



Spring 2003  
Volume 8 Number 2

*Stanford  
Journal  
of  
Law,  
Business  
&  
Finance*

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# 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?

John Warren Kindt\*

It is true that you may fool all the people some of the time; you can even fool some of the people all the time; but you can't fool all of the people all the time.

— Abraham Lincoln<sup>1</sup>

### Introduction

#### A. Background: A Case Study of Nebraska and Its Implications

By 1990, Abraham Lincoln's words about fooling the public were regularly being quoted as off-track betting parlors and riverboat casinos forced themselves into Illinois without the consent or a vote of the public.<sup>2</sup>

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<sup>1</sup> President Abraham Lincoln, To a caller at the White House, in *MONEY TALKS: THE 2500 GREATEST BUSINESS QUOTES FROM ARISTOTLE TO DELOREAN 156* (Robert W. Kent ed. 1985).

Economists and sociologists noted that the economic justifications for decriminalized gambling such as claims of new jobs, public revenues, and business development were the same types of arguments that Lincoln decried as being utilized to justify slavery in the 1800s,<sup>3</sup> and which could still be utilized to justify decriminalizing illegal drugs in the present era. In other words, during the 1990s the quasi-economic arguments of pro-gambling interests were without credible documentation<sup>4</sup> and were severely criticized<sup>5</sup>—even after the Washington-based lobbying group for the gambling industry financed two Arthur Andersen reports in the mid-1990s to give the gambling interests some credibility.<sup>6</sup>

By comparison, in the mid-1990s, the Nebraska legislature was approached by lobbyists for the ailing Aksarben<sup>7</sup> racetrack that wanted to save itself by transforming into a combination racetrack-casino or "racino."<sup>8</sup> Instead of allowing a casino to drain assets from the consumer economy, the legislature de facto closed the racetrack and transformed the racetrack's existing resources (combined with new financial assistance) into a high-tech office park with associated facilities/classrooms for the University of Nebraska at Omaha (UNO).

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<sup>2</sup> After the Illinois lottery was approved in the late 1970s, the voters of Illinois had no statewide votes on the continued expansion of gambling facilities within the state. However, a series of "nonbinding" referenda in various Illinois cities and counties during the 1990s made it quite evident that two-thirds of the state's voters were against legalized gambling activities and their expansion. Due to continued adverse public and voter opinion, expansion of legalized gambling activities in Illinois bypassed any binding statewide vote and was accomplished via legislation promoted by pro-gambling lobbyists. For a table of Illinois "nonbinding" votes during the 1990s, see ANITA BEDELL, ILL. CHURCH ACTION ON ALCOHOL PROBLEMS, GAMBLING RIGHT TO VOTE REFERENDUMS IN ILLINOIS AND ILLINOIS REFERENDUMS ON SPECIFIC GAMBLING PROPOSALS, tbls. (1997).

<sup>3</sup> See, e.g., ABRAHAM LINCOLN, SPEECHES AND WRITINGS 1859-1865 1, 40 (Don Fehrenbacher ed. 1989) [hereinafter LINCOLN]; see also *id.* at 132-50 (Lincoln Speech at New Haven, Conn., Mar. 6, 1860); *id.* at 31-58 (Lincoln Speech at Columbus, Ohio, Sept. 16, 1859).

<sup>4</sup> For the definitive analysis on the lack of credibility exhibited by studies by pro-gambling interests, see ROBERT GOODMAN, LEGALIZED GAMBLING AS A STRATEGY FOR ECONOMIC DEVELOPMENT (Ctr. for Econ. Dev., Univ. of Mass. at Amherst, 1994) [hereinafter CED REPORT]. For a comparison of disparities and the concomitant impeachment of studies financed by pro-gambling interests, see John W. Kindt, *The Economic Impacts Of Legalized Gambling Activities*, 43 DRAKE L. REV. 51 (1994) [hereinafter *Economic Impacts*]. For updated tables on the socio-economic costs of gambling activities, see John W. Kindt, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*, 22 MANAGERIAL & DECISION ECON. 17 (2001) [hereinafter *Mega-Lawsuits*].

<sup>5</sup> See generally sources cited *supra* note 4.

<sup>6</sup> ARTHUR ANDERSEN, ECONOMIC IMPACTS OF CASINO GAMING IN THE UNITED STATES, VOLUME 1: MACRO STUDY (Dec. 1996) (prepared for the Am. Gaming Ass'n., Lobbying Group) [hereinafter AM. GAMING ASS'N./ANDERSEN MACRO STUDY]; ARTHUR ANDERSEN, ECONOMIC IMPACTS OF CASINO GAMING IN THE UNITED STATES, VOLUME 2: MICRO STUDY (May 1997) (prepared for the Am. Gaming Ass'n., Lobbying Group) [hereinafter AM. GAMING ASS'N./ANDERSEN MICRO STUDY].

<sup>7</sup> Aksarben is "Nebraska" spelled backwards.

<sup>8</sup> Matthew Waite, *Legislature Likely to Approve Funds for UNO*, FDR, DAILY NEBRASKAN, Jan. 1997 [hereinafter Waite].

Beginning in 1997, the Nebraska legislature cleared the way for First Data Resources (FDR) "to build an office complex, which . . . [was predicted to] create 2000 new jobs over . . . five years."<sup>9</sup> This project was adjacent to a new UNO College of Information Sciences and Technology. The \$37.4 million new college facility was "called one of the most significant in the city's history by Omaha Mayor Hal Daub and NU [Nebraska University] President Dennis Smith."<sup>10</sup> Thus, instead of draining the Omaha economy via government-sanctioned casinos,<sup>11</sup> the Nebraska legislature in the short term pump-primed the consumer economy and in the long term educated the public and promoted high-tech entrepreneurship.

Thereafter, as pro-gambling interests returned to Nebraska, they were repeatedly rebuffed by the academic community, which was exemplified in one instance by 40 economists publicly rejecting new gambling proposals that would "cannibalize" the consumer economy.<sup>12</sup>

Similarly, suggestions have been made to re-criminalize gambling facilities in other states and transform the gambling facilities into educational and high-tech assets<sup>13</sup>—instead of giving the gambling industry tax breaks—like the \$40 billion federal tax break given to gambling companies<sup>14</sup> as part of the 2002 Economic Stimulus Bill.<sup>15</sup> Casinos and gambling parlors would generally be compatible with transformations into educational and high-tech resources. For example, the hotels and dining facilities could be natural dormitory facilities. Historically, facilities built for short-term events, such as various World's Fair Expositions, the 1996 Olympic Village (converted to facilities for the Georgia University system), and other public events have been transformed into educational and research facilities.<sup>16</sup>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Robert Dorr, *40 Economists Side Against More Gambling, Signers: Costs Likely Higher than Profits*, OMAHA WORLD-HERALD, Sept. 22, 1996, at 1B.

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., Garrison Wells, *Casino Foes Hear Call to Stop All Gambling*, GRAND RAPIDS PRESS (Grand Rapids, Mich.), Sept. 17, 2001, at D1.

<sup>14</sup> Tony Batt, *Tax Break for Slots OK'd*, LAS VEGAS REV.-J., Oct. 16, 2001 [hereinafter *Tax Break for Slots*].

<sup>15</sup> Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21 (2002). See generally John W. Kindt & John K. Palchak, *Legalized Gambling's Destabilization of U.S. Financial Institutions and the Banking Industry: Issues in Bankruptcy, Credit, and Social Norm Production*, 19 EMORY U. BANKR. DEV. J. 21 (2002) [hereinafter *Gambling's Destabilization of Financial Institutions*].

<sup>16</sup> See also Waite, *supra* note 8.

Given the allegations of misuse, non-accounting, and even malfeasance involving gambling revenues in Native American operations,<sup>17</sup> various U.S. Congressional personnel in the late 1990s considered potential legislation that would place Native American gambling revenues in trust for the benefit of all Native Americans, not just a few senior tribe members. This policy was to be combined with the partial use of trust monies to convert Native American gambling facilities into educational, cultural, and business facilities.<sup>18</sup>

#### B. Reasons for Re-Criminalizing U.S. Gambling: Crime, Corruption, and Poverty

As the 21st century began, U.S. Congressional support continued to increase for the proposal to transform Native American gambling facilities into educational and high-tech institutions financed largely by trust monies from all Native American gambling as that gambling was to be phased out over a period of three to five years.<sup>19</sup> The U.S. Congress could also establish federal jurisdiction over all licensed gambling activities, similar to the federal jurisdiction over the nuclear energy industry. This trend to transform Native American gambling facilities gained momentum from numerous reports. The Bureau of Indian Affairs (BIA), for example, had "certified" Native Americans such as those claiming to be Pequots (owning the largest casino in the world), but the Bureau apparently could not really substantiate that they were Native Americans.<sup>20</sup> Subsequent claims were made in 2001 of systemic and inappropriate (and perhaps even corrupted) decision-making at

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<sup>17</sup> For a historical summary of issues, see Bruce Orwall, *Gaming the System: The Federal Regulator of Indian Gambling is Also Part Advocate*, WALL ST. J., July 22, 1996, at A1 [hereinafter Orwall]. For concerns by the 1999 U.S. National Gambling Impact Study Commission, see, for example, NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT 7-9 (June 1999) [hereinafter NGISC FINAL REPORT]. "Again, the unwillingness of individual tribes, as well as that of the National Indian Gaming Association (the tribes' lobbyists) and the National Indian Gaming Commission (the federal agency that regulates tribal gambling), to provide information to this Commission, after repeated requests and assurances of confidentiality, limited our assessment. . . ." *Id.* With only one dissenting vote by Commissioner Robert W. Loesher who was unduly protecting Native American gambling interests, the 1999 U.S. National Gambling Impact Study Commission voted eight to one to subpoena information from the U.S. National Indian Gaming Commission in 1999. However, use of its subpoena power was thereafter deemed largely ineffectual by the Commission and was not pursued. *Federal Gambling Commission Wants to See Records*, GAMING MAG., Feb. 13, 1999, at 1 [hereinafter *Commission Wants Records*]; Tony Batt, *Gambling Panel Favors New Casino Moratorium*, LAS VEGAS REV.-J., Apr. 29, 1999 [hereinafter *Gambling Moratorium*].

<sup>18</sup> See generally NGISC FINAL REPORT, *supra* note 17, ch. 6.

<sup>19</sup> *Id.*

<sup>20</sup> *Casino Heretic*, WALL ST. J., June 24, 2002, at A16 [hereinafter *Casino Heretic*]; see William G. Flanagan & James Samuelson, *The New Buffalo - But Who Got the Meat?*, FORBES, Sept. 8, 1997, at 148 [hereinafter Flanagan & Samuelson]. See generally KIM I. EISLER, *REVENGE OF THE PEQUOTS* (2001).

the BIA,<sup>21</sup> resulting in the policy question: "Were senior Bureau of Indian Affairs officials acting as figureheads for powerful political and financial interests?"<sup>22</sup> In addition, the Office of the Inspector General reported in 1993 to the U.S. Department of the Interior (DOI) that 32 percent of Native American gambling operations were being conducted in violation of federal statutes/regulations.<sup>23</sup> Thereafter, the National Indian Gaming Commission (NIGC) arguably suppressed numbers that indicated in November 1996 that 84 percent of Native American gambling facilities were openly operating illegally or in violation of federal statutes/regulations.<sup>24</sup> Other reports suggested that there were more than just isolated instances of crime and corruption caused by Native American gambling activities<sup>25</sup>—with parallel scandals, such as the scandal tainting the career of U.S. Secretary of the Interior Bruce Babbitt, who was eventually exonerated.<sup>26</sup>

Furthermore, the implicit goals of the 1988 Indian Gaming Regulatory Act<sup>27</sup> (IGRA) to enhance the lives of all Native Americans were not being realized, as the large majority of Native Americans remained in grinding poverty as the 21st century began.<sup>28</sup> Accordingly, policymakers have suggested that future legislation should not disproportionately enrich isolated tribes. Instead, Native American gambling should operate for the benefit of all Native Americans, if not all of the U.S. public. This could be achieved via federal administration of a Gambling Proceeds Trust Fund financed by Native American gambling operations while they are phased out to become educational and technological operations.

<sup>21</sup> See Micah Morrison, *El Dorado at Last: The Casino Boom*, WALL ST. J., July 18, 2001, at A18 [hereinafter Morrison].

<sup>22</sup> *Id.*

<sup>23</sup> OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF INTERIOR, AUDIT REPORT: ISSUES IMPACTING IMPLEMENTATION OF THE INDIAN GAMING REGULATORY ACT (1993) [hereinafter AUDIT REPORT].

<sup>24</sup> NAT'L INDIAN GAMING COMM'N, REPORT TO THE SECRETARY OF THE INTERIOR ON COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT (Nov. 1996). A salient executive summary of the most revealing and relevant numbers was not provided. Readers of this report were compelled to add the numbers themselves to determine the wide-ranging scope of the violations. *Id.*

<sup>25</sup> See, e.g., CRIMINAL DIV., U.S. DEP'T OF JUSTICE, REPORT OF THE EXECUTIVE COMMITTEE FOR INDIAN COUNTRY LAW ENFORCEMENT IMPROVEMENTS (1997); *Chief's Battle for Seminole Nation*, NEWS-GAZETTE (Champaign, Ill.), May 11, 2002, at A3.

<sup>26</sup> See Morrison, *supra* note 21, at A18; *Babbitt Exonerated After 19-Month Probe of Wisconsin Casino Permit*, CHI. TRIB., Oct. 14, 1999, §1, at 6.

<sup>27</sup> 25 U.S.C. §§ 2701-2721 (1988).

<sup>28</sup> See, e.g., U.S. GENERAL ACCOUNTING OFFICE, INDIAN PROGRAMS: TRIBAL PRIORITY ALLOCATIONS DO NOT TARGET THE NEEDIEST TRIBES 1 (1998); Flanagan & Samuelson, *supra* note 20, at 148-51; see also WILLIAM THOMPSON, RICARDO GAZEL & DAN RICKMAN, THE ECONOMIC IMPACT OF NATIVE AMERICAN GAMING IN WISCONSIN (Wis. Pol'y Res. Inst., 1995) [hereinafter WIS. POL'Y RES. INST.]. See generally NGISC FINAL REPORT, *supra* note 17, ch. 6.

