THE GAMBLING INDUSTRY AND ACADEMIC RESEARCH:

HAVE GAMBLING MONIES TAINTED THE RESEARCH ENVIRONMENT?

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I. INTRODUCTION[*]

A. BEING ATTACKED BY PRO-GAMBLING INTERESTS: THE BADGE OF CREDIBILITY?

The research environment for academics and government officials investigating gambling issues raised First Amendment concerns during the 1990s as pro-gambling interests used substantial financial assets and other methods to influence the direction of the research. By 1999, Professor Kay C. James, the academic who chaired the U.S. National Gambling Impact Study Commission (NGISC), complained of gambling proponents' intimidation tactics. Maintaining her objectivity, she waited until the NGISC's work was completed in 1999 before publicly voicing her concerns. In a speech, Dr. James complained that:

> she was not prepared for the venom, bigotry, prejudice and stereotyping she experienced [from pro-gambling interests] in leading the Congressional study commission on the social and economic impact of gambling in America.
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> She said that she had endured more bigotry and intolerance as a religious conservative leading the Congressional study on gambling than she had as

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* Numbers in this article may easily be adjusted to current dollars by visiting the "Consumer Price Index (All Urban Consumers)" of the U.S. Bureau of Labor Statistics at http://stats.bls.gov/ and utilizing the following formula example:

Example: $ Former Year X [CPI Current Year/CPI Former Year] = $ Current Year
$4,000,000 (1983) X [184.5 (2003)/ 99.6 (1983)] = $7,409,639 (2003)

a black woman in corporate America.[1]

Apparently, Chair James was not the only commissioner with these concerns. One of the nine National Commissioners, who was critical of pro-gambling interests, felt it necessary to travel with additional security personnel while serving on the Commission.[2]

In 1999, the U.S. Gambling Commission concluded its work and produced two widely disseminated publications, the Commission's *Final Report*[3] and an *Executive Summary*.[4]

Protection of First Amendment academic debate is essential in every area, and concerns involving conflicts of interest must be addressed. With regard to gambling issues, the academic community should be more sensitized to distancing itself from the financial aura, potential intimidation, and conflicts of interest posed by pro-gambling interests or other special interests. As background industry data becomes increasingly important to potential future mega-lawsuits, the legal discovery process will necessarily "follow the money"[5] to determine validity and impeachment issues — as recommended by the *Columbia Journalism Review*.[6]

B. THE SINE QUA NON OF GAMBLING ISSUES RESEARCH: THE ACADEMIC REQUIREMENT TO AVOID EVEN THE APPEARANCE OF CONFLICTS OF INTEREST

A group consisting of Christiansen/Cummings Associates, the Lewin Group, Gemini Research (Rachel Volberg), and the National Opinion Research Center (NORC) at the University of Chicago (Christiansen Associates-NORC Group) have raised issues involving gambling industry hostility toward academic research.[7] When a party performs research that can be distinguished within the Christiansen Associates-NORC Group, this analysis references the party separately, such as "the NORC." One of the basic tenets of this analysis is that the NORC and similar academic groups should distance and even divorce their efforts from groups with direct

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[1] Assoc. Press, Jackson, Miss., Sept. 26, 1999 (story on Ann. Mtg. of Nat'l Coalition Against Legalized Gambling).

[2] For example, Commissioner James Dobson, Ph.D., was accompanied by security-oriented personnel at the October 26, 1998 Chicago, Illinois meeting of the Research Subcommittee of the 1996-1999 National Gambling Impact Study Commission. *See also* John W. Kindt, *The Failure to Regulate the Gambling Industry Effectively: Incentives for Perpetual Non-Compliance*, 27 S. ILL. U. L. J. 221 (2003); John W. Kindt, *Increased Crime and Legalizing Gambling Operations: The Impact on the Socio-Economics of Business and Government*, 30 CRIM. L. BULL. 538 (1994) [hereinafter *Increased Crime and Legalizing Gambling*].

[3] NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT (1999) [hereinafter NGISC FINAL REPORT].

[4] NAT'L GAMBLING IMPACT STUDY COMM'N, EXECUTIVE SUMMARY (1999).

[5] *See, e.g.,* Stephen Simurda, *When Gambling Comes To Town*, 1994 COLUM. JOURNALISM REV. 36, 37-38 [hereinafter COLUM. JOURNALISM REV.].

[6] *Id. See also* John W. Kindt, Gambling vs. The New Untouchables: Credibility Concerns for Academia, Criminal Justice, and the U.S. Supreme Court, Address at Benjamin N. Cardozo Law School, Yeshiva, Univ., N.Y., N.Y., Nov. 15-16, 1999.

[7] *See* Christiansen Associates-NORC Group's paper in the 2003 issue of *Managerial and Decision Economics* (forthcoming).

and/or indirect links to the financial umbrae of pro-gambling interests or other special interests. If they do not, the NORC and similar academic organizations will be forced to defend and/or justify their research in the face of questions regarding the extent of influence or direction exercised by special financial interests. Admittedly, it can be difficult for academic researchers to distance themselves from sources of information within the gambling industry when that information is necessary to the research base. This, however, is not a very common scenario because in most cases, pro-gambling interests refuse to supply researchers with information.[8] For example, in order to obtain background information on Native American gambling issues, the 1999 U.S. Gambling Commission was forced to consider utilizing its subpoena power to prod the U.S. National Indian Gaming Commission (NIGC) — an organization that had been criticized for significant improprieties by the *Wall Street Journal*. Such subpoena requests were determined to be ineffectual and were not utilized, but the fact that the commission was forced to consider using them demonstrates the reluctance of pro-gambling interests to cooperate with academics by surrendering information.[9] Another example of this reluctance can be seen in the behavior of a Native American group that refused to participate in a research survey of Wisconsin casinos[10] "unless it was allowed to control the study and know the results in advance"[11] (a condition refused by the researchers).[12]

Paradoxically, the pro-gambling interests first created the issues at bar, and arguably, the Christiansen Associates-NORC Group allowed those issues to become more important than necessary by criticizing objective academic research and the defenders of such research who are without financial ties to special interests.[13] Whether or not it was intended, the Christiansen Associates-NORC Group's criticisms increased the net public relations benefit of pro-gambling interests by highlighting those interests.

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[8] WILLIAM THOMPSON ET AL., THE ECONOMIC IMPACT OF NATIVE AMERICAN GAMING IN WISCONSIN preface (Wis. Pol'y Res. Inst. 1995) [hereinafter WIS. POL'Y RES. INST.]; NGISC FINAL REPORT, *supra* note 3, at 7-9 (noting that the U.S. National Indian Gaming Commission regulating tribal gambling, the National Indian Gaming Association lobbying for the tribes, and most tribes engaging in gambling collectively refused to provide the NGISC with even basic information).

[9] Tony Batt, *Gambling panel favors new casino moratorium*, LAS VEGAS REV.-J., Apr. 29, 1999. *See also* Bruce Orwall, *Regulation of Tribal Casinos Is Mild*, WALL ST. J., July 22, 1996, at A9. The 1999 U.S. National Gambling Impact Study Commission in an 8-1 vote "threatened . . . to invoke its subpoena powers for the first time to obtain Indian gaming finance records" from the U.S. National Indian Gaming Commission. *Federal Gaming Commission Wants to See Records*, GAMING MAG., Feb. 13, 1999, at 1.

[10] WIS. POL'Y RES. INST., *supra* note 8, at preface.

[11] *Id.*

[12] *Id. See also* John W. Kindt, *Would Re-Criminalizing U.S. Gambling Pump-Prime the Economy and Could U.S. Gambling Facilities Be Transformed into Educational and High-Tech Facilities? Will the Legal Discovery of Gambling Companies' Secrets Confirm Research Issues?*, 8 STANFORD J.L., BUS. & FIN. 169, 172-76 (2003) [hereinafter *Gambling Facilities Transformed into Educational Facilities*].

[13] *See, e.g., supra* note 7; Christiansen Assoc.-NORC 1999 Overview Survey, *infra* note 14, at 17-18 (abandoning the traditional measuring screen, the South Oaks Gambling Screen — as reportedly directed by the research mandate — but providing no data comparisons to it).

Academics should be of one accord in conducting their research to the highest standards within their respective disciplines. In the area of gambling issues, this requires a complete divestment from the direct and indirect financial and research influences of pro-gambling interests and other special interests to eliminate the possibility of even the appearance of such conflicts of interest.

C. SPECIALIZED CONCERNS WITHIN THE RESEARCH ENVIRONMENT

Part of the research for the 1999 U.S. Gambling Commission was under the direction of Christiansen/Cummings Associates, the Lewin Group, Gemini Research, and the NORC (basically, the Christiansen Associates-NORC Group).[14] In 2002, the Christiansen Associates-NORC Group took issue with two paragraphs in the article *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*[15] (hereinafter *Mega-Lawsuits*), apparently objecting to the following critique:

> One interesting scenario involves the NORC, which performed the cost estimates for the National Gambling Impact Study Commission.[16] The NORC estimated very few of the types of applicable costs and entirely omitted some types of costs. Consequently, these estimates were notoriously low and, therefore, lacked credibility.[17] The methodology utilized by NORC in calculating these estimates has been criticized as being flawed and incomplete—particularly regarding methodology.[18] Other estimates which are at the lower end of the spectrum have been performed by reputable groups, such as the $10,000 figure reported by the Wisconsin Policy Research Institute,[19] but it is important to note that these are only partial listings of the total costs.[20] Public relations experts for the gambling industry tend to seize on these

[14] Nat'l Opinion Res. Center et al., Gambling Impact and Behavior Study: Report to the National Gambling Impact Study Commission (1999) [hereinafter Christiansen Assoc.-NORC 1999 Study]; Nat'l Opinion Res. Center et al., Overview of National Survey and Community Database Research on Gambling Behavior, Report to the National Gambling Impact Study Commission, Feb. 1, 1999 [hereinafter Christiansen Assoc.-NORC 1999 Overview Survey]; Nat'l Opinion Res. Ctr. et al., Slide Show: National Survey and Community Database Research on Gambling, Preliminary Report to the National Gambling Impact Study Commission, Feb. 16, 1999 (rev. ed.) [hereinafter Christiansen Assoc.-NORC 1999 Slides Survey Database]. These cost issues involving pathological and problem gamblers will be addressed in this analysis.

[15] John W. Kindt, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?,* 22 MANAGERIAL & DEC. ECON. 17, 32 (2001) [hereinafter *Mega-Lawsuits*].

[16] *Compare* sources in footnote 14 *supra*. In particular, *see, e.g.,* Christiansen Assoc.-NORC 1999 Study, *supra* note 14 (sections on costs of gambling, which have sparse footnotes/references). Based on this report, the *NGISC Final Report* devotes only two pages to the socio-economic costs associated with adult pathological and problem gambling. NGISC FINAL REPORT, *supra* note 3, at 4-13, 4-14.

[17] *Id.*

[18] *Id. See* "Trends and Conditioning Factors" *infra*.

[19] WIS. POL'Y RES. INST., *supra* note 8, at 41-42.

[20] *See, e.g., id.*

> lower estimates without revealing to the public that they constitute only partial costs.[21]

In addition, the Christiansen Associates-NORC Group appeared to disagree with the following concerns involving the estimates given in their 1999 report:

> The spectre of intimidated academics has also been raised as in the case of the NORC estimates. When the academics from NORC were giving their preliminary report to the National Gambling Impact Study Commission, they were severely criticized by the gambling industry representatives sitting on the Commission. One commissioner representing the gambling industry even threatened the academics with legal action, claiming that their methodology and data collection methods were flawed.[22] Skeptics noted that the NORC final report thereafter reported very conservative estimates involving both the costs of pathological gamblers and the prevalence of pathological gamblers in the general population. The NORC also changed the definitional approach to calculating the prevalence of pathological gamblers but significantly, these changes were never incorporated into the academic literature by the general academic community. It is common practice when introducing new measures or statistics to calculate the old as well as the proposed new ones on the same data to provide a comparison or benchmark. NORC provided no such comparison/benchmark.[23]

These particular concerns can only be addressed and visualized within the overall context of freedom for all academic and government officials to conduct research in an environment unencumbered by pro-gambling interests or other special interests. The pro-gambling interests first raised and emphasized most of these issues. Therefore, those interested in the discovery process for information, as well as academia, must necessarily address these issues. *The Chronicle of Higher Education*,[24] the *Los Angeles Times*,[25] the *Philadelphia Inquirer*,[26] and other national news media have cautioned not only government officials, but also the academic community about naively accepting information from pro-gambling interests that has been packaged as valid research. The test recommended by the media is to

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[21] *Mega-Lawsuits*, *supra* note 15, at 32.

[22] Dave Berns, *Gambling Survey Approved*, LAS VEGAS REV.-J., Oct. 10, 1998, at D1 [hereinafter *Gambling Survey*].

[23] *Mega-Lawsuits, supra* note 15, at 32.

[24] David L. Wheeler, *A Surge of Research on Gambling Is Financed in Part by the Industry Itself*, CHRON. HIGHER EDUC., Mar. 5, 1999, at A17 [hereinafter *Research Financed by Industry*].

[25] David Ferrell & Matea Gold, *Casino Industry Flights on Emerging Backlash*, L.A. TIMES, Dec. 14, 1998, at A1 [hereinafter *Casino Backlash*]. *See also* Matea Gold & David Ferrell, *Going For Broke*, L.A. TIMES, Dec. 13, 1999, at A1 [hereinafter *Going For Broke*].

[26] Loretta Tofani, *Gambling Industry Seeks a Winning Image: Companies Bet They Can Shake Off Critics Who Blame the Games for Social Problems*, PHILA. INQUIRER, July 6, 1998, at A1 [hereinafter *Gambling Seeks Image*].

"follow the money," as enumerated by the *Columbia Journalism Review*[27] in 1994. Specifically, the *Columbia Journalism Review* suggests that investigators ask if experts, academics, government officials, and even the news media have any direct or indirect financial links to the expansive resources of pro-gambling interests or other special interests.[28]

The Christiansen Associates-NORC Group's "comment"[29] gives the appearance of objecting more to the two paragraphs in the *Mega-Lawsuits* article that defend their right to an unprejudiced research environment, than to the highlighted pattern of actions by pro-gambling interests. This impeaches the Christiansen Associates-NORC Group's complaint as a *non sequitur*. The *Mega-Lawsuits* article should be interpreted as asserting the First Amendment academic independence of all researchers and encouraging experts to divorce themselves from overt and subtle influences exercised by special interests, particularly pro-gambling interests. The Christiansen Associates-NORC Group should be lauded for asserting its independence from the influence of special interests.[30] However, the larger question is why these matters are raised in the national news media and academic literature, and why there is a focus on alleged attempts by pro-gambling interests to direct, compromise, or even prejudice research efforts?[31]

II. DELIMITATION OF PROBLEMS

A. THE FIRST AMENDMENT RESEARCH ENVIRONMENT: HAVE PRO-GAMBLING INTERESTS SUBJECTED ACADEMICS TO A PATTERN OF INTIMIDATION?

