

ALL
GAMBLING

ALL THE TIME

TURNING THE *EMPIRE STATE* INTO THE *GAMBLING STATE*

By Senator Frank Padavan

All Gambling All the Time:
Turning the *Empire State* Into the *Gambling State*

A Legislative Report
by Senator Frank Padavan

April, 2004

about this version

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October 2004

Gambling is the child of avarice,
the brother of iniquity,
and the father of mischief.

George Washington^[1]

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Note

It has been pointed out that the marketing of gambling as a harmless activity has been greatly advanced through the manipulation of language: gambling has become the benign-sounding "gaming."^[2] The careful reader of this report will note that gambling advocates regularly employ the latter term.

As Orwell pointed out: "The great enemy of clear language is insincerity."^[3] That is what is behind the use of the term "gaming."

Where the term "gaming" is found either in law or in some other quoted text, it is replicated as such in this report. Elsewhere, however, every effort has been made to use the proper term: gambling.

Introduction

This report is an attempt to update what we know about gambling in New York State. Previous reports have focused, variously, on the costs and benefits of gambling; on Indian casino gambling; on proposals to amend the state constitution; and on the expansion of the state lottery.^[4] This report seeks to pull these strands together, and to examine the full impact of gambling in New York State. The overall negative economic and social impact of existing forms of gambling has already been documented in some detail.^[5] Measuring the impact is becoming an increasingly daunting task, however, owing to the continuing proliferation of gambling opportunities in the state. In addition to the state lottery, pari-mutuel wagering and charitable gambling, there is now Indian casino gambling, Quick Draw and video lottery terminals (VLTs); while perennially in the offing is the effort to legalize non-Indian casino gambling.^[6] These comprise the seven-headed gambling Hydra that threatens both the economic and social well-being of New York State.

The first part of this report looks at the history of gambling in New York State, including the general constitutional prohibition of gambling dating to the nineteenth-century, as well as the three twentieth-century exceptions: the state lottery, pari-mutuel wagering, and charitable gambling. Part II examines Chapter 383 of the Laws of 2001, the single largest expansion of gambling in the history of New York State. Parts III and IV extend the discussion to include, respectively, the national gambling picture and Indian casino gambling. Part V examines the role

of the Lottery Division in increasing gambling opportunities in New York State. Part VI looks at the court case challenging the 2001 expansion. Part VII documents the level of wagering in New York State for all currently authorized gambling and the increase that would result from all proposed gambling. Part VIII examines the dark side of gambling, including problem gambling, political corruption, crime, and the social costs inherent in the legalization of gambling. Part IX reveals the lack of adequate treatment available to problem gamblers in New York State. Finally, Part X discusses the latest proposal to amend the state constitution to legalize virtually unlimited casino gambling.

The Hydra in Greek mythology was eventually slain by Hercules. Quelling the gambling onslaught in New York State seems with each passing year to be such a Herculean task. The defeat of each ill-conceived gambling proposal or the withering away of an existing form of gambling seems only to yield new proposals that must be beaten back. In the mid-1990's, for example, an attempt to amend the state constitution to legalize casinos failed; the gambling interests merely shifted their focus to the proliferation of Indian casinos, including the legalization of slot machines. Revenue from the state lottery flattened over time; in 1995, Quick Draw was passed. Racetracks saw attendance fall off; VLTs were authorized as their savior. Eventually, Quick Draw too failed to bring in as much revenue as promised; so it went from being played every five minutes to every four. Added to all this has been New York's participation in a multi-state lottery.

Meanwhile, the overall level of wagering in New York State is growing at an alarming rate. Wagering for all currently authorized gambling is estimated to be over thirty-five billion

dollars; for all proposed gambling -- not including Indian casinos or the proposal to amend the constitution -- it will rise to nearly fifty billion dollars. If the Indian casinos are included, the projected figure for New York State exceeds seventy billion dollars annually, more than the gross state product (GSP) of eighteen states and the District of Columbia^[7] as well as the gross domestic product (GDP) of over one-hundred world countries.^[8]

The negative economic and social consequences of gambling are likewise increasing. As we first reported in 1997, the New York Council on Problem Gambling found that 7.3% of New Yorkers are lifetime problem gamblers or potential problem gamblers.^[9] More recently, increased calls from problem gamblers have been reported by treatment centers.^[10] The other negative indices of gambling proliferation likewise testify to gambling's dark side. A respected economist and gambling expert has summarized his findings succinctly: "Gambling is a catalyst for economic downturn."^[11]