In 2000 it was reported that “[d]espite an explosion of Indian gambling revenues—from \$100 million in 1988 to \$8.26 billion a decade later [1998]—an Associated Press [AP] computer analysis of federal unemployment, poverty and public-assistance records indicates the majority of American Indians have benefited little.”<sup>29</sup> Between 1988 and 1998 “poverty and unemployment rates changed little”<sup>30</sup>, as exemplified by the Fort Mojave Indian Reservation, where despite two casinos, the Native American “unemployment rate climbed from 27.2 percent in 1991 to 74.2 percent in 1997.”<sup>31</sup> This development was attributed to the fact that “among the 130 tribes with casinos, a few near major population centers have thrived while most others make just enough to cover the bills.”<sup>32</sup> In addition, any “new jobs [created by the Indian gambling facilities] have not reduced unemployment for Indians.”<sup>33</sup> According to the National Indian Gaming Association, the lack of net new jobs for Indians was because “75 percent of jobs in tribal casinos are held by non-Indians.”<sup>34</sup> Unexpectedly, the 55 tribes with casinos before 1992 had their 1991 unemployment rate of 54 percent even increase somewhat to 54.4 percent by 1997.<sup>35</sup>

These situations were exacerbated by illusory accounting standards that resulted in some tribal members with exorbitant wealth while most Native Americans remained disenfranchised.<sup>36</sup> The tribes also claimed to have sovereign immunity from general federal statutes like those involving labor rules, sexual harassment, equal employment opportunity, and tortious acts.<sup>37</sup> As reported in the *Wall Street Journal* and as most disconcerting to Congressional leaders were the indications involving alleged organized crime activities.<sup>38</sup> The concerns among the U.S. Representatives were exemplified by Representative Chris Shays (R-Conn.) and Representative Frank Wolf (R-Va.) who highlighted in a letter to President Clinton

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<sup>29</sup> David Pace, *Casino Boom a Bust for Most Members of Indian Tribes*, NEWS-GAZETTE (Champaign, Ill.), Sept. 2, 2000, at A1 [hereinafter *Casino Bust*].

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*; see also NGISC FINAL REPORT, *supra* note 17, ch. 6. For an extensive investigative report highlighting the problems of Native American gambling activities, see Donald L. Bartlett & James B. Steele, *Look Who's Cashing In At Indian Casinos: Wheel of Misfortune*, TIME, Dec. 14, 2002, at 44 (cover story).

<sup>36</sup> See generally Flanagan & Samuelson, *supra* note 20, at 148-51; Joel Millman, *Indian Casinos Win By Partly Avoiding Costly Labor Rules*, WALL ST. J., May 7, 2002, at A1 [hereinafter *Indian Casinos Labor Rules*]; Morrison, *supra* note 21, at A18.

<sup>37</sup> See, e.g., *Indian Casinos Labor Rules*, *supra* note 36, at A1.

<sup>38</sup> Morrison, *supra* note 21, at A18.

that the "influence of organized crime on Indian gambling is alarming."<sup>39</sup> For example, as early as 1994 a reputed Gambino crime family associate convicted on drug-conspiracy, racketeering, and gambling charges "was caught on security surveillance tapes with [John A. "Junior"] Gotti and a handful of other reputed Gambinos at the Foxwoods [Indian] Casino,"<sup>40</sup> but the Indian casino arguably had no duty to report such activities to federal authorities.

As the 20th century drew to a close, former FBI agent Jim Elroy, who conducted background work for a U.S. Senate investigation, summarized for the national press the growing problems in Native American gambling operations.

There are illegal acts going on in every single one of them [Native American casinos]. The Indians are getting nothing out of it. Meaning the . . . now I'm not talking about the Indian leadership, they do fine. They get their pockets full and the mob gets their pockets full but the Indian people are getting the shaft.<sup>41</sup>

Joseph Johnson of the FBI concluded that the "[s]pectacular expansion of Indian gaming enterprises has created a natural target for organized crime figures and their henchman."<sup>42</sup> In one example, "[i]n 1998 the government announced that 16 more members of the mob had been convicted of felony offenses for trying to take over the [Ricon Indian] reservation's gambling operations."<sup>43</sup>

In another problematic scenario, in 1998 the "Salt River Pima-Maricopa Indian Community acknowledged it . . . [was] employing felons" for its gambling facilities but argued "all of them [the felons] were screened and approved by the National Indian Gaming Commission"<sup>44</sup>—the federal regulatory group that has been castigated by the national press for various improprieties.<sup>45</sup> The Arizona state gaming director charged with the oversight of the Salt River tribe's gambling

<sup>39</sup> *Id.*; see also *Oversight Hearing on the Implementation of the Indian Gambling Regulatory Act: Hearing Before the S. Comm. on Indian Affairs*, 107th Cong., (July 25, 2001) (statement of Bruce G. Ohr, Chief, Organized Crimes and Racketeering Section, U.S. Dept. of Justice) [hereinafter *Oversight 2001 Hearing on IGRA*].

<sup>40</sup> Al Guart, 'Singing' Suspect May Link Junior To Mob Gambling Racket, N.Y. POST, June 27, 1998.

<sup>41</sup> *Justice Files: Watch Your Wallet* (Discovery Channel television broadcast, Aug. 13, 2001).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*; see *Oversight 2001 Hearing on IGRA*, *supra* note 39, at 62-63.

<sup>44</sup> *Indian Poker Casino in Arizona Acknowledges Hiring Felons*, PHOENIX ASSOCIATED PRESS, June 19, 1998 [hereinafter *Felons*].

<sup>45</sup> Orwall, *supra* note 17, at A9.



complained that "putting felons on a payroll invites corruption and threatens public safety."<sup>46</sup>

### C. Making Poor People Poorer: Jesse Jackson's Designation of Legalized Gambling as "The New Chains of Slavery"<sup>47</sup>

After Illinois decriminalized casino gambling on riverboats in 1992, "a Chicago area-based coalition of religious and business leaders and college professors"<sup>48</sup> joined with the Illinois NAACP, whose "40 local chapters voted unanimously . . . to oppose expanded gambling without permission from voters."<sup>49</sup> The 1995 Illinois NAACP State Chairman, David Livingston, summarized that decriminalized "gambling . . . [was] unfair to minorities because gambling ads target them,"<sup>50</sup> and he complained that "minorities do not get the higher-paying jobs on the riverboats."<sup>51</sup>

In a 1999 Illinois speech on Dr. Martin Luther King, Jr. Day, Jesse Jackson summarized that "[t]he new chains of slavery happen to be credit cards and lottery tickets."<sup>52</sup> According to Jackson, the "key to achieving [Dr.] King's dream is 'teaching our people to go from the lottery to the markets, from [casino] gambling boats to boardrooms'."<sup>53</sup>

The gambling industry's ability to disenfranchise the best interests of African-American communities as well as "most" taxpayers was exemplified in 1997 when one Atlantic City casino indicated it would pay \$55 million of the \$330 million projected cost of a 1.8 mile tunnel and roadway to its casino.<sup>54</sup>

Today, [Lillian] Bryant's neighborhood is the last stable, middle-class, mostly black area in all of boom-or-bust Atlantic City. Bryant says she's not against new casinos, she's against uprooting good neighborhoods so outsiders can pretend they're in Shangri-La. "Steve Wynn must have something good on these people. The state is bickering about having to pay \$200 million for public education

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<sup>46</sup> *Felons*, *supra* note 44.

<sup>47</sup> Bryan Smith, 'New Chains' Shackle King's Dream, CHI. SUN-TIMES, Jan. 19, 1999, at 10 [hereinafter *Gambling's New Chains of Slavery*].

<sup>48</sup> Heidi Hildebrand, *Anti-Gambling Forces Gain Allies*, HERALD & REV. (Springfield, Ill. Bur.), May 16, 1995, at A3 [hereinafter *Anti-Gambling Allies*].

<sup>49</sup> *Id.*; see *supra* notes 1-2 and accompanying text.

<sup>50</sup> *Anti-Gambling Allies*, *supra* note 48, at A3.

<sup>51</sup> *Id.*

<sup>52</sup> *Gambling's New Chains of Slavery*, *supra* note 47, at 10.

<sup>53</sup> *Id.*

<sup>54</sup> Steve Lopez, *In the Name of Her Father*, TIME, July 14, 1997, at 4.

by an order of the Supreme Court, but they'll spend \$300 million to build a private driveway for a billionaire."<sup>55</sup>

Interestingly, the state of New Jersey was reportedly prepared to exercise "eminent domain" throughout the black neighborhood if landowners continued to resist buyout offers from the casino developers.<sup>56</sup>

Notably, one former black City Council-member Pierre Hollingsworth, who helped bring casino gambling to Atlantic City in 1976-1977,<sup>57</sup> became one of gambling's harshest critics during the 1980s and 1990s after witnessing the destructive impacts of casino gambling.<sup>58</sup> Hollingsworth indicated that according to many residents, the casinos transformed Atlantic City from "a slum by the sea" into "a slum by the sea — with casinos."<sup>59</sup>

#### D. Will the Legal Discovery of Gambling Companies' Secrets Confirm Research Issues?

During the 1996 formation of the U.S. National Gambling Impact Study Commission (1999 U.S. Gambling Commission or NGISC), the American Gaming Association (AGA) lobbied aggressively to eliminate all subpoena powers from the NGISC.<sup>60</sup> After successfully eliminating the subpoena power in the Senate version of the bill establishing the NGISC,<sup>61</sup> the bill's chief co-sponsor, U.S. Senator Paul Simon (D-Ill.), called a press conference and angrily demanded that the subpoena power be reinstated.

Critics charge[d] that the American Gaming Association—the gambling lobby headed by Nevadan and former Republican Party Chairman Frank Fahrenkopf—succeeded in killing provisions that

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *See id.*

<sup>58</sup> *See* Pierre Hollingsworth, Former Atlantic City Council-member, Peoples Conference on Gambling: Casino Gambling's Impact on Communities (Apr. 19, 1995) (giving a speech in Springfield, Ill. sponsored by Ill. State Conference of NAACP Branches, Ill. Church Action on Alcohol Problems, et alia.).

<sup>59</sup> *Id.*

<sup>60</sup> *See State Involvement Sought in Gaming Study Bill*, INT'L GAMING & WAGERING BUS., May 1996, at 22 (enumerating the maneuvers by pro-gambling interests to derail the formation and/or powers of the proposed 1999 U.S. National Gambling Impact Study Commission); *see also* David Ferrell & Matea Gold, *Casino Industry Fights an Emerging Backlash*, L.A. TIMES, Dec. 14, 1998, at A1 [hereinafter *Casino Backlash*].

<sup>61</sup> *See* S. 704, 104th Cong. (1995); *The Gambling Impact Study Commission Act: Hearing on S. 704 Before the S. Comm. on Governmental Affairs*, 104th Cong. (1995); *see also* S. 1720, 103d Cong. (1993).

would allow the commission to call witnesses, subpoena documents and study gambling's impact on other businesses.

"I can't imagine a (bill) that caters more to gambling interests," Simon said. He said the watered-down version left the commission with little to do besides go to the library and look up what's already been written.<sup>62</sup>

While the power to subpoena documents was eventually reinstated, the power to subpoena casino executives and other persons to testify was eliminated from the powers of the NGISC.<sup>63</sup>

In this context, in 1996 the former chair of the U.S. Commission on the Review of the National Policy Toward Gambling (1972-1976) Charles H. Morin complained aggressively about the attempts by the lobbyists for the gambling industry to strike the subpoena power from the new U.S. National Gambling Impact Study Commission.<sup>64</sup> According to Chairman Morin, "the conclusion [is] that the opponents of *any* power of subpoena do, in fact, have something to conceal, which again leads to the decision that it is indeed necessary."<sup>65</sup> Chairman Morin elaborated on his conclusion as follows:

[T]he major issue is whether or not the [new] Commission should have subpoena power to compel testimony and the production of documents. Obviously such a Commission is meaningless without this power, at least to the extent necessary to fulfill its stated purpose. The 1972-1976 Commission had subpoena power and, because of that, we never had to use it—in other words, when you have the power you will get cooperation.<sup>66</sup>

In his personal capacity, Chairman Morin also provided some expert conclusions important to the historical record.

With a proper mixture of pride and modesty, I would refer you to the Report of the 1972-1976 Commission, with specific attention to our recommendations concerning casinos and (that most cynical of

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<sup>62</sup> Kenneth Pins, *Federal Study of Gambling's Effects Shelved*, DES MOINES REG., June 19, 1996; Press Release, U.S. Senator Paul Simon, Simon Says Don't Stack The Deck On Gambling Commission (Oct. 10, 1996) (on file with the author).

<sup>63</sup> Pub. L. No. 104-169, § 5(b), 110 Stat. 1482 (1996).

<sup>64</sup> Letter from Charles H. Morin, former Chair, U.S. Commission on the Review of the National Policy Toward Gambling 1972-76, to U.S. Representative Frank R. Wolf, co-sponsor of HR-497, the National Gambling Impact Study Commission Act (May 7, 1996) (on file with the author) (representing only "personal opinions").

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

retrogressive taxation) state lotteries. As I have observed, if anyone tried to sell corporate securities with the failure to disclose material facts so characteristic of state lottery promotion, he would be sent to prison. . . .

And so, perhaps, is casino gambling [a national problem]. The unavoidable dangers to the public interest in installing casino gambling in metropolitan areas are too obvious to ignore, and the 1972-1976 Commission recommended that this be permitted "only in rare instances and extraordinary circumstances." Another in-depth study is certainly now called for, and I believe the results will be shocking.<sup>67</sup>

Subsequently, the 1996-1999 U.S. Gambling Commission was created but without the power to subpoena witnesses. The Final Report of the Commission was issued in 1999.<sup>68</sup>

Other unsettling actions by Native American groups were highlighted in the 1995 Wisconsin Policy Research Institute report on Native American casinos in Wisconsin that complained in its introduction that one tribe would not participate unless it "could control the study and know the results in advance."<sup>69</sup> Perhaps significantly, the only threatened subpoena by the 1999 U.S. Gambling Commission was against the U.S. National Indian Gaming Commission (NIGC) to produce an agency audit, as well as background information on Native American gambling interests. However, the Commission determined that a subpoena would be ineffectual and it was not issued—although the *Wall Street Journal* had revealed improprieties at the NIGC dating back to 1996.<sup>70</sup>

The concerns among pro-gambling interests involving subpoenas and the legal discovery of information was perhaps reflective of the net effects and consequences exemplified by the civil suit by Paula Jones against William J. Clinton.<sup>71</sup> For example, the legal discovery process of information in the Paula Jones 1994 sexual harassment suit arguably transformed a relatively insignificant civil suit into the 1998 impeachment of President William J. Clinton.<sup>72</sup> Analysts might

<sup>67</sup> *Id.*

<sup>68</sup> NGISC FINAL Report, *supra* note 17; see NAT'L GAMBLING IMPACT STUDY COMM'N, EXECUTIVE SUMMARY (June 1999) [hereinafter NGISC EXECUTIVE SUMMARY].

<sup>69</sup> WIS. POL'Y RES. INST., *supra* note 28, at introduction (emphasis added).

<sup>70</sup> *Gambling Moratorium*, *supra* note 17. The 1999 U.S. National Gambling Impact Study Commission in an eight to one 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. *Commission Wants Records*, *supra* note 17, at 1; see also Orwall, *supra* note 17, at A9.

<sup>71</sup> Stuart Taylor, Jr., *Her Case Against Clinton*, AM. LAW., Nov. 1996, at 56.