The complaints of intimidation tactics by pro-gambling interests, which were voiced by Dr. Kay James, the Chair of the 1999 U.S. Gambling Commission,[32] could be considered overstated if there did not exist a history of similar complaints to corroborate her concerns. Particularly throughout the 1990s, several academics, elected representatives, and experts testified before U.S. Congressional committees, state legislative committees, and the National Gambling Impact Study Commission regarding the reported intimidation tactics of pro-gambling interests, including allegations of threats against academics and/or critics of gambling.[33]

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[27] COLUM. JOURNALISM REV., *supra* note 5, at 36, 37-38.
[28] *Id.*
[29] *See supra* note 7.
[30] *Id.*
[31] *See, e.g.*, COLUM. JOURNALISM REV., *supra* note 5, at 36, 37-38; *Casino Backlash, supra* note 25, at A1; *Research Financed by Industry, supra* note 24, at A17; *Gambling Seeks Image, supra* note 26, at A1. *See, e.g.*, *Gambling Survey*, *supra* note 22, at D1 (exemplifying threatened lawsuit).
[32] *See supra* note 1 and accompanying text.
[33] *See, e.g., infra* notes 44-51 and accompanying text.

In 1995, University of Massachusetts Professor Robert Goodman summarized some of the tactics utilized against academics in the introduction to his book *The Luck Business*,[34] beginning with a letter of complaint from James Ritchie, the Executive Vice President of Mirage Resorts to the President of the University of Massachusetts. In part, the letter states, "the results of this survey have been used as a weapon in attacking very sound economic proposals by any number of companies involved in gaming and entertainment projects . . . Who is Robert Goodman and what are his credentials for undertaking such a study?"[35] Ironically, Mr. James Ritchie, the casino executive who wrote this complaint to the President of the University of Massachusetts, was a former administrator with the 1976 U.S. Gambling Study,[36] but in a subsequent in-depth 1998 expose in the self-explanatory *New York Times* article, "From Gambling's Regulators to Casinos' Men," Mr. Ritchie declined to be interviewed.[37]

Goodman's *The Luck Business* followed his earlier 1994 report, *Legalized Gambling As A Strategy For Economic Development*,[38] a ground-breaking report funded by the Ford Foundation and the Aspen Institute, and identifies and summarizes the inappropriate pressures exerted on academics as follows:

> My presentations typically elicited heated attacks from politicians and leaders of the gambling industry. Some raised questions about my right to do this research at a state university, while others tried to cast doubt on my professional qualifications. People — sometimes posing as prospective students — phoned my department at Hampshire College to get background information on me.[39]

It almost appeared that Professor Goodman and other academics were being subjected to a campaign by pro-gambling interests to undermine their research and/or job positions. This notion is further corroborated in the following excerpt from Professor Goodman's book:

> Letters of complaint were written to the president of the University of Massachusetts, where the research was carried out, accusing me of maligning a productive industry. An investigation of my study and its finances was undertaken by a Massachusetts state senate oversight committee, headed by a state senator who was a leading

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[34] ROBERT GOODMAN, THE LUCK BUSINESS, introduction (1995) [hereinafter LUCK BUSINESS].

[35] LUCK BUSINESS, *supra* note 34, at introduction, *citing to* Letter to Michael K. Hooker, President, University of Massachusetts, from James E. Ritchie, Exec. Vice President, Corp. Dev., Mirage Resorts, Las Vegas, NV, May 24, 1994.

[36] U.S. COMM'N ON THE REV. OF A NAT'L POL'Y TOWARD GAMBLING, GAMBLING IN AMERICA (U.S. Gov't. Printing Off. 1976) [hereinafter U.S. COMM'N GAMBLING].

[37] Brett Pulley, *From Gambling's Regulators to Casinos' Men*, N.Y. Times, Oct. 28, 1998, at A1.

[38] ROBERT GOODMAN, LEGALIZED GAMBLING AS A STRATEGY FOR ECONOMIC DEVELOPMENT (Ctr. Econ. Development, U. Mass.-Amherst (1994)) [hereinafter CED REPORT].

[39] LUCK BUSINESS, *supra* note 34, at introduction.

> proponent of gambling expansion.[40] Unnamed sources called newspaper reporters to describe the Ford Foundation and the Aspen Institute, which funded the research, as "moral crusaders" against gambling. And in spite of the fact that I openly acknowledged that I gamble myself, I was also attacked as an antigambling moralist.[41]

Professor Goodman postulated the reason for these tactics as follows:

> As a result of all this, I've developed a fairly good understanding of why gambling industry executives and politicians were so disturbed by our work. Casinos and electronic gambling machines can be extremely profitable, and public debate about their economic and social consequences was simply seen as threatening those profits.[42]

Thus, the gambling industry is unique in that any perceived threat to the potential mega-profits of pro-gambling interests prods overreaching responses, at least according to Professor Goodman.

B. THE FIRST AMENDMENT RESEARCH ENVIRONMENT: HAVE PRO-GAMBLING INTERESTS SUBJECTED ACADEMICS AND/OR GOVERNMENT OFFICIALS TO THREATS?

Examples of alleged threats aimed at academics and government officials abound. During his 1998 sworn testimony in Chicago before the National Gambling Impact Study Commission, Iowa State Representative William Witt alleged that his criticisms of expanded legalized gambling were met with "death threats."[43] The University of Chicago component of the Christiansen Associates-NORC Group was proximate to and familiar with the environment of this hearing and similar hearings before the National Commission. Similarly, in testimony before a U.S. Congressional Hearing in 1994, Professor Robert Goodman complained of the tactics utilized by some pro-gambling interests and stated, "[t]o be quite honest, I was at first surprised by the intensity of some of the attacks . . . [by] people in the gambling industry."[44] At the same Congressional Hearing, Dr. Valerie Lorenz testified, "Dr. Goodman said that he has received all kinds

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[40] *See, e.g.,* Ford Turner, *Agency Queries Casino Criticism*, UNION-NEWS (Springfield, Mass.), Apr. 14, 1994, at 1, 16.

[41] LUCK BUSINESS, *supra* note 34, at introduction. *See* Joan Vennochi, *High Stakes*, BOSTON GLOBE, May 31, 1995, at 39 (exemplifying behind-the-scenes efforts by an employee of one casino to discredit Whittier Law Professor I. Nelson Rose and University of Illinois Economics Professor Earl Grinols).

[42] LUCK BUSINESS, supra note 34, at viii. *See generally* John W. Kindt, *Internationally, The 21st Century is No Time for the United States to be Gambling with the Economy: Taxpayers Subsidizing the Gambling Industry and the De Facto Elimination of All Casino Tax Revenues via the 2002 Economic Stimulus Act*, 29 OHIO N. UNIV. L. REV. 363 (2003); John W. Kindt & Stephen W. Joy, *Internet Gambling and the Destabilization of National and International Economies: Time for a Comprehensive Ban on Gambling Over the World Wide Web*, 80 DENV. U. L. REV. 111 (2002).

[43] Testimony of Iowa State Representative William Witt before the National Gambling Impact Study Commission, Chicago, Ill., May 20, 1998.

[44] *The National Impact of Casino Gambling Proliferation: Hearing Before the House Comm. on Small Business*, 103d Cong., 2d Sess., 4 (1994) (testimony of Prof. Robert Goodman, Univ. Mass.) [hereinafter *Congressional Gambling Hearing 1994*].

of threats," and also complained, "so have I."[45] In addition, the *Washington Post* reported that after testifying at this Congressional Hearing, States Attorney Jeffry Bloomberg had received a "death threat."[46]

Incidents involving one state commission occurred in 1995 and again in 1997, when the Iowa Racing and Gaming Commission denied a casino license. In the latter instance, the Commission panel was showered with "angry letters," some of which "were so threatening they were turned over to the Iowa Division of Criminal Investigation."[47] For opposing expanded gambling, some state agencies such as the West Virginia Attorney General's Office have had their budgets cut by pro-gambling interests.[48]

Gambling companies that have financed or backed Native American gambling have also been embarrassed by their pro-gambling associates. In an open letter to Michigan legislators, Chris Guzaldo, the Executive Director of Citizens for Pokagon Casino, wrote, "I am investigating which politicians are stalling this approval process again and why . . . [and] [i]f I do not receive the proper response to my letters or meetings with legislation by 3-23-97, I will ask the Federal Government to investigate!"[49] After the *Chicago Sun-Times* published the 1998 article entitled "Mich. Casino Backer Tied to Mob,"[50] Mr. Guzaldo faded away from his position because of his "long arrest record . . . [but indicated he was] not doing the mob's business as he pushe[d] for approval of a casino proposed by the Pokagon Band of Potawatomi Indians."[51]

C. THE FIRST AMENDMENT RESEARCH ENVIRONMENT: HAVE PRO-GAMBLING INTERESTS SUBJECTED ACADEMICS AND/OR GOVERNMENT OFFICIALS TO THE INTIMIDATION OF LAWSUITS?

Attempts to intimidate First Amendment academic inquiries via threatened legal action have historically generated academic and

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[45] *Congressional Gambling Hearing 1994*, *supra* note 44, at 12 (testimony of Dr. Valerie Lorenz, Dir., Compulsive Gambling Center, Baltimore, Md.).

[46] Jack Anderson & Michael Binstein, *Deadwood's Gamble Hasn't Paid 0ff*, WASH. POST, Oct. 7, 1994 ("Washington Merry-Go-Round") ("after testifying before a Congressional committee several of Deadwood's [S. Dakota] casino owners threatened his [Bloomberg's] life"); Pat Dobbs, *Bloomberg Says Report of Death Threat Overblown*, RAPID CITY J. (Rapid City, S.D.), Oct. 8, 1994, at C1 (citing to the WASHINGTON POST).

[47] William Petroski, *New Vote on Osceola Casino at Hand*, DES MOINES REG., Apr. 7, 1997, at M1, M6. For the 1995 scenarios involving the Iowa Racing and Gaming Commission, see William Petroski, *Regulators: Opposition Out of Line*, DES MOINES REG., Aug. 16, 1995 (according to one member of the Iowa Racing and Gaming Commission, "[t]hese attacks on our personal integrity are unwarranted and unmerited.").

[48] Address by West Virginia Attorney General Darrell V. MacGraw, Jr., before the Annual Conf. of the Nat'l Coalition Against Legalized Gambling, Branson, Mo., Mar. 10, 1995.

[49] Open letter to State Representatives, from Chris Guzaldo, Exec. Dir., Citizens for Pokagon Casino, Mar. 12, 1997.

[50] Cam Simpson, *Mich. Casino Backer Tied To Mob*, CHI. SUN-TIMES, Dec. 13, 1998, at A24.

[51] *Id.*

governmental outrage.[52] When First Amendment public-forum debates have revealed information that is unfavorable to the gambling industry, pro-gambling interests have arguably demonstrated a predilection toward threatening to file lawsuits.[53] These scenarios have occurred despite ethical precedents which indicate that legal interests "shall not: File a suit, assert a position, conduct a defense, delay a trial, or take other action . . . [when they know] or when it is obvious that such action would serve merely to harass . . . ."[54] This stricture in the precedential Canon 7 of the American Bar Association's *Code of Professional Responsibility*[55] influenced the twenty-first century ethical requirements for legal advisors.

On October 9, 1998, the Christiansen Associates-NORC Group's initial work was reported to the 1999 U.S. Gambling Commission. During the report to the nine-member Commission, two of the pro-gambling Commissioners vociferously aired their concerns. One of them, J. Terrence Lanni, the chairman of the gambling company, MGM Grand Inc., went so far as to "threaten[] legal action against NORC."[56]

> Lanni accused NORC of "shabby" work and unprofessional conduct during the pilot survey at MGM Grand and Treasure Island casinos in Las Vegas. He said NORC tried to interview a uniformed MGM employee; had one employee interview two MGM patrons at once; and either allowed or asked one MGM patron to write his responses instead of interviewing him. Lanni was further incensed that NORC broke a promise by publicly identifying MGM Grand and Treasure Island as the interview sites. He threatened legal action against NORC.[57]

Commissioner Lanni stated, "'Because of the fact that anonymity was not observed and what I consider to be false allegations . . . this company reserves its right to seek full legal redress for these actions,' he warned"[58] as chairman of MGM Grand. From the Christiansen Associates-NORC Group, Lanni reportedly singled-out the NORC[59] and raised issues of both competence and integrity.[60] "Researchers [NORC] found that one-third of 86 people questioned at the properties were considered problem gamblers, but Lanni questioned whether the researchers conducted the interviews

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[52] *See generally Gambling Survey, supra* note 22, at D1. *See also* Assoc. Press, *Wichita racetrack warns critic of suit: Testimony before legislative panel is called slanderous*, KAN. CITY STAR (Topeka, Kan.), Apr. 17, 1997 (The racetrack quickly retracted its "warning" after being criticized by the press.).

[53] *Id.* For an international perspective on gambling research financed by pro-gambling interests, see Jennifer Borrell, *Values in gambling research and implications for public policy*, Paper for "Dis-arming the Bandits" Conf., Victoria Univ. & Victorian Local Governance Assoc., Sept. 12-13, 2002.

[54] AM. BAR ASSOC., CODE OF PROFESSIONAL RESPONSIBILITY, Disciplinary Rule 7-102(A)(1) (Aug. 12, 1969).

[55] *Id.*

[56] Joe Weinert, *U.S. Gaming Panel to Study Gamblers' Habits in Casinos*, S. JERSEY PUB., Oct. 10, 1998 [hereinafter *U.S. Gamblers' Habits in Casinos*].

[57] *Id.* (emphasis added).

[58] *Gambling survey, supra* note 22, at 1§D.

[59] *Id.; U.S. Gamblers' Habits in Casinos, supra* note 56.

[60] *Gambling Survey, supra* note 22, at 1§D.

without potentially biasing the results. 'My question is the *competence* of (the research center) in this particular instance,' Lanni said."[61]

Lanni also specifically "criticized . . . [the] preliminary survey of casino customers as employing a 'very shabby approach.'"[62] He further questioned whether the survey was conducted with "integrity and honesty."[63]

> "I really question the capability here. I've said before, there is a percentage of this population that shouldn't be gambling and that this industry should be dealing with that issue more. I want to get to the bottom of this, but we need integrity and honesty," Lanni said.[64]

While the U.S. Gambling Commission voted 6 to 2 in favor of continuing NORC's research work, a chorus of pro-gambling interests and lobbyists joined Commissioners Lanni and John Wilhelm in criticizing NORC's methodology and research:[65]

> The American Gaming Association [lobbying group], which represents half of Atlantic City's 12 casinos, called NORC's survey methods "seriously flawed." "Today the commission took steps to continue the tradition of sloppy, third-rate research on matters related to gambling behavior and gambling policy in the United States. The American people and public policy deserve much better," said Dean Hestermann, manager of policy analysis and research for Harrah's Entertainment Inc., which owns two Atlantic City casinos.[66]

After NORC's report was completed in 1999, further criticism was forthcoming from the Harvard Medical School, Division on Addictions:[67]

> NORC's efforts represent only one of many ways to measure the impact of gambling. It is entirely possible that a different methodology might yield wholly different results. Furthermore, the analysis considers only casinos. Although NORC addresses other forms of gambling, casino gambling is the only type subjected to the present regression methodology.[68]

Once again, however, it should be noted that the components of the Harvard Medical School, Division on Addictions, which generated this

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[61] *Id.* (emphasis added).

