

THE NATIONAL GAMBLING IMPACT STUDY COMMISSION



FINAL REPORT

June 1999



NATIONAL GAMBLING IMPACT STUDY COMMISSION

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June 18, 1999

TO THE PRESIDENT, CONGRESS, GOVERNORS, AND TRIBAL LEADERS:

At the inaugural meeting of this Commission two years ago, I stated that we had been charged by Congress with "a very broad and very difficult task – to conduct a comprehensive legal and factual study of the social and economic implications of gambling in the United States." We have now completed that task. This Report presents the principal findings of that effort and the recommendations we believe provide a coherent framework for action.

The Commission devoted considerable attention and resources to discharging its responsibilities, efforts which included holding a series of hearings around the country in which the Commission and its Subcommittees received testimony from hundreds of experts and members of the public; making several site visits; commissioning original research; conducting surveys of the existing, wide-ranging literature; and soliciting and receiving input from a broad array of individuals and organizations.

Despite these extensive efforts, we have not exhausted the topic: the subject of gambling's impact is too extensive to be fully captured in a single volume. Through our contracted research, we have added important new information in several fields; but the need for additional research remains. In fact, one of our most important conclusions is that far more data is needed in virtually every area. But even though the need for additional information cannot be contested, this cannot be allowed to become an excuse for inaction. It is likely that necessary information will always be in short supply and insufficient to compel agreement on controversial issues or to lay out a road map for the future. However, it is our belief that we have substantially reduced the uncertainties that are an inevitable part of that process.

Two years ago, I also stated that this Commission had a diverse make-up, representing broad differences of opinion, and that I expected that diversity to be fully and forcefully voiced. I believe anyone who has been present at any of our proceedings will acknowledge that that was an accurate forecast. That diversity did not necessarily make for quick decisions or easy consensus, but it did ensure a healthy representation of a wide range of interests and perspectives. One need not claim perfection for the process to understand that this approach is the foundation of representative democracy.

In the end, however, the unanimous adoption of this Report speaks for itself. That is not to say that every Commissioner has agreed with every point or recommendation. Even in areas of agreement, each Commissioner brought to our work his own point of view, some of which is reflected in the individual statements appended to this Report. But the determination of the Commissioners to search for common ground without sacrificing a vigorous advocacy of their perspective is a testament to their dedication to public service.

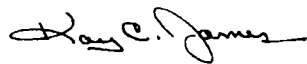
This is the Report of a national Commission to the President, Congress, State Governors, and Tribal Leaders. But although the growth of gambling is a national phenomenon, gambling itself is of greatest concern to the individual communities in which it operates or is proposed to operate. It is at that level that its impact is felt most keenly and where the debates surrounding this issue are most energetically contested. Those communities form no common front: one community may welcome gambling as an economic salvation, while its neighbor may regard it as anathema. As such, there are few areas in which a single national, one-size-fits-all approach can be recommended.

Thus, with only a few exceptions in areas such as the Internet, we agree that gambling is not a subject to be settled at the national level, but is more appropriately addressed at the state, tribal, and local levels. It is our hope that this Report will help spark a review and assessment of gambling in those same communities and jurisdictions. For that reason, we have recommended a pause in the expansion of gambling in order to allow time for an assessment of the costs and benefits already visible, as well as those which remain to be identified. The only certainty regarding these reviews is that any results will be as individual as the communities undertaking them: some will decide to curtail the gambling they already have, others may wish to remove existing restraints. Still others may conclude that their situation requires no change. What is most important, however, is that these reviews take place and that whatever decisions are made are informed ones.

The recommendations in this Report are not self-enacting. In the end, the usefulness of the Commission's work can only be measured by the actions of others, be they in government or in the private sector. Regardless of whether or not their actions draw directly upon the recommendations in this Report or are the result of other efforts that this Commission may help prompt, it is our hope that those who bear the responsibility for protecting and promoting the public's welfare will find this Report useful toward that end. That alone would be sufficient reward for our efforts.

I want to express my deep appreciation to the members of this Commission for their perspective, sacrifice, and commitment to a fair, balanced, and objective analysis of the issue. Our ability to come together with a unanimous Report is indicative of their diligence, as well as the outstanding support provided by the Commission's staff.

On behalf of my fellow Commissioners, thank you for the opportunity to serve the American people.

A handwritten signature in black ink, reading "Kay C. James". The signature is fluid and cursive, with a large, stylized "K" and "J".

Kay C. James
Chairman



ACKNOWLEDGMENTS

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The Commission recognizes and appreciates the efforts made in the last two years by those who have served the public and the Commission as staff. Through their support and hard work, Commissioners were able to achieve the mandate set forth by the United States Congress.

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CHAPTER 1. OVERVIEW

Today the vast majority of Americans either gamble recreationally and experience no measurable side effects related to their gambling, or they choose not to gamble at all. Regrettably, some of them gamble in ways that harm themselves, their families, and their communities. This Commission's research suggests that 86 percent of Americans report having gambled at least once during their lives. Sixty-eight percent of Americans report having gambled at least once in the past year.¹ In 1998, people gambling in this country lost \$50 billion in legal wagering, a figure that has increased every year for over two decades, and often at double-digit rates. And there is no end in sight: Every prediction that the gambling market was becoming saturated has proven to be premature.

THE EXPANSION OF LEGALIZED GAMBLING

The most salient fact about gambling in America—and the impetus for the creation of the National Gambling Impact Study Commission (NGISC)—is that over the past 25 years, the United States has been transformed from a nation in which legalized gambling was a limited and a relatively rare phenomenon into one in which such activity is common and growing. (See Figure 1-1.) Today, all but two states have some form of legalized gambling.² Pari-mutuel racetracks and betting are the most widespread form and are now legal in over 40 states; lotteries have been established in 37 states and the District of Columbia, with more states poised to follow; Indian casinos operate in every region of the country. Non-Indian casino gambling has expanded from Nevada and Atlantic City to the Mississippi Gulf Coast, Midwest riverboats, and

western mining towns. As gambling sites proliferate on the Internet and telephone gambling is legalized in more states, an increasingly large fraction of the public can place a bet without ever leaving home at all. Universally available, “round-the-clock” gambling may soon be a reality.

Once exotic, gambling has quickly taken its place in mainstream culture: Televised megabucks drawings; senior citizens' day-trips to nearby casinos; and the transformation of Las Vegas into family friendly theme resorts, in which gambling is but one of a menu of attractions, have become familiar backdrops to daily life.

IMPACT AND CONTROVERSY

This massive and rapid transformation clearly has had significant economic and social impacts on individuals, communities, and on the United States as a whole. But what are they? And is the net impact positive or negative?

Not surprisingly, the spread of legalized gambling has spawned a range of public debates, infused with the drama of contests between great interests and sharpened by a visceral emotional intensity. Typically, proponents of gambling choose to stress the potential economic benefits that the gambling industry can produce, such as jobs, investment, economic development, and enhanced tax revenues; whereas opponents underline the possible social costs, such as pathological gambling, crime, and other maladies.

Many of the positive economic impacts are in fact easy to point to if not always to quantify: Sleepy backwaters have become metropolises almost overnight; skyscrapers rise on the beaches at once-fading tourist areas; legions of employees testify to the hope and opportunities that the casinos have brought them and their families; some Indian nations have leapt from prolonged neglect and deprivation to sudden abundance. Gambling has not just made the desert bloom in Las Vegas but has made it the fastest growing city in the United States.

¹ National Opinion Research Center, Gambling Impact and Behavior Study, Report to the National Gambling Impact Study Commission, April 1, 1999, p. 6.

² Hawaii and Utah have no legal gambling; pari-mutuel horse racing is legal in Tennessee, but no racetracks are currently operating there.

Others, however, tell a different tale—of lives and families devastated by problem gambling, of walled-off oases of prosperity surrounded by blighted communities, of a massive transfer of money from the poor to the well-off, of a Puritan work ethic giving way to a pursuit of easy money.

Which of these images is true? If elements of both exist, how does one weigh them? Assuming an assessment is even possible, what should be done?

These are obvious questions, but few answers suggest themselves as readily, at least not to all observers. Certainties may abound for the respective partisans; but the ongoing public debate is evidence that these viewpoints have not yet settled the matter. It was for this reason that the NGISC was created and given a mandate to investigate and report on the impact of gambling on America. The task set by Congress—one which the Commissioners confirmed in their own deliberations—was not to shoulder the impossible burden of resolving all disputes, but instead to provide far greater clarity regarding what is really happening in our country, in service of the informed public debate that is a prerequisite for decisionmaking in a democratic society.

A Moving Target

Gambling is an ephemeral subject, the study of it is frustrated by the apparently solid repeatedly slipping away. A good starting point is a recognition that the gambling “industry” is far from monolithic. Instead, it is composed of relatively discrete segments: Casinos (commercial and tribal), state-run lotteries, pari-mutuel wagering, sports wagering, charitable gambling, Internet gambling, stand-alone electronic gambling devices (EGD’s) (such as video poker and video keno), and so forth. Each form of gambling can, in turn, be divided or aggregated into a variety of other groupings. For example, pari-mutuel wagering includes the

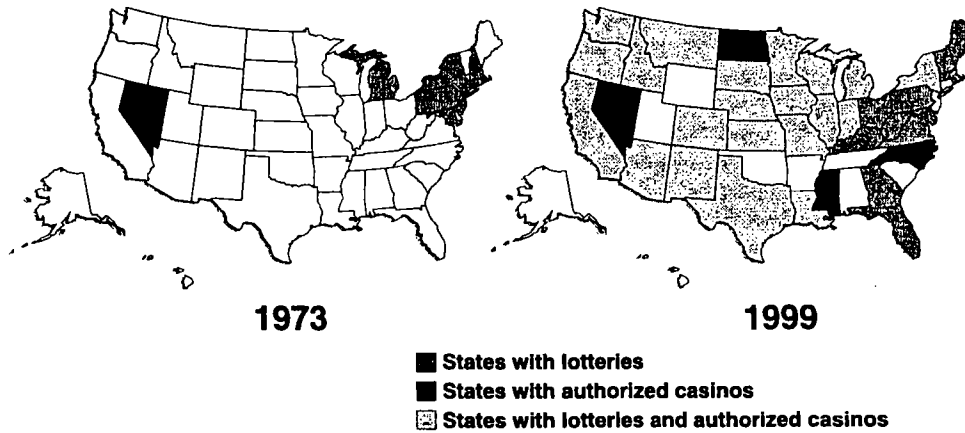
subgroups of horse racing, dog racing, and jai alai. In addition, the terms “convenience gambling” and “retail gambling” have often been used to describe stand-alone slot machines, video keno, video poker, and other EGD’s that have proliferated in bars, truck stops, convenience stores, and a variety of other locations across several states. This term may also be applied to many lottery games. (These groupings will be discussed in greater detail later in this report.)

Each group has its own distinct set of issues, communities of interests, and balance sheets of assets and liabilities. For example, lotteries capture enormous revenues for state governments, ostensibly benefiting the general public in the form of enhanced services, such as education. But critics charge that the states knowingly target their poorest citizens, employing aggressive and misleading advertising to induce these individuals to gamble away their limited means. Casinos spark different discussions. In Atlantic City, the casinos have transformed the Boardwalk and provide employment for thousands of workers. But opponents point to the unredeemed blight only blocks away, made worse by elevated levels of crime that some attribute to the presence of gambling. And so-called convenience gambling may help marginal businesses survive, but at the cost of bringing a poorly regulated form of gambling into the hearts of communities. The Internet brings its own assortment of imponderable issues.

The fortunes of each segment also differ greatly. As a group, the destination casinos have done well. Las Vegas, like America, constantly reinvents itself, with an endless line of new projects. Indian gambling has expanded rapidly, but with enormous disparities in results. Pari-mutuel racetracks have kept their heads above water in the face of increasing competition for gambling dollars, but often only at the price of mutating into quasi-casinos. Lottery revenues have plateaued, prompting some to expand their inventory to include ever-more controversial sources of income, such as video keno.

Figure 1-1

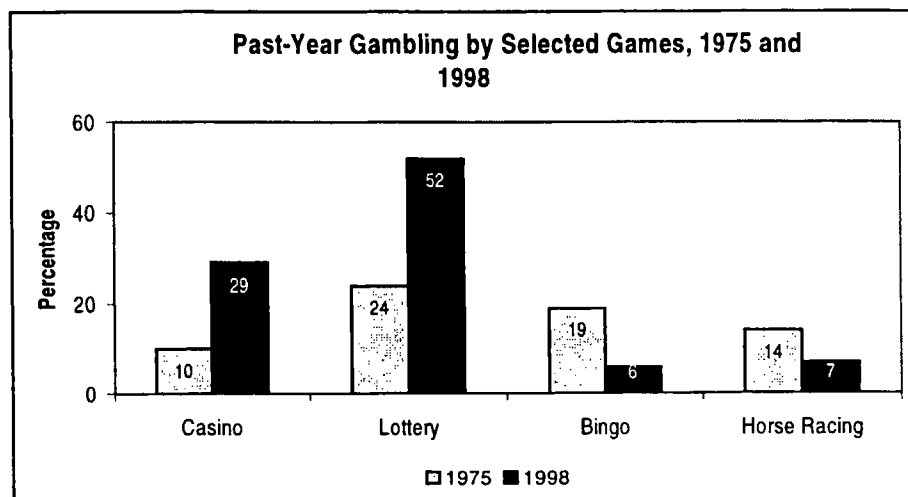
Increase in states with lottery and casino gambling 1973 versus 1999*



*Excludes pari-mutuel gambling

SOURCES: *Gross Annual Wager*, International Gambling and Wagering Business Magazine, August 1998, p. 8. *Gambling in America*, Final Report to Congress, 1975, pp. 78, 144. *Casino Business Directory*, Reno, Nevada: Nevada Gaming Publishing, 1998 and other sources.

Figure 1-2



SOURCE: National Opinion Research Center at the University of Chicago, Gemini Research, and The Lewin Group. Gambling Impact and Behavior Study. Report to the National Gambling Impact Study Commission. April 1, 1999, p. 7.

The terrain also is becoming more complicated. As gambling has expanded, it has continued to evolve. Technology and competitive pressures have joined to produce new forms, with the onset of the Internet promising to redefine the entire industry.

The participants in the various debates are similarly varied. Even the designations “proponents” and “opponents” must be applied with care because opponents can include those opposed to all gambling, those content with the current extent of gambling but opposed to its expansion, those favoring one type of gambling but opposed to another, and those who simply want to keep gambling out of their particular community, the latter being less motivated by questions of probity than of zoning. Proponents can be similarly divided: Few people in the casino industry welcome the advent of gambling on the Internet, and the owners of racetracks are no friends of the state lotteries. Similarly, if polls are to be believed, a clear majority of Americans favor the continued legalization of gambling (in fact, in any given year a majority of Americans report having gambled; see Figure 1-2) but a clear majority also opposes unlimited gambling, preferring continued regulation. Drawing the line on gambling has proven difficult; and, in fact, most lines in this area become blurred when examined closely. But governments are in business to draw lines, and draw them they do.

THE ROLE OF GOVERNMENT

The public has voted either by a statewide referendum and/or local option election for the establishment or continued operation of commercial casino gambling in 9 of 11 states where commercial casinos are permitted. Similarly, the public has approved state lotteries via the ballot box in 27 of 38 instances where lotteries have been enacted. Whatever the case, whether gambling is introduced by popular referendum or by the decision of elected officials, we must recognize the important role played by government in the industry’s growth and development. Government decisions have

influenced the expansion of gambling in America, and influencing those decisions is the principal objective of most of the public debates on this issue.

Although some would argue that gambling is a business like any other and, consequently, should be treated as such, in fact it is almost universally regarded as something different, requiring special rules and treatment, and enhanced scrutiny by government and citizens alike. Even in the flagship state of Nevada, operation of a gambling enterprise is explicitly defined as a “privilege,” an activity quite apart from running a restaurant, manufacturing furniture, or raising cotton.

Unlike other businesses in which the market is the principal determinant, the shape and operation of legalized gambling has been largely a product of government decisions. This is most obvious in the state lotteries, where governments have not just sanctioned gambling but have become its enthusiastic purveyors, legislating themselves an envied monopoly; and in Native American tribal gambling, where tribal nations own, and their governments often operate, casinos and other gambling enterprises.

But the role of government is hardly less pervasive in other forms of gambling: Governments determine which kinds of gambling will be permitted and which will not; the number, location, and size of establishments allowed; the conditions under which they operate; who may utilize them and under what conditions; who may work for them; even who may own them. All of this is in addition to the normal range of governmental activity in areas such as taxes, regulations, and so forth. And, because governments determine the level and type of competition to be permitted—granting, amending, and revoking monopolies, and restricting or enhancing competition almost at will—they also are a key determinant of the various industries’ potential profits and losses.

No Master Plan

To say that gambling has grown and taken shape in obeisance to government decisions does not

imply that there was a well thought-out, overall plan. All too commonly, actual results have diverged from stated intentions, at times completely surprising the decisionmakers. There are many reasons for this awkward fact.

In the U.S. federalist system, use of the term “government” can easily mislead: Far from a single actor with a clear-eyed vision and unified direction, it is in fact a mix of authorities, with functions and decisionmaking divided into many levels—federal, state, local, and others, including tribal. Each of these plays an active role in determining the shape of legalized gambling. The states have always had the primary responsibility for gambling decisions and almost certainly will continue to do so for the foreseeable future. Many states, however, have delegated considerable authority to local jurisdictions, often including such key decisions as whether or not gambling will be permitted in their communities. And the federal government plays an ever-greater role: Indian gambling sprang into being as a result of federal court decisions and congressional legislation; and even the states concede that only Washington has the potential to control gambling on the Internet.

And almost none of the actors coordinate their decisions with one another. The federal government did not poll the states when it authorized Indian gambling within their borders, nor have Mississippi and Louisiana—nor, for that matter, any other state—seen fit to adopt a common approach to gambling. In fact, rivalry and competition for investment and revenues have been far more common factors in government decisionmaking regarding gambling than have any impulses toward joint planning.

Those decisions generally have been reactive, driven more by pressures of the day than by an abstract debate about the public welfare. One of the most powerful motivations has been the pursuit of revenues. It is easy to understand the impetus: Faced with stiff public resistance to tax increases as well as incessant demands for increased or improved public services from the same citizens, tax revenues from gambling can

easily be portrayed as a relatively painless method of resolving this dilemma.

Lotteries and riverboat casinos offer the clearest examples of this reactive behavior on the part of legislatures. The modern history of lotteries demonstrates that when a state authorizes a lottery, inevitably citizens from neighboring states without lotteries will cross the border to purchase tickets. The apparent loss of potential tax revenues by these latter states often gives rise to demands that they institute lotteries of their own, in order to keep this money in-state, for use at home. Once any of these states installs a lottery, however, the same dynamic will assert itself in still other states further afield. This competitive ripple effect is a key reason why lotteries now exist in 37 states and the District of Columbia, with more poised to join the list.

The same pattern surfaced in legislative debates regarding riverboat casinos. As the great majority of these casinos have been sited on borders with other states, they quickly gave rise to charges of one state “raiding” the pocketbooks of its neighbors. This often prompted cries in the affected states to respond by licensing their own riverboats which, when generously distributed along their own borders, in turn, often stimulated similar reactions from other states far removed from the original instigator. For both lotteries and riverboat casinos, the immediate legislative attempt to capture fleeing tax dollars created a powerful yet usually unacknowledged dynamic for the expansion of gambling. Some believe another contributing factor has been the increasing volume of political contributions from interests with an economic stake in virtually every place expansion is sought.

Critics have asserted that this legislative pursuit of revenues has occurred at the expense of consideration of the public welfare, a serious charge indeed, albeit an unproveable one. But advocates have successfully deployed many other arguments for legalizing or expanding gambling: economic development for economically depressed areas, the general promotion of business for the investment and employment opportunities it can bring with it, undermining illegal gambling and the organized

crime it supports, and so forth. There is even the eminently democratic motivation of responding to public demand: A number of election campaigns and referenda have been successfully waged on the issue of legalizing or expanding gambling.

THE LACK OF INFORMATION

Presumably, many of the debates could be settled if either the benefits or costs of gambling could be shown to be significantly greater than the other. But such a neat resolution has evaded would-be arbiters. Efforts to assess the various claims by proponents and opponents quickly encounter gambling's third defining characteristic—the lack of reliable information. Regarding gambling, the available information on economic and social impact is spotty at best and usually inadequate for an informed discussion let alone decision. On examination, much of what Americans think they know about gambling turns out to be exaggerated or taken out of context. And much of the information in circulation is inaccurate or even false, although often loudly voiced by adherents. Add to this the fact that many of the studies that do exist were contracted by partisans of one point of view or another and uncertainty becomes an understandable result. Nevertheless, decisions must be made and governments have shown little hesitation in making them.

The problem is not simply one of gathering information. Legalized gambling on a wide scale is a new phenomenon in modern America and much of the relevant research is in its infancy. Many phenomena are only now beginning to be recognized and defined, a prerequisite to gathering useful information. And many of the key variables are difficult to quantify: Can the dollar costs of divorce or bankruptcy adequately capture the human suffering caused by problem gambling?

The more difficult the measurement; the more the weighing of competing claims retreats from science to art or, with even greater uncertainty, to politics. Nevertheless, the lack of information

will not reduce the pressures on governments to make decisions.

To take but one example: What are the economic impacts of gambling? The answer in great part depends on the context selected. On an individual basis, it is obvious that some people benefit and others do not, including both gamblers and nongamblers. The larger the group examined, however, the more ambiguous the possible conclusions. Single communities boasting a positive impact can readily be found, but the radius of their concerns usually does not extend to surrounding areas where negative consequences for others may surface as a direct consequence of this good fortune, such as loss of business, increases in crime, reduced tax revenues, and problem gamblers taking their problems home.

For example, gambling has been touted as an instrument of economic development, especially for poorer areas. In communities like Tunica, Mississippi, the arrival of large-scale gambling has had a highly visible and generally positive role, bringing with it capital investment, increased tax revenues, and enhanced public services, as well as vastly expanded employment opportunities and health-care benefits for many people who formerly were without much of either. But some argue that that prosperity is offset by negative impacts in the surrounding area, including nearby Memphis, a major source of casino patrons. But even if the communities in the immediate area were seen to benefit, or at least not to suffer, what can be said about the impact beyond? Is California hurt, helped, or left untouched by gambling in Nevada? Some claim that Californians leave their spending money and tax dollars in Nevada and bring back a slew of economic and social costs, such as pathological gambling. There are surprisingly few independent studies that have addressed issues such as these. And as for the impact on the national economy, efforts to estimate the net impact of gambling on national statistics such as investment, savings, economic growth, and so forth, break down in the face of our limited knowledge.

But even when the economic benefits are clear and agreed upon, there are other equally important issues to be decided. In fact, the heart of the debate over gambling pits possible economic benefits against assumed social costs. What are the broad impacts of gambling on society, on the tenor of our communities' lives, on the weakest among us? Because they inevitably involve highly subjective, non-quantifiable factors, assessing these is a more controversial exercise than the more pleasant task of estimating economic benefits. How can one ruined life be compared with the benefits provided to another? How can the actual costs of gambling-related crime be measured? Where is the algorithm that would allow the pursuit of happiness to be measured against the blunt numbers of pathological gambling?

Time for a Pause

It may be that the expansion of gambling accurately reflects the will of the people, as expressed in referenda, state legislatures, tribal reservations, and in Washington. The impressive financial resources already accounted for by businesses, workers, and public officials further strengthen the industry's ability to voice its interests. This Commission, however, believes that gambling is not merely a business like any other and that it should remain carefully regulated. Some Commissioners would wish it to be far more restricted, perhaps even prohibited. But overall, all agree that the country has gone very far very fast regarding an activity the consequences of which, frankly, no one really knows much about.

In an attempt to better understand those consequences, this Commission has examined many issues, received testimony from hundreds of individuals and organizations, and deliberated over a period of 2 years. This broad ingathering of information and discussion of issues will be reflected in the following chapters, which outline the parameters of the many debates, discuss the available evidence, and offer recommendations. Inevitably for a Commission of such diverse makeup, some differences in viewpoint refuse to

melt away and the existing evidence is insufficient to compel a consensus. But there is an encouraging breadth of agreement among Commissioners on many individual issues, such as the immediate need to address pathological gambling; and on one big issue: The Commissioners believe it is time to consider a pause in the expansion of gambling.

The purpose of the pause is not to wait for definitive answers to the subjects of dispute, because those may never come. Additional useful information is, of course, to be hoped for. But the continuing evolution of this dynamic industry has produced visible changes even in the short lifetime of this Commission and indicates that research will always trail far behind the issues of the day and moment. Instead, the purpose of this recommended pause is to encourage governments to do what to date few if any have done: To survey the results of their decisions and to determine if they have chosen wisely.

To restate: Virtually every aspect of legalized gambling is shaped by government decisions. Yet, virtually no state has conformed its decisions in this area to any overall plan, or even to its own stated objectives. Instead, in almost every state whatever policy exists toward gambling is more a collection of incremental and disconnected decisions than the result of deliberate purpose. The record of the federal government is even less laudatory. It is an open question whether the collective impact of decisions is even recognized by their makers, much less wanted by them. Does the result accord with the public good? What harmful effects could be remedied? Which benefits are being unnecessarily passed up?

Without a pause and reflection the future does indeed look worrisome. Were one to use the experience of the last quarter century to predict the evolution of gambling over the next, a likely scenario would be for gambling to continue to become more and more common, ultimately omnipresent in our lives and those of our children, with consequences no one can profess to know.

The Commission, through its research agenda, has added substantially to what is known about the impact of gambling in the United States. The Commission also has tried to survey the universe of information available from other sources. But it is clear that Americans need to know more. In this context, the Commission's call for a pause should be taken as a challenge—a challenge to intensify the effort to increase our understanding of the costs and the benefits of gambling and deal with them accordingly. Policymakers and the public should seek a comprehensive evaluation of gambling's impact so far and of the implications of future decisions to expand gambling. In fact, state and local versions of this Commission may be an appropriate mechanism to oversee such research. If such groups are formed they will find as did the Commission that the search for answers takes time. Therefore, some policymakers at every level may wish to

impose an explicit moratorium on gambling expansion while awaiting further research and assessment.

Although some communities may decide to restrict or even ban existing gambling, there is not much prospect of its being outlawed altogether. It is clear that the American people want legalized gambling and it has already sunk deep economic and other roots in many communities. Its form and extent may change; it may even disappear altogether. But for the present, it is a reality. The balance between its benefits and costs, however, is not fixed. To a welcome extent, that appears to lie within our power to determine. We can seek to shape the world we live in or simply allow it to shape us. It is in service of the former that this *Final Report* and its recommendations are offered.

CHAPTER 2. GAMBLING IN THE UNITED STATES

In 1999 the gambling landscape is varied and complex. This chapter provides a snapshot of the scope and location of legal gambling activities in the United States,¹ which occurs in a variety of places and takes many forms. The chapter also outlines each form of gambling, describing its scope and availability, and introducing some of the issues raised by each type of gambling.²

LOTTERIES

Lotteries held a prominent place in the early history of America, including an important role in financing the establishment of the first English colonies. Lotteries frequently were used in colonial-era America to finance public works projects such as paving streets, constructing wharves, and even building churches. In the 18th century, lotteries were used to finance construction of buildings at Harvard and Yale. Several lotteries operated in each of the 13 colonies in 1776.

Most forms of gambling and all lotteries were outlawed by the states beginning in the 1870's, following massive scandals in the Louisiana lottery—a state lottery that operated nationally—and which included bribery of state and federal officials. The federal government outlawed the use of the U.S. mail for lotteries in 1890 and, in 1895, invoked the Commerce Clause to forbid shipments of lottery tickets or advertisements across state lines, effectively ending all lotteries in the United States.

The revival of lotteries began in 1964 when New Hampshire established a state lottery. New York followed in 1966. New Jersey introduced its lottery in 1970 and was followed by 10 other

states by 1975. In 1999, 37 states and the District of Columbia have operating lotteries.

Growth of Lotteries

Along with the lottery's rapid expansion, lottery revenues have increased dramatically over the years. In 1973 lotteries were found in 7 states and had total sales of \$2 billion. In 1997 lotteries existed in 37 states and the District of Columbia and garnered \$34 billion in sales, not counting electronic gambling devices (EGD's) sales³. This rapid growth is a result of both the expansion of lotteries into new states and increased per capita sales, from \$35 per capita in 1973 to \$150 in 1997.⁴ (See Table 2-1 and Figure 2-1.)

In addition to expansion and increased per capita sales, technological advances have played a major role in lottery growth, especially on-line computer links between retail outlets and the central computer, which are required for the daily numbers games and lotto. Changing technologies also have allowed lotteries to branch out into new games enabling them to compete with casino-style gambling.

Types of Lottery Games

Before the mid-1970's state lotteries were little more than traditional raffles, with the public buying tickets for a drawing at some future date, often weeks or months away. The introduction of new types of games has almost entirely displaced the original sweepstakes form of the lottery. Today, states offer five principle types of lotteries: instant games, daily numbers games, lotto, electronic terminals for keno, and video lottery.

- Instant games utilize a paper ticket with spaces that can be scratched off, revealing

¹ For a discussion on Native American gambling, please refer to the chapter, "Native American Tribal Gambling."

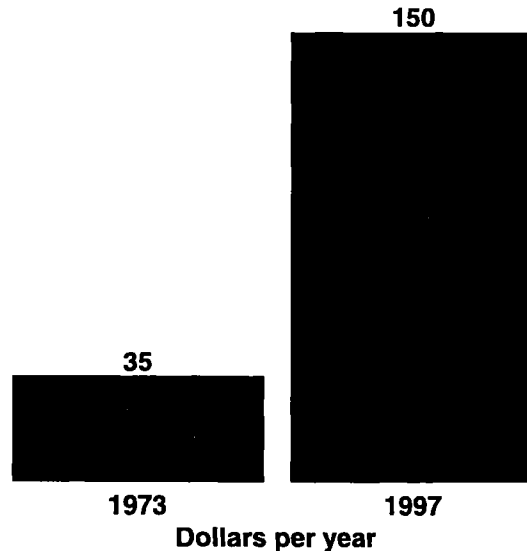
² Recommendations based on the Commission's findings will be included in subsequent chapters.

³ Charles T. Clotfelter, Philip J. Cook, et.al., "State Lotteries at the Turn of the Century: A Report to the National Gambling Impact Study Commission" at 2 (April 1, 1999).

⁴ Ibid.

Figure 2-1

Per capita lottery sales in states with lotteries: 1973 versus 1997*



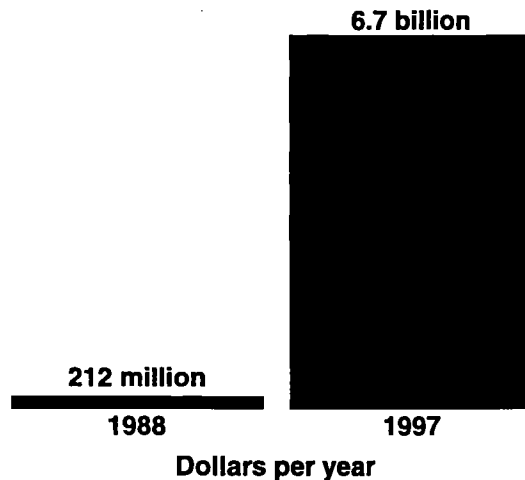
*Per capita based on total lottery sales/population of all states with lotteries.

NOTE: Sales in billions.

SOURCES: Clotfelter and Cook, "Redefining 'Success' in the State Lottery Business," *Journal of Policy Analysis and Management* 9, 1990, Table 1, p. 100. *Gross Annual Wager*, International Gambling and Wagering Business Magazine, April 1988, p. 44, June 1998, pp. 48-49.

Figure 2-2

Increase in tribal gambling revenues: 1988 versus 1997



SOURCES: See chart entitled "Trends in Tribal Casino Gaming Revenues, 1988-1997." Amounts are in constant 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President*, February 1999, p. 398. For Indian gaming revenues from 1988 and 1995, see U.S. General Accounting Office, *Tax Policy: A Profile of the Indian Gaming Industry*, May 1997, p. 6. For Indian gaming revenues in 1996 and 1997, see *Gross Annual Wager*, International Gambling and Wagering Business, August supplements, 1998, p9

numbers or words indicating whether the ticket wins or loses.

- Daily numbers games allow players to choose their own three or four digit number. Often there are a variety of bets that can accompany these numbers, each with a different probability and a different payout.
- The Lotto allows bettors to choose their own numbers by picking from a large set of possibilities. Drawings of winning numbers take place at regular intervals.
- Video Keno requires bettors to choose a few numbers out of a larger group of numbers, with drawings held quite often, sometimes several times an hour. The payoff is a function of how many numbers the bettor chose, which corresponds to the probability of winning in each case.
- EGD's require a terminal that can be programmed to carry a wide variety of games, such as video poker. These games offer bettors a chance to play a game and receive immediate payouts for winning bets.⁵

The Contradictory Role of State Governments

The lottery industry stands out in the gambling industry by virtue of several unique features. First, it is the most widespread form of gambling in the United States. It also is the only form of commercial gambling that a majority of adults report having played. Furthermore, the lottery industry is the only form of gambling in the United States that is a virtual government monopoly. State lotteries have the worst odds of any common form of gambling, but promise the greatest potential payoff to the winner in absolute terms, with prizes regularly amounting to tens of millions of dollars.

One theme that emerged at the Commission hearings is the contradictory role of state government as an active promoter of lotteries while imposing a heavy "sin" tax on the lottery buyer. According to experts, states have "gone

into business selling a popular consumer product, and they have carried on with Madison Avenue gusto and an unfettered dedication to the bottom line. The complete about-face from prohibition to promotion in one state after another is remarkable, to say the least."⁶

Lotteries are established and run exclusively by state governments and the government of the District of Columbia. Since the beginning of the wave of lotteries in the 1960's, state governments have seized on the lottery as a state-operated monopoly. State governments have become dependent on lottery sales as a source of revenue, and have tried to justify the money by earmarking it for good causes, such as education.

The lotteries are used to finance various state programs and services. Of the 38 state lotteries, the revenue from only 10 go into their general funds. Of the remaining states, 16 earmark all or part of the lottery revenues for education, making that the most common use of lottery funds.⁷ For example, in Georgia lottery money is used for the HOPE Scholarship Program, which provides college scholarships, and for kindergarten education for 65,000 children.⁸ Georgia also sets aside several hundred thousand dollars of lottery profits for gambling treatment programs.⁹ Other uses range from the broad (parks and recreation, tax relief, and economic development) to the narrow (Mariner's Stadium in Washington and police and fireman pensions in Indiana).¹⁰

Although earmarking might be an excellent device for engendering political support for a lottery, there is reason to doubt if earmarked

⁶Charles T. Clotfelter and Philip J. Cook, *Selling Hope: State Lotteries in America* (1989).

⁷Charles T. Clotfelter and Philip J. Cook, "State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission," at April 1, 1999.

⁸Rebecca Paul, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts, at 82 (March 16, 1998). (Director of the Georgia Lottery, Past President of the National Association of State and Provincial Lotteries).

⁹Ibid.

¹⁰La Fleur's Lottery World (<http://lafleurs.com>) 1/11/99.

⁵Ibid.

lottery revenues in fact have the effect of increasing funds available for the specified purpose. When expenditures on the earmarked purpose far exceed the revenues available from the lottery, as is the case with the general education budget, there is no practical way of preventing a legislature from allocating general revenues away from earmarked uses, thus blunting the purpose of the earmarking.¹¹

Although lotteries often are seen as a principal source of state revenue, actual contributions to state budgets are exceedingly modest. In 1997 total own-source general revenues from the 38 lotteries ranged between .41 percent in New Mexico to 4.07 percent in Georgia.¹² By contrast, state general-sales taxes and income taxes each averaged one-quarter of all own-source general revenue collected by states.¹³

Another important issue regarding lotteries is the ability of government at any level to manage an activity from which it profits. In an anti-tax era, many state governments have become dependent on "painless" lottery revenues, and pressures are always there to increase them. The evolution of state lotteries is a classic case of public policy being made piecemeal and incrementally, with little or no general overview. Authority is divided between the legislative and executive branches, with the result that the general public welfare is taken into consideration only intermittently. Policy decisions taken in the establishment of a lottery are soon overcome by the ongoing evolution of the industry. It is often the case that public officials inherit policies and a dependency on revenues that they can do little or nothing about.

¹¹ Charles T. Clotfelter and Philip J. Cook, *Selling Hope: State Lotteries in America* (1989).

¹² Clotfelter and Cook, "State Lotteries," table 4 (April 1999).

¹³ Own-source general revenue excludes intergovernmental grants as well as special sources of revenue such as that generated by utilities or liquor stores. U.S. Bureau of the Census (1998, Table 515, p. 138).

CONVENIENCE GAMBLING AND STAND-ALONE ELECTRONIC GAMBLING DEVICES

The terms "convenience gaming" and "retail gaming" have been used to describe legal, stand-alone slot machines, video poker, video keno, and other EGD's that have proliferated in bars, truck stops, convenience stores, and a variety of other locations across several states. However, these terms do not adequately convey the range of locations at which EGD gambling takes place, nor do they describe the spectrum of laws and regulations that apply (or fail to apply) to EGD's. Some states, including Louisiana, Montana, and South Carolina, permit private sector businesses to operate EGD's; in other states, such as Oregon and California, this form of gambling is operated by the state lottery.

In Nevada, slot machines can be found in many public locations, including airports and supermarkets. Montana was the first state after Nevada to legalize stand-alone EGD's, specifically video poker in bars.¹⁴ In California, video keno operated by the state lottery can be found in most traditional lottery outlets and in many other locations as well. The following table shows the number of EGD's reported in several of the states in which this form of gambling is legal.

Table 2-1

State	Reported Number of Machines	Year of Report
Louisiana	15,000	1999
Montana	17,397	1998-99
Nevada	17,922	1999
New Mexico	6,300	1999
Oregon	8,848	1999
South Carolina	34,000	1999
South Dakota	8,000	1998

South Carolina, where video poker has been legal for 8 years, reports by far the largest

¹⁴ Paul E. Pozin et al., "From Convenience Stores to Casinos: Gambling—Montana Style." 36 *Montana Business Quarterly*. No. 4.2. (January 1, 1998).

number of legal, non-casino EGD's. In that state video poker machines, which can be played 24 hours a day excluding Sundays,¹⁵ operate in about 7,500 separate establishments, including bars, restaurants, gas stations, convenience stores, and "video game malls."¹⁶ Video poker machines started as arcade games where players could only win credits to replay the game, but in 1991, the South Carolina Supreme Court ruled that cash payoffs were legal if the money did not come directly from the gaming device. According to recent figures from the South Carolina Department of Revenue, EGD's in that state generated \$2.5 billion in annual gross machine receipts (cash in) and paid prizes (cash out) to players of \$1.8 billion, a payout rate of approximately 71 percent.¹⁷ Video poker licensing fees yielded \$60 million during the most recent fiscal year.¹⁸

Although several states have legalized stand-alone EGD's, illegal and quasi-legal EGD's offering a similar if not identical gambling experience to legal EGD's are common in the bars and fraternal organizations of many other states, including West Virginia, New Jersey, Alabama, Illinois, and Texas. Quasi-legal EGD's are often referred to as "gray machines" because they exist in a gray area of the law. Typically, they are legal as long as no winnings are paid out—in fact, they are often labeled "For Amusement Only." In practice, however, winnings are not paid out directly by the machine, but are instead paid more or less surreptitiously by the establishment in either monetary or non-monetary forms.

The exact number of gray machines available has not been accurately measured, but there are estimates for some states. For example, in West Virginia, there are approximately 15,000 to

30,000 gray machines.¹⁹ In New Jersey, it is estimated that there are at least 10,000 machines.²⁰ The Alabama Bureau of Investigation estimated that there were 10,000 illegal EGD's across that state in 1993.²¹ Illinois is estimated to have 65,000.²²

Issues

One controversial feature of legal and illegal EGD's is their location. Because this form of gambling occurs in close proximity to residential areas and/or at consumer oriented sites, patrons regularly encounter them in the course of their day-to-day activities. Most other forms of gambling take place at gambling-oriented sites, such as casinos and racetracks, which patrons visit specifically for the purpose of gambling and other entertainment. EGD's proliferate rapidly because they can be purchased and installed quickly at existing sites with a relatively small capital investment. By contrast, casinos and racetracks require substantial capital investment and cannot be built overnight.

This form of gambling creates few jobs and fewer good quality jobs, and it is not accompanied by any significant investment in the local economy.

Opponents of convenience gambling argue that electronic gambling creates dependency and should not be widely available or legalized. Robert Hunter, a clinical psychologist in Las Vegas who specializes in problem and pathological gambling, calls electronic gambling devices "the distilled essence of gambling." He claims that video poker's hold on people is caused by the game's rapid pace (an experienced player can play 12 hands a minute), the ability to play for long periods of time, and the

¹⁵ "Industry Stirs Money. Controversy: South Carolina illustrates how gambling can impact a state," *Sarasota Herald-Tribune*. February 22, 1999, p 1, section A.

¹⁶ Letter from D. John Taylor, Manager, South Carolina Department of Revenue. Gaming Section, Regulatory Division to National Gambling Impact Study Commission (April 26, 1999).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Phil Kabler. "Legislature may legalize, ignore or ban gray machines in 1999." *Charleston Gazette*. August 29, 1998.

²⁰ Report on Video Gambling by New Jersey State Commission of Investigation, September 1991.

²¹ "Video poker in running at dog track." *Montgomery Advertiser*, March 22, 1999, p. 1A.

²² Cam Simpson. "Gambling raid in west suburbs," *Chicago Sun-Times*. November 17, 1997.

mesmerizing effect of music and rapidly flashing lights. Of problem and pathological gamblers who use these machines, Mr. Hunter, says "They sort of escape into the machine and make the world go away. It's like a trip to the Twilight Zone."²³

Hunter is widely quoted as calling EGD's "the crack cocaine of gambling."²⁴ Former Gov. David Beasley of South Carolina called the machines "a cancer." Anti-gambling advocates in South Carolina are in the process of filing a class action suit to collect millions on behalf of gambling victims.²⁵ Currently in the discovery stage, the suit has named 36 plaintiffs, with well over a 100 more to join. The class action suit will go after "all profits illegally obtained over the past five years" on behalf of gambling victims.²⁶ According to Columbia, South Carolina attorney Pete Strom, the "illegally obtained" profits are those that break the South Carolina gambling laws, such as the restriction of \$50 in losses to any one gambling in one sitting.

Despite being lucrative, the proliferation of convenience gambling machines is controversial. Much of the controversy regarding convenience gambling stems from its disparate locations outside of traditional gambling venues, its rapid proliferation, the belief that this form of gambling provides fewer economic benefits and higher social costs than more traditional forms of gambling.

CASINOS

Before the beginning of this decade, legalized casinos operated in two jurisdictions: Nevada and Atlantic City. Casinos are now legalized in 28 states. With the multiplication of locations

there was a metamorphosis of the types of casinos. In addition to Las Vegas resort casinos, there are now nearly 100 riverboat and dockside casinos in six states and approximately 260 casinos on Indian reservations.²⁷ The expansion of gambling to these new sites has been called the "most significant development" in the industry in the 1990s.²⁸

Casinos are an important source of entertainment, jobs, and income. The largest casino markets are: Nevada, with 429 full-scale casinos, 1,978 slots-only locations, one Indian casino, and gross casino revenues for 1997 of \$7.87 billion; New Jersey, with 14 casinos and gross casino revenues for 1997 of \$3.9 billion; and Mississippi, with 29 state-regulated casinos, one Indian casino, and gross casino revenues for 1997 of \$1.98 billion.²⁹

The largest concentration of casinos are in urban areas, including Clark County and Las Vegas, with 211 casinos, 30.5 million visitors in 1997, and gross casino revenues for 1997 of \$6.2 billion accounting for 79 percent of the Nevada market; Atlantic City, where all of New Jersey's 14 casinos are located, with 34.07 million visitors in 1997, and gross casino revenues for 1997 of \$3.9 billion accounting for 100 percent of the New Jersey market; and Tunica County (Mississippi), with 10 casinos, approximately 17.4 million visitors in 1997 and gross casino revenues for 1997 of \$933.3 million accounting for 47 percent of the Mississippi casino market.³⁰

For many people, casinos symbolize the gambling industry. Hence, casino locations are often viewed as indicative of a community's embrace of the gambling industry.

²³"Video poker in running at dog track." *The Montgomery Advertiser*, March 22, 1999, p.1, section A.

²⁴Ibid.

²⁵"Gambling and its Discontents," *The American Spectator*, March 1999.

²⁶Ibid.

²⁷Ibid.

²⁸Harold Vogel, 4 *Entertainment Industry Economics* (1998).

²⁹Bear Stearns, 1998 *Global Gaming Almanac*, at 19 (1998).

³⁰"Industry Stirs Money, controversy: South Carolina Illustrates How Video Gambling Can Impact a State," *Sarasota Herald-Tribune*. February 22, 1999, page 1, section A.

RIVERBOAT CASINOS

Riverboat casinos are a relatively new, and uniquely American, phenomenon. Riverboat casinos began operating in Iowa in 1991, and quickly expanded throughout the Midwest. By 1998 there were over 40 riverboat casinos in operation in Illinois, Indiana, Missouri, Iowa, and nearly 50 riverboat and dockside casinos in Louisiana and Mississippi.³¹ In 1997 revenues for riverboats totaled \$6.1 billion. The same year, riverboats paid over \$1 billion in gambling privilege taxes. And growth has continued, with revenues up 11.3 percent from 1996 to 1997.³²

With these original states now approaching saturation point, several state governments have decided to take a closer look at the record compiled so rapidly by this industry. Iowa, the pioneer state, recently legislated a 5-year moratorium on the expansion of casinos, in part to allow time to assess the impact to date; Indiana has established a commission to examine and report on the economic and social effects stemming from the state's experience with gambling.

In this regional pause, advocates for and against casinos strive to make their arguments heard. The record of state decisionmaking regarding riverboats is not comforting. In the hierarchy of considerations of state policymakers, the original arguments in favor of tourism and economic development have often been displaced by the need to generate and maintain tax revenues. The various states' decisions have been driven to a surprising extent not by a steadfast concern for the public welfare but by a fierce interstate competition for tax dollars (and in the process revealing remarkably similar patterns of decisionmaking).

Prominent in each state's calculations have been the twin desires of securing tax revenues from

the citizenry of neighboring states while also blocking those same states from undertaking a similar raid of their own. Riverboat casinos seemed to be ideal instruments for delivering this budgetary nirvana: when located on the borders of other states, often conveniently near major population centers across the river, they could be assured of drawing at least some of their revenues (and thus tax receipts) from the populations of their benighted neighbors. Unfortunately, the spectacle of their citizens' taxes going to benefit other jurisdictions proved too stress-inducing for the public officials in the targeted states, who quickly retaliated with riverboats of their own in the name of "recapturing" the revenues of their wayward citizens. The fact that they were not above attempting their own raids by locating a portion of their new boats near the casino-deprived populations in states far afield from the original aggressor meant that the pattern tended to be self-propagating.

Despite the intense search for money from outside their borders, the resulting counteractions have meant that the net revenue gains from, and losses to, non-resident populations tend to cancel each other out. But the very same strategy has ensured that every state's population is now within an easy commute of the casinos. In setting out to tap into their neighbors' pocketbooks, state governments have ended up tapping into that of their own citizens.

Measuring the impact of a single industry in a dynamic economy is often complicated by an inability to determine a clear cause-and-effect relationship. For example, a 1994 study by the Illinois Economic and Fiscal Commission on the impact of riverboats found that there had in fact been a measurable increase in non-gambling-related commercial activity in the riverboat communities, but concluded that although some locations did appear to have benefited economically from the casinos, in most locations the improvement was more likely due to an upturn in the general economy than to the riverboats. It did find, however, that those gains

³¹ The term "riverboat" casino refers to a boat that is capable of self-contained operation away from land whether or not it ever leaves the dock. "Dockside" casinos float on water but are permanently moored.

³² *Gross Annual Wager*, International Gaming and Wagering Business Magazine (August 1998).

that did occur tended to be greater the smaller the community.³³

Similarly, a separate study of the Illinois riverboat communities concluded that “[o]ne fact is clear: any city fortunate enough to be selected as a site for a riverboat casino is guaranteed a windfall.” However, the same report continues with the caveat that “little is known about the impact that gambling has had on the dozens of municipalities in the region surrounding each riverboat.”³⁴ Thus, it is possible that the benefits to a host community may come at the expense of the surrounding area.

Opponents counter claims of local benefit with the specter of “cannibalization.” This term refers to the phenomenon where the apparent increased economic activity produced by a casino may actually be the result of its having drained money away from local non-gambling businesses. The fate of an area’s restaurants is a commonly used example: subsidized facilities on riverboats may thrive by taking customers away from their land-based, non-casino counterparts. Thus, opponents allege, what appears as an increase in spending on restaurants due to the presence of a casino may in fact represent only a simple transfer of customers and spending from one place to another.

There has also been much information provided to this commission that counters this view. Arthur Andersen’s study of the gaming industry considered “cannibalization,” or the “substitution theory” as it is sometimes called, and reported the following:

First, the size of the U.S. economy is not fixed; rather, it expands over time as new jobs are created. Second, at the macroeconomic level, the industries which some maintain have been affected by consumer spending on gaming have grown concurrently with the gaming industry. Third, economists have known for centuries that for an economy to grow, it must

produce the goods and services which consumers prefer. Fourth, casino gaming relies more heavily than most industries on domestic labor and domestic supplies (including capital). In addition, spending by foreigners in U.S. casinos also represents an export activity for the domestic economy.³⁶

The study conducted by Arthur Anderson of the micro-economic impacts of casino gambling also contained information relative to the “substitution theory.” In each jurisdiction surveyed, this study documented the creation of economic growth fostered by the casino gaming industry.

For example, in Biloxi/Gulfport, Mississippi³⁷:

- Prior to the arrival of casinos, the combined value of commercial construction permits in 1991 and 1992 was \$12 million. During the three years following the arrival of casinos, the combined total was \$447 million.
- From 1990 to 1995, the construction industry added almost 1,300 new jobs—an increase of 50 percent.
- Retail sales growth rates increased from an average of 3 percent a year from 1990 through 1992 to approximately 13 percent between 1993 and 1995.

However, the record of riverboat casinos in promoting general tourism development is mixed: It appears to have been most successful in places such as Galena, Illinois, where the tourism industry was already well established.³⁸ But in other places, the expected boom has yet to appear. The most important reason for this lagging development is that the “evidence shows that most gambling at riverboat casinos is from regional, or day-trip, patrons who do not incur the expense of an overnight stay.” These day-trippers, or “excursionists,” tend to concentrate almost entirely on gambling and to spend little or

³³Truitt, pp. 92-94.

³⁴Ibid.

³⁶Arthur Andersen, *Macro Study*, p. 9.

³⁷Arthur Andersen, *Micro Study*, Executive Summary, p. 7.

³⁸Truitt, pp. 91-92.

no time and money at non-gambling locations. Thus, there is often little boost to the local tourist industry in the form of hotel occupancy, retail sales, increased patronage at restaurants, etc.³⁹

The key to large-scale tourism development is inducing gamblers to stay a least one night, and preferably more, which requires attracting individuals from beyond the radius of an easy roundtrip by car. Becoming such a “destination” resort, including the lucrative market of mainstream conventioners, however, involves considerably more investment of capital than has been the case with the vast majority of riverboats, including the creation of an infrastructure of non-gambling-related attractions, such as golf courses and theme parks, as well as airports and highways.

Some critics assert that riverboat casinos that draw their customers primarily from the local population have a regressive economic impact on the community because the profits go to owners outside of the community and the benefits of taxes raised locally are distributed throughout the state. The possibility of a regressive impact becomes more clouded when placed in the context of economic development. Riverboat casinos have often been located in poorer neighborhoods with the specific intention of stimulating economic development there. However, some observers contend that, as a result, a disproportionate amount of the casino’s winnings are drawn from residents of this same community who tend to be poorer and less educated than the state average, thereby hurting the very people the riverboat casino was intended to help.⁴⁰ According to one critic, casinos have drawn monetary resources away from depressed communities and away from individuals who are economically poor—those who can least afford the costs of gambling.

³⁹“The Economic and Fiscal Impacts of Riverboat Casino Gambling in Illinois: Phase One: Direct Impact Data 1991-1995,” Illinois Gaming Board, p. 12.

⁴⁰Conversation with Terrence Brunner.

NATIVE AMERICAN TRIBAL GAMBLING⁴¹

Large-scale Indian casino gambling is barely a decade old. Most Native American tribal gambling started after 1987, when the United States Supreme Court issued a “landmark decision”⁴² in *California v. Cabazon Band of Mission Indians*. This decision, in effect, confirmed the inability of states to regulate commercial gambling on Indian reservations.⁴³ In an effort to provide a regulatory framework for Indian gambling, Congress passed the *Indian Gaming Regulatory Act* (IGRA) in 1988.⁴⁴ IGRA provides a statutory basis for the regulation of Indian gambling, specifying several mechanisms and procedures and including the requirement that the revenues from gambling be used to promote the economic development and welfare of tribes. For casino gambling—which IGRA terms “Class III” gambling—the legislation requires tribes to negotiate a compact with their respective states, a provision that has been a continuing source of controversy and which will be discussed at length later in this chapter.