<sup>72</sup> *Id.*

speculate whether the legal discovery process in a relatively insignificant civil suit could reveal information strategically destructive to the entire U.S. gambling industry.<sup>73</sup>

## I. Defining the Problems

### A. 21st Century Governmental Policymakers: Forgetting or Ignoring the Economic History of Gambling

The rapid decriminalization of U.S. gambling during the 1990s was not driven by economists, but rather by over \$200 million in lobbying, campaign contributions, and public relations from pro-gambling interests.<sup>74</sup> Many economists and members of the academic community cautioned against the governmental trend toward decriminalization.<sup>75</sup>

Increasingly, taxpayers and businesses began to realize that, as Professor Jack Van Der Slik summarized in 1990 for much of the academic community, state-sponsored gambling "produces no product, no new wealth, and so it makes no genuine contribution to economic development."<sup>76</sup> Business-economic history supports this proposition. To paraphrase Georg Hegel's common quote, "those who forget the lessons of economic history are condemned to relive them."<sup>77</sup>

Despite these economic caveats, during the 1980s and 1990s the U.S. military and state and local governments appeared to forget the reasons why gambling in the United States was criminalized for almost 100 years. Implying that the state constitutional safeguards against gambling were based only on some type of moralist movement, pro-gambling interests denied the historical obvious.<sup>78</sup> The pro-gambling interests conveniently compared the criminalization of gambling to the prohibition of alcohol during the 1920s. However, prohibition lasted only a few short years, while the criminalization of gambling lasted for almost a century. The criminalization of gambling activities remained practical, workable, and necessary. If this were not the case, gambling would have been legalized throughout the United States during the 1930s, paralleling the legalization of alcohol. The fact that gambling activities remained criminalized for generations stands as testimony to the

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<sup>73</sup> See generally *id.*

<sup>74</sup> See, e.g., John W. Kindt, *Follow the Money: Gambling, Ethics, and Subpoenas*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 85 (1998) [hereinafter *Follow the Money*]; April Lynch, *All Bets Are Off*, MOTHER JONES, July/Aug. 1997, at 38-39 [hereinafter *Bets*].

<sup>75</sup> See generally *National Gambling Impact & Policy Comm'n Act: Hearing on H.R. 497 Before the House Comm. on the Judiciary*, 104th Cong. (1995) [hereinafter *Congressional Gambling Hearing 1995*]; *The National Impact of Casino Gambling Proliferation: Hearing Before the House Comm. on Small Business*, 103d Cong. (1994) [hereinafter *Congressional Gambling Hearing 1994*].

<sup>76</sup> Jack Van Der Slik, *Legalized gambling: predatory policy*, ILL. ISSUES, Mar. 1990, at 30.

<sup>77</sup> JOHN BARTLETT, *FAMILIAR QUOTATIONS* 507 (14th ed. 1968).

<sup>78</sup> See, e.g., *Casino Backlash*, *supra* note 60, at A1.

economic history of legalized gambling activities, creating new addicted gamblers, new bankruptcies, and new crime and corruption.<sup>79</sup> In other words, the socio-economic costs of decriminalized organized gambling outweighed the benefits.<sup>80</sup>

Furthermore, if legalized gambling actually constituted a genuine strategy for economic development, then policymakers should ask why gambling was not decriminalized during the most desperate economic timeframe in U.S. history—the Great Depression of the 1930s. Following the logic of pro-gambling interests, gambling should have been decriminalized during the time-frame in which alcohol was decriminalized. Gambling was not decriminalized because economic history clearly demonstrated that legalized gambling activities are inherently recessionary and can catalyze economic and social downturns.

As Nobel-Prize economist Paul Samuelson<sup>81</sup> has reiterated for many years, it is just basic textbook economics that:

[Gambling] involves simply *sterile transfers of money or goods* between individuals, *creating no new money or goods*. Although it creates no output, gambling does nevertheless absorb time and resources. When pursued beyond the limits of recreation, where the main purpose after all is to “kill” time, *gambling subtracts from the national income*.<sup>82</sup>

Corollary principles to Professor Samuelson’s observations are enumerated in the following analysis.

## **B. Governmental Policy and the Economic Principles of Decriminalized Organized Gambling: Re-Educating the U.S. Public**

### **1. Strategic Economic Principles Governing Gambling Activities**

Governmental policymakers and the public should be aware of the strategic economic principles governing gambling activities. These principles apply to both illegal and legal gambling activities—although legalized gambling activities are of greater impact because they are more widespread due to the governmental “acceptability factor” that accompanies their exercise.

<sup>79</sup> See *infra* notes 83-90 and accompanying text.

<sup>80</sup> See *infra* notes 86-87 and accompanying text.

<sup>81</sup> Paul Samuelson won the Nobel Prize in Economic Science in 1970.

<sup>82</sup> PAUL A. SAMUELSON, *ECONOMICS* 425 (10th ed. 1976) (emphasis added) [hereinafter SAMUELSON].

- ◆ Gambling is inherently recessionary<sup>83</sup>
- ◆ Gambling catalyzes economic downturn<sup>84</sup>
- ◆ When "consumer dollars" become lost "gambling dollars" there is a negative economic multiplier impact<sup>85</sup>
- ◆ Gambling's socio-economic costs outweigh the benefits by 3:1<sup>86</sup>
- ◆ Government-legalized gambling is a net drain on the economy.<sup>87</sup>
- ◆ Taxpayers/society necessarily must subsidize all gambling<sup>88</sup>
- ◆ Recriminalizing gambling pump-primed the consumer economy<sup>89</sup>
- ◆ Government-legalized gambling intensifies all of the economic consequences of gambling activities<sup>90</sup>

<sup>83</sup> For analyses of this principle, see *Congressional Gambling Hearing 1995*, *supra* note 75 (providing economic analyses); *Congressional Gambling Hearing 1994*, *supra* note 75 (providing economic analyses). For a further discussion see FLA. OFF. GOV., CASINOS IN FLORIDA: AN ANALYSIS OF THE ECONOMIC AND SOCIAL IMPACTS (1994) [hereinafter FLA. GOV. REPORT]; 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) [hereinafter *Strategic Economic Base*]. See also *Gambling's Destabilization of Financial Institutions*, *supra* note 15.

<sup>84</sup> See sources cited *supra* note 83.

<sup>85</sup> See sources cited *supra* note 83. For early analyses of the potential negative multiplier for gambling facilities, see Paul Teske & Bela Sur, *Winners and Losers: Politics, Casino Gambling, and Development in Atlantic City*, 10 POL'Y STUD. REV. 130 (1991) [hereinafter *Teske & Sur*]; CED REPORT, *supra* note 4, at 49-53. See also ROBERT GOODMAN, *THE LUCK BUSINESS* (1995) [hereinafter *LUCK BUSINESS*].

<sup>86</sup> For the authoritative 2001 cost/benefit ratios of "at least" 2:1, see Earl L. Grinols & David B. Mustard, *Business Profitability Versus Social Profitability: Evaluating Industries with Externalities - The Case of Casinos*, 22 MANAGERIAL & DECISION ECON. 143 (2001) [hereinafter *The Case of Casinos*]; Earl L. Grinols & David B. Mustard, *Management and Information Issues for Industries with Externalities: The Case of Casino Gambling*, 22 MANAGERIAL & DECISION ECON. 1 (2001) [hereinafter *The Case of Casino Gambling*]. See also CED REPORT, *supra* note 4, at 64 (costs/benefit ratio = 2:1). For cost/benefit ratios of 3:1, see *Congressional Gambling Hearing 1994*, *supra* note 75, at 77, 79-81 (Statement of John W. Kindt); 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, 23 (1996) [hereinafter *Business-Economic Impacts of Gambling*]. For cost/benefit ratios greater than 3:1, see, for example, FLA. GOV. REPORT, *supra* note 83, at executive summary. See also John W. Kindt, *Increased Crime and Legalized Gambling Operations: The Impact on the Socio-Economics of Business and Government*, 30 CRIM. L. BULL. 538 (1994) [hereinafter *Increased Crime and Legalized Gambling*].

<sup>87</sup> See *supra* notes 83-86 and accompanying text. See generally John W. Kindt, *U.S. and International Concerns over the Socio-Economic Costs of Legalized Gambling: Greater than the Illegal Drug Problem?*, Statement to the National Gambling Impact Study Commission (May 21, 1998) [hereinafter *U.S. and International Costs*].

<sup>88</sup> For an analysis of informational sources and data, see John W. Kindt, *Legalized Gambling Activities as Subsidized by Taxpayers*, 48 ARK. L. REV. 889 (1995) [hereinafter *Gambling Subsidized*].

<sup>89</sup> For analyses of informational sources and data, see *Strategic Economic Base*, *supra* note 83, 567 et seq.; *Increased Crime and Legalized Gambling*, *supra* note 86, at 538 et seq. See also John W. Kindt, *Legalized Gambling Activities: The Issues Involving Market Saturation*, 15 N. ILL. U. L. REV. 271 (1995) [hereinafter *Gambling Saturation*]; John W. Kindt, *The Negative Impacts of Legalized Gambling on Businesses*, 4 U. MIAMI BUS. L.J. 93 (1994) [hereinafter *Impacts On Businesses*].

In depth discussions of each of these principles may be found in the source materials as referenced. As the 21st century continues, the economic history of U.S. gambling activities will impress these principles upon a re-educated public.

## 2. Basic Economic Principles Governing Gambling Activities

The basic problems with gambling activities are that they are nonproductive and actually subtract from other productive economic sectors. Gambling also creates opportunity costs plus social costs that overwhelm any illusory benefits that accompany the zero-sum redistribution of wealth from patrons to the owners/sponsors of the gambling.

- ◆ Gambling creates no product<sup>91</sup>
- ◆ Faster methods of gambling cannibalize slower methods<sup>92</sup>
- ◆ Gambling transfers money from the patrons to the organized owners/sponsors of the gambling<sup>93</sup>
- ◆ Organized owners/sponsors of gambling design all gambling along zero-sum guidelines to leave the owners with the sum and the patrons with zero<sup>94</sup>
- ◆ Organized gambling must expand to survive via continual increases in: (1) geographic scope, (2) new varieties, (3) faster wagering methods<sup>95</sup>
- ◆ Ad hoc gambling between individuals transfers wealth by creating an artificial risk, but its socio-economic impacts are minor when compared with organized gambling sponsored by governmental entities<sup>96</sup>

Further analyses discussing these principles may be found in the sources specifically cited herein.

## 3. Socio-Economic Principles Dominating the Governmental Interface with Gambling Interests

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<sup>90</sup> For analyses of informational sources and data, see *Economic Impacts*, *supra* note 4, at 51 et seq.; *Strategic Economic Base*, *supra* note 83, at 567 et seq.

<sup>91</sup> See, e.g., SAMUELSON, *supra* note 82, at 425.

<sup>92</sup> For analyses of informational sources and data, see, for example, *Gambling Saturation*, *supra* note 89. See also 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) [hereinafter *Destabilization of Economies*].

<sup>93</sup> For analyses of informational sources and data, see, for example, SAMUELSON, *supra* note 82, at 425; *Gambling Subsidized*, *supra* note 88.

<sup>94</sup> For analyses of informational sources and data, see, for example, *Congressional Gambling Hearing 1995*, *supra* note 75 (statement of William Jahoda); *Gambling Saturation*, *supra* note 89.

<sup>95</sup> For analyses of informational sources and data, see, for example, *Gambling Saturation*, *supra* note 89. See also *Destabilization of Economies*, *supra* note 92.

<sup>96</sup> For analyses of informational sources and data, see, for example, *Congressional Gambling Hearing 1995*, *supra* note 75; *Congressional Gambling Hearing 1994*, *supra* note 75; *Economic Impacts*, *supra* note 4.



It was difficult to find any reasonable excuse for U.S. governmental units to decriminalize gambling activities during the last two decades of the 20th century. The illusory benefits touted by pro-gambling interests were simply a reshuffling of money and resources with the owners/sponsors of the gambling receiving inordinate amounts of the reshuffled wealth. Some of the socio-economic principles dominating the governmental interface with gambling interests follow.

- ◆ Government-authorized gambling cannibalizes the non-gambling/consumer economy and its business<sup>97</sup>
- ◆ When governments authorize, sponsor, and promote organized gambling, a classic "boom and bust" economic cycle is initiated<sup>98</sup>
- ◆ Unless severely limited in scope, government-authorized gambling activities will always precipitate a "bust" in a classic "boom and bust" economic cycle<sup>99</sup>
- ◆ Government-sponsored gambling will collapse unless it continues to expand both in: (1) acceptability via the legalization of various new forms of gambling and (2) accessibility via placing the gambling in maximum contact with large population bases<sup>100</sup>
- ◆ As government-authorized gambling expands market saturation will be approached, and the gambling will become increasingly recessionary<sup>101</sup>
- ◆ Government and private sponsors of organized gambling must lobby to remove prohibitions on the scope and forms of gambling or pre-existing gambling will stagnate and eventually collapse<sup>102</sup>
- ◆ Historically, gambling's expansionary needs have ultimately corrupted governments<sup>103</sup>
- ◆ Public policy must be predicated on a non-gambling economy, because the only other options with government-authorized gambling are

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<sup>97</sup>See *Business-Economic Impacts of Gambling*, *supra* note 86; *Gambling Saturation*, *supra* note 89; *Impacts on Businesses*, *supra* note 89; sources cited *supra* note 96.

<sup>98</sup>For analyses of informational sources and data, see *Follow the Money*, *supra* note 74, at 85; *Strategic Economic Base*, *supra* note 83. See also *Gambling's Destabilization of Financial Institutions*, *supra* note 15.

<sup>99</sup>See sources cited *supra* note 98.

<sup>100</sup>For analyses of informational sources and data, see, for example, *Gambling Saturation*, *supra* note 89. See also *Gambling's Destabilization of Financial Institutions*, *supra* note 15.

<sup>101</sup>See sources cited *supra* note 100.

<sup>102</sup>For analyses of informational sources and data, see, for example, *Follow the Money*, *supra* note 74. See also John W. Kindt, *The Failure to Regulate the Gambling Industry Effectively: Incentives for Perpetual Non-Compliance*, 27 S. ILL. U. L. J. 219 (2003) [hereinafter *Gambling Industry Perpetual Non-Compliance*]; *Destabilization of Economies*, *supra* note 92; *Gambling's Destabilization of Financial Institutions*, *supra* note 15.

<sup>103</sup>See sources cited *supra* note 102.

matters of degree—from a slow to a fast gambling economy culminating in an economic downturn and eventual bust<sup>104</sup>

- ◆ Saturation gambling occurs when all feeder markets have achieved maximized acceptability and accessibility and gambling cannot expand in geographic scope, new varieties, or faster wagering methods<sup>105</sup>
- ◆ From a political science perspective, government-authorized gambling must be re-criminalized before saturation gambling occurs via maximized acceptability and accessibility<sup>106</sup>
- ◆ Once government-authorized saturation gambling occurs, the saturated economy will experience a dramatic downturn<sup>107</sup>
- ◆ If government-authorized saturation gambling occurs in an industrialized country, particularly the United States, the economic downturn will domino into the economies of the world<sup>108</sup>

To illustrate how these principles interrelate, it is beneficial for policymakers to visualize the gambling industry's own "feeder markets" around a gambling facility.<sup>109</sup>

### C. Illustrating the Socio-Economic Impacts of Decriminalized Gambling: Why Do Gambling Interests Label Locales As "Feeder Markets"?