[62] *Id.*

[63] *U.S. Gamblers' Habits in Casinos*, *supra* note 56.

[64] *Id.*

[65] *Id.* American Gaming Association Press Release, Statement by Frank Fahrenkopf, Jr., AGA, "Re: Release of the Most Recent NORC Report to the National Gambling Impact Study Commission," Mar. 18, 1999 [hereinafter American Gaming Association Criticizes/Spins NORC Report to NGISC]. American Gaming Association Press Release, Addendum, "NORC Alters Findings of Final Report with Sensational Language, Data Modifications and Omissions, and Unsound Analysis," Mar. 18, 1999 [hereinafter American Gaming Association Claimed NORC Alters Findings].

[66] *U.S. Gamblers' Habits in Casinos*, *supra* note 56.

[67] "The National Gambling Impact Study Commission: Part III," The Wager (Harvard Medical School, Division on Addictions), Aug. 3, 1999 [hereinafter "Study Commission"].

[68] *Id.*

criticism have themselves been criticized[69] for accepting millions of dollars in (albeit appropriate) funding from pro-gambling interests.[70]

In a display of what could only be deemed political harassment, a few days after NORC's report to the U.S. Gambling Commission on October 9, 1998, the Commission was harnessed with an audit requested by Nevada Senator Richard Bryan.[71] The U.S. General Accounting Office (GAO) performed the audit, which revealed nothing improper. In fact, it confirmed the integrity of the Commission's operations.[72]

Due to the contentious nature of gambling issues, research into these areas must avoid the appearance of impropriety. The solution to these dilemmas and criticisms is for the NORC, the Harvard Division on Addictions, and all academics to divorce themselves completely from groups with direct or indirect conflicts of interest, particularly financial interests. If pro-gambling interests can raise such major credibility issues with respect to the $1.25 million government NORC study, *a fortiori* researchers must avoid any "follow the money" links to pro-gambling or other special interests.

III. CLARIFICATION OF GOALS

With respect to research involving gambling issues, the overall goal is for all researchers to pursue their expertise area unencumbered, uninfluenced, and unintimidated by special interests. When gambling issues move into the legal arena, based upon the principle of "follow the money," direct and indirect sources of financial support will be subjected to the discovery process. Accordingly, an appropriate goal would be for researchers and experts to be sensitized to this problem and to divorce themselves from direct or indirect conflicts of interest.

Since 1995, the national news media has indicated that pro-gambling interests' financial influence may have prejudiced research into gambling issues.[73] In procedures involving the legal discovery of information, the national news media has advised interested parties (such as attorneys, public welfare advocates, and government officials) to inquire into the

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[69] *See, e.g., Casino Backlash, supra* note 25, at A1; *Research Financed by Industry, supra* note 24, at A17; *Gambling Seeks Image, supra* note 26, at A1.

[70] *See, e.g.,* National Center for Responsible Gaming, Annual Report 2, 4-7 (2001) (funded almost exclusively by pro-gambling interests).

[71] *Casino Backlash, supra* note 25, at A1. *See* Letter from Bernard L. Unger, Director, Government Business Operations Issues, General Accounting Officer to Mr. Timothy Kelly, Executive Director, National Gambling Impact Study Commission (Oct. 16, 1998) (on file with Bernard L. Unger). *See also* Joe Weinert, *Congress' GAO to Probe U.S. Gaming Commission*, THE PRESS OF ATLANTIC CITY (S. Jersey Pub. Co.), Oct. 20, 1998, at A1.

[72] Weinert, *supra* note 71, at A1. For analyses of the gambling industry's interface with issues involving U.S. government policies, U.S. "military readiness," and terrorism, see John W. Kindt, *Gambling with Terrorism and U.S. Military Readiness: Time to Ban Video Gambling Devises on U.S. Military Bases and Facilities?*, 24 N. ILL. U. L. REV. 1 (2003) [hereinafter *Gambling with Terrorism and U.S. Military Readiness*].

[73] *See, e.g., supra* notes 24-31 and accompanying text.

extent to which the financial aura of the gambling industry might have influenced various organizations, their publications, and/or their associates, such as:

1. The National Council on Problem Gambling (and individual state councils on problem gambling);[74]

2. *Journal of Gambling Studies*;[75]

3. National Center for Responsible Gaming;[76]

4. *Gaming Law Review*[77] (which is misleading since it has no university sponsor); and

5. The University of Nevada at Las Vegas Law School[78] and its publications.

IV. HISTORICAL BACKGROUND

A. ATTEMPTING TO STOP PRO-GAMBLING INTERESTS FROM PREJUDICING THE RESEARCH ENVIRONMENT: THE ESTABLISHMENT OF THE 1990S NATIONAL GAMBLING IMPACT STUDY COMMISSION

In 1998, Frank Fahrenkopf, the CEO of the Washington-based lobbying group American Gaming Association (AGA), complained, "[t]he *Washington Post* has editorialized 38 times in the last 38 months against gambling. Thirty eight times."[79] As the watch-dog of Washington D.C.'s national politics, the *Washington Post* repeatedly identified and warned Congress and the American public of the multiple problems and historical scandals associated with legalized gambling activities.[80]

In 1997, *Washington Post* editorials exemplified the public's distaste for the gambling industry lobbyists' efforts to "stack" the nine-member 1999 U.S. Gambling Commission after its creation in 1996.[81] In the mid-1990s, pro-gambling interest involvement in Commission appointments

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[74] *See, e.g., Going for Broke, supra* note 25, at A1; *Casino Backlash, supra* note 25, at A1; *Gambling Seeks Image, supra* note 26, at A1.

[75] *Id. See* COLUM. JOURNALISM REV., *supra* note 5, at 36-38.

[76] *Id. See generally Research Financed by Industry, supra* note 24, at A17. *See also* Rick Alm, *KC Will be Home to Foundation for Gambling Studies*, KANSAS CITY STAR, Oct. 17, 1995, at B1; Assoc. Press, *Industry to Study Problem Gambler*, DES MOINES REG., Feb. 19, 1996, at A1 [hereinafter *Industry to Study Problem Gambler*].

[77] *Industry to Study Problem Gambler, supra* note 76, at A1.

[78] *See also Gambling Seeks Image, supra* note 26, at A1; *Illinois Professor Takes Swing at UNLV's Law School Bid*, SAN DIEGO UNION-TRIB., May 9, 1999; John L. Smith, *Professor Sees Gamers and Hookers and Lawyers, Oh My*, LAS VEGAS REV.-J., Nov. 2, 1997, at 18. *See generally Gambling Facilities Transformed into Educational Facilities, supra* note 12, at 189-90; *Gambling with Terrorism and U.S. Military Readiness, supra* note 72, at 34-36.

[79] Dave Palermo, *Capitol Gains*, INT'L GAMING & WAGERING BUS., Aug. 1998, at 1, 58 (the main trade magazine of the American gambling industry).

[80] *See generally id.*

[81] National Gambling Impact Study Commission Act, Pub. L. No. 104-169, 110 Stat. 1482 (1996).

included a scandal involving political contributions linked to White House coffees:

> Start with the guess-who's-coming-to-coffee list at the White House . . . [F]or example, one White House coffee guest was the chairwoman of the Oneida Nation, an Indian tribe with *gambling interests*. On that same day, according to the Wall Street Journal, the Oneida Nation donated $30,000 to the Democratic National Committee. Coffee guest lists show at least 10 representatives of Indian *gambling interests* since mid-1995.[82]

Eventually, one of President Clinton's appointees was Robert W. Loescher, who was unabashedly protective of Native American gambling interests.[83] Other candidates who topped the Clinton appointment list and whom President Clinton eventually appointed were:

> Richard Leone, who is close to New Jersey Rep. Robert G. Torricelli, a strong supporter of the Atlantic City gambling industry [who was forced to quit the U.S. Senate in 2002 due to scandals]; and Bill Bible, chairman of the Nevada Gaming Control Board. According to the Las Vegas Sun, Sen. Harry Reid of Nevada was assured by a top White House aide last October [1996] that Mr. Bible's selection was a "done deal."[84]

Despite these initial concerns, Commissioner Leone's subsequent service on the Commission was reasonable and objective.[85] Bill Bible, however, argued for pro-gambling interests which included basically unrestricted campaign contributions from the industry and the legalization of gambling on intercollegiate sports[86] — positions rejected by virtually every state except Nevada. After serving on the U.S. Gambling Commission, Bill Bible was tapped to be the president of one of the gambling industry's major trade organizations, the Nevada Resort Association.

Numerous other pro-gambling individuals also received appointments. For example, one of Speaker Newt Gingrich's two Commission appointments went to J. Terrence Lanni, the CEO and chair of a casino company in Las Vegas.[87] Additionally, House Minority Leader Richard Gephardt who got "one selection — and whose political committees received at least $46,500 from gambling interests along with another $4,500 from three women listed as homemakers from Las Vegas — [appointed pro-gambling Commissioner John Wilhelm] . . . the head of a

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[82] Editorial, *Gambling Payoff?*, WASH. POST, Feb. 10, 1997, at A18 [hereinafter *Gambling Payoff?*] (emphasis added).

[83] *See, e.g.*, NGISC FINAL REPORT, *supra* note 3, at App. I (statement of Robert W. Loescher).

[84] *Gambling Payoff?*, *supra* note 82, at A18.

[85] *See, e.g.*, NGISC FINAL REPORT, *supra* note 3, at App. I (statement of Richard C. Leone).

[86] *See id.* (statements by William A. Bible). After the NGISC, Bill Bible became president of the Nevada Resort Association, a major trade organization within the gambling industry. Bill Bible's wife began serving in the Nevada Attorney General's office in Las Vegas in 1991, and became the Assistant Chief Deputy Attorney General for Nevada in January 2001. Sun Capital Bur., *AG Picks New Boss for Las Vegas Office*, LAS VEGAS SUN, Jan. 4, 2001 (on file with the author).

[87] *Gambling Payoff?*, *supra* note 82, at A18.

union representing casino employees."[88] It was not surprising that the legislative sponsors of the Commission were outraged at these appointments.[89] The academic community needs to be aware of these concerns, as well as the difficult research environment they create.[90]

In Volume 22 of *Managerial and Decision Economics*, Economics professors Earl Grinols and David Mustard produced and published a 2001 research summary of the partial socio-economic costs associated with the creation of each new pathological gambler. Their figure of $13,586 on average (including the low "partial cost" estimates of $1,200 of the Christiansen Associates-NORC Group) is summarized in the tables in the Appendix.[91] Extrapolated to the national level, the annual total U.S. costs associated with a nationwide casino expansion were $40.1 billion per year (compared with the Christiansen Associates-NORC Group's "partial costs" of $5 billion).[92]

Critics have suggested that, with a $1.25 million budget from the National Commission, the Christiansen Associates-NORC Group should have produced a more comprehensive list of socio-economic costs, as was clearly intended by the members of Congress who sponsored the Commission. In comparison, the Grinols and Mustard article written as normal academic discourse for *MDE* Volume 22 not only made a leading-edge attempt to identify and define several of those socio-economic costs, but also considered and reviewed the previous literature. The following analysis considers both of these research projects, as well as numerous others, as it details the early definitions of the 1980s and 1990s, and provides the historical context for future analyses.

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[88] *Id.*

[89] *Id.*

[90] *See id.*

[91] *Compare* Earl L. Grinols & David B. Mustard, *Business Profitability vs. Social Profitability: Evaluating Industries with Externalities, The Case of Casinos*, 22 MANAGERIAL & DEC. ECON. 143, 153-55 & Tables 2-4 (2001) [hereinafter *Evaluating Casinos*] *with* NGISC FINAL REPORT, *supra* note 3, at 4-14 (reporting the Christiansen Associates-NORC Group's results as $1,200 partial costs per pathological gambler per year). *See* Frank L. Quinn, *First Do No Harm: What Could Be Done by Casinos to Limit Pathological Gambling*, 22 MANAGERIAL & DEC. ECON. 133 (2001). *See generally* Ricardo C. Gazel, Dan S. Rickman & William N. Thompson, *Casino Gambling & Crime: A Panel Study of Wisconsin Counties*, 22 MANAGERIAL & DEC. ECON. 65 (2001). For definitive analyses of the costs and benefits, see EARL L. GRINOLS, GAMBLING IN AMERICA: COSTS AND BENEFITS (Cambridge Univ. Press 2004) [hereinafter GAMBLING COSTS] (confirming the ratio accepted since at least 1994: that the legalized gambling cost/benefit ratio is approximately $3 in costs for every $1 in benefits).

[92] *Compare Evaluating Casinos, supra* note 91, at 154-55, Tables 3-4, *with* NGISC FINAL REPORT, *supra* note 3, at 4-14 (reporting the Christiansen Associates-NORC Group's results as $5 billion in total U.S. costs per year), *with Mega-Lawsuits, supra* note 15, at 44, Table A3 (citing the costs ranges of various experts at between $24-$88 billion).

B. DEFINING THE SOCIO-ECONOMIC COSTS OF EACH PATHOLOGICAL AND PROBLEM GAMBLER: THE HISTORICAL CONTEXT OF THE 1980S AND 1990S

Despite the new tax revenues, the socio-economic costs of legalizing gambling activities create real costs for taxpayers and state governments. To compensate for these costs, taxes must theoretically be increased dollar for dollar. Since state governments are unlikely to raise taxes dollar for dollar, the alternatives are the following: (1) divert dollars from education to address the increased social-welfare and crime costs; (2) transfer many of these costs to "charitable organizations"; (3) adjust to a decline in the pre-existing "quality of life" values; (4) raise taxes somewhat; (5) transfer many of the societal costs such as "rehabilitative costs" to businesses; or (6) implement some or all of these strategies to some extent. This last scenario is the most likely to occur. It should be noted, however, that all of these increased costs to taxpayers and state governments can be simply avoided by not legalizing gambling activities.

For years, members of the Christiansen Associates-NORC Group have been directly or indirectly associated editorially with the publication of articles that attempted to delineate the socio-economic costs of pathological and problem gambling.[93] However, the Christiansen Associates-NORC Group does not appear to address important precedents such as the research article by Robert M. Politzer, James S. Morrow, and Sandra B. Leavey (hereinafter *Johns Hopkins Report*)[94] in the *Journal of Gambling Behavior* (which was renamed the *Journal of Gambling Studies* in 1996).