The result of those two developments was a rapid expansion of Indian gambling. From 1988, when IGRA was passed, to 1997, tribal gambling revenues grew more than thirty-fold, from \$212 million to \$6.7 billion.⁴⁵ (See Figure 2-2.) By comparison, the revenues from non-Indian casino gambling (hereinafter termed “commercial gambling”) roughly doubled over

⁴¹Native American tribal gambling is discussed more fully in the chapter devoted to that topic.

⁴²David H. Getches, Charles F. Wilkinson, and Robert A. Williams, Jr., 4 Cases and Materials on Federal Indian Law, at 739 (1998).

⁴³480 U.S. 202.

⁴⁴25 U.S.C.A. §2701-2721.

⁴⁵See chart entitled “Trends in Tribal Casino Gaming Revenues, 1988-1997.” Amounts are in constant, 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President* (February 1999), p. 398. For Indian gaming revenues from 1988 and 1995, see U.S. General Accounting Office, *Tax Policy: A Profile of the Indian Gaming Industry* (May 1997), p. 6. For Indian gaming revenues in 1996 and 1997, see International Gaming & Wagering Business, *The Gross Annual Wager* (August supplements, 1997 and 1998).

the same period, from \$9.6 billion to \$20.5 billion in constant 1997 dollars.⁴⁶

As was IGRA's intention, gambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States. Nevertheless, Indian gambling has not been a panacea for the many economic and social problems that Native Americans continue to face.

More than two-thirds of Indian tribes do not participate in Indian gambling at all. Only a small percentage of Indian tribes operate gambling facilities on their reservations. According to the Bureau of Indian Affairs (BIA), there are 554 federally recognized tribes in the United States, with 1,652,897 members, or less than 1 percent of the U.S. population. Of these 554 tribes, 146 have Class III gambling facilities, operating under 196 tribal-state compacts.⁴⁷ In 1988, approximately 70 Indian casinos and bingo halls were operating in a total of 16 states; in 1998, approximately 298 facilities were operating in a total of 31 states.⁴⁸

For the majority of tribal governments that do run gambling facilities, the revenues have been modest yet nevertheless useful. Further, not all gambling tribes benefit equally. The 20 largest

Indian gambling facilities account for 50.5 percent of total revenues, with the next 85 accounting for 41.2 percent.⁴⁹ Additionally, not all gambling facilities are successful. Some tribes operate their casinos at a loss and a few have even been forced to close money-losing facilities.

Only a limited number of independent studies exist regarding the economic and social impact of Indian gambling. Some have found a mixture of positive and negative results of the impact of gambling on reservations,⁵⁰ whereas others have found a positive economic impact for the tribal governments, its members and the surrounding communities.⁵¹ This is an area greatly in need of further research. However, it is clear from the testimony that the Subcommittee received that the revenues from Indian gambling have had a significant, and generally positive, impact on a number of reservations.

PARI-MUTUEL WAGERING

The pari-mutuel industry, so called for the combining of wagers into a common pool,

⁴⁶ See chart entitled, "Trends in Commercial Casino Gaming Revenues, 1988-1997." Amounts are in constant, 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President* (February 1999), p. 398. For commercial casino revenues, see International Gaming & Wagering Business, *The Gross Annual Wager* (August Supplements, 1988 to 1997).

⁴⁷ Figures obtained by Commission Staff in oral communication with the Bureau of Indian Affairs, March 4, 1999. The larger number of compacts is due to some tribes operating more than one gambling facility.

⁴⁸ See charts entitled, "States with Tribal Gaming in 1988" and "States with Tribal Gaming in 1998." For 1988, there was no centralized information source, and the data was compiled from numerous sources, including the National Indian Gaming Commission; the Bureau of Indian Affairs; newspaper and magazine articles; and the *Indian Gaming Magazine, Directory of North American Gaming* (1999). For 1998, see National Indian Gaming Commission, "Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act" (June 30, 1998).

⁴⁹ Letter from Penny Coleman, Deputy General Counsel, NIGC to Donna Schwartz, Research Director, National Gambling Impact Study Commission, dated December 4, 1998.

⁵⁰ See General Accounting Office, Tax Policy: A Profile of the Indian Gaming Industry, GAO/GGD-97-91 (Letter Report, May 5, 1997) (as of December 31, 1996, 184 tribes were operating 281 gaming facilities with reported gaming revenues of about \$4.5 billion); Stephen Cornell, Joseph Kalt, Matthew Krepps, and Jonathan Taylor, *American Indian Gaming Policy and Its Socioeconomic Effects: A Report to the National Gambling Impact Study Commission* (July 31, 1998) (a study of five tribes that found gambling was an "engine for economic growth" and "the number of compulsive gamblers ... has grown" but that "head counts of compulsive gamblers ... pale in importance beside the demonstrable improvements in social and economic indicators documented for gaming tribes." At iii-iv); William Bennett Cooper, III, Comment: What is in the Cards for the Future of Indian Gaming? 5 Vill. *Sports & Entertainment Law Forum* 129 (1998) (discussion of the law and economics of Indian gambling that examines revenue increases, Indian cultural backlash, compulsive gambling, and crime); and Gary C. Anders, "Indian Gaming: Financial and Regulatory Issues, Gambling: Socioeconomic Impacts and Public Policy," *The Annals* V. 556 (March 1998), pp. 98-108 (survey and discussion of a number of positive and negative aspects of Indian gambling).

⁵¹ *The Connecticut Economy* (Published by the Department of Economics, University of Connecticut) (Spring 1997), p. 6.

consists of horse racing, greyhound racing, and jai alai. Pari-mutuel wagering provides for winnings to be paid according to odds, which are determined by the combined amount wagered on each contestant within an event. The increased interest in racing and jai alai in the twentieth century is largely attributed to the rise in the pari-mutuel style of betting.

The Horse-Racing Industry

The largest sector within pari-mutuel gambling is the horse-racing industry. Historically rooted with tradition, the first American horse race was run in Hempstead, New York, in the late 1660's. Following the race, the British governor of New York, Colonel Richard Nichols ordered the regular running of races so as to improve the stamina and speed of the horses.⁵² Today, several of the larger racing venues, such as Churchill Downs in Louisville, Kentucky, have been operational since the 1800's.

Many economic and traditional aspects of the horse-racing industry stem from the agro-industrial sector. This base is responsible for the diversity of racing's economic impact. Beyond directly related occupations such as track operators, trainers, owners, breeders, and jockeys, the beneficiaries of the racing industry include veterinarians, stable owners, etc. The total employment for the horse-racing industry has been estimated at 119,000.⁵³

Pari-mutuel wagering on horse racing is legal in 43 states, generating annual gross revenues of approximately \$3.25 billion.⁵⁴ While there are over 150 operational racetracks, most wagering takes place away from the venue of the originating race. Fueling this development is the availability of satellite broadcasting making it possible to simultaneously broadcast races either between racetracks or at Off-Track Betting sites

(OTB), where no racing occurs at all. The simulcasts provide for larger betting pools by increasing patron access to numerous racetracks. Until recently, simulcasting races did not include at-home, pari-mutuel betting. However, several companies have made the transition into cable and are broadcasting races through 24-hour racing channels. Furthermore, one U.S. company is presently broadcasting races through the Internet. Through the process of setting up accounts at racing venues, patrons in eight of the nine states that permit account wagering can telephone their wagers from anywhere, including their homes.⁵⁵ Approximately \$550 million was wagered through account wagering in 1998.⁵⁶

The Greyhound Industry

The greyhound industry began in 1919 with the first track in Emeryville, California.⁵⁷ Today there are 49 tracks operating in 15 states.⁵⁸ Greyhound racing is responsible for approximately 14 percent of the total handle of pari-mutuel betting.⁵⁹ In 1996 the gross amount wagered in the greyhound industry totaled \$2.3 billion with \$505 million in revenues.⁶⁰ The industry accounts for approximately 30,000 jobs directly related to the operation of the racetracks and other agricultural operations.⁶¹

Over the last decade, the greyhound industry has experienced significant financial decline,

⁵⁵ Account wagering is currently available in eight of the nine states that allow account wagering, including Connecticut, Kentucky, New Mexico, Maryland, Nevada, Ohio, Pennsylvania, Oregon and New York. Florida, Texas, California, Illinois, New Hampshire, Washington, Maryland and New Jersey are presently considering OTB establishments and wagering over the telephone.

⁵⁶ The American Horse Council, written testimony to the National Gambling Impact Study Commission.

⁵⁷ "Economic Benefits of the Greyhound Racing Industry in the United States," Racing Resource Group, Inc. 1998.

⁵⁸ Ibid.

⁵⁹ "Pari-mutuel Racing: A Statistical Summary," Association of Racing Commissioners International, Inc. (1996).

⁶⁰ "Economic Benefits of the Greyhound Racing Industry in the United States," Racing Resource Group, Inc. 1998.

⁶¹ Ibid.

⁵² Thomas H. Meeker, "Thoroughbred Racing – Getting Back on Track Equine Law Symposium," *Kentucky Law Journal* 78(1990).

⁵³ *Gross Annual Wager*, International Gaming and Wagering Business (Aug. 1997).

⁵⁴ Eugene Christiansen, *Gaming and Wagering Business* (July and Aug., 1998).

dropping \$300,000 in handle annually.⁶² One example is the Wichita Greyhound Park in Kansas, which experienced a 22-percent decline in attendance and a 16-percent decline in betting between 1995 to 1996.

Jai Alai

Jai alai, the smallest segment of the pari-mutuel industry, involves players hurling a hard ball against a wall and catching it with curved baskets in a venue called a "fronton." With a handle of approximately \$275,000 annually, Jai alai accounts for less than 2 percent of the total handle among the three pari-mutuel sectors. Originating in Spain, the sport of jai alai was brought to the United States by a group of wealthy Bostonians.⁶³

Jai alai has experienced a dramatic decline in overall revenues over the last decade. Jai alai hit its peak in the early 1980's with over \$600 million wagered annually.⁶⁴ By 1996, the total amount wagered was less than \$240 million.⁶⁵ Florida, once home to more than 10 frontons, remains the leader in the industry with only 6 facilities throughout the state. Other states with jai alai include Rhode Island and Connecticut. Efforts to rejuvenate the industry include Florida's state legislature passing a law to change the taxing structure on jai alai profits, and a recently proposed bill in that state to allow electronic gambling devices at all pari-mutuel venues, including frontons.

Issues

The issues facing pari-mutuel wagering have changed dramatically in the last 30 years. Legalizing slot machines and other EGD's is a

highly contentious issue throughout the pari-mutuel industry. Even with the increased availability to racing information and account wagering, the pari-mutuel industry is facing economic problems. Industry officials point to the expansion of different forms of gambling as the reason for the downward financial turn. They say that competing for gambling dollars is making it increasingly difficult to maintain wagering pools large enough to pay for the cost of running the races. In response, several members of the pari-mutuel industry have fought for and received the opportunity to provide for alternative forms of gambling at racetracks. Presently, several states—such as Delaware, Rhode Island, South Carolina and West Virginia—permit EGD's at the racing venues. Proponents of installing EGD's point to increased revenues raised at the racetracks from both the machines and from larger number of patrons betting on the actual races.⁶⁶ Other states have fought off the battle for increasing forms of gambling at pari-mutuel venues and are looking for alternatives to keep the industry alive within their state. Recently, Maryland provided \$10 million in subsidies to the state's ailing horseracing industry to stave off another round of campaigning to provide slot machines at racetracks.⁶⁷

EGD's and the Pari-Mutuel Industry

A separate area of controversy regarding EGD's—and an example of how they can blur the former distinctions regarding gambling—are efforts by many dog track, horse track, and jai alai owners to install them at their facilities. Proponents in the pari-mutuel industry contend that they seek a "level playing field" that will allow them to compete with State lotteries and Indian gambling facilities. They argue that the EGD's will draw larger crowds to racetracks and thereby save existing jobs connected with racing

⁶² "Pari-mutuel Racing: A Statistical Summary," Association of Racing Commissioners International, Inc. (1996).

⁶³ Edmund Mahoney and Lyn Bixby, "Did the FBI Hinder the Investigation into the 1980's Jai Alai Killings?" *The Hartford Courant* (Nov. 9, 1997), A1.

⁶⁴ International Gaming and Wagering Business, "The Topline Numbers," (Aug. 1997), S12.

⁶⁵ *Ibid.*

⁶⁶ *Gross Annual Wager*, International Gaming and Wagering Business (Aug. 1997).

⁶⁷ Daniel LeDuc and Amy Argetsinger, "Maryland Approves a Prosperity Budget; Assembly Agrees to Funding for New Schools, Racetracks." *The Washington Post* (April 13, 1999), A1.

or even create new jobs. Conversely, opponents contend that track owners view EGD's as means of transforming their businesses into quasi-casinos, thereby allowing them to capture the much larger profits characteristic of that form of gambling, and that the pari-mutuel aspect of the business will be allowed to wither. They also oppose the further spread of casino-style gambling in the form of assisting racetracks. Currently, Delaware, Rhode Island, South Carolina, and West Virginia allow EGD's at their racetracks. According to the National Council Against Legalized Gambling, efforts to legalize EGD's at pari-mutuel facilities have failed in 12 states since 1995.

SIMULCASTING AND ACCOUNT WAGERING

In addition to EGD's and slot machines, the pari-mutuel industry is taking advantage of advances in communication technology and changes in regulations to expand gambling opportunities. In 1978, Congress passed the Interstate Horseracing Act (IHA), 15 U.S.C. Sec. 3001-3007, which extended authority for States and the pari-mutuel industry to provide regulated interstate wagering on races. The law allows the racing industry to create larger wagering pools by combining bets from sources beyond the originating track. To facilitate interstate wagering, the pari-mutuel industry uses satellite communications to instantaneously broadcast races, known as "simulcast" wagering. Even before passage of the IHA, wagering was available at off-track venues, commonly known as off-track betting (OTB) sites. In 1970, the New York legislature approved the first OTB operation. Since then, simulcast wagering has grown rapidly both in the United States and internationally.⁶⁸ Presently, at least 38 States have authorized simulcast interstate wagering.

Along with OTB sites, racetracks began offering telephone account wagering services to their

patrons. Racing patrons now can establish accounts with licensed racetracks in eight of the nine authorized states, which are Connecticut, Kentucky, Maryland, Nebraska, Nevada, New York, Ohio, Pennsylvania, and Oregon.⁶⁹ To establish accounts, individuals must appear in person or provide documentation by mail as well as deposit money in an account, which may be increased or reduced according to their wins and losses. According to the American Horse Council, most money wagered on races now occurs at sites other than where the originating race takes place.⁷⁰ Recent industry figures estimate that off-track and simulcast wagering constitute more than 77 percent of the total annual amount wagered on pari-mutuel races;⁷¹ in 1997 they accounted for \$11.8 billion of the \$15 billion industry total.⁷² In 1998 the amount wagered through telephone account wagering systems reached almost \$550 million.⁷³

Although previously available in some regions for a number of years, various efforts are now underway to expand the broadcasting of races directly into the home, and in some cases, offer accompanying account wagering. Several companies are developing racing channels, which are offered either through basic cable or as a subscription-based channel. For example, Television Games Network (TVG) is a company that combines several communications technologies to provide coverage and account wagering in the home. United Video Group, under its parent company, TV Guide, Inc., operates TVG through the use of satellite technology to broadcast live horse races on a cable channel. To access this technology, hardware is installed on bettor's television set, enabling him or her to use special remotes to scroll through on-screen information menus. To

⁶⁹ Ibid.

⁷⁰ The American Horse Council. Written testimony to the National Gambling Impact Study Commission (February 4, 1999).

⁷¹ Robin A. Farley and Elizabeth Q. Davis, *Hit or Stand? The 1999 Gaming Industry Overview*. BT Alex Brown 28 (November 1998).

⁷² Ibid.

⁷³ This figure excludes Nevada. Telisport W. Putsavage, Written submission to the National Gambling Impact Study Commission, (April 16, 1999).

⁶⁸ The American Horse Council, Written testimony to the National Gambling Impact Study Commission, Subcommittee on Enforcement, Regulation and the Internet (May 21, 1998).

place bets, bettors deposit money in an account with Churchill Downs, the sponsoring racetrack, and place wagers after providing a user name and confidential PIN number. Although currently operating only in Kentucky, TVG has broadcasting agreements with a number of other racetracks in anticipation of offering a wider scale of racing to its patrons.⁷⁴ Many in the horse-racing industry see this system as an integral step toward expanding the base of the pari-mutuel clientele.⁷⁵

SPORTS WAGERING

Despite its popularity, sports wagering in America is illegal in all but two states. Nevada has 142 legal sports books that allow wagering on professional and amateur sports.⁷⁶ Oregon runs a game called "Sports Action" that is associated with the Oregon Lottery and allows wagering on the outcome of pro football games. Outside of these two states, wagering on sports is illegal in the United States.

According to Russell Guindon, Senior research analyst for Nevada's Gaming Control Board, sports wagering reached \$2.3 billion in Nevada's legalized sports books in fiscal 1998.⁷⁷ Nevada sports books took in \$77.4 million in revenue on college and professional sports wagering. According to one major strip resort, betting on amateur events accounted for 33 percent of revenue.⁷⁸ Estimates of the scope of illegal sports

betting in the United States range anywhere from \$80 billion to \$380 billion annually, making sports betting the most widespread and popular form of gambling in America.⁷⁹

Many Americans are unaware of the risks and impacts of sports wagering and about the potential for legal consequences. Even when Americans understand the illegality of sports wagering, it is easy to participate in, widely accepted, very popular, and, at present, not likely to be prosecuted. One reason Americans may not be aware of the illegality of sports wagering is that the Las Vegas "line," or point spread, is published in most of the 48 states where sports wagering is illegal. Some have argued that the point spread is nothing more than a device that appeals to those who make or solicit bets. Critics claim that the point spread does not contribute to the popularity of sports, only to the popularity of sports wagering.

Because sports wagering is illegal in most states, it does not provide many of the positive impacts that other forms of gambling offer. In particular, sports wagering does not contribute to local economies and produces few jobs. Unlike casinos or other destination resorts, sports wagering does not create other economic sectors.

Issues

This Commission heard testimony that sports wagering is a serious problem that has devastated families and careers.⁸⁰ Sports wagering threatens the integrity of sports, it puts student athletes in a vulnerable position, it can put adolescent gamblers at risk for gambling problems, and it can devastate individuals and careers.

There is considerable evidence that sports wagering is widespread on America's college campuses. Cedric Dempsey, executive director of the NCAA, asserts that "every campus has student bookies. We are also seeing an increase

⁷⁴The 16 racetracks that have partnerships with TVG include: Aqueduct Race Track, Churchill Downs, Gulfstream Park, Hollywood Park, Santa Anita, Laurel Park, Arlington International, Lone Star Park, Pimlico, Calder Race Course, Turfway Park, Suffolk Downs, Turf Paradise, Belmont Park, Del Mar, and Saratoga Race Course.

⁷⁵The Television Games Network, Press Release, *NTRA, TVG Announce Agreement on Sponsorship, Joint Projects: New Entities Join Together to Pursue Strategic Development Initiatives* <http://www.televisiongames.com/NTRA.html> (last visited December 9, 1998).

⁷⁶"Odds Against College Ban in Gambling," *San Francisco Examiner*, May 18, 1999, D-8.

⁷⁷Robert Macy, "Ban on College Sports Betting Could Costs State Books Millions," *Las Vegas Review-Journal*, May 18, 1999, 4A.

⁷⁸*Ibid.*

⁷⁹*Ibid.*

⁸⁰Testimony of Mitzi Schlichter before the National Gambling Impact Study Commission, Las Vegas, NV, November 10, 1998.

in the involvement of organized crime on sports wagering.”⁸¹

Students who gamble on sports can be at risk for gambling problems later in life. There is evidence that sports wagering can act as a gateway to other forms of gambling. Therefore, it is important to understand the scope of the problem and educate students to the dangers of sports wagering. The Commission needs to know how widespread the phenomenon of underage sports gambling is now, the relationship between sports wagering and other forms of gambling, and the ways to prevent its spread. Those who attempt to draw adolescents into illegal sports wagering schemes deserve the full attention of law enforcement efforts.

There is much justifiable concern about the rise of sports wagering on college campuses. For example, Dempsey has argued that “there is evidence more money is spent on gambling on campuses than on alcohol.” Dempsey claimed that “[e]very campus has student bookies. We are also seeing an increase in the involvement of organized crime in sports wagering.”⁸² Bill Saum, who is the NCAA official who oversees efforts to address gambling, has called campus betting “the Number One thing in the 90s in college.”⁸³ Three years ago, *Sports Illustrated* called college betting “rampant and prospering.”⁸⁴ Gambling rings have been uncovered at Michigan State, University of Maine, Rhode Island, Bryant, Northwestern, and Boston College, among many other institutions.⁸⁵ While studies of college gambling

are sparse, Lesieur has found in a survey of six colleges in five states that 23 percent of students gambled at least once a week.⁸⁶ The same study found that between 6 and 8 percent of college students are “probable problem gamblers,” which was defined in that study as having uncontrollable gambling habits.⁸⁷ There is some concern that gambling by students may lead to problem or pathological gambling in later life.⁸⁸

INTERNET

Beginning with its introduction on the World Wide Web in the summer of 1995, Internet gambling is the newest medium offering games of chance.⁸⁹ While projected earnings are open to subjective interpretations, the previously small number of operations has grown into an industry practically overnight. In May of 1998, there were approximately 90 on-line casinos, 39 lotteries, 8 bingo games, and 53 sports books. One year later, there are over 250 on-line casinos, 64 lotteries, 20 bingo games, and 139 sportsbooks providing gambling over the Internet.⁹⁰ Sebastian Sinclair, a gambling industry analyst for Christiansen/Cummings Associates, estimates that Internet gambling revenues were \$651 million for 1998, more than double the estimated \$300 million from the previous year.⁹¹ A separate study conducted by Frost and Sullivan shows that the Internet gambling industry grew

⁸¹ Cited in Gary Lundy, “NCAA Says Lady Vols Not Safe from Gamblers,” *Knoxville News-Sentinel*, August 6, 1998, C1.

⁸² Ibid.

⁸³ Cited in Susan Yerkes, Gambling “Most Critical Issue for NCAA,” *San Antonio Express News*, March 30, 1998, C1.

⁸⁴ Tim Layden, “Better Education,” *Sports Illustrated* (April 3, 1995) at 68. Layden found that the college better speaks the language of the trade—juice, vig, tease, parlay, quarter (\$25), dollar (\$100), push—and sometimes deals in amounts that would buy sport-utility vehicles. It seems out of place in a youthful, academic setting. Gamblers come equipped with war stories of losing money and winning money, stories you expect to hear from older, harder men. They have the ability to make a campus hangout like a Keno lounge or a storefront off-track betting parlor.

⁸⁵ Ibid.

⁸⁶ Henry Lesieur, et. al., Gambling and Pathological Gambling Among University Students, *Addictive Behavior* (1991) at 517-527.

⁸⁷ Ibid.

⁸⁸ Bill Saum, Director of Agent and Gambling Activities, National Collegiate Athletic Association, Testimony before the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information 2 (March 23, 1999). “A growing consensus of research reveals that the rates of pathological and problem gambling among college students are higher than any other segment of the population.”

⁸⁹ Kevin A. Mercuri, *Interactive Policy Briefing* presented at the First International Symposium on Internet Gambling Law and Management, Washington, D.C. (November 11-13, 1997).

⁹⁰ Rolling Good Times, <http://www.rgtonline.com> (last visited May 21, 1999).

⁹¹ Sebastian Sinclair, “The Birth of an Industry: Gambling and the Internet,” *The Internet Gambling Report III* (Anthony Cabot ed.).

from \$445.4 million in 1997 to \$919.1 million in 1998.⁹² Both the Sinclair and the Frost and Sullivan studies estimate that revenues for Internet gambling doubled within 1 year.

Several factors have contributed to the dramatic growth. First, Internet access has increased throughout the world, particularly in the United States.⁹³ As interest in the Internet has increased, technologies that drive the Internet have continued to improve. Internet gamblers can participate instantaneously through improved software providing real-time audio and visual games and races. Additionally, the public's confidence in conducting financial transactions on-line has increased.⁹⁴ Furthermore, a number of foreign governments, such as Australia and Antigua, are licensing Internet gambling operators within their borders.

However, along with its meteoric rise, Internet gambling is raising issues never previously addressed and exacerbating concerns associated with traditional forms of gambling. While preventing underage gambling and reducing problems associated with problem and pathological gambling are concerns for all forms of gambling, reducing these concerns is particularly challenging for Internet gambling. The Internet provides the highest level of anonymity for conducting gambling to date. While "know your customer" is a motto of the gambling industry, this becomes particularly challenging through technologies available to Internet users. Screening clients to determine age or if they have a history of gambling problems is difficult at best. For the users of gambling, the Internet fuels concerns regarding the legitimacy of the games and the gambling operators.

General concerns about the relationship between gambling and crime, including money laundering, become particularly acute when considering gambling on the Internet.

Various public officials and interest groups are initiating efforts to address the concerns of Internet gambling. Several states have passed or are considering legislation to ban Internet gambling within their jurisdictions. Several attorneys general have brought lawsuits against Internet gambling operators. Individuals who have incurred credit card debt have brought lawsuits against their credit card companies and their respective banks. The Department of Justice has arrested or issued warrants for arrest on 22 Internet gambling operators and successfully indicted several individuals. Legislation to ban Internet gambling in the United States has been introduced during the 105th and 106th Congress, and is presently under consideration in the Senate. Groups that have supported these measures include state gambling regulators, professional and amateur sports associations, and a rare stance for federal involvement by the National Association of Attorneys General.

Still, mechanisms to enforce prohibitions have raised concerns regarding the role of Internet Service Providers and possible infringement on freedom of speech. Furthermore, most Internet gambling business operate offshore and are licensed by foreign governments, making it difficult to prevent access to illegal sites. Politically, sentiments surrounding Internet commerce are unique, as demonstrated by the President's declaration of the Internet as a free-trade zone.⁹⁵

⁹² Glenn Barry, *Seven Billion Gambling Market Predicted* *Interactive Gaming News* (May 11, 1998) <http://www.igamingnews.com>.

⁹³ Market research firm INTECO Corp. conducted a survey comparing the first and last quarters of 1998. After polling 16,400 people throughout the United States, the survey concluded that 108 million adults, or approximately 55 percent of the adult population, accessed the Web during the last quarter of 1998.

⁹⁴ 35 million U.S. adults either placed a product order or made a reservation online during the last quarter of 1998. This number represents a 250 percent increase from the beginning of 1998.

⁹⁵ Presidential Directive on Electronic Commerce, July 1, 1997.

CHAPTER 3. GAMBLING REGULATION¹

Over the past quarter century, legalized gambling in America has undergone a rapid expansion. Once an infrequent experience tinged with the exotic—a trek to the distant Nevada desert once was a common requirement for those seeking casino gambling—it has since become a common feature of everyday life, readily accessible in one form or another to the vast majority of Americans. As it has grown, it has become more than simply an entertaining pastime: The gambling industry has emerged as an economic mainstay in many communities, and plays an increasingly prominent role in state and even regional economies. Although it could well be curtailed or restricted in some communities, it is virtually certain that legalized gambling is here to stay.

Despite its increasing familiarity, nowhere is gambling regarded as merely another business, free to offer its wares to the public. Instead, it is the target of special scrutiny by governments in every jurisdiction where it exists, including even such gambling-friendly states as Nevada. The underlying assumption—whether empirically based or not—is that, left unregulated and subject only to market forces, gambling would produce a number of negative impacts on society and that government regulation is the most appropriate remedy. Thus, the authorization of

legalized gambling has almost always been accompanied by the establishment of a corresponding regulatory regime and structure.

GOVERNMENTS SET THE RULES

Much of gambling regulation is focused on policing functions that differ little from community to community. The most immediate of these is ensuring the integrity of the games offered, a function often valued most by the proprietors of gambling establishments themselves. In the popular imagination, the “con” man forever hovers in the shadows of gambling; and, in truth, without the stern presence of independent regulators, it would require little effort to conjure methods of conflating “games of chance” with outright deception. Thus, to the extent that governments assume a general responsibility to shield their populations from fraud, regulation is the most effective means of ensuring that such legal gambling as does exist is fair and honest.

A second area of government concern is crime, especially organized crime. Fairly or not, Nevada’s casinos were once closely linked in the popular mind with organized crime, a bias given substance by repeated federal and state investigations and prosecutions of casino owners and operators. Because of the volume of cash transactions involved in casino gambling, and in order to minimize any resulting potential for money laundering, casinos must comply with requirements regarding the reporting of these transactions. All of the evidence presented to the Commission indicates that effective state regulation, coupled with the takeover of much of the industry by public corporations, has eliminated organized crime from the direct ownership and operation of casinos.

GAMBLING AND THE PUBLIC INTEREST

In addition to these relatively well-defined policing functions, a broader and far more important role for government regulation is

¹ Regulating Casinos Gaming: A View from State Regulators by Michael A. Belletire, Administrator of the Illinois Board. This document was developed for the NGISC at the request of the Commission’s Subcommittee on Regulation, Enforcement, and the Internet. Direct contributions to the content and topics discussed in the document were made by the following individuals: Steve DuCharm and Dennis Neilander (Nevada), Frank Catania (New Jersey), Chuck Patton (Mississippi), George Turner (Colorado), Mel Fischer (Missouri), Jack Thar (Indiana), Jack Ketterer (Iowa), Hillary Crain (Louisiana), and Mac Ryder (Illinois). This chapter also benefited from state reports submitted directly to the Commission. For example, see New Jersey Casino Control Commission, Casino Gambling in New Jersey: A Report to the National Gambling Impact Study Commission (January 1998) and Mississippi Gaming Commission, Regulating Gaming in Mississippi: Policing an Unprecedented Phenomenon: A Report to the National Gambling Impact Study Commission (1998).

determining the scope and manifestation of gambling's presence in society and thus its impact on the general public. In this sense, regulation can be broadly defined to include the political process by which the major decisions regarding legalized gambling are arrived at, the corresponding legislation and rules specifying the conditions of its operation, and the direction given to regulatory bodies. Through such means as specifying the number, location, and size of gambling facilities; the types of games that can be offered; the conditions under which licensed facilities may operate; and so forth, governments have considerable control over the benefits and costs legalized gambling can bring with it. These measures can be as simple and straightforward as attempting to prevent underage gambling or as ambitious and contentious as promoting traditional social values.

If this basic responsibility is to be adequately met, government decisions regarding the introduction and regulation of legalized gambling would best be made according to a well-defined public policy, one formulated with specific goals and limits in mind. While governments have established a variety of regulatory structures, it is not at all clear that these have been guided by a coherent gambling policy or even that those making the decisions have had a clear idea of the larger public purpose they wish to promote. Generally, what is missing in the area of gambling regulation is a well thought-out scheme of how gambling can best be utilized to advance the larger public purpose and a corresponding role for regulation. Instead, much of what exists is far more the product of incremental and disconnected decisions, often taken in reaction to pressing issues of the day, than one based on sober assessments of long-term needs, goals, and risks.

There are a number of factors contributing to this gap between measures actually taken and any guiding public purpose, however conceived. One such factor is the existence of multiple decisionmakers: Federal, state, tribal, and local officials all have a say in gambling policy, and coordination among any of them is far more the exception than the rule. In addition, the gambling

industry is not monolithic; each segment—lotteries, Native American casinos, convenience gambling, and so forth—comes with its own particular set of issues, concerns, and interest groups, one result being that the respective regulatory structures and objectives often differ considerably from segment to segment. Further, the dynamism of the industry as a whole requires continuous adaptation on the part of regulation: In addition to a rapid pace of expansion, technology continues to produce new and different forms, often directly aimed at any weak links in government restrictions and regulation.

Far more worrisome than these factors, however, is that most government decisionmaking has been chasing rather than leading the industry's growth and evolution and has often focused on less-than-central concerns, to the neglect of the larger public interest. One of the more damning criticisms of government decisionmaking in this areas is the assertion that governments too often have been focused more on a shortsighted pursuit of revenues than on the long-term impact of their decisions on the public's welfare.

Not unexpectedly, the results of decisions regarding legalizing gambling often produce results that surprise even the officials responsible for making them. And not all of these results are positive. Without constant adaptation to this changing industry, time alone will produce a mismatch between the stated goals of government regarding gambling and the actual effects resulting from its decisions. Given the rapid accumulation of decisions regarding gambling, most of the respective governments—and certainly their respective communities—would be well-served by a thorough review of their public policy toward gambling. This review should focus on determining the specific public purpose regarding legalized gambling and an assessment, in that context, of the existing regulatory structure in its entirety: laws, rules, agencies, and so forth. The objective of this review is to identify what changes, if any are needed, with a goal to maximizing the benefits and minimizing the costs.

Although wide-scale legalized gambling is a relatively recent phenomenon, the large number

of jurisdictions involved, operating under many different conditions, has produced a useful variety of experience for other communities to draw on. By examining this variety of positive and negative experiences, governments can draw the appropriate lessons from the successes and mistakes of others and thereby reduce the need to experiment on their communities.

REGULATING GAMBLING

The Federal Role

Until relatively recently, the federal government largely deferred to the states in matters relating to gambling; Washington's attention focused largely on criminal matters, including organized crime, fraud, and the like, especially when these involved activities across state lines.²

In the early 1950's, Congressional investigations into the activities of organized crime in the gambling industry resulted in an enhanced federal role, including the creation of the Special Rackets Squad of the FBI and the enactment of the Gaming Devices Act of 1951 (commonly referred to as the Johnson Act).³

In the 1960's the federal government expanded its regulatory role over gambling activity through such measures as the 1961 Wire Communications Act ("Wire Act"), which prohibits the use of wire communications (telephones, telegrams, etc.) by persons or organizations engaged in the business of wagering to transmit bets or wagers, or information that assists in the placing of bets or wagers, taking care to specifically mention "sporting events or contest."⁴ Similarly, the Travel Act prohibits travel or the use of mail, either inter-state or internationally, for "any

business enterprise involving gambling."⁵ Other federal laws add to these measures, such as the prohibition on the inter-state transportation of wagering paraphernalia.⁶

One of the best known federal measures is the Racketeering Influenced and Corrupt Organizations statutes (RICO).⁷ Enacted in 1971 under the Crime Control Act, the RICO were aimed at combating "the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce," including gambling.⁸

In 1985, the Bank Secrecy Act was amended to include casinos, used car dealers, money transfer services, and a number of other "cash-intensive" businesses in the list of financial institutions subject to special requirements that are designed to prevent money laundering. Among other things, the Act requires casinos to report each deposit; withdrawal; exchange of currency, gambling tokens or chips, or other payment; or transfer that is made by, through, or to the casino in amounts greater than \$10,000.⁹ As its name indicates, the Money Laundering Control Act of 1986 was aimed at strengthening federal efforts in this area; it was followed in 1990 by the creation of the Treasury Department's Financial Crimes Enforcement Network (FinCEN) to "establish, oversee and implement policies to prevent and detect money laundering."¹⁰

In the late 1980's, the federal government became directly involved in the area of Native American gambling. Here, federal involvement was an outgrowth of the federal government's responsibility for, and legislative authority over,

²James H. Frey, Introduction, *Federal Gambling Law*, Anthony N. Cabot (ed) 2 (1999), citing an unpublished paper by Cabot.

³Among its other provisions, the Johnson Act prohibits the transportation of gambling devices across state lines. It was amended to exempt cruise ships but not airlines either originating from or bound for the U.S.

⁴18 U.S.C. § 1084.

⁵18 U.S.C. § 1952.

⁶18 U.S.C. § 1953.

⁷18 U.S.C. § 1961 et seq.

⁸Senate Report No. 91-617, 91st Congress, 1st Session 80 (1969).

⁹31 U.S.C. § 103. Also known as the Currency and Foreign Transactions Reporting Act

¹⁰U.S. Treasury Order No. 105-08.

<http://www.ustreas.gov/fincen/faqs.html> (last visited May 8, 1999).

Native American reservations, and that direct involvement continues to the present.¹¹

THE STATE ROLE

Lotteries

In the modern era, lotteries have been the unique province of state governments. To date, each state that has authorized a lottery has granted itself a monopoly; none has seen fit to allow competitors. In part, the impetus behind this exclusivity is to ensure that the state can capture monopoly profits. But an important additional motive, especially at the dawn of the modern era of lotteries in the 1960's and 1970's, was the assumption that only direct government ownership and control of gambling could guarantee the exclusion of criminal elements. That concern has faded over time with the growth of commercial gambling, but it reappears in states taking up the issue for the first time.

With only minor variations, states with lotteries have implemented remarkably similar regulatory structures. Some are organized as arms of a particular state agency, others exist as separate organizations, with varying degrees of independence.¹² But regardless of their administrative form, all state lotteries share a common subordination to elected state officials, with the responsibility for the form, goals, and operations of lotteries firmly in the hands of the latter. But this arrangement has created a number of problems of its own.

For example, lottery directors are under constant pressure from state political authorities to at least maintain the level of revenues and, if possible, to increase them. Some observers have alleged that, as a result, considerations of public welfare at best take second place. This has often been cast as an inherent conflict of interest: How can a state government ensure that its pursuit of revenues does not conflict with its responsibility

to protect the public? For some, state governments have exceeded their stated objective of using the lottery to modestly enhance public services, and instead have irresponsibly intruded gambling into society on a massive scale through such measures as incessant advertising and the ubiquitous placement of lottery machines in neighborhood stores. In this view, states have become active agents for the expansion of gambling, setting the stage for the introduction of commercial gambling in all its forms. The question arises: Is this a proper function of government?

Particular attention has been devoted to the extent to which, in pursuit of enhanced revenues, lotteries have allegedly targeted vulnerable populations, such as the economically disadvantaged and possible pathological gamblers. The data suggests that lottery play is heaviest among economically disadvantaged populations and among some ethnic groups, such as African-Americans, but it is not clear that these have been deliberately targeted by lottery officials.

With the lottery being such a widely available form of gambling, one area of concern is play by minors. Although illegal in every state, the sale of lottery tickets to minors nevertheless occurs with a disturbing frequency. For example, one survey in Minnesota of 15- to 18-year-olds found that 27 percent had purchased lottery tickets.¹³ Even higher levels of 32 percent, 34 percent, and 35 percent were recorded in Louisiana, Texas, and Connecticut, respectively.¹⁴ In Massachusetts, Connecticut, and other states, lottery tickets are available to the general public through self-service vending machines, often with no supervision regarding who purchases them. Thus, it is not surprising that a survey conducted by the Massachusetts Attorney

¹¹ See the Chapter 6, on "Native American Tribal Gambling" for a full discussion of the IGRA and the classes of gambling.

¹² Clotfelter and Cook, *supra* note 2 at 12.

¹³ Robyn Gearey, "The Numbers Game," *The New Republic*, May 19, 1997, p. 19.

¹⁴ Joe Gyan, Jr. "More Louisiana Youths Try Gambling than Drugs," [Baton Rouge, La.] *Advocate*, August 8, 1997; Lynn S. Wallisch, "Gambling in Texas: 1995 surveys of Adult and Adolescent Gambling Behavior," Texas Commission on Alcohol and Drug Abuse, August 1996, p. 78; Lyn Bixby, "Lottery Pitch Seen as Luring Kids," *Hartford Courant*, October 23, 1997, p. A4.

General's office found that minors as young as 9 years old were able to purchase lottery tickets on 80 percent of their attempts, and that 66 percent of minors were able to place bets on keno games. Seventy-five percent of Massachusetts high school seniors report having played the lottery.¹⁵

A further criticism is that, in pursuit of revenues, some lotteries have employed overly aggressive—and even deceptive—advertising and other marketing methods. Lottery advertising has advanced in recent years from simple public-service announcement type ads to sophisticated marketing tools. Critics charge that they are intentionally misleading, especially regarding such matters as the miniscule odds of winning the various jackpots. (As an agency of government, lotteries are not subject to federal “Truth-in-Advertising” standards). Others assert that lottery advertising often exploits themes that conflict with the state's obligation to promote the public good, such as emphasizing luck over hard work, instant gratification over prudent investment, and entertainment over savings.

CASINOS¹⁶

As commercial casino gambling has spread from its original base in Nevada to New Jersey, the Gulf Coast, the Midwest, and to locations such as Deadwood, South Dakota, a variety of different regulatory structures has emerged. As with the lotteries, most of the administrative differences are more superficial than substantive, and basic tasks such as ensuring the integrity of the operations and policing against infiltration by

organized crime vary little from state to state. Of far greater importance are the differences in public purpose that supposedly guide government decisionmaking in this area, with corresponding consequences for each state's economy and society.

Two contrasting, if simplified, approaches can be identified. The first, dubbed here the “Nevada” model, can be characterized as weighted toward viewing gambling as a business, albeit one requiring its own set of safeguards. In this model, the public purpose of legalizing gambling is to secure the maximum possible economic benefits for the state and its citizens, including investment, jobs, and tax revenues. Reserving to government the policing functions—ensuring the integrity of the games, combating organized crime, etc.—this approach emphasizes granting gambling a relatively free hand to respond to the demands of the market regarding the numbers of facilities, their location, and so forth. This welcoming approach—much like that accorded to favored industries in other states—has been a key factor in Nevada's long-time prominence as a center of casino gambling in the United States.

A contrasting approach, dubbed here the “New Jersey” model, focuses on gambling's potential negatives and emphasizes its differences from other businesses. One consequence is a broader and more in-depth role for government in the making of key decisions. In this view, casino gambling is viewed as a potentially dangerous phenomenon, but one nevertheless capable of producing significant benefits under carefully controlled conditions. In New Jersey's case, the legalization of casino gambling in 1976 was a highly controversial issue, but was eventually accepted for the narrow purpose of helping to revive the declining resort community of Atlantic City. It was accompanied by the establishment of a strict and comprehensive regulatory structure, with few areas free from government oversight and approval. Significantly, even after two decades, casino gambling has not been allowed to expand beyond its original base of Atlantic City. As a result, it has never reached its economic

¹⁵ Scott Harshbarger, Attorney General of the Commonwealth of Massachusetts, “Report on the Sale of Lottery Tickets to Minors in Massachusetts,” July 1994, pp. 3-4; Scott Harshbarger, Attorney General of the Commonwealth of Massachusetts, “Kids and Keno are a Bad Bet: A Report on the Sale of Keno Tickets to Minors in Massachusetts,” October 1996, p. 1; Howard J. Shaffer, “The Emergence of Youthful Addiction: The Prevalence of Underage Lottery use and the Impact of Gambling,” Massachusetts Council on Compulsive Gambling, January 13, 1995, p. 9.

¹⁶ Casinos in the United States can be divided into two major groups: Native American tribal casinos and non-Indian “commercial” casinos. This chapter focuses on the latter; Native American tribal casinos will be discussed in the Chapter VI, “Native American Tribal Gambling.”

potential, but neither has it been woven into the state's social fabric.

These two approaches can be seen in other states. Most states with riverboat casinos adopted the "New Jersey" approach, employing gambling for purposes of targeting economic development to a finite number of specific communities or to a finite number of communities along specific waterways. According to this approach, casino gambling is akin to enterprise zones intended to deliver economic benefits—in the case of casinos, these benefits are job creation, capital investment, public sector revenue, and increased tourism—to a finite number of specified locations. These states have subjected their gambling industries to relatively strict controls: The fact that gambling was confined to riverboats, symbolically and physically separate from the surrounding communities, underscored the desire to employ gambling for relatively narrow purposes while mitigating perceived potential negative effects. In these states, the limited number of approved licenses has meant that gambling remains confined to a handful of cities.

Mississippi, by contrast, adopted more of a "Nevada" approach, although in fact the approach is something of a Nevada/New Jersey hybrid. There are limits on where casinos may be located (in counties along the Mississippi River or on the Gulf Coast), but there is no limit on the number of permitted casinos either within a particular county or statewide. This regulatory climate has proved favorable: Mississippi's casino industry now ranks among the state's major industries in terms of revenues, taxes, and employment.

Administrative Structure

In some jurisdictions, the gambling board or commission exercises final administrative authority. Other jurisdictions, most notably Nevada, have adopted a two-tiered system in which one body (the Nevada Gaming Control Board) exercises administrative authority, subject to a separate entity (the Nevada Gaming

Commission) that serves as the due process oversight body.¹⁷

Much of casino regulation is concentrated on the day-to-day operations of casinos. Typically, each casino is required to adopt and adhere to a comprehensive set of state-designated procedures, commonly termed the "Minimum Internal Control Standards" (MICS). These MICS focus on the range of gambling-related activity, including the conduct of games, the movement and handling of cash and cash equivalents, and the accounting and record trail of all transactions. State regulators often rely upon the casinos to maintain logs that document irregularities and to "self-report" violations.

In addition to internal control and surveillance, casino regulatory agencies direct and review audits of casino operations. In some states, private sector audit firms are engaged by the regulatory body (usually at the expense of the casino) to conduct compliance audits. The audits measure operator conformity with MICS requirements. These audits are in addition to required annual financial audits conducted by certified public accounting firms that are selected by casino operators, subject to regulatory approval.

Furthermore, the regulatory structure of most states includes statutory language that restricts gambling by those under 21. The state levies fines and other punishments for the failure to adhere to this code of conduct. The casino industry itself self-regulates with regard to underage gambling in an attempt to ensure that its patrons and employees understand that only those 21 and older are permitted to gamble. Some casinos perform this function more effectively than others; those that do not tend to be the recipients of fines and sanctions. In addition, many states have gambling statutes requiring casinos to address pathological gambling.

There is considerable variability across the states regarding the scope of the individuals and entities subject to licensure to work in casinos.

¹⁷ Belletire document.

Some jurisdictions license only persons engaged in gambling-related duties. In other states, all employees, regardless of work duties or work location (i.e. hotel rooms) are subject to licensing. In most jurisdictions, licensure for rank-and-file gambling personnel entails a standardized criminal background check. Upper management casino personnel and other key persons of a licensed operation are subjected to more extensive background examinations. Most jurisdictions have statutory provisions specifying disqualifying criteria for persons seeking to work in casinos. Typically, any felony conviction disqualifies an individual. In some cases a misdemeanor conviction, or the denial or revocation of licensure in another gambling jurisdiction, are also cited as disqualifying factors.

The depth of regulatory investigations and oversight of suppliers also varies across the states. The licensure of gambling industry suppliers is primarily concentrated on the business entities that provide gambling devices and equipment. Most regulatory bodies are also granted the statutory authority to license entities that provide non-gambling-related goods or services to casinos. Such authority is not routinely utilized. Only the State of New Jersey currently requires licensure of certain non-gambling casino contractors.

At the Commission's request, a guide to model regulation was developed by Michael Belletire, the former Administrator of the Illinois Gaming Board (see Attachment A at the end of this chapter).¹⁸

PARI-MUTUEL GAMBLING

The pari-mutuel industry, which includes greyhound racing and jai alai, has a long history in the United States, but horse-racing remains by far the largest and most financially healthy segment.

Administrative Structure

While the exact form varies, all states with legal pari-mutuel operations regulate the activity through a racing commission or other state gambling regulatory body. The purposes of regulation include maintaining the integrity of the races or events, ensuring the state receives its tax revenues, overseeing the licensing of tracks and operators, and preventing an infiltration by criminal elements.¹⁹

To obtain a license to operate, state racing commissions perform background checks on track owners, horse owners, trainers, jockeys, drivers, kennel operators, stewards, judges, and backstretch personnel. Once the license is extended, racing commissioners retain the authority to suspend or revoke licenses. Reasons for denying, suspending, or revoking a license include criminal infractions, false representations, failure to disclose ownership of a horse or greyhound, inadequate training, or a history of concerns pertaining to an individual's integrity.²⁰

Underage gambling also is a concern. In most states, children under 18 years of age must be accompanied by an adult in order to enter a pari-mutuel facility, and the minimum age requirement for betting varies from 17 to 21 years of age. Most states have set the minimum at 18.²¹

The Kentucky Racing Commission provides a prominent example of the comprehensiveness of state regulation of the pari-mutuel industry. Laws that fall under the enforcement authority of this commission pertain to virtually every aspect of races and include the presence and placement of specific race officials such as timers, placing judges, starters, and patrol judges. There also are laws governing owners, trainers, jockeys, horses, and ticket sellers. Individuals must meet standards set by the commission for each

¹⁸This regulatory model relies heavily on the paper submitted by Michael A. Belletire entitled "Legislating and Regulating Casino Gaming: A View from State Regulators."

¹⁹R. Anthony Chamblin, Testimony for the National Gambling Impact Study Commission, Del Mar, California (July 29, 1998) (on file with the Commission).

²⁰Ibid.

²¹Ibid.

position and be licensed in order to be eligible to participate in pari-mutuel betting events. The commission itself has the power to deny, suspend, revoke, or declare void the license of any person involved in a violation of an administrative regulation. The commission also approves three stewards who make determinations regarding all questions, disputes, protests, complaints, or objections that arise during a race meeting. They are granted extensive disciplinary powers: For example, the stewards can declare a horse ineligible or a race void.

One of the key controversies in pari-mutuel gambling are proposals to introduce electronic gambling devices (EGD's), such as slot machines, at racetracks. Some track owners maintain that increased competition from state lotteries, nearby casinos, and other forms of gambling have hurt their business and that EGD's are needed in order to allow their businesses to survive. Opponents within and outside of the industry counter that by introducing such games, racetracks in effect become mini-casinos. Four states—Delaware, South Carolina, Rhode Island, and West Virginia—have legalized the operation of EGD's at racetrack facilities. Several other states are currently considering similar provisions.

Federal involvement in pari-mutuel regulation focuses on issues of interstate and foreign commerce. Specifically, the federal government provides regulation through two federal statutes that address or exempt interstate wagering within the pari-mutuel industry. According to the Interstate Horse Wagering Act of 1978²² and in compliance with the "Wire Act" of 1961,²³ racetracks can broadcast events to other licensed establishments and provide for a commingling of wagers on races. The industry broadcasts these races through satellite technology to other racetracks and off track betting parlors (OTBs). Bettors can then place wagers on a particular race hosted at a participating track that may be located outside

the state. This system has enabled the industry to create larger wagering pools and therefore larger purses. Under the authority provided by the federal government within these two statutes, several states have permitted the pari-mutuel industry to broadcast races in the home and have also provided for account wagering. Further discussion on account wagering and at-home devices is included in the chapter on the "Gambling in the United States."

Several organizations set industry standards and codes of conduct. As early as 1934, racing commissioners from a number of states formed the National Association of State Racing Commissioners (NASRC) to provide a more coordinated approach to regulatory efforts. Out of this body grew the Association of Racing Commissioners International, Inc. (RCI). Today, RCI's membership includes commissioners from 24 states and 5 neighboring territories or countries.²⁴ Other industry organizations include the National Thoroughbred Racing Association, the Thoroughbred Racing Associations of North America, The American Quarter Horse Association and the American Horse Council. These organizations address issues including integrity of racing, underage concerns, and concerns regarding problem and pathological gambling.

SPORTS WAGERING²⁵

The Professional and Amateur Sports Protection Act (Pub.L. 102-559) is the primary regulatory document for sports wagering activity. The law was passed to ensure the integrity of athletic events. At the time of the passage, Sen. Bill Bradley (D-NJ) said:

"Based on what I know about the dangers of sports betting, I am not prepared to risk the

²⁴ *Supra* note 1.

²⁵ Sports wagering refers to betting on the outcome of a contest. People bet on the outcome of many events, whether the outcome of the Academy Awards, individual athletic performances, or team play. For the purposes of this section on sports wagering regulation, the term does not cover pari-mutuel activity, which is legal in many states.

²² 15 U.S.C. § 3001-3007.

²³ 18 U.S.C. § 1084.

values that sports instill in youth just to add a few more dollars to state coffers.... State-sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship. In these days of scandal and disillusionment, it is important that our youngsters not receive this message...sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling...sports gambling raises people's suspicions about point-shaving and game-fixing.... All of this puts undue pressure on players, coaches, and officials."²⁶

The Act was signed by the President on October 28, 1992. Section 3702 of the Act makes it illegal for a government entity or a person to operate or authorize any wagering scheme based on "competitive games in which amateur or professional athletes participate."²⁷

Federal legislation also addresses the use of wire communications for sports wagering. The "Wire Act" of 1961 prohibits gambling businesses from using wire communications to transmit bets or wagers or information that assists in the placing of bets or wagers either interstate or across U.S. national borders. By specifying bets or wagers on "sporting events or contests," the statute expressly determines the illegality of the use of wire communications for the purposes of interstate or international sports wagering. Penalties for breaking this law include fines and imprisonment for not more than two years or both.

While these federal Acts imply federal jurisdiction over sports wagering, states retained the right to determine the scope of legalized sports wagering until 1992. Currently, sports wagering is legal in four states but offered only in Nevada and

Oregon. Nevada offers sports wagering through casino sports books and Oregon runs a state lottery game based on games played in the National Football League. Nevada prohibits the placing of wagers on teams from within the state in an attempt to avoid any hint of impropriety when Nevada teams are included and to protect the integrity of contests involving such teams. Delaware and Montana are allowed to have sports books by statute, but currently neither state offers legalized sports wagering. Because these four states had pre-existing statutes providing for sports gambling, they were unaffected by enactment in 1992 of the federal legislation prohibiting sports betting in all other states.²⁸

Despite Being Widespread, Most Sports Wagering Is Illegal

The popularity of sports wagering in most states, both legal and illegal, makes it a regulatory challenge. Legal sports wagering—especially the publication in the media of Las Vegas and offshore-generated point spreads—fuels a much larger amount of illegal sports wagering.²⁹ Although illegal in 48 states, office betting is flourishing. This type of informal or small-scale betting, which is often considered innocuous and not worth prosecuting from a law enforcement standpoint, is often ignored and goes largely unregulated.