To conceptualize the socio-economic impacts of decriminalized gambling, it is beneficial to illustrate or visualize the gambling industry's identified "feeder markets"<sup>110</sup> for a particular gambling facility, such as a casino. Gambling industry analysts delimit the "population markets" upon which the gambling facility "feeds"—hence the term "feeder markets." For example, the 35-mile radius around a casino is typically the "primary feeder market," or local market, commonly providing 80 percent (84 percent in Illinois)<sup>111</sup> of the consumer dollars transforming

<sup>104</sup> See *supra* note 102. See generally *Congressional Gambling Hearing 1995*, *supra* note 75; *Congressional Gambling Hearing 1994*, *supra* note 75.

<sup>105</sup> For analyses of informational sources and data, see generally *Gambling Saturation*, *supra* note 89.

<sup>106</sup> *Id.*; *Gambling Industry Perpetual Non-Compliance*, *supra* note 102; *Strategic Economic Base*, *supra* note 83, at conclusion.

<sup>107</sup> For analyses of informational sources and data, see for example, *supra* note 106; *U.S. and International Costs*, *supra* note 87.

<sup>108</sup> See sources cited *supra* note 107. See also 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 *TEMP. INT'L & COMP. L.J.* 243 (2002) [hereinafter *Gambling Destabilizing Economies*]; *Gambling's Destabilization of Financial Institutions*, *supra* note 15.

<sup>109</sup> See *infra* note 110.

<sup>110</sup> See, e.g., HARRAH'S ENTERTAINMENT, INC., HARRAH'S SURVEY OF CASINO ENTERTAINMENT 20-21 (1996) [hereinafter HARRAH'S ENTERTAINMENT].

<sup>111</sup> WILLIAM N. THOMPSON & RICARDO C. GAZEL, *THE MONETARY IMPACTS OF RIVERBOAT CASINO GAMBLING IN ILLINOIS* (June 11, 1996) [hereinafter THOMPSON AND GAZEL].

into gambling dollars. This 35-mile radius usually equates roughly to the county in which the casino is located. This is the proper scope for analyzing the economic impacts of the casino as well as any socio-economic impacts such as increased addicted gamblers, business and personal bankruptcies, and crime.<sup>112</sup>

The secondary "feeder market" is typically a 100-mile radius around the casino and can include a quasi-tourist market—although a gambling tourist should not be defined as a pre-existing tourist, but a new tourist from out-of-state who would not otherwise cross the state line if not for the gambling facility.<sup>113</sup> Generally, the new tourist trade must increase 50 percent for the host locale to break even.<sup>114</sup> Otherwise, the gambling facility will be "cannibalizing" the consumer economy within the 35-mile radius. Unfortunately for state governments and the taxpayers, practically no gambling facilities meet the 50 percent breakeven point. For example, on average in Illinois, 84 percent of the consumers entering the Illinois casinos were from the 35-mile radius or were Illinois residents.<sup>115</sup> Las Vegas was the lone exception with 80 to 90 percent of its gambling patrons from out-of-state.

In a summary of a frequent gambling industry tactic, Commissioner Richard Leone of the National Gambling Impact Study Commission complained that if the gambling industry can "keep the focus of the camera tight enough, [it] can show gains [from gambling]."<sup>116</sup> However, he indicated that the view would "change as the camera zoomed out"<sup>117</sup> and the socio-economic negatives would become apparent. Accordingly, the primary focus for both the benefits and socio-economic costs of a casino should not be the couple of miles around the casino, but rather the 35-mile "feeder market," and secondarily the concomitant "statewide" costs and benefits.

However, the most appropriate perspective is that of the nation as a total economic base. From this strategic perspective it becomes apparent that the multiple feeder markets are only transferring wealth from the pre-existing consumer economy into the gambling establishments. These gambling venues reinvest in more gambling feeder markets until the economy becomes saturated with gambling, and the faster forms of gambling then begin to cannibalize the slower forms of gambling

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<sup>112</sup> See, e.g., *Economic Impacts*, supra note 4, at 87-95, Tables 1-3; *Increased Crime and Legalized Gambling*, supra note 86; *U.S. and International Costs*, supra note 87.

<sup>113</sup> See generally *Gambling Saturation*, supra note 89.

<sup>114</sup> See, e.g., Prof. William Thompson, University of Nevada at Las Vegas, National Conf. on Problem Gambling, Crime and Gaming Enforcement, Chair, Panel Discussion at Illinois State University, Bloomington-Normal, Ill. (Apr. 3, 1996).

<sup>115</sup> THOMPSON AND GAZEL, supra note 111.

<sup>116</sup> *Gambling on the Future*, THE ECONOMIST, June 26, 1999, at 27-28.

<sup>117</sup> *Id.*

- until the artificial gambling boom becomes an economic bust - paralleling textbook economic boom and bust cycles.

## II. Clarification of Goals

### A. Utilize the "Best Evidence" for Strategic Analyses Involving Gambling Issues

The "best evidence rule" compels legal policymakers to identify the most authoritative, current, and relevant information related to the issues at bar.<sup>118</sup> In the context of gambling issues, the best evidence rule requires legal analysts to scrutinize impeccable sources of information, particularly sources of information under the direct or indirect financial aura of pro-gambling interests. Accordingly, in the 1990s those groups and organizations identified in national press reports<sup>119</sup> and other arenas as potentially necessitating scrutiny of their informational sources included, *inter alia*:

- ◆ The American Gaming Association (AGA), Washington-based lobbying group<sup>120</sup>
- ◆ The National Center for Responsible Gaming (NCRG),<sup>121</sup> started by the AGA
- ◆ The National Council on Problem Gambling (NCPG)<sup>122</sup>
- ◆ The *Journal of Gambling Studies* (since 1996)<sup>123</sup>

<sup>118</sup> For a classic example of informational and analytical failure, see Romesh Ratnesar & Michael Weisskopf, *How the FBI Blew the Case*, TIME, June 3, 2002, at 24.

<sup>119</sup> See, e.g., Stephen J. Simurda, *When Gambling Comes To Town: How To Cover a High-Stakes Story*, COLUM. J. REV., Jan./Feb. 1994, at 36-38 [hereinafter COLUM. J. REV.]; Loretta Tofani, *Gambling Industry Seeks a Winning Image*, PHILA. INQUIRER, July 6, 1998, at A1 [hereinafter *Gambling Seeks Image*]; 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, A18 [hereinafter *Research Financed by Industry*]. Several articles in the L.A. Times ran each day beginning the week of December 13, 1998, see for example, Matea Gold, *Treatment Options Scarce for Gamblers*, L.A. TIMES, Dec. 15, 1998, at A1 [hereinafter *Treatment Options*]; *Casino Backlash*, supra note 60, at A1. See also *Bets*, supra note 74, at 38-39; April Lynch, *Heavy Betting*, MOTHER JONES, July/Aug. 1997, at 40; Brett Pulley, *From Gambling's Regulators to Casinos' Men*, N.Y. TIMES, Oct. 28, 1998, at A1 [hereinafter *Casinos' Men*]. See generally David Ferrell, *Indians Have Found a Bonanza in the Casino Business*, L.A. TIMES, Dec. 14, 1998, at A26; David Ferrell, *Living by Casinos, Losing by Casinos*, L.A. TIMES, Dec. 14, 1998, at A26; Matea Gold, *New Gamblers Find Old Troubles*, L.A. TIMES, Dec. 13, 1998, at A26; Matea Gold & David Ferrell, *Going for Broke*, L.A. TIMES, Dec. 13, 1999, at A1.

<sup>120</sup> See, e.g., *Research Financed by Industry*, supra note 119, at A17; *Casino Backlash*, supra note 60, at A1; *Gambling Seeks Image*, supra note 119, at A1.

<sup>121</sup> See sources cited supra note 120. NAT'L CTR RESPONSIBLE GAMING, ANNUAL REPORT 2001, at 3-4 [hereinafter NCRG 2001 ANNUAL REPORT].

<sup>122</sup> See, e.g., *Treatment Options*, supra note 119, at A1; see also *Casino Backlash*, supra note 60, at A1.

- ◆ The Gaming Law Review<sup>124</sup> (a misleading title, as it has no university sponsorship)
- ◆ The University of Nevada Boyd Law School and its publications<sup>125</sup>
- ◆ Organizations and trade associations associated with the gambling industry<sup>126</sup>

While academics can and should interface with industry representatives, concerns have been raised about the professional distance necessary when analyzing gambling issues. For example, conferences and informational sources might be coordinated and themed by groups directly or indirectly linked to substantial gambling industry resources. On December 8-10, 2002, three organizations sponsored a conference whose subtitle admitted that "*gambling and other behavioral addictions* are changing the concept and treatment of alcohol and substance abuse disorders"<sup>127</sup> and whose theme stated that "[t]raditionally, substance use disorders have provided the model to understand non-chemical addictions such as pathological gambling . . ." <sup>128</sup> These statements were noteworthy because for years pro-gambling interests resisted categorizing pathological gambling as an "addiction." However, advertisements for the conference urging press participation opined that "[n]ew research is encouraging the scientific community to reconsider the nature of addiction."<sup>129</sup> Furthermore, the title of the conference per se was perhaps revealing: "Rethinking Addiction."<sup>130</sup>

Held in Las Vegas at the Mirage Hotel-Casino, whose CEO Terrence Lanni was a pro-gambling Commissioner on the 1999 U.S. Gambling Commission,<sup>131</sup> the "Rethinking Addiction" conference had the following sponsors: (1) the National Council on Problem Gambling, which received substantial financial resources from

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<sup>123</sup> See sources cited *supra* note 122; see also informational sources and data cited in *Mega-Lawsuits*, *supra* note 4, at 31-32; 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, (Nov. 15-16, 1999) [hereinafter *Credibility Concerns*]. See generally William R. Eadington, *Measuring Costs From Permitted Gaming: Concepts And Categories In Evaluating Gambling's Consequences*, J. GAMBLING STUDIES (forthcoming).

<sup>124</sup> See sources cited *supra* note 123.

<sup>125</sup> John L. Smith, *Professor Sees Gamers and Hookers and Lawyers, Oh My*, LAS VEGAS REV.-J., Nov. 2, 1997; *Illinois Prof. Takes Swing at UNLV's Law-School Bid*, SAN DIEGO UNION-TRIB., May 9, 1999.

<sup>126</sup> See *supra* notes 119-21, 125 and accompanying text; see also *Casinos' Men*, *supra* note 119.

<sup>127</sup> See, e.g., NAT'L CTR. RESPONSIBLE GAMING & NAT'L COUNCIL PROBLEM GAMBLING, *RETHINKING ADDICTION*, (Dec. 8-10, 2002) (emphasis added).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> See, e.g., NGISC FINAL REPORT, *supra* note 17, at app. I (statement of Commissioner J. Terrence Lanni); see also *Casinos' Men*, *supra* note 119.

the gambling industry<sup>132</sup> and whose director Keith Whyte previously represented the American Gaming Association, a lobbying group;<sup>133</sup> (2) the National Center for Responsible Gaming, initiated by the AGA and almost exclusively funded by a multimillion-dollar-budget from pro-gambling interests;<sup>134</sup> and (3) the Institute for Research on Pathological Gambling and Related Disorders, substantially funded via the NCRG,<sup>135</sup> but located at the Harvard Division on Addictions.

Academic concerns about the conference "Rethinking Addiction" focused on the conflict between the conference's well-funded theme and the prevailing academic trends. These concerns had been raised during the 1990s. With regard to the NCRG's research, one criticism was that it is pre-directed: "'They have an agenda,' says Valerie Lorenz, executive director of the Compulsive Gambling Center Inc. in Baltimore. If the industry can say something is neurologically wrong with a problem gambler, 'then it's not the casinos' responsibility', she says."<sup>136</sup> Joanna Franklin of the National Council on Problem Gambling summarized the research concerns that pro-gambling interests were "not going to fund anything that's going to hurt them, or that has the potential to hurt them."<sup>137</sup>

By 2002, the independent groups providing valid sources of information included, inter alia:

- ◆ The Institute for Problem Gambling in Pawtucket, Rhode Island, chaired by Professor Henry Lesieur<sup>138</sup>
- ◆ The U.S. Gambling Institute, centered at the University of Massachusetts and chaired by Professor Robert Goodman<sup>139</sup>

<sup>132</sup> See *Casino Backlash*, *supra* note 60, at A1; *Treatment Options*, *supra* note 119, at A1.

<sup>133</sup> See, e.g., Keith S. Whyte, *Industry Takes Proactive Steps to Address Problem Gambling*, NAT'L COUNCIL PROB. GAMBLING NEWSLETTER, (Nat'l Council Prob. Gambling, Washington D.C.) Summer 1998, at 4 (defending the gambling industry and representing the "American Gaming Association," a lobbying group); see also, e.g., Editorial Board, *GAMING L. REV.*, vols. 1-2 (listing Keith Whyte's identifier as "American Gaming Association," a lobbying group).

<sup>134</sup> NCRG 2001 ANNUAL REPORT, *supra* note 121, at 4-5.

<sup>135</sup> *Id.* at 2, 6-8.

<sup>136</sup> Virginia Young, *Gambling Addiction: A No-Win Wager: Casinos Fund Problem Gambling Research: Critics Worry About Their Influence*, ST. LOUIS POST-DISPATCH, Feb. 10, 2000, at A9-A10; see *Critics Question Casinos' Commitment To Finding Cause of Gambling Addiction*, ST. LOUIS POST-DISPATCH, Feb. 10, 2000, at A1.

<sup>137</sup> *Casino Backlash*, *supra* note 60, at A1.

<sup>138</sup> See, e.g., Henry R. Lesieur, *Pathological Gambling, Work, and Employee Assistance*, 1 J. EMPLOYEE ASSISTANCE RES. 32 (1992); 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; Henry R. Lesieur & Kenneth Puig, *Insurance Problems and Pathological Gambling*, 3 J. GAMBLING BEHAV. 123 (1987); Henry R. Lesieur & Richard J. Rosenthal, *Pathological Gambling: A Review of the Literature*, 7 J. GAMBLING STUD. 5 (1991) (prepared for the American Psychiatric Association Task Force on DSM-IV, Committee on Orders of Impulse Control Not Elsewhere Classified).