On its editorial page, the *Journal of Gambling Studies* is designated as the "Official Journal of the National Council on Problem Gambling: Co-sponsored by the Institute for the Study of Gambling and Commercial Gaming"[95] (the institute is located in Reno, Nevada). In the late 1990s, Keith Whyte, a former representative of the American Gaming Association (AGA), the gambling industry's lobbying group in Washington, D.C.,

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[93] *Compare, e.g.,* Editorial Board/Reviewers, 1 J. GAMBLING BEHAV. *with* Editorial Board/Reviewers, 5 J. GAMBLING BEHAV., and Editorial Board/Reviewers, 10 J. GAMBLING STUDIES (successor publication to J. GAMBLING BEHAV.).

[94] Robert M. Politzer, *Report on the Cost-Benefit/Effectiveness of Treatment at the Johns Hopkins Center for Pathological Gambling*, 1 J. GAMBLING BEHAV. 131 (1985) (the *Journal of Gambling Behavior* was renamed the *Journal of Gambling Studies* in 1996) [hereinafter *Johns Hopkins Report*]. *See also* Robert M. Politzer, *Report on the Societal Cost of Pathological Gambling and the Cost-Benefit/Effectiveness of Treatment*, *presented at* The Fifth National Conference on Gambling and Risk Taking 1981) [hereinafter Politzer et al.]. For another example of a "costs" article in the JOURNAL OF GAMBLING BEHAVIOR, see Henry Lesieur & Kenneth Puig, *Ins. Problems and Pathological Gambling*, 3 J. GAMBLING BEHAV. 123 (1987) [hereinafter Lesieur & Puig]. For examples of other well-known publications/articles examining the delimitation of costs, *see* 138 CONG. REC. S187 (daily ed. Jan. 22, 1992); TASK FORCE ON GAMBLING ADDICTION IN MARYLAND (1990) [hereinafter GAMBLING ADDICTION IN MARYLAND]; NATIONAL CENTER FOR PATHOLOGICAL GAMBLING, AN OVERVIEW OF PATHOLOGICAL GAMBLING 3 (1990); Henry Lesieur, *Compulsive Gambling*, SOCIETY, May/June 1992, at 42, 43; Henry Lesieur, *Compulsive Gambling: Documenting the Social & Economic Costs* 1 (Apr. 23, 1991) (available from Professor Henry Lesieur) [hereinafter Lesieur, Economic Costs].

[95] *See, e.g.,* Editorial Board, 15 J. GAMBLING STUDIES (1999).

became the executive director of the National Council on Problem Gambling, while William Eadington headed the Institute for the Study of Gambling and Commercial Gaming in Reno, Nevada. The predecessor *Journal of Gambling Behavior*, then under the editorship of well-respected Professor Henry Lesieur, published the *Johns Hopkins Report* in 1985.[96]

In the early 1990s, the *Johns Hopkins Report* by Politzer, as well as other academic literature on the socio-economic costs of legalized gambling, established the parameters of the issues.[97] In 1994, in order to facilitate analyses of the socio-economic costs of pathological gamblers, the prevailing literature (including the "lower" cost estimates which were perhaps somewhat influenced by pro-gambling interests) was summarized in a comprehensive table.[98] Subsequent academic efforts resulted in the 2001 article[99] by economics professors Earl Grinols and David Mustard, and some of its leading-edge tables are reproduced in this analysis as an appendix.[100] It is important to review the literature published prior to 1995 — particularly the 1985 *Johns Hopkins Report* — in order to ascertain the historical perspective that existed before the gambling industry's lobbying group, the AGA, began to influence the debate.[101] The following is a summary of that historical perspective and its relevance to modern research.

Once gambling is legalized in a venue, the number of pathological and problem gamblers[102] in the population rises. It can easily double within 1 to 5 years because of the accessibility and acceptability of gambling.[103] In

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[96] *Johns Hopkins Report, supra* note 94.

[97] For a compendium of the prevailing literature, see the footnotes in John W. Kindt, *The Economic Impacts of Legalized Gambling Activities*, 43 DRAKE L. REV. 51, 90-95, nn.272-90 (1994) [hereinafter *Economic Impacts*].

[98] *Economic Impacts, supra* note 97, Table 3, at 90-95 nn.272-90.

[99] *Evaluating Casinos, supra* note 91, at 153-55, Tables 2-4.

[100] *Id. See infra* Table and accompanying footnotes.

[101] *See generally Johns Hopkins Report, supra* note 94; Politzer et al., *supra* note 94.

[102] For the delimitation of a pathological gambler, see AM. PSYCHIATRIC ASSOCIATION., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 615-18, § 312.31 (4th ed. 1994) ("pathological gambling") [hereinafter DSM-IV]. *Compare id., with* AM. PSYCHIATRIC ASSOCIATION., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 324-25, § 312.31 (3d rev. ed. 1987) [hereinafter DSM-III].

For analyses of the social and economic aspects of pathological gambling, see HENRY R. LESIEUR, REPORT ON PATHOLOGICAL GAMBLING IN NEW JERSEY (1988); *Johns Hopkins Report, supra* note 94; I. Sommers, *Pathological Gambling: Estimating Prevalence and Group Characteristics*, 23 INT'L J. ADDICTIONS 477 (1988); Rachel Volberg, Estimating the Prevalence of Pathological Gambling in the United States (1992) (on file with author); Rachel Volberg & Henry J. Steadman, *Refining Prevalence Estimates of Pathological Gambling*, 145 AM. J. PSYCHIATRY 502 (1988); Rachel Volberg & Henry J. Steadman, Problem Gambling in Iowa (research study funded by Nat'l Inst. Mental Health & Iowa Dep't Human Serv. 1989); Rachel Volberg & Randall M. Steufen, Gambling and Problem Gambling in South Dakota (1991) (on file with author).

[103] *See, e.g.*, Div. Addictions, Harvard Medical School, Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-analysis, App. II (Howard J. Shaffer, Matthew N. Hall, & Joni Vander Bilt, Dec. 15, 1997) [hereinafter Harvard Addictions Meta-analysis]; Press Release of Harvard Medical School, "Harvard Medical School Researchers Map Prevalence of Gambling Disorders in North America" Dec. 4, 1997 (From .84% in 1993, "the prevalence rate for 1994-1997 grew to 1.29 percent of the adult population.") [hereinafter Harvard Division on Addictions

the early 1990s, the "doubling rule" theorized that all costs associated with pathological gambling would increase by at least 100% once gambling was legalized in a jurisdiction.[104] Pursuant to Volberg's 1992 field research, the "findings suggest that the introduction of widespread legal gambling, including pulltabs, casinos and video lottery terminals, was associated with a 1% (100 basis points) increase in the prevalence rate of problem and probable pathological gambling over a 2-year period."[105] This observation was made of the adult problem and probable pathological gamblers. This type of increase in the prevalence rates appeared to be 100% greater among the teenage population.[106]

In the 1990s, it was predicted that when more long-term field data became available, a framework for projecting the future number of pathological gamblers could be based on the following formula:[107]

$$N_G = N_O e^{mt},$$

where N_G is the projected number of pathological gamblers, and N_O is the number of pathological gamblers in the initial period. Taking the baseline 1975 prevalence rate[108] of .0077, and multiplying it by the population (or more precisely, the adult population of an area in 1975) produces the N_O. The time in years is represented by t. The rate of growth of pathological gambling is represented by m, which might be zero (or some low number) before gambling is legalized in a state (or in a particular population base) and some positive number thereafter.[109]

The previous equation may be translated linearly by taking the logarithms of the equation and placing it in estimation form as follows:[110]

$$\ln N_G = \ln N_O + mt$$

Because more extensive field research needs to be conducted to calculate m, more precise numbers depend on future research results. The 1975 baseline prevalence rates, however, are well established and the recent prevalence rates can be and have been accurately calculated. Although 0.17% per year was an apparent growth rate in pathological gamblers from 1994 to 1997, the annualized *rate* of growth in pathological

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Press Release]. *See also* Statement of John Warren Kindt, Univ. of Ill., to the National Gambling Impact Study Commission, "U.S. and International Concerns over the Socio-Economic Costs of Legalized Gambling: Greater than the Illegal Drug Problem?," Chicago, Ill., May 21, 1998, Figures 1-5, Tables 1-3 [hereinafter U.S. and International Costs].

[104] BETTER GOVERNMENT ASSOCIATION, STAFF WHITE PAPER: CASINO GAMBLING IN CHICAGO 2 (1992) [hereinafter BGA REPORT]; *see, e.g.*, *Economic Impacts*, *supra* note 97, at 65-66.

[105] Letter from Rachel Volberg, President, Gemini Research, to John Warren Kindt, Professor, University of Illinois 2 (Dec. 23, 1992) [hereinafter Letter from Volberg to Kindt].

[106] *See infra* notes 114-115 and accompanying text.

[107] Letter from Economics Professor Jane Leuthold, University of Illinois, to John Warren Kindt, Professor, University of Illinois (Feb. 25, 1993) (on file with the author) [hereinafter Letter from Leuthold to Kindt].

[108] U.S. COMM'N GAMBLING, *supra* note 36, at 73.

[109] Letter from Leuthold to Kindt, *supra* note 107, at 1.

[110] *Id.*

gambling may await future research. However, by 1997, the fact that there will be an *increase* in the number of pathological gamblers once gambling is legalized was well established by the Harvard Addictions Meta-analysis at an additional 0.5% of the population, or 1.5 to 2.2 million new pathological gamblers between 1994 and 1997.[111]

As reported in 1992, the majority of experts[112] were already estimating that 1.5 to 5% of the populations of states and/or state locales where gambling was legal were pathological and problem gamblers.[113] Accordingly, to project this figure into the immediate future was not unreasonable — particularly because the next generation, the teenage population, was already evidencing gambling addiction rates of 4 to 15%.[114] Prior to 1990, Dr. Durand Jacobs of the Loma Linda University Medical School reported a more widely accepted range of 4 to 5%.[115] For prevalence rates among the adult population during the early 1990s, Volberg reported, for example, thirteen studies with a range of 1.5 to 6.3%.[116] These gambling percentages paralleled percentages in a 1992 Gallup poll.[117] The percentage of the population admitting that "gambling caused family problems" was 5%, the percentage who enjoyed gambling "a lot" was 7%, and the percentage admitting they gambled "too much" was 10%.[118]

In 1994, the majority of academic/expert literature pointed to an increasing trend in the numbers of pathological and problem gamblers. Starting at 0.77% pathological gamblers and 2.33% problem gamblers de facto in 1976,[119] pathological rates were trending into the 1 to 2% range by 1994.[120] The increased rates applied to states with widespread legalized gambling, such as state lotteries. There was an academic debate about the degree to which state lotteries contributed to this problem, but the ultimate consensus was that the problem would be mitigated by the absence of state lotteries.[121] There was little doubt, however, that states would reach these

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[111] *See, e.g.*, Harvard Addictions Meta-analysis, *supra* note 103, at 43, Table 13 and 51, Table 16; Harvard Division on Addictions Press Release, *supra* note 103 (from 0.84% in 1993, "the prevalence rate for 1994-1997 grew to 1.29 percent of the adult population.").

[112] *See, e.g.,* BGA REPORT, *supra* note 104, at 30.

[113] *Id.*

[114] *Id.* For analyses of sports gambling as the "introductory drug" hooking young people to gambling, see John W. Kindt & Thomas Asmar, *College and Amateur Sports Gambling: Gambling Away Our Youth?*, 8 VILL. SPORTS & ENT. L. J. 221 (2002).

[115] Durand F. Jacobs, *Illegal and Undocumented: A Review of Teenage Gambling and the Plight of Children of Problem Gamblers in America*, in COMPULSIVE GAMBLING: THEORY, RESEARCH, AND PRACTICE 249 (Howard J. Shaffer et al. eds. 1989).

[116] Letter from Volberg to Kindt, *supra* note 105 (reporting and summarizing 13 studies in the Table "Comparison of Lifetime Prevalence Rates of Problem and Pathological Gamblers by State").

[117] George Gallup, Jr., *The Gallup Poll, Public Opinion 1992*, SCHOLARLY RESOURCES, INC. (1993) [hereinafter NEWS SERVICE 12-16-92]. How pathological and problem gambling is defined in reference to this poll probably differs substantially from more refined definitions accepted by 2000. However, in 1992, this poll was widely cited by sociologists.

[118] *Id.*

[119] U.S. COMM'N GAMBLING, *supra* note 36, at 73.

[120] *See, e.g., Economic Impacts, supra* note 97, at 89, Table 2.

[121] *See, e.g.,* NGISC FINAL REPORT, *supra* note 3, at 4-1 to 4-20, 5-4.

numbers more quickly once they legalized the "faster" forms of gambling, such as riverboat gambling, casino gambling, and video-machine gambling (*i.e.*, the "crack-cocaine" of pathological gamblers).[122]

Initiated in 1981 and finalized in 1985, the *Johns Hopkins Report* established several parameters for delimiting the socio-economic costs of pathological gamblers (or what the industry likes to term "compulsive gamblers"). A review of the Christiansen Associates-NORC Group's submissions to the 1999 U.S. Gambling Commission suggests that the Group apparently gave cursory, if any, consideration to these baseline efforts. Arguably, the Group could establish new baselines and definitions at its discretion, but these changes should have improved upon and differentiated themselves from the standards established by the *Johns Hopkins Report*. With a $1.25 million budget,[123] the Group appeared to have the resources to make such analyses.[124]

For example, the *Johns Hopkins Report* suggested that "average" compulsive (pathological) gamblers should consist of those compulsive gamblers "who are at the beginning stages of their gambling addiction."[125] Cost estimates can also be viewed in a longer-term analysis. The marginal costs of legalizing gambling activities can extend years (and even generations) into the future. A standard cost/benefit analysis could project these costs into the future, and an appropriate discount rate could be used to sum the discounted values of the costs associated with legalizing gambling.[126] As suggested in 1994, the following formula might be used:

$$C = \sum C_t/(1+r)^t.$$

In this formula, *C* constitutes the present value of discounted future costs. C_t consists of the annual projected cost in year *t*, while the rate of discount is represented by *r*.[127]

Throughout the 1980s and 1990s, the *Johns Hopkins Report* and subsequent literature established the parameters of the debate for socio-economic costs. It was remarkable that the work of the Christiansen/Cummings Associates-NORC Group made only cursory, if

[122] *Id.* at 5-5, 4-1 to 4-20. *See also* Viveca Novak, *They Call it Video Crack*, TIME, June 1, 1998, at 58. *See generally* John W. Kindt, *Legalized Gambling Activities: The Issues Involving Market Saturation*, 15 N. ILL. U. L. REV. 271 (1995).

[123] Tony Batt, *Casinos Delighted by Study Findings*, LAS VEGAS REV.-J., Feb. 9, 1999, at D1 [hereinafter *Casinos Delighted by Study*].

[124] *Id.*

[125] BGA REPORT, *supra* note 104, at 15 (quoting Robert M. Politzer et al., *supra* note 94, at 8-10). By comparison, the larger social costs were reflected in those pathological gamblers who were in the later stages of gambling addiction and had "bottomed-out." *Id.* (citing Politzer et al., *supra* note 94, at 9-10). S*ee also* GAMBLING ADDICTION IN MARYLAND, *supra* note 94, at 59-61. It should be noted that virtually all of these estimates are based on male subjects as recorded in GAMBLING ADDICTION IN MARYLAND. When adjusted for inflation as of 1992, the $52,000 per year cost for a compulsive gambler increased to $53,000 per year. BGA REPORT, *supra* note 104, at 14.