This report seeks to document the work of experts, whose studies overwhelmingly demonstrate that gambling's costs outweigh any economic benefit; that problem gambling rises as gambling opportunities proliferate; that economic hardship and crime likewise increase with more gambling; and that the level of wagering in this state and nation is increasing at a rate that is incompatible with true economic growth. We suggested in previous reports that by expanding gambling opportunities, the legislature was itself gambling -- with New York State's future.^[12] What this report finds is that the *Empire State* is in the process of being transformed into the *Gambling State*. Welcome to the future.

I. Gambling in New York State

Historical Background

The New York State constitution contains an absolute prohibition against gambling in New York State,^[13] with three narrowly defined exceptions^[14] (see below). The history of that prohibition dates back to the constitutions of 1821; 1846; and 1894, and includes some statutory law.^[15]

In 1721, private lotteries for goods were prohibited by statute. In 1772, private lotteries for money prizes were also prohibited by statute. Then by the constitution of 1821, all lotteries, public or private, for goods or money prizes, were prohibited. That prohibition was readopted by the constitution of 1846. Private "bookmaking" and "poolselling" and other forms of private gambling were prohibited by statute in 1877. Exceptions to those prohibitions were allowed by statute for seasonal (i.e., during the racing season) "bookmaking" and "poolselling" in 1887 (the so-called "Ives pool law"). Then by the constitution of 1894, "bookmaking," "poolselling" and "any other kind of gambling" were absolutely prohibited.

The Constitutional Convention of 1894

Many of the arguments in 1894,^[16] in favor of as well as opposed to gambling, resonate as strikingly similar to the arguments heard in recent years. The reported record of the

constitutional convention reveals that the framers of the 1894 constitution were concerned about gambling's "pernicious" effects and saw gambling generally as a moral evil and contrary to the work ethic.

One delegate to the convention stated that the prohibition was designed to

extend or define the prohibition already contained in the present [1846] constitution, and which is against public gambling in the form of lotteries. This amendment is framed so as to explicitly prohibit the equally pernicious form of public gambling known as poolselling, which has come into existence since the present Constitution was framed, and the manifest and enormous evils of which are notorious.

The concern expressed by delegates was the effect of gambling on working people, particularly their financial situation and commitment to the work ethic. Another delegate stated that allowing exceptions by statute in 1887 had been "an act dangerous to public morals."

Delegates disagreed over whether the prohibition as drafted would apply to all forms of gambling or only to bookmaking and poolselling. However, both the language of the prohibition and statements made by delegates indicating that the prohibition was meant to eliminate different standards and gambling laws in different parts of the state clearly indicate that the prohibition was intended to be a broad one.

Delegates opposed to the prohibition argued that people would always wish to gamble, and that the state could not prevent gambling activity by law, and that in any event the people of the state were opposed to the prohibition.

One delegate in favor of the prohibition, however, called gambling "a cancer." Another pointed to "ethics, morality, and propriety" and called the legalization of gambling an "iniquitous policy." Yet another thought legalization amounted to a "co-partnership of the state with criminals, which every one will agree will be found unparalleled in the record of any civilized community." This delegate was recorded as saying: "Sweep the whole brood together -- gamblers, pool sellers, bookmakers -- all the racing fraternity into oblivion forever."

The Debate in 1997

Perhaps the most recent airing of a thoroughgoing debate among state policymakers concerning gambling came in 1997, with the failed attempt at second-passage of a concurrent resolution proposing to amend the constitution to legalize casino gambling.^[17] At that time, Senator Goodman echoed the observations of many constitutional delegates a century before:

The fact of the matter is that [legalizing casino gambling] is predicated on one gigantic moral assumption, and that is that a society can have a major portion of its economy predicated on the idea that you can get something for nothing. The land of opportunity, the land of Horatio Alger, where success is built on diligence and hard work and self-boot-strapping, is now being superseded by a very different kind of image. It's a land where you can get something for nothing by just rolling the dice, stepping up to the blackjack table, and using the fabulous one-armed bandit with its seductive graphics which lure you and charm you into a situation where you actually see little old ladies with baskets of quarters spending hour after hour seated at slot machines, hoping for returns which they can never

hope to get. The odds are stacked against you, and it's the biggest sucker bet imaginable.