²⁸The Professional and Amateur Sports Protection Act, (Pub.L. 102-559), signed by the President on October 28, 1992. Section 3702 of the Act stipulates the following:

"It shall be unlawful for 1) a government entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or 2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games."

See Linda S. Calvert Hansen, Sports, Athletics, and the Law: A Selected Topical Bibliography of Legal Resources Published During the 1990s, 4 Seton Hall Law and Sports Journal 763 (1994).

²⁹James H. Frey, "Gambling on Sports: Policy Issues," Journal of Gambling Studies, Winter 1992, p. 355, as cited in the testimony of Nancy Price before the NGISC in Las Vegas, NV, November 10, 1998.

²⁶Submitted with the testimony of Nancy Price to the NGISC in Las Vegas, NV, November 10, 1998.

²⁷Pub.L. 102-559, Sec. 3702.

In addition to being largely informal, widespread and illegal, sports wagering is difficult to regulate since anyone in any state can access legal sports books via telephone or Internet. Because sports wagering is illegal in most states, reliable figures on the scope of sports gambling are difficult to find.

This Commission heard testimony that sports gambling is a serious problem which has devastated families and careers.³⁰ Many Americans do not know that the majority of sports wagering in America is illegal. In addition, many do not know about the risks and impacts of sports wagering and about the possible legal consequences. Even when Americans understand the illegality of sports wagering, it is easy to participate in, widely accepted, very popular, and, at present, not likely to be prosecuted.

One reason Americans may not be aware of the illegality of sports wagering is that the Las Vegas “line,” or point spread, is published in most of the 48 states where sports wagering is illegal.³¹ Some have argued that the point spread is nothing more than a device that appeals to those who make or solicit bets. Critics claim that the point spread does not contribute to the popularity of sports, only to the popularity of sports wagering.

Because sports wagering is illegal in most states, it does not provide many of the positive impacts of other forms of gambling. In particular, sports wagering does not contribute to local economies or produce many jobs. Unlike casinos or other destination resorts, sports wagering does not create other economic sectors.

However, sports wagering does have social costs. Sports wagering threatens the integrity of sports, it puts student athletes in a vulnerable position, it can serve as gateway behavior for adolescent gamblers, and it can devastate individuals and careers.

It is important that the regulation of sports wagering be strengthened and enforced. Illegal sports betting should be contained in order to keep the remaining 48 states free from this form of gambling. Government and law enforcement agencies in particular could increase their efforts to deal with this area of illegal gambling.

One argument for strengthening sports wagering regulation is that athletes themselves are often tempted to bet on contests in which they participate, undermining the integrity of sporting contests. According to the findings of a University of Michigan survey on collegiate sports gambling, more than 45 percent of male collegiate football and basketball athletes admit to betting on sporting events, despite NCAA regulations prohibiting such activities. More than 5 percent of male student-athletes provided inside information for gambling purposes, bet on a game in which they participated, or accepted money for performing poorly in a game.³²

There is considerable evidence that sports wagering is widespread on America’s college campuses. Cedric Dempsey, executive director of the NCAA, asserts that “every campus has student bookies. We are also seeing an increase in the involvement of organized crime on sports wagering.”³³

Students who gamble on sports can be at risk for gambling problems later in life. There is evidence that sports wagering can act as a gateway to other forms of gambling. Therefore, it is important to understand the scope of the problem and educate students to the dangers of sports wagering. The Commission needs to know how widespread the phenomenon of underage sports gambling is now, the relationship between sports wagering and other forms of gambling, and the ways to prevent its spread. Those who attempt to draw adolescents into illegal sports wagering schemes deserve the full attention of law enforcement efforts.

³⁰ Testimony of Mitzi Schlichter before the NGISC, Las Vegas, NV, November 10, 1998.

³¹ Define the point spread and Vegas “line” here.

³² The Extent and Nature of Gambling Among College Student Athletes. Michael E. Cross and Ann G. Vollano, University of Michigan Athletic Department, 1999.

³³ Cited in Gary Lundy, NCAA Says Lady Vols Not Safe from Gamblers, Knoxville News-Sentinel, August 6, 1998, p. C1.

What Is Being Done and What Can Be Done

The importance of regulating legal sports wagering and stifling illegal sports wagering has been acknowledged by professional and amateur sports organizations, which have strict regulations regarding sports wagering. For example, the National Football League, Major League Baseball, and the National Basketball Association have all issued rules stating that betting on your own sport is grounds for dismissal for any athlete or coach. Each league also offers referral services for treatment of problem or pathological gambling and other addictions.³⁴

The National Collegiate Athletic Association has adopted legislation prohibiting university athletics department members, athletics conference office staff, and student athletes from engaging in wagering activities related to intercollegiate or professional sporting events. Violations of NCAA gambling regulations carry stringent penalties. The NCAA also has created a full-time staff position devoted to agent and gambling issues.³⁵

Current NCAA initiatives recognize the importance of raising awareness of the problems associated with sports wagering and problem and pathological gambling. Television broadcast has proven to be a powerful tool for educating the public about the problems associated with sports wagering. The NCAA contracts with CBS and ESPN to run public service announcements (PSA's) during the broadcast of popular sporting events, such as the Division I men's basketball tournament.³⁶ In 1998, CBS, in conjunction with the NCAA, developed a lengthy segment on sports wagering that aired between the Division I men's basketball semifinal games. These

announcements are only a part of the larger gambling education programs that the NCAA plans to develop.³⁷

CONVENIENCE GAMBLING³⁸ AND STAND-ALONE ELECTRONIC GAMBLING DEVICES

Stand-alone EGD's are seldom well regulated outside Nevada. Because EGD's can be placed in a wide variety of locations, they can be difficult to monitor. State regulation of convenience gambling includes licensing, regulation of the placement of machines within an establishment, age restrictions, regulation of operations, and taxation of revenues. States that permit convenience gambling have various methods of regulating the operation, distribution, and allocation of machines. Licensure is usually processed in state gambling commissions. An exception is South Carolina, where the Department of Revenue administers the machines. Applicants' character, past criminal records, business competence, and experience is evaluated during the licensing process. In addition, the operation and number of machines is regulated, since many states allow only a limited number of convenience gambling machines in certain locations. For example, in Nevada, locations with non-casino gambling licenses may operate a maximum of 15 devices. South Carolina machine operators are limited to only five machines per "single place or premise."

State regulations also dictate the qualifications and specifications of convenience gambling machines that are permitted. Some states also limit the amount of money played and the value of prizes. In Montana, each video draw poker or keno machine is not allowed to credit more than \$800. In Oregon, to ensure age-controlled access

³⁴ See Jeff Pash, Executive Vice president of the NFL, Testimony before the Senate Subcommittee on Technology, Terrorism and Governmental Information, Washington, DC, July 28, 1997.

³⁵ See letter from Cedric Dempsey, Executive Director of the NCAA to Commissioner McCarthy, NGISC, October 16, 1997, on file with the NGISC.

³⁶ See letter from Cedric Dempsey, Executive Director of the NCAA, to Kay James, NGISC, April 28, 1999, on file with the NGISC.

³⁷ Ibid.

³⁸ Most commonly, "convenience gambling" is defined as any gambling activity that encompass various electronic versions of bingo, keno, blackjack, lottery, video poker, or any other electronic, electromechanical, or mechanical games that operate by chance and that award the player with game award credits or free games. It is legal in Nevada, South Carolina, Montana, Louisiana, Oregon, and South Dakota.

to video lottery, locations are off-limits to minors.

The fees that convenience gambling operators have to pay to the state government vary state by state. For example, Oregon collects excise taxes from retailers who operate the video lottery games and since 1992, the EGD's excise taxes have provided \$8.5 million to the state.³⁹ In Louisiana, license fees paid to the state and local governments for the period of July 1998 through March 1999 were \$148,848,000.⁴⁰

Attempts to regulate legal convenience gambling in South Carolina have been marginally successful. In an attempt to curb the growth of gambling, state officials decreed that no business could have more than five EGD's and limited daily payouts to \$125. However, these attempts at regulation are easily circumvented by establishments that partition their outlets into separate rooms, each containing five machines and an attendant.⁴¹ Video poker outlets often advertise and offer jackpots much greater than the \$125 limit allowed by law. In addition to being difficult to regulate, convenience gambling revenues are not evenly distributed. One quarter of South Carolina's machines are owned by just three operators: Collins, McDonald's Amusements of Little River, and Tim's Amusement of Greenville.⁴²

Illegal and quasi-legal EGD's (or so-called gray machines) are often considered a challenging yet low-priority law enforcement problem. Some states report bribery of police and other law enforcement officers. Confiscation is one method of enforcement but has proven ineffective since the confiscated machines are easily replaced. Moreover, penalty fees are usually low in comparison to the profit or "payoff."

In Illinois, with an estimated 65,000 illegal or quasi-legal EGD's,⁴³ video slot machines are classified as games of chance and are banned throughout the state. Supporters of video poker machines, however, claim that since poker requires some skill and does not rely on chance alone, the machines are therefore not illegal under existing law. The distinction is clear to the many bar and club owners who earn significant, largely untaxed profits from video poker machines. Owners of competing establishments contend that illegal gambling devices give some businesses an unfair advantage because the profits can be used to subsidize prices on food, drinks, or even gasoline.⁴⁴

Some states have considered replacing the EGD's with state-approved machines provided by commercial distributors. This would allow the regulation and taxation of the machines. In South Dakota, the state government gets 49.5 percent of the profits from the machines, while local bar owners and machine operators split the other 50.5 percent.⁴⁵ In Oregon, a 1992 law gives the state, which owns the machines outright, 67 percent of the profit. Local proprietors get 33 percent.⁴⁶ Some recommendations in improving the regulation of illegal convenience gambling include that of improving the local licensing, numbering and tracking of machines. Also targeting the manufacturers and distributors as well as organized crime and shop-owners could improve the regulation of convenience gambling.

ADVERTISING

Current restrictions limit the scope of advertising allowed by gambling facilities, but do not completely ban it. For example, casinos are allowed to advertise their restaurant and

³⁹ Source: Response from Governor Kitzhaber on April 26, 1999.

⁴⁰ Source: Response from Governor Foster on April 28, 1999.

⁴¹ "Industry Stirs Money, Controversy: South Carolina Illustrates How Video Gambling Can Impact a State," *Sarasota Herald-Trib.*, February 22, 1999, p. 1A.

⁴² "Video Poker generates millions for some South Carolina entrepreneurs," *The State*, March 21, 1999.

⁴³ Cam Simpson, "Gambling raid in west suburbs," *Chicago Sun-Times*, November 17, 1997.

⁴⁴ "Bars warily consider return of video poker: Court has struck down ban on the machines," *St. Louis Post-Dispatch*, February 10, 1999.

⁴⁵ "Video Poker: Why reward vendors," *The Charleston Gazette*, March 5, 1999, p. 4A.

⁴⁶ *Ibid.*

entertainment venues but not their gambling activities. Native American tribes, church bingo nights, and state-run lotteries are permitted to advertise gambling.

Supporting a Restriction on Advertising

The reason for the uneven restrictions on gambling advertising stems from differing interpretations of First Amendment protections, as well as exemptions granted in regulatory statutes. The rationale for existing prohibitions is complex, but rests on two assumptions: first, the federal prohibition on commercial gambling advertising assumes that casino gambling has a causal relationship with social ills; and ⁴⁷ second, that advertising increases gambling behavior both by enticing people to do more gambling than they otherwise would do and by recruiting people to gamble who otherwise might not.

The Foundation for the Ban: The Federal Communications Act

The Federal Communications Act of 1934 was the first attempt to provide a statutory basis for restrictions on gambling advertising. Although the Act has been significantly changed and a number of exceptions added, there continue to be federal restrictions on many forms of gambling advertising. The Federal Communications Act prohibited lottery advertisements, extending an earlier prohibition on the use of the U.S. Postal Service to radio.⁴⁸ As a result, Title 18 of the United States Code §1304 provides:

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcast of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes

drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prize, shall be fined under this title or imprisoned not more than one year, or both.

The Federal Communications Commission (FCC) is the agency authorized to enforce Title 18.⁴⁹ In that capacity, the FCC implemented regulation 47 C.F.R. §73.121 prohibiting broadcasting advertising of any “lottery, gift enterprise, or similar scheme.” Title 18 states, in part:

- (a) No license of an AM, FM, or television broadcast station...shall broadcast any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

A number of exceptions undercut the original sweeping scope of the Act. The exceptions include state lotteries,⁵⁰ fishing contests,⁵¹ gambling conducted by an Indian Tribe pursuant to the Indian Gaming Regulatory Act,⁵² a lottery, gift enterprise or similar scheme by a not-for-profit organization or a governmental organization⁵³ or conducted as a promotional activity by a commercial organization.⁵⁴ Additional exceptions include horse racing and off-track betting.⁵⁵

⁴⁹ FCC rule 73.1211. See 47 C.F.R. §76.213

⁵⁰ (18 U.S.C. 1307 (a); 102 Stat. 3205).

⁵¹ 18 U.S.C. 1395.

⁵² 25 U.S.C. 2701 et seq.

⁵³ (18 U.S.C. 1307 (a); 102 Stat. 3205).

⁵⁴ Ibid.

⁵⁵ 41 F.C.C 2d 172 (1973) and 47 U.S.C. §307.

⁴⁷ 988 F. Supp 497 (D.N.J. 1997).

⁴⁸ See Anthony N. Cabot, et al., supra note 2 at 51-80.

Federal Appeals courts are split on the constitutionality of the Act. Therefore, the ban is currently in effect in only some parts of the United States. Some jurisdictions have struck down the ban outright. For example, in *Valley Broadcasting Co. v. United States*,⁵⁶ the 9th U.S. Circuit Court of Appeals struck down the ban in 1998, blocking enforcement in nine Western states: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. As a result of the Valley case, the FCC stated it would not enforce the ban in Nevada.⁵⁷ In *Players International Inc. v. United States*,⁵⁸ the U.S. District Court in New Jersey ruled that the federal ban violates the First Amendment rights of casinos and broadcasters. As a result of the *Players* case, the FCC stated it would not enforce the advertising ban in New Jersey, where the case had jurisdiction.⁵⁹

Other jurisdictions have upheld the ban. In *Posadas de Puerto Rico Associates v. Tourism Co.*,⁶⁰ the U.S. Supreme Court in 1986 upheld the constitutionality of a Puerto Rico law that prohibited the advertising of casino gambling aimed at residents of Puerto Rico, but permitted such advertising aimed at tourists. In *United States v. Edge Broadcasting Co.*,⁶¹ the U.S. Supreme Court also upheld a federal statute that prohibited the airing of lottery advertising by broadcasters licensed in states that prohibit lotteries, while allowing such advertising by broadcasters in states where lotteries were permitted.

Is the Ban an Indirect Gambling Regulation?

Given these assumptions, the ban on gambling advertising can be interpreted as an indirect

attempt to regulate people's gambling behavior and, in turn, minimize gambling's social costs. The interpretation of the ban as an indirect gambling regulation has led to differing arguments for and against the ban, all challenging or supporting the two underlying assumptions outlined above.

In *United States v. Players International*, the plaintiffs argued that a ban on gambling advertising can be interpreted as an indirect attempt to regulate people's gambling behavior by regulating commercial speech about gambling. The main thrust of the plaintiff's argument in *Players* revolved around the contention that there exist non-speech regulating "alternatives" to the broadcast ban on gambling casinos. They argued that because people's gambling behavior can be regulated through non-speech means, then non-speech regulating policy alternatives should be considered. In short, the *Players* case encourages the direct regulation of people's conduct rather than a ban on speech about that conduct, particularly when it is legal conduct. This case also questions the primary assumption that the federal government can show "any causal connection between casino gambling and the social ills that the federal government seeks to prevent."⁶²

The argument supporting the ban makes similar assumptions with one major difference. Supporters of the ban assume that gambling advertising does influence (or induce) gambling behavior and that there is a causal relationship between gambling behavior and social ills. Therefore, states, in their role of protector of their citizens, need "legislative flexibility" in order to allow them to protect their citizens from the advertisement of the private gambling industry, which recruits new players and encourages new ones, thereby contributing to social ills through advertising.

⁵⁶ 107 F.3D 1328 (9th Cir. 1997), cert. denied, 118 S.Ct. 1050 (1998).

⁵⁷ Nora FitzGerald, "Gambling Fever," *Adweek* (Eastern Edition), January 26, 1998.

⁵⁸ 988 f. supp 497 (D.N.J. 1997).

⁵⁹ FitzGerald, *supra*, note 52.

⁶⁰ 478 U.S. 328 (1986).

⁶¹ 409 U.S. 418 (1993).

⁶² *Ibid.*

The New Orleans Case

Recently, in the much-discussed case of *Greater New Orleans Broadcasting v. United States*,⁶³ the 5th U.S. Circuit Court of Appeals has upheld the ban.⁶⁴ In this case, the Greater New Orleans Broadcasters Association challenged federal restrictions barring gambling advertising from crossing state lines and FCC regulations providing additional sanctions. The Federal District Court had earlier found in summary judgment that governmental interests were sufficient to override free speech concerns. The Appellate Court agreed in 1995.⁶⁵ In a 1996 ruling, the Supreme Court sent the case back to the lower courts. However, on remand, the 5th Circuit again upheld the advertising ban, precipitating the upcoming review by the Supreme Court.⁶⁶ As a result of these exceptions and contradictory decisions, "what remains of that prohibition is a vague regulatory scheme propped up by obscure, often unpublished rulings and undermined by a hodgepodge of congressionally approved exceptions."⁶⁷ The Supreme Court recently heard the Greater New Orleans Broadcasting case and is expected to offer a decision shortly.⁶⁸

Interpretations of New Orleans

There are at least two sides to the argument about the ban on gambling advertising expressed in the *New Orleans* case. The American Association of Advertising Agencies argues that gambling advertising is commercial speech, protected under the First Amendment, and

should not be banned or restricted. Relying on the *44 Liquormart v. Rhode Island* decision,⁶⁹ in which the Supreme Court struck down a state ban on advertising the price of alcoholic beverages, they believe that the Court will find the restriction on gambling to be analogous and, therefore, unconstitutional.

The Clinton Administration continues to support the ban, arguing that there is a compelling state interest in banning gambling advertising. In an appeal of the *Players* case, the government attorney argued that broadcast advertising of casino gambling "would directly contribute to compulsive gambling by reaching into the homes of current and potential compulsive gamblers".⁷⁰

Lottery Advertising

While gambling advertising is generally a controversial topic, it is even more controversial when state governments themselves actively promote gambling through advertising. Running a lottery places states in a new business. Many states "have adopted the tools of commercial marketing, including product design, promotions, and advertising" to promote their lotteries.⁷¹ In 1997 state lotteries spent a total of \$400 million to advertise, about one percent of total sales.⁷² Unlike many governmental promotions, which are straightforward, low-tech, and serious, lottery advertising can be characterized as persuasive, glitzy, and humorous. This attempt to make gambling attractive is sanctioned by the state, promoted by the state, and paid for by the state. (See Table 3-1.)

One particularly troublesome component of lottery advertising is that much of it is misleading, even deceptive. State lotteries are

⁶³ 149 F.3d 334 (5th Cir. 1998).

⁶⁴ Richard Carelli, Law Banning Casino Ads Reviewed, AP Online, January 15, 1999.

⁶⁵ *Greater New Orleans Broadcasting Association v. United States*, 69 F.3d 1296 (5th Cir. 1995).

⁶⁶ See Alicia Mundy, "Court Rules on Vice Ads; Supreme Court May Rule on Casino Advertising," Adweek, August 10, 1998.

⁶⁷ Argument of New Orleans Broadcasters, cited in Scott Ritter, Supreme Court Refuses to Review Ban on Casino Gaming Ads, Dow Jones Newswires, January 11, 1999.

⁶⁸ *Greater New Orleans Broadcasting v. United States*, Supreme Court of the United States, 98-387, writ of certiorari granted, January 15, 1999. See Associated Press, Supreme Court to Consider Advertising Ban on Casinos, wire copy, January 18, 1999.

⁶⁹ 517 U.S. 484 (1996).

⁷⁰ Richard Carelli, "Gambling Ad Ban Full of Exceptions," AP Online, December 28, 1998.

⁷¹ Clotfelter and Cook, supra note xx at 9.

⁷² Patricia A. McQueen, Investing in Tomorrow, International Gaming and Wagering Business at 48 (January 1998), cited in Clotfelter and Cook, supra note xx at 11.

Table 3-1

Advertising Themes Used in Marketing Plans of State Lottery Agencies, 1998

	Plans using theme (%)
Size of the prize or the jackpot	56
Fun and excitement of playing the lottery	56
Winner Awareness	46
Benefits to state of lottery dollars	28
Sports themes	28
Product Awareness	24
How to Play	20
Playing responsibly	16
Odds of winning	16
Tie-in with fairs and festivals	12
Play more often	12
Emotions of Winning	12
Answer to your Dream	12
Benefits of Winning	8
Instant gratification	8
Social interaction of playing	4
Low Price	4

Source: Charles T. Clotfelter, Philip J. Cook, Julie A. Edell, and Marian Moore, "State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission." Duke University, 1999. Table 13.

exempt from the Federal Trade Commissions' truth-in-advertising standards because they are state entities and, in terms of their advertising, can in fact operate in a manner that true commercial businesses cannot.⁷³ While the Federal Trade Commission requires statements about probability of winning in commercial sweepstakes games, there is no such federal requirement for lotteries. Lottery advertising rarely explains the poor odds of winning. Many advertisements imply that the odds of winning are even "better than you might think." For example, one video presented to the Commission stated that "chances are good you can be \$10,000 richer". An ad aired in Texas compared the odds of winning the lottery to the odds of some everyday events, implying that winning the lottery is possible, perhaps even probable.⁷⁴

In addition to being misleading, lottery advertising messages often exploit themes that conflict with the state's role as protector of the public good. For example, many advertisements emphasize luck over hard work, instant gratification over prudent investment, and entertainment over savings. New York's "All you need is a dollar and a dream" ad campaign was particularly emblematic of the theme that lotteries provide an avenue to financial success. The idea that the lottery is an investment in your future is particularly troublesome when targeted toward populations that are least able to afford to play.

Lottery advertising is also manipulative when it encourages players to play the lottery in order to contribute to state programs. Because lottery revenues are often earmarked for specific purposes, such as education, lottery advertising sometimes exploits the idea that playing the lottery can make you "feel good." This message implies that buying a lottery ticket is akin to supporting social programs, with the added benefit that you could become a millionaire

⁷³ Ellen Perlman, "Lotto's Little Luxuries," *Governing*, December 1996, p. 18.

⁷⁴ Testimony of Philip Cook, before the NGISC, March 18, 1999, Washington, DC.

yourself in the process. One video clip presented to the Commission emphasized that lottery dollars provide education and job training, encouraging the idea that by playing the lottery, a gambler can help other people improve their lives.⁷⁵

There is also concern that lottery ads target particularly vulnerable populations, specifically youth and the poor. Some lottery ads presented to the Commission showed young people playing the lottery.⁷⁶ The appeal of such images, and the illegality of underage lottery purchases in most states, raises justifiable concerns about the role of state governments as a promoter and participant in this type of gambling promotion.

The concern over lottery marketing themes and messages prompted several states to place restriction on what kind of advertising its lottery agency could do. In particular, Virginia, Minnesota, and Wisconsin ban ads designed to induce people to play. A few other states require odds of winning to be displayed or ads to be accurate and not misleading.⁷⁷

Time for an Advertising 'Pause'

Underlying the legal arguments for and against the ban on gambling advertising are larger questions about the relationship between commercial speech and legalized behavior. While many states have legalized gambling activity, some states continue to support the ban on advertising for that very activity. In addition, some states actively promote their lotteries while continuing to support the ban on gambling advertising for commercial casinos. Although contradictory on the surface, conflicting policies are often the product of incremental decisionmaking rather than uncertainty. It is important that states ensure that their gambling policies and regulations match their objectives

while simultaneously protecting the public interest.

This Commission is aware that the legal landscape may change with the Supreme Court's decision in the Greater New Orleans case. This Commission is preparing for the possibility of the Supreme Court lifting the advertising ban. If the ban is lifted, there could be a proliferation of gambling advertising across the United States. Given this rare advertising "pause" prior to the Court's decision, this Commission has an opportunity and responsibility to address the issue of gambling advertising. One suggestion is the adoption of a "best practices" paradigm for gambling advertising, possibly modeled after the guidelines created by both the North American Association of State and Provincial Lotteries and the American Gaming Association (see Attachments A, B, and C at the end of this chapter).

RECOMMENDATIONS

3.1 The Commission recommends to state governments and the federal government that states are best equipped to regulate gambling within their own borders with two exceptions—tribal and Internet gambling. (See separate recommendations on tribal and Internet gambling in their respective chapters.)

3.2 The Commission recommends that all legal gambling should be restricted to those who are at least 21 years of age and that those who are under 21 years of age should not be allowed to loiter in areas where gambling activity occurs.

3.3 The Commission recommends that gambling "cruises to nowhere" should be prohibited unless the state from which the cruise originates adopts legislation specifically legalizing such cruises consistent with existing law.

3.4 The Commission recommends that warnings regarding the dangers and risks of gambling, as well as the odds where feasible, should be posted in prominent locations in all gambling facilities.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission. Charles T. Clotfelter, Philip J. Cook, Julie A. Edell and Marion Moore, April 1, 1999.

3.5 The Commission recognizes the difficulty of campaign finance reform in general and an industry-specific contribution restriction in particular. Nonetheless the Commission believes that there are sound reasons to recommend that states adopt tight restrictions on contributions to state and local campaigns by entities—corporate, private, or tribal—that have applied for or have been granted the privilege of operating gambling facilities.

3.6 The Commission received testimony that convenience gambling, such as electronic devices in neighborhood outlets, provides fewer economic benefits and creates potentially greater social costs by making gambling more available and accessible. Therefore, the Commission recommends that states should not authorize any further convenience gambling operations and should cease and roll back existing operations.

3.7 The Commission recommends that the betting on collegiate and amateur athletic events that is currently legal be banned altogether.

3.8 The Commission recommends that in states where there is little regulatory oversight for organizations contracted to help manage or supply the lottery, states should put all individuals, entities, and organizations involved with managing or supplying the lottery through a rigorous background check and licensing process.

3.9 The Commission recommends to states with lotteries that the states should publicly develop and review model regulations for their lottery in the form of “best practices,” designed to be adopted legislatively.

3.10 The Commission urges states with lotteries to disallow instant games that are simulations of live card and other casino-type games. Generally, the outcome of an instant game is determined at the point of sale by the lottery terminal that issues the ticket.

3.11 The Commission recommends that all relevant governmental gambling regulatory

agencies should ban aggressive advertising strategies, especially those that target people in impoverished neighborhoods or youth anywhere.

3.12 The Commission recommends that states should refuse to allow the introduction of casino-style gambling into pari-mutuel facilities for the primary purpose of saving a pari-mutuel facility that the market has determined no longer serves the community or for the purpose of competing with other forms of gambling.

3.13 The Commission recommends to state and tribal governments, the NCAA, and other youth, school, and collegiate athletic organizations that, because sports gambling is popular among adolescents and may act as a gateway to other forms of gambling, such organizations and governments should fund educational and prevention programs to help the public recognize that almost all sports gambling is illegal and can have serious consequences. The Commission recommends that this effort should include public service announcements, especially during tournament and bowl game coverage. The Commission recommends that the NCAA and other amateur sports governing bodies adopt mandatory codes of conduct regarding sports gambling education and prevention. The Commission also calls upon the NCAA to organize U.S. research universities to apply their resources to develop scientific research on adolescent gambling, sports gambling, and related research.

3.14 The Commission recommends that each gambling operation, state lottery, tribal government, and associations of gambling organizations voluntarily adopt and then follow enforceable advertising guidelines. These guidelines should avoid explicit or implicit appeals to vulnerable populations, including youth and low-income neighborhoods. Enforcement should include a mechanism for recognizing and addressing any citizen complaints that might arise regarding advertisements. Additionally, the Commission recommends that Congress amend the federal truth-in-advertising laws to include Native

American gambling and state-sponsored lotteries.

3.15 The Commission recommends that the Congress should delegate to the appropriate federal agency the task of annually gathering data concerning lottery operations in the United States, including: volume of purchase; demographics of lottery players and patterns of play by demographics; nature, content, accuracy, and type of advertising spending regarding problem and pathological gamblers; spending on regulation; and other relevant matters.

3.16 The Commission recommends that states and tribal governments should conduct periodic reassessments of the various forms of gambling permitted within their borders for the purpose of determining whether the public interest would be better served by limiting, eliminating, or expanding one or more of those forms.

3.17 The Commission recommends that federal, state, and tribal gambling regulators should be subject to a cooling-off period that prevents them from working for any gambling operation subject to their jurisdiction for a period of 1 year. Federal, state, or tribal lottery employees should be subject to a cooling-off period that prevents them from working for any supplier of lottery services for a period of 1 year.

3.18 The Commission recommends that jurisdictions considering the introduction of new forms of gambling or the significant expansion of existing gambling operations should sponsor comprehensive gambling impact statements. Such analyses should be conducted by qualified independent research organizations and should encompass, in so far as possible, the economic, social, and regional effects of the proposed action.

3.19 The Commission recommends that states with lotteries reduce their sales dependence on low-income neighborhoods and heavy players in a variety of ways, including limiting advertising and number of sales outlets in low-income areas.

3.20 The Commission recommends that states with lotteries create a private citizen oversight board. The board would make data-based policy decisions on types of games to offer, marketing strategies to follow, etc.

3.21 The Commission recognizes that lotteries and convenience gambling may play a significant role in the development of youthful gamblers. Further, with respect to all forms of legal and illegal gambling, the Commission recommends that all relevant governmental gambling regulatory agencies enact and enforce harsh penalties for abuse in this area involving underage gamblers. Penalties and enforcement efforts regarding underage gambling should be greatly increased.

3.22 Heavy governmental promotion of lotteries, largely located in neighborhoods, may contribute disproportionately to the culture of casual gambling in the United States. The Commission therefore recommends that states curtail the growth of new lottery games, reduce lottery advertising, and limit locations for lottery machines.

ATTACHMENT A

A “BEST PRACTICES” MODEL FOR CASINOS

At the Commission’s request, a guide to model regulation was developed by Michael Belletire, the former Chairman of the Illinois Gaming Board. His major points include:

LEGISLATIVE CLARITY OF PURPOSE

In crafting gambling statutes, a clear articulation of public purpose or legislative intent is essential. A statement of intent serves to clarify the standards by which the long-term acceptability of authorizing gambling activity may be measured. This type of statement may also serve to reconcile the adoption of statutory provisions that face potential constitutional challenges. Even more importantly, clarity of purpose provides the grounding against which to test regulatory and administrative decisions at the time of initial decisionmaking, as well as upon review or appeal. Integral with a statement of public purpose should be an explicitly stated commitment to the overarching principle of integrity.

Constitutional Considerations

Each state’s elected officials must carefully weigh constitutional history and language and contemporary public sentiment before enacting gambling legislation.

Organization of Regulation

The principle of integrity demands that administrative decisionmaking be placed in the hands of an appointed independent body, rather than a single individual subject to political influence. The decisionmaking body itself should exercise operating and administrative authority and must be further subject to appeal or oversight of its decisions.

Extent of Gambling Authorized

According to Belletire, “Perhaps the single most significant factor in shaping the dynamics of the regulatory process is the scope of legislatively authorized casino gambling.” However, by restricting the market and putting decisions in the hands of regulators and others, a statute intended to “limit the spread” of casino gambling could increase the potential for inappropriate influence in the awarding of licenses. Therefore, statutory safeguards should include consideration of the following:

- Independence in licensure decisionmaking.
- Placing the burden to prove suitability for licensure upon the applicant.
- An explicit requirement for competitive proposals for limited availability licenses.
- Carefully articulated policy standards for deciding among competing applications.

- Comprehensive disclosure of financial and political relationships.
- Explicit powers to review, investigate, and approve contractual relationships entered into by applicants and licensed operators.
- Requirements that ensure confidentiality in the treatment of sensitive personal and financial information balanced by appropriate public meeting requirements.
- In-depth and independent investigative practices and personnel.

Suitability and Investigations

A foundation of contemporary casino gambling regulation is the presumption that those involved in the ownership or control of casino operations must be deemed “suitable” for licensure or involvement in gambling. Appointed boards or commissions should be given broad powers to assess the background and integrity of owners and others deemed “key persons” of a gambling company.⁷⁸ The chief regulatory body should be empowered to establish which individuals or entities are deemed key persons. In order to be effective, regulators must be authorized to conduct in-depth background investigations. Legislation should mandate “full cooperation” from applicants, wherein the failure to provide information is grounds for determining unsuitability. It is advisable that persons with a felony conviction be statutorily prohibited from serving as a key person. It is also advisable for gambling statutes to explicitly authorize the gambling regulatory authority to compel the “disassociation” of persons found “unsuitable” for involvement, in addition to the authority to deny licensure to an entity. Personnel assigned to conduct investigations should be law enforcement officers of the state, as they have wide-ranging access to criminal and background information.

Enforcement

On-site agents enhance the ability of a regulatory body to identify operating irregularities. One of the most powerful tools in overseeing the conduct of gambling operations is the video camera surveillance system. Typically, surveillance requirements are imposed by rules and regulation rather than by statute.

Conformance with Anti-Gambling Statutes

Every state has statutory provisions that criminalize various forms of gambling activity. In enacting legislation authorizing gambling, proper attention should be paid to crafting appropriate exemptions to existing gambling prohibitions. Enforcing the honesty and integrity of legalized casino gambling requires an ability to prosecute those who engage in cheating at otherwise legal games. Attention must be paid to ensuring that appropriate and clearly enforceable criminal statutes exist to prosecute casino gambling cheaters.

Non-Gambling Business Relationships

A casino, like any large business, engages in a diverse set of outside business relationships in order to conduct operations. For this reason, it is important that casino jurisdictions—by statute, by rule, or both—

⁷⁸ A key person may be an individual or an entity that, by position, office, ownership, or relationship can exercise control or significant influence over, the broad policies, management or operations of a licensed entity. (Belletire)

exert a measure of oversight over all procurement decisions made by operators. This oversight might entail licensure of (non-gambling) provider entities or other regulatory measures. It is preferable that casino gambling enabling legislation expressly require that financing for casino operations be approved by the regulatory authority as being “appropriate and from a suitable source.”

Problem and Underage Gambling

States acting to authorize legalized casinos should consider statutory and regulatory policies that acknowledge problem gambling and seek to offset its impact. Measures to draw awareness to problem gambling should be initiated by the regulatory agency.

Statutes dealing with the age for legalized casino gambling should take a two-pronged direction. First, those licensed to operate casinos should be subject to strict regulatory oversight and held accountable for failing to consistently and diligently deter and detect attempts by underage persons to enter casinos or engage in gambling. Secondly, statutes should place responsibility upon young persons seeking to intentionally frustrate the law by gaining access to casino gambling. Specifically, states should consider promulgating petty or misdemeanor offense provisions that can be applied to persons gambling or facilitating entry by intent or deception.

ATTACHMENT B

NASPL ADVERTISING STANDARDS

The North American Association of State and Provincial Lotteries (NASPL) approved a list of advertising standards for their members on March 19, 1999.⁷⁹ These standards address the content and tone of lottery advertising, including the use of minors in ads, the inclusion of game information and a clear listing of lottery revenue beneficiaries. According to the NASPL, signatory NASPL members “will conduct their advertising and marketing practices in accordance with the provisions of these standards.”⁸⁰ These advertising standards are outlined below:

Content:

- Advertising should be consistent with principles of dignity, integrity, mission, and values of the industry and jurisdictions.
- Advertising should neither contain nor imply lewd or indecent language, images or actions.
- Advertising should not portray product abuse, excessive play, nor a preoccupation with gambling.
- Advertising should not imply nor portray any illegal activity.
- Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
- Advertising by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.
- Advertising should not encourage people to play excessively nor beyond their means.
- Advertising and marketing materials should include a responsible play message when appropriate.
- Responsible play public service or purchased media messages are appropriate, especially during large jackpot periods.
- Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising.
- Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person’s financial or personal difficulties.
- Advertising should not exhort play as a means of recovering past gambling nor other financial losses.
- Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.

⁷⁹ In addition to the national standards provided by NASPL, many state lotteries have created their own guidelines for advertising. The advertising codes for 24 lottery states were forwarded to the NGISC on April 20, 1999.

⁸⁰ See NASPL Advertising Standards, sent to NGISC by George Anderson, April 1999.

Tone:

- The lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment, nor a way to achieve financial security.
- Lottery advertisements should not be designed so as to imply urgency, should not make false promises, and should not present winning as the probable outcome.
- Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
- Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
- Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
- Advertising should not imply that lottery games are games of skill.

Minors:

- Persons depicted as lottery players in lottery advertising should not be, nor appear to be, under the legal purchase age.
- Age restriction should, at a minimum, be posted at the point of sale.
- Advertising should not appear in media directed primarily to those under the legal age.
- Lotteries should not be advertised at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
- Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.
- The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs.
- Celebrity or other testimonials should not be used that would primarily appeal to persons under the legal purchase age.

Game information:

- Odds of winning must be readily available to the public and be clearly stated.
- Advertising should state alternative case and annuity values where reasonable and appropriate.

Beneficiaries:

- Lotteries should provide information regarding the use of lottery proceeds.
- Advertising should clearly denote where lottery proceeds go, avoiding statements that could be confusing or misinterpreted.

ATTACHMENT C

“BEST PRACTICES” PARADIGM FOR ADVERTISING AND MARKETING

In January 1999, the Board of Directors of the American Gaming Association approved Voluntary Guidelines for Casinos Marketing and Advertising. These voluntary guidelines apply to the advertising and marketing of gambling in casinos. While they are intended for casino gambling, these guidelines can serve as a model for all forms of gambling advertising.

The purpose of these voluntary guidelines is two-fold:

- 1) To ensure responsible and appropriate advertising and marketing of casinos to adults that reflects generally accepted contemporary standards; and
- 2) To avoid casino advertising and marketing materials⁸¹ that specifically appeal to children and minors.

GENERAL GUIDELINES

- All casino advertising and marketing will contain a responsible gambling slogan and the toll-free telephone number for those individuals in need of assistance.
- Casino advertising and marketing materials are intended for adults who are of legal age to gamble in casinos.
- Casinos advertising and marketing materials should reflect generally accepted contemporary standards of good taste.
- Casino advertising and marketing materials should not imply or suggest any illegal activity of any kind.
- Casino advertising and marketing materials shall strictly comply with all state and federal standards to not make false or misleading claims or exaggerated representations about gambling activity.
- Casino advertising and marketing materials should not contain claims or representations that individuals are guaranteed social, financial, or personal success.
- Casino advertising and marketing materials should not feature current collegiate athletes.

⁸¹ For the purposes of the AGA guidelines, the terms “advertising” and “marketing” are defined to include, but are not limited to, radio and television broadcast off the premises, print, direct mail, billboard, and Internet promotions.

UNDERAGE GUIDELINES

- Casino advertising and marketing materials directed to or intended to appeal to persons below the legal age are prohibited.
- Casino advertising and marketing materials should not contain cartoon figures, symbols, celebrity/entertainer endorsements, and/or language designed to appeal specifically to children and minors.
- Casinos should not be advertised or promoted by anyone who is or appears to be below the legal age to participate in gambling activity. Models or actors should appear to be 25 years of age or older.
- Casino gambling should not be advertised or promoted in media specifically oriented to children and/or minors.
- Casino advertising and marketing should not be placed in media where most of the audience is reasonably expected to be below the legal age to participate in gambling activity.
- Where reasonably possible, casino advertising and marketing materials should not appear adjacent to or in close proximity to comics or other youth features.
- Casino gambling activity should not be advertised to or promoted at any U.S. venue where most of the audience is normally expected to be below the legal age to participate in gambling activity.
- Unless in response to a charitable request, clothing, toys, games, or other materials that appeal primarily to children or minors should not be given away at events where most of the audience is reasonably expected to be below the legal age to participate in gambling activity.
- Participation in casino gambling should not be promoted on college or university campuses or in college or university publications. This voluntary guideline is not intended to cover sponsorships sought by the institutions or their agents, legal employment ads or job fair participation, college scholarship offerings or other legitimate business, scholarship or employment relationships.
- Casino gambling activity should not be advertised or promoted on billboards or other outdoor displays that are adjacent to schools or other primarily youth-oriented locales.

CHAPTER 4. PROBLEM AND PATHOLOGICAL GAMBLING

In its 1997 meta-analysis of literature on problem and pathological gambling prevalence, the Harvard Medical School Division on Addictions, using “past year” measures, estimated at that time that there were 7.5 million American adult problem and pathological gamblers (5.3 million problem and 2.2 million pathological). The study also estimated there were 7.9 million American adolescent problem and pathological gamblers (5.7 million problem and 2.2 million pathological).¹

The “past year” estimates of American adults who gamble is 125 million. Based on the data available to the Commission, we estimate that about 117.5 million American adult gamblers do not evidence negative consequences (125 million minus the 7.5 million estimate of adults who are either problem or pathological gamblers). Because a comparable estimate of American adolescent gamblers has not been determined, there is no reliable way to calculate the number of adolescents who gamble without negative consequences.

There are several terms used to describe pathological gamblers. Clinically, the American Psychiatric Association (APA) in its Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) classifies pathological gambling as an impulse control disorder and describes 10 criteria to guide diagnoses, ranging from “repeated unsuccessful efforts to control, cut back, or stop gambling” to committing “illegal acts such as forgery, fraud, theft or embezzlement to finance gambling.” (See Table 4-1.)

These 10 criteria represent three dimensions: damage or disruption, loss of control, and dependence.

The National Research Council Review on Pathological Gambling states the American Psychiatric Association uses the terms “abuse” or “dependence,” not addiction. The lay public uses terms like “addiction” or “compulsive” interchangeably with the more scientifically accurate term “dependence.”

All seem to agree that pathological gamblers “engage in destructive behaviors: they commit crimes, they run up large debts, they damage relationships with family and friends, and they kill themselves. With the increased availability of gambling and new gambling technologies, pathological gambling has the potential to become even more widespread.”²

Most seem to agree that “problem gambling” includes those problem gamblers associated with a wide range of adverse consequences from their gambling, but fall below the threshold of at least five of the ten APA DSM-IV criteria used to define pathological gambling.

THE RESEARCH

The Commission determined its first priority in studying problem and pathological gambling was to bolster existing research with updated data on gambling behavior of the general population, which would include the prevalence of problem and pathological gambling. In addition, measurements of the economic and social impacts on communities from legalized gambling were compiled. As part of its contract with the Commission, the National Opinion Research Center (NORC) at the University of Chicago conducted a national survey of gambling behavior in the U.S. population, including a set of questions focused on problem gambling. In that survey, NORC interviewed 2,417 adults by telephone (the “telephone survey”) and 534 adolescents by telephone (the “adolescent telephone survey”). In addition, 530 adults in gambling facilities (the “patron survey”) were interviewed to increase the sample size of

¹ Dr. Howard Shaffer, “Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-Analysis,” (1997), p. 51.

² National Research Council, “Pathological Gambling: A Critical Review,” (April 1, 1999), p. Exec-2.

Table 4-1

DSM–IV Criteria for Pathological Gambling

Preoccupation	Is preoccupied with gambling (e.g., preoccupied with reliving past gambling experiences, handicapping or planning the next venture, or thinking of ways to get money with which to gamble)
Tolerance	Needs to gamble with increasing amounts of money in order to achieve the desired excitement
Withdrawal	Is restless or irritable when attempting to cut down or stop gambling
Escape	Gambles as a way of escaping from problems or relieving dysphoric mood (e.g., feelings of helplessness, guilt, anxiety, or depression)
Chasing	After losing money gambling, often returns another day in order to get even ("chasing one's losses")
Lying	Lies to family members, therapists, or others to conceal the extent of involvement with gambling
Loss of control	Has made repeated unsuccessful efforts to control, cut back, or stop gambling
Illegal acts	Has committed illegal acts (e.g., forgery, fraud, theft, or embezzlement) in order to finance gambling
Risked significant relationship	Has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling
Bailout	Has relied on others to provide money to relieve a desperate financial situation caused by gambling

Source: National Opinion Research Center at the University of Chicago, Gemini Research, and The Lewin Group. Gambling Impact and Behavior Study. Report to the National Gambling Impact Study Commission. April 1, 1999. Table 1, p. 16.

potential problem and pathological gamblers.³ Also, 100 communities across the country were selected for a detailed examination of the impact of gambling on a variety of indices, including financial health, crime, and social problems. NORC conducted case studies in 10 of these communities in which they interviewed 7 or 8 community leaders regarding their perceptions.

A separate research contract was given to the National Research Council (NRC) of the National Academy of Sciences for the purpose of conducting a thorough review of the available literature on problem and pathological gambling. This review covered 4,000 gambling-related references, including 1,600 specifically focused on problem or pathological gambling. Three hundred of these were empirical studies.⁴ Together, the NORC and NRC reports have added substantially to the publicly available literature on the subject and provide a valuable addition to our knowledge of gambling behavior, along with a clearer picture of the effects of problem and pathological gambling on individuals and their communities. These research findings are not the last word on the subject, however, indicating that much more research is needed. The studies are included in their entirety with this *Final Report* and may be found on the accompanying CD-ROM.

Despite the lack of basic research and consensus among scholars, the Commission is unanimous in its belief that the incidence of problem and pathological gambling is of sufficient severity to warrant immediate and enhanced attention on the part of public officials and others in the private and non-profit sectors. The Commission strongly urges those in positions of responsibility to move aggressively to reduce the occurrence of this malady in the general population and to alleviate the suffering of those afflicted.

³ National Opinion Research Center, "Gambling Impact and Behavior Study, Report to the National Gambling Impact Study Commission," (April 1, 1999).

⁴ NRC.

Risk Factors for Problem and Pathological Gambling

Although the causes of problem and pathological gambling remain unknown, there is no shortage of theories. For some, problem or pathological gambling results primarily from poor judgment and inadequate self-control. Others argue that problem or pathological gambling is often simply a developmental stage, which a person can outgrow. Especially interesting is research into the genetic basis of problem and pathological gambling. Given the present state of knowledge, there appears to be no single "root cause" of problem and pathological gambling; instead a variety of factors come into play.

According to the NRC study, certain patterns of behavior exist that may predispose a person to develop a gambling problem. For example:

- Pathological gambling often occurs in conjunction with other behavioral problems, including substance abuse, mood disorders, and personality disorders. The joint occurrence of two or more psychiatric problems—termed co-morbidity—is an important, though complicating, factor in studying the basis of this disorder. Is problem or pathological gambling a unique pathology that exists on its own or is it merely a symptom of a common predisposition, genetic or otherwise, that underlies all addictions?
- Pathological gamblers are more likely than non-pathological gamblers to report that their parents were pathological gamblers, indicating the possibility that genetic or role model factors may play a role in predisposing people to pathological gambling.
- Recent research suggests that the earlier a person begins to gamble, the more likely he or she is to become a pathological gambler. However, many people who report being heavy gamblers in their youth also report "aging out" of this pattern of behavior as they mature. This process is sometimes likened to college-age "binge" drinkers who may fit the definition of "problem drinker" while at

school but who significantly moderate their intake of alcohol after graduation.

These latter findings are an indication that environmental factors are significant. One of the most obvious of these is the availability of gambling opportunities. Whatever the ultimate cause of problem or pathological gambling, it is reasonable to assume that its manifestation depends, to some undetermined degree, on ease of access to gambling, legal, or otherwise. And the limited available evidence appears to support this assumption:

- NORC examined the nearby presence of gambling facilities as a contributing factor in the incidence of problem and pathological gambling in the general population. In examining combined data from its telephone and patron surveys, NORC found that the presence of a gambling facility within 50 miles roughly doubles the prevalence of problem and pathological gamblers. However, this finding was not replicated in NORC's phone survey data alone.
- Seven of the nine communities that NORC investigated reported that the number of problem and pathological gamblers increased after the introduction of nearby casino gambling.⁵
- NRC's review of multiple prevalence surveys over time concluded that "[S]ome of the greatest increases in the number of problem and pathological gamblers shown in these repeated surveys came over periods of expanded gambling opportunities in the states studied."

An examination of a number of surveys by Dr. Rachel Volberg concluded that states that introduced gambling had higher rates of problem and pathological gambling.⁶ The relationship between expanded gambling opportunities and

increased gambling behaviors was highlighted in the personal testimony received by the Commission. Ed Looney, executive director of the New Jersey Council on Compulsive Gambling, testified that the national helpline operated by his organization received significant increases in calls from locations where gambling had been expanded.⁷

ESTIMATING THE PREVALENCE

A more contentious subject than the actual source of problem or pathological gambling is estimating the percentage of the population suffering from pathological or problem gambling, however it is defined. Different studies have produced a wide range of estimates.

One reason for the variation in estimates centers on the timeline used. For example, studies using the DSM-IV may make a distinction between those gamblers who meet the criteria for pathological or problem gambling at sometime during their life ("lifetime") and those who meet the criteria only during the past 12 months ("past year"). Each approach has its defenders and critics. For the purpose of measuring prevalence in the general population, lifetime estimates run the risk of overestimating problem and pathological gambling because these estimates will include people who may recently have gone into recovery and no longer manifest any symptoms. On the other hand, past year measures may understate the problem because this number will not include people who continue to manifest pathological gambling behaviors, but who may not have engaged in such behavior within the past year.

Prior to the research undertaken by this Commission, the data on prevalence was scattered at best. Nevertheless, virtually all estimates indicate a serious national problem. For example, Dr. Shaffer's review of the existing literature on the subject concluded that approximately 1.6 percent of the adult population

⁵ NORC

⁶ Rachel A. Volberg, "Prevalence Studies of Problem Gambling in the United States," *Journal of Gambling Studies*, at 123 (Summer 1996).

⁷ Testimony of Edward Looney before the NGISC, January 22, 1998.

(3.2 million people) are lifetime “Level 3” gamblers (comparable to the DSM-IV’s “pathological” gamblers). Another 3.85 percent (7.7 million) are lifetime “Level 2” gamblers (those with problems below the pathological level).⁸

A number of state-based and regional studies also have been conducted, with mixed results. A 1997 survey in Oregon indicated that the lifetime prevalence of problem and pathological gambling in that state was 4.9 percent.⁹ Recent studies in Mississippi and Louisiana indicated that 7 percent of adults in those states could be classified as “lifetime” problem or pathological gamblers, with approximately 5 percent meeting “past year” criteria.¹⁰ The problems inherent in measuring this disorder are indicated in a study of surveys carried out in 17 states, which reported results ranging from 1.7 to 7.3 percent.¹¹

The Commission’s Research Findings

The goal of the Commission’s research was to provide reliable, solid numbers on the incidence of problem and pathological gambling in the national population and to better define the behavioral and demographic characteristics of gamblers in general. The NRC estimated the “lifetime” rate of pathological gambling to be 1.5 percent of the adult population, or approximately 3 million people. In addition, in a given year, 0.9

percent of all adults in the United States, approximately 1.8 million people, meet the necessary criteria to be categorized as “past year” pathological gamblers. The NRC estimated that another 3.9 percent of adults (7.8 million people) meet the “lifetime” criteria for problem gambling, and that 2 percent (4 million people) meet “past year” criteria. The NRC also stated that between 3 and 7 percent of those who have gambled in the past year reported some symptoms of problem or pathological gambling.¹²

The NORC study, based on a national phone survey supplemented with data from on-site interviews with patrons of gambling establishments, concluded that approximately 1.2 percent of the adult population (approximately 2.5 million people) are “lifetime” pathological gamblers and that 0.6 percent (approximately 1.2 million) were “past year.”¹³ An additional 1.5 percent¹⁴ of the adult population (approximately 3 million), fit the criteria for “lifetime” problem gamblers; “past year” problem gamblers were 0.7 percent of the population (approximately 1.4 million). Based on “lifetime” data, more than 15 million Americans were identified as “at-risk” gamblers.¹⁵ At-risk gamblers are defined as those who meet 1 or 2 of the DSM-IV criteria. They are “at risk” of becoming “problem” gamblers, but may also gamble recreationally throughout their lives without any negative consequences. These figures varied somewhat when examining phone survey or patron data alone, and also when measuring “past year” gambling as opposed to “lifetime.” (See Tables 4-2, 4-3, and 4-4.) The incidence of problem and pathological gambling among regular gamblers appears to be much higher than in the general population. In NORC’s survey of 530 patrons at gambling facilities, more than 13 percent met the lifetime criteria for pathological or problem gambling,

⁸ Howard Shaffer, et al., *Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-Analysis* (1997).

⁹ Rachel A. Volberg, *Gambling and Problem Gambling in Oregon: Report to the Oregon Gambling Addiction Treatment Foundation* at 37 (August 26, 1997).

¹⁰ Rachel A. Volberg, *Gambling and Problem Gambling in Mississippi: Report to the Mississippi Council on Compulsive Gambling* at 31 (November 1996).