[126] Letter from Leuthold to Kindt, *supra* note 107, at 1-2.

[127] *Id*. at 2; *see generally* CHARLES CLOTFELTER & PHILLIP COOK, SELLING HOPE (Harvard Univ. Press 1989).

any, citation to the *Johns Hopkins Report* and related literature.[128] This scenario became more unusual, considering that two of the four component authors of the Christiansen/Cummings Associates and Gemini Research Group (but notably not the NORC) were long-time editorial review members of the journal in which the *Johns Hopkins Report* and subsequent related articles were published. While the work of the NORC in similar sociological areas was widely accepted, it could be argued that the NORC's research for the 1999 U.S. Gambling Commission was its first experience with gambling-related issues, and, therefore, the NORC was to some extent reliant upon information and direction provided by those influencing the Commission — particularly pro-gambling Commissioners,[129] as well as researchers too closely associated with pro-gambling interests.

A research endeavor such as the $1.25 million effort engaged in by the Christiansen/Cummings Associates-NORC Group should not, and perhaps cannot, ignore the *Johns Hopkins Report* and related literature. There are almost two decades of precedent since the initial Politzer effort,[130] including the 1985 *Johns Hopkins Report*,[131] the 1990 Politzer coauthored Maryland Government Report, *Task Force on Gambling Addiction in Maryland*,[132] and related literature that must also be academically addressed. Accordingly, a brief review of the socio-economic costs categories for pathological and problem gamblers that were proposed and published in the 1985 *Johns Hopkins Report* is appropriate. These categories constitute the starting point for a blueprint of the socio-economic costs categories of pathological and problem gamblers. The Christiansen/Cummings Associates-NORC Group's determinations can only add to this blueprint.

It should also be noted that for years, the gambling industry denied that there were *any* socio-economic costs associated with pathological and problem gambling.[133] Beginning in the mid-1990s, the lobbyists for the gambling industry decided not to repeat the public relations mistakes of the tobacco industry, and admitted that there were costs associated with excessive gambling.[134] Even J. Terrence Lanni, the CEO of MGM Grand, Inc., raised these issues to groups in the industry after he was appointed by Speaker of the House Newt Gingrich to be a Commissioner on the 1996-1999 U.S. Gambling Commission:

> Lanni said his industry has to be more aggressive about problem gambling. Until recent efforts by the American Gaming Association (which is funding a Harvard study on the issue), he

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[128] *See generally* Christiansen Assoc.-NORC 1999 Study, *supra* note 14, at references; Christiansen Assoc.-NORC 1999 Overview Survey, *supra* note 14, at references; Christiansen Assoc.-NORC 1999 Slides Survey Database, *supra* note 14. *Compare id.*, *with infra* footnotes130-131.

[129] *See, e.g.*, *Gambling Survey*, *supra* note 22, at D1.

[130] Politzer et al., *supra* note 94.

[131] *See generally Johns Hopkins Report, supra* note 94.

[132] *See generally* GAMBLING ADDICTION IN MARYLAND, *supra* note 94.

[133] For a brief review of this historical scenario, see *Mega-Lawsuits*, *supra* note 15, at 28-29 & nn.187-98.

[134] *Id.*

said, "we have been less than forthright about compulsive gambling."[135]

Accordingly, a basic review of the socio-economic costs categories established by the *Johns Hopkins Report* is beneficial. Several costs categories were initially delimited as the blueprint for future studies and research.

1. *"Abused Dollars" a.k.a. "Lost Consumer Dollars"*

From an economic perspective, the term "lost consumer dollars" equates well with the sociological concept of "abused dollars," and these two concepts may be defined as "[e]stimates of the average annual amount obtained legally and/or illegally by the pathological gambler which otherwise would have been used by the pathological gambler, his family, or his victims for other essential purposes."[136] According to Dr. Politzer and his associates:

> These abused dollars include earned income put at risk in gambling, borrowed and/or illegally obtained dollars spent on basic needs and/or provided to the family which otherwise would have been 'covered' by that fraction of earned income which was used for gambling, and borrowed and/or illegally obtained dollars for the partial payment of gambling related debts.[137]

From a business-economic viewpoint, "lost consumer dollars" are the equivalent of "consumer dollars lost to traditional business sales," which is also the equivalent of "gambling dollars gained by gambling organizations." The "lost consumer dollars" figure includes $15,000 per year in lost liquid assets.[138]

2. *"Lost Productivity" a.k.a. "Lost Work Productivity"*

The *Johns Hopkins Report* also delimited "lost productivity." From the business-economic viewpoint, "lost work productivity" is the conceptual equivalent of the sociological term, "lost productivity," which is defined as "[e]stimates of percent of time *not* engaged in the production of goods and services for which the individual was employed, multiplied by the average gross annual salary."[139] Characteristic examples of lost productivity in the

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[135] Fred Faust, *Gambling Leaders Turning to Political, Social Matters*, ST. LOUIS POST-DISPATCH, Dec. 16, 1996, at 14.

[136] *Johns Hopkins Report, supra* note 94, at 133; BGA REPORT, *supra* note 104, at 15; Politzer et al., *supra* note 94, at 9. *See also Evaluating Casinos*, *supra* note 91, at 152 ("Abused Dollars").

[137] *Johns Hopkins Report, supra* note 94, at 133; BGA REPORT, *supra* note 104, at 15; Politzer et al., *supra* note 94, at 9.

[138] This conservative $15,000 per year figure is used in this analysis instead of the higher $42,900 per year (in 1985 dollars) in the *Johns Hopkins Report*. *See Johns Hopkins Report, supra* note 94, at 137. For an analysis of the strategic and regional impacts of "lost consumer dollars," see John W. Kindt, *Diminishing Or Negating the Multiplier Effect: The Transfer of Consumer Dollars to Legalized Gambling:Should A Negative Socio-Economic "Crime Multiplier" Be Included in Gambling Cost/Benefit Analyses?*, 2003 MICH. ST. DCL L. Rev. 281.

[139] BGA REPORT, *supra* note 104, at 8; Politzer et al., *supra* note 94, at 8 (emphasis original to Politzer et al.).

life of a pathological gambler include "inattention to work"[140] and jeopardizing or losing a "job" or "career opportunity."[141] The lost productivity of the abused or distracted spouse should also be added as a cost—whether the spouse evinces a loss in family productivity and child care, or has lost a more quantifiable percentage of work time from a job (such as 10% lost time from a $40,000 per year work year).[142]

3. *"Crime Costs" a.k.a. "White-Collar Crime Costs"*

From a government perspective, "white-collar crime costs" equate with the sociological concept of "crime costs," and are defined as "[e]stimates of the average annual law enforcement, adjudication, and detention costs for the typical type of 'white collar' crime committed by pathological gamblers multiplied by the average number of violations of the law per pathological gambler."[143] These costs arise because pathological gamblers frequently engage in "financially motivated illegal activities to pay for gambling."[144] It should be noted that the high "regulatory costs" of administering and monitoring the legalized gambling activities are not generally included in these formulas, but they are significant, and should be incorporated into the overall costs. Because of the large number of private security guards traditionally associated with casino gambling, these "security costs" might also be factored into future modifications of these cost estimates, especially when the security consists of state police and/or regulators provided at taxpayer expense. These costs are increased by the presence of security guards around casinos because they generally tend to move some types of criminal activities away from casino areas.

For purposes of this analysis, "white-collar crime costs" include costs due to forgery, check forgery, embezzlement, employee theft, tax evasion, tax fraud, and insurance fraud. These subcategories are used because they correlate with the crimes most frequently committed by pathological gamblers.[145]

4. *"Incarceration Costs" a.k.a. "Intermediate Incarceration Costs"*

"Intermediate incarceration costs" equate with the sociological term "incarceration costs" and are defined as "[e]stimates of the average confinement costs for a typical crime committed by pathological gamblers multiplied by the average number of such crimes committed per pathological gambler."[146] These costs would be higher, but courts tend to divert pathological gamblers to treatment programs and/or require

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[140] DSM-III, *supra* note 102, at 324.

[141] DSM-IV, *supra* note 102, at 618 (Sec. 312.31). *See also* John W. Kindt, *The Negative Impacts of Legalized Gambling on Businesses*, 4 U. MIAMI BUS. L. J. 93 (1994).

[142] *See Johns Hopkins Report*, *supra* note 94, at 141.

[143] BGA REPORT, *supra* note 104, at 15; Politzer et al., *supra* note 94, at 8.

[144] DSM-III, *supra* note 102, at 324.

[145] *See* Lesieur, Economic Costs, *supra* note 94, Table 2, at 21. *See generally* Lesieur & Puig, *supra* note 94; *Increased Crime and Legalizing Gambling*, *supra* note 2.

[146] BGA REPORT, *supra* note 104, at 15; Politzer et al., *supra* note 94, at 9.

restitution. Given that successfully completing the treatment program and/or making restitution often results in "clearing the record" of the pathological gambler, it is quite difficult to calculate some of the costs in this area. There is, however, a high recidivist rate among pathological gamblers.

5. *Subtotal of Socio-Economic Costs of Pathological Gamblers*

Regardless of subsequent claims by pro-gambling interests to the contrary, the majority of the academic/government source materials of 1992 were reporting $52,000 (in 1992 dollars) as the most conservative and frequently utilized sociological cost of a pathological gambler per year.[147] This included only *partial* costs, specifically:

1. abused dollars or lost consumer dollars,
2. lost productivity or lost work productivity,
3. crime costs or white-collar crime costs, and
4. intermediate incarceration costs.[148]

What sociologists were adding to these partial costs were other categories of costs, namely:

1. long-term incarceration costs,
2. rehabilitative costs,
3. debt accumulation,
4. other socio-economic costs,
5. commonplace crime costs, and
6. gambling system crime costs.[149]

Specific definitions and categories needed to be refined to prevent the overlapping of costs estimates, but in the 1980s and 1990s the academic literature had already begun the process.

6. *"Long-Term Incarceration Costs" a.k.a. "Long-Term Imprisonment Costs"*

"Long-term imprisonment costs" are defined as the long-term costs of incarcerating a pathological gambler per year. In 1994, these costs were $25,000 per year for young prisoners, but due to the increased medical costs and other factors, these costs climbed to $50,000 per year for elderly prisoners.[150] Given that 13 percent to 15 percent of all pathological

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[147] BGA REPORT, *supra* note 104, at 12-17.

[148] *See supra* footnotes 136-146 and accompanying text.

[149] *See infra* notes 150-166 and accompanying text. Since at least 1994, the calculable costs to the taxpayers have been $3 for every $1 in benefits. *See supra*, note 91 and accompanying text. *See generally* John W. Kindt, *Legalized Gambling Activities As Subsidized by Taxpayers*, 48 ARK. L. REV. 889 (1995).

[150] Costs provided by both the U.S. Department of Justice, Illinois Department Corrections and the Compulsive Gambling Center in Baltimore, Maryland (1992) [hereinafter CGC Costs].

gamblers are incarcerated for the long-term, the total costs as a function of "all pathological gamblers" would be $3,750 per year for younger prisoners and $7,500 per year for elderly prisoners.[151] These costs may overlap somewhat with the sociological category of "incarceration costs,"[152] but incarceration costs are more appropriately considered to be predominantly short-term or intermediate incarceration costs.

7. *"Rehabilitative Costs" a.k.a. "Rehabilitation Costs"*

From both a sociological and legal standpoint, "rehabilitative costs" are defined as the costs of making the pathological gambler "whole again." In 1992, these costs varied from estimates of $5,000 to $20,000 in grand total costs for outpatient treatment, to estimates of $17,000 to $42,000 per month for in-patient treatment.[153] In a legal context, these rehabilitative costs would be part, but not all, of the potential "compensatory damages" and would necessarily be projected into the future.

8. *Debt Accumulation*

While the liquid assets lost by a pathological gambler were traditionally harder to track, by the twenty-first century, "players cards" utilized gambling technology to track such losses; particularly for casinos, and especially in electronic gambling devices (EGDs) such as video gambling machines (VGMs). The overall figure for these gambling losses included debt accumulation once liquid assets were lost and could be tracked not only through credit card companies, but also through the gambling industry's in-house credit mechanisms.

In 1990, the most authoritative government report analyzing pathological gamblers calculated indebtedness at a range of $72,000 to $83,000,[154] with a weighted average of $75,000.[155] In 1991, the "average gambling debt of callers to the New Jersey Compulsive Gambling Hotline [was] $41,848."[156] "It is of interest to note that, as a rule of thumb, when a compulsive gambler states the amount of debt he/she has due to gambling, an accurate figure is arrived at by multiplying by 3."[157] Other experts believed that a multiplier of "2" was more accurate. Pathological gamblers had historically demonstrated characteristic problems including "extensive indebtedness and consequent default on debts and other financial responsibilities."[158]

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[151] *Id.*

[152] BGA REPORT, *supra* note 104, at 15 (quoting Politzer et al., *supra* note 94, at 139).

[153] CGC Costs, *supra* note 150.

[154] GAMBLING ADDICTION IN MARYLAND, *supra* note 94, at 60-61.

[155] *Id.*

[156] Ann E. Andrews, *Database*, U.S. NEWS & WORLD REP., Mar. 25, 1991, at 12.

[157] Letter from Elizabeth George, Executive Director, Minnesota Council on Compulsive Gambling, Inc., to John Warren Kindt, Professor, University of Illinois (December 21, 1992).

[158] DSM-III, *supra* note 102, at 324. For analyses of the significant strategic and regional costs of gambling-related bankruptcies, see John W. Kindt & John K. Palchak, *Legalized Gambling's*

In 1999, the *NGISC Final Report* confirmed these earlier-reported trends and reported $75,000 to $150,000 as the range of indebtedness of pathological gamblers.[159]

9. *"Other Socio-Economic Costs" a.k.a. "Costs of Abuse"*

Other socio-economic costs or the "costs of abuse" were being delimited as significant by at least 1983. By 1994, "other socio-economic costs" included costs due to child abuse, child neglect, and spousal abuse. For example, after casino gambling came to Lawrence County, South Dakota, the State Attorney's Office reported an increase of 42 percent in the number of child abuse cases between 1991 and 1993.[160]

By definition, pathological gamblers evince "disrupted family relationships."[161] A 1982 study of members in Gam-Anon, which constitutes a family organization that parallels Gamblers Anonymous, reported that with regard to spouses of pathological gamblers, "[e]motional, verbal, and physical abuse was noted in 43% of all cases."[162] Furthermore, "[i]n about 10% of the cases the children were being physically abused by the gambler."[163] The consequence was that "[s]ignificant behavioral or adjustment problems" were experienced by 25 percent of the children.[164]

In 1994, a dollar value of the socio-economic costs of spousal abuse had not yet been calculated. Preliminary data indicated that 15 percent of the wives of pathological gamblers were "battered" or physically abused.[165] In various samples, 43 percent to 50 percent of the cases involving spouses of pathological gamblers reported physical, verbal, or emotional abuse.[166]

10. *"Commonplace Crime Costs" a.k.a. "Property Crimes and Miscellaneous Crimes"*

By 1994, the sociological literature had identified "commonplace crime costs" that paralleled the legal/governmental definitions of "property crimes," which are usually defined as theft crimes motivated by the need for money. The sociologists, however, tended to delimit "commonplace crime costs" to include not only larceny, burglary, and armed robbery, but

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Destabilization of U.S. Financial Institutions and the Banking Industry: Issues in Bankruptcy, Credit, and Social Norm Production, 19 EMORY U. L. BANKR. DEV. J. 21 (2002).