I condemn this on the grounds that it seeks to expand the notion of something for nothing, which is precisely contradictory to our basic values as a society.^[18]

Senator Mendez likewise suggested that by passing the casino gambling amendment, the legislature would "be gambling with the social fabric of people residing in our state."^[19] Senator Spano, among some others, was unconvinced:

people are going to gamble, whether it's legal or not. They're going to gamble on racetracks or OTB or they're going to gamble, as many people did last weekend on a football game, on the Super Bowl, or get a bookie and put some money on the games.^[20]

In the end, the amendment lost;^[21] the constitutional prohibition against gambling remains in place, with three exceptions.

Constitutional Exceptions

The State Lottery

The lottery exception was written into the constitution when voters approved the amendment on November 8, 1966, becoming the second state in the modern era to authorize a lottery; implementing legislation followed.^[22] The constitutional exception provides that

no lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe . . . shall hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.^[23]

The lottery New Yorkers had in mind when they went to the polls in 1966 was the New Hampshire Sweepstakes, which began with twice-yearly drawings and was itself modeled on the Irish Sweepstakes,^[24] which was held only four times a year.^[25] In 1967, the New York State lottery was limited to a monthly drawing with a top prize of \$100,000. The lottery was expanded in 1976 to include an instant lottery; Lotto was introduced in 1978; the daily "numbers" game and Win-4" were introduced in 1980 and 1981, respectively; "Pick 10" began in 1988; Take-5" was added in 1992; and Quick Draw was authorized in 1995. Quick Draw began as a game played every five minutes; currently, the game is played every four minutes.^[26] The New York State lottery is the largest lottery system in North America.^[27] The sale of instant scratch-off tickets alone means that New Yorker's have the opportunity to gamble twenty-four hours a day, seven days a week, 365 days a year.

Pari-Mutuel Wagering

The pari-mutuel wagering exception dates back to 1939;^[28] it permits

pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government.^[29]

Pari-mutuel wagering has been defined as "a form of wagering, generally on the outcome of horse or dog races, whereby all bets made on a particular race are pooled and then paid, less a management fee;"^[30] "winnings are divided in proportion to the sums individually wagered."^[31] At present, there are four operating thoroughbred racetracks that have pari-mutuel wagering: Aqueduct; Belmont; Finger Lakes; and Saratoga.

In 1970, New York State expanded pari-mutuel wagering to include Off-Track Betting, the first state to do so. The purpose of the OTB's was to support local government, particularly New York City; to displace illegal bookmaking; and to aid the horse industry. In 1973, seven geographic OTB regions were established, of which six currently have off-track wagering: Capital; Catskill; Nassau; New York City; Suffolk; and Western.

In addition to thoroughbred racing, New York State has seven harness racetracks: Batavia; Buffalo; Monticello; Saratoga; Syracuse; Vernon; and Yonkers. In 1981, simulcasting began in New York State, on an experimental basis; simulcasting is the "live simultaneous video and audio transmission of a race from an originating racetrack to a receiving port located

elsewhere for the purposes of pari-mutuel wagering"; in 1990, simulcasting was made permanent.

Most New Yorkers now live within a short drive of either a thoroughbred or a harness racetrack; many live within easy commuting distance of both. Telephone betting accounts, moreover, mean that anyone can place a bet from virtually anywhere.^[32]

Charitable Gambling

The charitable gambling exception became part of the state constitution in 1957 and was added to in 1975; the exception provides that

any city, town or village within the state may by an approving vote of the majority of the qualified electors in such municipality voting on a proposition therefor submitted at a general or special election authorize, subject to state legislative supervision and control, the conduct of one or both of the following categories of games of chance commonly known as: (a) bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random; (b) games in which prizes are awarded on the basis of a winning number or numbers, color or colors, or symbol or symbols determined by chance from among those previously selected or played, whether determined as the result of the spinning of a wheel, a drawing or otherwise by chance. If authorized, such games shall be subject to the following restrictions, among others which may be prescribed by the legislature: (1) only bona fide religious, charitable or non-profit organizations of veterans, volunteer firefighter and similar non-profit organizations shall be permitted to conduct such games; (2) the entire net proceeds of any game shall be exclusively devoted to the lawful