¹¹ See Rachel Volberg, *Gambling and Problem Gambling in New York: A 10-Year Replication Survey, 1986 to 1996, Report to the New York Council on Problem Gambling* (1996) and Lynn S. Wallich, *Gambling in Texas: 1995 Survey of Adult and Adolescent Behavior, Texas Commission on Alcohol and Drug Abuse* (1996). Cited in Henry R. Lesieur, “Costs and Treatment of Pathological Gambling,” *The Annals of the American Academy of Political and Social Science* (March 1998).

¹² NRC, p. 3-6.

¹³ 0.6 percent past year. Numbers are based on data from patron and telephone survey. (random digit dial data alone is 9 percent).

¹⁴ 0.7 percent past year.

¹⁵ 5.8 million past year.

Table 4-2

Comparison of Problem and Pathological Gambling Prevalence Rates, General Adult Population

	University of Michigan (1976)		Harvard Meta-analysis (1997)		National Research Council (1999)		NORC RDD/Patrons Combined		NORC RDD (1999)	
	Rate per 100,000	Category	Rate per 100,000	Category	Rate per 100,000	Category	Rate per 100,000	Category	Rate per 100,000	Category
Lifetime	0.77	Probable compulsive gambler	1.60 (range = 1.35-1.85)	Level 3	1.5	Level 3	1.2	Pathological	0.8	Pathological
Lifetime	2.33	Potential compulsive gambler	3.85 (range = 2.94-4.76)	Level 2	3.9	Level 2	9.2	Sum of at risk (7.7) and problem (1.5)	9.2	Sum of at risk (7.9) and problem (1.3)
Past year	—	—	1.14 (range = 0.90-1.38)	Level 3	0.9	Level 3	0.6	Pathological	0.1	Pathological
Past year	—	—	2.80 (range = 1.95-3.65)	Level 2	2.0	Level 2	3.6	Sum of at risk (2.9) and problem (0.7)	2.7	Sum of at risk (2.3) and problem (0.4)

Notes: Level 3 = disordered gambling that satisfies diagnostic criteria; level 2 = pattern of gambling that is associated with adverse consequences but does not meet criteria for diagnosis as a pathological gambler; At risk = 1 or 2 DSM-IV criteria and lost more than \$100 in a single day; problem gambler = 3 or 4 DSM-IV criteria and lost more than \$100 in a single day; pathological gambler = 5 or more DSM-IV criteria and lost more than \$100 in a single day; RDD = household telephone survey; RDD/patrons combined = household telephone survey and interviews with patrons of gaming venues. National Research Council study used same codes as Harvard meta-analysis.

Sources: University of Michigan Survey Research Center for Commission on the Review of the National Policy Toward Gambling (1976); Shaffer et al., *Estimating the Prevalence of Disordered Gambling Behavior in the U.S. and Canada: A Meta-analysis* (1997); National Research Council, *Pathological Gambling: A Critical Review* (1999); National Opinion Research Center, *Gambling Impact and Behavior Study* (1999).

Table 4-3

Comparison of U.S. Adult Pathological and Problem Gambling With Alcohol and Drug Dependence and Abuse (percent)

	Pathological Gambling	Alcohol Dependence	Drug Dependence	Pathological and Problem Gambling	Alcohol Dependence and Abuse	Drug Dependence and Abuse
12-month	0.9	7.2	2.8	2.9	9.7	3.6
Lifetime	1.5	14.1	7.5	5.4	23.5	11.9
Source	Committee analysis of Shaffer et al., 1997 data	National Comorbidity Survey (NCS): Kessler et al., 1994	National Comorbidity Survey (NCS): Kessler et al., 1994	Committee analysis of Shaffer et al., 1997 data	National Comorbidity Survey (NCS): Kessler et al., 1994	National Comorbidity Survey (NCS): Kessler et al., 1994

Source: National Research Council. *Pathological Gambling: A Critical Review*. Washington, DC: National Academy Press, 1999. pp. 3-21.

Table 4-4

Comparing Lifetime and Past-year Prevalence Rates of Adult Psychiatric Disorders in the United States: Where Does Disordered Gambling Fit?

Disorder	Lifetime (%)	Past year (%)
Gambling Disorder (level 3*)	1.6	1.1
Antisocial Personality Disorder	2.6	1.2
Obsessive-Compulsive Disorder	2.6	1.7
Drug Abuse/Dependence	6.2	2.5
Major Depressive Episode	6.4	3.7
Generalized Anxiety Disorder	8.5	3.8
Alcohol Abuse/Dependence	13.8	6.3

*Level 3 = satisfies diagnostic criteria for pathological gambling as defined in DSM-IV.

Source: Shaffer, H.J., Hall, M.N., and Vander Bilt, J. *Estimating the Prevalence of Disordered Gambling in the United States and Canada: A Meta-analysis*. Boston: President and Fellows of Harvard College, 1997. p. 60.

Table 4-5

Prevalence of Gambling Problems Among Demographic Groups

Demographic Characteristic	At-Risk (n=267)	Problem (n=56)	Pathological (n=67)
	<i>Lifetime/Past-Year</i>	<i>Lifetime/Past-Year</i>	<i>Lifetime/Past-Year</i>
Gender			
Male	9.6 / 3.9	2.0 / 0.9	1.7 / 0.8
Female	6.0 / 2.0	1.1 / 0.6	0.8 / 0.3
Race			
White	6.8 / 2.7	1.4 / 0.6	1.0 / 0.5
Black	9.2 / 4.2	2.7 / 1.7	3.2 / 1.5
Hispanic	12.7 / 3.7	0.9 / 0.7	0.5 / 0.1
Other	8.8 / 1.8	1.2 / 0.5	0.9 / 0.4
Age			
18–29	10.1 / 3.9	2.1 / 1.0	1.3 / 0.3
30–39	6.9 / 2.1	1.5 / 0.8	1.0 / 0.6
40–49	8.9 / 3.3	1.9 / 0.7	1.4 / 0.8
50–64	6.1 / 3.6	1.2 / 0.3	2.2 / 0.9
65+	6.1 / 1.7	0.7 / 0.6	0.4 / 0.2
Education			
Less than HS	10.0 / 2.4	1.7 / 1.2	2.1 / 1.0
HS graduate	8.0 / 3.5	2.2 / 1.1	1.9 / 1.1
Some college	7.9 / 3.5	1.5 / 0.8	1.1 / 0.3
College graduate	6.4 / 2.0	0.8 / 0.2	0.5 / 0.1
Income			
< \$24,000	7.3 / 2.6	1.6 / 0.7	1.7 / 0.9
\$24,000–49,999	6.9 / 3.2	1.8 / 0.9	1.4 / 0.6
\$50,000–99,999	8.0 / 2.5	1.3 / 0.7	0.9 / 0.2
> \$100,000	13.4 / 4.9	1.4 / 0.4	0.7 / 0.2

Source: National Opinion Research Center at the University of Chicago, Gemini Research, and The Lewin Group. Gambling Impact and Behavior Study. Report to the National Gambling Impact Study Commission. April 1, 1999. Table 7, p. 26.

while another 18 percent were classified as “at risk” for developing severe gambling problems. By comparison, the NORC random digit dialing survey of 2,417 members of the general population found that 2.1 percent met the lifetime criteria for pathological or problem gambling, while 7.9 percent were classified as “at risk.”

It is possible that the numbers from the NRC and NORC studies may understate the extent of the problem. Player concealment or misrepresentation of information and the reliance of surveyors on telephone contact alone may cause important information on problem or pathological gamblers to be missed. For example, among pathological gamblers, a common characteristic—in fact, one of the DSM-IV criteria—is concealing the extent of their gambling. Data in the NORC survey support the theory that even non-problem gamblers tend to understate their negative experiences related to gambling. And, in fact, survey respondents greatly exaggerated their wins and underreported their losses¹⁶ Similarly, respondents were five times more likely to report that their spouse’s gambling contributed to a prior divorce than to admit that their own gambling was a factor.¹⁷ Thus, the actual prevalence rates may be significantly higher than those reported. Additional research is needed to verify the full scope of problem and pathological gambling.¹⁸

CHARACTERISTICS OF PATHOLOGICAL GAMBLERS

Although it is impossible to predict who will develop a gambling problem, it is clear that pathological and problem gamblers are found in every demographic group, from college students to the elderly, housewives to professionals, solid citizens to prison inmates. (See Table 4-5.) The following short vignettes relate the personal testimonies of the dangers and tragic consequences of pathological gambling.

¹⁶ NORC, pp. 31-34.

¹⁷ NORC, p. 48.

¹⁸ NORC.

Mary began visiting the riverboat casinos in Kansas City, Missouri, shortly after her husband of 40 years died. “It was something to do. The lights, the music, there were people around. You could forget where you were at,” she said. March 9, 1997, marked the one-year anniversary of her husband’s death. She decided to stay out that night to help forget the pain. She won several jackpots, including one of \$28,000. From then on, Mary became a regular. Casino workers knew her by name, and treated her as a VIP. In 1997, she received 14 W-2 forms from the casino, each representing a jackpot of over \$1,200.

But behind the wins were many, many losses. The money from her husband’s life insurance, his \$50,000 annual pension, and Mary’s monthly social security payment all went to the casinos. She then racked up \$85,000 in debt on her 14 credit cards. She was forced to file for bankruptcy. Not one did anyone in the casinos ever ask this 60-year-old grandmother if she had a problem with gambling. Instead, besides the free rooms and meals at the casino, she was also bombarded with marketing mailings. “They know you have no control,” she said. “They do everything they can to lure you in.”

—“Mary”

As a child, Scott watched his parents scrape by paycheck to paycheck. He vowed it would be different with him. “I thought the way to a good life was money,” the New York native said. “And I thought the way to a lot of money was gambling.” Scott placed his first bet with a bookie his freshman year of college. He found himself in debt within weeks. Later, he stole \$600 from his first employer, a supermarket, to cover gambling debts.

At age 24, Scott made his first trip to Atlantic City, his “real downfall.” “The casinos were an escape,” he said. “They gave meaning to my life.” They also helped Scott block out the depression caused by his earlier gambling activities. Sometimes he would make the two-hour drive twice each weekend. Other times he gambled as many as 50 hours straight.

His relationship with his parents, friends, and even girlfriends crumbled as his obsession with gambling grew. His savings account dwindled to nothing. He embezzled \$96,000 from the stock brokerage where he worked, then wrote \$100,000 in bad checks. Even his arrest, jail time, and then subsequent placement under house arrest didn’t deter him.

“I still went to Atlantic City with ankle bracelet on,” he said from the inpatient treatment center where he was being treated for his pathological gambling. “Nothing mattered to me but gambling.”

—“Scott,” New York

Bob and Robin C. sent their middle child off to college with high hopes. Rann was a state speech champion who graduated from high school in Kalispell, Montana. During his freshman year at Montana State University, they thought all was well with Rann. It was not. His first extended time away from home left him feeling isolated and lonely. He found relief by playing video keno.

Virtually overnight, he was hooked. Within months he had pawned almost all his possessions to gamble. He was forced to live out of his car. His parent remained in the dark until they discovered that Rann had been forging checks from their checking account. And until they found rifles, skis, and other belongings missing from their home. Rann had pawned them for gambling money.

Bewildered by their son’s behavior and at a loss as to how to help. Bob and Robin decided on a “tough love” approach. They called the authorities, who placed Rann in jail, and then in a pre-release program. During the months in pre-release, Rann was allowed to work. When he completed his sentence, he was given the \$2,500 he had earned during that time. Within a few days, Rann had gambled it away. Then he stole and pawned a VCR belonging to his employer. He was caught and sentenced again, this time for seven months.

Rann has begged for help for this “devil” that has tormented him. But the state of Montana, which profits handsomely from the losses of problem and pathological gamblers, does not offer help for compulsive gambling. Rann’s parents are attempting to locate professional help and to find the resources to pay for that help. Without it, they fear greatly for Rann’s future.

—“The C. Family,” Kalispell, Montana

Debbie had never been to a casino. So, shortly after casinos opened in nearby Black Hawk and Central City, Colorado, Debbie suggested to her husband that they make the hour trek from their Denver home. They enjoyed their first visit, then went again a few days later.

The novelty quickly wore off for Debbie, a licensed professional counselor. Such was not the case for her husband. Before long, he was visiting the casinos four and five nights a week. Within three months of their initial visit, Debbie became aware that the couple would have to file for bankruptcy. Her husband had lost close to \$40,000 in those three months—losses their combined income of \$3,000 per month could not sustain.

Still Debbie’s husband continued to gamble. Debbie filed for divorce, ending

17 years of marriage. Before his gambling problems, Debbie described her husband as a stable individual, an involved father with a strong work ethic. After gambling problems developed, Debbie found her husband virtually unrecognizable. There were episodes of domestic violence and bizarre behavior.

“The husband I divorced was not the husband that I married,” she said. “He’s a total stranger to me. He became a liar, he became a cheat, he became engaged in criminal and illegal activities.”

— “Debbie,” Denver, Colorado

As demonstrated by these testimonials, problem and pathological gambling affects a wide range of people and their families. Research is attempting to better classify those people at greatest risk, however. For example:

- Both the NRC and NORC studies found that men are more likely to be pathological, problem, or at-risk gamblers than women.
- Both studies found that pathological, problem, and at-risk gambling was proportionally higher among African Americans than other ethnic groups. Although little research has been conducted on gambling problems among Native American populations, the few studies that have been done indicate that Native Americans may be at increased risk for problem and pathological gambling.¹⁹
- NORC reported that pathological gambling occurs less frequently among individuals over age 65, among college graduates, and in households with incomes over \$100,000 per year.²⁰ NRC concluded that pathological gambling is found proportionately more often among the young, less educated, and poor.²¹

- Researchers have discovered high levels of other addictive behavior among problem and pathological gamblers, especially regarding drugs and alcohol. For example, estimates of the incidence of substance abuse among pathological gamblers ranges from 25 to 63 percent. Individuals admitted to chemical dependence treatment programs are three to six times more likely to be problem gamblers than are people from the general population.²² In its survey, NORC found that “respondents reporting at-risk, problem, and pathological gambling are more likely than low-risk or nongamblers to have ever been alcohol or drug-dependent and to have used illicit drugs in the past 12 months.”²³
- The Commission heard testimony that the prevalence of pathological gambling behavior may be higher among gambling industry employees than in the general population²⁴ and Dr. Robert Hunter, a specialist in pathological gambling treatment, has estimated that 15 percent of gambling industry employees have a gambling problem.²⁵ In recognition of this potential problem, 24 of the 25 largest non-tribal casinos surveyed by the Commission provide health insurance covering the cost of treating problem or pathological gambling among their employees.²⁶

UNDER-AGE PROBLEM GAMBLING

One of the most troubling aspects of problem and pathological gambling is its prevalence among

²² NRC, pp. 4-15.

²³ NORC, p. 30.

²⁴ Arnie Wexler, testimony before the NGISC, Atlantic City, New Jersey, January 20, 1998.

²⁵ Rex Butain, “There’s a Problem in the House,” *International Gambling & Wagering Business*, July 1996, p. 40.

²⁶ NORC’s analysis of NGISC casino survey, as described in this chapter, p. 15. In addition, about 6 of every 10 smaller, non-tribal casinos and a slightly higher proportion of tribal casinos also provided such coverage

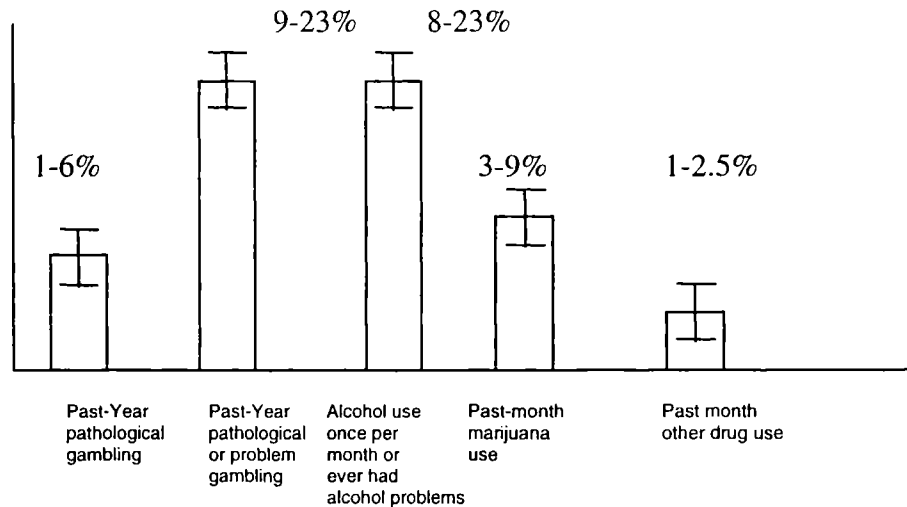
¹⁹ NRC, pp. 4-6, 4-16.

²⁰ NORC.

²¹ NRC, pp.3-15.

Figure 4-1

Gambling, Alcohol Use, and Drug Use Among Adolescents



Source: National Research Council. *Pathological Gambling: A Critical Review*. Committee on the Social and Economic Impact of Pathological Gambling, Committee on Law and Justice, Commission on Behavioral and Social Sciences and Education, National Research Council. Washington, DC: National Academy Press, 1999. Figure 3-10, p. 3-26.

youth and adolescents. (See Figure 4-1.) The available evidence indicates that individuals who begin gambling at an early age run a much higher lifetime risk of developing a gambling problem. Although the full scope of this problem remains to be defined, the Commission is unanimous in urging elected officials and others to focus on implementing more effective measures to address the problem of adolescent gambling.

There is much that the Commission does know regarding adolescent gambling, and much of it is troubling:

- Adolescent gamblers are more likely than adults to develop problem and pathological gambling. The NRC estimates that as many as 1.1 million adolescents between the ages of 12 and 18 are past year pathological gamblers, a much higher percentage than adults.²⁷ In the NORC study, the rate of problem and

pathological gambling among adolescents was found to be comparable to that of adults, but the rate of those “at-risk” was more than that for adults.²⁸

- Based on its survey of the research literature on problem and pathological gambling among adolescents, the NRC reported that estimates of the “past year” rate of adolescent problem and pathological gambling combined range from 11.3 to 27.7 percent, with a median of 20 percent. Estimates of “lifetime” adolescent pathological and problem gambling range between 7.7 and 34.9 percent, with a median of 11.2 percent. Examining pathological gambling alone, estimated rates of “past year” adolescent pathological gamblers rates range between 0.3 to 9.5 percent, with a median of 6.1 percent. For “lifetime” adolescent pathological gamblers, the estimates range

²⁷ NRC.

²⁸ NORC.

from 1.2 percent to 11.2 percent, with a median of 5.0 percent.²⁹

Clearly, adolescents are a segment of the population who are at particular risk of developing problems with gambling. This also is clearly an area in which targeted prevention efforts should be launched to curtail youth gambling. One program, funded by the Minnesota Department of Human Services, has developed a number of prevention measures aimed at youth, including the development of a curriculum that stresses the risks of gambling, speakers who relate their experiences with gambling, and the creation of posters and other printed material targeted specifically toward adolescents.

THE COSTS OF PROBLEM GAMBLING

Estimating the costs of problem and pathological gambling is an extraordinarily difficult exercise—and a subject of heated debate. Without common standards of measurement, comparisons are problematic at best. Dollar costs would allow the clearest comparisons, especially in relation to the economic benefits from gambling. Yet, how can human suffering be tallied in terms of money? And many of the consequences commonly attributed to problem gambling, such as divorce, child abuse, depression, and so forth, may be the result of many factors that are difficult to single out. Inevitably, attempts to estimate the costs of problem and pathological gambling differ enormously.

The Costs to Problem and Pathological Gamblers

Problem or pathological gambling can affect the life of the gambler and others in varied and profound ways. The NRC study stated that “although the research in this area is sparse, it suggests that the magnitude and extent of personal consequences on the pathological gambler and his or her family may be severe.”³⁰

²⁹ NRC.

³⁰ NRC, pp. 5-4.

That report notes that many families of pathological gamblers suffer from a variety of financial, physical, and emotional problems,³¹ including divorce, domestic violence, child abuse and neglect, and a range of problems stemming from the severe financial hardship that commonly results from problem and pathological gambling. Children of compulsive gamblers are more likely to engage in delinquent behaviors such as smoking, drinking, and using drugs, and have an increased risk of developing problem or pathological gambling themselves.³²

The National Research Council also noted the existence of a number of costly financial problems related to problem or pathological gambling, including crime, loss of employment, and bankruptcy. According to NRC, “As access to money becomes more limited, gamblers often resort to crime in order to pay debts, appease bookies, maintain appearances, and garner more money to gamble.”³³ NRC also states that “Another cost to pathological gamblers is loss of employment. Roughly one-fourth to one-third of gamblers in treatment in Gamblers Anonymous report the loss of their jobs due to gambling.”³⁴

In addition, according to NRC, “Bankruptcy presents yet another adverse consequence of excessive gambling. In one of the few studies to address bankruptcy, Ladouceur et al. (1994) found that 28 percent of the 60 pathological gamblers attending Gamblers Anonymous reported either that they had filed for bankruptcy or reported debts of \$75,000 to \$150,000.”³⁵

Others who are impacted by problem and pathological gambling include relatives and friends, who are often the source of money for the gambler. Employers may experience losses in the form of lowered productivity and time missed from work. Problem and pathological gamblers

³¹ NRC, pp. 5-2.

³² NRC, pp. 4-7, 4-8, 5-2.

³³ NRC, p. 5-3.

³⁴ NRC, p. 5-3.

³⁵ NRC, p. 5-4.

often engage in a variety of crimes, such as embezzlement, or simply default on their financial obligations. During our site visits, the Commission heard testimony from social service providers that churches, charities, domestic violence shelters, and homeless shelters are often significantly burdened by the problems created by problem and pathological gamblers.

Some costs can be assigned a dollar figure. The Commission heard repeated testimony from compulsive gamblers who reported losing tens and even hundreds of thousands of dollars to gambling. Problem and pathological gamblers appear to spend a disproportionate amount of money on gambling compared to non-problem gamblers.³⁶ According to NRC, these individuals report spending 4½ times as much on gambling each month as do non-problem gamblers.³⁷

The Costs to Society

In addition to the costs of problem and pathological gambling borne by the individual and his or her family, there are broader costs to society. NORC estimated that the annual average costs of job loss, unemployment benefits, welfare benefits, poor physical and mental health, and problem or pathological gambling treatment is approximately \$1,200 per pathological gambler per year and approximately \$715 per problem gambler per year.³⁸ NORC further estimated that lifetime costs (bankruptcy, arrests, imprisonment, legal fees for divorce, and so forth) at \$10,550 per pathological gambler, and \$5,130 per problem gambler. With these figures, NORC calculated that the aggregate annual costs of problem and pathological gambling caused by the factors cited above were approximately \$5 billion per year, in

addition to \$40 billion in estimated lifetime costs.³⁹

NORC admittedly “focuse[d] on a small number of tangible consequences”⁴⁰ and did not attempt to estimate the financial costs of any gambling-related incidences of theft, embezzlement, suicide, domestic violence, child abuse and neglect, and the non-legal costs of divorce.⁴¹ As a result, its figures must be taken as minimums. According to NORC: “The current economic impact of problem and pathological gambling, in terms of population or cost per prevalent case, appears smaller than the impacts of such lethal competitors as alcohol abuse (estimated annual cost of \$166 billion⁴²) and heart disease (estimated annual cost of \$125 billion⁴³). However, the costs that are measured through health-based estimates do not capture all of the consequences important to the person, family, or society. The burden of family breakdown, for example, is outside of these measures.”⁴⁴

TREATING THE PROBLEM

According to therapists and other professionals in the field, pathological gambling is a difficult disorder to treat. As with substance abuse, treatment for pathological gambling is a costly, time-consuming effort, often without quick results and with a high degree of re-occurrence. Given the lack of information about the root causes of the disorder and the relatively new awareness of the phenomenon, at least on a large scale, no single treatment approach has been devised. Instead, a variety of different approaches are employed, with mixed results.

³⁹ NORC, p. 53.

⁴⁰ NORC, p. 41.

⁴¹ NORC, p. 52.

⁴² NORC, p. 54.

⁴³ NORC, p. 54.

⁴⁴ NORC, p. 53.

³⁶ Henry R. Lesieur, “Costs and Treatment of Pathological Gambling,” *The Annals of the American Academy of Political and Social Science*, March 1998, p. 164.

³⁷ NRC, p. 3-7. NRC notes that reporting of gambling expenditures in general is of “dubious accuracy.”

³⁸ NORC, p. 52.

Unfortunately, as the NRC report noted, few studies exist that measure the effectiveness of different treatment methods. Those that do exist “lack a clear conceptual model and specification of outcome criteria, fail to report compliance and attrition rates, offer little description of actual treatment involved or measures to maintain treatment fidelity by the counselors, and provide inadequate length of follow-up.”⁴⁵ Not surprisingly, the effectiveness of these various treatments are “not well substantiated in the literature.”⁴⁶ However, one thing that is known is that each has a high recidivist rate. For example, the only known survey on the effectiveness of Gamblers Anonymous found that only 8 percent of GA members were in abstinence after one year in the group.⁴⁷

Understanding the rate and processes of natural recovery among pathological gamblers also would enhance our understanding of the etiology of the disorder and advance the development of treatment strategies. Several Canadian investigators have recently embarked on investigations of natural recovery among disordered gamblers. Dr. Rachel Volberg has conjectured that prevalence studies, which usually show a lower rate of pathological gambling among adults than youth, might be evidence of one form of natural recovery, as young people experience the “maturing-out” process and leave behind risky behaviors as they enter adulthood.⁴⁸ Natural recovery estimates also will affect economic cost studies.

The majority of state affiliates of the National Council on Problem Gambling report that most insurance companies and managed care providers do not reimburse treatment for pathological

gambling, even though pathological gambling is a recognized medical disorder. As a result, people seeking treatment generally must pay out of their own pockets, which severely limits treatment options given the limited financial resources of most pathological gamblers. Even where treatment is available, however, only a small percentage of pathological gamblers may actually seek help. According to NORC, preliminary research suggests that only 3 percent of pathological gamblers seek professional assistance in a given year.⁴⁹

Private Sector Efforts

After a quarter century of dynamic growth and heated competition, leaders in the gambling industry are only now beginning to seriously address the existence of problem and pathological gambling among millions of their patrons. The American Gaming Association (AGA)—which represents a wide range of casinos—has initiated several efforts to address problem and pathological gambling and is the largest source of funding for research on problem and pathological gambling. Members of the AGA have committed \$7 million to researching several aspects of problem and pathological gambling. Helplines also have been established by AGA. In addition, the industry has created the *Responsible Gaming Resource Guide* (2nd Ed.), which lists programs and efforts in each state to assist problem and pathological gamblers.

However laudable these efforts, industry funds earmarked for treatment for pathological gambling are miniscule compared to that industry’s total revenue. Critics have assailed the relatively modest industry efforts in this area by asserting that a large percentage of gambling revenues are derived from problem and pathological gamblers. NORC calculated that they account for about 15 percent of total U.S. gambling revenues,⁵⁰ or about \$7.6 billion per year (based on total annual gambling revenues of

⁴⁵ NRC.

⁴⁶ NRC.

⁴⁷ Ruth M. Stewart and r. Iain Brown, “an Outcome Study of Gamblers Anonymous,” *British Journal of Psychiatry*, volume 152, pp. 284–288, 1988, as cited in Henry R. Lesieur, “Costs and Treatment of Pathological Gambling,” *The Annals of the American Academy of Political and Social Science*, March 1998, p. 259.

⁴⁸ Rachel A. Volberg, “Wagering and problem wagering in Louisiana,” Report to the Louisiana Economic Development and Gaming Corporation (Roaring Spring, PA: Gemini Research).

⁴⁹ NRC, p. 51.

⁵⁰ NORC, p. 33.

\$50 billion). Dr. Henry Lesieur calculated that problem and pathological gamblers account for an average of 30.4 percent of total gambling expenditures in the 4 U.S. states and 3 Canadian provinces he examined.

Other recent studies at the state level provide further evidence. A 1998 study commissioned by the state of Montana found that problem and pathological gamblers account for 36 percent of electronic gambling device (EGD) revenues, 28 percent of live keno expenditures, and 18 percent of lottery scratch ticket sales.⁵⁰ A 1999 study for the Louisiana Gaming Control Board indicated that problem and pathological gamblers in Louisiana comprise 30 percent of all spending on riverboat casinos, 42 percent of Indian casino spending, and 27 percent of expenditures on EGD machines.⁵¹

In addition to casinos, the pari-mutuel industry also has begun to take steps to address the issues surrounding problem and pathological gambling. In 1998, the American Horse Council published the "Responsible Wagering Resources Guide for Racing Managers." Additionally, four major racing organizations—the National Thoroughbred Racing Association, Inc., the Thoroughbred Racing Associations of North America, Inc., Harness Tracks of America, and the American Quarter Horse Association—have joined together in an initiative to address problem and pathological gambling among both patrons and employees.⁵² The American Greyhound Track Operators Association has advised that "an all out effort will be undertaken this year to educate both management and patrons" about problem and pathological gambling.⁵³

Casino Questionnaire

The Commission mailed a questionnaire to approximately 550 casinos nationwide. Of 143 responses, the top 25 non-tribal casinos responded. Four of the top 20 tribal casinos responded.

There are some hopeful signs found in the responses:

- 15 of the largest 25 non-tribal casinos use professional personnel to train management and staff to help identify problem or pathological gamblers among their customers or employees. Not quite half of all tribal and non-tribal casinos below the top 25 that responded said they used such personnel.
- 11 of the largest 25 non-tribal casinos said they formulated criteria to guide staff in identifying problem and pathological gamblers. Around 4 of 10 among the non-tribal casinos below the top 25 and the tribal casinos responding set such criteria for their staff to follow.
- 24 of the 25 largest non-tribal casinos offered insurance coverage for the cost of treating problem or pathological gambling among employees. About 6 of every 10 among non-tribal casinos below the top 25 and slightly more among tribal casinos did likewise.
- 20 of the 25 largest non-tribal casinos contributed during 1998 to programs or organizations that foster research or treatment for problem and pathological gamblers. About 7 of every 10 tribal casinos and about half of the non-tribal casinos below the top 25 also contributed in varying amounts.
- The top 25 non-tribal casinos averaged four referrals for treatment during 1998 of either employees or customers to persons qualified to provide options for professional treatment. Non-tribal casinos below the top 25 provided referral guidance nine times on the average during 1998. Tribal casinos averaged 16 referrals in the same period, to record the best effort.

⁵¹ Polzin, et al., "Final Report Presented to the Montana Gambling Study Commission," Bureau of Business and Economic Research, University of Montana-Missoula and Gemini Research Ltd., September 30, 1998, p. 25.

⁵² Letter from James J. Hickey, Jr., president, American Horse Council, to Leo McCarthy, Commissioner, NGISC, April 20, 1999.

⁵³ Letter from Henry C. Cashen II, counsel to the American Greyhound Track Operators Association, to Kay James, NGISC chairman, April 22, 1999.

Non-Profit and Other Efforts

A number of grass-roots treatment groups have emerged throughout the United States in response to this problem. The National Council on Problem Gambling (NCPG) is a leader in this area, acting as a national coordinating body for its 34 state affiliates, as well as for other treatment organizations and self-help groups. Its overall purpose is to “disseminate information about problem and pathological gambling and to promote the development of services for those afflicted with the disorder.”⁵⁴ Among the services provided by the NCPG are a nationwide help line and a referral resource database. Funding comes from membership dues, affiliate dues, grants, and private contributions.⁵⁵

One of the most important non-profit groups working in this area is Gamblers Anonymous (GA). Modeled after the 12-step program of Alcoholics Anonymous, individuals can attend meetings in their area to receive support and counseling from fellow problem and pathological gamblers and professionals. The number of GA chapters has increased from 650 in 1990 to 1,328 in October of 1998, a period of rapid legalized gambling expansion.⁵⁶ In contrast to other non-profit organizations, GA is entirely funded through private contributions, mainly from its members.

Although some colleges offer training courses for counselors and treatment programs for students with gambling-related disorders, the most important contribution at the university level is in research. One of the leaders in the field—the Harvard University Medical School Division on Addictions—supports ongoing research and publication on addictive behavior, including a focus on problem and pathological gambling.⁵⁷

⁵⁴ *Supra* note 4, at 23-24.

⁵⁵ *Supra* note 4, at 24.

⁵⁶ Information provided by Gamblers Anonymous International Service Office, Los Angeles, California.

⁵⁷ *Supra* note 4, at 26.

Government Response

State Efforts

A few states have begun allocating a relatively small amount of money for treatment services, usually drawn from tax receipts on gambling revenues. These amounts, although inadequate to the task, represent a welcome start in providing sufficient resources.

Most state efforts involve contributing to non-profit organizations that deal with problem and pathological gambling. According to the National Council on Problem Gambling (NCPG), state governments focus on funding treatment and education on pathological and problem gambling rather than research efforts. However, state appropriations for problem and pathological gambling are small when compared to resources allotted to other mental health and substance abuse services.⁵⁸ According to the NCPG's 1998 National Survey of Problem Gambling Programs, the combined resource allocation by states is approximately \$20 million annually to 45 different organizations.⁵⁹ This amount represents only .01 percent of the total \$18.5 billion that states receive from gambling.⁶⁰ Most of the funds are portions of tax revenues from gambling operations within the state, private industry contributions and contributions by tribal governments.⁶¹

The amounts of funding, types of assistance programs, and the contributors vary greatly from state to state. For example, Iowa allots over \$3 million—less than 0.4 percent⁶² of its gross gambling revenues from lotteries, riverboat

⁵⁸ *See id.*, at 18-19.

⁵⁹ National Council on Problem Gambling, American Gaming Association, North American Association of State and Provincial Lotteries, 1998 *National Survey of Problem Gambling Programs* (1998).

⁶⁰ Eugene M. Christiansen, “An Overview of Gambling in the United States,” presented to the NGISC, February 8, 1999, Virginia Beach, Virginia. p.7.

⁶¹ *ibid.*

⁶² *International Gaming & Wagering Business*, August 1998, p. 13. Iowa's gross gambling revenues were \$807 million in 1997.

casinos, and slots at racetrack—to the Iowa Gambling Treatment Program. One of the few state-run efforts, it consists of two main components: promoting public awareness and offering assistance through its help-line. However, the program does not address treatment, training, research or prevention. Connecticut's approach is more comprehensive and treatment-oriented. There, the state government contributes a portion of lottery revenues and pari-mutuel tax revenues to the Connecticut Compulsive Gambling Treatment Program. This non-profit organization offers services for training, treatment, and prevention, conducts research, and raises public awareness.⁶³

Given the importance of prevention measures, especially those aimed at underage gamblers, some states have begun to establish public awareness and early intervention programs to curtail gambling problems before they begin or become severe. Few states, however, fund such programs at any significant level. The Commission heard testimony of one program funded by the Minnesota Department of Human Services that features several preventative measures that seem to be having a positive impact in that state. Many of those measures are aimed at youth, including the development of a curriculum that stresses the risks of gambling, speakers who relate their experiences with gambling, and the creation of posters and other printed material targeted specifically toward adolescents. Additional efforts have focused on other at-risk populations, including the elderly, people in substance abuse treatment programs, as well as specific ethnic groups.⁶⁴

Tribal Government Efforts

A number of tribal governments with casinos contribute to non-profit organizations that deal with mental health issues, human services, and addiction. For example the Mashantucket Pequot Nation in Connecticut, which owns the Foxwoods

casino, contributes \$200,000 annually to the Connecticut Council on Compulsive Gambling. The Oneidas in Wisconsin contribute \$35,000 annually to the Wisconsin Council on Problem Gambling. Other tribal governments also work with the Indian gambling associations within their states to fund problem gambling programs and promote awareness of problem and pathological gambling through distributed literature in their casino properties.⁶⁵

Federal Efforts

The principal contribution of the federal government to the treatment and prevention of problem and pathological gambling is in research, including that through this Commission and other entities. These include the national prevalence study undertaken by the 1976 Commission on the Review of National Policy Toward Gambling, a study of prevalence rates in selected states from 1988 to 1990 conducted by the National Institute of Mental Health;⁶⁶ a co-morbidity study examining the rate of problem gambling among methadone patients by the National Institute of Drug Abuse;⁶⁷ and the inclusion of policies on pathological gambling in the Worldwide Study of Substance Abuse and Health Behaviors Among Military Personnel in a report to the Department of Defense in 1992.⁶⁸ In addition to research, there has been limited federal funding allocated to treatment of pathological gamblers by the Veterans Administration since 1972.⁶⁹

⁶⁵ *Supra* note 4, at 23.

⁶⁶ Rachel Volberg, *The Prevalence and Demographics of Pathological Gamblers: Implications for Public Health* *American Journal of Public Health* 84 (1994).

⁶⁷ B.J. Spunt et al., *Prevalence of Gambling Problems Among Methadone Clients*. Final Report to the National Institute on Drug Abuse (1995).

⁶⁸ R.M. Bray, et al., *Worldwide Survey of Substance Abuse and Health Behaviors Among Military Personnel*, Report to the Department of Defense (1992).

⁶⁹ National Council on Problem Gambling, *Problem and Pathological Gambling in America: The National Picture* (January 1997) 17-18.

⁶³ *ibid.*

⁶⁴ Testimony of Roger Svendsen before NGISC, New Orleans, September 11, 1998.

CONCLUSION

More research on the prevalence and causes of problem and pathological gambling clearly is a priority. For the millions of Americans who confront problem and pathological gambling, treatment may be necessary and should be made readily available. For those in need of such treatment, the gambling industry, government, foundations, and other sources of funding should step forward with long-term, sustained support.

As the opportunities for gambling become more commonplace, it appears likely that the number of people who will develop gambling problems also will increase. Future research efforts must address not only the treatment of this disorder, but prevention and intervention efforts that may prove useful in stopping problem and pathological gambling before it begins. Prevention of problem and pathological gambling is especially important in adolescents, who appear to be a population at particular risk for developing problems with gambling.

RECOMMENDATIONS

The Commission respectfully recommends that all governments take every step necessary to implement all relevant components of the recommendations offered here before lotteries or any other form of legalized gambling is allowed to operate or to continue to operate. Such requirements should be specifically itemized in a state statute as applicable to a state-run lottery. Similarly, such requirements should also be specified and made applicable for inclusion in tribal government law and tribal-state compacts.

4.1 The Commission respectfully recommends that all relevant governmental gambling regulatory agencies require—as a condition of any gambling facility’s license to operate—that each applicant adhere to the following:

- Adopt a clear mission statement as to applicant’s policy on problem and pathological gambling.

- Appoint an executive of high rank to execute and provide ongoing oversight of the corporate mission statement on problem and pathological gambling.
- Contract with a state-recognized gambling treatment professional to train management and staff to develop strategies for recognizing and addressing customers whose gambling behavior may strongly suggest they may be experiencing serious to severe difficulties.
- Under a state “hold harmless” statute, refuse service to any customer whose gambling behavior convincingly exhibits indications of problem or pathological gambling.
- Under a state “hold harmless” statute, respectfully and confidentially provide the customer (as described above) with written information that includes a state-approved list of professional gambling treatment programs and state-recognized self-help groups.
- Provide insurance that makes available medical treatment for problem and for pathological gambling facility employees.

4.2 The Commission recommends that each state and tribal government enact, if it has not already done so, a Gambling Privilege Tax, assessment, or other contribution on all gambling operations within its boundaries, based upon the gambling revenues of each operation. A sufficient portion of such monies shall be used to create a dedicated fund for the development and ongoing support of problem gambling-specific research, prevention, education, and treatment programs. The funding dedicated for these purposes shall be sufficient to implement the following goals:

- Undertake biennial research by a nonpartisan firm, experienced in problem gambling research, to estimate the prevalence of problem and pathological gambling among the general adult population. Specific focus on major sub-populations including youth, woman, elderly and minority group gamblers

should also be included. An estimate of prevalence among patrons at gambling facilities or outlets in each form of gambling should also be included.

- Initiate public awareness, education, and prevention programs aimed at vulnerable populations. One such purpose of such programs will be to intercept the progression of many problem gamblers to pathological states.
- Identify and maintain a list of gambling treatment services available from licensed or state-recognized professional providers, as well as the presence of state recognized self-help groups.
- Establish a demographic profile for treatment recipients and services provided, as state and federal laws permit. Develop a treatment outcome mechanism that will compile data on the efficacy of varying treatment methods and services offered, and determine whether sufficient professional treatment is available to meet the demands of persons in need.
- When private funding is not available, subsidize the costs of approved treatment by licensed or state-recognized gambling treatment professionals for problem and pathological gamblers, as well as adversely affected persons. Additionally, such funds shall ensure that persons in need of treatment can receive necessary support based upon financial need. Treatment cost reimbursement levels and protocols will be established by

each state.

4.3 Despite the fact that pathological gambling is a recognized medical disorder most insurance companies and managed care providers do not reimburse for treatment. The Commission recommends to states that they mandate that private and public insurers and managed care providers identify successful treatment programs, educate participants about pathological gambling and treatment options, and cover the appropriate programs under their plans.

4.4 The Commission recommends that each gambling facility must implement procedures to allow for voluntary self-exclusion, enabling gamblers to ban themselves from a gambling establishment for a specified period of time.

4.5 The Commission recommends encouraging private volunteerism of groups and associations working across America to solve problem gambling, especially those involving practitioners who are trying to help people who are problem gamblers. This should include strategically pooling resources and networking, drawing on the lists of recommendations these organizations have presented to the Commission, and working to develop uniform methods of diagnosis.

4.6 The Commission recommends that each state-run or approved gambling operation be required to conspicuously post and disseminate the telephone numbers of at least two state-approved providers of problem-gambling information, treatment, and referral support services.

CHAPTER 5. INTERNET GAMBLING

A key mandate of the National Gambling Impact Study Commission was to assess the impact of technology on gambling in the United States. Technology in this area is evolving at a rapid rate, and its potential is only beginning to be glimpsed. This is especially true regarding Internet gambling. On-line wagering promises to revolutionize the way Americans gamble because it opens up the possibility of immediate, individual, 24-hour access to the full range of gambling in every home.

To better understand the impact of Internet gambling, the Commission and its Subcommittee on Regulation, Enforcement, and the Internet received testimony from technology experts, the interactive gambling community, and public officials and reviewed the growing research on Internet use and the efforts of regulators to match the unprecedented pace of change. This chapter presents a summary of those findings and recommendations for meeting the challenge posed by this technology.

THE EMERGENCE OF INTERNET GAMBLING

The increasing number of people who use the Internet and the growing consumer confidence in conducting on-line financial transactions have led to a greater number of people who are willing to engage in Internet gambling. Although the phenomenon is difficult to measure, all observers agree that the growth is rapid. Sebastian Sinclair, a research consultant for Christiansen/Cummings Associates, Inc., estimates that Internet gambling more than doubled from 1997 to 1998, the number of gamblers increasing from 6.9 million to 14.5 million and revenues from \$300 million to \$651 million.¹ (See Figure 5-1.) Other studies indicate

similar rates of growth. One study, which looked at Internet gambling revenues and the revenues of companies that produce software for on-line gambling operators, concluded that the Internet gambling industry's revenues grew from \$445.4 million in 1997 to \$919.1 million in 1998.²

Although projections concerning the turbulent world of the Internet are notoriously inaccurate, virtually all observers assume the rapid growth of Internet gambling will continue. Sinclair estimates that Internet gambling revenues will reach \$2.3 billion by 2001.³ *The Financial Times* and Smith Barney have estimated that the Internet gambling market will reach annual revenues of \$10 billion in the beginning of the next millennium.⁴

Obviously, the numbers are greatly influenced by a number of hard-to-predict variables, the most important of which are regulatory measures undertaken by governments. Such efforts are unlikely to be uniform, however: Even as the U.S. Congress debates legislation to prohibit Internet gambling, several foreign governments have moved in the other direction and have licensed Internet gambling operations within their own borders, which Americans can access.⁵ Clearly, the politics of Internet gambling are evolving almost as quickly as the medium itself, and with a similar lack of common direction.

¹ Sinclair, *supra* note 12.

² Glenn Barry, "Seven Billion Gambling Market Predicted," *Interactive Gaming News* (May 11, 1998) (<http://www.igamingnews.com>).

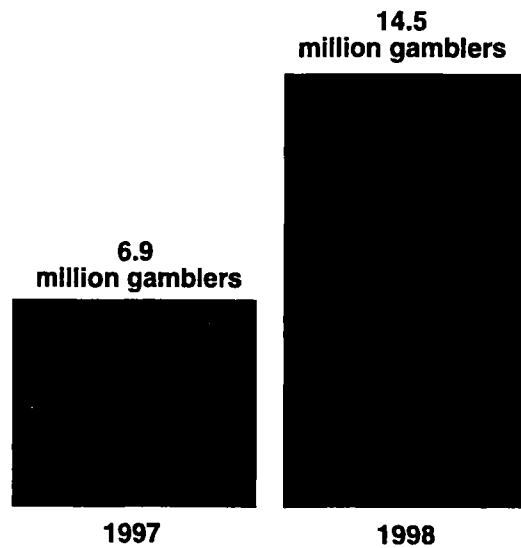
³ Sinclair, *supra* note 12.

⁴ Sinclair, *supra* note 12.

"Starnet Communications: Internet Gambling Pioneer Switches to Starnet Technology," *Business Wire*, Aug. 27, 1998 available in LEXIS, Nexis Library, News File.

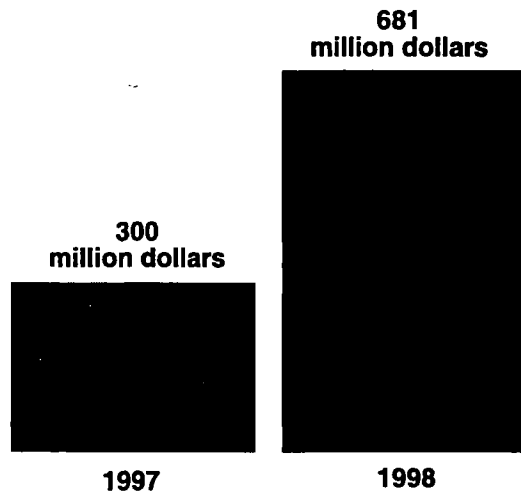
⁵ The countries with laws in place to extend Internet gambling licenses include: five territories within Australia, Antigua and Barbuda, Austria, Belgium, Cook Islands, Costa Rica, Curaçao, Dominica, Dominican Republic, Finland, Germany, Grand Turk, Grenada, Honduras, the territory of Kalmykia in Russia, Liechtenstein, Mauritius, St. Kitts and Nevis, St. Vincent, South

Increase in internet gamblers, 1997 to 1998



SOURCE: Sebastian Sinclair(Christiansen/Cummings Associates, Inc.)

Increase in internet gambling revenue, 1997 to 1998



SOURCE: Sebastian Sinclair(Christiansen/Cummings Associates, Inc.)

Figure 5-1
Internet Gambling

TYPES OF INTERNET GAMBLING SITES

The most visible indicator of change is the proliferation of Internet gambling sites. At the present, a comprehensive inventory of the number of gambling sites is probably impossible to compile, given companies' constant entry into and exit from the market and the lack of any central registry. In December 1998, the on-line publication *Bloomberg News* reported that 800 gambling-related sites existed, 60 of which offered real-time betting.⁶ Reflecting the lack of sharp borders in this area, this estimate includes sites that provide information for all types of gambling, such as Web pages promoting tourism to large casinos. The Web site *Rolling Good Times* provides links to approximately 1,000 Internet sites that offer some form of betting.⁷ By itself, however, this number may be misleading, because many of those sites are segments within a single operation and many of the on-line gambling operations are merely subsidiaries of the same companies. Nevertheless, the number of sites can be expected to grow.

Along with a burgeoning presence on the Internet, the design and pace of the on-line games have advanced dramatically over the past few years, as has their ease of use. Gambling sites now feature interactive games, broadcast races in real-time video, and walk customers through a virtual tour of the site, complete with colorful graphics and background music. Prior to gambling, most sites require people to fill out registration forms and to either purchase "chips" or set up accounts with a preset minimum amount. Payment is made using credit or debit cards, money transfers, or other forms of

electronic payment, such as "smart cards" or "Cybercash."⁸

Once registered, the gambler has a full range of games from which to choose. Most Internet gambling sites offer casino-style gambling, such as blackjack, poker, slot machines, and roulette.⁹ Casino-style sites also often require gamblers to either download special software or ask for a CD-ROM, with the software to be sent to their home.

Another form of gambling available on the Internet is sports gambling, which is receiving increasing media attention.¹⁰ The January 26, 1998, edition of *Sports Illustrated* highlighted the proliferation of Internet sports gambling sites, which increased from 2 in 1996 to more than 50 by 1998.¹¹ As of February 1, 1999, *Rolling Good Times* had listed 110 sports-related Internet gambling sites.¹² The rapid increase in sites likely is the result of the financial success of existing operations. According to National Football League estimates, the Internet sports-gambling market will reach \$750 million by the end of 1999.¹³

For many reasons, gambling on sports via the Internet is increasingly financially successful. Unlike casino-style games, Internet sports books do not necessarily use highly complex Web sites that require bettors to download software in order to participate. Whereas casino-style games can generate concerns over the possibility of tampered results, the outcomes of sporting events are public knowledge and are assumed to be beyond the control of the site operator. The

⁸For more information on electronic payment forms visit <http://www.cybercash.com>.

⁹I. Nelson Rose, "Internet Gambling: Domestic & International Developments," *Gambling and the Law*, 4 (Nov. 23, 1998).

¹⁰Ante Z. Udovicic, "Special Reports: Sports and Gambling A Good Mix? I Wouldn't Bet On It," 8 *Marq. Sports L.J.* 401, Spring 1998 at 11.

¹¹Steven Crist & Don Yeager, "All Bets Are Off," *Sports Illustrated*, Jan. 26, 1998, available in LEXIS, Nexis Library, News file.

¹²Rolling Good Times, *supra* note 21.

¹³Jeff Houck, "To A Cyber Abyss," *The Palm Beach Post*, Jan. 26, 1999, p. 1C.

Africa, Trinidad, Turks and Caicos Islands, four territories in the United Kingdom, Vanatu, and Venezuela. *Interactive Gaming News*, Licensing Information, <http://www.igamingnews.com/articles/licenses/countries.cfm>. (last visited May 10, 1999).

⁶Laurie Berger, "Betting Against the Odds?" *Bloomberg News*, (Dec. 1998) http://www.bloomberg.com/mag/vp_A9801.html.

⁷Rolling Good Times; visited Jan. 31, 1999. <http://www.rgtonline.com>.

integrity of Internet sports wagering results is therefore less open to question.

Included in several sports-gambling operations is the opportunity to bet on live horse racing events. Through the use of real-time audio and video software, races are broadcast live on the World Wide Web. Presently, at least one domestic Internet operation is solely focused on the pari-mutuel industry. The company *You Bet!* provides information and live coverage of racing as well as the ability to process account wagers on-line.¹⁴ The company has contractual agreements with several racetracks to provide coverage of the races and at-home betting services for pari-mutuel wagering. Like all bets placed through the system of common pool wagering, bets placed using the *You Bet!* Web site are included in the commingled pools at tracks hosting the races.

Other on-line gambling sites offer only lotteries and bingo. In the United States, Powerball and Interlotto maintain Web sites, as does the Coeur d'Alene Native American Tribe in Idaho. In keeping with the borderless world of the Internet, however, many other sites have appeared outside of the United States. One of the largest Internet lotteries, called "One Billion Through Millions 2000," is a site launched by the Liechtenstein Principality under contract with the International Red Cross.¹⁵ The United Kingdom has an Internet site for its lottery, and other European government-sponsored lotteries also are exploring the option of providing lottery and bingo games on-line.

On-line tournaments are another type of Internet operation that may fall into the wagering category. These Web sites offer video games that are the same or very similar to popular at-home video game devices used by millions of children. In tournaments and sweepstakes, Web site patrons compete against either the Web site host or other participants, much like playing a video game. Sites often charge "entrance fees," of which a portion is used in prizes for the

winners. Prizes range from small electronic devices to cars and large cash winnings. These games often find legal loopholes based on how the law defines gambling.¹⁶ As one observer notes, "Tournaments, even slot machine tournaments, for example, have been excluded from the definition of games of chance by the FCC."¹⁷

CANDIDATES FOR PROHIBITION

Youth Gambling

Because the Internet can be used anonymously, the danger exists that access to Internet gambling will be abused by underage gamblers. In most instances, a would-be gambler merely has to fill out a registration form in order to play. Most sites rely on the registrant to disclose his or her correct age and make little or no attempt to verify the accuracy of the information. Underage gamblers can use their parents' credit cards or even their own credit and debit cards to register and set up accounts for use at Internet gambling sites.

Concerns regarding underage gambling derive in part from this age group's familiarity with and frequent use of the Internet. *American Demographics* reports that 69 percent of 18- to 24-year-olds use computers for hobbies and entertainment, compared with 10 percent of people ages 65 and older.¹⁸ A 1997 study by the Survey of Public Participation in the Arts (SPPA) showed that 72 percent of people ages 18 to 24 use computers, averaging four hours of use daily.¹⁹ According to the American Internet User Survey, younger users communicate more often on-line and browse more Web sites than

¹⁶ Cynthia R. Janower, "Gambling on the Internet," 2 *J. Computer-Mediated Com.* 2, (Sept. 1996) <http://jcmc.huji.ac.il/vol2/issue2/janower.html>.