[159] NGISC FINAL REPORT, *supra* note 3, at 4-13 (describing the range of indebtedness of pathological gamblers attending Gamblers Anonymous).

[160] Jeffry Bloomberg, State's Attorney for Lawrence County, S.D., Speech before the Coalition of Concerned Citizens Against Gambling in Jo Daviess County (Nov. 17, 1991); Letter from Jeffry Bloomberg, State's Attorney for Lawrence County, S.D., to John Warren Kindt, Professor, University of Illinois (Jan. 4, 1993) (containing crime statistics for Lawrence County, S.D.) [hereinafter Letter from Bloomberg to Kindt]. *See also Economic Impacts*, *supra* note 97, at 72-73.

[161] DSM-III, *supra* note 102, at 324. *Compare id*., *with* DSM-IV, *supra* note 102, at 615-18.

[162] Valerie Lorenz & Duane E. Shuttlesworth, *The Impact of Pathological Gambling on the Spouse of the Gambler*, 11 J. COMMUNITY PSYCHOL. 67, 69 (1983).

[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] *Id.*

also pimping, prostitution, selling drugs, and fencing stolen goods.[167] These subcategories were identified because they correlated with the crimes most frequently committed by pathological gamblers.[168]

11. *"Gambling System Crime Costs"*

By the late 1980s, the sociologists had defined the category of "gambling system crime costs" to include those costs due to bookmaking, working illegal games, hustling at pool, cards, dice or sports, running a "con game," swindling "suckers," and other criminal fraud.[169] These subcategories were used because they correlated with the crimes most frequently committed by pathological gamblers.[170]

C. NEGLECTING TO MAKE GOOD FAITH ESTIMATES OF THE SOCIO-ECONOMIC COSTS OF PATHOLOGICAL AND PROBLEM GAMBLERS: A FAILURE OF THE 1999 U.S. GAMBLING COMMISSION?

With a multi-million dollar budget for research, the 1999 U.S. Gambling Commission was charged by Congress with the task of delimiting and defining at least some of the social and economic costs of a pathological gambler and a problem gambler. Instead of proceeding from the historical academic outline for analyzing these costs and then advancing the research, the Commission wavered. Accordingly, it appeared to miss the opportunity to establish cost definitions or guidelines:

> 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.[171]

Because of this, the historical definitions of the *Johns Hopkins Report*, as supplemented by the 2001 analysis by Professors Grinols and Mustard, remained the most authoritative academic determinations until at least 2003.

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[167] *See* Lesieur, Economic Costs, *supra* note 94, Table 2, at 21. *See generally* Lesieur & Puig, *supra* note 94.

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] NGISC FINAL REPORT, *supra* note 3, at 4-13.

V. TRENDS AND CONDITIONING FACTORS

A. THE STRATEGIC QUESTIONS IN GAMBLING ISSUES

There are several questions which are central to a proper analysis of gambling issues. The first is whether gambling per se is simply a recreational activity without any downside. The U.S. gambling industry maintained this position until the mid-1990s. However, studies throughout the 1980s and 1990s revealed a downside — negative social and economic consequences. Since the mid-1990s even the gambling industry's lobbying group, the AGA, has acknowledged the *existence* (but disputes the *degree*) of such consequences.[172]

The second question is whether state and national governments should encourage or "legalize" gambling activities as a source of short-term tax revenue, or whether the long-term socio-economic consequences outweigh the short-term benefits.[173] Gambling industry proponents look for the former, as they have a large financial interest in trivializing social or economic consequences that may exist for governments that legalize and spread gambling throughout the public domain.

The following questions arise frequently in this area:

1. What is the definition, or what are the determining traits of a "pathological gambler" (*i.e.,* the definitional "gold standard" for "pathological gamblers")?

2. What is the companion definition/determination of a "problem gambler" (i*.e.*, the definitional "gold standard" for "problem gamblers")?

3. To what extent does the increased spread of legalized gambling create *new* pathological and problem gamblers (usually expressed as a percentage of the general population over a one or five year period)?[174]

4. What are the *total* socio-economic costs of each *new* pathological gambler and each *new* problem gambler? A corollary question asks what the costs are in individual cost categories, such

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[172] *See* Brett Pulley, *Compulsive Gambling Spreads, Largely Due to Legality*, N.Y. TIMES, Dec. 7, 1997, at A1 [hereinafter *Compulsive Gambling Spreads Due to Legality*].

[173] *See* John W. Kindt, *The Business-Economic Impacts of Licensed Casino Gambling in West Virginia: Short-Term Gain but Long-Term Pain*, 13 W. VA. U. PUB. AFF. REP. 22 (1996) (providing sample summaries of these issues); *Congressional Gambling Hearing 1994, supra* note 44, at 77. *See also* John W. Kindt, *U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts Of The Legalization Of Gambling Activities*, 39 ST. LOUIS U. L.J. 567 (1995). For the international implications of the decriminalization of organized gambling, see John W. Kindt & Anne E. C. Brynn, *Destructive Economic Policies in the Age of Terrorism: Government-Sanctioned Gambling As Encouraging Transboundary Economic Raiding and Destabilizing National and International Economies*, 16 TEMPLE INT'L & COMP. L. J. 243 (2002).

[174] For a summary, see *Compulsive Gambling Spreads Due to Legality, supra* note 172, at A1; Harvard Division on Addictions Press Release, *supra* note 103.

as *new crime* costs attributed to a pathological gambler, and how those cost categories are defined.

The complexity of this last question, as well as the beginning blueprint for addressing these issues, was outlined in the previous section detailing the historical background of gambling issues in the 1980s and 1990s.

The U.S. Gambling Commission was formed in 1996 with a mandate to "assess[] pathological or problem gambling, including its impact on individuals, families, businesses, social institutions, and the economy,"[175] or implicitly, to answer the above questions. University of Illinois economics professor Earl Grinols proposed to the Commission of the 1990s that these types of questions be addressed and analyzed in diverse geographic U.S. locales. However, this approach was not incorporated into the Commission's research agenda.

It is important to emphasize that manipulation of the definitional standards by special interest groups would distort the four essential questions, and any future statistical comparisons would become convoluted or even futile. "Trends" involving increases in the numbers of pathological and problem gamblers due to the spread of legalized gambling are thus rendered suspect, because they can be obfuscated by vested interests that are sensitized to government decision-makers alerted to the socio-economic costs of pathological and problem gamblers.

Prior to the 1995 advent of the AGA, the definitional gold standards for the "pathological gambler" and the "problem gambler" were well established in the sociological literature as being delimited by the questionnaire tests of the South Oaks Gambling Screen (SOGS),[176] based on the American Psychiatric Association's definition in the *Diagnostic and Statistical Manual of Mental Disorders*.[177] While sociological studies prior to 1995 might have modified the SOGS (or the SOGS-Revised screen) somewhat as new information became available, *comparisons* could now be made between most studies because of the general use of the SOGS as the "gold standard." Comparisons were also possible using some lesser-utilized screening methods.

Even the 1997 Harvard Addictions Meta-analysis, financed by a $140,000 grant from the gambling industry,[178] acknowledged that the SOGS was utilized in approximately two-thirds of the 152 studies analyzed.[179] However, the Meta-analysis also proposed completely new delimitations/definitions for the first two essential questions[180] and departed from the established "gold standard" delimitations/definitions for the

[175] Pub. L. No. 104-169, 104th Cong., Sec. 4(a)(2)(C) (1996).

[176] *See, e.g.,* Henry R. Lesieur & Sheila B. Blume, *The South Oaks Gambling Screen (SOGS): A New Instrument for Identification of Pathological Gamblers*, 144 AM. J. PSYCHIATRY, Sept. 1987, at 1184-87.

[177] *Compare* DSM-IV, *supra* note 102, at 615-18, § 312.31 (pathological gambling), *with* DSM-III, *supra* note 102, at 324-25, § 312.31 (pathological gambling).

[178] *Casino Backlash*, *supra* note 25, at A1.

[179] Harvard Addictions Meta-analysis, *supra* note 103, Appendix 2.

[180] For the essential questions, *see supra* footnotes 173-175 and accompanying text.

pathological gambler, problem gambler, and indirectly, the SOGS. Accordingly, the Meta-analysis actually proposed a new terminology:

> (a) "Level 3" as "disordered gambling" which would satisfy certain diagnostic criteria (*i.e.*, a "pathological gambler");
>
> (b) "Level 2" as a "pattern of gambling that is associated with adverse consequences, but does not meet criteria for diagnosis as a pathological gambler"[181] (basically, a "problem gambler"); and
>
> (c) "Level 1" as basically an "at risk gambler."[182]

These proposed definitional changes convoluted any comparison between studies and obfuscated determinations involving the third essential question, *i.e.*, "how much does the spread of legalized gambling create *new* pathological gamblers and *new* problem gamblers?"[183] The net result was that the issues became more convoluted, which purposely or not, operates to the detriment of academic discourse and to the public relations benefit of pro-gambling interests.

The ability to make comparisons between studies was made even more difficult when the Christiansen Associates-NORC Group's introduced its new NODS screen (NORC DSM Screen for Gambling Problems).[184] While a revised screen was probably necessary for the Commission's work, and while the NODS probably should become the future standard, the new NODS should have provided parallel *comparisons* to the previous studies — especially to the "gold standard," the SOGS (and the SOGS-Revised). Although the Christiansen Associates-NORC Group did not provide relevant comparisons to SOGS, one of the Group's co-authors, Rachel Volberg, had earlier concluded that these comparisons needed to be made. In one 1997 study, she devoted a whole chapter to the topic, which she entitled, "Comparing The SOGS And The DSM-IV."[185] Volberg summarized her conclusions as follows:

> In moving forward, it is essential that the performance of any new instrument, such as the DSM-IV, be compared to the South Oaks Gambling Screen as well as to clinical assessments so that findings based on these new measurements can be matched to findings based on the South Oaks Gambling Screen. In this way, the field of gambling research can move forward in an evolutionary, rather than revolutionary, manner.[186]

Because federally funded research was designed to answer the difficult questions that had stymied the "unfunded" academic community for years, these omissions by the Christiansen Associates-NORC Group were doubly disappointing to academia. In all fairness, however, this problem should

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[181] NGISC FINAL REPORT, *supra* note 3, at 4-6.

[182] *See id. See generally* Harvard Addictions Meta-analysis, *supra* note 103, at ii-iv.

[183] *See supra* notes 173-175 and accompanying text.

[184] *See, e.g.,* Christiansen Assoc.-NORC 1999 Overview Survey, *supra* note 14, at 16-20.

[185] Rachel A. Volberg, Gambling and Problem Gambling in Colorado, Gemini Research (Aug. 28, 1997) (on file with author).

[186] *Id.* at 28.

not be attributed exclusively to the Christiansen Associates-NORC Group, because the AGA lobbyists completely changed the research environment of the 1999 U.S. Gambling Commission. The AGA's attempts were exemplified by a May 21, 1998 press conference with Frank Fahrenkopf, the CEO of the AGA, during the Chicago hearings of the Commission. During the press conference, Fahrenkopf tried to impeach Volberg with her own statements, claiming that:[187]

> [Rachel Volberg] has publicly stated that her figures, have [*sic*] "acquired a reality that I do not believe it merits … it is not based on actual data on the costs of pathological gambling in any reliable sense . . . I wouldn't stand up in a peer-reviewed journal and try to defend this approach."[188]

Obviously, these statements by Volberg were taken out of context, but they reveal the AGA's attempts to prejudice the research environment. In any event, it could be argued that the NODS was at least more current and definitionally superior to the proposed changes of the 1997 Harvard Addictions Meta-analysis.

With regard to the Harvard Addictions Meta-analysis, these types of problems were also highlighted by the failure of the Meta-analysis to provide the numbers (percentages) of pathological gamblers and problem gamblers in each of the studies reported[189] — a fairly simple process that academics would expect in order to confirm the report's conclusions. Thereafter, a subsequent commitment to provide those numbers went unfulfilled, despite the fact that the commitment was publicly made by Associate Professor Howard Shaffer, the lead author of the Meta-analysis, during a 2000 Conference — an event the Harvard group cosponsored — at the University of Illinois at Chicago Medical School.[190]

After some of the criticisms of the 1997 Harvard Addictions Meta-analysis were highlighted during the public hearings of the 1999 U.S. Gambling Commission,[191] and thereafter expressed in the *Mega-Lawsuits* article in *MDE*, the lead author of the Meta-analysis, Associate Professor Howard Shaffer, contacted the *MDE* editorship and he was allowed to write

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[187] Press Release, Frank J. Fahrenkopf, Jr., President and CEO, American Gaming Association, Anti-Gaming Testimony at the NGISC Chicago Meeting (May 21, 1998), *available at* http://www.americangaming.org/press/press_releases/press_detail.ofv?id=143 (last visited Nov. 14, 2003).

[188] *Id.*

[189] *See, e.g.*, Harvard Addictions Meta-analysis, *supra* note 103, at Appendix 2.

[190] Speaker's Question and Answer Session with Howard J. Shaffer, Associate Professor, Director of Division on Addictions, Harvard Medical School, 'Understanding Gambling and Its Potential Health Consequences,' at the Medical Center, University of Illinois, Chicago (May 4, 2000) (registration through the National Center for Responsible Gaming, an organization primarily financed by contributions from pro-gambling interests). *See, e.g.*, Letter from University of Illinois Research Associate, to Howard J. Shaffer, Associate Professor, Harvard Medical School (May 10, 2000) (requesting baseline numbers); Letter from Howard J. Shaffer, Associate Professor, Harvard Medical School, to University of Illinois Research Associate (May 31, 2000) (stating uncertainty and declining to provide the numbers).