purposes of such organizations; (3) no person except a bona fide member of any such organization shall participate in the management or operation of such game; and (4) no person shall receive any remuneration for participating in the management or operation of any such game. Unless otherwise provided by law, no single prize shall exceed two hundred fifty dollars, nor shall any series of prizes on one occasion aggregate more than one thousand dollars. The legislature shall pass appropriate laws to effectuate the purposes of this subdivision, ensure that such games are rigidly regulated to prevent commercialized gambling, prevent participation by criminal and other undesirable elements and the diversion of funds from the purposes authorized hereunder and establish a method by which a municipality which has authorized such games may rescind or revoke such authorization. Unless permitted by the legislature, no municipality shall have the power to pass local laws or ordinances relating to such games. Nothing in this section shall prevent the legislature from passing laws more restrictive than any of the provisions of this section.^[33]

The "Bingo Licensing Law"^[34] legalized charitable bingo pursuant to the 1957 constitutional exception.^[35] In 1976, enabling legislation for "Games of Chance" was passed, providing the basis for the operation of so-called "Las Vegas Nights."^[36]

In 2002, the level of charitable gambling in New York State was approximately \$461 million.^[37] More significantly, the charitable gambling exception and enabling legislation have been the means by which the federal Indian Gaming Regulatory Act has allowed Indian casino gambling to be introduced into New York State^[38] (see Part IV).

II. Chapter 383 of the Laws of 2001

Chapter 383 of the Laws of 2001 represents the single largest expansion of gambling in the history of New York State.^[39] The legislation was introduced "at the request of the Governor" in both houses, by their respective Rules committees, on October 24, 2001.^[40] The legislation amended various laws, as summarized:

Relates to issues deemed necessary for the state including: provisions of law relating to persons in need of supervision, casino gambling, video lottery terminals, powerball, Tennessee pipeline, and building aid; extends various provisions of law relating to quick draw, lofts, the child health insurance program, bank tax, universal pre-kindergarten, medical malpractice, child care professional retention program, persons in need of supervision, the school tax relief (STAR) program and Roosevelt Union Free school district, the olympic games facilitation act and upstate and downstate tourism councils.^[41]

The Senate passed the bill on the day it was introduced,^[42] and the Assembly did so on the following day;^[43] the Governor signed the bill into law on October 29, 2001.^[44]

It was repeatedly asserted at the time that the reason for passing this legislation was the need to raise revenue in the wake of September 11, 2001.^[45] However, it was also pointed out that any revenue that would result from the gambling provisions of the bill would not be realized for years to come,^[46] and in any event New York State had survived worse economic times without resorting to widespread gambling.^[47]

Indian Casinos and Slot Machines

The gambling sections of Chapter 383 are Parts B, C, and D.^[48] Part B creates a new section of the Executive Law^[49] authorizing the Governor to enter into a casino gambling compact with the Seneca Nation of Indians.^[50] The compact, pursuant to a memorandum-of-understanding previously agreed to by the Governor and the Nation, would allow for three casinos in the western part of the state. Under the legislation, there is no need for further legislative approval: the compact is "deemed ratified by the legislature upon the governor's certification."^[51] Also, Part B allows for a future compact, or compacts, for three casinos in the Catskills, also "deemed ratified by the legislature";^[52] and permits gambling by slot machine, with a percentage of slot-machine revenue going into a "Tribal-State compact revenue account."^[53]

VLTs at Racetracks

Part C authorizes the Lottery Division to license racetracks to install video lottery terminals (VLTs), with part of the proceeds from these devices going to enhance horse racing purses and breeding funds, and an undetermined amount to go into a lottery fund.

[VLTs are to be placed at] Aqueduct, Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery gaming has been authorized pursuant to local law, [except Belmont Park and Saratoga racetrack].^[54]

[VLTs may operate] during the hours of ten a.m. through ten p.m. Sunday through Thursday and twelve p.m. through twelve a.m. Friday and Saturday, provided, however, that the lottery may authorize such video lottery gaming on public holidays and the day preceding such holidays from twelve p.m. through twelve a.m.^[55]

The specifications for video lottery gaming shall be designed in a manner as to pay prizes that average no less than ninety percent of sales.^[56]

The Mega Millions Lottery

Part D provides for New York State's participation in a so-called multi-state, or "multi-jurisdiction," lottery (popularly known as Mega Millions or Powerball).