¹⁷ Ibid.

¹⁸ John Robinson, et al., "Computer Time," *Am. Demographics* (Aug. 1998) (http://www.demographics.com/publications/ad/98_ad/9808_ad/ad98086.html).

¹⁹ Crist, *supra* note 11.

¹⁴ (Visited March 17, 1999.) <http://www.youbet.com>.

¹⁵ Joseph M. Kelly, *Internet Gambling Law*, (forthcoming 1999) (manuscript at 4, on file with author).

older Internet users do.²⁰ Moreover, younger Internet users are most likely to download video clips and to access bank account information.²¹ Given their knowledge of computers and familiarity with the Web, young people may find gambling on the Internet particularly appealing.

Of particular concern is the special attraction of youth to on-line sports wagering, tournaments, and sweepstakes.²² The National Collegiate Athletic Association has voiced its concern over the problem of Internet sports gambling among college students. In testimony before the Senate Judiciary Committee's Subcommittee on Technology, Terrorism and Government Information, Director of Agent and Gambling Activities Bill Saum stated that sports gambling "remains a growing problem on college campuses.... If left unchecked, the growth of Internet gambling may be fueled by college students. After all, who else has greater access to the Internet?"²³

Pathological Gamblers

Pathological gamblers are another group susceptible to problems with Internet gambling. In addition to their accessibility, the high-speed instant gratification of Internet games and the high level of privacy they offer may exacerbate problem and pathological gambling.²⁴ Access to the Internet is easy and inexpensive and can be conducted in the privacy of one's own home. Shielded from public scrutiny, pathological

gamblers can traverse dozens of Web sites and gamble 24 hours a day. Experts in the field of pathological gambling have expressed concern over the potential abuse of this technology by problem and pathological gamblers. The director of the Harvard Medical School's Division on Addiction Studies, Dr. Howard J. Shaffer, likened the Internet to new delivery forms for addictive narcotics. He stated, "As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced."²⁵ Bernie Horn, the executive director of the National Coalition Against Legalized Gaming, testified before Congress that Internet gambling "magnifies the potential destructiveness of the addiction."²⁶

Criminal Use

The problems associated with anonymity extend beyond youth and pathological gambling. Lack of accountability also raises the potential for criminal activities, which can occur in several ways. First, there is the possibility of abuse by gambling operators. Most Internet service providers (ISPs) hosting Internet gambling operations are physically located offshore; as a result, operators can alter, move, or entirely remove sites within minutes. This mobility makes it possible for dishonest operators to take credit card numbers and money from deposited accounts and close down. Stories of unpaid gambling winnings often surface in news reports and among industry insiders.²⁷ In fact, several Web sites now exist that provide analysis of the payout activity for Internet gambling operations.

Second, computer hackers or gambling operators may tamper with gambling software to manipulate games to their benefit. Unlike the physical world of highly regulated resort-

²⁰ Thomas E. Miller, "Segmenting the Internet," *Am. Demographics* (July 1996) (http://www.demographics.com/publications/ad/96_ad/9607_ad/9607af04.htm).

²¹ Ibid.

²² Cynthia R. Janower, "Gambling on the Internet," *2 J. Computer-Mediated Com.* 2, (Sept. 1996) (<http://jcmc.huji.ascusc.org/jcmc/vol2/issue2/janower.html>).

²³ Bill Saum, Testimony before the Subcommittee on Technology, Terrorism and Government Information Senate Judiciary Committee (March 23, 1999) (transcript on file with the Subcommittee).

²⁴ Bernard P. Horn, Testimony before the Subcommittee on Crime, Committee on the Judiciary, U.S. Congress (Feb. 4, 1998).

²⁵ Crist, *supra* note 11.

²⁶ Horn, *supra* note 24.

²⁷ An example of the risk involved with unscrupulous Internet gambling operators are the experiences of Internet gambler Steve Rudolf. Rudolf has lost several thousand dollars from Internet gambling sites, including \$7,000 from one gambling operation that refused to pay winnings and closed operations without leaving forwarding information.

destination casinos, assessing the integrity of Internet operators is quite difficult. Background checks for licensing in foreign jurisdictions are seldom as thorough as they are in the United States. Furthermore, the global dispersion of Internet gambling operations makes the vigilant regulation of the algorithms of Internet games nearly impossible.

Third, gambling on the Internet may provide an easy means for money laundering. Internet gambling provides anonymity, remote access, and encrypted data.²⁸ To launder money, a person need only deposit money into an offshore account, use those funds to gamble, lose a small percent of the original funds, then cash out the remaining funds. Through the dual protection of encryption and anonymity, much of this activity can take place undetected. In a study prepared for the Office of Science and Technology Policy and the Financial Crimes Enforcement Network of the Critical Technologies Institute, David A. Mussington and colleagues examined the potential for money laundering on the Internet. The study raises several essential concerns regarding the use of the Internet for money-laundering activities, including the lack of uniform international law and oversight or regulatory regime, the fluidity of funds crossing international borders, and the high degree of anonymity.²⁹

STATE OF THE LAW: THE APPLICABILITY OF 18 U.S.C. § 1084

Presently, the most widely applied federal statute addressing gambling on the Internet is 18 U.S.C. § 1084. According to this statute,

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.³⁰

This section makes illegal the use of wire communications to place or assist with placing bets or wagers. However, ambiguity does make its appearance. The section of the statute immediately following the quoted passage exempts the use of a wire communication facility to report on, provide information for, or assist with the placing of bets or wagers “from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country which such betting is legal.”³¹ The statute also outlines the obligation of communications carriers to discontinue providing services once notified of the illegal activity.³²

The applicability of 18 U.S.C. § 1084 to Internet gambling has given rise to a number of disputes over the past few years. For example, does the phrase “wire communications” include the Internet? Does the specific mention of “sports wagering” and “contests” include all types of gambling on the Internet? When placing a bet

²⁸ Richard Harms, Ph.D., PriceWaterhouseCoopers, Director in Investigative Services, Remarks at the Second International Symposium on Internet Gambling Law & Management (Nov. 30, 1998). Most messages, especially those containing sensitive information such as financial data, use encryption, a process of encoding messages, thereby preventing access of information by unintended readers. The most commonly used encryption language on the Internet is the Secure Socket Layer (SSL) protocol. This encoded language can layer itself on top of other protocols, such as TCP/IP. For further discussion, see Internet Security and Secure Servers at <http://rho.pmel.noaa.gov/help/HELPSECURITY.HTML>.

²⁹ David A. Mussington, et al., “Exploring Money Laundering Vulnerabilities Through Emerging Cyberspace Technologies: A Caribbean-Based Exercise.”

³⁰ Wire Communications Act of 1961, 18 U.S.C. § 1084 a (1998).

³¹ *Ibid.*

³² Wire Communications Act of 1961, 18 U.S.C. § 1084 a (1998).

on the Internet, where does jurisdictional authority reside?

The debate over the applicability of the phrase “wire communications” to the Internet involves both the original intent of the law as well as the future of the technology. Some argue that because there was no technology known as the Internet at the time of the statute’s formulation, the intent of the law applies only to telephone communications.³³ However, because Congress did not write the statute as “telephone communications,” it is argued that its intent was to include any and all wire communication devices.³⁴ This debate, however, may be moot: Future technological advances may make it possible for individuals to bypass cables and telephone wires when establishing connections to the Internet. For example, cellular access to the Internet is presently available, and several companies are developing hand-held Internet devices that access satellite technology.³⁵ Perhaps through existing cellular technology and direct satellite feeds, information on the Internet will pass through most computers without any hard wire connection at all to communication devices.

A second point of contention arises over the forms of gambling to which 18 U.S.C. § 1084 applies. It is clear through the specification of “sporting event” that the statute applies to sports wagering. Because it lacks a clear definition of “contest,” however, the statute’s applicability to other forms of gambling is vague. Do contests include bingo, lotteries, or casino-style games?

Definitions are further clouded regarding the unique jurisdictional concerns of the Internet. The mention of “transmission” of bets or wagers or “information assisting in the placing of bets or wagers,” raises concerns over the definition of those words when applied to the Internet.³⁶ Is posting a Web site that provides citizens an

opportunity to engage in Internet gambling a “transmission” of illegal services and information?³⁷ The question of who is facilitating the transmission of bets or wagers raises concerns. Where are bets and wagers taking place on the Internet? Are they taking place at the site where the person downloads a Web page onto a personal computer? Is the bet taking place at the point of financial transactions—that is, where the bank account, credit card, or smart card companies are located? Or is the bet or wager occurring at the ISP that hosts the Internet gambling site?³⁸

REGULATION OR PROHIBITION?

State Efforts

Given the traditional responsibility of the states regarding gambling, many have been in the forefront of efforts to regulate or prohibit Internet gambling. Several states, including Louisiana, Texas, Illinois, and Nevada, have introduced and/or passed legislation specifically prohibiting Internet gambling.³⁹ Florida has

³⁷ *Cybersell, Inc. an Arizona corp. v. Cybersell, Inc., a Florida corp.*, 130 F. 3d 414 (U.S.C.C. App. 1997). In *Cybersell v. Cybersell*, the court concluded “the essentially passive nature of Cybersell FL’s activity in posting a home page on the World Wide Web that allegedly used the service mark of Cybersell, AZ does not qualify as purposeful activity invoking the benefits and protections of Arizona. As it engaged in no commercial activity and had no other contacts via the Internet or otherwise in Arizona, Cybersell, FL lacks sufficient minimum contacts with Arizona for personal jurisdiction to be asserted over it there. Accordingly, its motion to dismiss for lack of personal jurisdiction was properly granted.”

³⁸ Generally, people connect to the Internet from their personal computer through an Internet service provider (ISP). Personal or business accounts to access the Web are often bundled with the ISP service to provide e-mail. In addition to providing access from personal computers to the Internet, ISP’s perform a multitude of functions. Individuals, businesses, universities, government agencies, and organizations contract with ISP’s to “host” Web sites. In hosting Web sites, ISP’s are responsible for launching the data on a particular page to the Internet and often for updating and maintaining the information presented. Web sites are usually hosted by ISP’s that are geographically located in close proximity to their contractors. Additionally, the term ISP is used to refer to the routing computers responsible for sending message packets throughout the network of computers driving the Internet.

³⁹ 1997 La. Act 1467. S. 4, 91st Leg. 1st Reg. Sess. (Ill. 1999) S. 318, Reg. Sess. (Nev. 1997). S. 1222, 76th Leg. Reg. Sess. (Texas, 1999).

³³ Janower, *supra* note 16, at 10.

³⁴ *Ibid.*

³⁵ Microsoft Corp. and Accord Technologies are developing hand-held devices to access the Internet.

³⁶ Wire Communications Act of 1961, 18 U.S.C. § 1084 a (1998).

taken an active role, including cooperative efforts with Western Union, to stop the money-transfer service of 40 offshore sports books. On this subject, Florida Attorney General Robert A. Butterworth stated, "Through sports magazines and other media, offshore bookmakers are urging Floridians to place bets by telephone, and the Internet. They are leading people to believe such wagers are legal when in fact they are strictly prohibited by Florida law."⁴⁰

Additionally, Florida's Office of the Attorney General mailed letters to media throughout the State advising them to "cease and desist" advertising for offshore sports books.⁴¹

A number of state attorneys general have initiated court action against Internet gambling owners and operators and have won several permanent injunctions; some companies have been ordered to dissolve, and their owners have been fined and sanctioned. But the impact has been limited: The large majority of Internet gambling sites, along with their owners and operators, are beyond the reach of the state attorneys general.

Native American Internet Gambling

The difficulty state governments face in regulating or prohibiting Internet gambling has been made clear in disputes regarding sites owned by Native American tribal governments. A number of state attorneys general have taken action to prevent Native Americans from providing Internet gambling within their states. The unique legal status of Native Americans in the area of gambling, however, creates a number of issues that only the federal government can resolve.

The first such site, called "US Lottery," was launched by the Coeur d'Alene Tribe in Idaho in

1998. Before its entry into Internet gambling, the tribe had legally operated a casino on its reservation and had an approved compact with the state of Idaho to do so. The provisions of the Indian Gaming Regulatory Act (IGRA), however, allow tribes to provide games such as bingo without state authorization or regulation. And IGRA is ambiguous on the subject of tribes offering such games to individuals outside of the reservation and into other states and jurisdictions. This lack of specificity has led to several different interpretations in recent court cases.

In 1998, Idaho's attorney general attempted to prevent the site from beginning operations by informing AT&T that his office was taking court action to prevent the company from providing telephone service that facilitated the placing of bets or wagers. AT&T subsequently informed the tribe that it could not provide the service, prompting a tribal court ruling ordering the company to provide the service. The dispute then moved to federal court.

While the case was being heard, the Coeur d'Alene Tribe established the US Lottery Internet site. Much like the Internet gambling sites located outside the United States, the US Lottery site offered information, demonstrations, and payment options via credit card, fax, or telephone.⁴² In response, the Missouri attorney general filed a lawsuit against the Coeur d'Alene Tribe and UniStar Entertainment, Inc., in the U.S. District Court for the Eastern District of Missouri, seeking to prevent US Lottery from offering its games to Missouri citizens.⁴³

The resulting court rulings have further confused the subject: The Federal Court in 1997 ruled that the Coeur d'Alene Tribe's sovereign immunity preempted them from Missouri state law and regulation of the gambling. This ruling was later reversed by the U.S. Court of Appeals for the 8th Circuit, which stated that the activity concerned occurred off the reservation and thus

⁴⁰ Press Release from the Office of the Attorney General of the state of Florida, "Western Union Cuts Off Sports Betting Accounts," (Dec. 23, 1997) (on file with the office of the attorney general).

⁴¹ Letter from Gary L. Betz, Special Council, Office of the Attorney General of Florida, to various radio stations and print publications, Re: Advice to Cease and Desist, (Dec. 24, 1997) (on file with the attorney general's office).

⁴² Ibid.

⁴³ National Association of Attorneys General, *supra* note 126.

was covered by state law. In a third lawsuit, brought by Wisconsin's Attorney General, the U.S. District Court for the Western District of Wisconsin ruled that the Coeur d'Alene Tribe's status as a sovereign nation exempts the tribe from Wisconsin state law. However, the Court did not extend the protection of sovereignty to the technology firms that assist the tribe in providing the Internet gambling site.⁴⁴

AN ENHANCED FEDERAL ROLE AT STATE REQUEST

Given this and other experiences, several states have concluded that only the federal government has the potential to regulate or prohibit Internet gambling. In the words of Florida Attorney General Butterworth:

State law prohibits an individual in Florida from placing a bet or wager by wire communication or by use of the Internet. However... the burgeoning growth of the Internet and the difficulty in adopting and implementing durable and effective enforcement mechanisms, makes any effort to regulate the Internet's use better suited to federal legislation, rather than a patchwork attempt by individual states.⁴⁵

To this end, the National Association of Attorneys General (NAAG) has called for an expansion in the language of the federal antiwagering statute to prohibit Internet gambling and for federal-state cooperation on this issue.⁴⁶ In the view of the state attorneys general, existing federal legislation and regulation falls short in several major areas,

including the definition of what constitutes gambling, the need for the law to specifically cover more types of communications devices, and the ambiguity regarding the legality of receiving information on bets or wagers.⁴⁷

NAAG's position on Internet gambling is a rare stance by the association in support of increased federal law enforcement and regulation and is a clear indication of the regulatory difficulties posed by Internet gambling. NAAG usually argues against federal intrusion into areas of traditional state responsibility, such as gambling. However, in a letter to William A. Bible, a member of this Commission and Chairman of the Subcommittee on Regulation, Enforcement and the Internet, James E. Doyle, the attorney general of Wisconsin, wrote that "NAAG has taken the unusual position that this activity must be prohibited by federal law, and that State regulation would be ineffective."⁴⁸ In addressing the issue of enforceability of the federal prohibition, Doyle emphasized that "simply because an activity is difficult to control does not mean law enforcement should be forced to stick its head into the sand and act as though the issue does not exist."⁴⁹

Federal Efforts

The federal government has been active in the area of Internet gambling. Thus far, DOJ has investigated and brought charges against 22 Internet gambling operators on charges of violating the Wire Communications Act.⁵⁰ All the defendants operated their businesses offshore and maintained that they were licensed by foreign governments.⁵¹ However, the defendants are U.S. citizens, some of whom were living in the United States at the time of their arrests.⁵² In a public statement following the charges, Attorney General Janet Reno

⁴⁴ Ibid.

⁴⁵ Letter from Robert A. Butterworth, Attorney General of Florida, to The Honorable Steven A. Gellar, Representative, District 101 (Oct. 18, 1997) (on file with the state attorney general's office).

⁴⁶ Letter from James E. Doyle, Attorney General of Wisconsin and Immediate Past President, National Association of Attorneys General, to Commissioner William A. Bible, Chairman of the Subcommittee on Regulation, Enforcement and the Internet, National Gambling Impact Study Commission (Feb. 1, 1999) (on file with the attorney general's office).

⁴⁷ Ibid.

⁴⁸ Doyle, *supra* note 88.

⁴⁹ Doyle, *supra* note 88.

⁵⁰ Dean Starkman, "U.S. Indicts 14 Over Gambling on the Internet," *Wall Street Journal*, March 5, 1998, p. A8.

⁵¹ Ibid.

⁵² Starkman, *supra* note 83.

announced, "The Internet is not an electronic sanctuary for illegal betting. To Internet betting operators everywhere, we have a simple message: 'You can't hide online and you can't hide offshore.'" ⁵³

Ongoing efforts aim to strengthen Federal regulation and prohibition of Internet gambling. Members in both chambers of Congress have introduced legislation to address Internet gambling. The Internet Gambling Prohibition Act, first introduced by Senator Kyl during the 105th Congress, provides for the prohibition of Internet gambling through amending the Wire Communications Act. As reintroduced during the 106th Congress, the bill would expand and/or clarify definitions within the statute to include the technology of the Internet and all forms of gambling. ⁵⁴ The enforcement mechanisms in the legislation include fines and/or imprisonment for people conducting business or participating in illegal gambling as well as measures against ISPs that provide communications service to Internet gambling Web sites.

OTHER ACTIONS

Other measures affecting Internet gambling focus on the financial transactions used to make wagers. In at least two cases, individuals have named credit card companies and their banks in lawsuits for permitting them to use their credit cards for illegal Internet gambling. The first, in a California state court, stemmed from a bank's attempt to collect a \$70,000 debt, incurred through gambling, on 12 credit cards. ⁵⁵ The resulting countersuit sought to prevent credit card companies from "permitting their credit cards from being used or accepted on Web sites that accept illegal bets from residents of the

State of California." ⁵⁶ A similar federal court case in Wisconsin contends that credit card companies and banks have "aided and abetted" illegal gambling and therefore should not be able to collect what are illegal gambling debts. ⁵⁷

OBSTACLES TO REGULATION

Although amending or creating new federal statutes to prohibit or regulate gambling on the Internet would provide law enforcement with greater authority to prosecute owners and operators, there are many ways of frustrating the efforts of regulators. The international nature of business is perhaps the most important facilitator of owners' and operators' ability to circumvent regulations.

Currently, governments in 25 countries license or have passed legislation to permit Internet gambling operations. ⁵⁸ To effectively prohibit Internet gambling, the U.S. government would have to ensure that these licensed operators do not offer their services within U.S. borders, a proposition that poses a range of unanswered questions regarding feasibility. Efforts to prevent customers in the United States from accessing and using these sites may be easily circumvented. For example, the on-line registration process makes possible an initial screening of customers when they disclose the locations of bank accounts or credit card companies. Yet potential customers can take a number of steps to conceal their location within the United States. For example, patrons can establish offshore bank accounts and wire the money from those accounts to the Internet gambling site. In addition, patrons can mask their origins by first dialing an offshore ISP before logging onto a particular site, thereby

⁵³ Benjamin Weiser, "14 Facing Charges in First U.S. Action on Internet Betting," *New York Times*, March 5, 1998, p. A1.

⁵⁴ Internet Gambling Prohibition Act of 1997, S.474, 105th Cong. (1997).

⁵⁵ Joseph M. Kelly, "Internet Gambling Law," 26 *William Mitchell L. Rev.* (forthcoming Fall 1999) (manuscript at 4, on file with author).

⁵⁶ *Ibid* at 38.

⁵⁷ The statutes specified in the lawsuit include: 18 U.S. Code § 2, 18 U.S. Code § 1081, 18 U.S. Code § 1084, 18 U.S. Code § 1952, 18 U.S. Code § 1955, 18 U.S. Code § 1957, 18 U.S. Code § 1960, 18 U.S. Code § 1961, 18 U.S. Code § 1962, 18 U.S. Code § 1964, 28 U.S. Code § 2201.

⁵⁸ (Last visited 5/7/99.) Interactive Gaming News http://www.igaming_news.com/articles/licenses/countries.cfm.

creating the appearance of operating in a legal Internet gambling jurisdiction.

Internet gambling operators also have several tools at their disposal for concealing their activity from law enforcement. Internet gambling operators can change the address of their Web site quickly and without cost, maintaining their easily identifiable domain name. Although Internet users typically key in a domain name to visit a particular site, the addresses of Web sites actually consist of a series of numbers. By changing its numerical address, the site may appear to remain in the exact place each time a user accesses the address, even though the site may have moved or may be one of several mirrored sites. (Mirrored sites are usually created because a particular Internet address cannot handle the number of visitors attempting to access its original location. Popular Internet operations, such as AOL's home page, may have more than 15 different numerical addresses under a single domain name). Changing the numerical address makes it difficult to track the physical location of Internet gambling operators. Internet gambling operators also may notify their regular customers of an address change by sending e-mail directly to their clients. Because of the volume of e-mails sent daily, it may be difficult to monitor or prevent this type of activity. Furthermore, Internet gambling operators can obscure the originating location of e-mails through the service of "re-mailers." Other methods that Internet gambling operators can use to provide information on Web address changes include posting notices on Internet bulletin boards and in newsgroups and chat rooms.

Holding ISP's responsible for information passed through their routers raises technical concerns. Most of the 6,500 ISP's within the United States are local providers. Installing hardware that monitors information would be too costly for most operators and could lead to a dramatic slowdown in the general transmission of information on the Internet as well as the possibility of failures within the system. Likewise, filtering devices may rule out legally

posted Web sites, including those with helpful information on where to receive treatment for problem or pathological gambling.

The possibility of prohibiting Internet gambling also has raised concerns regarding whether the ban will infringe on the constitutionally protected freedom of speech. Congress has made two previous attempts to implement legislation regulating activity on the Internet. The first proposal passed by Congress was the Communications Decency Act (CDA). Incorporated in the Telecommunications Competition and Deregulation Act of 1996,⁵⁹ the purpose of the CDA was to protect children on the Internet by discouraging the transmission of potentially harmful information to minors. The intent was to prevent minors' access to obscenities and safeguard them from stalkers and harassment via the Internet. Following passage of the CDA, legal battles ensued regarding the constitutionality of the law; the case eventually was heard before the Supreme Court. In *Reno v. American Civil Liberties Union (ACLU)*, the Supreme Court decided in favor of the ACLU and held that "provisions which prohibit knowing transmission to minors of 'indecent' or certain 'patently offensive' communications (47 USCS 223 (a), 223 (d)) held to abridge free speech protected by First Amendment."⁶⁰

The second law addressing the need to protect children from certain activity on the Internet was the Child Online Protection Act (COPA). Included in the omnibus appropriations bill for the fiscal year ending in 1999, COPA attempted to prohibit the transmission of harmful information to minors over the Internet. In response to the passage of COPA, the ACLU filed for and was granted a preliminary injunction from the U.S. District Court for the Eastern District of Pennsylvania barring the

⁵⁹ 47 USCS § 230, 223 (a), 223 (d).

⁶⁰ *Janet Reno, Attorney General of the United States, Et Al., v. American Civil Liberties Union Et Al.*, 117 S. Ct. 2329 (1997).

Department of Justice from enforcing the COPA.⁶¹

At first glance, the arguments against Congress' previous attempts to regulate speech on the Internet may appear relevant to the issue of prohibiting Internet gambling. In reviewing the legal status of gambling, however, federal courts have undermined the contention that the activity of gambling is protected free speech.⁶² Because money is exchanged in gambling, it is considered a commercial act and therefore is not subject to the same protections under the First Amendment as pure speech. The U.S. District Court for the District of Rhode Island, in *Allendale Leasing, Inc. v. Stone*, found that "the commercial act of collecting or raising funds, if it is totally divorced from expression interests, must be subject to reasonable government regulations."⁶³ Furthering this position, the U.S. District Court for the District of Connecticut, in *Ziskis v. Kowalski*, reasoned that "there is no First Amendment right to conduct or play...a game of chance."⁶⁴ Still, free speech issues may remain germane to the discussion if filtering software in ISP's prevents access to legally posted information on the Internet.⁶⁵

RECOMMENDATIONS

5.1 The Commission recommends to the President, Congress, and the Department of Justice (DOJ) that the federal government should prohibit, without allowing new exemptions or the expansion of existing federal exemptions to other jurisdictions, Internet gambling not already authorized within the United States or among parties in the United

States and any foreign jurisdiction. Further, the Commission recommends that the President and Congress direct DOJ to develop enforcement strategies that include, but are not limited to, Internet service providers, credit card providers, money transfer agencies, makers of wireless communications systems, and others who intentionally or unintentionally facilitate Internet gambling transactions. Because it crosses state lines, it is difficult for states to adequately monitor and regulate such gambling.

5.2 The Commission recommends to the President, Congress, and state governments the passage of legislation prohibiting wire transfers to known Internet gambling sites, or the banks who represent them. Furthermore, the Commission recommends the passage of legislation stating that any credit card debts incurred while gambling on the Internet are unrecoverable.

5.3 The Commission recognizes that current technology is available that makes it possible for gambling to take place in the home or the office, without the participant physically going to a place to gamble. Because of the lack of sound research on the effects of these forms of gambling on the population and the difficulty of policing and regulating to prevent such things as participation by minors, the commission recommends that states not permit the expansion of gambling into homes through technology and the expansion of account wagering.

5.4 The Commission recommends to the President and Congress that because Internet gambling is expanding most rapidly through offshore operators, the federal government should take steps to encourage or enable foreign governments not to harbor Internet gambling organizations that prey on U.S. citizens.

⁶¹ *American Civil Liberties Union, Et. Al. v. Janet Reno, Attorney General of the United States*, No. 98-5591 (E.D. Pa. Feb. 1, 1999) (order granting preliminary injunction).

⁶² *Allendale Leasing, Inc. v. Stone*, 614 F. Supp. 1440, 1452-58 (D.R.I. 1985) aff'd. 788 F.2d 830 (1st Cir. 1986).

⁶³ *Ibid* at 1457.

⁶⁴ *Ziskis v. Kowalski*, 726 F. Supp. 902, 911-912 (D. Conn. 1989).

⁶⁵ The American Horse Council, written testimony to the National Gambling Impact Study Commission, Subcommittee on Enforcement, Regulation and the Internet (May 21, 1998).

CHAPTER 6. NATIVE AMERICAN TRIBAL GAMBLING

Congress established the National Gambling Impact Study Commission in 1996 and directed it to study and report on the economic and social impacts of all forms of legalized gambling in the United States, including Indian gambling.¹ To ensure that sufficient attention was devoted to this important and complex subject, the Commission established a Subcommittee on Indian Gambling to supplement the full Commission's work in this area. In the course of seven formal hearings (in Del Mar, California; the Gila River Indian Community near Tempe, Arizona; Albuquerque, New Mexico; New Orleans, Louisiana; Las Vegas, Nevada; Seattle, Washington; and Virginia Beach, Virginia), and with the assistance of the National Indian Gaming Association (NIGA), the Subcommittee received testimony from approximately 100 tribal leaders, representing more than 50 tribes from every section of the country. At the invitation of officials from the Gila River Indian Community, the Subcommittee visited that reservation and toured a range of facilities,

¹ *National Gambling Impact Study Commission Act*, Public Law 104-169. The charge to study Indian gambling is quite explicit. The Act provides:

- (1) IN GENERAL—it shall be the duty of the Commission to conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States on (A) . . . Native American tribal governments,
- (2) MATTERS TO BE STUDIED—The matters to be studied by the Commission under paragraph (1) shall at a minimum include (A) a review of existing Federal, State, local and Native American tribal government policies and practices with respect to the legalization or prohibition of gambling, including a review of the costs of such policies and practices (E) an assessment of the extent to which gambling provided revenues to State, local, and Native American tribal governments, and the extent to which possible alternative revenue sources may exist for such governments. . . . Section 4(a)

The Commission was also instructed by Congress to develop a contract with the Advisory Council on Intergovernmental Relations to conduct "a thorough review and cataloging of all applicable Federal, State, local and Native American tribal laws, regulations, and ordinances that pertain to gambling in the United States" Section 7(a)(1)(A).

including tribal housing developments, community centers, tribal government facilities, agricultural enterprises, and one of the reservation's two casinos. In addition to the Subcommittee's work, the full Commission heard testimony from tribal representatives, officials of the National Indian Gaming Commission (NIGC), the Bureau of Indian Affairs, and representatives of state and local governments at its hearings in Boston, Massachusetts; Del Mar, California; and Tempe, Arizona. The full Commission also visited Foxwoods, near Ledyard, Connecticut, the largest Indian gambling facility in the United States, to observe an Indian casino firsthand.

GROWTH OF TRIBAL GAMBLING

Large-scale Indian casino gambling is barely a decade old. Its origins trace back to 1987, when the U.S. Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians*. This decision held that the state of California had no authority to apply its regulatory statutes to gambling activities conducted on Indian reservations.² In an effort to provide a regulatory framework for Indian gambling, Congress passed the *Indian Gaming Regulatory Act* (IGRA) in 1988.³ IGRA provides a statutory basis for the regulation of Indian gambling, specifying several mechanisms and procedures and including the requirement that the revenues from gambling be used to promote the economic development and welfare of tribes. For casino gambling—which IGRA terms "Class III" gambling—the legislation requires tribes to negotiate a compact with their respective states, a provision that has been a continuing source of controversy and which will be discussed at length later in this chapter.

The result of those two developments was a rapid expansion of Indian gambling. From 1988, when IGRA was passed, to 1997, tribal gambling revenues grew more than 30-fold, from \$212

² 480 U.S. 202.

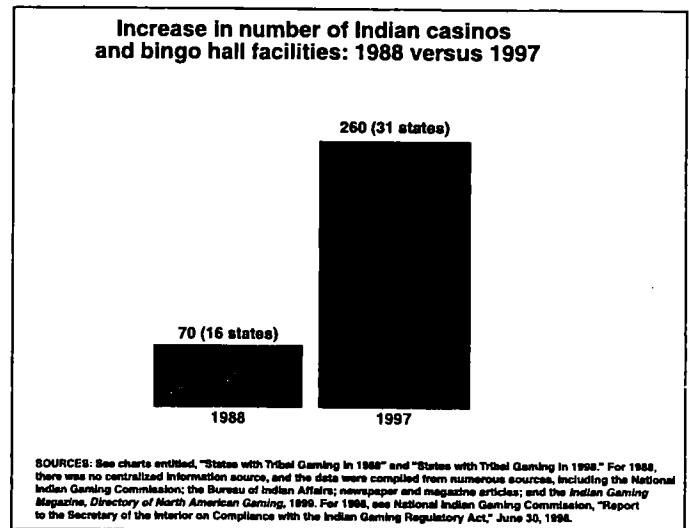
³ 25 U.S.C.A. §2701-2721.

million to \$6.7 billion.⁴ By comparison, the revenues from commercial casino gambling (hereinafter termed “commercial gambling”) roughly doubled over the same period, from \$9.6 billion to \$20.5 billion in constant 1997 dollars.⁵

Since the passage of IGRA, tribal gambling revenues consistently have grown at a faster rate than commercial gambling revenues, in large part because a relatively small number of the Indian gambling facilities opened in densely populated markets that previously had little, if any, legalized gambling. This trend has continued. For example, from 1996 to 1997, tribal gambling revenues increased by 16.5 percent, whereas commercial gambling revenues increased by 4.8 percent. The growth rates for both, however, have shown signs of slowing over the same period. There is a degree of economic concentration in a relatively small number of gaming tribes. The 20 largest revenue generators in Indian gaming account for 50.5 percent of the total revenue; the next 85 account for 41.2 percent.⁶

As was IGRA’s intention, gambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States. Nevertheless, Indian gambling has not been a panacea for the many economic and social problems that Native Americans continue to face.

Only a minority of Indian tribes operate gambling facilities on their reservations. According to the Bureau of Indian Affairs (BIA), there are 554 federally recognized tribes in the United States, with 1,652,897 members, or less than 1 percent of the U.S. population. In 1988, approximately 70 Indian casinos and bingo halls were operating in a total of 16 states; in 1998, approximately 260 facilities were operating in a total of 31 states.⁷ (See Figure 6-1) Of these 554 tribes, 146 have Class III gambling facilities, operating under 196 tribal-state compacts.⁸



More than two-thirds of Indian tribes do not participate in Indian gambling at all. Some tribes, such as the Navajo Nation, have rejected Indian gambling in referenda. Other tribal governments are in the midst of policy debates on whether or not to permit gambling and related commercial developments on their reservations.⁹

⁴ See chart entitled “Trends in Tribal Casino Gaming Revenues, 1988-1997.” Amounts are in constant, 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President* (February 1999), p. 398. For Indian gaming revenues from 1988 and 1995, see U.S. General Accounting Office, *Tax Policy: A Profile of the Indian Gaming Industry* (May 1997), p. 6. For Indian gaming revenues in 1996 and 1997, see International Gaming & Wagering Business, *The Gross Annual Wager* (August Supplements, 1997 and 1998).

⁵ See chart entitled, “Trends in Commercial Casino Gaming Revenues, 1988-1997.” Amounts are in constant, 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President* (February 1999), p. 398. For commercial casino revenues, see International Gaming & Wagering Business, *The Gross Annual Wager* (August Supplements, 1988 to 1997).

⁶ Letter from Penny Coleman, Deputy General Counsel, NIGC, to Donna Schwartz, Research Coordinator, Advisory Commission on Intergovernmental Relations, dated December 4, 1998.

⁷ See charts entitled, “States with Tribal Gaming in 1988” and “States with Tribal Gaming in 1998.” For 1988, there was no centralized information source, and the data was compiled from numerous sources, including the National Indian Gaming Commission; the Bureau of Indian Affairs; newspaper and magazine articles; and the *Indian Gaming Magazine, Directory of North American Gaming* (1999). For 1998, see National Indian Gaming Commission, “Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act” (June 30, 1998).

⁸ Figures obtained by Commission staff in oral communication with the Bureau of Indian Affairs, March 4, 1999. The larger number of compacts is due to some tribes operating more than one gambling facility.

⁹ “Tribes Weighing Tradition vs. Casino Growth,” Brett Pulley, *New York Times*, March 16, 1999.

The reasons for opposition are varied, but a common theme among many opposed to Indian gambling is a concern that gambling may undermine the “cultural integrity” of Indian communities.¹⁰

For the majority of tribes with gambling facilities, the revenues have been modest yet nevertheless useful. However, not all gambling tribes benefit equally. The 20 largest Indian gambling facilities account for 50.5 percent of total revenues, with the next 85 accounting for 41.2 percent.¹¹ Additionally, not all gambling facilities are successful. Some tribes operate their casinos at a loss and a few have even been forced to close money-losing facilities.

TRIBAL SOVEREIGNTY AND INDIAN GAMBLING

Under the U.S. Constitution and subsequent U.S. law and treaties with Indian nations, Native Americans enjoy a unique form of sovereignty. Chief Justice John Marshall, who was instrumental in defining the constitutional status of Indians, described the legal relationship between the federal government and the tribes as “unlike that of any other two people in existence.”¹² Two centuries of often contradictory federal court decisions and Congressional legislation have ensured that the definition and boundaries of tribal sovereignty remain in flux. Differing perspectives on the nature and extent of that sovereignty—in particular, the relationship of Indian tribes to the state governments in which they reside—lie at the heart of the many disputes about Indian gambling.

The authority for tribal governmental gambling lies in the sweep of U.S. history and the U.S. Constitution. The Commerce Clause of the U.S.

Constitution recognizes Native American tribes as separate nations. The Supreme Court so held in the early years of the Nation’s history. In *Cherokee Nation v. Georgia*¹³—the Court held that an Indian tribe is a “distinct political society...capable of managing its own affairs and governing itself.” A year later in *Worcester v. Georgia*,¹⁴—Chief Justice Marshall, writing for the Court, held that Indian tribes are distinct, independent political communities “having territorial boundaries, within which their authority [of self-government] is exclusive...By entering into treaties, the Court held, Indian tribes did not “surrender [their] independence—[their] right to self-government...”¹⁵

These principles of federal law have been repeatedly reaffirmed by the Supreme Court. Thus, it is broadly understood that “[t]he sovereignty retained by tribes includes ‘the power of regulating their internal and social relations.’”¹⁶—and that this authority includes the “power to make their own substantive law in internal matters...and to enforce that law in their own forums.”¹⁷ And under settled law these rights include the right to engage in economic activity on the reservation,¹⁸ through means that specifically include the right to conduct gambling on reservation lands.¹⁹

As a result of these principles, state law generally does not apply to Indians on the reservation. Thus, in *Worcester*, the Court held that the law of the state of Georgia (which is one of the original 13 states) has no force within the boundaries of the Cherokee Nation. “The Cherokee Nation, then, is a distinct community,

¹³ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831).

¹⁴ *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 557 (1832).

¹⁵ *Ibid.* at 561.

¹⁶ *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332 (1983) (quoting *United States v. Kagama*, 118 U.S. 375, 381-382 (1886)).

¹⁷ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (citations omitted).

¹⁸ *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335-36 (1983) and *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1981).

¹⁹ *California v. Cabazon Band of Indians*, 480 U.S. 202, 207 (1987).

¹⁰ Anders, *supra* note 1 at 104.

¹¹ Letter from Penny Coleman, Deputy General Counsel, NIGC to Donna Schwartz, Research Coordinator, Advisory Commission on Intergovernmental Relations, dated December 4, 1998.

¹² *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

occupying its own territory... in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress.”²⁰ As the Court explained in *Warren Trading Post v. Arizona Tax Comm.*, “from the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference...”²¹ Moreover, tribes enjoy immunity from suit absent a clear and express waiver by tribal governments.²²

Consistent with the Supreme Court’s decisions, Congress and the Executive Branch have implemented a policy of supporting and enhancing tribal sovereignty.

The federal government’s unique obligation toward Indian tribes, known as the trust responsibility, is derived from their unique circumstances; namely that Indian tribes are separate sovereigns, but are subject to federal law and lack the lands and other resources to achieve self-sufficiency. Since it was first recognized by Justice Marshall in *Cherokee Nation v. Georgia*,²³—federal courts have held that Congress as well as the Executive Branch must carry out the federal government’s fiduciary responsibilities to Indian tribes.²⁴ The trust responsibility is the obligation of the federal government to protect tribes’ status as self-governing entities and their property rights.

However, Congress may limit tribal sovereignty.²⁵ The Congressional power over Indian affairs is plenary, subject to constitutional restraint. Congress may use its plenary power to “limit, modify or eliminate the powers of local self-government which the tribes otherwise possess.”²⁶ But, federal law now recognizes that Congressional acts are subject to judicial review to determine whether such enactments violate Indian rights and whether they are constitutional. The notion that Congressional power to regulate commerce with Indian tribes under Art. 1, sec. 8, cl. 3 of the Constitution, is plenary or absolute, is no longer the law. To the contrary, the Supreme Court has expressly rejected contentions that Congress’ pervasive authority over Indian affairs presents “nonjusticiable political questions” that immunize federal legislation from constraints on Congressional power imposed by other parts of the Constitution.²⁷ As the Supreme Court held in *Delaware Tribal Business Comm. v. Weeks*,

The statement...that the power of Congress “has always been deemed a political one, not subject to be controlled by the judicial department of the government...” has not deterred this Court, particularly in this day, from scrutinizing Indian legislation to determine whether it violates the equal protection component of the Fifth Amendment....The power of Congress over Indian affairs may be of a plenary nature; but it is not absolute.”²⁸
(emphasis added)

Reaffirming this rule just three years later, the Court explained that “the idea that relations between this Nation and the Indian tribes are a political matter, not amenable to judicial review... has long since been discredited in the

²⁰ *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515,561 (1832); see also *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

²¹ *Warren Trading Post v. Arizona Tax Comm.*, 380 U.S. 685, 686-7 (1965).

²² *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, at 58.

²³ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

²⁴ See, e.g. *Morton v. Mancari*, 417 U.S. 535, 555 (1974) (application of trust responsibility to the Congress); *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73 (1977) (same); *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942) (application of trust responsibility to Executive Branch); *United States v. Creek Nation*, 295 U.S. 103, 110 (1935) (same); *Cramer v. United States*, 261 U.S. 219, 232-33 (1923) (same).

²⁵ *Santa Clara Pueblo v. Martinez*, *supra* note 10.

²⁶ *Santa Clara Pueblo v. Martinez*, *supra* note 10. At 56. See *Talton v. Mayes*, *supra*, note 11 and *United States v. Kagama*, 118 U.S. 375, 379-381 (1886).

²⁷ *Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, 83-84 (1977).

²⁸ *Ibid.* at 84, (quoting *United States v. Alcea Band of Tillamooks*, 329 U.S. 40, 54 (1946) and citing *United States v. Creek Nation*, 295 U.S. 103, 109-110 (1935).

taking cases, and was expressly laid to rest in *Delaware Tribal Business Comm. v. Weeks*.²⁹ Thus, while Congress has power “to control or manage Indian affairs,” that power extends to “appropriate measures for protecting and advancing the tribe” and is further “subject to limitations inhering in a guardianship and to pertinent constitutional restrictions.”³⁰ In short, Indian rights are no longer excluded from the protection of the Constitution.

In these decisions, the Supreme Court also articulated the standard of review under which the constitutionality of Indian legislation is to be tested. That standard requires that the legislation “be tied rationally to the fulfillment of Congress’ unique obligation toward the Indians ...”³¹ Applying this standard, the Supreme Court has critically examined federal legislation affecting Indians to determine whether it comports with constitutional limits imposed on Congressional power. As a result of that analysis, the Court has set aside those enactments that contravene the Fifth Amendment³²—or has held the United States liable to pay just compensation.³³

Federal Policy: Failure of the “Trust Responsibility” and Alternative Revenue Source to Indian Gambling

One fact that is not in dispute is the federal government’s responsibility for the welfare of the Indian tribes and their members. In the *Cherokee* decision, Chief Justice Marshall described the relationship between the federal government and the Indian tribes to “that of a ward to his guardian.” This “trust relationship” is a term derived from treaties between the United States and Indian tribes involving massive land

successions and the fact that the title to Indian lands is held for tribal members “in trust” by the federal government. It has also come to mean that, among its other obligations, the protection of tribal members and the promotion of their economic and social well-being is the responsibility of the federal government. All observers agree that, in this regard, the federal government’s record has been poor, at best.

The statistics are disheartening. According to U.S. government figures, the rates of poverty and unemployment among Native Americans are the highest of any ethnic group in the U.S., whereas per capita income, education, home ownership, and similar indices are among the lowest. Statistics on health care, alcoholism, incarceration, and so forth, are similarly bleak. As summarized by Senator John McCain (R-Arizona) during a Senate debate:

Nearly one of every three Native Americans lives below the poverty line. One-half of all Indian children on reservations under the age of 6 are living in poverty.

On average Indian families earn less than two-thirds the incomes of non-Indian families. As these statistics indicate, poverty in Indian country is an everyday reality that pervades every aspect of Indian life. In this country we pride ourselves on our ability to provide homes for our loved ones. But in Indian country a good, safe home is a rare commodity.

There are approximately 90,000 Indian families in Indian country who are homeless or underhoused. Nearly one in five Indian homes on the reservation are classified as severely overcrowded. One third are overcrowded. One out of every five Indian homes lacks adequate plumbing facilities. Simple conveniences that the rest of us take for granted remain out of the grasp of many Indian families.

Indians suffer from diabetes at 2½ times the national rate. Indian children suffer the awful effects of fetal alcohol syndrome at rates far exceeding the

²⁹ *United States v. Sioux Nation of Indians*, 448 U.S. 371, 415 (1980).

³⁰ *Sioux Nation of Indians*, 448 U.S. at 415.

³¹ *Delaware Tribal Business Comm.*, 430 U.S. at 85 (quoting *Morton v. Mancari*, 417 U.S. 535, 555) (1974).

³² see *Hodel v. Irving*, 481 U.S. 704 (1987).

³³ *United States v. Sioux Nation of Indians*, 448 U.S. 371, 415 (1980); *Menominee Tribe v. United States*, 391 U.S. 404 (1968); *United States v. Alcea Band of Tillamooks*, 329 U.S. 40, 54 (1946).

national average. Perhaps most shocking of all, Indian youth between the age of 5 and 14 years of age commit suicide at twice the national rate. The suicide rate for Indians between the ages of 15 and 24 is nearly three times the national rate.³⁴

Congress directed the Commission to conduct an assessment of the extent to which gambling provided revenues to...Native American tribal government, and the extent to which possible alternative revenue sources may exist for such governments.³⁵

Since the early 19th century, the federal government has attempted under specific treaty obligations and overall trust duty to provide for the health, education, and welfare needs of tribes and Indians. This has included federal efforts to promote mainstream economic activities in Indian communities such as agriculture, natural resource development, and various forms of industry and commerce. For example, the Allotment policies of the late 19th and early 20th centuries were aimed at breaking up the tribal land base and distributing it to tribal members thereby transforming Indians into farmers like their non-Indian neighbors. These policies failed to produce successful agricultural economies in tribal communities and, instead, are widely recognized as having had a disastrous impact on tribes and caused substantial reduction in lands owned by tribes and individual Indians.³⁶

Today Congress continues to pursue efforts at stimulating economic development and to provide for the basic needs of Indians in Indian country. Recent enactments in pursuit of these objectives include the Native American Housing Assistance and Self-Determination Act of 1996,³⁷ the American Indian Agricultural

Management Act of 1993,³⁸ the Indian Energy Resources Act of 1992,³⁹ the Indian Tribal Justice Act of 1993,⁴⁰ the Indian Employment, Training and Related Services Demonstration Act of 1992,⁴¹ and many more. In addition, the federal government operates dozens of programs through the Department of Interior and the other federal agencies to provide assistance to tribes and Indians in the areas of health care, law enforcement, fire protection, tribal courts, road maintenance, education, child abuse and neglect, housing, and natural resource management. However, major federal expenditures on behalf of Native Americans have declined during the period from FY 1975 through FY 1999 (in constant dollars), except for the Indian Health Service.⁴² Further this decline indicates that most federal Indian program spending areas have lagged behind their equivalent federal spending areas.

The poor economic conditions in Indian country have contributed to the same extensive social ills generated in other impoverished communities including high crime rates, child abuse, illiteracy, poor nutrition, and poor health care access.

But with revenues from gambling operations, many tribes have begun to take unprecedented steps to begin to address the economic as well as social problems on their own. For example, through gambling tribes have been able to provide employment to their members and other residents where the federal policies failed to create work. This has resulted in dramatic drops in the extraordinarily high unemployment rates in many, though not all, communities in Indian country and a reduction in welfare rolls and other governmental services for the unemployed.

³⁴ 141 Cong. Rec. S11881 (August 8, 1995) (Statement of Sen. McCain)

³⁵ Pub. L. 104-169, 4(a)(1)(E).

³⁶ *Hodel v. Irving*, 481 U.S. 704, 707 (1987); see also *County of Yakima v. Yakima Nation*, 502 U.S. 251, 255-56 (1992); Felix S. Cohen's Handbook of Federal Indian Law 137-38 (1982 ed.).

³⁷ 25 U.S.C. 4101 et seq.

³⁸ 25 U.S.C. 3701 et seq.

³⁹ 25 U.S.C. 3501 et seq.

⁴⁰ 25 U.S.C. 3601 et seq.

⁴¹ 25 U.S.C. 3401 et seq.

⁴² *Concurrent Resolution on the Budget, 1999 Report of the Committee on the Budget, United States Senate to accompany Con. Res. 86, together with additional and minority views, Report 105-170, March 20, 1998.*

Tribes also use gambling revenues to support tribal governmental services including the tribal courts, law enforcement, fire protection, water, sewer, solid waste, roads, environmental health, land-use planning and building inspection services, and natural resource management. They also use gambling revenues to establish and enhance social welfare programs in the areas of education, housing, substance abuse, suicide prevention, child protection, burial expenses, youth recreation, and more. Tribes have allocated gambling funds to support the establishment of other economic ventures that will diversify and strengthen the reservation economies. Gambling revenues are also used to support tribal language, history, and cultural programs. All of these programs have historically suffered from significant neglect and underfunding by the federal government. Although the problems these programs are aimed at reducing continue to plague Indian communities at significant levels, gambling has provided many tribes with the means to begin addressing them. There was no evidence presented to the Commission suggesting any viable approach to economic development across the broad spectrum of Indian country, in the absence of gambling.

The Move Toward Self-Determination

Over the past two centuries, the policy of the U.S. government toward the Indian tribes has oscillated between recognition of their separate status and attempts to culturally assimilate them into the broader society. Federal policy toward Indians in the first half of this century emphasized the latter and was characterized by an effort to reduce their separate status, culminating in the so-called Termination Policy of the 1950's. Under the Termination Policy, several Indian reservations were broken up and the land divided among members and some tribes were "terminated" and declared no longer in existence. This policy was reversed in the 1960's and 1970's when Native American self-awareness and political movements expanded. At the same time, there was growing public awareness of the difficult economic and social

conditions on reservations. As a result of these developments, the federal government's policy toward Native Americans shifted toward enhancing tribal self-determination and placing a greater emphasis on promoting economic and social development on the reservations.

The blueprint for this change was laid by President Johnson in his Presidential statement. And, a milestone in this change was the Nixon Administration's Indian Self-Determination policy.⁴³ In his July 8, 1970, Message to Congress on Indian Affairs, President Nixon stated: "[t]he United States Government acts as a legal trustee for the land and water rights of American Indians" and has "a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill." This emphasis on self-determination has been reinforced by succeeding Administrations. For example, in 1975 Congress passed and President Ford signed the Indian Self-Determination and Education Assistance Act, which authorized the tribes to administer several federal programs and provided them with greater flexibility and decisionmaking authority regarding these programs and the associated funding.⁴⁴ In addition, promoting self-determination and economic development on the reservations was seen as requiring a move away from reliance on federal money. As President Reagan said in his 1983 Statement on Indian Policy: "[i]t is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government." These principles have been substantially expanded by President Clinton through four Presidential Executive Orders on various tribal issues.⁴⁵

⁴³ "The Forgotten American", Message to the Congress from the President of the United States, March 6, 1968 and Executive Order 11399, Establishing the National Council on Indian Opportunity, 33 FR 4245, March 6, 1968.

⁴⁴ 25 U.S.C. §§ 450-458.

⁴⁵ For example, as recently as May 14, 1998, President Clinton issued Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," reiterating the relationship between Federal and Tribal governments: "The United States has a unique

It was within this new context that large-scale Indian gambling made its appearance. One of IGRA's purposes was to ensure that the proceeds from tribal gambling were used to fund tribal government operations, including allowing for investment in the infrastructure relating to the promotion of tribal economic development.

Review of Regulations

In its 1987 *Cabazon* decision, the Supreme Court held that the state of California had no authority to apply its regulatory statutes to gambling activities conducted on the reservation. In essence, this ruling held that unless a state prohibited a certain form of gambling throughout the state (in practice meaning either by means of its constitution or its criminal code), it could not prohibit gambling on reservations on its territory. In the *Cabazon* case, the Supreme Court concluded that because bingo and card games were permitted in California in some form—in that case, for charitable purposes—and were merely regulated by the state, these games could not be considered to be prohibited. The Court stated that “In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular.” The conclusion was that tribes could operate these games on their reservations and that the authority to regulate them lay with the tribes, not the state.

This decision prompted the passage in 1988 of the *Indian Gaming Regulatory Act*.⁴⁶ IGRA provides a regulatory framework for the conduct of gambling on Indian lands. It divides the gambling into three classes, each with a separate treatment:

legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. . . . The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian treaty and other rights.”

⁴⁶ 25 U.S.C.A. §2701-2721.

- Class I consists of traditional tribal games and social games for prizes of nominal value, all of which are subject solely to tribal regulation;
- Class II consists of bingo, instant bingo, lotto, punch cards, and similar games and card games legal anywhere in the state and not played against the house. A tribe may conduct or license and regulate Class II gambling if it occurs in a “state that permits such gaming for any purpose by any person” and is not prohibited by federal law;
- Class III consists of all other games, including electronic facsimiles of games of chance, card games played against the house, casino games, pari-mutuel racing, and jai alai. Class III games may be conducted or licensed by a tribe in a state that permits such gambling for any purpose or any person, subject to a state-tribal compact. The compact may include tribal-state allocations of regulatory authority; terms of criminal justice cooperation and division of labor; payments to the state to cover the costs of enforcement or oversight; tribal taxes equal to those of the state; procedural remedies for breach of the compact; and standards for the operation of gambling, including licensing.⁴⁷

Class II Tribal/Federal (NIGC) Regulation

One of IGRA's provisions was the establishment of the National Indian Gaming Commission (NIGC), which was given certain regulatory and investigative functions regarding Indian gambling. Originally the NIGC's responsibilities were focused largely on Class II facilities, but the rapid growth in Class III operations has resulted in a shift of its emphases toward this sector of Indian gambling.