[191] *See, e.g.*, Hearings before the National Gambling Impact Study Commission, Chicago, Ill., May 20-21, 1998.

a response. However, Shaffer subsequently failed to submit anything to *MDE* for publication. Additionally, Executive Director Keith Whyte of the National Council on Problem Gambling made a similar request, but likewise apparently did not submit anything for publication in *MDE* either.[192]

Given these concerns in a research environment where pro-gambling interests, in particular, maintained an overbearing financial presence, the U.S. Gambling Commission was intended by federal legislators to be free of any industry influences.[193] The Congressional sponsors of the U.S. Gambling Commission were also alarmed by the partially successful attempts of the gambling industry's lobbyists to stack the Commission with pro-gambling Commissioners.[194] Accordingly, the federally-funded research was designed to avoid and/or distinguish industry-financed or industry-tainted analyses.[195]

The pro-gambling interests themselves first raised criticisms of the Christiansen Associates-NORC research. All research groups should be able to investigate whatever areas they wish — free from the direct and indirect influences of pro-gambling interests or other special interests. When the Christiansen Associates-NORC Group provided little or no rebuttal to the alleged initial interferences or intimidation tactics of the pro-gambling interests, the issues raised by the pro-gambling interests became magnified, and they must necessarily be analyzed in any future litigation requiring expert testimony. Potential litigators should be supplied with both an outline of the issues and a list of the research, which may have been financed and/or otherwise impacted by pro-gambling interests. When pro-gambling interests such as the AGA publicly claim to impact particular research or simply create the appearance of having impacted that research,[196] then those issues must necessarily be addressed. For example, on March 18, 1999, the AGA lobbying group issued a press release[197]

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[192] *See, e.g*., Memorandum from Paul H. Rubin, Professor and Editor-in-Chief, Managerial and Decision Economics, to various authors in MDE 2001 (Dec. 24, 2001) (on file with author).

[193] *See, e.g*., Editorial, *Congress and Gambling*, WASH. POST, Aug. 12, 1996, at A12. ("The effort of the [gambling industry's] lobbyists now will be to weaken the investigation as much as possible by pushing to stack the membership" of the 1999 U.S. Gambling Commission); Editorial, *An Independent Look at Gambling*, WASH. POST, Oct. 18, 1996, at A26 ("If the [Commission's] membership turns out to be excessively industry-oriented, the whole purpose of the legislation will have been undercut and its findings will be suspect."); William Safire, *Political Gambling*, N.Y. TIMES, Nov. 21, 1996, at A19 (Commissioners picked by U.S. legislators such as Representative Dick Gephardt's pick of pro-gambling John Wilhelm "would stack the commission in gambling's favor, guaranteeing a Pablum report."). For concerns involving pro-gambling lobbyists "stacking" the Commission as expressed by the chief legislative sponsors, U.S. Senator Paul Simon and U.S. Representative Frank Wolf, see Press Release of Paul Simon, U.S. Senator, "Simon Says Don't Stack The Deck On Gambling Commission," Washington, D.C. (Oct. 10, 1996) (on file with author); Press Release of Frank Wolf, U.S. Representative, "Concerns About National Gambling Commission Appointments," Washington, D.C. (Oct. 10, 1996) (on file with author).

[194] *Id.*

[195] *Id. See also* CED REPORT, *supra* note 38, at executive summary.

[196] American Gaming Association Criticizes/Spins NORC Report to NGISC, *supra* note 65; American Gaming Association Claimed NORC Alters Findings, *supra* note 65.

[197] *Id.*

slighting NORC's research and claiming there were "two scientifically dishonest adjustments."[198] This AGA press release was concomitant with an associated document titled "NORC Alters Findings of Final Report with Sensational Language, Data Modifications and Omissions, and Unsound Analysis."[199] These types of AGA tactics speak for themselves and should be ignored, but they nevertheless highlight the environment in which researchers on gambling issues must operate.[200]

As a practical exercise, academic sources such as the NORC may need to collect information from sources within the gambling industry. These groups, however, should be cautious about *co-authorship* with those sources directly or indirectly linked financially to pro-gambling interests. When the NORC prominently associates or co-authors with groups such as Christiansen Associates, which are perhaps financially benefiting from contacts with the gambling industry, the *existence* and/or *degree* of any financial linkages will often become the object of questioning in any academic debate—and particularly in any judicial proceeding. To avoid these concerns completely, academic groups must necessarily divorce themselves from any appearance of conflicts of interest.

Perhaps due in part to the different diagnostic methods utilized, the Christiansen Associates-NORC Group's report generally contained the lowest levels of pathological and problem gamblers of the recent reports summarized by the 1999 U.S. Gambling Commission[201] (see Table 4-2).[202] As the U.S. Gambling Commission conceded:

> It is possible that the numbers from the NRC [National Research Council] 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 losses.[203]

The 1999 Commission reported the research results within the context of the definitional "gold standard" debate for: (1) pathological gambler, (2) problem gambler, and (3) the South Oaks Gambling Screen's interface with the *DSM*. A future corollary definitional debate may involve reporting incidence rates for pathological and problem gamblers within the categories

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[198] *Id.*

[199] *Id.*

[200] *Id.*

[201] NGISC FINAL REPORT, *supra* note 3, at 4-4, 4-5, & 4-6 (Table 4-2), "Comparison of Problem and Pathological Gambling Rates, General Adult Population").

[202] *Id.* at Table 4-2.

[203] NGISC FINAL REPORT, *supra* note 3, at 4-9.

of "lifetime" vis-à-vis "past year."[204] In reporting to the 1999 Commission, the NORC's numbers can be compared with parallel research by the National Research Council (NRC).[205]

Comparison of Problem and Pathological Gambling Prevalence Rates (General Adult Population, Percentages and Population Numbers Affected)			
Category	NRC (1999) (Percentage)	NORC RDD Patrons Combined (1999) (Percentage)	NORC RDD (1999) (Percentage)
Lifetime Pathological Gamblers	1.5% (3 million people)	1.2% (2.5 million)	0.8% (1.6 million)
Lifetime Problem Gamblers	3.9% (7.8 million people)	1.5% (3 million) + 7.7% At Risk (15.4 million) 9.2%	1.3% (2.6 million) + 7.9% At Risk (15.8 million) 9.2%
Past Year Pathological Gamblers	0.9% (1.8 million)	0.6% (1.2 million)	0.1% (200,000)
Past Year Problem Gamblers	2.0% (4 million) 3-7% At Risk (6-14 million)	0.7% (1.4 million) + 2.9% At Risk (5.8 million) 3.6%	0.4% (800,000) + 2.3% At Risk (4.6 million) 2.7%

The national press summarized NORC's numbers as follows:

1. pathological gamblers, 1 million;
2. problem gamblers, 4 million; and
3. at risk gamblers, 15 million.[206]

By comparison, in one category the National Research Council reported estimates almost 9 times those of the NORC, and the NRC concluded that "1.8 million Americans suffer severe 'pathological' gambling each year."[207] While a large anomaly existed in that instance, another NORC survey indicated that there were 1.2 million "past year" pathological gamblers, which was closer to the NRC's figure of 1.8 million.[208]

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[204] *Id.* at 4-4, 4-5, & 4-6.

[205] *Id.*

[206] *See, e.g.*, Rick Alm, *Changes Sought in Casino Statutes*, KAN. CITY STAR, Feb. 10, 1999; Laurence Arnold, Assoc Press, *Neither Side Wants to Bet Much on Results of Gambling Study*, ST. J.-REG. (Springfield, Ill.), Mar. 19, 1999, at 8.

[207] Associated Press, *supra* note 206, at 8. *See also* NGISC FINAL REPORT, *supra* note 3, at 4-4, 4-5, & 4-6.

[208] For comparisons, see NGISC FINAL REPORT, *supra* note 3, at 4-5 & 4-6.

B. SAMPLES OF INITIAL PUBLIC CRITICISMS OF THE CHRISTIANSEN ASSOCIATES-NORC GROUP'S PREVALENCE ESTIMATES OF THE NUMBERS OF PATHOLOGICAL AND PROBLEM GAMBLERS IN THE GENERAL ADULT POPULATION

The analysis and criticism of the NORC's work for the 1999 Commission was somewhat initiated by the same editorial interests that prompted the 1997 Harvard Addictions Meta-analysis, which was financed by a grant linked to the gambling industry.[209]

> Overall, NORC estimated that 0.1% or 0.6% of the general adult population were pathological gamblers during the past 12 months, depending on whether patrons are included in the analysis. Both of these estimates are below those reported by studies conducted by Harvard Medical School (1997) and the National Research Council (1999). In addition, these prevalence estimates are considerably lower than estimates of past-year alcohol dependence/abuse (9.7%) and past-year drug dependence/abuse (3.6%).[210]

This Harvard source also criticized changing the gold standards and concluded that with regard to NORC's research, the "complexity of this issue highlights the need for a standard nomenclature."[211] Paradoxically, and perhaps hypocritically, it could be noted that it was the 1997 Harvard Addictions Meta-analysis which first obfuscated the obvious definitional gold standards for pathological and problem gambling by proposing changing to new terminology, such as "disordered gambling."[212]

Other concerns raised by the Christiansen Associates-NORC Group (in the 2003 *MDE* volume) over criticisms involving methodology and/or definitions were probably not raised initially in the *Mega-Lawsuits* article, but were raised by the aforementioned Harvard source.[213]

> NORC used DSM-IV criteria to guide the development of a new survey instrument. Respondents who had lost more than $100 in a single day *and* reported one or more DSM-IV criteria were classified as pathological, problem, or at-risk. While the former two categories are common in the gambling research literature, the at-risk classification is not. At-risk subjects were those who reported one or two criteria. The notion of "at-risk" is complex, and poses numerous problems[.][214]

While the Christiansen Associates-NORC Group can assert its total academic independence, it may still be confronted with public news reports that raise questions. An analysis of informational sources indicates that on October 9, 1998, National Commissioner and casino executive J. Terrence

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[209] *See Casino Backlash*, *supra* note 25, at A1.
[210] "Study Commission," *supra* note 67.
[211] *Id.*
[212] *See generally* Harvard Addictions Meta-analysis, *supra* note 103.
[213] "Study Commission," *supra* note 67.
[214] *Id.*

Lanni "threatened legal action against NORC"[215] when NORC presented some of its initial report to the U.S. Gambling Commission. The Christiansen Associates-NORC Group's subsequent report was dated February 1, 1999,[216] and the Group's slide show to the National Commission was dated February 16, 1999.[217]

In the interim, on February 9, 1999, the *Las Vegas Review-Journal*[218] reported its summary of the Christiansen Associates-NORC Group's findings with a self-explanatory headline article, "Casinos delighted by study findings:"[219]

> The numbers generated by a $1.25 million survey conducted by the National Opinion Research Center of Chicago conclude the number of seriously addicted gamblers is less than half of other studies, including one conducted by Howard Shaffer of Harvard Medical School, gaming executives said.[220]

The pro-gambling interests were obviously pleased with the reported results on the numbers of pathological and problem gamblers,[221] but critics indicated that the Christiansen Associates-NORC Group's results did not "fit other studies."[222]

> Gaming industry executives who have monitored the commission expressed delight at the survey findings on problem gamblers. "We are very pleased with the result, provided that its (survey) method is accepted by the scientific community," said Frank Fahrenkopf, chief of the American Gaming Association.
>
> But Commissioner James Dobson, a gaming industry critic, was openly skeptical. "I am really concerned about the data we got back," Dobson said. "It doesn't fit other studies."
>
> Bernie Horn, communications director of the National Coalition Against Legalized Gambling said he thought the figures were "low-balled."[223]

These alleged "low-balled" numbers are reflected in Table 4-2 of the

[215] *U.S. Gamblers' Habits in Casinos*, *supra* note 56. *See Gambling Survey*, *supra* note 22.
[216] Christiansen Assoc.-NORC 1999 Overview Survey, *supra* note 14.
[217] Christiansen Assoc.-NORC 1999 Slides Survey Database, *supra* note 14.
[218] *Casinos Delighted by Study*, *supra* note 123.
[219] *Id.*
[220] *Id.*
[221] *Id.*
[222] *Id.*
[223] *Id.*

National Commission's *Final Report*,[224] and were reported in an atmosphere of criticism. One article stated that:

> A major study [by NORC] . . . shows about 2 million Americans, less than 1 percent of the population, suffer from the most serious gambling addictions that require psychiatric treatment.
>
> The statistic was welcomed by the gaming industry because it concludes the problem is less severe than previous research has suggested.
>
> On the other hand, gaming critics said they found the numbers hard to believe.
>
> Besides pathological gamblers requiring medical care, another 2 million people are considered problem gamblers, according to the study.[225]

In this context, members of the Christiansen Associates-NORC Group defended their work, as reported in the same article:[226]

> Rachel Volberg of the Chicago research center *defended* the report which included telephone interviews of more than 2,400 adults and 500 young people ages 16 and 17. The study was conducted over nine months in 1998.
>
> Among other things, the survey showed gambling has increased by 20 percent among women compared to 10 percent among men since 1975, when a federal commission last studied gambling.
>
> The survey also showed gambling has increased among young adults, but only slightly.[227]

C. SAMPLES OF INITIAL PUBLIC CRITICISMS OF THE CHRISTIANSEN ASSOCIATES-NORC GROUP'S COST ESTIMATES FOR PATHOLOGICAL AND PROBLEM GAMBLERS

With regard to the social costs of pathological and problem gamblers, the estimates of the Christiansen Associates-NORC Group generated criticism from not only the National Commissioners, but also the gambling industry's lobbyists. Initially, some of the most vociferous complaints came from the lobbyists for the gambling industry based in Wasington, D.C. One such complaint was by "Frank Fahrenkopf, Jr., president of the American Gaming Association, [who] alleged that an earlier draft of the

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[224] NGISC FINAL REPORT, *supra* note 3, at 4-6 (Table 4-2).
[225] *Casinos Delighted by Study*, *supra* note 123.
[226] *Id.*
[227] *Id.*

report was retooled to exaggerate the dangers of gambling through sensational language and changes in conclusions."[228]

In defense, the Chair of the 1999 U.S. Gambling Commission, Kay James, summarized the good-faith efforts of the Commission: "Everybody on the commission has really struggled with this: How do you estimate the social cost?"[229]

Despite what may have been a good-faith effort, the Christiansen Associates-NORC Group's "partial" estimates that an individual pathological (or addicted) gambler costs society only $1,200 per year with $5 billion per year as the total (partial) cost were criticized as being simply unreasonable.[230] While such estimates might comply with the standard methodology determined by the investigators in their specialized discipline, these numbers appear to defy common sense. Sociologists often compare pathological (or addicted) gambling to drug addiction.[231] It was postulated that no reasonable academician would claim that the societal costs of a drug addict were only $1,200 per year — particularly when the American Medical Association estimated the total socio-medical cost of U.S. pathological gamblers at $40 billion in 1994.[232] According to an article by the Associated Press,

> [Members of the 1999 U.S. Gambling Commission] were troubled by the report's finding that the economic cost of problem gambling is "relatively small"—about $5 billion a year in legal fees for divorce, court and jail costs for arrests, lost wages and bankruptcy. That compares with $72 billion for smoking, $166 billion for alcohol abuse and $71 billion for motor vehicle crashes, the report said.[233]

Notably, the Christiansen Associates-NORC Group made cost comparisons to alcohol abuse and heart disease,[234] but basically appeared to ignore cost comparisons to drug abuse, which was reported to the National Commission as the most common sociological comparison made to gambling addiction.[235] These types of concerns and criticisms were publicly summarized by one of the National Commissioners: "James Dobson, president of Focus on the Family and the panel's most outspoken opponent of gambling, said the $5 billion estimate of gambling's cost is far too low. He wondered how to calculate the costs of child abuse or spousal abuse committed by a

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[228] Laurence Arnold, Assoc. Press, *Neither Side Wants to Bet Much on Results of Gambling Study*, ST. J.-REG. (Springfield, Ill.), Mar. 19, 1999, at 8 [hereinafter Arnold].