- ◆ The Research Initiative on Gambling at the University of Illinois, coordinated by Professor Earl Grinols<sup>140</sup>
- ◆ The Compulsive Gambling Center in Baltimore, Maryland, directed by Valerie Lorenz, Ph.D.<sup>141</sup>
- ◆ The Final Report<sup>142</sup> and the Executive Summary<sup>143</sup> of the 1999 National Gambling Impact Study Commission, directed by Executive Director Tim Kelly, Ph.D., who was subsequently located at George Mason University in Arlington, Virginia and Fuller College in Pasadena, California

## B. Reports and Governmental Decision-making: Eliminate Methodologies Utilized to Justify Decriminalizing Gambling

One flaw of gambling studies was that they often did not match the proper methodology to the problem. Studies in the economic, social, and accounting/finance areas might follow accepted standards within their respective disciplines, but the overall issues they were trying to address were interdisciplinary in scope. Furthermore, when making decisions with "strategic" ramifications involving gambling issues, government policymakers should have been utilizing the Myres McDougal/Harold Lasswell methodology<sup>144</sup> or even a less well-accepted strategic methodology. Instead, policymakers would often utilize limited or narrow (or even nonexistent) studies to justify federal, state, and local government decision-making regarding gambling issues,<sup>145</sup> such as the subsequently discredited Arthur Andersen studies funded by pro-gambling interests during the mid-1990s.<sup>146</sup> These faulty decision-making processes resulted in the elimination of the prohibitions against gambling contained in the constitutions of two-thirds of the states throughout most of the 20th century.

Recognizing some of these analytical problems, the U.S. Congress enacted the National Gambling Impact Study Commission<sup>147</sup> (1999 U.S. Gambling Commission, or NGISC) that produced a generally well-done *Final Report*<sup>148</sup> and a

<sup>139</sup> See, e.g., CED REPORT, *supra* note 4; LUCK BUSINESS, *supra* note 85.

<sup>140</sup> See, e.g., *The Case of Casinos*, *supra* note 86; *The Case of Casino Gambling*, *supra* note 86; see also NGISC FINAL REPORT, *supra* note 17, app. VI, at 1.

<sup>141</sup> See, e.g., *Congressional Gambling Hearing 1994*, *supra* note 75, at 11-14 (testimony of Valerie C. Lorenz, Ph.D., Dir., Compulsive Gambling Center); see also Valerie C. Lorenz & Duane E. Shuttlesworth, *The Impact of Pathological Gambling On The Spouse Of The Gambler*, 11 J. OF COMMUNITY PSYCHOLOGY 67 (1983).

<sup>142</sup> NGISC FINAL REPORT, *supra* note 17.

<sup>143</sup> NGISC EXECUTIVE SUMMARY, *supra* note 68.

<sup>144</sup> See *infra* notes 150-51 and accompanying text.

<sup>145</sup> See *supra* note 6 and accompanying text.

<sup>146</sup> *Id.*

<sup>147</sup> National Gambling Impact Study Commission Act, Pub. L. No. 104-169, 110 Stat. 1482 (1996).

<sup>148</sup> NGISC FINAL REPORT, *supra* note 17.

separate *Executive Summary*.<sup>149</sup> However, some believed that even the strategic scope of the NGISC *Final Report* could have encompassed more issue areas.

The Myres McDougal/Harold Lasswell methodology of "policy-oriented jurisprudence" with an interdisciplinary and legal policy interface constituted the best—and proper—methodology for government decision-makers to analyze local, state, and particularly federal and international gambling issues.<sup>150</sup> Throughout the latter half of the 20th century, much of the upper echelon policymaking in the U.S. government, such as in the U.S. State Department, was predicated upon McDougal/Lasswellian methodology and practiced by strategic decision-makers.<sup>151</sup> Even a cursory use of McDougal/Lasswell methodology quickly revealed the strategic economic, social, and governmental flaws in any policies decriminalizing gambling.<sup>152</sup> However, even when McDougal/Lasswell methodology was not utilized, the systemic flaws in most studies of gambling issue areas were often obvious.

### III. Historical Background

#### A. Gambling Studies Prior to 1995: Objective Studies Object to Legalized Gambling

<sup>149</sup> NGISC EXECUTIVE SUMMARY, *supra* note 68.

<sup>150</sup> This particular analysis is summary in scope, but it was conceived within the penumbra of the McDougal/Lasswell model for decision-making. In the areas of legal and government policy, which subsume strategic socio-economic and business concerns, the classic decision-making models were formulated by the post legal realists, in particular, Professor Myres McDougal and Professor Harold Lasswell who postulated a conceptual framework for legal decision-making in a landmark article directed toward legal educators and law professors. See Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); see also Harold D. Lasswell & Myres S. McDougal, *Criteria for a Theory About Law*, 44 S. CAL. L. REV. 362 (1971); John W. Kindt, *An Analysis of Legal Education and Business Education Within the Context of a J.D./MBA Program*, 31 J. LEGAL EDUC. 512, 517-18 (1981); John W. Kindt, *An Analysis of Legal Education and Business Education Within the Context of a J.D./MBA Program*, 13 LAW TEACHER 12, 14-16 (1979); Myres S. McDougal, *Jurisprudence for a Free Society*, 1 GA. L. REV. 1 (1966). The decision-making concepts which McDougal and Lasswell introduced were later expanded to include international law and U.S. domestic law, as these areas interfaced with "policy-oriented jurisprudence." See John N. Moore, *Prolegomenon to the Jurisprudence of Myres McDougal and Harold Lasswell*, 54 VA. L. REV. 662 (1968); Frederick S. Tipson, Note, *The Lasswell-McDougal Enterprise: Toward a World Public Order of Human Dignity*, 14 VA. J. INT'L L. 535 (1974).

<sup>151</sup> See sources cited *supra* note 150.

<sup>152</sup> See *Economic Impacts*, *supra* note 4 (demonstrating how the "strategic elements of gambling activities [negatively] impact state and local economies"); *Strategic Economic Base*, *supra* note 83 (concluding that legalized gambling represents a threat to the strategic U.S. economic base and stability of expectations); see also *Destabilization of Economies*, *supra* note 92; *Gambling Destabilizing Economies*, *supra* note 108.



In 1994, the Economic Development Center at the University of Massachusetts produced the report, *Legalized Gambling as a Strategy for Economic Development*<sup>153</sup> (*U.S. Gambling Study*) funded by grants from the Ford Foundation and the Aspen Institute. The *U.S. Gambling Study* examined the existing analyses that purported to review the use of "legalized gambling as an economic development strategy."<sup>154</sup> Among other conclusions, the *U.S. Gambling Study* found that only one report by the University of New Orleans was "balanced." Ten other reports that were totally or largely-financed by pro-gambling interests were either "unbalanced" (eight reports) or "mostly unbalanced" (two reports), which meant that decision-makers were urged to ignore those ten reports as lacking credibility.<sup>155</sup>

The *U.S. Gambling Study* was independently corroborated by an extensive 1994 report produced by a team of Florida economists led by Subhasis Das, Ph.D., in the Florida Governor's Office and titled *Casinos in Florida: An Analysis of the Economic and Social Impacts*<sup>156</sup> (*Florida Governors Report*). The *Florida Governors Report* contained leading-edge cost estimates, such as those involving prisons/prisoners linked to newly legalized gambling activities.<sup>157</sup> These 1994 socio-economic costs should definitely have been brought to the attention of the National Opinion Research Center (NORC) that conducted related research for the 1999 U.S. Gambling Commission. Apparently these costs went largely unaddressed—perhaps due to an oversight by those advising NORC or to the misdirection of pro-gambling interests influencing the Commission's research agenda. Accordingly, several of the costs in the *Florida Governors Report* retained their validity into the 21st century as the only cost estimates in some socio-economic categories related to gambling activities.<sup>158</sup>

A third 1994 academic publication was *The Economic Impacts of Legalized Gambling Activities*<sup>159</sup> (*Economic Impacts*) that was produced at the University of Illinois and which paralleled and largely confirmed the Florida and University of Massachusetts reports. Apparently, each of these studies was produced without the knowledge of the other two—until immediately before publication. Therefore, these three 1994 reports independently corroborated each other. In addition, all three of these 1994 reports were highly critical of the sources of information provided by pro-gambling interests, and these reports concluded that the socio-economic costs of

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<sup>153</sup> CED REPORT, *supra* note 4, at 68-87.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> FLA. GOV. REPORT, *supra* note 83.

<sup>157</sup> *See id.* at 67-69.

<sup>158</sup> *See, e.g., id.* at 71-74 (citing costs of new prisons/prisoners caused by new gambling facilities).

<sup>159</sup> *Economic Impacts, supra* note 4.

decriminalized gambling activities outweighed the benefits by cost/benefit ratios ranging from 2:1<sup>160</sup> to 12:1.<sup>161</sup>

## B. Gambling Studies Since 1995: The American Gaming Association (AGA)

### Lobbying Group Finances and Searches for Credibility

Formed in 1995 and headed by CEO Frank Fahrenkopf, the American Gaming Association (AGA) was a Washington-based lobbying group financed with a multi-million dollar budget from pro-gambling interests.<sup>162</sup> The AGA searched for credibility to respond to academic studies concluding that legalized gambling activities did not constitute a valid strategy for economic development and should not be condoned by government decision-makers.

Initially, the AGA promulgated a pamphlet titled *Gaming Industry Myths And Facts* whose inaccuracies were brutalized by the investigative press; for example

The most absurd claim—made in the brochure and by the association's president, Frank Fahrenkopf, in a television interview last week—is that casinos don't cause crime.

Explain that to the court workers in Tunica County, who have faced at least a tenfold increase in their caseload—1200 filings to 12,000—since the casinos opened. Though Federal crime statistics are not yet available, felony indictments for the county increased from 13 in 1992 to 172 in 1995.<sup>163</sup>

Thereafter, the AGA financed an Arthur Andersen "Macro Study"<sup>164</sup> issued in December 1996, that was followed by an Arthur Andersen "Micro Study"<sup>165</sup> in 1997. In a display of lobbying power, the AGA not only reportedly tried to stack the 1999 U.S. Gambling Commission with pro-gambling commissioners,<sup>166</sup> but also apparently encouraged the Commission to discount the three negative 1994 academic/expert reports while accepting the two Arthur Andersen reports financed

<sup>160</sup> CED REPORT, *supra* note 4, at 64; *Economic Impacts*, *supra* note 4, at 55-56, 88-95 (estimating a ratio of 3:1).

<sup>161</sup> FLA. GOV. REPORT, *supra* note 83, at executive summary.

<sup>162</sup> See, e.g., NCRG 2001 ANNUAL REPORT, *supra* note 121.

<sup>163</sup> James Thomas Snyder, *Casino County*, N.Y. TIMES, July 24, 1996, at A25, (criticizing Am. Gaming Ass'n.'s 1995 pamphlet, *Gaming Industry Myths and Facts*).

<sup>164</sup> AM. GAMING ASS'N./ANDERSEN MACRO STUDY, *supra* note 6.

<sup>165</sup> AM. GAMING ASS'N./ANDERSEN MICRO STUDY, *supra* note 6. For an example of the public relations use of the Arthur Andersen studies by the American Gaming Association, see *Putting a Face on the Industry: Arthur Andersen Study Shows Economic Benefits of Casino Gaming in the United States*, INSIDE THE AGA, (Am. Gaming Ass'n., Washington, D.C.) Nov./Dec. 1996.

<sup>166</sup> See Editorial, *Gambling Payoff?*, WASH. POST, Feb. 10, 1997, at A18; Warren Richey, *Anti-Gambling Activists Warn of Stacked Commission Deck*, CHRISTIAN SCI. MONITOR, Mar. 21, 1997, at 3.

by the AGA.<sup>167</sup> With acquiescence by some pro-gambling Commissioners on the NGISC, the AGA goal was generally successful in achieving prominent placement and NGISC reliance on information in the two Arthur Andersen reports.<sup>168</sup>

For example, in the NGISC *Executive Summary*<sup>169</sup> the NGISC accepted without contrary citations the Macro Study's conclusion that by 1996 just the legalized casinos alone had created over 709,000 direct and indirect jobs and were paying employee wages of approximately \$21 billion.<sup>170</sup> It should be noted, however, that as early as 1992 the credibility of the reports that Arthur Andersen compiled for the gambling industry were undermined by the "leaked" internal public relations documents of some casino companies proposing a Chicago casino complex.<sup>171</sup> These leaked documents were released by the Better Government Association of Chicago in 1992.<sup>172</sup> Dated April 16, 1992,<sup>173</sup> these documents urged the sponsors of the Chicago casino complex to:

[b]e proactive on "tax"/"revenue" issues: It probably won't be enough for Arthur Andersen and Northwestern University to develop numbers that are "credible", although that is the essential first step to take.

We must also use these studies to make a compelling and convincing case for the kind of jobs that will be created, with an emphasis on their "quality" and "career" potential.<sup>174</sup>

Despite these types of revelations, the AGA utilized and promoted the 1996 Arthur Andersen Macro Study in attempts to create gambling industry credibility countering academic studies. An article in the *Kansas City Star* explained the AGA's strategy.

The first salvo came in a study by the Arthur Andersen & Co. accounting firm, financed by the industry and made public . . . [December 1996]. It found that the gaming industry created more jobs, paid higher average wages and had a greater spinoff effect on

<sup>167</sup> See, e.g., *Credibility Concerns*, *supra* note 123 (presentation by Prof. John W. Kindt, Univ. Ill. and response by Frank Fahrenkopf, Am. Gaming Ass'n.).

<sup>168</sup> See, e.g., NGISC FINAL REPORT, *supra* note 17, at 2-8 nn.36-37.

<sup>169</sup> NGISC EXECUTIVE SUMMARY, *supra* note 68, at 4 (claiming 700,000 direct and indirect jobs).

<sup>170</sup> *Id.* (citing to ARTHUR ANDERSEN, ECONOMIC IMPACTS OF CASINO GAMING IN THE UNITED STATES: VOLUME I: MACRO STUDY 8 (Dec. 1996) (709,000 direct and indirect jobs)).

<sup>171</sup> BETTER GOV'T ASS'N., STAFF WHITE PAPER: CASINO GAMBLING IN CHICAGO, app. P (1992) [hereinafter BETTER GOV'T ASS'N.].

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* app. P, at 10.

the economy than did similar service and entertainment industries.<sup>175</sup>

The apparent goal promoted by the AGA was to utilize Arthur Andersen's credibility to support the theories of pro-gambling interests.

The Andersen study attempts to debunk critics' greatest economic argument against gambling: that it harms other businesses that also rely on consumer spending.

But that so-called "substitution theory" of consumer spending "is the most ridiculous of positions taken by our opponents," [AGA lobbyist Frank] Fahrenkopf said.<sup>176</sup>

Arthur Andersen's Las Vegas office was the support for Las Vegas' chief lobbyist for pro-gambling interests, Frank Fahrenkopf. "Steve Comer, managing partner of Andersen's Las Vegas office, agrees [with Frank Fahrenkopf]. 'It's simply not true,' said Comer. '(Casino gambling) has actually given back to the economy more than it's taken from customers' through taxes, wages, spending and capital investment."<sup>177</sup> By 2001 and 2002, the reported accounting and managerial scandals plaguing Arthur Andersen threatened the firm with not only bankruptcy, but also criminal charges.<sup>178</sup> When combined with earlier criticisms on the two AGA-financed Arthur Andersen reports, the 21st century scandals at Arthur Andersen completely undermined the AGA's attempts at credibility for the arguments of pro-gambling interests.