NIGC's regulatory responsibilities regarding Class II gambling are extensive. Prior to the opening of any Class II operation, NIGC must review and approve all related tribal gambling ordinances. If a tribal government is working with an outside investor, the NIGC also is

⁴⁷ 25 U.S.C. §2701(d)(7).

charged with reviewing all contracts with that outside management company.

Once a Class II gambling enterprise becomes operational, NIGC is authorized to monitor, inspect, and examine the gambling premises, as well as review and audit the operating records. NIGC has the broad authority to determine whether a tribal gambling operation is complying with the provisions of IGRA, NIGC regulations, and tribal regulations. If NIGC believes any of these provisions have been violated, it is empowered to issue notices of violation, closure orders, and civil fines up to \$25,000 per day, per violation.⁴⁸

The Commission and the Subcommittee have heard testimony that, in the past, the NIGC had been underfunded and understaffed, and that neither the NIGC nor state regulatory authorities have been able to prevent tribes from operating uncompacted gambling facilities in some states. This situation may have improved: With the passage of federal legislation amending IGRA in October of 1997, the NIGC has been empowered to impose fees upon both Class II and Class III gambling activities. This change has increased the NIGC's annual level of funding and has allowed for a significant increase in the number of field investigators and compliance officers. The NIGC reports having issued more notices of violation, closure orders, and civil fines during the period between October 1997 and end of 1998 than during the entire life of the Commission prior to that point. According to its own figures, those efforts have proven successful in bringing more than 95 percent of all the tribal gambling facilities into compliance with federal law.

Class III Tribal/State Regulation

NIGC's original purpose and focus was the regulation of Class II gambling. The explosive growth of Class III gambling has resulted in a greater emphasis on this area as well. NIGC has been assigned a number of responsibilities regarding the regulation of Class III operations, such as conducting background investigations on

individuals and entities with a financial interest in, or a management responsibility for, a Class III gambling contract. In addition NIGC reviews and approves Class III management contracts. However, NIGC's regulatory responsibilities and authority regarding Class III gambling are far more limited than for Class II because IGRA gives the primary responsibility for the regulation of Class III gambling to the tribes and the states.

Under IGRA, the conduct of Class III gambling activities is lawful on Indian lands only if such activities are:

- authorized by an ordinance adopted by the governing body of the tribe and approved by the Chairman of the NIGC;
- located in a state that permits such gambling for any purpose by any person, organization, or entity, and;
- conducted in conformance with a tribal-state compact that is in effect.

IGRA requires that tribes and states negotiate a compact covering, among other things, the regulation of Class III gambling on Indian lands.⁴⁹ The primary responsibility to regulate Class III gambling is with the tribe. States may, but are not required to, provide some form of regulatory oversight of Indian Class III casino games under the compact provisions of the Act.⁵⁰ Therefore, the level of state and tribal regulatory oversight in any given state is determined by the voluntary compact negotiations between the tribe and the state.

The primary regulators of tribal government gambling are Tribal Gaming Commissions with front-line day-to-day responsibilities for monitoring the gambling operations. As noted by

⁴⁹ Section §2710(d)(3)(A) states: "Any Indian tribe having jurisdiction over the Indian lands upon which a Class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact."

⁵⁰ 25 U.S.C. §2701(14)(a)(1-3).

⁴⁸ 25 U.S.C. §2712(a)(1).

the NIGC's Deputy Counsel, "The tribes generally serve as the primary regulators for gambling. They're the ones on the ground. They're the ones that are there 24 hours a day. On occasion states are there 24 hours a day, too, if the tribal/state compact provides for it, but by and large it is the tribes who are doing the primary regulating of Indian gambling."⁵¹

If a state has a public policy of complete prohibition against Class III gambling, then tribes within the borders of the state may not initiate such gambling. However, if the state has no completely prohibitive policy against Class III gambling, then the federal courts have held that the state may not prohibit gambling on reservations.

Given the often opposing viewpoints between tribes and state governments, IGRA's requirement that the two parties negotiate compacts for Class III gambling has been the source of continuing controversy. On one hand, the federal courts have ruled that Indian tribes have a right to establish gambling facilities on their reservations; on the other hand, IGRA requires that compacts be negotiated between the tribes and the states, obviously requiring the state's consent. Clearly, some form of mutual agreement is required. Although most states and tribes seeking to open gambling facilities have managed to successfully negotiate compacts, many have not. When an impasse develops, each side commonly accuses the other of not negotiating "in good faith" and there is no accepted method of resolution.

Eleventh Amendment Immunity for States

IGRA contains a provision for resolving such impasses, at least when it has been the state that is accused of not negotiating in good faith: the tribe may sue the state in federal court. However, in *Seminole Tribe of Florida v. Florida*,⁵² a federal court found that this violated the

Eleventh Amendment's guarantee of state sovereign immunity.

This decision, which covers a plethora of legal issues, has been widely interpreted. It did not, however, declare invalid nor set aside any part of the Act, nor did it set aside any Class III gambling pacts already negotiated. Obviously, states and tribes may continue to voluntarily enter into new compacts.⁵³

One immediate and continuing effect of the *Seminole* decision is that a tribe has no judicial recourse if it believes a state has failed to comply with IGRA's "good faith" provisions. The *Seminole* decision contributed to a stalemate in negotiations between a number of tribal and state governments, a stalemate that continues nearly three years after the *Seminole* decision.

State Criticism of IGRA

Many states are unhappy with several of IGRA's provisions. In testimony before the Commission, representatives of the states have raised a number of areas of concern regarding Indian gambling, including: (1) The federal government does not actively and aggressively enforce IGRA on the reservations, and the states are unable to enforce it on their own; (2) IGRA requires states to negotiate in good faith but does not place the same requirement on tribes; and (3) the scope of gambling activities allowed to tribes is not clearly defined under IGRA.

In the large majority of cases, mutually acceptable tribal-state compacts have been successfully negotiated. In some states, however, including California, Florida, and Washington, tribes have opened Class III casinos without a compact. (As an indication of the difference in their perspectives, states refer to this as "illegal" gambling; tribes term it "uncompacted" gambling.) State governments are not empowered to act against Indian tribes if the tribes are operating Class III gambling establishments without a compact, as enforcement is a federal responsibility. Yet some

⁵¹ Penny Coleman, Deputy General Counsel, National Indian Gaming Commission, testimony before the National Gambling Impact Study Commission, Tempe, AZ (July 30, 1998).

⁵² 517 U.S. 44 (1996).

⁵³ *Ibid.*

states have complained that the federal government refuses to act aggressively in these matters.⁵⁴

State officials also argue that IGRA requires states to negotiate in good faith without placing the same requirement on tribes. According to Tom Gede, Special Assistant Attorney General for the state of California, this unilateral good faith requirement reduces the likelihood that states and tribes will come to agreement through the negotiating process:

[I]t's too easy to get to bad faith, and if there were incentives to allow legitimate differences of opinion to continue to be discussed at the table before somebody raises the bad faith flag, then both parties would be better off. What happens now is that any legitimate difference of opinion results in somebody hoist[ing] the bad faith flag, and it only goes against one party, the state.⁵⁵

In addition, the states argue, IGRA lacks clarity on the scope of gambling activities permitted to tribes. For example, IGRA does not address whether states should be required to negotiate with tribes about providing electronic versions of games already authorized. As technological advances continue to blur the line between Class II and Class III gambling, this issue may become even more complex. Similar disputes have occurred regarding the proper classification of some bingo operations and, thus, the scope of the state's regulatory role.

The states also have bristled at court rulings that have held that if gambling is allowed anywhere in the state for any purpose, even if only under highly controlled and limited circumstances such as charitable gambling by non-profit institutions, there is effectively little restriction on what tribes may offer, including full-fledged casinos. Raymond Scheppach, Executive Director of the

National Governors' Association (NGA), summarized the states' position as follows:

It must be made clear that the tribes can negotiate to operate gambling of the same type and subject to the same restrictions that apply to all other gambling in the state. The governors firmly believe that it is an inappropriate breach of state sovereignty for the federal government to compel states to negotiate tribal operations of gaming activities that are prohibited by state law.⁵⁶

Mechanism for Handling Impasse Between Tribes and States

In an attempt to resolve the impasse caused by the *Seminole* decision and provide a mechanism for resolving state-tribal disputes regarding compacts, the Bureau of Indian Affairs published an "Advanced Notice of Proposed Rulemaking" (hereinafter, "ANPR") on May 10, 1996.⁵⁷ The proposed procedures are a complex and lengthy series of steps involving repeated consultation with the respective tribes and states, but the key element is a provision that would allow the Secretary of the Interior to approve a tribe's request to operate gambling facilities, even if the state and tribe have been unable to agree on a compact. Tribes have strongly supported the ANPR because it would replace the remedy nullified by the *Seminole* decision⁵⁸; states have strongly opposed the proposal as an infringement on their sovereignty.

In essence, the procedures would leave to the Secretary of the Interior the right to determine if the respective state had been negotiating in good faith and, if he determines that it has not, to approve a tribe's proposal to operate Class III gambling facilities. The proposed Secretarial procedures detail a number of steps and

⁵⁴ Ray Scheppach, Testimony Before the National Gambling Impact Study Commission, Washington, D.C. (March 19, 1999) (Executive Director of the National Governors Association). See also *Rumsey Indian Rancheria v. Wilson*, 41 P.3d 421 (9th Cir. 1994).

⁵⁵ *Ibid.*

⁵⁶ Raymond Scheppach, Testimony Before the National Gambling Impact Study Commission, Tempe, Arizona (July 30, 1998) (Executive Director of the National Governors Association).

⁵⁷ 61 FR 21394 (1996).

⁵⁸ However, tribes disagree with the Secretary's decision to use the *Rumsey* case as the legal standard for the scope of gambling because it would impose the 9th Circuit's interpretation of California state gambling public policy on the rest of the nation.

conditions necessary before a final ruling can take place. For example, the Secretary would intervene only after a state had invoked sovereign immunity to block a suit regarding its failure to negotiate a compact in good faith and that suit had been dismissed under *Seminole*. Further, the state would have the right to put forward an alternative proposal, which the tribe would be asked to comment on. Absent such comments, the state's proposal could be adopted. The key point of dispute concerns the fact that, assuming no tribal-state agreement had been reached, the Secretary could then appoint a mediator to decide the issue or himself approve the operation of the gambling facilities, in both cases without the state's consent.

At its July 29, 1998, hearing in Tempe, Arizona, the Commission voted to send a letter to the Secretary of the Interior requesting that he defer issuance of a final rule pending completion of the Commission's *Final Report*.⁵⁹ However, on April 12, 1999, shortly after the expiration of a legislative ban imposed by Congress prohibiting the Secretary of the Interior from approving any Class III compacts without the prior approval of the affected states, the Department of the Interior published its final rule that, in effect, would implement the proposed procedures after 30 days. This measure was immediately challenged in federal court by the states of Florida and Alabama, which sought to block the new rules from taking effect. Senator Enzi offered an amendment to an appropriations bill that would have prohibited the Secretary from issuing the 'Procedures.' Senator Slade Gordon withdrew the amendment based upon a promise from Secretary Bruce Babbitt that he would not implement the 'Procedures' until a federal court decided the issue of his authority to issue such procedures under the IGRA. The resolution of

this problem will almost certainly become the responsibility of the federal courts.

Other Mechanisms

Other mechanisms have been proposed for resolving the problems underlined by the *Seminole* case. For example, the Department of Justice might prosecute tribes in federal courts only when the state has acted in good faith or by suing states on behalf of the tribes when it determines that the states are refusing to comply with their obligations under IGRA.⁶⁰ One scholar has argued for expansion of federal jurisdiction to allow for federal resolution of state-tribal disputes.⁶¹ Senator Daniel Inouye (D-Hawaii) has suggested that both states and tribes agree to waive their sovereign immunity on this issue. No proposal, however, has secured the agreement of tribes and states.

LOCAL COMMUNITY IMPACTS

Local regulations such as zoning, building, and environmental codes do not apply on Indian lands. Tribal governments do, however, sometimes adopt local building and other health and safety codes as tribal laws. State and local governments usually provide and service infrastructure such as roads and bridges near reservations that are relied on by tribal gambling facilities. In some instances, state and local governments may provide water, sewage treatment, and electrical service to a tribal casino, and tribes may be charged (and pay) for such services. In addition tribal governments often conclude agreements with the local governments for certain essential governmental services such as fire and emergency medical services, or enter into reciprocal agreements to provide such services with an agreed level of compensation. Two of the largest Indian

⁵⁹ Letter from Kay C. James, Chairman of the National Gambling Impact Study Commission, to Bruce Babbitt, Secretary of the Interior (August 6, 1998) (on file with the National Gambling Impact Study Commission). The Commission vote was 8 to 1 in favor of recommending to the Secretary of the Interior that he postpone issuing the final rule until after the Commission had delivered its report and recommendations to Congress and the President on June 18, 1999; Commissioner Robert Loescher opposed the motion.

⁶⁰ Ibid.

⁶¹ See Brian Casey Fitzpatrick, *Casenote: Finding a Fair Forum: Federal Jurisdiction for IGRA Compact Enforcement Action in Cabazon Band of Mission Indians v. Wilson*, 35 Idaho L. Rev. 159 (1998).

gambling enterprises in the United States remit substantial funds to the state that are then redistributed by the state on a formula to local communities.⁶²

Tribal representatives often point to positive economic and social impacts of Indian casinos on neighboring communities. According to a study funded by five gambling tribes and presented at the Subcommittee's hearing at the Gila River Indian Community:

In addition to...positive economic and social impacts on reservations, the available evidence also demonstrates that tribes contribute to local economies through taxes, revenue sharing, employment of non-Indians, contributions to local charities, and a myriad of other ways. Furthermore, the case study tribal casinos we analyzed did not appear to have discernable negative impacts on off-reservation sales or crime rates.⁶³

A similar view has been expressed by Richard G. Hill, chairman of the National Indian Gaming Association:

NIGA encourages all those who would disparage Indian governmental gaming to, first, add up all the benefits to their own communities from Indian gaming and what would happen to the jobs and businesses if Indian Nations and their economic development were no longer there. Those opponents of Indian governmental gaming who self-righteously speak about morality and "state's rights" would have much greater

problems to deal with than poor, starving Indians.⁶⁴

In many cases, local government officials acknowledge the positive economic impact of tribal gambling but voice concerns regarding other matters. For example, William R. Haase, Planning Director for the town of Ledyard, Connecticut, near the Foxwoods Casino, owned by the Mashantucket Pequot Tribal Nation, stated that:

the three local host communities (Ledyard, Preston, and North Stonington), with a combined population of only 25,300, find it difficult to cope with the magnitude of Foxwoods Casino, primarily in the areas of diminished quality of life due to tremendous increases in traffic along local roads and state highways, deteriorating highway infrastructure, and increased policing and emergency services costs. Although confined to a 2,300-acre federally recognized Indian reservation, Foxwoods has expanded so rapidly that the host towns and Connecticut Department of Transportation have been unable to keep up. Fortunately, the adverse effects of Foxwoods are confined primarily to the immediate surrounding host communities, and problems diminish with distance.⁶⁵

Similarly, Supervisor Dianne Jacob of San Diego, California, while noting that her county government "has had some success in establishing a government-to-government relationship with the members of the tribes in [her supervisorial] district," also pointed out that

⁶² Together, the Mashantucket Pequot Tribal Nation and the Mohegan Nation are forecasted to contribute \$294 million to the state of Connecticut in FY 1999, of which \$135 million will be redistributed directly to towns. *1999-2001 Biennium: Governor's Budget Summary, Connecticut, John G. Rowland, Governor, p. A-3, A-7, A-12, 1999.*

⁶³ Stephen Cornell, Joseph Kalt, Matthew Krepps, and Jonathan Taylor, "American Indian Gaming Policy and Its Socio-Economic Effects" (July 31, 1998), p. 78.

⁶⁴ National Indian Gaming Association Press Release (March 16, 1998).

⁶⁵ William R. Haase, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts (March 16, 1998) (Planning Director, town of Ledyard, Connecticut). Mr. Haase addressed the Commission during the bus trip to Foxwoods Casino and not during the regular meeting. He also indicated that the problem was less with the tribe reimbursing the local communities for the costs they incurred from the nearby presence of the Foxwoods Casino than with the state of Connecticut's failure to share sufficiently the revenues it obtained from the same casino.

local governments incur the costs of law enforcement for gaming-related crimes whether they are property crimes that occur at a casino or more serious crimes related to individuals who have been at a casino. For example, the San Diego County Sheriff, who is responsible for law enforcement adjacent to all 3 of the reservations [in San Diego County] on which there is gambling, responded to almost 1,000 calls for service in 1996 alone.⁶⁶

Supervisor Jacob also testified at length about two tribal land acquisitions that had been proposed but not yet approved in her district:

In both of these situations, the impact on residents of adjacent communities—in terms of traffic, crime, and property devaluation—would have been devastating.

[I]t is one thing to respect the sovereignty of existing tribal lands, but another to annex lands simply for the purpose of circumventing local land use and zoning regulations.⁶⁷

Many tribes have voluntarily entered into agreements with neighboring local governments to address those types of issues. Howard Dickstein, an attorney representing the Pala Band of Mission Indians in California, explained to the Commission how such agreements can be reconciled with tribal sovereignty:

I think the Pala and other tribes that I represent have determined that in an era when tribes have begun to interact with other non-reservation governments...and clearly have off-reservation impacts because of their on-reservation activities, what sovereignty requires is negotiation with those other governments that represent those non-reservation

constituencies and reaching agreements and accommodations that allow those other governments to protect their interests but maintain the tribes' interests and allow the tribes to protect their interests.⁶⁸

ECONOMIC DEVELOPMENT

Only a limited number of independent studies exist regarding the economic and social impact of Indian gambling. Some have found a mixture of positive and negative results of the impact of gambling on reservations,⁶⁹ whereas others have found a positive economic impact for the tribal governments, its members and the surrounding communities.⁷⁰ This is an area greatly in need of further research. However, it is clear from the testimony that the Subcommittee received that the revenues from Indian gambling have had a significant—and generally positive—impact on a number of reservations.

IGRA requires that the revenues generated by Indian gambling facilities be used to fund tribal government operations and programs, the general welfare of the Indian tribe and its members, and tribal economic development,

⁶⁸ Howard Dickstein, Testimony Before the National Gambling Impact Study Commission, Del Mar, California (July 29, 1998) (Attorney Representing the Pala Band of Mission Indians).

⁶⁹ See General Accounting Office, Tax Policy: A Profile of the Indian Gaming Industry, GAO/GGD-97-91 (Letter Report, May 5, 1997) (as of December 31, 1996, 184 tribes were operating 281 gaming facilities with reported gaming revenues of about \$4.5 billion); Stephen Cornell, Joseph Kalt, Matthew Krepps, and Jonathan Taylor, *American Indian Gaming Policy and Its Socioeconomic Effects: A Report to the National Gambling Impact Study Commission* (July 31, 1998) (a study of five tribes that found gambling was an "engine for economic growth" and "the number of compulsive gamblers...has grown" but that "head counts of compulsive gamblers...pale in importance beside the demonstrable improvements in social and economic indicators documented for gaming tribes." At iii-iv); William Bennett Cooper, III, Comment: What is in the Cards for the Future of Indian Gaming? 5 *Vill. Sports & Entertainment L. Forum* 129 (1998) (discussion of the law and economics of Indian gambling that examines revenue increases, Indian cultural backlash, compulsive gambling, and crime); and Anders, *supra* note 1 (survey and discussion of a number of positive and negative aspects of Indian gambling).

⁷⁰ *The Connecticut Economy* (published by the Department of Economics, University of Connecticut), page 6, (Spring 1997).

⁶⁶ Diane Jacob, Testimony Before the National Gambling Impact Study Commission, Del Mar, California (July 29, 1998) (Supervisor, County of San Diego, 2nd District).

⁶⁷ *Ibid.*

among other uses. This includes essential governmental services such as education, health, and infrastructure improvements.⁷¹ According to the Chairman of the National Indian Gaming Commission, many tribes have used their revenues “to build schools, fund social services, provide college scholarships, build roads, provide new sewer and water systems, and provide for adequate housing for tribal members.”⁷²

Many tribes are providing more basic services. One example is the Prairie Island Indian Community. Their representative testified before the Commission’s Subcommittee on Indian Gambling that:

We no longer rely only on government funding to pay for the basics. We have used gaming proceeds to build better homes for our members, construct a community center and an administration building, develop a waste water treatment facility and build safer roads. We are also able to provide our members with excellent health care benefits and quality education choices.... We are currently working with the [Mayo Clinic] on a diabetic study of Native Americans. We can provide chemical dependency treatment to any tribal member who needs assistance. And our education assistance program allows tribal members to choose whatever job training, college, or university they wish to attend.⁷³

A representative of the Viejas Band of Kumeyaay Indians also testified that:

Our gaming revenues provide such government services as police, fire, and ambulance to our reservation, neighbors and casino. Earnings from gaming have

paved roads, provided electricity, sewage lines, clean water storage, recycling, trash disposal, natural habitat replacement, and watershed and other environmental improvements to our lands.⁷⁴

Other tribal governments report the development of sewage management projects, energy assistance, housing, job training, conservation, education, native language programs, and many other services that previously were absent or poorly funded before the introduction of gambling. There also has been an emphasis by many tribes on using gambling revenues for preserving cultural practices and strengthening tribal bonds.⁷⁵

For some, Indian gambling provides substantial new revenue to the tribal government.⁷⁶ For others, Indian gambling has provided little or no net revenue to the tribal government, but has provided jobs for tribal members. One estimate of employment at Indian gambling facilities puts the figure at 100,000 jobs. Indian gambling provides jobs for Indian tribal members in areas where unemployment has often exceeded 50 percent of the adult age population. Many of the casinos also employ non-Indian people and therefore can have a significant positive economic impact on surrounding communities, as well as for many small businesses near Indian reservations.⁷⁷

⁷⁴Anthony R. Pico, Testimony Before the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Las Vegas, Nev. (Nov. 9, 1998) (Chairman of the Viejas Band of Kumeyaay Indians).

⁷⁵Ibid., note 50, and Hilary Osborn, Testimony Before the Subcommittee on Indian Gambling of the National Gambling Impact Study Commission, Las Vegas, Nev. (Nov. 9, 1998) (Chairman of the Tribal Casino Gaming Enterprise, Eastern Band of Cherokee Indians).

⁷⁶See, Sean Paigc, *Gambling on the Future*, Insight on the News, 8. (Dec. 22, 1997).

⁷⁷“Economic Contributions of Indian Tribes to the Economy of Washington State,” Veronica Tiller, Ph.D., Tiller Research, Inc., and Robert A. Chase, Chase Economics (1999). This study was a partnership effort commissioned by the State of Washington and the Washington state tribal governments. See also, “Economic Benefits of Indian Gaming in the State of Oregon,” James M. Klas and Matthew S. Robinson (June 1996) and “Statistics on the Economic Impact of Indian Gaming,” National Indian Gaming Association, (February, 1997).

⁷¹25 U.S.C. §2701(11)(B)(i-v).

⁷²Tadd Johnson, (now former Chairman), Testimony Before the National Gambling Impact Study Commission, Boston, Mass. (March 16, 1998).

⁷³Carrel Campbell, Testimony Before the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Las Vegas, Nev. (Nov. 9, 1998) (Secretary of the Prairie Island Indian Community).

Although the impact varies greatly, tribal gambling has significantly decreased the rates of unemployment for some tribes. For example, the Subcommittee received testimony that stated that, for the Mille Lacs Band of Ojibwes in Minnesota, unemployment has decreased from about 60 percent in 1991 to almost zero at present.⁷⁸ For the Oneida tribe of Wisconsin, the unemployment rate dropped from nearly 70 percent to less than 5 percent after their casino opened.⁷⁹ Representatives from the Gila river Indian Community testified that unemployment on their reservation has decreased from 40 percent to 11 percent since the introduction of gambling.⁸⁰ The Coeur d'Alene tribe reported a decrease in the unemployment rate from 55 percent to 22 percent.⁸¹ A number of other tribes have reported similar results.

The Subcommittee also heard much testimony about the pride, optimism, hope, and opportunity that has accompanied the revenues and programs generated by Indian gambling facilities. As one tribal representative stated:

Gaming has provided a new sense of hope for the future among a Nation that previously felt too much despair and powerlessness as a result of our long term poverty...and a renewed interest in the past. The economic development generated by gaming has raised our spirits and drawn us close together.⁸²

The Chairman of the Hopi tribe testified before this Commission.

⁷⁸ Testimony submitted by Marge Anderson, Chief Executive, Mille Lacs Band of Ojibwe Indians, before the Indian Gambling Subcommittee of the National Gambling Impact Study Commission, Las Vegas, NV, November 9, 1998.

⁷⁹ Ibid.

⁸⁰ Letha Lemb-Grassley, Testimony Before the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Seattle, WA (Jan 7, 1999) (Board of Directors of the Gila River Indian Community).

⁸¹ Information provided by the Coeur d'Alene Tribe to the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Seattle, WA (Jan. 7, 1999).

⁸² Jacob LoneTree, Testimony Before the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Las Vegas, NE (Nov. 9, 1998) (President of the Ho-Chunk Nation).

One need only visit an Indian casino to realize that a significant number of casino patrons are Indian people from the reservations on which the casino is located or from other nearby reservations, including non-gaming reservations.... I believe it is also safe to conclude that most Indian people do not routinely have a surplus disposable income which should be expended on games of chance. Most of our people on most reservations and tribal communities find it difficult enough to accumulate enough income on a monthly basis to meet the most basic needs of their families. While the decision to expend those funds in gaming activities is an individual choice, the impacts on family members who frequently do not participate in that choice are nevertheless affected.⁸³

EMPLOYMENT LAWS AND INDIAN TRIBAL GOVERNMENTS

The applicability of federal labor laws to tribal governments and their business enterprises is a controversial and much-discussed issue in federal courts.⁸⁴ Two federal statutes concerning employment issues expressly exclude tribes from coverage: *Title VII of the Civil Rights Act of 1964* and *Title I of the Americans with Disabilities Act of 1990*. In addition, certain other non-discrimination laws have been held not to apply where the alleged discrimination was in regards to admission to membership in the tribe.⁸⁵ All other federal statutes regarding employment "are silent."⁸⁶ Some federal courts

⁸³ The Honorable Wayne Taylor, Jr., Testimony before the National Gambling Impact Study Commission, Tempe, AZ, July 30, 1998.

⁸⁴ See William Buffalo and Kevin Wadzinski, *Application of Federal and State Labor and Employment Law to Indian Tribal Employers*, 25 MR. ST. U.L. REV. 1365 (1995).

⁸⁵ *Nero v. Cherokee Nation of Oklahoma*, 892 F.2d 1457, 1462-1463 (CA10 1989).

⁸⁶ Vicki J. Limas, *Application of Federal Labor and Employment Statutes to Native American Tribes: Respecting Sovereignty and Achieving Consistency*, 26 ARIZ.L.J. 681 at 682.

of appeals, however, have held that the following federal laws do apply to on-reservation tribal businesses under fact-specific circumstances: The Occupational Safety and Health Act;⁸⁷ the Employee Retirement Income Security Act;⁸⁸ and the Fair Labor Standards Act.⁸⁹

The National Labor Relations Act (NLRA) permits employees to form unions and to bargain collectively with their employer. The law does not contain language that expressly applies the Act to Indian tribes nor does it expressly exempt Indian tribes from the Act's coverage. However, the Act does expressly exempt government entities.

The National Labor Relations Board (NLRB or Board), which hears disputes brought under the Act in the first instance, has addressed the issue of whether the Act applies to Indian tribes and has twice held that a tribally owned and operated business located on Indian lands is exempt from the Act under the Act's exemption for government entities. Similarly, at least one court has ruled that the NLRA does not apply to tribal governments.

An important case on the subject, *Fort Apache Timber Company*, was decided by the Board in 1976.⁹⁰ In this case, the Board ruled that it lacked jurisdiction over the White Mountain Apache Tribe and a wholly owned and operated enterprise of the tribe. Central to the Board's ruling was the recognition that the tribe was a government, and thus exempt from the Act:

⁸⁷ *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1115 (CA9 1985); *Reich v. Mashantucket Sand & Gravel*, 95 F. 3d 174 (CA2 1996). For example, in *Mashantucket*, OSHA was found to apply to the Mashantucket Pequot Sand & Gravel operation through its activities in interstate commerce, but recognized Tribe's right to establish its own tribal OSHA system.

⁸⁸ *Smart v. State Farm Insurance Co.*, 868 F.2d 929 (CA7 1989); *Lumber Industry Pension Fund v. Warm Springs Forest Products*, 939 F.2d 683 (CA9 1991).

⁸⁹ *Reich v. Great Lakes Indian Fish & Wildlife Commission*, 4 F.3d 490 (CA7 1993). The Court ruled against the plaintiff on the grounds that the FLSA's police exemption applied. The Court never reached or decided the question of whether or not FLSA applied directly to the tribal government.

⁹⁰ *Ft. Apache Timber Co.* 226 N.L.R.B. 503 (1976).

Consistent with our discussion of authorities recognizing the sovereign-government character of the Tribal Council in the political scheme of this country it would be possible to conclude that the Council is the equivalent of a State, or an integral part of the government of the United States as a whole, and as such specifically excluded from the Act's Section 2(2) definition of "employer." We deem it unnecessary to make that finding here, however, as we conclude and find that the Tribal Council, and its self-directed enterprise on the reservation that is here asserted to be an employer, are implicitly exempt as employers within the meaning of the Act.⁹¹

The Federal District Court for the District of Oregon expressly agreed with the Board's position in *Fort Apache Timber* and similarly ruled that the Confederated Tribes of the Warm Springs Reservation was "not an employer for purposes of [the NLRA]."⁹² The court held, however, that a business operated by a tribal corporation was covered by the NLRA.

It should be noted that the Board has expressly held, and the D.C. Circuit Court has upheld, that the Act's provisions apply to private employers operating on reservations.⁹³ Similarly, the Board has applied the NLRA to a joint venture between a tribal employer and a non-tribal employer on a reservation.⁹⁴ In addition, the Board has also held that the Act applies to businesses wholly owned and operated by a tribe if the business is located off reservation.⁹⁵

The applicability of state labor law to tribal gambling employers is significantly less complex. Absent some showing that Congress

⁹¹ *Ibid.*

⁹² 103 L.R.R.M. (BNA) 2749 (D. Or. 1980).

⁹³ *Navajo Nation v. N.L.R.B.*, 288 F.2d 162 (D.C. Cir. 1961), *cert. denied*, 366 U.S. 928 (1961).

⁹⁴ *Devils Lake Sioux Manufacturing Corporation*, 243 N.L.R.B. 163 (1979).

⁹⁵ *Sac & Fox Industries, Ltd.*, 307 N.L.R.B. 241 (1992).

has consented, the states have no power to regulate activity conducted on an Indian reservation.⁹⁶ Thus, tribal labor laws apply and state labor laws do not apply to tribal gambling employers under the federal law.⁹⁷ State laws that would be inapplicable include workers' compensation; state unemployment insurance; state minimum wage; daily or weekly overtime; state disability insurance programs; protection against discrimination for race, sex, age, religion, disability, etc.; protection of minors; no authorized deductions from paychecks; no kickbacks or wage rebates; mandatory day of rest; payment of wages at least semi-monthly; no payment in scrip, coupons, or IOU's; no required purchases at company store; and payment in full to terminated workers. It should be noted that most states have laws of the types listed, but some states do not. Other states have additional laws not on the list.

State labor law varies considerably with respect to the rights of state government employees. Under these laws, 28 states allow their employees to organize but not to strike; 9 states permit employees to strike in limited instances; 11 states put limits on the areas that are subject to negotiations; and 8 states do not grant their employees a right to bargain collectively. However, citizens of those states have the right to vote for their state and local government officials. Although tribal members make up a majority of tribal casino employees in a few smaller rural tribal casinos, the great majority of tribal casino employees are not Native Americans; for example, in California, more than 95 percent of the estimated 15,000 tribal casino employees are not Indians; at Foxwoods, in Connecticut, there are a little more than 500

members of the Mashantucket Pequot Tribal Nation and more than 13,000 employees.

In Boston, the Commission heard extensive testimony on the issue of applicability of labor law to tribal employers. Connecticut Attorney General Richard Blumenthal urged the Commission to "apply basic worker protections in federal and state law to the tribal employers or require the tribes to enact laws and ordinances or protections that are commensurate with the federal protections."⁹⁸

Noting that Indian casinos have created thousands of badly needed jobs in southeastern Connecticut, Connecticut State Senator Edith Prague, Chair of the Labor Committee for the Connecticut General Assembly, gave testimony on the relationship between tribal sovereignty and workers' rights:

Federally recognized tribes enjoy sovereignty which is guaranteed under the Constitution of the United States. Along with sovereignty, there is a responsibility to maintain a basic respect for human rights. This is the balance we need. The reason there is no balance at Foxwoods is because of how the Mashantucket Pequots have chosen [to use] their sovereign rights....

I am not opposed to sovereignty. I am however opposed to a tribe using sovereignty as a weapon to shield themselves from having to behave fairly and decently with their workers. There are just over 500 members of the Mashantucket Pequot Tribe, there are just over 13,000 workers at Foxwoods Casino, some of them may be Mashantucket Pequots, the great majority of them are not. And what rights do these workers have?⁹⁹

⁹⁶ *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973).

⁹⁷ Examples of state laws include workers' compensation; state unemployment insurance; state minimum wage; daily or weekly overtime; state disability insurance programs; protection of minors; no authorized deductions from paychecks; no kickbacks or wage rebates; mandatory day of rest; payment of wages at least semi-monthly; no payment in scrip, coupons or IOU's; no required purchase at a company store, and payment for terminated workers. It should be noted that while many states have these laws, some states do not. It is a prerogative of state sovereignty to choose its labor laws and of tribal sovereignty to choose its labor laws.

⁹⁸ Richard Blumenthal, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts (March 16, 1998) (Attorney General, State of Connecticut).

⁹⁹ Edith Prague, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts (March 16, 1998) (Connecticut State Senator).

In addition, the Commission heard testimony from former employees of the Foxwoods Casino, including Fred Sinclair, who described his experience there:

I am part Cherokee and I support the dream of the Pequots and their success. I was at the original employer rally in 1992 and actually believed that they cared about their employees. I put my heart, soul, and thousands of uncompensated hours into Foxwoods. Even though my part may be considered small, I helped the Pequots achieve their dream, only to be severely injured, harassed, stripped of my position, my rights, my job, and my health benefits by the abusive upper management they are responsible for.¹⁰⁰

Tribal representatives have disputed employee claims of poor working conditions. According to Richard G. Hill, Chairman of the National Indian Gaming Association:

The record clearly shows Indian Nations provide good jobs, often with wages in excess of the federal minimum wage, health care, retirement, burial insurance, and other fringe benefits. Indian Nation gaming jobs are generally better than other jobs available in the community. We agree that unemployment insurance and workman's compensation should be available under a Tribal system or the Tribe should participate in a state or federal plan. We reject the notion that Indian Nation non-Indian employees have no rights. Indians and non-Indians are permitted access to grievance procedures at every Indian gaming facility. This objection infers Indian Nations cannot run fair grievance systems and is code for the implication that Indians are not able to govern themselves. This is an extremely prejudicial claim. No Indian Nation testified against Unionization. In fact,

Indian people generally perceive Union members as working people like themselves.¹⁰¹

Although some tribes do not favor unionization, other tribes have taken an alternative approach by entering into labor agreements covering tribal gambling employees. Testifying before the Subcommittee in Seattle, Apesanahkwat, Chairman of the Menominee Indian Tribe of Wisconsin, described one such voluntary agreement between his tribal government and a group of unions, covering the tribe's proposed off-reservation casino in Kenosha, Wisconsin. This groundbreaking agreement affirms the tribe's sovereignty and guarantees the rights of tribal gambling employees to organize themselves, join unions, and bargain collectively. Among other things, it provides for employer neutrality on the issue of unionization; union access to employee dining and break rooms; and binding arbitration to settle disputes. The tribe also agrees to participate in the state's unemployment and workers' compensation programs. For their part, the unions agree not to engage in strikes, slowdowns, picketing, sit-ins, boycotts, hand-billing, or other economic activity against the tribe's casino.¹⁰²

OTHER ISSUES FOR CONSIDERATION

Taxation

Few topics regarding Indian gambling have generated more controversy and heated dispute than the subject of taxation.

As governmental entities, tribal governments are not subject to federal income taxes. Instead, the Internal Revenue Service classifies tribal

¹⁰⁰ Fred Sinclair, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts (March 17, 1998) (Former employee at Foxwoods Casino).

¹⁰¹ Richard G. Hill, Testimony Before the National Gambling Impact Study Commission, Virginia Beach, Virginia (February 9, 1999) (Chairman of the National Indian Gaming Association).

¹⁰² Apesanahkwat, Testimony Before the Indian Gambling Subcommittee of the National Gambling Impact Study Commission, Seattle Washington (January 7, 1999) (Chairman, Menominee Tribe of Wisconsin).

governments as non-taxable entities.¹⁰³ As Indian casinos are owned and often operated by the tribes, the net revenues from these facilities go directly into the coffers of the tribal governments. Some proponents of Indian gambling argue that these revenues are thus taxed at a rate of 100 percent.

As noted above, IGRA requires that the revenues generated by Indian gambling facilities be used for tribal governmental services and for the economic development of the tribe. To the extent that the revenues are used for these purposes, they are not subject to federal taxes. The major exception concerns per-capita payments of gambling revenues to eligible tribal members. According to IGRA, if any gambling revenues remain after a tribe's social and economic development needs have been met, and its tribal government operations have been sufficiently funded, then per-capita distributions can be made to eligible tribal members, if approval is granted by the Secretary of the Interior. Individuals receiving this income are then subject to federal income taxes as ordinary income.¹⁰⁴

State income taxes, however, do not apply to Indians who live on reservations and who derive their income from tribal enterprises. State income tax does apply to non-Indians working at Indian casinos, and to Indians living and working off the reservations, as well as to those Indians who live on reservations but who earn their income at non-tribal operations off the reservations.

In general, state and local government taxes do not apply to tribes or tribal members living on reservations. However, many of the state-tribal compacts that have been negotiated contain provisions for payments by the tribes to state governments, which may or may not then allocate some of the proceeds to local governments. These payments most commonly include reimbursement of the state's share of the

costs of regulating tribal gambling facilities or similar types of services. But there are examples in which the state has required payment from tribes merely as a quid pro quo for concluding a compact. For example, in its compact with the Mashantucket Pequot, the state of Connecticut receives 25 percent of the proceeds from slot machines at the Foxwoods casino in return for maintaining the tribe's monopoly (shared along with the nearby Mohegan Sun casino on the Mohegan reservation) on slot machines in the state. In addition to these mandatory compacts, many tribes have negotiated voluntary agreements with neighboring communities in which compensation is provided for fire protection, ambulance service, and similar functions provided to the tribe.

Exclusivity Payments

Tribes in some states have made "voluntary" payments to states in exchange for the exclusive right to conduct casino-type gambling on a large scale when states allow charitable casino nights but not commercial casinos. These "exclusivity payments" are usually based on a percentage of revenues earned from slots or other gambling.

These voluntary payments have created some confusion. Given that the IGRA specifically prohibits imposition of a state tax on an Indian tribe as a condition of signing a tribal gambling compact, the payments at first glance seem to violate this provision.¹⁰⁵ The distinction, however, is that in order for these voluntary payments to be valid, the state must provide additional value that is distinct from the right of a tribe to operate Class III gambling in a state.

The Mashantucket Pequot Tribal Nation was the first such agreement to include exclusivity payments and provides the clearest example. The

¹⁰³ Internal Revenue Service Revenue Ruling 94-16, 1994-1 C.B. 19, as amplified by Rev. Rul. 94-65, 1994-2 C.B. 14. See also, "Indian Assistance Handbook," Department of the Treasury, Internal Revenue Service, (1994).

¹⁰⁴ 25 U.S.C. § 2710(b)(3)(D).

¹⁰⁵ 25 U.S.C. § 2710(d)(4), as follows:

"(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity."

tribe was permitted to exclusively operate casino-style, Class III gambling in Connecticut in exchange for a 25 percent payment of the gross slot machine revenues to the state of Connecticut. The extraordinarily high value of the exclusivity consideration derived from the casino's location in one of the densest and wealthiest populations in the United States. Should the state of Connecticut permit any other party to operate casino-style gambling in Connecticut, the tribe's obligation to pay 25 percent of its slot revenues would cease, unless the tribe consents (as they recently did for the new Mohegan Sun casino). But the Mashantucket Pequot Tribal Nation would still be permitted to operate Class III gambling. Therefore, the additional agreement in which the state ensures non-competition for the tribe's gambling operation is distinct from the right of the tribe to operate Class III gambling.

Off-Reservation Gambling

It is possible for an Indian tribe to operate Indian gambling off existing reservation lands. The general rule under IGRA is that no Indian gambling may occur unless it is located on "Indian lands" acquired before the enactment of IGRA in 1988.¹⁰⁶ IGRA prohibits the operation of Indian gambling on lands acquired by a tribe and transferred into trust after its enactment in 1988, with the following exceptions:

- When an Indian tribe was without a reservation when IGRA was enacted and the newly acquired lands in trust are within the boundaries of the tribe's former reservation;
- When an Indian tribe purchases off-reservation lands and transfers them into trust after the enactment of IGRA and it meets certain conditions and obtains certain consents. An Indian tribe is permitted to

operate Indian gambling on newly acquired lands that have been transferred into trust and located off an existing reservation when "the Secretary [of the Interior], after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gambling establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination;"¹⁰⁷

- When an Indian tribe acquires land as settlement of a tribal land claim or its former reservation lands are restored to trust status;¹⁰⁸
- When an Indian tribe acquires an initial reservation as a part of its federal recognition under the federal acknowledgement process.

In the eleven years since IGRA's enactment, the Bureau of Indian Affairs has reviewed ten applications to operate off-reservation casinos in Milwaukee, Wisconsin; Council Bluffs, Iowa (two applications for the same parcel of land); Salem, Oregon; Park City, Kansas; Allen Parish, Louisiana; Oklahoma City, Oklahoma; Detroit, Michigan; Marquette County, Michigan; and Airway Heights, Washington. Of these, the BIA accepted two—the Forest County Potawatomi Tribe located in Milwaukee, Wisconsin in 1990; and the Kalispel Tribe, located in Airway Heights, Washington in 1998. One application—i.e., Allen Parish—was rendered moot by the tribe's decision to use a site that did not require approval; three applications—Council Bluffs, Salem, and Detroit—were officially rejected by either the Secretary of the Interior or the state governor; and the remainder, though not officially rejected, apparently are no longer under active

¹⁰⁶ 25 U.S.C. §2710 (b)(1), (d)(1). "Indian lands" are "all lands within the limits of any Indian reservation" and "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. §2703 (4)

¹⁰⁷ The Indian Gaming Regulatory Act of 1988, 25 U.S.C., Sect. 2719.

¹⁰⁸ Ibid.

consideration, at least in some cases because of the governor's stated opposition.¹⁰⁹

Proposals for off-reservation tribal casinos do not always reach the formal application stage. For example, off-reservation tribal casinos also have been proposed in Bridgeport, Connecticut; Fall River, Massachusetts; Kenosha, Wisconsin; Kansas City, Kansas; Portland, Oregon; southern New Jersey; and New York's Catskill Mountains.

Land acquisitions by Indian tribes for non-gambling purposes have been largely focused on reclaiming former reservation land that was alienated in the past. According to Richard G. Hill, Chairman of the National Indian Gaming Association (NIGA): "There is really no need for anyone to fear land-into-trust acquisitions. It's not like Indian nations will ever be able to buy back the entire country."¹¹⁰

Class II "Megabingos"

Tribes currently operate Class II "megabingos" that use the telephone lines to operate gambling similar to the current pari-mutuel uses. These are not Internet gambling, as the linkages are reservation to reservation and do not involve individual home terminal access. More than 60 tribal governments currently use these forms of technology in the play of interstate-linked Class II bingo games, which are satellite broadcast across the country. These forms of technology are used to broaden the participation levels of these games and attract more people to visit Indian communities.

¹⁰⁹ U.S. Department of the Interior, Bureau of Indian Affairs, "Gaming Acquisitions Approved Since Enactment of IGRA, October 17, 1988"; "Unapproved Gaming Acquisitions Since Enactment of IGRA, October 17, 1988"; and "Actions by the Washington, D.C. Office of the Department of the Interior on Applications to Take Off-Reservation Land In Trust for Gaming (Not Including the Application Involving the Hudson Do Track)" January 8, 1998.

¹¹⁰ Daniel Meisler, "State and Local Finance: Senate Proposal on Indian Gambling Is Under Attack By Governors' Group," *The Bond Buyer* (May 13, 1998), p. 5.

RECOMMENDATIONS

6.1 The Commission acknowledges the central role of the National Indian Gaming Commission (NIGC) as the lead federal regulator of tribal governmental gambling. The Commission encourages the Congress to assure adequate NIGC funding for proper regulatory oversight to ensure integrity and fiscal accountability. The Commission supports the NIGC's new Minimum Internal Control Standards, developed with the help of the National Tribal Gaming Commissioners and Regulators, as an important step to ensure such fiscal accountability. The Commission recommends that all Tribal Gaming Commission work ensures that the tribal gambling operations they regulate meet or exceed these Minimum Standards, and that the NIGC focus special attention on tribal gambling operations struggling to comply with these and other regulatory requirements.

6.2 The Commission recommends that IGRA's classes of gambling be clearly defined so that there is no confusion as to what forms of gambling constitute Class II and Class III gambling activities. Further, the Commission recommends that Class III gambling activities should not include any activities that are not available to other persons, entities or organizations in a state, regardless of technological similarities. Indian gambling should not be inconsistent with the state's overall gambling policy.

6.3 The Commission recommends that labor organizations, tribal governments, and states should voluntarily work together to ensure the enforceable right of free association—including the right to organize and bargain collectively—for employees of tribal casinos. Further, the Commission recommends that Congress should enact legislation establishing such worker rights only if there is not substantial voluntary progress toward this goal over a reasonable period of time.

6.4 The Commission recommends that tribal governments, states and, where appropriate, labor organizations, should work voluntarily together to extend to employees of tribal casinos

the same or equivalent (or superior) protections that are applicable to comparable state or private-sector employees through federal and state employment laws. If state employee protections are adopted as the standard for a particular tribal casino, then they should be those of the state in which that tribal casino is located. Further, the Commission recommends that Congress should enact legislation providing such protections only if there is not substantial voluntary progress toward this goal over a reasonable period of time.

6.5 The Commission recognizes that under IGRA, Indian tribes must annually report certain proprietary and non-proprietary tribal governmental gambling financial information to the NIGC, through certified, independently audited financial statements. The Commission recommends that certain aggregated financial, Indian gambling data from reporting tribal governments, comparable by class to the aggregated financial data mandatorily collected from commercial casinos and published by such states as Nevada and New Jersey, should be published by the National Indian Gaming Commission annually. Further, the Commission recommends that the independent auditors should also review and comment on each tribal gambling operation's compliance with the Minimum Internal Control Standards (MICS) promulgated by the NIGC.

6.6 The Commission recommends that, upon written request, a reporting Indian tribe should make immediately available to any enrolled tribal member the annual, certified, independently audited financial statements and compliance review of the MICS submitted to the NIGC. A tribal member should be able to inspect such financial statements and compliance reviews at the tribal headquarters or request that they be mailed.

6.7 The Commission recommends that tribal and state sovereignty should be recognized, protected, and preserved.

6.8 The Commission recommends that all relevant governmental gambling regulatory agencies should take the rapid growth of

commercial gambling, state lotteries, charitable gambling, and Indian gambling into account as they formulate policies, laws, and regulations pertaining to legalized gambling in their jurisdictions. Further, the Commission recommends that all relevant governmental gambling regulatory agencies should recognize the long overdue economic development Indian gambling can generate.

6.9 The Commission has heard substantial testimony from tribal and state officials that uncompacted tribal gambling has resulted in substantial litigation. Federal enforcement has, until lately, been mixed. The Commission recommends that the federal government fully and consistently enforce all provisions of the IGRA.

6.10 The Commission recommends that tribes, states, and local governments should continue to work together to resolve issues of mutual concern rather than relying on federal law to solve problems for them.

6.11 The Commission recommends that gambling tribes, states, and local governments should recognize the mutual benefits that may flow to communities from Indian gambling. Further, the Commission recommends that tribes should enter into reciprocal agreements with state and local governments to mitigate the negative effects of the activities that may occur in other communities and to balance the rights of tribal, state and local governments, tribal members, and other citizens.

6.12 IGRA allows tribes and states to negotiate any issues related to gambling. Nothing precludes voluntary agreements to deal with issues unrelated to gambling either within or without compacts. Many tribes and states have agreements for any number of issues (e.g., taxes, zoning, environmental issues, natural resources management, hunting and fishing, etc.). The Commission recommends that the federal government should leave these issues to the states and tribes for resolution.

6.13 The Commission recommends that Congress should specify a constitutionally sound means of resolving disputes between states and

tribes regarding Class III gambling. Further, the Commission recommends that all parties to Class III negotiations should be subject to an independent, impartial decisionmaker who is empowered to approve compacts in the event a state refuses to enter into a Class III compact, but only if the decisionmaker does not permit any Class III games that are not available to other persons, entities, or organizations of the state and only if an effective regulatory structure is created.

6.14 The Commission recommends that Congress should adopt no law altering the right of tribes to use existing telephone technology to link bingo games between Indian reservations when such forms of technology are used in conjunction with the playing of Class II bingo games as defined under IGRA.

6.15 The Commission recommends that tribal governments should be encouraged to use some of the net revenues derived from Indian gambling as “seed money” to further diversify tribal economies and to reduce their dependence on gambling.

CHAPTER 7. GAMBLING'S IMPACTS ON PEOPLE AND PLACES

*"Gambling is inevitable. No matter what is said or done by advocates or opponents in all its various forms, it is an activity that is practiced, or tacitly endorsed, by a substantial majority of Americans."*¹

Even the members of the previous federal study would be astounded at the exponential growth of gambling, in its availability, forms and dollars wagered, in the 23 years since they chose the words above to begin their work. Today, the various components of legalized gambling have an impact—in many cases, a significant one—on numerous communities and almost every citizen in this nation. The principal task of this Commission was to examine the "social and economic impacts of gambling on individuals, families, businesses, social institutions, and the economy generally."²

The numbers involved are staggering: "More than \$50 billion spent on legal commercial games in 1997"³ employing more than 600,000 individuals.⁴ In 1976 only a few states allowed gambling; today, 47 states and the District of Columbia permit some form of gambling.⁵ What is even more astonishing is how little is known and has been studied regarding the social and economic impacts of this diverse industry upon our nation. Despite the growing magnitude of the industry and the widespread involvement of a significant portion of the population, there is a paucity of research in this field. Much of what does exist is flawed because of insufficient data,

poor or undeveloped methodology, or researchers' biases.

It is evident to this Commission that there are significant benefits *and* significant costs to *the places*, namely, those communities which embrace gambling and that many of the impacts, both positive and negative, of gambling spill over into the surrounding communities, which often have no say in the matter. In addition, those with compulsive gambling problems take significant costs with them to communities throughout the nation. In an ideal environment, citizens and policy-makers consider all of the relevant data and information as part of their decisionmaking process. Unfortunately, the lack of quality research and the controversy surrounding this industry rarely enable citizens and policymakers to truly determine the *net* impact of gambling in their communities, or, in some cases, their backyards.

Many communities, often those suffering economic hardship and social problems, consider gambling as a panacea to those ills. Indeed, a number of communities plagued by high unemployment have found a form of economic renewal through gambling, particularly through the development of "destination resorts."⁶ In addition, state, local, and tribal governments have received substantial revenues from taxes on gambling enterprises and lottery receipts. However, there are costs associated with these decisions and gambling cannot be considered a panacea for all economic problems in a community.

To the economist John Kenneth Galbraith, "People are the common denominator of progress." Economic progress can only be measured by its impact on individuals. Gambling's impact on *people* represents an even more complicated and understudied area. Certainly, segments of the industry, especially the resort, hotel, and commercial casinos, provide jobs with good pay and benefits. The short and long-term social benefits of work,

¹ *Final Report*, Commission on the Review of the National Policy Toward Gambling, p. 1 (Washington: 1976).

² Sec. 4 (a) (P.L. 104-169).

³ E.M. Christiansen, "An Overview of Gambling in the United States," testimony before the National Gambling Impact Study Commission, p. 2, Virginia Beach, VA (February 8, 1999).

⁴ *Ibid.*, p.7.

⁵ The exceptions are Utah, Hawaii, and Tennessee.

⁶ For the purposes of this document, "destination resorts" can be defined as "those tribal or commercial casinos that offer restaurants, retail, recreation, entertainment, and/or hotels in addition to a number and variety of gaming opportunities."

health care, training and education are undeniable. Some have argued that quality entertainment, in and of itself, is a social benefit to communities and individuals.⁷

Many witnesses before the Commission argued forcefully that gambling has been a good deal for hard pressed families and communities. In fact, if that were the whole story, our task would have been easy. What has made it complex is the fact that along with the real benefits of gambling, come equally undeniable and significant costs.