[229] *Id.*

[230] NGISC FINAL REPORT, *supra* note 3, at 4-14. *See also* Rick Alm, *Changes Sought in Casino Statutes*, KAN. CITY STAR, Feb. 10, 1999.

[231] *See, e.g.*, U.S. and International Costs, *supra* note 103.

[232] American Medical Association, House of Delegates, Resolution 430 (A-94) (1994).

[233] *See* Arnold, *supra* note 228, at 8.

[234] NGISC FINAL REPORT, *supra* note 3, at 4-14.

[235] *See, e.g.,* Hearings Before the National Gambling Impact Study Commission, Chicago, Illinois, May 20-21, 1998; U.S. and International Costs, *supra* note 103.

gambling addict."[236] By comparison, the National Research Council found significantly more costs associated with pathological and problem gambling.[237] "The second study by the National Research Council — part of the National Academy of Sciences, an independent organization chartered by Congress to advise the government—says pathological gamblers are far more likely to commit crimes, run up large debts, damage relationships and kill themselves."[238]

Disagreeing with the NRC's observations, in 1999 Jay S. Albanese authored a study suggesting that there was "little evidence that the spread of casinos contributes significantly to white-collar crimes like embezzlement, forgery and fraud."[239] Albanese's study, however, "was paid for by the American Gaming Association which represents [and lobbies for] commercial casinos."[240] Yet even if the gambling lobby group had not provided the financing for this study, it would still have generated some academic debate because its conclusions ran counter to two decades of previous studies,[241] as well as the results suggested by the 1999 official U.S. Gambling Commission.[242] However, the fact that the Albanese study was financed by the gambling industry made it especially vulnerable to criticism from the academic community.[243]

VI. POLICY ALTERNATIVES AND RECOMMENDATIONS

With gambling issues, as with some other controversial research areas, there are some alternatives for researchers.

First, researchers can avoid even the appearance of impropriety by rejecting all direct and indirect financial connections to special interests. Of course, this policy would be the ideal, and in the area of gambling issues, some researchers maintain this policy. However, it is generally difficult for researchers to maintain this policy because they must forego many funding opportunities (particularly from the pro-gambling interests).

The second option is for researchers to accept research funds and consultant fees from all sources, but ultimately exercise their independence from the agendas of those funding them. The problem with this approach is that the very existence of questionable funding sources can still raise credibility issues regarding whether the researcher has exercised academic "independence."

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236 Arnold, *supra* note 228, at 8.

237 *See* NGISC FINAL REPORT, *supra* note 3, at 4-13, 4-14.

238 Arnold, *supra* note 228, at 8.

239 *See* Associated Press, *Gambling Industry Releases Study*, LAS VEGAS SUN, Apr. 30, 1999 [hereinafter *Gambling Industry 1999 Study*].

240 *Id.*

241 *See, e.g.*, sources for tables in: *Mega-Lawsuits*, *supra* note 15, Tables A6-A9 and accompanying footnote sources.

242 *See, e.g.*, NGISC FINAL REPORT, *supra* note 3, at 7-13.

243 *Gambling Industry 1999 Study, supra* note 239.

Another option is for researchers to focus on research directly for or associated with the gambling industry. Yet, doing research on behalf of pro-gambling interests is the most problematic of all the options because, as a leader of the National Council on Problem Gambling, Joanna Franklin, once summarized, "[t]hey're not going to fund anything that's going to hurt them, or [that] has the potential to hurt them."[244]

The following conclusion was expressed by one of the leading researchers in gambling issues, Dr. Henry Lesieur of the Institute for Problem Gambling:

> There isn't one piece of research the industry has funded on the social costs of problem gambling that is academically respectable. It's all self-serving . . . It says a lot about the nature of the field that research funded by the industry is going to dominate the dialogue for the next few years. That is a sad state.[245]

The remaining alternative was to fund research via state governments and the federal government. However, even state crime statistics have been redirected by law by pro-gambling interests. The unfavorable crime statistics, which have historically plagued Atlantic City, New Jersey, and the concomitant negative public perceptions, motivated a new 1998 law that "would force the state to take fluctuations in a resort's [primarily Atlantic City's] population into account when calculating [crime statistics]."[246] While such fluctuations may need to be considered from an academic perspective, questions arose involving the propriety of state laws mandating research and statistical methodology for crime statistics.[247]

One goal of the federal legislation creating the 1999 U.S. Gambling Commission was to fund research in the area of gambling issues. Yet again, questions were raised concerning the considerable and direct influence of pro-gambling interests on state governments, as well as on the 1999 U.S. Gambling Commission.[248] Given what appear to be over-reaching efforts by pro-gambling interests to impact the academic/research community (including a strategy of "stacking" the 1999 National Commission)[249] researchers are constrained to only two realistic alternatives: either to "follow the money"[250] of the gambling industry or to accept no funds linked to special interests.

VII. CONCLUSION

Studies that propose a change in the definitions of "pathological gambler" and "problem gambler" must academically justify the rationale

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[244] *Casino Backlash, supra* note 25, at A1.

[245] *Id.*

[246] Michele Darnell, Statehouse Bur., *Crime Statistics Must Now Reflect Summer Population*, S. JERSEY PUB. CO., July 11, 1998.

[247] *Id.*

[248] *Casino Backlash, supra* note 25, at A1.

[249] *Id.* For several sources, see *supra* note 193 and accompanying text.

[250] *See, e.g.*, John W. Kindt, *Follow the Money: Gambling, Ethics, and Subpoenas*, 556 ANNALS AM. ACADEMY POL. & SOC. SCI. 85 (1998).

for such changes and show the transition between the old and the new standard.

Similarly, when for almost two decades the overwhelming majority of academics/experts have utilized the South Oaks Gambling Screen (SOGS) as the "gold standard" for delimiting whether a person can be categorized as a pathological or problem gambler,[251] any study proposing modifications to that standard must justify those modifications. Although several academics/experts might argue otherwise, the Christiansen Associates-NORC Group probably provided that justification by closely associating the questions for categorizing potential pathological and problem gamblers[252] with the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*.[253] However, the Christiansen Associates-NORC Group could have easily added/modified their questionnaire to allow for comparisons by calculating the information under the SOGS gold standard, as well as under their newer proposed standard, as one of the Group's own authors recommended back in 1997. With a base research budget of $1.25 million, there was no financial reason as to why these basic standards could not be met.

Within these constraints, there are sound arguments for recognizing the modified *DSM* standard, but implications that their proposed modified standard has already supplanted the SOGS as the gold standard are unconvincing at best because the Christiansen Associates-NORC Group can only cite mostly to unpublished papers to support this assertion.

If the national news media has raised substantial issues involving the gambling industry's attempts to influence research via the industry's financial aura and other methods, then *a fortiori* the academic community should be concerned. The academic community should distance itself from even the appearance of potential conflicts of interest with pro-gambling interests or other such interests.

First Amendment academic debate necessitates that academics be able to discuss and analyze methodologies and data without the heightened concerns created by the gambling industry's direct or indirect interference or monetary influence. As indicated by the *Chronicle of Higher Education*, the gambling industry's constant interferences with academic processes and debate should be rejected.[254]

It is appropriate that the Christiansen Associates-NORC Group finally made their clarifications in a 2003 *MDE* issue. With a $1.25 million budget, perhaps these basic clarifications should have been made in the

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[251] *See* Harvard Addictions Meta-analysis, *supra* note 103, Appendix 2 (showing that the South Oaks Gambling Screen was used in approximately two-thirds of all studies during the 1980s and 1990s).

[252] *See* Christiansen Assoc.-NORC 1999 Overview Survey, *supra* note 14, at Questions Appendix.

[253] *Compare id.* at 15-30 ("The Eclipse of the South Oaks Gambling Screen"), w*ith* DSM-IV, *supra* note 102.

[254] *Research Financed by Industry*, *supra* note 24, at A17.

original report. With more widespread input from the academic spectrum, these problem areas should have received more consideration in the past.

While several National Commissioners indicated concerns over the report by the Christiansen Associates-NORC Group, it was the gambling industry's criticism that raised the specter of intimidated academics. The concern with the alleged intimidation tactics outlined in the *Mega-Lawsuits* article should be interpreted as supporting all research, including that of the Christiansen Associates-NORC Group. While denying that the alleged intimidation had any impact, Volberg of that Group has recognized that "some [National] Commission members and others who were interested in the results made efforts, on the record and off, to influence NORC's work. One could reasonably label some of these efforts as attempts to intimidate."[255] However, when confronted with intimidation tactics by special interest groups, academic independence should be emphasized and asserted when that intimidation first appears, instead of months or years after "sleeping on those rights."

With regard to framing the methodology, there does not appear to be sufficient input, if any, from the initial researchers addressing the socio-economic costs of pathological and problem gambling. In addition, there is insufficient, if any, focus on the issues raised by Politzer, Morrow, and Leavey both in their 1981 paper[256] and their subsequently published *Johns Hopkins Report*.[257] This concern applies equally to the insufficient references to a classic 1990 work, *Gambling Addiction in Maryland*,[258] by Drs. Robert Politzer, Valerie Lorenz, and Robert Yaffee, and to the tangential cost issues raised by Professor Robert Goodman in the 1994 *U.S. Gambling Study*[259] by the University of Massachusetts. Similar omissions have involved a lack of attention to the ground-breaking and still relevant report on costs entitled *Casinos In Florida: An Analysis of the Economic and Social Impacts*, produced by a team of economists, that included Dr. Subhasis Das in the Florida Governor's Office of Planning and Budgeting.[260]

The Congressional Hearings in 1994[261] and 1995[262] certainly provided a framework of experts for beginning the costs analyses. However, the degree to which these leading-edge authorities were consulted when framing the analysis appears to be minimal to non-existent. Laudably, the Christiansen Associates-NORC Group's report acknowledges some of its

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[255] Letter from Rachel Volberg, Gemini Research, to Earl Grinols, Professor of Economics, University of Illinois (Oct. 17, 2001) (copies to Paul Rubin, David Mustard, John Kindt, Dean Gerstein, and Eugene Christiansen).

[256] Politzer et al., *supra* note 94.

[257] *See Johns Hopkins Report, supra* note 94.

[258] *See* GAMBLING ADDICTION IN MARYLAND, *supra* note 94.

[259] *See* CED REPORT, *supra* note 38.

[260] *See* FLORIDA OFFICE OF THE GOVERNOR, CASINOS IN FLORIDA: AN ANALYSIS OF THE ECONOMIC AND SOCIAL IMPACTS (1994).

[261] *Congressional Gambling Hearing 1994, supra* note 44.

[262] *National Gambling Impact & Policy Commission Act: Hearing on H.R. 497 Before the House Comm. on the Judiciary*, 104th Cong., 1st Sess. (1995).

shortcomings. Nonetheless, an analysis of the testimony before the 1999 U.S. Gambling Commission indicates that the Commission and the NORC itself should have more closely reviewed the direct and indirect influences, which could have been exerted by the gambling industry in framing the analysis.[263] As indicated in the 1994 *Columbia Journalism Review*,[264] academics new to the issues need to be alert to being misdirected,[265] as the gambling industry has been increasing its adroitness at obscuring the obvious.[266]

Attacks upon the credibility of academic sources by the chief lobbyist for the gambling industry, Frank Fahrenkopf, have been almost totally ignored by the press[267] and have, in fact, operated to confirm the credibility of those attacked by pro-gambling interests, including the NORC.[268] For example, the former executive director of the U.S. Gambling Commission, Tim Kelly, has repeatedly rebuffed Frank Fahrenkopf's attacks on academic sources.[269] In addition, one of Fahrenkopf's targeted academic organizations, for example, is now listed on the first page of the "Sources of Information and Resources on Gambling" recommended by the *Final Report* of the 1999 U.S. Gambling Commission.[270]

It may be argued that the pattern of inappropriate behavior by pro-gambling interests has prejudiced the research environment involving gambling issues and created disharmony and disagreements that should not exist. Furthermore, the critical analysis of the information disseminated by

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[263] *See supra* note 193 (accompanying text includes several sources on the gambling industry's attempts to skew the 1999 U.S. Gambling Commission's findings).

[264] COLUM. JOURNALISM REV., *supra* note 5, at 36, 37-38.

[265] *Id.*

[266] *Id.*

[267] For examples of the American Gaming Association lobbying group's attacks on the credibility and research of the National Opinion Research Center at the University of Chicago, see *supra* notes 65-66, 196-200 and accompanying text. *See, e.g.*, American Gaming Association Criticizes/Spins NORC Report to NGISC, *supra* note 65; American Gaming Association Claimed NORC Alters Findings, *supra* note 65. *See also* American Gaming Association, Press Release, Statement by CEO Frank Fahrenkopf, Jr., AGA, during the Hearings of the National Gambling Impact Study Commission, Chicago, Illinois (May 21, 1998). Although attended by many members of the national press who were covering the hearings of the National Gambling Impact Study Commission, Frank Fahrenkopf's May 21, 1998 press conference attacking the academic community (as involved in a conspiracy theory to discredit the gambling industry) was ignored by virtually all of the news media except the Nevada/Las Vegas press.

[268] *Id.*

[269] For attacks on the credibility of several academics by gambling industry lobbyist Frank Fahrenkopf, see *id.* *See also* Panel Discussion, "Betting on the Future: Taking Gaming and the Law into the 21st Century," Benjamin N. Cardozo Law School, Yeshiva University, New York, N.Y., Nov. 15-16, 1999 ("Current Issues in Casino Resort Gaming"). For example, a challenge by an editor of the *Gaming Law Review* combined with two challenges by gambling lobbyist Frank Fahrenkopf that the National Gambling Impact Study Commission found Professor John Kindt's research not "credible" were twice rebuffed by Tim Kelly, the former executive director of the National Gambling Impact Study Commission, who indicated that the Commission specifically found Kindt's research "credible" and cited to Kindt in several places in the *Final Report* of the Commission. *Id. See, e.g.*, NGISC FINAL REPORT, *supra* note 3, at III-11, V-3, V-10, V-13, V-19, VI-1.

[270] NGISC FINAL REPORT, *supra* note 3, Appendix VI, at 1 ("Sources of Information and Resources on Gambling").

pro-gambling interests has almost become a science. At the beginning of the twenty-first century, the research controversies that manifested themselves were largely centered on the potential research influence and/or interference of pro-gambling interests. These issues highlight the research problems that are likely to be raised in any discovery process of information pursuant to the litigation process.