In a 1992 proposal for a \$2 billion casino complex in Chicago, Illinois, the alleged or projected tax revenues were between \$327 million<sup>179</sup> and \$500 million,<sup>180</sup>

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<sup>175</sup> Rick Alm, *Casino Industry Stresses Positive Economic Contribution: Critics Say Latest Report Ignores Crime as Well as Gambling Addiction*, KANSAS CITY STAR, Dec. 7, 1996, at B1 [hereinafter *Casino Ignores Crime*].

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> See, e.g., *Enron Corporation's Collapse: Hearing before the S. Comm. on Energy and Natural Resources*, 107th Cong. (2002); Walter Hamilton & Jeff Leeds, *Internal Report Cites Extensive Abuse at Enron*, L.A. TIMES, Feb. 3, 2002, at A1; Rone Tempest & Richard Simon, *Enron's Lay Faces Capitol Hill Hot Seat*, L.A. TIMES, Feb. 3, 2002, at A20.

<sup>179</sup> Editorial, *Economically, Casinos Are a Good Bet*, CHI. TRIB., May 24, 1992, §4, at 2 [hereinafter *Casinos Are a Good Bet*].

<sup>180</sup> Editorial, *Daley, Developers Raise the Stakes*, CHI. TRIB., Mar. 26, 1992, §1, at 28 [hereinafter *Developers Raise the Stakes*].

and even up to a more unlikely \$625 million to \$644 million.<sup>181</sup> This projection of \$625 million was disseminated in what appears to be an undated (but probably the Fall of 1992) press release by the sponsors of the casino complex.<sup>182</sup> As of June 11, 1992, the Illinois press was reporting the \$625 million figure. The news release was interesting in that it claimed:

An economic impact study conducted by *Arthur Andersen & Co.* concludes the proposed entertainment and casino complex will create up to 100,000 new jobs—37,000 during construction and 66,000 permanent jobs on and off-site—and produce at least \$625 million in new tax revenues. The study further predicts the center will draw 10.2 million new tourists to Chicago each year.<sup>183</sup>

These numbers had increased substantially from numbers promulgated by gambling industry reports just a few weeks earlier. These mercurial numbers raising the "public relations ante" were soundly criticized by academic analyses.<sup>184</sup>

#### IV. Trends and Conditioning Factors

##### A. Basic Problems with Research on Gambling Issues

Regardless of the procedural and substantive issues involved in the 21st century scandals at Arthur Andersen, it was still useful to dissect the 1997 Arthur Andersen Micro Study as exemplifying the analytical problems involving gambling-oriented studies.

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<sup>181</sup> In the report sponsored by the proponents of the casino complex, the numbers have to be viewed very favorably for the totals to reach \$500 million. See CHICAGO GAMING COMM'N, ECONOMIC AND OTHER IMPACTS OF A PROPOSED GAMING, ENTERTAINMENT AND HOTEL FACILITY 270-71 (May 19, 1992) (prepared by Deloitte & Touche, Chicago, Ill.) [hereinafter PROPOSED GAMING]. The \$625 million to \$644 million in estimated tax revenues resulted from several predictions in a report by Arthur Andersen and Company, which was sponsored by the proponents of the casino complex. See Ray Long, *New Casino Studies Bolster Predictions of Big Pot for City*, CHI. SUN-TIMES, May 20, 1992, at 1, 16 [hereinafter Long]. See generally ARTHUR ANDERSEN & CO., IMPACT OF THE PROPOSED CHICAGO INTERNATIONAL ENTERTAINMENT CENTER (1992).

<sup>182</sup> Press Release, Chicago International Entertainment Center, News at a Glance (undated news release, probably Fall of 1992) [hereinafter News at a Glance].

<sup>183</sup> *Id.* (emphasis added); see, e.g., John Webber, *Chicago Gambling Plan Would Hurt Downstate: Expert*, QUINCY HERALD-WHIG (Ill.), June 11, 1992, at 1, 3 [hereinafter Webber] (reporting the complex would "[r]aise more than \$625 million in city, county and tax revenue annually after the complex opens").

<sup>184</sup> For analysis of informational sources and data, see *Economic Impacts*, *supra* note 4, at 52-56.

**1. Follow the Money:<sup>185</sup> Studies and Organizations Potentially Under the Financial Aura of Pro-Gambling Interests<sup>186</sup>**

While it is possible for researchers to conduct valid studies financed by industries or individuals with vested interests in the outcome of the research, by the 1990s the national press was regularly reporting that the research on gambling issues was fraught with endemic direct and indirect conflicts of interest.<sup>187</sup> By 1994, an article in the *Columbia Journalism Review*<sup>188</sup> was recommending that reporters and researchers “flat out ask [other reporters, researchers, and academics] if they make money off the industry.”<sup>189</sup> Accordingly, the first hurdle any research financed by pro-gambling interests must address consists of questions of the “amounts” of finances or resources contributed by vested interests and the “degree” of direct or indirect vested influences including conflicts of interest. A related concern was “the appearance of impropriety” — a well-known ethical standard in common law. For example, one can look at the way the Arthur Andersen Las Vegas office corroborated with the chief gambling lobbyist for Las Vegas and the gambling industry.<sup>190</sup> Given these trends and conditioning factors, it was almost a sine qua non research principle that: Researchers on gambling issues should not be directly or indirectly linked by finances or resources to pro-gambling interests or other special interests, and should be encouraged even to avoid honoraria, consultant fees, and the appearance of impropriety. By the 1990s some researchers, such as at the University of Illinois, were attempting to comply with these standards.

**2. Pre-Selected Positives Mean Pre-Selected Results<sup>191</sup>**

**a. The Effects of Pre-Selected Parameters**

When those financing research can influence or even pre-determine the parameters of the research, then the results can often be pre-determined. A study can be valid and its methodology can be sound, but if it is within pre-determined parameters then the study is vulnerable to being criticized as just another exercise in public relations for the industry. The 1997 Arthur Andersen Micro Study was vulnerable to this type of criticism because it only reviewed three communities, such as Shreveport/Bossier City, Louisiana, with regard to the impact of casinos. Even a layperson should recognize that those communities starting casinos would initially

<sup>185</sup> See, e.g., *Follow the Money*, *supra* note 74.

<sup>186</sup> See *supra* notes 119-37 and accompanying text.

<sup>187</sup> See *supra* note 186; see, e.g., *Casino Backlash*, *supra* note 60, at A1.

<sup>188</sup> COLUM. J. REV., *supra* note 119, at 36-38.

<sup>189</sup> *Id.* at 37-38.

<sup>190</sup> See *supra* notes 175-77 and accompanying text.

<sup>191</sup> See, e.g., *Casino Ignores Crime*, *supra* note 175.

reflect positive economic indicators.<sup>192</sup> Several tables purporting to compare the same economic factors between the three communities lacked uniformity that made comparisons difficult, and it could even be argued that the methodology was changed in analyzing the employment/unemployment tables between the communities—and the outcome perhaps reflected more positively on the gambling interests.<sup>193</sup> Notably, the mayor who negotiated the advent of casino gambling in Shreveport, Louisiana, thereafter in 1996 became a noted critic of casino gambling and its negative impacts.

Former Shreveport Mayor Hazel Beard's worst fears were realized when she lost a relative to riverboat gambling. "I myself had a cousin to lose everything and create a debt of \$80,000 and commit suicide, all because of gambling. His was at the boats," Beard said in . . . [an] interview. But Beard said she doesn't think Shreveport has "suffered enough" to vote to discontinue riverboats in the Nov. 5 [1996] local-option elections.<sup>194</sup>

By comparison, a comprehensive academic study of virtually every casino venue was conducted by economists Earl Grinols, David Mustard, and Cynthia Dilley. The study entitled *Casinos and Crime*<sup>195</sup> reviewed every U.S. casino county/feeder market (with a few exceptions excluded by the data) with "before and after" analyses over relevant time periods.

#### b. The Effects of a Pre-Selected Time-Frame

In gambling issue areas, it was common knowledge that the advent of a gambling establishment, such as a casino, would bring initial short-term construction to an area as well as a short-term cream market interested in the new opening of the establishment. Therefore, "studies" by gambling industry economists to influence government decision-makers often focused on the first two years or on short-term inappropriate time frames; consequently they were "unbalanced" (as the University of Massachusetts report concluded).<sup>196</sup> In this regard the Arthur Andersen Micro Study utilized new casino markets for its analysis and somehow avoided or

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<sup>192</sup> AM. GAMING ASS'N./ANDERSEN MICRO STUDY, *supra* note 6, at 7-11.

<sup>193</sup> Cf. *id.* tbls. at 21, 40, 54-55.

<sup>194</sup> Scott Dyer, *Ex-Shreveport Mayor Expects Gambling to Survive Election*, THE ADVOCATE ONLINE (Baton Rouge, La.), Oct. 14-15, 1996, at 1.

<sup>195</sup> EARL L. GRINOLS, DAVID B. MUSTARD, & CYNTHIA HUNT DILLEY, *CASINOS AND CRIME* (1999) [hereinafter *CASINOS AND CRIME*].

<sup>196</sup> CED REPORT, *supra* note 4, at executive summary, 68-87.

neglected the older casino markets.<sup>197</sup> By comparison, *Casinos and Crime*<sup>198</sup> includes "before and after" casinos analyses, including both short-term and long-term impacts. *Casinos and Crime* revealed that studies done in the first or second year after a casino opened would generally show no increase in crime, but in the third year the crime rate in the casino county/feeder market increased nine percent on average and then trended upward in subsequent years.<sup>199</sup> The extensive and long-term analyses done in *Casinos and Crime* make it academically superior to any previous report, including the NGISC Final Report's analyses of gambling activities as they interfaced with crime.

c. **The Effects of a Pre-Selected Geographic Scope**

1. **The Proper Scope Utilizes the Industry's Own 35-Mile "Feeder Market" Radius**

If pro-gambling interests can focus the geographic scope of any study to within a mile or a few miles of the gambling activity, such as a casino, the limited scope generally influences the results to reflect favorably on economic and crime statistics. This problem was highlighted by NGISC Commissioner Richard Leone.<sup>200</sup> However, as Commissioner Leone indicated, a limited focus is invalid because the gambling dollars and concomitant socio-economic impacts are coming from the industry's own identified "feeder markets."<sup>201</sup> Until the mid-1990s the gambling industry analyses, particularly those utilized to prompt government officials into licensing casinos, commonly delimited the "feeder markets" for the casinos.<sup>202</sup> Contradicted and embarrassed by their own "feeder market" analyses, after the mid-1990s it became increasingly difficult to find gambling interests that publicly identified their feeder markets.

These feeder markets were commonly delimited as the 35-mile feeder market (primary geographic market) and the 100-mile feeder market (secondary geographic market). These feeder markets revealed, for example, that the projected casino was designed to take monies out of the feeder markets and not drop money into the locales represented in the feeder market (other than the city hosting the

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<sup>197</sup> AM. GAMING ASS'N./ANDERSEN MICRO STUDY, *supra* note 6, at 7-11 (including, for example, Shreveport, La.); see, e.g., *Casino Bust*, *supra* note 29, at A1.

<sup>198</sup> See generally *CASINOS AND CRIME*, *supra* note 195.

<sup>199</sup> *Id.*

<sup>200</sup> See *supra* notes 116-17 and accompanying text.

<sup>201</sup> See sources cited *supra* note 200.

<sup>202</sup> For examples of feeder markets, see HARRAH'S ENTERTAINMENT, *supra* note 110. See also PROPOSED GAMING, *supra* note 181.



casino).<sup>203</sup> Accordingly, cost/benefit analyses must be conducted with the "costs" calculated in the respective feeder markets as well as the "benefits." Ignoring the costs, or calculating the costs more restrictively than in the entire "feeder market" disproportionately reduces or eliminates the costs. Similarly, the benefits should focus not just on the owners of the gambling and those governments narrowly benefiting, but on the "benefits" as a function of the entire 35-mile feeder market.

## 2. The Appropriate Geographic Scope: Basic Guidelines for Valid Feeder Market and Cost/Benefit Analyses

To be valid, cost/benefit analyses must be conducted with the "costs" and the "benefits" both being calculated in the same markets.<sup>204</sup> Typically, the feeder markets<sup>205</sup> can be visualized with a casino as the focal point and categorized as follows:

- ◆ The 35-mile radius feeder market (i.e., the primary feeder market), that usually equates roughly to the surrounding county and the "local dollars" transformed from consumer dollars into gambling dollars.
- ◆ The 100-mile radius feeder market (i.e., the secondary feeder market) that usually includes the 35-mile radius "local dollars" plus those dollars more likely to cross state lines.
- ◆ States themselves as feeder markets.<sup>206</sup>
- ◆ International markets that basically apply only to Las Vegas (and to a lesser extent Atlantic City).

For local, state, and federal decision-makers the 35-mile feeder market is the most important feeder market—all of the other feeder markets are largely irrelevant. Publicly-released industry analyses have also identified, for example, "U.S. Casino Feeder States and Markets,"<sup>207</sup> including charts/tables for: (1) "Top Feeder States,"<sup>208</sup> (2) "Top 10 Casino Feeder States,"<sup>209</sup> (3) "Top Feeder Markets (ADIs)"<sup>210</sup> (i.e., Areas of Dominant Influence as television markets),<sup>211</sup> (4) "Top 20 Casino

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<sup>203</sup> Compare AM. GAMING ASS'N./ANDERSEN MICRO STUDY, *supra* note 6, with HARRAH'S ENTERTAINMENT, *supra* note 110, and PROPOSED GAMING, *supra* note 181.

<sup>204</sup> Of course, there are some demographic exceptions where the cost geographic market and the benefit geographic market must necessarily differ, but these differences should be minimized.

<sup>205</sup> See generally HARRAH'S ENTERTAINMENT, *supra* note 110.

<sup>206</sup> See, e.g., *id.* at 20.

<sup>207</sup> *Id.* at 20.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* at 21.

<sup>211</sup> *Id.*

Feeder Markets,"<sup>212</sup> and (5) "Feeder Markets Generating More Than 500,000 Household Visits to Casinos."<sup>213</sup> Of course, federal decision-makers and McDougal/Lasswell methodologists should be focused on the entire U.S. market as it interfaces with the international economy and strategic policy.

### 3. The Gambling Industry's Lack of Documentation

The evidence showed that to support their opinions, the gambling industry's economists as well as quasi-experts for the industry often cited to papers with a lack of footnotes and source materials.<sup>214</sup> Typically, the industry's analysts might have only a couple dozen source materials that too frequently did not even support the analyst's proposition. Several gambling industry analyses touted by industry public relations did not have a single footnote or source reference.<sup>215</sup>

The citations in the two AGA-financed Arthur Andersen reports<sup>216</sup> widely disseminated to the press by gambling lobbyists should be compared with the extensive documentation in the three 1994 academic/expert reports. These three reports criticized the claims of pro-gambling interests. As an example, the 1994 *Economic Impacts* academic article has 290 footnotes.<sup>217</sup> Furthermore, the *Mega-Lawsuits* article in *Managerial and Decision Economics* that generated the current debate in 2002-2003 has 372 footnotes.<sup>218</sup> By comparison, the AGA-financed Arthur Andersen Macro Study had 49 footnotes<sup>219</sup> and the Micro Study had 89 footnotes.<sup>220</sup>

## B. Obfuscating the Obvious?: Gambling Industry-Sponsored "Studies" Often Contain Systemic Flaws

### 1. Biased Data Result in Biased Conclusions

In addition to other problems with research on gambling issues, systemic flaws apparent in most research financed by pro-gambling interests should be eliminated. Reviews of historical scenarios introduce and highlight some of the systemic flaws. In one historical example of studies, a \$2 billion casino complex was proposed for the Chicago area in 1992. A comparison of public and internal "leaked" documents reflected poorly upon the sponsors of the casino complex and

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> For criticisms of gambling industry studies, see, for example, CED REPORT, *supra* note 4, at 68-87.