This Commission heard testimony about the growing numbers of individuals suffering from problem and pathological gambling, which often results in bankruptcy, crime, suicide, divorce, or abuse. While recent studies have attempted to “quantify” these costs to society, the Commission knows that no dollar amount can represent what a lost or impaired parent, spouse or child means to the rest of the family. Furthermore, many of these costs are hidden and it is difficult to quantify the emotional damage and its long-term impact on families and their children. As NORC indicated in its report, “In a number of respects the tangible impacts from problem gambling can be thought of as analogous to the economic impacts of alcohol abuse. In both situations, inappropriate and/or excess participation in a legal and widely pursued leisure activity can exact an undesirable toll in individuals, family, friends, and the surrounding community.” In reality, it is these hidden costs—the emotional costs of addictive behavior—that concern us far more than the annual economic expense of problem and pathological gamblers.

We recognize that some policymakers and citizens have struggled and continue to struggle with these sometimes conflicting impacts. Attempting to determine the appropriate course of action for their communities while considering the introduction, expansion, or restriction of gambling, is a difficult task. The Commission should begin by acknowledging that, at this time and based upon available information, we do not have a definitive

answer for all those and challenge anyone who suggests otherwise. What the Commission does offer in this chapter is a process and factors to consider in assessing the benefits and costs of gambling and its implications for businesses and people.

DETERMINING THE IMPACT OF GAMBLING

As the Commission noted earlier, and as the Commission will explicate in other chapters, the gambling landscape is neither well-studied nor well-understood. Studies have often been generally parochial, limited, and fragmentary. To determine the impact of the various forms of gambling, the Commission has held hearings throughout the country, heard testimony on a number of relevant topics, reviewed thousands of articles and comments, and considered academic research. In addition, the Commission initiated new research through a number of projects, including studies by the National Opinion Research Center (NORC) and an analysis of professional literature by the National Research Council (NRC).

The NRC project involved a review of all existing and relevant studies by representatives of a variety of scientific fields. In the end, NRC recommended that further study be initiated. Study of the benefits and costs of gambling “is still in its infancy.”⁸ Lamenting past studies that utilized “methods so inadequate as to invalidate their conclusions,” the absence of “systematic data,” the substitution of “assumptions for the missing data,” the lack of testing of assumptions, “haphazard” applications of estimations in one study by another, the lack of clear identification of the costs and benefits to be studied, and many other problems, NRC concluded the situation demands a “need for more objective and extensive analysis of the economic impact that gambling has on the economy.”

In addition to these activities, the Commission invited input from a number of sources affected by

⁷ David Ramsey Steele, “Gambling is Productive and Rational,” *Legalized Gambling, For and Against*, Evans and Hance, ed.

⁸ National Research Council, “Pathological Gambling: A Critical Review,” (April 1, 1999) at 5-18.

gambling, particularly governors and other tribal, state, and local officials in jurisdictions in which some form of gambling is legalized, as well as organizations representing those affected by gambling. Regrettably, some segments of the gambling industry were not as forthcoming in responding to information requests as were others. In particular, many of the Indian tribes involved in Class III gambling, as well as the National Indian Gaming Commission, refused to provide information to this Commission.⁹ This is in stark contrast to the assistance provided by many commercial gambling companies, the pari-mutuel industry, and state and local officials. The Commission, taking into account the tribal sovereignty issue, thought it more appropriate for Congress to address this than to utilize the Commission's limited resources for legal remedies and sought information from alternative sources wherever appropriate.

In attempting to determine the impact of gambling on people and places, the Commission offers a number of caveats for policymakers to consider.

First, social and economic impacts are not as easily severable as policymakers would like. In fact, this is considered a false dichotomy for most individuals other than economists. Employment, for instance, is both an economic and a social benefit. Likewise, crime is both an economic and social cost.

Secondly, as was noted in the overview to this chapter, it is extremely difficult to quantify social costs and benefits. Some economists suggest distinguishing between a "private" cost and benefit and a "social" cost and benefit. NRC also notes the confusion of "transfer effects" from "real effects." For instance, in an economic analysis of transfer effects, bankruptcy would not be considered to be a cost by economists because the dollars are merely transferred. Nor would a casino job necessarily be considered a true benefit, since other jobs may be available. While

this may be true to economists, we know that bankruptcy is indeed a "cost" to the individuals and families involved, just as a good job is a tremendous benefit to that family.

Just as only net economic and social benefits should be included on the positive side of legalized gambling's ledger, only net social and economic costs should be tallied on the negative side. Determining net costs associated with pathological gambling, for example, requires an understanding of what researchers call "comorbidity," described as "the co-occurrence of two or more disorders in a single individual."¹⁰

Reviews of the literature indicate that substance use disorders, mood disorders such as depression, suicidal thoughts, antisocial personality disorder, and attention-deficit hyperactivity disorder may often co-exist with pathological gambling.¹¹ To the extent that researchers can isolate the effects of pathological gambling on, for example, marital stability, from the effects of co-existing conditions like drug abuse can researchers determine the net negative effects of pathological gambling on marriages.

This task is challenging. As the NRC explains, "Evaluating studies of conditions that co-occur with pathological gambling requires careful formulation of research questions, such as: Does gambling precede the onset of other disorders? Do certain disorders exacerbate pathological gambling? Is there a pattern of symptom clustering? Is the severity of one disorder related to the other? And is a standard assessment instrument used to collect data for both gambling and the comorbid condition? Very few pathological gambling studies have addressed even one of these questions."¹²

Third, what society terms "the gambling industry" actually involves segments that are quite different from one another. Destination casino resorts bear little resemblance to convenience gambling. The former provides

⁹ In testimony before the Commission, Rick Hill, the Chairman of the association which represents tribes operating gambling facilities, stated, "We don't trust you to give you the information. It is that clear. Every time we give our financials [information] to someone, someone has used it against us," Virginia Beach, VA (February 9, 1999).

¹⁰ National Research Council, p. 4-13.

¹¹ Ibid, pp 4-14 to 4-21.

¹² Ibid, p. 4-15.

numerous jobs, restaurants, shopping and entertainment as well as a number of games in a highly regulated setting, while the latter involves a relatively small number and type of games, creates few or no jobs, is far less regulated and fails to create significant beneficial economic impact.

When the public considers “gambling,” they tend to think principally of casino style settings. In fact, there are 10 states with commercial casinos, sixteen states with tribal casinos (23 states have either commercial or tribal casinos or both.) Some of these are mega-resorts that include hotels, retail, dining and entertainment. For the most part, companies involved in this form of gambling are publicly traded and highly regulated. As a result, this is the one area of the industry where some data and analyses of social and economic factors exists.¹³

But, the reality is that the most prevalent forms of gambling are the ones found in most neighborhoods: lotteries and other forms of “convenience” gambling.¹⁴ And in the past few years, Internet gambling sites enabled slot machine and video poker style gambling to come right into our homes. In many ways, these forms of gambling are far more troublesome than any other, as the benefits are negligible, the level of regulation minimal and the likelihood of abuse much greater. Of greater concern to parents, convenience and Internet gambling are far more accessible to children and, unlike casino and pari-mutuel gambling, far more difficult to avoid. Further, the types of games typically offered in convenience gambling facilities or over the Internet tend to be the fastest-paced and, therefore, most addictive forms of gambling.¹⁵

While the Commission has some idea of the impact of gambling on our citizens, we must acknowledge that the state of research is extremely

incomplete and that much more work should be done in the future. However, even without a complete range of measurements, the Commission can begin the process of determining the *net impact* of gambling. To this end, the Commission was able to conduct important analyses of gambling’s economic and social costs and benefits, based not only on the personal experiences of individuals and communities, but also on quantitative and qualitative factors. This represents only a beginning of the process—but it is a beginning. The Commission urges policymakers at all levels of government to accept our challenge to evaluate and to critically test both the economic and social costs and benefits associated with the introduction of, or continuation of, or restriction of gambling activities within their communities.

Legalized gambling has had certain positive economic effects in some of the communities in which it has been introduced. Hundreds of employees in several cities described the new and better jobs they had obtained with the advent of casinos. Some described relocating from other states to the sites of new casinos; others spoke of leaving minimum-wage jobs in which they had no benefits, to accept unionized jobs at the casinos at higher compensation and with significant employment opportunities. Some described the homes and cars they had been able to purchase, and the health and retirement benefits they had obtained by going to work for the casinos. In other locations, tribal members testified that the advent of casinos on tribal lands had provided jobs where none had existed before and had improved hospital and clinic facilities and schools for the benefit of their children. They spoke with evident pride about the economic impact opportunities which legalized gambling had made available to them, providing them with economic resources, both personal and tribal, which they had been unable to obtain before the advent of legalized gambling on their tribal lands. Further, several tribal representatives testified that gambling revenues are providing tribes with enough resources to make investments in other industries and enterprises.

¹³The pari-mutuel industry has also received a significant amount of scrutiny and likewise was open and supportive of our study.

¹⁴“Convenience gambling” have been used to describe legal, stand-alone slot machines, video poker, video keno, and other electronic gambling devices (EGD’s).

¹⁵For more information, see chapter on “Pathological and Problem Gambling.”

The Commission also heard from a number of local officials in jurisdictions where casinos are located. Among those who informed the commissioners with their testimony were Elgin, Illinois, Mayor Kevin Kelly; Mayor Scott King from Gary, Indiana; Mayor James Whelan from Atlantic City; as well as mayors from Bettendorf, Iowa, and Alton, Illinois. The Commission also heard from Mayors A.J. Holloway, Bobby Williams, Bob Short, and Eddy Favre of Biloxi, Tunica, Gulfport, and Bay St. Louis, Mississippi, respectively. Without exception these elected officials expressed support for gambling and recited instances of increased revenues for their cities. They also discussed community improvements made possible since the advent of gambling in their communities and reviewed the general betterment of life for the citizenry in their cities and towns.

In the community analysis conducted by NORC, other communities reported growth in the hotel industry, more money for local government, and increased construction. In two of the ten communities studied, property values were reported to have improved. Three communities reported an increase in retail establishments; two reported a decline. The NORC 100 community database analysis of casino proximity reported that there is a statistically significant casino effect on per capita casino spending; on 4 of 5 employment measures and on 7 of 16 income earnings measures. This analysis also found that there is a marked decrease in the percentage of the labor force that is unemployed; a slight increase in construction earnings; an increase in actual per capita construction earnings; and a substantial percentage increase in earnings in hotel and lodgings and recreation and amusements industries.¹⁶

While pointing out that legalized gambling has social and economic costs, the NRC notes that “the recent institutionalization of gambling appears to have benefited economically depressed communities in which it is offered.”¹⁷

More specifically, “the benefits are borne out in reports, for example, of increased employment and income, increased tax revenues, enhanced tourism and recreational opportunities, and rising property values.”¹⁸

But there were other factors brought to the attention of the Commission. In Atlantic City and elsewhere, small business owners testified to the loss of their businesses when casinos came to town.¹⁹ As evidence of this impact, few businesses can be found more than a few blocks from the Atlantic City boardwalk. Many of the “local” businesses remaining are pawnshops, cash-for-gold stores and discount outlets. One witness noted that, “in 1978 [the year the first casino opened], there were 311 taverns and restaurants in Atlantic City. Nineteen years later, only 66 remained, despite the promise that gaming would be good for the city’s own.”²⁰

Other citizens testified to the lack of job security they had encountered in tribal casinos, the absence of federal and state anti-discrimination laws, and the lack of workers’ compensation benefits.

NORC found “no change in overall per capita income” after the introduction of casinos, “as the increases [in certain industries] are offset by reductions in welfare and transfer payments as well as a drop-off in income from restaurants and bars.”²¹

In its survey of leaders in 10 casino communities, NORC found mixed perceptions about the economic impact of casinos. Respondents in 5 of the 10 communities cited new employment opportunities as a “very positive advantage.” However, “Respondents in the other four communities indicated that unemployment remained a problem, despite former hopes to the contrary.” Unemployment

¹⁸ *Ibid.*, p. 5-1.

¹⁹ See, for instance, testimony of Joseph Faldetta to the National Gambling Impact Study Commission, Atlantic City, N.J., (January 22, 1998).

²⁰ *Ibid.*

²¹ NORC, p. 70.

¹⁶ National Opinion Research Council (April 1, 1999), pp. 70, 76-77.

¹⁷ NRC, (April 1, 1999), p. Exec-1.

among Indian tribes remains extremely high. Respondents in six of the communities complained that the casinos provided low-paying and/or part-time jobs with no benefits.

It bears stating the obvious in this discussion: A number of formerly struggling communities across this nation have undergone an economic renaissance in recent years without turning to gambling. It is also worth noting that much of a recent wave of casino expansion occurred in the early 1990's, when the country was mired in an economic recession. So, for example, while the Commission heard testimony of the casino-inspired "Mississippi Miracle," in reality the unemployment rate in Mississippi declined at about the same rate as the national average in the years from 1992 to 1998.²²

GROWTH AND EMPLOYMENT

A number of arguments have been advanced to promote gambling in an area or to demonstrate its positive impact. The most significant are associated with economic growth and employment. As was noted earlier, it is important to distinguish among the various forms of gambling. Two segments, casinos and pari-mutuel, are the most labor intensive aspects of gambling.²³ In 1996 more than half a million people were employed by the legal gambling industry, earning more than \$15 billion.²⁴

In 1996 Arthur Anderson conducted a study on behalf of the American Gaming Association to determine the influence of casino gambling on the American economy. They found that in 1995 the casino industry recorded \$22-25 billion in total revenues, paid a total of \$2.9 billion in direct taxes (including federal and state, property, construction sales and use, and gambling taxes), directly

employed almost 300,000 people and paid \$7.3 billion in wages, paid an average national wage of approximately \$26,000 (which exceeds that paid in most related fields) and invested \$3 for every \$1 earned, created 13 direct jobs for every \$1 million in revenues, supported 400,000 indirect jobs paying \$12.5 billion in wages, and spent a large majority of its revenues within the United States on payroll, taxes and other expenses.²⁵

The economic benefits of casino gambling have been especially powerful in economically depressed communities where opportunities for economic development are scarce. State, local, and tribal government officials from other communities with casino gambling testified with near unanimity to the positive economic impact of gambling. Mayor James Whelan of Atlantic City told the Commission that "Atlantic City would be dead without casino gambling."²⁶ When members of the Commission visited the Atlantic City Rescue Mission, its director, Barry Durman, who says he personally opposes gambling, agreed with the Mayor on this point, but also noted that at least 22 percent of the homeless served by the Mission say gambling is the cause of their homelessness.²⁷

State Senator Earline Rogers, whose district includes Gary, described that city's efforts over a 15-year period to replace the 70,000 jobs lost due to the decline of the steel industry:

"Our attempts to recruit major businesses to locate in Northwest Indiana were not successful. The State of Indiana spent millions of dollars luring major manufacturing operations to Indiana, often spending hundreds of thousands of dollars for jobs. Not one was located in Northwest Indiana. We knew something had to be done when we found ourselves championing our economic development successes at a ribbon

²² Mississippi's unemployment rate declined from 8.2 percent in 1992 to 4.8 percent in 1998. The national unemployment rate declined from 7.5 percent to 4.1 percent in that same period.

²³ E.M. Christiansen, *Gambling and the American Economy*, 556 *Annals of the American Academy of Political and Social Science* (James Frey, ed) at 43 (March 1998).

²⁴ *Ibid.*

²⁵ Arthur Anderson L.L.P., *Economic Impacts of Casino Gaming in the United States*, Volume 1: Macro Study (December 1996).

²⁶ James Whelan, testimony Before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 21, 1998) (Mayor of Atlantic City).

²⁷ Rev. Barry Durman, written testimony before the National Gambling Impact Study Commission, Atlantic City Site Visit (January 21, 1998) p. 17.

cutting for a McDonald's restaurant in Gary, Indiana."²⁸

Indiana legalized casino gambling in 1993, and within a few years, casinos opened in Gary. Now, the city has started to turn itself around, rebuilding its streets and replacing outmoded police cars.²⁹

Unlike many industries, casino gambling creates full-time, entry-level jobs, which are badly needed in communities suffering from chronic unemployment and underemployment. Dozens of casino workers testified that these economic benefits are felt in the home and not just at city hall. Calvin Chandler, who left college to care for his mother, told the Commission about his efforts to find work in Gary, Indiana, before the legalization of casino gambling:

"The infamous steel mills of Gary were slowly dying and they weren't and haven't been hiring many. So basically I ended up bouncing between temporary jobs such as lifeguarding for the boys and girls club and bartending at a local lounge and off and on doing some substitute work at elementary schools."³⁰

When the Majestic Star Casino opened, Mr. Chandler, a single father, found work as a bartender. Now, he has the financial resources to support his young daughter and finish college.³¹ Before coming to Las Vegas from California 5 years ago, Silvia Amador worked as a maid for \$4.75 an hour and relied on welfare to make ends meet; today, she cleans rooms at the Las Vegas Hilton, no longer depends on welfare, and earns enough money to give her family "anything they need."³²

Other casino workers described how a steady job and secure livelihood enables them to prepare for contingencies and plan for the future. Frances Brewin,³³ a food server at the Atlantic City Hilton, described how important her employer-paid medical benefits became after her husband was disabled and forced to take early retirement. When his medical benefits ran out, she was able to support him through a long period of illness. Olivetta Scott, a booth cashier at the Circus Circus Hotel and Casino, told the Commission, "I am 58 years old and in four years, I can retire if I want to. I will be a burden to no one, my family, or the government. I have my union pension and I have my social security to rely on."³⁴ Rosendo and Gloria Caldera, who live in Inglewood, California, and work at the Hollywood Park Casino, were able to send their children to Boston University and the University of Southern California. According to Mr. Caldera, "We have faith that we'll continue to have good jobs so that we can continue to send them to school. We'd like to give them the best education for their future and for that of the community."³⁵

Research conducted on behalf of the Commission confirms the testimony of these casino workers and government officials that casino gambling creates jobs and reduces levels of unemployment and government assistance in communities that have legalized it. In its analysis of 100 gambling and non-gambling communities, NORC found that in communities close to newly opened casinos, "unemployment rates, welfare outlays, and unemployment insurance decline by about one-seventh."³⁶

²⁸ Earline Rogers, testimony Before the National Gambling Impact Study Commission, Chicago, Illinois (May 30, 1998) (Indiana State Senator).

²⁹ Ibid.

³⁰ Calvin Chandler, testimony before the National Gambling Impact Study Commission, Chicago, Illinois (May 20, 1998).

³¹ Ibid.

³² Silvia Amador, testimony Before the National Gambling Impact Study Commission, Las Vegas, Nevada (November 10, 1998) (Guest Room Attendant, Las Vegas Hilton).

³³ Frances Brewin, testimony Before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 21, 1998) (Food Server, Atlantic City Hilton).

³⁴ Olivetta Scott, testimony before the National Gambling Impact Study Commission, Las Vegas, Nevada (November 10, 1998).

³⁵ Rosendo Caldera, Testimony Before the National Gambling Impact Study Commission, Del Mar, California (July 29, 1998). (Food Server, Hollywood Park Casino, Inglewood, California).

³⁶ NORC, "Gambling Impact and Behavior Study: Report to the National Gambling Impact Study Commission," (April 1, 1999), p. v.

Additionally, NORC found increased per capita income in the construction, hotel and lodging, and recreation and amusement industries. However, “no change is seen in overall per capita income as the increases noted above are offset by reductions in welfare and transfer payments as well as a drop-off in income from restaurants and bars...”³⁷ In other words, there were more jobs in the communities NORC studied after casino gambling was established than before. Although income in those communities stayed the same, more came from paychecks and less from government checks than before.

The Commission also heard testimony quantifying job quality in the casino industry, and these data show that in terms of income, health insurance, and pension, casino jobs in the destination resorts of Las Vegas and Atlantic City are better than comparable service sector jobs. Matthew Walker, director of research and education for the Hotel Employees and Restaurant Employees International Union, which represents approximately 75,000 gambling industry employees nationwide, testified that from 1977 through 1996, real income for Atlantic City casino workers increased at a much higher rate than real income for service-sector employees in New Jersey and the United States as a whole. Moreover, since 1989, real income for Atlantic City casino workers has continued to rise, while real income for New Jersey and U.S. service workers has declined. In 1996, 83 percent of Atlantic City’s unionized casino workers were covered by family health insurance, almost twice the percentage of New Jersey and U.S. service workers with family coverage. In 1993, the most recent year for which comparative data were available, 95 percent of the union’s Atlantic City members were earning pension benefits, as compared to 45 percent of the private-sector workforce nationally.³⁸

Within the casino industry, destination resorts tend to create more and better quality jobs than other kinds of casinos. In the Commission’s casino survey conducted by NORC, the casinos that responded were divided into three groups: the top 25 casinos in terms of revenue; other commercial casinos; and, tribal casinos. Almost all of the casinos in the first group are destination resorts, and all but four are unionized. By contrast, a much smaller proportion of the other two groups are destination resorts. Moreover, fewer of the smaller commercial casinos and none of the tribal casinos are unionized. Annual salaries were, on average, \$26,000 in the largest casinos, \$20,500 in the smaller commercial casinos, and \$18,000 in the tribal casinos. Employer contributions to employee health and retirement plans were also higher in the large casinos.³⁹

Pari-Mutuel

Another segment of the gambling industry with a significant impact on the economy is the pari-mutuel industry, which is legal in 43 states. With over 150 racetracks in the United States, horse racing generates annual gross revenues of approximately \$3.25 billion, based on a handle, or gross revenues, of \$15.357 billion annually.⁴⁰ While comparatively small in terms of revenue, the industry has an extensive network of connections throughout the economy. These are located primarily in the agro-industrial sector where, in addition to the racing industry itself, a number of related occupations—such as veterinarians, owners of stables, and others—owe their livelihoods entirely or partly to the industry. Total employment has been estimated at 119,000, of which track and off-track betting (see below) operations constitute 36,300 jobs, maintenance of

³⁷ Ibid., p. 70.

³⁸ Matthew Walker, testimony before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 22,

1998) (Director of Research and Education, Hotel Employees and Restaurant Employees International Union).

³⁹ NORC, p.2.

⁴⁰ E.M. Christiansen, *Gaming and Wagering Business* (July and August, 1998).

competing horses 52,000, and breeding 30,800.⁴¹ A 1994 study for the California Horsemen's Benevolent and Protective Association reported that the horse-racing industry directly created 14,700 jobs in that state. The industry generated over \$800 million in direct expenditures, such as payroll, taxes, and purchases, including \$129 million paid to governments from taxes on wagering, \$306 million spent on operations at the wagering facilities, \$253 million on racing stable operations, and \$123 million for horse breeding operations.⁴² Overall, James Hickey of the American Horse Council has submitted evidence to the Commission that the annual impact of the pari-mutuel industry on the U.S. economy is \$34 billion supporting 473,000 jobs.⁴³

Native American Tribal Government Gambling

Tribal gambling accounted for \$6.7 billion in revenues in 1997.⁴⁴ "Two-hundred and eighty seven tribal gambling facilities operated, most of them small; the eight largest account for more than forty percent of all revenue."⁴⁵ It is estimated that approximately 100,000 individuals are employed in Indian gambling facilities, but a breakdown of employees indicating how many are Indian is not generally available. A study by the *San Francisco Examiner* prior to the state's referendum vote indicated that Indian casinos in California employed nearly 15,000 individuals in 1998, only 10 percent of whom are Native American.⁴⁶ In testimony that same month before the Commission's Indian Gambling Subcommittee in Del Mar, California, Native Americans were

estimated to be approximately five percent of the total gambling industry workforce in the state.⁴⁷

According to the Bureau of Indian Affairs (BIA), 156 tribes are involved in gambling activities. The Indian Gaming Regulatory Act limits use of revenues to three purposes: "1) to fund tribal government operations or programs; 2) to provide for the general welfare of the Indian tribe and its members; and, 3) to promote tribal economic development."⁴⁸ Forty-seven tribes have a per capita payment plan approved by BIA.

Some tribes have used this opportunity to rebuild infrastructure, diversify holdings, reduce unemployment, and contribute to the surrounding communities. Again, the unwillingness of individual tribes, as well as that of the National Indian Gaming Association (the tribes' lobbyists) and the National Indian Gaming Commission (the federal agency that regulates tribal gambling), to provide information to this Commission, after repeated requests and assurances of confidentiality, limited our assessment to testimony and site visits. While the social benefits to some tribes appear evident, information about economic benefits of Indian gambling cannot be factually proven, other than through estimates, because they have not been forthcoming with information they perceive to be "proprietary." One perceived economic benefit to both the tribes and the general population—reduction of the reliance upon taxpayer-funded federal assistance—has not manifested itself to date. For the most part, requests for federal assistance from tribes involved in gambling have continued.⁴⁹ As an example, the Mashantucket Pequot, whose Foxwoods facility in Connecticut is the largest casino in the world and grosses more than \$1 billion in annual

⁴¹ Barents Group, *The Economic Impacts of the Horse Industry in the United States*, Volume 1: National Summary, at 19 (December 9, 1996).

⁴² Thalheimer Research Associates, *The Economic Impact of the California Race Horse Industry*, at iii-iv (January 1994).

⁴³ James J. Hickey, Jr., *Retreat Briefing Materials for the National Gambling Impact Study Commission*, at 1 (February 4, 1999).

⁴⁴ Christiansen, *Op.cit.*, p. 11.

⁴⁵ *Ibid.*, p. 23.

⁴⁶ "Tribal Gaming," *San Francisco Examiner* (August 2, 1998), p. A-14.

⁴⁷ Testimony before the National Gambling Impact Study Commission, Del Mar, CA (July 29, 1998).

⁴⁸ 25 U.S.C. 2710 (b)(1-3).

⁴⁹ One in-depth report noted: "Sudden wealth has not sated the strong sense of entitlement of some tribes. Minnesota's Fond du Lac Chippewas voted against spending \$9 million to replace a dilapidated school even though the tribe had \$30 million in banked casino revenues. The United States has an obligation to Indian people, and I'm going to hold them to it," the tribe's chairman told the Minneapolis Star Tribune recently." (Sean Paige, "Gambling on the Future," *Insight Magazine*, December 12, 1997, p.6.)

revenues for the 550 tribal members, still received \$1.5 million in low-income housing assistance in 1996 and continues to receive other federal funds.⁵⁰

While casinos have been an extraordinary economic success story for a handful of Indian tribes,⁵¹ for most they have brought considerably fewer benefits. Wayne Taylor, chairman of the Hopi tribe, testified, "With the exception of a very few, very small and very fortunate tribes ... who have had extraordinary success with tribal gambling, the majority of tribes across the country still find it very difficult to reconcile the obligation and responsibilities side of their ledger with the income side."⁵² As of the writing of this report, the unemployment rate among Native Americans continues to hover around 50 percent.⁵³

Other Gambling Industries

Other segments of gambling have a significant economic impact upon places and people, but the benefits do not include large-scale growth or employment. Most lottery directors testified that the impact of lottery revenue was beneficial to the state and its citizens, but, in the cases where revenue distribution was specified, no state could prove that program funding would not exist in the absence of lotteries. To the contrary, several states experienced reductions in actual general funding for programs for which lottery revenue was earmarked. Nor are the economic implications of regressive taxation given much consideration. As Dr. Philip Cook, a leading researcher under contract to the Commission, stated, "It's astonishingly regressive. The tax that is built into lottery is the most regressive tax we know."⁵⁴ In

addition, the inordinate number of lottery outlets in poor neighborhoods and the reliance upon a small number of less-educated and poor individuals for the bulk of the proceeds causes us serious concern. In fact, Cook and his colleague, Dr. Charles Clotfelter, found that lottery players with incomes below \$10,000 spend more than any other income group, an estimated \$597 per year. Further, high school dropouts spend four times as much as college graduates. Blacks spend five times as much as whites. In addition, the lotteries rely on a small group of heavy players who are disproportionately poor, black, and have failed to complete a high school education. The top 5 percent of lottery players (who spend \$3,870 or more) account for 51 percent of total lottery sales. Several government officials suggested that a state's only alternative to a lottery was a tax increase. Limiting spending, reducing the size of government, or seeking alternative revenue sources were rarely mentioned.

No economic benefit to either a place or a person was advanced by proponents of convenience gambling. There are no national statistics that indicate the specific impacts of neighborhood gambling and there are few significant state-wide studies.

We did hear compelling testimony indicating that neighborhood gambling is a phenomenon that should be more widely studied, and therefore should be a serious topic of inquiry in this *Final Report*. Las Vegas Mayor Jan Jones said that, in her view, neighborhood gambling locations are places where children and families routinely visit. She spoke of entering a grocery store and seeing parents playing slot machines with children sitting behind them. Children see gambling as part of the same environment as candy and soda. Such encounters with gambling may lead to higher rates of adolescent gambling and problem/pathological gambling in later life. Such availability also harms economic diversification, because some corporations from both inside and outside the state may object to relocation to an environment that allows neighborhood gambling. And sadly, convenience gambling is often found in neighborhoods where the money spent on

⁵⁰ Ibid.

⁵¹ According to the 1997 NIGC Audit Reports, the 8 largest operations account for more than 40 percent of the more than \$6 billion in gross revenues, 20 operations account for 50 percent of the total, and 45 operations account for 71 percent of revenues.

⁵² Wayne Taylor, testimony before the National Gambling Impact Study Commission (July 30, 1998), Tempe, AZ.

⁵³ Liz Hill, "Senate Oversight Hearing Addresses Welfare Reform and Indian Country," *Indian Country Today* (April 26, 1999).

⁵⁴ Dr. Philip Cook, Meeting of the National Gambling Impact Study Commission (March 19, 1999).

gambling could otherwise be spent on necessary goods and services.⁵⁵

One commentator has called neighborhood gambling a “paradoxical perversity,” because in Massachusetts convenience stores have become “shrines to the shill” and “neighborhood gambling dens.”⁵⁶ The evidence available to us, so far, indicates there are no measurable societal benefits to be derived from the introduction or continuation of convenience gambling facilities; that these facilities benefit only a few operators, while bringing gambling into neighborhoods in close proximity to children and families. They carry with them all of the negative costs associated with gambling, while offering none of the economic benefits that may be contributed to destination-style casinos.

A Careful Look at Economic Benefits

For some areas, it may well be argued that gambling has a measurable and significant economic impact. For other areas, the boon may be less clear. Even in the face of the apparent benefits touted by many in Atlantic City, at the time the Commission visited in January 1998, the unemployment rate stood at 12.7 percent, notwithstanding the legalization of gambling in 1978. That rate was considerably above both the national rate and the rate of unemployment for the rest of New Jersey at that time. It is unclear, therefore, whether the introduction of casino-style legal gambling in New Jersey has produced all of the benefits that are usually described by those who promote it.

One indirect method to get a qualitative sense of the net effects of gambling is to look at its effect on property values. An increase in property values reflects growing attractiveness of a location. For example, if a new factory increases property values in a metropolitan area, but depresses them near its location, one can draw conclusions about the near-by and the broader

impacts of the factory. This method has been applied to evaluate the effects of airports, waste disposal, and other public sector activities. It has also been used to estimate the consequences of casino gambling on the economy of a community. Needless to say, it is not a simple matter to extract the effect of any particular presumed cause on property values.

One study that looked at counties that added casinos between 1991 and 1994 suggests several conclusions concerning the effect of gambling on property values. First, the counties that introduced gambling had relatively poor growth in property values before the introduction of gambling (compared to similar counties). The introduction of gambling increased the rate of growth of property values, making it similar to that in comparable counties that lacked casinos. The greatest effect of the introduction of gambling is on commercial property values, with residential property values not raised at all, perhaps even lowered by casino gambling.⁵⁷

One theme running through the testimony received before the Commission was that the economic benefits were generally most pronounced within the immediate vicinity of the gambling facilities, while the social costs tended to be diffused throughout a broader geographic region. In Tunica, Mississippi, the advent of legalized gambling provided jobs for an area of extreme poverty. Many citizens of Tunica have undoubtedly benefited by the increase in the wage base and the increased ability of its citizens to purchase homes and other amenities. Some area towns have even been adopted by the industry to improve employee preparation. The Commission heard similar testimony from representatives of other economically depressed communities such as Gary, Indiana and numerous tribal lands in Arizona and elsewhere. But the Commission also received substantial testimony from people outside these communities about losses of business and tourism, infrastructure problems and economic costs related to problem and pathological

⁵⁵ Mayor of the City of Las Vegas, Jan Jones, testimony before the National Gambling Impact Study Commission, Las Vegas Nevada, (Nov. 10, 1998) (transcript available at <http://www.ngisc.gov>).

⁵⁶ Get Kenos Out of the Corner Store, *The Patriot Ledger* (Quincy, MA), 18 (July 2, 1997) (editorial).

⁵⁷ L.M. George, B.M. Ambrose, and P. Linneman, “What We Need to Know About Casino Gambling,” *Wharton Real Estate Review*, Vol. 11, no. 1 (Spring 1998).

gambling resultant from the expansion of gambling into nearby communities. (See Table 7-1).

There is general agreement that legalized gambling has offered regulators the opportunity to locate gambling activities where incomes are depressed, thus providing, in some cases, an economic boost to needy people and places. So doing, however, has the negative consequence of placing the lure of gambling proximate to individuals with few financial resources. The Commission is concerned about the significant danger posed by the continuing expansion of legalized gambling into places where the economy is already prospering. In the extreme, the Commission can imagine competition among localities driving the extent and location of gambling toward an outcome in which most gambling establishments are just one more business in prosperous areas, most employees are people who easily could get other jobs, and therefore, the economic benefits are small. Not only are the net benefits in these new areas low, but the benefits to other, more deserving places are diminished due to the new competition. And, as competition for the gambling dollar intensifies, gambling spreads, bringing with it more and more of the social ills that led us to restrict gambling in the first place. It is easy to imagine jurisdictions competing for the gambling dollar, with the consequent overexpansion of legalized gambling; shrinking social benefits are overwhelmed by rising social costs.

What the Commission can agree on is that analysis of the economic effects of gambling is poorly developed and quite incomplete. Further, almost all studies have been conducted by interested parties. These typically have gone no further than to estimate local jobs and income from the gambling industry. But since the economic effect of an activity is its value added above what the same resources would be adding to value if employed elsewhere, these studies are deficient and may mislead readers to conclude that the introduction of gambling activities in an area will result in significant benefits without attendant costs, which may, in fact, overwhelm

the benefits. Without an estimate of the opportunity cost of the resources used in gambling, the Commission can generate no meaningful estimate of its net effect. Beyond this, the social costs of gambling are so important to regulatory decisions that even an accurate estimate of the net income generated by the gambling industry would constitute only the start of a full cost-benefit analysis. No one—not tribal leaders, governors, mayors or citizens—should make, or should be forced to make, a decision without an assessment of both economic and social benefits and costs.

The NRC concluded in its report to the Commission that while gambling appears to have net economic benefits for economically depressed communities, the available data are insufficient to determine with accuracy the overall costs and benefits of legal gambling. The NRC study stated that pervasive methodological problems in almost all existing studies prevent firm conclusions about the social and economic effects of gambling on individuals, families, businesses, and communities, generally.

Crime

Historically, there is a view that the introduction of legalized gambling will increase crime in a community. It is also claimed that legalized gambling reduces crime because it eliminates incentives for illegal gambling. Since the types of crime involved in each of these hypotheses are different, it is not surprising that proponents of both views are able to advance research to support their views. The reliability of many of these studies, however, is questionable. As one commentator observed:

The story of the relationship between legalized casino gambling and street crime is far from written. The problem is that although a great deal has been written on the subject, so much of the writing on all sides is

bombast and blather that it is difficult to discern any strong facts.⁵⁸

Some of the more thorough studies examine crime and pathological gambling. Not surprisingly, the findings reveal that many problem and pathological gamblers steal or commit other crimes to finance their habit. According to the National Research Council, "As access to money becomes more limited, gamblers often resort to crime in order to pay debts, appease bookies, maintain appearances, and garner more money to gamble."⁵⁹ In Maryland, a report by the Attorney General's Office stated: "[c]asinos would bring a substantial increase in crime to our State. There would be more violent crime, more juvenile crime, more drug- and alcohol-related crime, more domestic violence and child abuse, and more organized crime. Casinos would bring us exactly what we do not need—a lot more of all kinds of crime."⁶⁰ Some commentators link crime to pathological gambling, where addicted gamblers steal or commit other crimes to finance their habit. The Commission heard repeated testimony of desperate gamblers committing illegal acts to finance their problem and pathological gambling, including a Detroit man who faked his own son's kidnapping to pay back a \$50,000 gambling debt,⁶¹ a 14-year hospital employee in Iowa who embezzled \$151,000 from her employer for gambling,⁶² and the wife of a Louisiana police officer who faced 24 counts of felony theft for stealing to fund her pathological gambling.⁶³ In a survey of nearly

400 Gamblers Anonymous members, 57 percent admitted stealing to finance their gambling. Collectively they stole \$30 million, for an average of \$135,000 per individual.⁶⁴ One witness before the Commission indicated that "80 to 90 percent of people in Gamblers Anonymous will tell you they did something illegal in order to get money to gamble." A lot of them do white collar crimes, fraud, credit card and employee theft."⁶⁵ In Louisiana, one man confessed to robbing and murdering six elderly individuals to feed his problem with gambling on electronic gambling devices.⁶⁶

But beyond pathological gambling, tracing the relationship between crime and gambling has proven difficult. One problem is the scope of the studies being done: some look at street crime alone, others include family crimes, still others may simply look at adolescent gambling, and others include white collar crime. Another problem is differentiating the effects of gambling from the effects of tourism in general. Nevada consistently has one of the highest crime rates in the nation. Several researchers suggest this is caused more by tourism than it is by the nature of the gambling industry. Is the crime surrounding an upscale Las Vegas resort similar to crime surrounding an amusement park? Are the volume and types of crimes comparable?

Despite having few answers to these questions, policymakers continue to push or pull gambling based on a real or perceived, positive or negative, relationship between gambling and crime.

The Commission attempted to investigate the relationship between crime and legalized gambling through two studies mentioned here and elsewhere in this *Final Report*: the NRC and NORC reports. The results from these two

⁵⁸ William J. Miller and Martin D. Schwartz, *Casino Gambling and Street Crime*, 556 *Annals supra* note 6 at 133-4.

⁵⁹ Lesieur, 1987; Meyer and Fabian (1992).

⁶⁰ J. Joseph Curran, Jr., *The House Never Loses and Maryland Cannot Win: Why Casino Gaming is a Bad idea: Report to the Joint Executive-Legislative Task Force to Study Commercial Gaming Activities in Maryland* at E1 (October 16, 1995). (Attorney General of Maryland).

⁶¹ Mike Harris, testimony before the National Gambling Impact Study Commission, Chicago, Illinois (May 21, 1998).

⁶² Marlys Popma, testimony before the National Gambling Impact Study Commission, Chicago, Illinois (May 21, 1998).

⁶³ Donna Kelly, testimony before the National Gambling Impact Study Commission, Biloxi, Mississippi (September 10, 1998).

⁶⁴ Henry Lesieur, testimony Before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 22, 1998) (Institute for Problem Gambling).

⁶⁵ Edward Looney, testimony Before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 22, 1998) (Executive Director, New Jersey Council on Compulsive Gambling).

⁶⁶ Jarvis DeBerry and Rhonda Bell, *Deadly Compulsion*, *New Orleans Times-Picayune* at A1 (November 23, 1997).

studies suggest that a relationship may exist between gambling activity and the commission of crime, but concluded that insufficient data exists to quantify or define that relationship. More study is necessary to isolate the exact relationship between crime and legalized gambling. This result highlights similar conclusions reached by many in the research field, scholars who lament the paucity of information. Yet, one study also found that people within communities that host legalized gambling believe crime rates are up. We are not prepared to discount these views in the community. Rather, they are troubling and demand greater research, clarity, and knowledge.

The NORC study found that pathological gamblers had higher arrest and imprisonment rates than non-pathological gamblers.⁶⁷ A third of problem and pathological gamblers had been arrested, compared to 10 percent of low-risk gamblers and 4 percent of non-gamblers. About 23 percent of pathological gamblers have been imprisoned, and so had 13 percent of problem gamblers.⁶⁸ There are economic costs associated with arrests and imprisonment. Problem and pathological gamblers account for about \$1,000 in excess lifetime police costs each. The 32 percent of pathological gamblers arrested had a lifetime arrest cost of \$10,000.⁶⁹

Evidence provided to the Commission presented another side to this issue. A study by the chair of the Department of Criminal Justice at Virginia Commonwealth University found that:

An examination of arrest trends for embezzlement, forgery and fraud in nine of the largest casino markets shows no consistent pattern, although more jurisdictions report more decreases than increases in arrests.⁷⁰

Jeremy Margolis, a former director of the Illinois State Police, who also served as assistant U.S. attorney for the Northern District of Illinois and was the Illinois inspector general, published a comprehensive review of available information on gambling and crime. His study, "Casinos and Crime: An Analysis of the Evidence,"⁷¹ was based upon 10 jurisdictions that have commercial casinos. In testimony before the Commission he stated that he found little documentation of a causal relationship between the two. Taken as a whole, the literature shows that communities with casinos are just as safe as communities that do not have casinos.

FINANCIAL AND CREDIT ISSUES

The Commission found wide-spread perception among community leaders that indebtedness tends to increase with legalized gambling, as does youth crime, forgery and credit card theft, domestic violence, child neglect, problem gambling, and alcohol and drug offenses.⁷²

One of the issues of most concern to this Commission is the ready availability of credit in and around casinos, which can lead to irresponsible gambling and problem and pathological gambling behavior. Forty to sixty percent of the cash wagered by individuals in casinos is not physically brought onto the premises.⁷³ Each year casinos extend billions of dollars in loans to their customers in the form of credit markers. Additional sums are charged by casino customer on their credit cards as cash advances. Casinos charge fees for cash advances ranging from 3 percent to 10 percent or more.⁷⁴

According to the Casino Chronicle (as footnoted by I. Nelson Rose), the twelve casinos in Atlantic City issued approximately \$2.13 billion

⁶⁷ NORC, *Gambling Impact and Behavior Study* (April 1, 1999).

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Jay S. Albanese, Ph.D., Professor and Chair, Department of Criminal Justice, Virginia Commonwealth University. "Casino Gambling and White Collar Crime: An Examination of the

evidence" Presented at "Gambling and Gaming: Winners or Losers?" (April 30, 1999), p.32.

⁷¹ An Analysis of the Evidence, Dec. 1997

⁷² Ibid.

⁷³ Robyn Taylor Parets, "Cash Advances: Second Generation Money Dispensing Terminals Can Increase Casino Profit," *International Gaming & Wagering Business* (September 1996), p. S8.

⁷⁴ Ibid., p. S9.

in credit markers in 1997. Of this extended credit, \$543,174,000 remained outstanding after customers left the casinos. However, through the banking system, an additional \$434,400,000 of outstanding debt is collected, leaving only 1.3 percent left in unpaid loans, which is generally lower than other unpaid consumer debt.⁷⁵ Still, the true debt—that is, the amount the customers owed when they walked out of the casinos, still exceeded \$108 million—20 percent of the debt.

The credit marker policies in Nevada are similar to those of the casinos in Atlantic City. Credit markers are extended to patrons who pass through a background credit check. Nevada and Atlantic City casinos use the services of Central Credit, Inc. to determine a customer's credit history. In addition, both jurisdictions use other national credit agencies. Practices of extending credit markers are reviewed by regulators and independent accountants hired by casinos. Inconsistencies in accounting are reported to the regulators, and Nevada casinos that use improper methods to collect on outstanding debts are subject to disciplinary action. Credit markers extended in Nevada casinos account for approximately ten percent of casino revenues. This figure does not include the third party credit extensions from ATM's, credit cards, or other credit providers.⁷⁶

Providing estimates on the amount of credit extended for gambling purposes through credit cards remains problematic. Unlike casinos, credit card companies do not have to report the amounts borrowed for gambling purposes. Nor do casinos report information on credit card advances, according to the president of Central Credit.⁷⁷ Furthermore, casinos do not know how much money is received by customers directly from a credit card advance or ATM machine. Many ATM's and debit cards have limits on the amount of money dispensed within a 24-hour

period and on each withdrawal. According to International Gaming & Wagering Business, "Casinos have found a way around this dilemma by utilizing credit card cash advance services ... [that] allow players to access as much cash as they want."⁷⁸ As a result, some individuals are able to spend far more than they can afford and incur dangerously high debts.

In at least one tribal casino (Foxwoods), Commissioners were told that ATM machines offered cash advances without even the safeguard of a so-called "PIN" to prevent misuse of stolen or lost credit cards. It seems clear to us that additional consideration of the restriction and regulation of credit practices permitted in and around casinos must be given by policymakers reviewing gambling activities in and near their communities.

During the Commission meeting in Nevada, Thomas Coats, the Director for Consumer Credit Counseling Services in Des Moines, Iowa, testified on the changes in credit availability and bankruptcy in Iowa with the rise in available gambling outlets. According to his testimony, at the beginning of the project in the late 1980's, two to three percent of the people seeking counseling services attributed their credit problems to gambling. Today, approximately 15 percent of counseling goes to individuals with gambling attributed to the core of their credit concerns. The project has grown to six offices treating over 400 new cases each month. Furthermore, the agency offers a gambling hotline to provide assistance with individuals who feel they have a gambling problem. This hotline, 1-800-BETSOFF, averages almost 300 crisis calls each month.

Coates shared with the Commission a suicide note from one man in Iowa who had accrued \$60,000 in credit card debt at a local casino: "I never thought of gambling prior to two or three years ago. I really can't blame anyone but myself but I sincerely hope that restrictions are placed upon credit card cash availability at casinos. The money is too easy to access and goes in no time. My situation is now one of

75 I. Nelson Rose, "The Role of Credit in the Third Wave of Legal Gambling," *Gambling and The Law* (Anthony Cabot ed) (1999), pp. 3-7.

76 Robert Faiss and Thomas Coats, testimony to the National Gambling Impact Study Commission, Las Vegas, Nevada (November 11, 1998).

77 Rose, *Gambling and the Law*.

78 Parets, Op.Cit., p. S8.

complete despair, isolation and constant anxiety.”

The Commission also heard numerous stories of pathological gamblers forced into bankruptcy as a result of problem and pathological gambling. Nearly one in five (19.2 percent) of the identified pathological gamblers in the NORC survey reported filing bankruptcy. This compares to rates of 4.2 percent for non-gamblers and 5.5 percent for low-risk gamblers.⁷⁹ Twenty-two percent of nearly 400 members of Gamblers Anonymous surveyed had declared bankruptcy.⁸⁰

Personal anecdotes were very compelling. The Commission heard about a couple along the Mississippi Gulf Coast, both of whom began gambling excessively at the casino, who lost approximately \$70,000. When they received a letter from a credit card company demanding \$10,000 in payment, the couple made a last-ditch effort to recoup the money at the casinos. They lost \$2,000, then filed bankruptcy.⁸¹

Nineteen percent of Chapter 13 bankruptcies in the State of Iowa involved gambling-related debt. Bankruptcies in Iowa increased at a rate significantly above the national average in the years following the introduction of casinos. Nine of the 12 Iowa counties with the highest bankruptcy rates in the state had gambling facilities in or directly adjacent to them.

OTHER ECONOMIC IMPACTS

Other economic impacts are mentioned elsewhere in this report. Costs include lost productivity of workers impaired by problem or pathological gambling and the cost to society for treatment programs.⁸² While precise dollar costs

are not yet available to measure these losses, the rapid expansion of gambling into so many communities is likely to produce exponential growth in these costs with attendant burdens in business and social services.

Additional economic benefits, including improvements in community infrastructure, particularly in transportation, as well as a reduction in public assistance spending are evidenced in the Commission’s research. In Biloxi, the Commission received testimony on capital investment, and new development, new car and home purchases. Joliet, Illinois testified as to the reduction in their bond debt and new sources of capital investment. The Commission also received a study from Coopers and Lybrand that highlights employee impacts on charitable giving, volunteerism, and other positive economic impacts. In public comments to the Commission, many individuals recounted personal transformations that they attributed, in part, to a job in the casino industry and the impact these have had in their ability to contribute in a meaningful way to the community. Walter Caron, a cook at Caesars Palace, told the Commission, “I now have an expanded sense of community, and I realize more of my responsibilities to that community.”⁸³

LOCAL EFFECTS

Finally, while the national impact of gambling is significant, the greatest impact is felt at the local level. In some locales, gambling has been a critical component of community economic development strategies. For example, the Nevada Resort Association and the Nevada Commission on Tourism found that the gambling/hospitality industry created gross state-wide revenues of almost \$8 billion in 1997; contributed \$2.2 billion annually to federal, state and local taxes; paid taxes representing one-third of the state’s general fund revenues forecast for 1997-99; generated about \$36.5 million in county-level revenues in

⁷⁹ NORC, p.46.

⁸⁰ Lesieur, testimony before the National Gambling Impact Study Commission, Atlantic City, NJ (January 1998).

⁸¹ McCormick, Biloxi Site Visit

⁸² The gambling industry asserts that it contributes toward state-administered treatment programs through gaming tax revenues. Interestingly, NORC’s analysis of the casino survey states that 96 percent of the 25 largest casinos provide gambling treatment coverage for their employees.

⁸³ Walter Caron, testimony before the National Gambling Impact Study Commission, Las Vegas, NV (November 10, 1998).

fiscal year 1997; directly employed 307,500 people and was directly and indirectly responsible for 60 percent of the state employment total; disbursed salaries of nearly \$6 billion, representing one quarter of all wages paid state-wide in 1996; added \$10.3 billion to personal incomes; and contributed an estimated \$30.6 billion to the state's business receipts, representing 63 percent of Nevada gross state product in 1995.⁸⁴

Nevada, however, is unique. Roughly 85 percent of Nevada's gambling revenues come from out-of-state tourists. Thus, Nevada receives the economic benefits of the dollars lost to gambling, while the attendant social and economic impacts of unaffordable gambling losses are visited on the families and communities in the states from which those individuals come. Every other gambling venue in the United States is far more reliant on spending by citizens in a far more concentrated geographic area. In many cases, gambling operations are overwhelmingly dependent on spending by local citizens. For instance, a survey of 800 riverboat gamblers in Illinois found more than 85 percent lived within 50 miles of the casino in which they were gambling.⁸⁵

In New Jersey, the gambling industry is also a significant factor in the local and state-wide economy. The New Jersey Casino Control Commission, in a report to this Commission, found that the gambling industry created gross casino gambling revenues of \$3.79 billion in 1996; paid revenue taxes totaling \$303.2 million in 1996; generated \$717 million for redevelopment projects in Atlantic City (including investment in low and moderate income housing, historic restoration projects and nonprofit facility improvement) as well as an additional \$69 million for projects state-wide since 1984 through contributions to the Casino Reinvestment Development Authority (CRDA); provided 50,000

full and part-time jobs with a payroll exceeding \$1 billion before fringe benefits; contributed to the creation of another 48,000 indirect jobs with wages of almost \$1 billion in 1994; spent \$1.54 billion on goods and services with more than 3,400 companies in New Jersey and almost \$2.5 billion with more than 8,000 companies across the United States in 1996; and expects to invest \$5 billion or more for the development of casino hotel facilities during the next several years.⁸⁶ Similar pictures of the economic impact of casinos have been found in Mississippi and elsewhere.⁸⁷

Las Vegas is heralded as an economic success story even by those who oppose gambling in other jurisdictions. Las Vegas weathered the recessionary years of the early 90's better than many cities, and its economy performs well even when gambling revenues are flat. During 1998, the city posted significant gains in economic indicators such as employment, taxable sales, and home sales.⁸⁸ At the end of 1998, the city's unemployment rate was just 2.8 percent. Statewide unemployment reached an all-time low of 3.1 percent in December 1998, and Nevada led the nation in job growth for the fourth quarter of 1998.⁸⁹

These are impressive economic statistics, demonstrating a profound economic impact in terms of economic growth employment. However, the economic boons of gambling are not always so clear cut. In a study of four Western mining communities that introduced gambling, one study found that gambling:

"Transformed employment, physical space, and revenues to become the dominant industry in all four towns. Soon retailers from car dealers to ladies' ready-to-wear would sell out or convert to casino operations. The citizens who had voted for gambling with the vision that restaurants and bars,

⁸⁴ Nevada Commission on Tourism, *Gaming. Made in Nevada. Creating Pride, Opportunity and Hope in the Silver State* and Nevada Resort Association, *Media Fact Book* (November 10-11, 1998)..

⁸⁵ Ricardo C. Gazel and William N. Thompson, "Casino Gamblers in Illinois: Who Are They?" Better Government Association, (1996) p.7.

⁸⁶ New Jersey Casino Control Commission, "Casino Gambling in New Jersey," A Report to the National Gambling Impact Study Commission (January 1998).

⁸⁷ American Gaming Association.

⁸⁸ Monica Caruso, "Economy ends year with gains," *Las Vegas Review-Journal*, (March 17, 1999), p. 1D.