The director may enter into an agreement with a government-authorized group of one or more other jurisdictions providing for the operation and administration of a joint, multi-jurisdiction, and out-of-state lottery, except the director may not agree to participate in the games of more than one such group at any single time. Such a joint, multi-jurisdiction, and out-of-state lottery game or games may include a combined drawing, a combined prize pool, the transfer of sales and prize monies to other jurisdictions as may be necessary, and such other cooperative arrangements as the director deems necessary or desirable.^[57]

Parts B, C, and D took effect "immediately."^[58]

III. Gambling in the United States

The level of gambling in the United States has increased dramatically in recent years. Legal gambling includes state lotteries; pari-mutuel wagering, including betting on horses, greyhounds, and jai-alai; casino gambling, including slot machines; sports betting; bingo; and video gambling, including keno and so-called video lottery terminals (VLTs).^[59] The legalization of these various forms of gambling has failed to stop illegal gambling, and may have actually facilitated its spread.^[60]

The States

The explosion of gambling in the United States has been to some extent a function of our federal system.

One explanation for the spread is that states need the revenue and are hooked on gambling funds. Another related view is that government has said it is acceptable, hence people are more willing to participate. Some observers attribute the domino effect: one state legalizes gambling, other states legalize gambling so they do not lose money to their neighbors. The spread of lotteries can be seen as an example of the domino effect. The current wave of legal lotteries started in New Hampshire, spread to other northeastern states, and then across the nation. Similarly, riverboat casinos were first legalized in Iowa, then Illinois, followed closely by Missouri, Indiana, Louisiana and Mississippi.^[61]

The "Third Wave" of Gambling

Historically, three waves of gambling in the United States have been identified: the first wave was from the colonial era until the Civil War; the second wave lasted through the early part of the twentieth century; and the third wave continues today.^[62] The modern expansion of gambling dates back to the 1930's.^[63] The economic and social dislocation associated with the Great Depression resulted in a weakening of gambling prohibitions in favor of legalization to raise revenue. In 1931, Massachusetts decriminalized charitable bingo; by 1950, eleven states had done so. Currently, bingo is legal in forty-six states and the District of Columbia.^[64] Pari-mutuel wagering also expanded during the Depression era: in 1933, California, Michigan, New Hampshire, and Ohio legalized betting on horse races. At present, some form of pari-mutuel wagering is legal in forty-three states.^[65]

In 1931, Nevada legalized casino gambling for the stated reasons of expanding tourism and seeking to displace illegal gambling, which was widely seen as corrupting state government. However, organized crime itself provided the financing for the first Las Vegas casinos.

During the 1950's, the United States Senate held hearings to investigate the influence of organized crime in the casino gambling business. The Kefauver Committee found evidence of widespread corruption in the casinos of Las Vegas, including the illegal sheltering of income from taxes. The committee's findings led to a crackdown on criminal influence in the gambling

industry and also a public backlash against gambling. Voters in several states rejected casino gambling initiatives, in at least one vote by a wide margin.

Lotteries were illegal in the United States for the first half of the twentieth century. "Because of a scandal over the Louisiana lottery, the U.S. Congress in 1890 passed a law making it illegal in the United States to import, to send through the mails, or to ship in interstate commerce any sweepstakes ticket."^[66] However, during the same period as many as 13% of Americans participated in the Irish sweepstakes at some time in their life; many people also played illegal "numbers." The 1960's saw the first state-sponsored lotteries, in New Hampshire and New York. During the 1970's, additional states authorized lotteries, led by New Jersey, often to fund education; there were also attempts to create a national lottery, but Congress failed to pass any such measure. Later years saw the advent of multi-state lotteries, such as Powerball. Forty states and the District of Columbia now offer some form of lottery gambling.^[67]

In 1978, New Jersey became the second state, after Nevada, to legalize casino gambling, in the seaside resort town of Atlantic City. A decade later, the federal government became involved with the passage of legislation to facilitate Indian-sponsored gambling, including casino gambling; and states began legalizing riverboats. Currently, twenty-nine states have either some form of legalized casino gambling or Indian casino gambling; four states allow sports-betting.^[68]