<sup>215</sup> See generally *id.*

<sup>216</sup> AM. GAMING ASS'N./ANDERSEN MICRO STUDY, *supra* note 6; AM. GAMING ASS'N./ANDERSEN MACRO STUDY, *supra* note 6.

<sup>217</sup> *Economic Impacts*, *supra* note 4, at nn.1-290.

<sup>218</sup> *Mega-Lawsuits*, *supra* note 4, at 17-63.

<sup>219</sup> AM. GAMING ASS'N./ANDERSEN MACRO STUDY, *supra* note 6.

<sup>220</sup> AM. GAMING ASS'N./ANDERSEN MICRO STUDY, *supra* note 6.

led to allegations that credible sources were being manipulated by pro-gambling interests.<sup>221</sup>

With regard to jobs, the initial estimates released by the sponsors of the casino complex were reported on March 26, 1992, at 10,000 construction jobs and 20,000 permanent jobs.<sup>222</sup> As one financial commentator in Chicago observed:

Ten thousand . . . construction jobs are supposed to be created by this project. This may very well be true. However, we could create plenty of construction (and permanent) jobs by building brothels and opium dens. If job creation is the aim of local government, why hasn't the mayor proposed such a project?<sup>223</sup>

By May 24, 1992, the estimated "new jobs" had grown to 38,100,<sup>224</sup> however, they would not all theoretically materialize until almost a decade later in 2001.<sup>225</sup> As criticism of the casino increased, the sponsors of the project continued to increase the "jobs ante" from 15,000 to 36,000 to 66,000 jobs.<sup>226</sup> By November 15, 1992, during the fall legislative session in Illinois, the so-called "Coalition for Jobs," associated with the casino supporters, had raised the estimates to 90,000 jobs.<sup>227</sup> Under the aura of credibility provided by support from a professor at Northwestern University and Arthur Andersen,<sup>228</sup> the jobs estimate then rose to 100,000 new jobs.<sup>229</sup> Therefore, during approximately an 8-month time frame, job estimates ranged from 15,000 to 100,000—raising serious doubt about the credibility of the sponsors of the casino complex. It should be noted that the entire state economy would probably have lost more jobs than the sponsors of the casino complex promised to create—partially due

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<sup>221</sup> Compare News at a Glance, *supra* note 182, with BETTER GOV'T ASS'N, *supra* note 171, app. P, at 10. See generally BETTER GOV'T ASS'N, *supra* note 171, app. O.

<sup>222</sup> *Developers Raise the Stakes*, *supra* note 180, at 28; see also Long, *supra* note 181, at 16 (reporting estimated creation of full-time equivalent employees of either 12,000 pursuant to the Proposed Gaming Facility Report or 18,000 pursuant to the report by Arthur Andersen and Company).

<sup>223</sup> Mark M. Quinn, *Social Costs of Casino Proposal Are Too High*, CHI. SUN-TIMES, Apr. 4, 1992, at 16.

<sup>224</sup> *Casinos are a Good Bet*, *supra* note 179, at 2.

<sup>225</sup> PROPOSED GAMING, *supra* note 181, at 14.

<sup>226</sup> BETTER GOV'T ASS'N, *supra* note 171 (personal statement from the Executive Director).

<sup>227</sup> See News at a Glance, *supra* note 182, at 1.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

to the migration of consumer dollars away from the pre-existing Illinois businesses, as concluded by the Illinois governor's office.<sup>230</sup>

## 2. Flooding the Data

While they can be valid within their own parameters, some studies can contain much irrelevant information that "floods the data" and complicates the decision-making—particularly for uninformed government decision-makers. To combat this problem at the federal level, since the Carter Administration (1976 to 1980), voluminous U.S. government reports have been required to provide a shortened "executive summary." The 1999 *Final Report*<sup>231</sup> of the NGISC was accompanied by a separately published *Executive Summary*.<sup>232</sup> Reports sponsored by pro-gambling interests, such as the Chicago interests' voluminous *Economic and Other Impacts of a Proposed Gaming, Entertainment and Hotel Facility*,<sup>233</sup> were vulnerable to criticisms of "flooding the data"—in part because virtually no analysis was dedicated to the socio-economic "costs" of a Chicago casino complex.

## 3. Starving the Data

The counterpart to "flooding the data" with information extraneous to the analysis is "starving the data" with a paucity of data and analysis. In the gambling area, a prime example of "starving the data" is the 2001 review by the U.S. Department of Defense (DOD), titled *Report on the Ready Availability of Slot Machines on Members of the Armed Forces, Their Dependents, and Others*<sup>234</sup> (*DOD 2001 Slots Report*), that eventually reflected the obvious influence of pro-gambling military interests as it was being conducted. This analysis was required by federal legislation after U.S. Representative Roscoe Bartlett (R-Md.)<sup>235</sup> and other members of Congress became alarmed at reports that pathological and problem gambling in the military were impacting U.S. "military readiness." In 1998, testimony before the NGISC had urged more Congressional scrutiny after analysis of the military report, 1992

<sup>230</sup> Press Release, Governor James Edgar, Illinois, Governor Warns Land-Based Casinos Could Bring Crime Surge as Well as Overall Loss of Jobs and State Revenues (Sept. 29, 1992) (on file with author); see, e.g., Webber, *supra* note 183, at 1, 3.

<sup>231</sup> NGISC FINAL REPORT, *supra* note 17.

<sup>232</sup> NGISC EXECUTIVE SUMMARY, *supra* note 68.

<sup>233</sup> See generally PROPOSED GAMING, *supra* note 181.

<sup>234</sup> U.S. DEP'T OF DEFENSE, REPORT ON THE EFFECT OF THE READY AVAILABILITY OF SLOT MACHINES ON MEMBERS OF THE ARMED FORCES, THEIR DEPENDENTS, AND OTHERS (2001) [hereinafter DOD 2001 SLOTS REPORT].

<sup>235</sup> Maura Casey, *Military Secrets: Gambling Problems Stay Hushed Up*, THE DAY (New London, Conn.), Mar. 17, 2002, at H1 [hereinafter Casey].

*Worldwide Survey of Substance Abuse and Health Behaviors Among Military Personnel*.<sup>236</sup> This report suggested that by 1997, pathological gambling in the military had increased 66 percent<sup>237</sup> from the 1991 baseline of 2.2 percent<sup>238</sup> of military personnel. The report also suggested that problem gambling had increased 108 percent<sup>239</sup> from a 1991 baseline of 5.1 percent.<sup>240</sup> This equaled a combined "doubling" of military problems<sup>241</sup> and \$3.6 billion per year in new related costs.<sup>242</sup>

These trends in the numbers were largely confirmed by the 1998 military report, *Department of Defense Survey of Health Related Behaviors Among Military Personnel*.<sup>243</sup> However, when faced with Congressional scrutiny in 2001, the DOD fired the private firm hired to do the follow-up analysis. Despite potential conflict of interest charges, DOD assigned the project to the in-house DOD Morale, Welfare, and Recreation Department that reviewed the \$127 million per year lost by military personnel in electronic and video gambling devices on U.S. military bases and facilities.<sup>244</sup>

The legislative intent was for the DOD to research new data and to follow-up the 1992 and 1998 data analyses.<sup>245</sup> Instead, the DOD review in 2001 basically performed no new study to confirm or deny the pathological and problem gambling trends identified as problematic in the 1992 and 1998 reports.<sup>246</sup> The 2001 DOD review "starved the data" and was only thirteen pages—an obvious whitewash of projected problems among military personnel and military readiness.<sup>247</sup> It was also interesting why an apologist for the gambling industry, William Eadington, would be motivated on his own to affirm this thirteen-page, conflict of interest, in-house 2001 report and imply that it was the final answer delimiting that there were insignificant numbers of military personnel with

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<sup>236</sup> NAT'L TECH. INFORMATION SERVICE, U.S. DEP'T OF COMMERCE, 1992 WORLDWIDE SURVEY OF SUBSTANCE ABUSE AND HEALTH BEHAVIORS AMONG MILITARY PERSONNEL 12-14 to 12-30 [hereinafter MILITARY PERSONNEL 1992 REPORT].

<sup>237</sup> U.S. and International Costs, *supra* note 87, at tbl. 11 and accompanying footnotes.

<sup>238</sup> MILITARY PERSONNEL 1992 REPORT, *supra* note 236, at 12-14 to 12-30.

<sup>239</sup> U.S. and International Costs, *supra* note 87, at tbl. 11 and accompanying footnotes.

<sup>240</sup> MILITARY PERSONNEL 1992 REPORT, *supra* note 236, at 12-14 to 12-30.

<sup>241</sup> U.S. and International Costs, *supra* note 87, at tbl. 11 and accompanying footnotes.

<sup>242</sup> *Id.*

<sup>243</sup> ROBERT M. BRAY ET AL., 1998 DEPARTMENT OF DEFENSE SURVEY OF HEALTH RELATED BEHAVIORS AMONG MILITARY PERSONNEL (1998) [hereinafter DOD 1998 HEALTH AMONG MILITARY].

<sup>244</sup> Casey, *supra* note 235, at H1.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

pathological and problem gambling habits<sup>248</sup>—when the more in-depth and complete 1992 and 1998 reports suggested otherwise.<sup>249</sup>

#### 4. Misdirecting or Unreasonably Focusing on Procedure

After the reported “intervention” of the AGA’s chief lobbyist Frank Fahrenkopf,<sup>250</sup> the National Center for Responsible Gaming (NCRG) that was primarily funded by pro-gambling interests<sup>251</sup> awarded a \$140,000 grant to a study group headed by Howard Shaffer.<sup>252</sup> The resulting Harvard Addictions Meta-analysis<sup>253</sup> has much to commend it, but it could be criticized as unnecessarily procedurally complex and difficult to read. The two chief criticisms of the Harvard Addictions Meta-analysis were: (1) that despite subsequent requests, the study apparently did not report the baseline numbers of pathological and problem gamblers for the 120-152 studies analyzed<sup>254</sup>—a regular and fairly simple procedure—that would allow for confirmation of the study’s numbers,<sup>255</sup> and (2) the study proposed a confusing and entirely new nomenclature of “disordered gambling”<sup>256</sup> instead of the American Psychiatric Association’s established nomenclature of “pathological gambling” and concomitant “problem gambling” pursuant to the *Diagnostic and Statistical Manual of Mental Disorders*.<sup>257</sup>

<sup>248</sup> See Eadington, *MANAGERIAL & DECISION ECON.* (forthcoming 2003); see also Liz Benston, *Expert: Problem Gambling Study Flawed*, LAS VEGAS SUN, Mar. 31, 2003 (stating that William Eadington has “long been critical of social cost studies that [Professor William] Thompson has conducted for . . . states grappling with how to measure the effect of legalized gambling”).

<sup>249</sup> See *supra* notes 234-43 and accompanying text.

<sup>250</sup> See, e.g., *Casino Backlash*, *supra* note 60, at A1.

<sup>251</sup> NCRG 2001 ANNUAL REPORT, *supra* note 121, at 4-5.

<sup>252</sup> *Casino Backlash*, *supra* note 60, at A1.

<sup>253</sup> HOWARD J. SHAFFER, ET AL., HARVARD MEDICAL SCHOOL, ESTIMATING THE PREVALENCE OF DISORDERED GAMBLING BEHAVIOR IN THE UNITED STATES AND CANADA: A META-ANALYSIS 43, Table 13 & 51, Table 16, (1997) [hereinafter HARVARD ADDICTIONS META-ANALYSIS] (calculating .5 percent of the U.S. population or 1.5 million new pathological (addicted) gamblers created by legalized gambling between 1994 and 1997); see Press Release, Harvard Medical School, Harvard Medical School Researchers Map Prevalence of Gambling Disorders in North America, (Dec. 4, 1997) [hereinafter Harvard Addictions Meta-analysis Press Release] (reporting that from .84 percent, “the prevalence rate [for pathological gambling] for 1994-1997 grew to 1.29 percent of the adult population”).

<sup>254</sup> See, e.g., *Mega-Lawsuits*, *supra* note 4, at nn.163-168, 190, 215-218, and accompanying text.

<sup>255</sup> *Id.*

<sup>256</sup> See, e.g., HARVARD ADDICTIONS META-ANALYSIS, *supra* note 253, at 1, 9. See also Harvard Addictions Meta-analysis Press Release, *supra* note 253. See generally AMERICAN GAMING ASS’N., A DISCUSSION OF DISORDERED GAMBLING & RESPONSIBLE GAMING (1997) [hereinafter AM. GAMING ASS’N. DISORDERED GAMBLING].

<sup>257</sup> AMERICAN PSYCHIATRIC ASS’N., *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, 615-618, § 312.21.

Reminiscent of President Clinton's famous but unsuccessful equivocation that "it depends on what the meaning of the word 'is' is,"<sup>258</sup> by 1999 Howard Shaffer was equivocating "when is pathological gambling, pathological gambling?"<sup>259</sup> Shaffer also apparently suggested that there were increases in the numbers of U.S. pathological gamblers during the 1990s because after people sought assistance for their gambling problems clinicians were "teaching them that they have an addiction."<sup>260</sup>

##### 5. Borrowing From the Tobacco Industry: Using Legal Discovery to Distract Public Opinion

In a surprising development, in 1996 tobacco interests launched a bold new defensive strategy to the states' tobacco lawsuits. They targeted the gambling states with a public relations/legal counter-attack predicated on "accusing state officials of promoting gambling. Such an activity, they say, can lead to a variety of economic and social problems, including 'addiction.' Cigarette lawyers also suggest[ed that states were] . . . hypocritical in accusing their industry of targeting minors, while permitting gaming interests to do exactly that."<sup>261</sup> In a case of first impression in Minnesota, tobacco lawyers filed discovery requests with state officials "to provide a massive amount of documents [on gambling] and the problems it . . . [had caused], which allegedly include[d] the creation of a new class of addicts, an increase in bankruptcies and the spread of crime."<sup>262</sup> The tobacco lawyers obviously saw parallel arguments that made the states look hypocritical in pursuing tobacco interests while exempting gambling interests. The scope of the tobacco lawyers' requests for information was instructive.

