Rivlin, “The Chrome-Shiny, Lights-Flashing, Wheel- Spinning, Touch Screened, Drew Carey-Wisecracking, Video-Playing, ‘Sound Events’ – Packed, Pulse Quickening Bandit,” New York Times, May 9, 2004, Section 6, Pg. 42.

<sup>20</sup> 21 NYCRR §2835.1

<sup>21</sup> Tax Law, §1612.a.(1)(B)(iii)

<sup>22</sup> Tax Law, §1612.a.(1)(A)

<sup>23</sup> In re: David M. Briese and Noreen K. Briese, 196 B.R. 440, 445 Note 8 (W.D. Wisc. 1996); State ex rel. City of Charleston v. W. Va. Econ. Dev. Auth., 214 W. Va. 277, 297 (2003) (concurring opinion of Chief Justice Starcher.)

<sup>24</sup> Id. at 297.

<sup>25</sup> See for example, R. Scott Girdwood, “Comment: Place Your Bets on the Keyboard: Are internet Casinos Legal?,” 25 Campbell L. Rev. 135, 137 (Fall 2002); John Warren Kindt & Stephen W. Joy, “Internet Gambling and The Destabilization of National and International Economies: Time For a Comprehensive Ban on Gambling Over the World Wide Web,” 80 Denv. U.L. Rev. 111, 115 (2002); Maya Hoffman, “Comment: A Game of High Stakes Roulette: Credit Card Companies Cash In On Gamblers' Bad Luck,” 32 J. Marshall L. Rev. 1197, 1216 (Summer 1999); Bruce P. Keller, “The Game's the Same: Why Gambling in Cyberspace Violates Federal Law,” 108 Yale L. J. 1569, 1575 (May, 1999).

should be obvious. It's a non sequitur. It proves nothing. Instead of telling us about the effect of particular type of gambling on society, it begs the question. It is sophistry. If most people who gamble play video poker, most of your problem gamblers will be video poker players. If most people who gambled played bingo, most of your problem gamblers would be bingo players.

The real problem with the crack cocaine/gambling analogy, however, is that it distracts us from focusing on the actual effects of gambling. Is one form of gambling, in reality, more addictive than another form? Is video poker more destructive than pari-mutuel wagering, or day trading on the stock market? Are gamblers bottoming out quicker in 2004 than in 1984? Has the increase of video poker and other video forms of gambling throughout the United States increased levels of compulsive gambling? Has video gaming increased societal problems in those areas with concentrations of these machines? These are the questions that need to be asked in rationally determining issues of gambling expansion. The one way not to decide these issues is by resorting to the specious name-calling invoked by the propagandist use of the crack cocaine/gambling analogy. It solves nothing.