Gambling Today

Only two states in the nation have no gambling: Hawaii and Utah.^[69] One columnist has observed that nationally, "gambling has been swiftly transformed from a social disease into social policy. A generation ago, legalized gambling was rare and generally stigmatized. Today it is ubiquitous."^[70] In 1994, we reported that Americans lost what was then a record amount in gambling: \$30 billion annually;^[71] by 2000, that amount had more than doubled to \$61.4 billion,^[72] and by 2003 it had grown to \$68 billion.^[73] "Americans now spend more on gambling than on movies, videos, DVD's, music, and books combined; and with an annual growth rate of about 9 percent since 1991, gambling is growing substantially faster than the economy as a whole."^[74]

The current expansion of gambling is not dissimilar to the growth that occurred as a result of the Depression of the 1930's. *The Washington Post* reported in 2002: "Faced with massive, unexpected debts, many states are taking a fresh look at gambling as a possible cure to their fiscal woes, triggering what could become the first broad expansion of casinos and slot machines in a decade."^[75] Former Massachusetts Attorney General Scott Harshbarger has observed that "there is a very conscious strategy" on the part of the gambling industry "to take advantage of vulnerable states and to ally with state officials who don't want to make tough decisions about taxes. But when there's a full and fair public policy debate, it's tough for the gambling forces to win. People realize there's no quick and easy fix to these tough economic problems."^[76] *The New York Times* has reported that the "latest expansion proposals mainly involve video lottery

terminals, which are widely agreed to be among the most addictive forms of gambling, and the least likely to create jobs in the community or generate other positive economic effects."^[77] Nevertheless, "like swallows to Capistrano," states are engaging in an "arms race" to expand gambling that is changing the face of America:

Although it's difficult to put an exact number on how many are seriously contemplating the issue, discussions are taking place in at least 18 states about allowing or adding new types of gambling, as well as increasing the number of electronic devices in existing venues.

Since the period between 1989 and 1993, when states last looked en masse to gambling as a budget savior, it has become more palatable and mainstream. In 2002, several gubernatorial candidates actively supported gambling.

Robert Erhlich campaigned for slot machines at Maryland horse tracks, and Oklahoma's Brad Henry promoted a state lottery. In Pennsylvania, both new Governor Edward Rendell and his opponent, Attorney General Michael Fisher, backed putting slots at the state's four racetracks. New governors in Alabama, Arizona, Kansas, Massachusetts, New York and Wisconsin favor some form of gambling.^[78]

In 1994, we reported that it was then "estimated that by 2000, every American may be a three to four-hour drive from a casino;"^[79] that prediction proved to be correct.^[80] Meanwhile, the casinos and other gambling venues continue to spread throughout the nation, bringing more and more Americans into their reach.

The National Gambling Impact Study Commission

In 1996, President Clinton signed into law the National Gambling Impact Study Commission Act.^[81] The act created a nine-member bi-partisan commission to "conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States."^[82] In 1999, the Commission released its report, which "shed light on an activity that hasn't been studied by the federal government in more than two decades."^[83] The report summarized:

The Commission's research suggests that 86 percent of Americans report having gambled at least once in the past year. In 1998, people gambling in this country lost \$50 billion in legal wagering, a figure that has increased every year for over two decades, and often at double-digit rates. And there is no end in sight.^[84]

The Commission reported that "over the past 25 years, the United States has been transformed from a nation in which legalized gambling was a limited and a relatively rare phenomenon into one in which such activity is common and growing."^[85] This has occurred, however, without planning by the states: "To say that gambling has grown and taken shape in obeisance to government decisions does not imply that there was a well thought-out, overall plan. All too commonly, actual results have diverged from stated intentions, at times completely surprising decision makers."^[86] The Commission made many recommendations, including those listed on the following page.