⁸⁹ "Nevada jobless rate falls to lowest in history," *Associated Press*, (February 3, 1999).

maybe even the bakery, might each have a few slot machines in the fronts of their businesses necessarily would soon find that businesses necessarily accommodated slot machines first, and only services that supported the playing of slot machines would survive. Everywhere, mostly run-down buildings that had been previously valued at a few thousand dollars were selling for a few hundred thousand. Not only buildings but streets and sewer and water lines would be renovated or, where possible, simply torn down for a new structure. And all of this was happening as roughly four times as many visitors were coming to town to check out the possibilities of getting rich quickly or at least to be able to have fun in ways previously impermissible.⁹⁰

Once gambling enters a small community, the community undergoes many changes. Local government becomes “a dependent partner in the business of gambling.”⁹¹

THE SOCIAL IMPACT OF GAMBLING

In considering the overall net impact of gambling on people and places, it is critical that social costs and benefits be included in this assessment. Unfortunately, because of difficulties in quantifying this impact, it appears that many policymakers have been forced to make decisions about expanding gambling without the benefit of this assessment, or, at best, with only an assessment of the perceived social impact.

Historically, communities have embraced or rejected gambling based upon perceived social impacts, concern about criminal activities and moral positions. Even among our nation’s Founding Fathers, much was written warning about the dangers of gambling. In the past, reasons for outlawing or limiting gambling included its negative impact on character and concern about promoting the myth that “lady

luck” was more likely to improve one’s situation than would hard work, education, and perseverance.

The Commission heard a significant amount of testimony and reviewed advertising materials that clearly suggested that lotteries and convenience gambling, in particular, sometimes preyed upon this kind of thinking among the most vulnerable populations—immigrants, minorities, and economically disadvantaged individuals. Numerous witnesses questioned the apparent contradictory message from states requiring work in exchange for welfare benefits and at the same time, promoting the lotto as a quick and easy means to profit without work.

As was often noted, credible studies of these forms of gambling are especially lacking. How can we begin to measure the social impact of individuals who spend their children’s milk money or cash their welfare checks to buy lottery tickets, as the Commission heard during visits to convenience stores? We cannot, but the Commission can acknowledge that when gambling is promoted as “the only way to get ahead” and, in particular, targets those who do not have “leisure dollars” to spend, the economic and social, indeed, the moral fabric of our nation is damaged.

One of the costs of gambling that the Commission are just beginning to better understand concerns problem and pathological gambling. While the Commission certainly have always known that some individuals have “problems” with gambling, in recent years this has been recognized as a clinical psychological disorder. Today, millions of families throughout the nation suffer from the effects of problem and pathological gambling. As with other addictive disorders, those who suffer from problem or pathological gambling engage in behavior that is destructive to themselves, their families, their work, and even their communities. This includes depression, abuse, divorce, homelessness, and suicide, in addition to the individual economic problems discussed previously. The impact of these problems on the future of our communities and the next generation is indeterminable. (See Table 7-2).

⁹⁰ Katherine Jensen and Audie Blevins, *The Last Gamble: Betting on the Future in Four Rocky Mountain Mining Towns* at 9. (1998). See also Blevins and Jensen, “Gambling as a Community Development Quick Fix,” *Annals*, at 109-123.

⁹¹ *Ibid.*

Today, proponents of gambling argue that, while gambling may be abused like many other activities, it is generally a form of entertainment practiced responsibly by millions of Americans. To its credit, the commercial casino industry has recently promoted several initiatives aimed at encouraging and understanding responsible “gambling” behavior, including the production of professional training materials for casino employees and guidelines for advertising.

But, when one talks about the social benefits of gambling as entertainment, opponents of gambling are quick to qualify this benefit, noting that gambling itself is an inherently flawed product because a certain percentage of those who engage in it will always suffer problems. Proponents point to evidence that the vast majority of those who gamble do not suffer or do not admit to having problem or pathological gambling problems. Yet among those for whom gambling is a regular activity, the risks appear much higher. A survey of 530 patrons at gambling establishments conducted for this Commission showed that 13 percent of those patrons were classified as lifetime problem or pathological gamblers.

In fairness, many segments of the gambling industry have begun to address this issue. But an enormous amount must be done by the public and private sectors, as well as by researchers, treatment providers, insurance programs and individuals to address the negative and harmful consequences of compulsive gambling. This is discussed in greater detail in the chapter on “Problem and Pathological Gambling.” For the purposes of this chapter, the Commission will discuss the impact of problem and pathological gambling behavior on individuals. In discussing our findings, the Commission must rely on the limited research available, anecdotal information and our own observations as the Commission traveled across the nation. While the Commission agree that this discussion should be shaped by scientific analysis, as evidenced by the commitment of more than half of our budget to research studies, the Commission cannot discount the weight of the personal testimony

presented to us by individuals who have experienced these problems first-hand.

PROBLEM AND PATHOLOGICAL GAMBLING

For millions of Americans, problem and pathological gambling is a serious consequence of legal and illegal gambling. Part of our challenge has been to pin down the exact number of individuals suffering from these disorders. Virtually every study varies in these estimations. For example, a Harvard University meta-analysis concluded that approximately 1.6 percent, or 3.2 million, of the American adult population are pathological gamblers.⁹² The combined rate of problem and pathological gambling in 17 states where surveys have been conducted ranges from 1.7 to 7.3 percent.⁹³ In Oregon, the lifetime prevalence of problem and pathological gambling is 4.9 percent.⁹⁴ Recent studies in Mississippi and Louisiana indicate that 7 percent of adults in these states have been classified as problem or pathological gamblers.⁹⁵

The two principal studies sponsored by this Commission found that the prevalence of problem and pathological gambling in America is troubling. NRC estimates that, in a given year, approximately 1.8 million adults in the United States are pathological gamblers. NORC found that approximately 2.5 million adults are pathological gamblers. Another three million of

⁹² Howard Shaffer, et. al., *Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-Analysis* (1997).

⁹³ See Rachel Volberg, *Gambling and Problem Gambling in New York: A 10-Year Replication Survey, 1986 to 1996*, Report to the New York Council on Problem Gambling (1996) and Lynn S. Wallich, *Gambling in Texas: 1995 Survey of Adult and Adolescent Behavior*, Texas Commission on Alcohol and Drug Abuse (1996). Cited in Henry R. Lesieur, “Cost and Treatment of Pathological Gambling,” 556 *Annals AAPSS*, at 154 (March 1998).

⁹⁴ Rachel A. Volberg, *Gambling and Problem Gambling in Oregon: Report to the Oregon Gambling Addiction Treatment Foundation* at 37 (August 26, 1997).

⁹⁵ Rachel A. Volberg, *Gambling and Problem Gambling in Mississippi: Report to the Mississippi Council on Compulsive Gambling* at 31 (November 1996).

the adult population are problem gamblers. Over 15 million Americans were identified as at-risk gamblers. About 148 million Americans are low-risk gamblers. Approximately 30 million Americans have never gambled at all.⁹⁶ While some believe that lifetime prevalence rates are overstated, others believe that past year rates are understated.

Reasonable people, including those with clinical expertise, disagree over the exact number of individuals suffering from gambling disorders and the relevance of “problem” versus “at-risk.” While getting an exact number is important for scientists, policymakers and treatment providers, more important is the acknowledgement that a significant number of individuals are pathological, problem or at-risk gamblers. And it is time for the public and private sector to come together in a meaningful way to address these problems.

The Commission is united in our concern for those currently suffering from problem gambling and our desire to prevent this problem in the future. The Commission also agrees that this should be a public-private partnership and that government at all levels should commit resources for research into the study and treatment of problem gambling.

ADOLESCENT GAMBLING

Adolescent gamblers are more likely than adults to become problem or pathological gamblers. NRC estimates that as many as 1.1 million adolescents between the ages of 12 and 18 are pathological gamblers, which is a much higher percentage than adults.⁹⁷ In the NORC study, adolescent problem and pathological gambling was found to be at the same rate as adults, but the at-risk rate was double the adult rate.⁹⁸ NRC noted that “adolescent measures of pathological gambling are not always comparable to adult

measures and that different thresholds for adolescent gambling problems may exist.”

With a growing number of underage gamblers, the social consequences of this illegal behavior are significant. In NRC’s survey of literature, they found that the percentage of adolescents who report having gambled during their lifetime ranges from 39 to 92 percent, with 39 percent functioning as an outlier, with the next highest percentage as 62.⁹⁹ The median was 85 percent. NRC also found that the prevalence of adolescent gambling during the past year ranged from 52 to 89 percent, with a median value of 73 percent.¹⁰⁰

And the impact is felt throughout the nation. In a survey of 12,000 Louisiana adolescents, one-quarter reported playing video poker, 17 percent had gambled on slot machines and one in 10 had bet on horse or dog racing.¹⁰¹ In Oregon, 19 percent of youths ages 13 to 17 reported having gambled in a casino, with 12 percent having done so in the past year.¹⁰² In Massachusetts, 47 percent of seventh-graders, and three-quarters of high school seniors, reported having played the lottery.¹⁰³ (See also Figure 7-1.)

The conclusion is startling, but confirmed by every study: children are gambling, even before they leave high school. NORC did note “adolescents were notably absent from casino play, with barely one percent reporting any casino wagers. This presumably reflects well on the enforcement efforts of casino operators, among other factors.” NRC, however, examined

⁹⁹ NRC at 3-9.

¹⁰⁰ NRC at 3-9.

¹⁰¹ James Westphal, et. al., “Final Report Statewide Baseline Survey Pathological Gambling and Substance Abuse, Louisiana Adolescents (6th Through 12th Grades), School Year 96-97,” Department of Psychiatry, Louisiana State University Medical Center, (April 27, 1998), p. 14.

¹⁰² Matthew J. Carlson and Thomas L. Moore, “Adolescent Gambling in Oregon: A Report to the Oregon Gambling Addiction Treatment Foundation,” (December 1, 1998).

¹⁰³ Howard J. Shaffer, “The Emergence of Youthful Addiction: The Prevalence of Underage Lottery Use and the Impact of Gambling,” Massachusetts Council on Compulsive Gambling (January 13, 1994), p. 12.

⁹⁶ NORC at 6-10.

⁹⁷ NRC at 3-9.

⁹⁸ NORC at 61-4.

Table 7-1
Financial Characteristics and Effects by Type of Gambler

Characteristic	Lifetime Gambling Behavior				
	Non-gambler	Low-Risk	At-Risk	Problem Gambler	Path. Gambler
Any unemployment benefits, 12 mos.	4.6	4.0	10.9	10.9*	15.0**
Received welfare benefits, 12 mos.	1.9	1.3	2.7	7.3*	4.6
Household income, 12 mos. (RDD)	\$36,000	\$47,000	\$48,000	\$45,000	\$40,000
Household debt, current (RDD)	\$22,000	\$38,000	\$37,000	\$14,000	\$48,000
Filed bankruptcy, ever	4.2	5.5	4.7	10.3 ϕ	19.2*

Statistical significance of differences between groups tested using multivariate logistical regression, with control variables for age, gender, ethnicity, education, child in household, and alcohol and drug use/abuse. Gamblers with no problems were used as the base group.

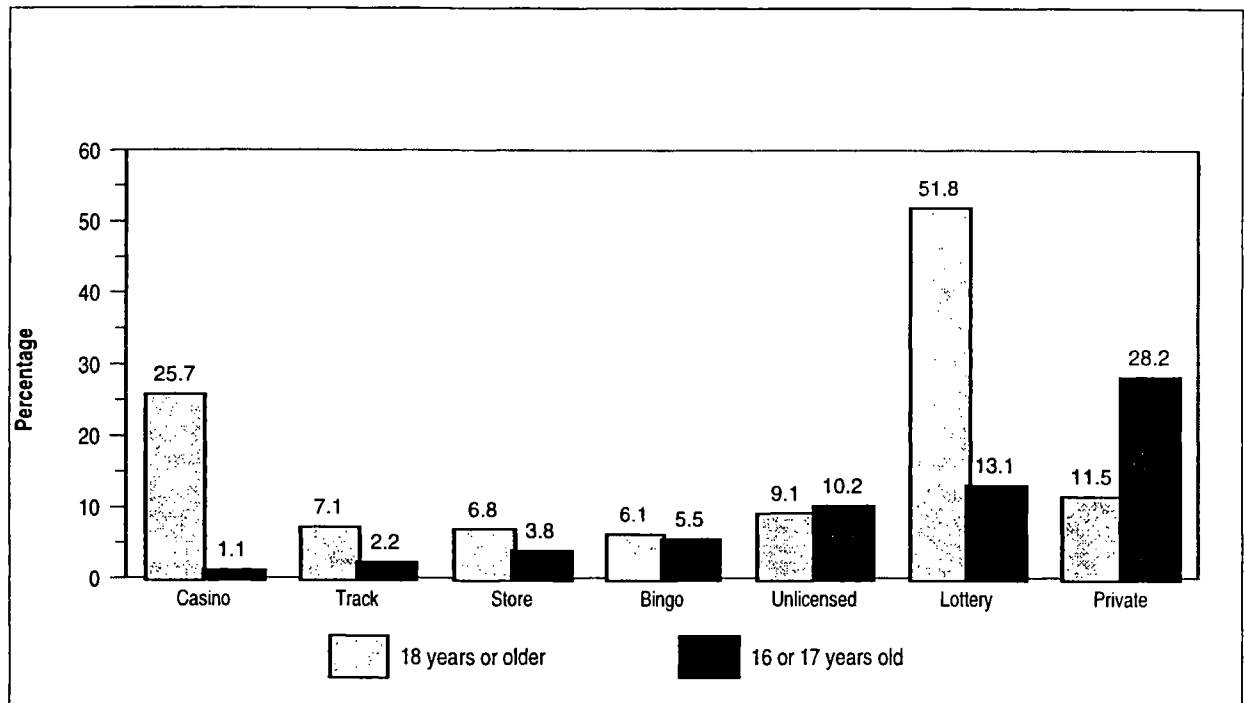
Significance tests: pathological and problem types tested *separately*; statistically significant at the: *** = 0.01 level; ** = 0.05 level. * = 0.10 level. Pathological and problem types *combined* for significance testing; statistically significant at the: $\phi\phi\phi$ = 0.01 level; $\phi\phi$ = 0.05 level. ϕ = 0.10 level.

Table 7-2
Percentage of Lifetime and Past-Year Gambler Types by Health, Mental Health, Substance Abuse, and Other Problems

Problem	Non-Gamblers		Low-Risk Gamblers		At-Risk Gamblers		Problem Gamblers		Path. Gamblers	
	Lifetime	Past Year	Lifetime	Past Year	Lifetime	Past Year	Lifetime	Past Year	Lifetime	Past Year
Health poor/fair, past year	22.8	21.0	14.0	12.3	15.7	13.2	16.3	22.6	31.1	29.6
Mentally troubled (currently) (RDD only)	10.7	14.6	15.9	17.1	26.5	28.5	42.3	24.2	41.9	66.5
Mental health tx, past year	5.1	6.9	6.8	6.3	6.4	10.1	12.8	5.4	13.3	12.9
Emotionally harmful family argument about gambling	NA	0.5	0.1	0.3	0.8	6.8	15.8	10.5	53.1	65.6
Manic symptoms, ever	NA	0.7	NA	1.6	11.3	17.6	16.8	13.4	32.5	40.1
Depressive episode, ever (RDD only)	NA	0.1	NA	1.0	8.6	17.4	16.9	5.2	29.1	20.0
Alcohol/drug dependent, ever (RDD only)	1.1	0.9	1.3	1.8	5.6	13.3	12.4	13.9	9.9	20.0
Drug use 5+ days, past year	2.0	2.4	4.2	5.1	9.2	13.5	16.8	16.1	8.1	13.9
Any job loss, past year	2.6	4.8	3.9	3.6	5.5	2.1	10.8	0.0	13.8	25.0
Bankruptcy, ever	3.9	3.3	5.5	6.4	4.6	10.9	10.3	13.8	19.2	10.7
Arrested, ever	4.0	7.0	10.0	11.9	21.1	25.7	36.3	25.0	32.3	26.4
Incarcerated, ever (RDD only)	0.4	—	3.7	—	7.8	—	10.4	—	21.4	—

Source: National Opinion Research Center at the University of Chicago, Gemini Research, and The Lewin Group. Gambling Impact and Behavior Study. Report to the National Gambling Impact Study Commission. April 1, 1999. Table 9, p. 29.

Figure 7-1
Adolescent Past-Year Gambling by Type of Game



Source: National Opinion Research Center at the University of Chicago, Gemini Research, and The Lewin Group. Gambling Impact and Behavior Study. Report to the National Gambling Impact Study Commission. April 1, 1999. Figure 9, p. 62.

thirteen relevant studies and found that a median of 27 percent of adolescents reported having gambled in a casino, while 10 percent reported having done so in the past year.¹⁰⁴ While the majority gamble on illegal activities, a significant number gamble on legal forms of gambling. This fact alone raises serious and troubling concerns regarding the accessibility of gambling, particularly convenience type, and the ineffective safeguards that are presently in place.

Parents simply cannot rely upon the government or the industry to prevent underage gambling.

NRC surveyed the relevant research literature on rates of problem and pathological gambling among adolescents. In the past year, the studies found that adolescent problem and pathological gambling combined ranged from 11.3 to 27.7 percent, with a median of 20 percent. For pathological gamblers only, these studies estimated rates between 0.3 to 9.5 percent, with a median of 6.1 percent. For lifetime adolescent pathological and problem gambling, the range of estimates was between 7.7 and 34.9 percent, with a median of 11.2 percent. For pathological gamblers only, the estimates ranged from 1.2 percent to 11.2 percent, with a median of 5.0 percent.¹⁰⁵

NORC, in a survey of 500 youths ages 16 to 17, found that the combined rate of pathological and problem gambling was 1.5 percent. But this figure may be low. The estimate was based on responses by youth who reported they had lost more than \$100 or more in a single day or as a net yearly loss. When this constraint is removed, the figure jumps up to three percent.¹⁰⁶ Other factors may have also led to under-reporting since the consent of a parent or guardian was required in order for a minor to participate in the NORC interview. Youths gambled differently from adults, using private and unlicensed games, such as card games or games of skill, sports

pools, and lotteries, especially instant lottery tickets.¹⁰⁷

It may be important to note the impact of proximity to legalized gambling on adolescents. One study found that college students in New York, New Jersey, and Nevada had higher rates of gambling than did students in Texas and Oklahoma.¹⁰⁸ Oddly, South Carolina law allows for anyone to play video poker, which some researchers have called the “crack-cocaine” of gambling because of its highly addictive nature. There is no age limit to play. But there is an age limit of 21 years on who can collect the earnings of play.¹⁰⁹

Several studies have shown that pathological gambling is associated with alcohol and drug use, truancy, low grades, problematic gambling in parents, and illegal activities to finance gambling. How does one place a dollar value—a cost—on that conduct? How do we, as a nation, quantify the value of lost opportunities to these young individuals?

One recent study found that gambling behavior was significantly associated with multiple drug and alcohol use. For 28 percent of those surveyed in the same study, gambling was associated with carrying a weapon at least once in the past 30 days, and for those who reported a problem with gambling the figure rose to 47 percent. Violence was also associated with gambling: while nearly one-fourth of the non-gambling students reported having fought in the last 30 days, the figure rose to 45 percent for those who reported gambling and 62 percent for those who reported problems attributed to gambling. In addition, the researchers suggested

¹⁰⁷ NORC at 4.

¹⁰⁸ Henry Lesieur, et. al., “Gambling and Pathological Gambling Among University Students,” 16 *Addictive Behavior*, at 517-527 (1991).

¹⁰⁹ *ibid.* Telephone conversation with Thomas Landes, Public Information Officer, Office of the Attorney General of South Carolina, staff of the National Gambling Impact Study Commission, S.C. (December 10, 1998).

¹⁰⁴ NRC, p. 3-24.

¹⁰⁵ NRC at 3-10.

¹⁰⁶ NORC at 57-60.

that the data may have been significantly underreported.¹¹⁰

In the Harvard meta-analysis, it was noted that "... compared to adults, youth have had more exposure to gambling during an age when vulnerability is high and risk-taking behavior is a norm; consequently, these young people have higher rates of disordered gambling than their more mature and less vulnerable counterparts."¹¹¹

A study presented to the commission by Louisiana State University Professor James Westphal also drew a link between compulsive gambling and criminal behavior among youth. Louisiana adolescents in juvenile detention are roughly four times as likely to have a serious gambling problem as their peers. Further, two-thirds of the juvenile problem gamblers in detention reported stealing to finance their gambling.¹¹²

RESPONDING TO ADOLESCENT GAMBLING

While the chapter, "Problem and Pathological Gambling," will address the clinical aspects of this subject, there have been a variety of local initiatives to address youth gambling. In Great Britain, "Parents of Young Gamblers," a support organization, has been developed to directly meet the needs of very young pathological gamblers and their families.¹¹³ Such an approach allows for relaxation training, avoidance of gambling opportunities, and family and peer support, including supervision of a young

person's money.¹¹⁴ One creative example of outreach is within America's Southeast Asian community. Several organizations, including the United Cambodian Association of Minnesota and the Lao Family Community of Minnesota, developed a prevention and education program to inform young Southeast Asians about the hazards of adolescent gambling.¹¹⁵ A similar booklet has been created for the general population by the Minnesota Institute of Public Health.¹¹⁶ The Minnesota Council on Compulsive Gambling has prepared a package containing a booklet, loose-leaf papers, and a video targeted to teenage gambling.¹¹⁷ The goal of the materials is to enhance critical thinking and to help identify compulsive behaviors.

Some sectors of the legal gambling industry have taken the initiative to begin to address adolescent gambling. For example, the Nevada Retail Gaming Association has developed a program to post stickers on slot and video poker games to warn against illegal gambling by adolescents. The Nevada Council on Problem Gambling has created literature to distribute to casinos and players. Several conferences have been funded by the gambling industry to increase research and awareness. Recognizing the importance of these problem, the American Gaming Association (AGA) created a task force to develop underage gambling prevention programs and policies and established a partnership with the National Center for Missing and Exploited Children to address the issue of missing and unattended children in casinos. Standards have been set for employee awareness of attempts at underage gambling, communication with employees about how to stop underage gambling, and guest awareness that underage

¹¹⁰ Proimos, et al. "Gambling and Other Risk Behaviors Among 8th and 12th Grade Students," *Pediatrics*, Vol. 102, No. 2 (August 1998).

¹¹¹ Howard Shaffer, et al., *Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-Analysis* (1997), p. 5.

¹¹² James R. Westphal, "Adolescent Gambling Behavior," Louisiana State University Medical Center—Shreveport, presented to the National Gambling Impact Study Commission, Las Vegas (November 11, 1998).

¹¹³ Jean Schroeder, "Youth and Gambling: A Review of Literature," *Report of the North American Training Institute* (1995).

¹¹⁴ See Mark D. Griffiths, "Factors in Problem Adolescent Fruit Machine Gambling: Results of Small Postal Survey," 9 *Journal of Gambling Studies*, 31-47 (1993).

¹¹⁵ Roger Svendsen, *Southeast Asian Youth Prevention Education Program* (pamphlet), developed in conjunction with the Minnesota Institute of Public Health (April 1997).

¹¹⁶ Roger Svendsen and Tom Griffin, *Gambling: Choices and Guidelines* (pamphlet) (1993).

¹¹⁷ North American Training Institute, *Wanna Bet* (booklet, papers, and video) (September 1998).

gambling will not be tolerated. On-going training and orientation efforts are underway. The industry has made several statements that adolescent gambling is neither wanted nor acceptable.¹¹⁸ In 1997, both AGA President Frank Fahrenkopf and casino owner Donald Trump spoke against adolescent gambling and urged casino employees to keep adolescents out of casinos.¹¹⁹

These efforts are a start, but far more that posting warning signs and training some employees needs to be done. Adolescent gambling is one issue on which there is considerable common ground among the industry, parents, anti-gambling advocates, clergy, and city officials. The prevalence of adolescent gambling is a serious problem which demands a broad coalition of efforts. The Commission has heard testimony from some who argue that the casino industry should shoulder the burden for funding prevention programs targeting underage gambling. The Commission believes that the responsibility rests with all sectors of the industry, including tribal and state governments.

SUICIDE

For those with destructive and dependent behavioral problems, an additional concern is suicide. Commissioners heard repeated testimony about suicide and attempted suicide on the part of compulsive gamblers. In Atlantic City, the Commission heard about a 16-year-old boy who attempted suicide after losing \$6,000 on lottery tickets.¹²⁰ In Chicago, Commissioners heard about a middle-aged couple in Joliet, Illinois, who both committed suicide after the wife accumulated \$200,000 in casino

debt.¹²¹ When evaluating the economic benefits of a proposed new facility, policymakers should also give serious consideration to consequences such as these.

According to the National Council on Problem Gambling, approximately one in five pathological gamblers attempts suicide. The Council further notes that the suicide rate among pathological gamblers is higher than for any other addictive disorder.¹²²

A survey of nearly 400 Gamblers Anonymous members revealed that two-thirds had contemplated suicide, 47 percent had a definite plan to kill themselves, and 77 percent stated that they have wanted to die.¹²³

University of California-San Diego sociologist Dr. David Phillips found that “visitors to and residents of gaming communities experience significantly elevated suicide levels.” According to Phillips, Las Vegas “displays the highest levels of suicide in the nation, both for residents of Las Vegas and for visitors to that setting.” In Atlantic City, Phillips found that “abnormally high suicide levels for visitors and residents appeared only after gambling casinos were opened.” Visitor suicides account for 4.28 percent of all visitor deaths in Las Vegas, 2.31 percent of visitor deaths in Reno, and 1.87 percent of visitor deaths in Atlantic City. Nationally, suicides account for an average of .97 percent of visitor deaths.¹²⁴

A study commissioned by the American Gaming Association to counter Phillips’ findings explains the suicide rates in Las Vegas not as a result of gambling but rather as a result of the city’s geographic and demographic characteristics.

¹¹⁸ See American Gaming Association, *Responsible Gaming Resource Guide*, Second Edition at 3-11 to 3-19, x-1 to x-5.

¹¹⁹ ABC News 20/20, *Where Are Their Parents?: Children Roam Casinos While Parents Gamble* (air date September 12, 1997).

¹²⁰ Testimony of Edward Looney, Executive Director, Council on Compulsive Gambling of New Jersey, Before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 22, 1998).

¹²¹ Testimony of Joe Clark, Before the National Gambling Impact Study Commission, Chicago, Illinois (May 20, 1998) (Executive Director, Illinois Family Institute)

¹²² National Council on Problem Gambling, *Problem and Pathological Gambling in America: The National Picture*, at 14-15 (January 1997).

¹²³ Edward Looney

¹²⁴ Elevated Suicide levels Associated with Legalized Gambling, 27 *Suicide and Life Threatening Behavior*, at 373-378 (December 1997).

University of California-Irvine Social Ecology professors Richard McCleary and Kenneth Chew, using different methodologies than Phillips, concluded that suicide rates in Las Vegas are comparable to other Western cities. They account for the high rates by analyzing the rapid growth of many Western cities, which results in a large population without established roots to a community. They concluded, "In strong contrast to the Phillips study, our investigation shows that...suicide levels in U.S. Casino resort areas are about average compared to non-gaming areas."¹²⁵ While these studies may account for the different rates, they both conclude that Las Vegas has the highest resident suicide rate in the nation.

The Centers for Disease Control and Prevention conducted a study of suicide and nowhere in this study was gambling mentioned as a cause. What the study did reveal was that:

A spectrum of social and environmental factors have been associated with suicidal behavior. For example, levels of residential instability, unemployment, and other indicators of limited economic opportunity may be higher in communities with higher suicide. Similarly, suicide rates are higher in communities with low levels of social integration and unstable social environments.¹²⁶

Other observers have noted the fact that Nevada regularly reports the highest rate of suicide among all 50 states. For 1995, that rate was more than twice the national average.¹²⁷ Testimony before the Commission indicated that, for numerous reasons, the magnitude of the link between gambling and suicide may be understated. For instance, Commissioners heard that gambling-related suicides and suicide

attempts often are not reported as suicides,¹²⁸ not tied to gambling, or disguised so as not to look like a suicide.

DIVORCE

The Commission likewise heard abundant testimony and evidence that compulsive gambling introduces a greatly heightened level of stress and tension into marriages and families, often culminating in divorce and other manifestations of familial disharmony. In Las Vegas, Michelle "Mitzi" Schlichter testified how she eventually ended her marriage to former NFL quarterback Art Schlichter after his second incarceration for gambling-related activities.¹²⁹ In Biloxi, Mississippi, a school teacher testified how her 30-year marriage to a prominent Gulf Coast attorney crumbled after the husband developed an obsession with casino gambling.¹³⁰ In Tempe, Arizona, Gwen Bjornson testified before the Commission how her 5- and 7-year-old sons' "lives are forever changed because I was compelled to divorce their father, a compulsive gambler. Divorce is one of the most painful things that we, as adults, sometimes must face. Yet, without divorce, I am very much in doubt that I would have skirted a complete mental breakdown."

In NORC's survey, 53.5 percent of identified pathological gamblers reported having been divorced, versus 18.2 percent of non-gamblers and 29.8 percent of low-risk gamblers. Further, NORC respondents representing two million adults identified a spouse's gambling as a significant factor in a prior divorce.¹³¹

NRC concluded, "Many families of pathological gamblers suffer from a variety of financial,

¹²⁵ Rob Bhatt, *Industry Engages Suicide Debate*, *Las Vegas Business Press*, at 1 (October 12, 1998)

¹²⁶ Christian Marfels, Ph.D., *Visitor Suicides and Problem Gambling in the Las Vegas Market: A Phenomenon in Search of Evidence*, *Gaming Law Review*, Vol. 2, No. 5 (1998), p.472.

¹²⁷ U.S. Bureau of the Census, *Statistical Abstract of the United States*: 1998 [118th Edition], Washington, D.C. at 105 (1998).

¹²⁸ Testimony of Chris Anderson before the National Gambling Impact Study Commission, Chicago, Illinois (May 20, 1998). (Executive Director, Illinois Council on Compulsive Gambling).

¹²⁹ Testimony Before the National Gambling Study Commission, Las Vegas, Nevada (November 8, 1998).

¹³⁰ Testimony of Robin, Before the National Gambling Impact Study Commission, Biloxi, Mississippi (September 10, 1998). (witness)

¹³¹ NORC, at 48,49.

physical, and emotional problems.” NRC reviewed studies showing that spouses of compulsive gamblers suffer high rates of a variety of emotional and physical problems.¹³² In a survey of nearly 400 Gamblers Anonymous members, 18 percent reported experiencing a gambling-related divorce. Another 10 percent said they were separated as a direct consequence of their gambling.¹³³

HOMELESSNESS

Individuals with gambling problems seem to constitute a higher percentage of the homeless population. The Atlantic City Rescue Mission reported to the Commission that 22 percent of its clients are homeless due to a gambling problem.¹³⁴ A survey of homeless service providers in Chicago found that 33 percent considered gambling a contributing factor in the homelessness of people in their program.

Other data presented to the Commission further substantiated this link. In a survey of 1,100 clients at dozens of Rescue Missions across the United States, 18 percent cited gambling as a cause of their homelessness.¹³⁵ Interviews with more than 7,000 homeless individuals in Las Vegas revealed that 20 percent reported a gambling problem.¹³⁶ Again, whether this is caused by gambling or by other factors related to addictive behavior is unclear, but homelessness and gambling should be included in future research.

ABUSE AND NEGLECT

Family strife created by gambling problems also appears in the form of abuse, domestic violence or neglect. In Biloxi, Mississippi, a witness testified before the Commission how her husband’s gambling problem affected their relationship: “I lived in fear daily due to his agitation and outbursts of violence broken doors, overturned furniture, broken lamps, walls with holes in them. I haven’t the words to describe the hell that my life became on a daily basis.”¹³⁷

NRC cites two studies showing that between one quarter and one half of spouses of compulsive gamblers have been abused.¹³⁸ Six of the 10 communities surveyed in NORC’s case studies reported an increase in domestic violence relative to the advent of casinos.¹³⁹

One domestic violence counselor from Harrison County, Mississippi, testified that a shelter there reported a 300 percent increase in the number of requests for domestic abuse intervention after the arrival of casinos. A substantial portion of the women seeking refuge reported that gambling contributed to the abuse.¹⁴⁰

Other casino communities report similar experiences. Rhode Island Attorney General Jeffrey Pine reported a “significant increase” in domestic assaults in the community of Westerly, R.I. after the opening of the Foxwoods casino 20 minutes away.¹⁴¹ Maryland Attorney General J. Joseph Curran, Jr. has likewise reported a linkage between expanded gambling and increases in domestic violence in numerous

¹³² NRC, p. 5-2.

¹³³ Testimony of Henry Lesieur, Before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 22, 1998). (Institute for Problem Gambling)

¹³⁴ Atlantic City Mission, “Report to the National Gambling Impact Study Commission” Atlantic City, NJ (January 24, 1998) p. 17.

¹³⁵ International Union of Gospel Missions, “Nationwide Survey: Nearly One in Five at Missions Say Gambling a Factor in Their Homelessness,” (March 12, 1998).

¹³⁶ Denise Cardinal, “More Beds Sought for Area’s Growing Homeless Population,” *Las Vegas Sun*, (May 11, 1998).

¹³⁷ Testimony of L.M., Before the National Gambling Impact Study Commission, Biloxi, Mississippi (September 10, 1998). (Witness)

¹³⁸ NRC, p. 5-2.

¹³⁹ NORC, at 73.

¹⁴⁰ testimony of Rachel Caine before the National Gambling Impact Study Commission, Biloxi, Mississippi (September 10, 1998). (Program Director, Salvation Army Domestic Violence Shelter).

¹⁴¹ Police Chiefs in Westerley and Hopkinton Announce Link of Casino Gambling to Increases in Crime and Economic Hardship for Families, [press release], Department of the [Rhode Island] Attorney General (February 6, 1996).

locales.¹⁴² The Commission even received testimony of several cases of spousal murder and attempted murder linked to problem and pathological gambling.¹⁴³

Children of compulsive gamblers are often prone to suffer abuse, as well as neglect, as a result of parental problem or pathological gambling. The Commission heard testimony of numerous cases in which parents or a caretaker locked children in cars for an extended period of time while they gambled. In at least two cases, the children died.¹⁴⁴ It was brought to the Commission's attention that cases of parents leaving their children in the Foxwoods casino parking lot became so commonplace that Foxwoods management posted signs warning that such incidents would be reported to the police.¹⁴⁵ The well-publicized murder of a seven-year-old girl in a Nevada casino during the formation of this Commission has brought significant attention to the issue of children abandoned by their parents inside gambling establishments.

In its case studies of 10 casino communities, NORC reported, "Six communities had one or more respondents who said they had seen increases in child neglect, and attributed this increase at least in part to parents leaving their children alone at home or in casino lobbies and parking lots while they went to gamble."¹⁴⁶ Respondents in these communities did not report noticeable increases in child abuse. NORC noted that the casino effect was not statistically

significant for the infant mortality measure. The NRC, however, reported on two studies indicating between 10 and 17 percent of children of compulsive gamblers had been abused.¹⁴⁷

LOCAL EFFECT

While it is important for this Commission to acknowledge that, in certain areas, especially those which had been economically depressed, the advent of casino gambling has produced localized benefits to the communities in the form of new and better jobs, increased purchasing power, and social support facilities (such as schools and hospitals), it is not appropriate to speak of those benefits without immediately acknowledging both the unknown, and presently unmeasured negative effects in those same communities experienced by those citizens who develop problem or pathological gambling habits and the wave effects which those persons cause in their families, workplaces, and local communities. Nor is it appropriate to ignore the negative effects that the introduction of legalized gambling in one community may have on the surrounding communities within its area of influence. Elsewhere in this *Report* the Commission has recommended that states require that thorough impact studies be conducted before new gambling facilities are permitted. That is not a reflection of a bias against gambling facilities, but rather an acknowledgment of the paucity of evidence of net impact derived from the introduction of gambling into an area where it does not already exist. The Commission is committed to the idea that local government agencies should make careful and informed decisions about whether to permit gambling into their respective jurisdictions. Since proposals for the introduction of new gambling facilities are usually accompanied by assurances of economic benefit to the community or region, it is reasonable to expect that there should be a careful and well-

¹⁴² "The House Never Loses and Maryland Cannot Win: Why Casino Gaming Is a Bad Idea," Report of Attorney General J. Joseph Curran, Jr. on the Impact of Casino Gaming on Crime, Presented to the Joint Executive-Legislative Task Force to Study Commercial Gaming Activities in Maryland at 32-33 (October 16, 1995).

¹⁴³ Arnie Wexler, before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 22, 1998). (Wexler Associates); Joe Lambe, Kansas City Woman Found Guilty of '95 Murder, *Kansas City Star* (December 14, 1996), at C1; and Petula Dvorak, Marrero Man Kills Wife, Self; Daughter Hears Shots, *New Orleans Times-Picayune* (May 8, 1998), Pg. A1.

¹⁴⁴ Arnie Wexler, *ibid*.

¹⁴⁵ Stephanie Saul, Tribe Bets on Growth; High Stakes Foxwoods Expansion Not Welcomed by All, *Newsday* (Aug. 11, 1997).

¹⁴⁶ NORC, at 78.

¹⁴⁷ NRC, at 5-2.

documented study of all aspects of gambling, the economic and social benefits and economic and social costs, before new facilities are approved. That is no more than the careful analysis that is required in most zoning and developmental planning decisions.

CONCLUSION

As the Commission noted earlier, in an ideal environment, policymakers and citizens prudently consider all of the relevant facts before committing themselves and their communities to major courses of action. This should be true for those communities considering the legalization or expansion of gambling activities, as the economic and social impacts of gambling are significant. Unfortunately, this is often not the case for a number of reasons. The amount of high quality and relevant research is extremely limited. The perceived lure of enormous economic benefits and tax revenues leads some to disregard potential economic and social costs. And sadly, today's political environment places more emphasis on "spin" than it does on facts, and too many of these decisions are turned into high-priced ballot issues.

The Commission fundamentally respects the wisdom of the American people to decide what is best for themselves and for their families. As Thomas Jefferson wrote more than 200 hundred years ago, "I know of no safe repository of the ultimate power of society but the people themselves." The Commission further values the right of all Americans to make choices regarding the legal activities in which they engage recreationally. The Commission committed our efforts to making certain that both elected officials and their constituents have as much information as possible on this industry from which to make informed decisions. The implications for communities and individuals of introducing, expanding or restricting gambling are far different and more complicated than they were 20 years ago.

In testimony before the Commission in Chicago, Michael Belletire, the Administrator of the Illinois Gaming Board, commented on the difficulties facing policymakers: "Overall, I would observe that riverboat gambling in the heartland has not been as detrimental or as malignant to our social fabric as its critics contend, or as important or as benign as the industry makes it out to be. The answers are not all in and the experience is an evolving one." In a macroeconomic sense, the Commission agrees with this assessment.

In terms of economic impact, the Commission notes that the conventional way of looking at a particular business activity involves citing statistics such as gross sales, revenues and employment. Strictly speaking, however, these gross numbers do not represent a true calculation of the net benefits to society. In the first place, gross wages and profits tell the whole story only when the resources and workers would not have been otherwise engaged. Secondly, policymakers need to be concerned about the extent to which the economic output of a given activity—especially one that involves a closely regulated business—is greater than the costs that it generates.

Gambling, like any other viable business, creates both profits and jobs. But the real question—the reason gambling is an issue in need of substantially more study—is not simply how many people work in the industry, nor how much they earn, nor even what tax revenues flow from gambling. The central issue is whether the net increases in income and well-being are worth the acknowledged social costs of gambling. After much testimony and a review of the existing economic literature, the Commission has concluded that it is currently impossible to obtain even a rough approximation of a true cost-benefit calculation concerning the economic impact of legalized gambling. The Commission believes that further economic research will help, but also understands that gambling's impacts are much too complicated for even the most sophisticated economic models.

Turning to the social impact of gambling, the process of finding ultimate answers is even more

difficult. No reasonable person would argue that gambling is cost free. And no member of the Commission opposes aggressive additional action to deal with problem and pathological gambling. Here, as in the economic sphere, the Commission does believe that more research can lead to greater understanding and more informed policy. After all, making decisions about whether to expand gambling or how to deal with its consequences may not be a science, but decisionmaking surely will be aided by more scientific evidence.

Finally, in other chapters of this report and in our conclusions, the Commission stresses our conviction that we must do more to cope with gambling's impact on the nation. The effects of gambling on people and places is an immensely complicated issue. If the Commission is to chart a sensible course in the future, it will require considerably more research and considerably more good judgment by both citizens and leaders.

RECOMMENDATIONS

7.1 Because of the easy availability of automated teller machines (ATM's) and credit machines encourages some gamblers to wager more than they intended, the Commission recommends that states, tribal governments, and pari-mutuel facilities ban credit card cash advance machines and other devices activated by debit or credit cards from the immediate area where gambling takes place.

7.2 While the Commission recognizes that the responsibility for children and minors lies first and foremost with parents, it recommends that gambling establishments implement policies to help ensure the safety of children on their premises and to prevent underage gambling. Policies that could be implemented include the following:

- Post local curfews and laws in public areas and inform guests traveling with minors of these laws.
- Train employees working in appropriate areas to handle situations involving unattended

children, underage gambling, and alcohol and tobacco consumption or purchase.

7.3 The Commission recommends to state, local and tribal governments that (when considering the legalization of gambling or the repeal of gambling that is already legal) they should recognize that, especially in economically depressed communities, casino gambling has demonstrated the ability to generate economic development through the creation of quality jobs.

7.4 The Commission recommends to state, local and tribal governments that (when considering the legalization of gambling or the repeal of gambling that is already legal) they should recognize that lotteries, Internet gambling, and non-casino electronic gambling devices do not create a concentration of good quality jobs and do not generate significant economic development.

7.5 The Commission recommends to state, local and tribal governments that (when they are considering the legalization of casino gambling) casino development should be targeted for locations where the attendant jobs and economic development will benefit communities with high levels of unemployment and underemployment and a scarcity of jobs for which the residents of such communities are qualified.

7.6 The Commission recommends to state, local and tribal governments that studies of gambling's economic impact and studies contemplating the legalization of gambling or the repeal of gambling that is already legal should include an analysis of gambling industry job quality, specifically income, medical benefits, and retirement benefits, relative to the quality of other jobs available in comparable industries within the labor market.

7.7 The Commission recommends to state, local and tribal governments that when planning for gambling-related economic development, communities with legal gambling or that are considering the legalization of gambling should recognize that destination resorts create more and better quality jobs than casinos catering to a local clientele.

7.8 The Commission recommends to state, local and tribal governments that communities with legal gambling or that are considering the legalization of gambling should look to cooperation between labor unions and management as a means for protecting job quality.

7.9 The Commission recommends that students should be warned of the dangers of gambling, beginning at the elementary level and continuing through college.

CHAPTER 8. FUTURE RESEARCH RECOMMENDATIONS

In 1996 Congress created the National Gambling Impact Study Commission (NGISC) and directed it to conduct a thorough study of the attitudes, events, and trends shaping the social and economic impacts of legal gambling in America. It quickly became apparent to the Commission that very little objective research existed on the current state of gambling in our nation. The Commission decided to commit nearly half of its \$5 million budget to a research agenda that would help policymakers and the public better understand the dramatic growth of the gambling industry over the last two decades.

The primary research program of the NGISC is embodied in the National Academy of Science's National Research Council and the University of Chicago affiliate, the National Opinion Research Center reports on gambling behavior, problem and pathological gambling, and related issues such as the availability and efficacy of treatment for gambling disorders. Useful data on state lotteries was developed by Philip Cook and Charles Clotfelter of Duke University. Other valuable information was obtained in answers from all 37 state lottery regulators and about 150 casino operators. Much helpful testimony on economic and social outcomes was given at our six regional site hearings, frequently describing research conducted in individual states that was of peer review quality. The data and analyses the Commission's research generated has added to the meager knowledge base on legal gambling.

Yet what is very clear is that there is still a dearth of impartial, objective research that the public and policymakers at federal, tribal, state, and corporate levels need to shape public policies on the impacts of legal gambling.

The gambling industry continues to undergo dynamic change. Many of our private sector gambling corporations have become international, national, or regional in their marketing strategy, customer base and in other

essential respects. These private sector operations plus state-run lotteries are generating more than \$50 billion in revenue this year. The parameters that used to define different forms of gambling are blurring. Betting from home is becoming more common. Betting over the Internet may soon become universal. Understanding the ever-evolving economic forms of legal gambling is important.

There are undeniably many millions of problem and pathological gamblers causing severe harm to themselves, their families and many others. Understanding the reasons that gambling disorders are multiplying is crucial to the health and stability of these families, their communities and many businesses.

Without a clearer understanding of the issues involved in this complex subject, all of us are less able to make sound judgements about future impacts of the gambling industry. Consider, for example, that more than \$88 million in the aggregate was spent on a 1998 referendum in California that would liberally expand Native American tribal casinos in that state. With no objective body of knowledge available, 30-second television spots defined the campaign dialogue. The public, Congress, and tribal and state leaders, need access to impartial data on which informed judgments can be based.

In past years, Congress initiated research on other disorders in effective and visionary ways. The nation knows far more about drug and alcohol abuse because Congress strongly supported research, undertaken primarily by national institutes that provided indispensable data.

Where it makes sense, those models should now be followed to understand the benefits and costs of legal gambling, including the causes and effects of gambling disorders.

As you will read in several of the recommendations below, the Commission is proposing that gambling components, where appropriate, be added to existing federal research in the substance abuse and other mental health fields. Adopting that strategy will, at less cost, greatly

accelerate the collection and analyses of data needed to design sensible solutions.

Taking the 15 federal and 4 state research recommendations in their totality, the Commission is trying to gauge the positive and negative outcomes of governmental (tribal and state) and private sector legal gambling. In virtually every past instance, what proponents and opponents offered as research was usually advocacy and not objective data produced by impartial sources. That must be remedied.

The research recommendations to Congress and to the states will produce knowledge that policymakers need to answer thousands of questions they will be asked in the first decade of the new millennium.

RECOMMENDATIONS

8.1 The Commission recommends that Congress encourage the appropriate institutes within the National Institutes of Health (NIH) to convene a multi-disciplinary advisory panel that will help to establish a broad framework for research on problem and pathological gambling issues within its range of expertise.

8.2 The Commission recommends that Congress direct the Substance Abuse and Mental Health Services Administration (SAMHSA), or other appropriate agency, to add gambling components to the National Household Survey on Drug Abuse. To understand the expanding dimensions of problem and pathological gambling nationwide, gambling prevalence studies need to be of sufficient volume and with annual updates to record changes brought about by expanding legalization, greater accessibility, technological advances and increasingly sophisticated games. This survey would examine not only the general population, but also sizable subgroups such as youth, women, the elderly and minority gamblers, if no other more appropriate longitudinal studies focusing on each of these groups are available.

In any event, no data gathering pursuant to these recommendations should violate any person's

right to medical privacy in seeking treatment for problem or pathological gambling.

8.3 The Commission recommends that Congress direct all federal agencies conducting or supporting longitudinal research panels to consider the feasibility of adding a gambling component to such surveys and, where appropriate, entertain applications to add such components that are determined to be of high scientific merit through scientific peer review. In addition to addressing gambling behavior, these components should include questions about treatment-seeking behavior, in order to begin to address the issue of the unmet need for treatment, which is currently unknown.

8.4 The Commission recommends that Congress encourage the National Institutes of Health (NIH) to issue a revision of the special research program announcement for research applications on pathological gambling to foster research designed to identify the age of initiation of gambling, influence of family and correlates with other youth high-risk behavior such as tobacco, alcohol and other drug use, early sexual activity and criminal activity evaluated separately for illegal and legal forms of gambling.

8.5 The Commission recommends that Congress direct the appropriate institutes of NIH to invite, where appropriate, applications for supplemental funds to add legal and illegal gambling components of high scientific merit to appropriate and relevant existing surveys, and to issue a revision of the special program announcement for research applications on pathological gambling to include the following areas:

- Effects on family members, such as divorce, spousal and/or child abuse, severe financial instability and suicide.
- Analysis of public awareness education and prevention programs offered at federal, tribal, state or corporate levels.

- Analysis of the development of gambling difficulties associated with electronic gambling devices (EGD's) and the risk factors that accompany this evolution for customers most likely drawn to this form of gambling.
- Effects on the workplace such as economic losses arising from unemployment, loss of productivity and workplace accidents.
- A study that would establish reliable instruments to measure non-monetary costs associated with legal gambling including, without limitation, divorce, domestic violence, child abuse and chronic neglect, suicide, and the secondary effects of bankruptcy and gambling-related crimes, and other outcomes of a similar character.

8.6 The Commission recommends that Congress direct the appropriate institutes of NIH to invite, where appropriate, applications for supplemental funds to issue a revision of the special program announcement for research applications to commence a study of American adult problem gamblers below the pathological gambler threshold (APA DSM-IV). The gambling behavior of those in this large group of 11 million adults and juveniles reveal warning signs that require thorough analysis. The gamblers in this group could go either way, that is, toward diminishing risk or toward pathological status.

8.7 The Commission recommends that Congress direct the Substance Abuse and Mental Health Services Administration (SAMHSA) or other appropriate agency to add specific gambling questions to its annual surveys of mental health providers, which are conducted by the Center for Mental Health Services. The survey should map the availability of both privately and publicly funded treatment services for gamblers. This should include a count of treatment slots for gambling; how many, in a given period, are in treatment for gambling problems alone, or for multiple disorders that include problem gambling;

a demographic profile of those receiving treatment, an assessment of the level of the gambling disorder, and a description of the services they are receiving. It would identify barriers to treatment, such as a lack of insurance coverage, exclusion of treatment for pathological gambling from HMO and other private insurance policies, stigmatization, or the lack of availability of treatment (including a lack of qualified treatment providers).

8.8 SAMHSA or another appropriate agency should initiate treatment outcome studies conducted by scientists in the treatment research field. Such studies should include formal treatment, self-help groups (Gamblers Anonymous) and natural recovery processes. These studies should encompass the general treatment population and should specifically include youth, women, the elderly and minority gamblers.

8.9 The Commission recommends Congress request the National Science Foundation to establish a multidisciplinary research program that will estimate the benefits and costs of illegal and separately each form of legal gambling allowed under federal, tribal and/or state law, particularly lottery, casino, pari-mutuel and convenience gambling. Further, the research program should include estimates of the costs and benefits of legal and illegal Internet gambling, assuming Congress prohibits this form of gambling with certain exemptions. Such a program, at a minimum, should address the following factors:

- Benefits associated with different kinds of legal and illegal gambling including increased income, creation of net new jobs and businesses, improvement in average wages and benefits, increased tax revenues, enhanced tourism and rising property values, and reductions in unemployment, if any.
- Costs associated with different kinds of legal and illegal gambling, including problem and pathological gambling,

increased crime, suicide, debts and bankruptcies, displacement of native inhabitants, traffic congestion, demand for more public infrastructure, demand for more public services from the courts (criminal, bankruptcy, divorce) and from schools, police and fire departments.

- The study should include benefits derived or costs incurred not only in “host” communities or states in which gambling facilities are located, but also in so-called feeder communities or states in which a significant number of the gamblers live and work who patronize facilities in the host communities.

8.10 The Commission recommends that Congress direct the National Institute of Justice (NIJ) or other appropriate agency to research what effect legal and illegal gambling has on property and/or violent crime rates. Such research should also examine whether gambling-related criminal activity is increased in neighboring jurisdictions where the arrest/gambler lives and/or works, but does not gamble.

8.11 The Commission recommends that Congress direct NIJ, the Bureau of Justice Statistics (BJS), or other appropriate agencies to add gambling components to ongoing studies of federal prison inmates, parolees, and probationers who manifest disorders that frequently coexist with pathological gambling.

8.12 The Commission recommends that Congress direct NIJ or other appropriate agency to investigate and study the extent of adolescent participation in illegal gambling and all forms of legal gambling separately. Further, that the NIJ focus on sports betting in the nation, work cooperatively with school authorities at high school and college levels and recommend what effective steps should be taken by federal, state, and school authorities to avoid the corruption of collegiate and amateur sports and reverse steady increases in adolescent gambling.

8.13 The Commission recommends that Congress direct the Department of Labor or other appropriate agency to research job quality in the gambling industry, as measured by income levels, health insurance coverage and affordability, pension benefits, job security and other similar indicators. The research should include a comparison between gambling jobs in a variety of communities and regions of the country. It should also compare job quality and availability in the gambling industry versus other comparable industries within those labor markets. Finally, it should also compare job quality at casinos with distinguishing characteristics, such as those that derive a significant part of their revenues from non-gambling components like hotels, food and beverage service, and shopping and entertainment (often referred to as destination resorts) versus those dependent almost wholly on gambling revenues.

8.14 The Commission recommends that if Congress acts to prohibit Internet gambling that it also require NIJ or other appropriate agency, 12 months after the effective date of the enabling statute, to measure its effectiveness for a period of 1 year. An estimate should be made of how much illegal Internet betting continues, despite the statutory prohibition. The factors contributing to successful evasion of the prohibition should be described in detail. Recommendations to Congress as to methods of closing the channels used to evade the prohibition should be made.

8.15 The Commission recommends that Congress direct the appropriate institutes within NIH to invite, where appropriate, applications for supplemental funds to issue a revision of the special program announcement for research applications to commence a study of prevalence of problem and pathological gambling among gambling industry employees in all forms of legal gambling, including, without limitation, pari-mutuel, lottery, casino and, where feasible, convenience-stop employees.