Among other things, [tobacco] industry lawyers . . . asked for documents about: whether or to what extent gambling is "an addiction" and imposes costs on society; Minnesota's marketing and public relations strategies and its expenditures for advertising of the state lottery; the effects of lottery advertising on minors; the state's

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<sup>258</sup> KENNETH W. STARR, OFFICE OF THE INDEPENDENT COUNSEL, TRANSCRIPT OF PRESIDENT WILLIAM CLINTON'S VIDEOTAPE TESTIMONY TO THE GRAND JURY, (Aug. 17, 1998).

<sup>259</sup> Howard J. Shaffer, *Strange Bedfellows: A Critical View of Pathological Gambling and Addiction*, 94 J. ADDICTION 1445 (1999) (manuscript supported in part by a grant from pro-gambling interests, the National Center for Responsible Gaming, a center almost entirely funded by pro-gambling interests).

<sup>260</sup> *Id.*

<sup>261</sup> L.A. Times Staff, *Tobacco Lawyers Use Gambling as Diversion*, BOSTON GLOBE, Nov. 7, 1996.

<sup>262</sup> *Id.*

efforts to discourage gambling by minors; state revenues from gambling; and state expenditures to help "problem gamblers."<sup>263</sup>

The tobacco lawyers' requests for information were designed to develop impeachment of any state's case, according to an attorney for one tobacco company. "The strikingly close parallels between the state's criticisms of defendants' sales of cigarettes and its own conduct in advertising and profiting from gambling may make discovery into that area perfectly appropriate to develop impeachment and rebuttal evidence . . ."<sup>264</sup> The Minnesota scenario involved not only requests for discovery of information from state officials, but also from healthcare plaintiffs such as Blue Cross/Blue Shield of Minnesota.<sup>265</sup> This "gambling as diversion"<sup>266</sup> strategy by the tobacco companies during the 1990s was eventually unsuccessful both in Minnesota and throughout the United States, but parallel strategies could easily reappear in the 21st century as new data becomes available.

## V. Policy Alternatives and Recommendations

### A. Congress Should Re-Criminalize U.S. Gambling to Pump-Prime the Short-Term Economy and Revitalize the Long-Term Consumer Economy

The federal re-criminalization of U.S. gambling activities throughout the United States would pump-prime the consumer economy out of any economic malaise by transforming "lost" gambling dollars into consumer dollars.<sup>267</sup> For example, in 2002 approximately \$55 billion in gambling dollars (with a multiplier, if any,<sup>268</sup> of approximately 1.7<sup>269</sup> equaling \$93.5 billion) would pump-prime the economy by being transformed into \$55 billion in consumer dollars (with a standard economic multiplier of 2 to 3, or \$110 billion to \$165 billion).<sup>270</sup> Thus, the consumer dollar may have as much as twice the value of the gambling dollar. U.S. economic history demonstrates that the re-criminalization of gambling activities was beneficial to the U.S. economy for almost 100 years—and from a practical standpoint, the criminalization of gambling activities was workable and largely enforceable.<sup>271</sup> Furthermore, re-criminalizing gambling would largely eliminate the negative "crime

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<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> See *supra* notes 81-117 and accompanying text.

<sup>268</sup> See *supra* notes 76-77, 81-90 and accompanying text.

<sup>269</sup> See generally Don Phares, Testimony before the National Gambling Impact Study Commission, Chicago, Ill., (May 20, 1998) (testifying that the net multiplier for Missouri casinos was 0.94 with a range of 0 to 1.79).

<sup>270</sup> See *supra* notes 81-117 and accompanying text.

<sup>271</sup> See *supra* notes 74-82 and accompanying text.



multiplier" which posits that every \$1 in gambling benefits leads to \$3 in socio-economic costs.<sup>272</sup>

Perhaps more importantly, the energy, intellect, and entrepreneurial "opportunity costs" that are now lost to the non-productive promotion of gambling would largely be redirected into the long-term U.S. consumer economy.<sup>273</sup> This could have positive economic ramifications for the rest of the world since much of the international community emulates or tries to emulate U.S. economic and social policies.<sup>274</sup>

#### **B. Congress Should Transform Re-criminalized Gambling Facilities into Long-Term Educational and High-Tech Research Facilities for Both the U.S. Public and Native American Tribes**

In the early 1990s, the Nebraska legislature rejected casinos for Nebraska—even to save the supposedly "beloved" Aksarben racetrack. Instead, the legislature essentially bulldozed the track and transformed its land and remaining infrastructure into collegiate facilities and a high-technology research park. Thus, the legislature: (1) eliminated the racetrack's gambling that "cannibalized" the Omaha consumer economy, (2) prevented an intensification of this economic cannibalization that would have been the result of a transformation of the racetrack into a casino, (3) de facto pump-primed the Omaha economy by eliminating the racetrack/casino, and (4) planned for long-term economic progress by transforming the gambling facilities into collegiate and high-tech facilities.

The Nebraska example typifies a policy of re-criminalization that would work on the national level for both state-sponsored and Native American gambling facilities. The U.S. Congress should return the country to the policy upheld for most of the 20th century by re-criminalizing all U.S. gambling. Congress should then transform gambling facilities into educational and high-tech facilities. Converting outmoded facilities into educational and high tech facilities is a long-standing practice still widely in use—after U.S. hosted World's Fairs and Olympic games, and similar short-term events, the facilities, residence halls, and restaurants have been transformed into research, consumer, high-tech, and collegiate facilities. For example, the 1996 Olympic Village and restaurants in Atlanta were transformed into residence halls and cafeterias for the Georgia University system. The negative economic and social consequences of legalized gambling activities as detailed in the

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<sup>272</sup> See *supra* note 86 and accompanying text.

<sup>273</sup> See, e.g., U.S. and International Costs, *supra* note 87; see also *Impacts On Businesses*, *supra* note 89.

<sup>274</sup> *Id.*

1999 U.S. Gambling Commission's *Final Report*<sup>275</sup> easily justify the re-criminalization of all U.S. gambling activities. In fact, the U.S. Gambling Commission may be among the leaders of such a movement—in 1999 its members unanimously called for a moratorium on the expansion of any type of gambling anywhere in the United States.<sup>276</sup>

**C. Academics, Researchers, and the News Media Should Critically Examine or Avoid Information and Publications from Sources That May Be Directly or Indirectly Linked Historically to Pro-Gambling Interests**

First and foremost, it is vital to critically examine and appropriately discount any information and publications from sources that are directly or indirectly linked to pro-gambling interests. As the 21st century began, the more obvious potential direct and indirect links of informational sources to pro-gambling interests became more obscure and subtle. Accordingly, the history of potential conflicts of interests needs to be highlighted for researchers who may naively assume that particular informational sources are valid on their face—without bothering to “follow the money.” These issues involving the impeachment of informational sources are particularly relevant with regard to the legal process of information discovery.

Researchers and reporters should specifically and directly question sources as to whether they receive direct or indirect “financial or resource assistance” from pro-gambling interests, as well as to the degree of assistance they receive. In 1994 an article in the *Columbia Journalism Review*<sup>277</sup> raised issues involving the direct and/or indirect financial links between academics/experts and pro-gambling interests.<sup>278</sup> Thereafter, several national news sources raised similar issues involving potential financial conflicts of interest.<sup>279</sup> In the 1990s a historical plateau was reached that necessitated that academics, researchers, and the news media pointedly ask all sources of information whether they receive any direct or indirect “financial or resource assistance” from pro-gambling interests (or other special interests) and the “degree” of any financial assistance. This policy must be continued in order to ensure unbiased presentation of the information pertinent to the gambling debate.

**D. Paralleling the Tobacco Cases of the 1990s, Pro-Gambling Interests and Informational Sources Should be Identified and Prevented from Suppressing Research and Studies**

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<sup>275</sup> NGISC FINAL REPORT, *supra* note 17.

<sup>276</sup> *Id.*, at introductory letter by NGISC Chair, Kay C. James.

<sup>277</sup> COLUM. J. REV., *supra* note 119, at 36-38.

<sup>278</sup> *Id.*

<sup>279</sup> See *supra* notes 119-26 and accompanying text.

With regard to the difficulty of publishing the theory underpinning the mega-lawsuits against the tobacco companies, it is interesting and somewhat disturbing that:

Although the theory developed by Ray Gangarosa, with support from Brian Willis and . . . [Professor Frank Vandall] is part of the theoretical development that led to the largest settlement in the history of the world, . . . *several elite law reviews rejected the article before it was accepted by Fordham . . .*<sup>280</sup>

[Thereafter] no hospital administration journal offered to re-publish the article in any form. It is a challenging question of American politics why these hospitals, which had been paying billions of dollars in tobacco-related expenses, would not want to bring suit, and *why their journals would not mention the article in any way, shape, or form.*<sup>281</sup>

These authors in the tobacco scenarios also identified financial conflicts of interest that may have suppressed republication of their law review article from Fordham.<sup>282</sup> With regard to pro-gambling interests, it was entirely foreseeable that a parallel scenario could arise in the future. Only through careful vigilance and increased academic interest can such an outcome be prevented.

#### E. Academics, Researchers, and News Personnel Should be Alert to the Subtleties of Apologists Defending Pro-Gambling Interests

In 1998 Professor Meir Gross of the University of Massachusetts published a comprehensive article, *Legal Gambling as a Strategy for Economic Development in the Economic and Development Quarterly* (EDQ).<sup>283</sup> This article concluded that legalized "gambling is problematic and not a substitute for sustainable economic development"<sup>284</sup> and complained that proponents of more legalized gambling activities "often rely on economic studies sponsored by the industry."<sup>285</sup> Summarizing several academic studies, including an analysis by the Federal Reserve

<sup>280</sup> Ray E. Gangarosa, et al., *Suits by Public Hospitals to Recover Expenditures for the Treatment of Disease, Injury, and Disability Caused by Tobacco and Alcohol*, 22 FORDHAM URBAN L.J. 81 (1994).

<sup>281</sup> Frank J. Vandall, *The Legal Theory and the Visionaries That Led to the Proposed \$368.5 Billion Tobacco Settlement*, 27 SW. U. L. REV. 482 (1998) (emphasis added).

<sup>282</sup> See, e.g., *id.* at 482 n.70.

<sup>283</sup> Meir Gross, *Legal Gambling as a Strategy for Economic Development*, 12 ECON. DEV. Q. 203 (1998) [hereinafter *Economic Development*].

<sup>284</sup> *Id.* at 203.

<sup>285</sup> *Id.*

Bank of Boston, Professor Gross concluded "[t]here is no evidence that gambling brings new money into the economy."<sup>286</sup>

Assistant Professor Douglas Walker of Georgia College wrote a three-page "Response" that was included after the EDC article,<sup>287</sup> that in turn was followed by a "Rejoinder" from Professor Gross.<sup>288</sup>

Mr. Walker's short critiques demonstrated a pattern of piggybacking on the agenda of pro-gambling interests in criticizing first the EDC article by Professor Gross and more recently another article, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*<sup>289</sup> (*Mega-Lawsuits*) published in the 2001 edition of *Managerial and Decision Economics* (MDE).<sup>290</sup> Assistant Professor Walker again generated his criticisms although he was not cited in either of the articles he criticized.

These types of concerns also raise a rhetorical question: If authors could publish in a university-related academic journal, why would they choose to publish in the "non-university sponsored" *Gaming Review*<sup>291</sup> or *Journal of Gambling Studies*?<sup>292</sup> These concerns were particularly relevant as those publications were re-editorially configured from 1997 and into the 21st century.<sup>293</sup>

## VI. Conclusion

For most of the 20th century gambling was criminalized throughout the United States—and criminalization worked. The U.S. Congress should re-criminalize gambling activities, a policy that would: (1) eliminate socio-economic taxpayer costs of \$3 for every \$1 in new tax revenues; (2) pump-prime the short-term economy via an economic multiplier effect, infusing the consumer economy with as much as \$110 billion to \$165 billion; (3) stimulate and "stabilize" the long-term U.S. economy by eliminating recessionary gambling influences; and, (4) send constructive policy signals to the international community which largely emulates or is influenced by U.S. economic signals.

<sup>286</sup> *Id.* at 208.

<sup>287</sup> Douglas M. Walker, *Response: Comment on Legal Gambling as a Strategy for Economic Development*, 12 *ECON. DEV. Q.* 214, 214-16 (1998) [hereinafter *Response*].

<sup>288</sup> Meir Gross, *Rejoinder: Response to a Comment on "Legal Gambling as a Strategy for Economic Development,"* 12 *ECON. DEV. Q.* 217 (1998) [hereinafter *Rejoinder*].

<sup>289</sup> *Mega-Lawsuits*, *supra* note 4; see also Benston, *supra* note 248 (noting that in March, 2003, to critique a study by Professors William Thompson and Keith Schwer, "the Nevada Resort Association [led by William Bible]—the chief lobbying group for Nevada Casinos—commissioned a rebuttal report by . . . Assistant Professor of Economics Douglas Walker").

<sup>290</sup> See generally 22 *MANAGERIAL & DECISION ECON.* 1 et seq. (2001).

<sup>291</sup> See *supra* note 124 and accompanying text.

<sup>292</sup> *Id.* at 123.

<sup>293</sup> See, e.g., *Mega-Lawsuits*, *supra* note 4, at 31-32.

After U.S. hosted World's Fairs and Olympic games, and similar short-term events, the facilities have been transformed for research and collegiate purposes. Similarly, both Native American and state-sponsored gambling activities could be transformed into research, consumer, high-tech, and collegiate facilities, generating long-term economic growth and stability.

On May 21, 1998, CEO Frank Fahrenkopf of the American Gaming Association called a press conference at the Chicago hearing of the 1999 U.S. Gambling Commission to launch an umbrella attack on the credibility of several academics, including some of the academics then in Chicago to testify before the Commission.<sup>294</sup> Despite the presence of many national media representatives, apparently no media carried Fahrenkopf's "conspiracy theory" —except the Nevada press. The gambling industry, pro-gambling interests, and their public relations publications should neither be allowed to dictate the parameters of the debate nor to misdirect the issues entirely.

By the advent of the 21st century, it was apparent that the critical analysis of legalized gambling issues, unfettered by pro-gambling interests or other special interests, was essential to the economic health of not only the United States, but also the international community. The re-criminalization of gambling activities appeared to be the long-term strategic solution to fostering greater economic and societal well-being throughout the world community. The re-criminalization and suppression of government-sanctioned gambling needed to occur to counter the socio-economic negatives occasioned by the historically recent trends in the 1980s and 1990s toward legalizing various gambling activities. Despite well-financed initiatives designed to protect gambling interests and despite blistering public relations attacks by gambling lobbyists against well-intentioned government officials, gambling activities needed to be re-criminalized and otherwise suppressed. Faced with intensely debated public issues, Abraham Lincoln summarized the historical dilemma for government officials:

If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference.<sup>295</sup>

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<sup>294</sup>Frank Fahrenkopf, CEO, the American Gaming Ass'n., "Conspiracy Theory" Press Conference, State of Ill. Bldg., Chicago, Ill. (May 21, 1998).

<sup>295</sup>President Abraham Lincoln in a conversation at the White House, JOHN BARTLETT, FAMILIAR QUOTATIONS 641 (Emily Morison Beck ed., Little, Brown & Co. 1968) (1919).