National Gambling Impact Study Commission Recommendations

All legal gambling should be restricted to those who are at least 21 years of age.^[87]

Betting on collegiate and amateur athletic events [should] be banned altogether.^[88]

The federal government should prohibit Internet gambling within the United States.^[89]

States [should] not permit the expansion of gambling into homes through technology and the expansion of account wagering.^[90]

States should refuse to allow the introduction of casino style gambling [including VLTs] into pari-mutuel facilities.^[91]

States, tribal governments, and pari-mutuel facilities [should] ban credit card cash advance machines.^[92]

[States should] ban aggressive gambling strategies, especially those that target people in impoverished neighborhoods or youth anywhere.^[93]

[State lotteries are urged to] reduce their sales dependence on low-income neighborhoods.^[94]

[There should be] enforceable advertising guidelines [and the application of] federal truth-in-advertising laws to include Native American gambling and state-sponsored lotteries.^[95]

States should not authorize any further convenience gambling operations and should cease and roll back existing operations.^[96]

Warnings regarding the dangers and risks of gambling, as well as the odds where feasible, should be posted in prominent locations in all gambling facilities.^[97]

Comprehensive Gambling Impact statements should precede consideration of new or enlarged forms of gambling.^[98]

States [should] adopt tight restrictions on contributions to state and local campaigns by [gambling] entities.^[99]

One commissioner offered the following summary of the Commission's recommendations:

The Commission has adopted numerous important -- indeed, critical -- recommendations for further research into the effects of gambling and for corrective action to be adopted by state and tribal governments. Among the most important are a moratorium on further expansion, a ban on neighborhood gambling operations, restrictions on political contributions, curbs on lotteries targeting the poor and their deceptive advertising practices, and raising (and enforcing) the gambling age limit to 21 universally. It is imperative that our government leaders immediately embrace these recommendations.^[100]

The Commission's recommendations have been largely ignored.^[101] In New York State, for example, no research has been conducted since Governor's Pataki's Task Force on Casino Gambling issued its report in 1996.^[102] Even that report, however, was essentially a feasibility study on the best way to facilitate the legalization of casinos, where to place them, and how best to regulate their operation;^[103] the negative effects of gambling were consistently downplayed or even ignored.^[104] As the Commission found, what is "offered as research [is] usually advocacy and not objective data produced by impartial sources. That must be remedied."^[105]

The Commission's Recommendations and New York State

Of the Commission's specific recommendations listed above, New York State has ignored most of those applicable to it: the legal age for most gambling in the state remains 18;^[106] ATM

machines remain in gambling venues throughout the state;^[107] as we reported in 2001, the lottery is promoted aggressively by the state,^[108] while "most of the money is pouring out of neighborhoods where struggling, lower and middle-income taxpayers live and work",^[109] the actual odds of winning the lottery remain unknown to most gamblers;^[110] and restrictions on campaign contributions from gambling interests remain elusive.^[111] The state has flouted at least three recommendations: OTBs continue to offer "telephone betting accounts";^[112] VLTs have been authorized at racetracks throughout the state,^[113] and are being proposed at OTB locations;^[114] and Quick Draw, the epitome of "convenience gambling," is being expanded,^[115] rather than "rolled back" as the Commission recommended.

Finally, suggesting that their most important recommendation was "a moratorium on further expansion," the Commission concluded that "policymakers need to answer thousands of questions they will be asked in the new millennium."^[116]

IV. Indian Casino Gambling

IGRA

In 1988, Congress passed the Indian Casino Gaming Regulatory Act (IGRA);^[117] the Act was passed in response to the United States Supreme Court's decision in California v. Cabazon Band of Mission Indians,^[118] which upheld the federal policy of encouraging Indian gambling operations, in the face of a state challenge.^[119] IGRA declared that "Indian tribes have the exclusive right to regulate gambling activity on Indian lands if the gambling activity is not specifically prohibited by federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gambling activity."^[120] IGRA provides statutory authorization for the establishment of Indian casinos; attempts to regulate gambling so as to avoid "corrupting influences"; and seeks to ensure that the Indian tribes are the primary beneficiaries of gambling.^[121]

IGRA requires a compact between a tribe and the state before the tribe will be permitted to conduct so-called "Class III" gambling, which includes Las Vegas-style casino gambling.^[122] When a tribe requests that a compact be negotiated, a state is required to do so "in good faith." The compact should resolve such matters as the applicability of state laws at the casinos; state taxation of gambling revenues; remedies for breach of contract; and "any other subjects that are directly related to the operation of gambling activities." IGRA authorizes compacts only in "state[s] that permit such gambling for any purpose by any person, organization, or entity."^[123]

Under IGRA, the U.S. Department of the Interior must approve any payment requirement, or revenue-sharing agreement, included in an Indian gambling compact.^[124]

IGRA and New York State

In 1993, Governor Cuomo entered into two compacts, one with the Oneida Indian Tribe;^[125] and a second with the Mohawk Indian Tribe.^[126] The Mohawk compact allowed the Tribe to conduct gambling, including casino gambling but not slot machines, on the Akwesasne Reservation in Franklin County.

Meanwhile, in 1996, the Supreme Court issued an important decision limiting the effect of IGRA: Seminole Tribe v. Florida.^[127] In that case, the Court struck down one of IGRA's most important provisions: finding in favor of the State of Florida over the Seminole Indians, the Court declared that states can not be sued by Indian tribes in federal court over gambling compacts.

The decision had the effect of removing one of the central arguments in favor of expanding gambling in New York State. IGRA has historically been under attack from a variety of sources:^[128] there have perennially been bills before congress to limit its scope or even repeal the act outright; the nation's governors have challenged the act as an intrusion on state sovereignty under the tenth and eleventh amendments to the federal constitution; and litigation has proliferated in federal courts -- and in some state courts -- over several provisions of the act.^[129] Now IGRA's enforcement mechanism had been found to be unconstitutional.

As a result of the Court's decision in the Seminole case, the argument that New York had no choice but to legalize gambling because Indian tribes could operate casinos tax-free essentially disappeared. The decision tipped the balance back in favor of the state.

Saratoga County Chamber of Commerce v. Pataki

In 1999, Governor Pataki and the Mohawk Tribe executed an amendment to the 1993 compact. The U.S. Department of the Interior approved the amendment, which allowed the casino to operate electronic gambling devices, including keno (the casino version of Quick Draw). Shortly after the amendment took effect, Saratoga County Chamber of Commerce v. Pataki^[130] was brought, challenging the 1993 compact and the 1999 amendment as violating the principle of separation-of-powers and the constitutional gambling prohibition. The suit sought a declaration that the 1993 compact and the 1999 amendment were unconstitutional.

In March, 2000, the state supreme court dismissed the action for failure to join the Mohawk Tribe as an "indispensable party." On appeal, the Appellate Division reversed that decision, concluding that the Tribe was not indispensable to the suit. The Court noted that a contrary ruling would put Indian gambling compacts beyond constitutional challenge or review. While the Appellate Division acknowledged that the Tribe's interests would be affected by the suit, it determined that, on balance, its absence should not prevent the suit from going forward.

In April, 2001, the Supreme Court, now deciding the case on the merits, declared that the 1999 amendment and the 1993 compact were invalid. Justice Teresi held that, "absent legislative

concurrence, the Governor's execution of the compact violated the doctrine of separation of powers, thereby rendering it void and unenforceable," and that "New York's Governors in signing [both the Oneida and St. Regis Mohawk] Indian Gambling Compacts have crossed the line of executive power and entered into the domain of the legislature without proper mandate or authority within the New York State Constitution."^[131]

The Appellate Division affirmed Justice Teresi's decision, holding that the Governor's unilateral action deprived the legislature of its policy-making authority in such areas as "the location of the casino, the gambling that could be carried on there, the extent of state involvement in providing regulation and the fees to be exacted for that regulation." The Appellate Division agreed, moreover, that *both* the Oneida and the Mohawk compacts were "void and unenforceable."^[132]

On June 12, 2003, the Court of Appeals affirmed the Appellate Division decision, expressing its "commitment to the separation of powers and constitutional government."^[133] Therefore, the two compacts remain void and unenforceable; the Turning Stone Casino and the Akwesasne Mohawk Casino are operating illegally and may be shut down at any time.^[134]

Ratifying the Mohawk Compact: S.5670-A

After the 2003 Court of Appeals decision in Saratoga County Chamber of Commerce v. Pataki,^[135] there was universal agreement that the Akwesasne Mohawk Casino was operating

illegally.^[136] As a result, there have been attempts to have the legislature ratify the compact; the first effort was in 2003, shortly after the Court of Appeals issued its decision.^[137] That effort passed the senate, but died in the assembly.^[138]

In 2004, a second effort was made to ratify the compact; the bill, S.5670-A, is an amended version of the earlier proposal.^[139] The amendments are significant: in addition to ratification, S.5670-A would authorize the Governor to amend the compact to allow the Mohawks to install slot machines at their casino. The plan is for the state to get a percentage of the proceeds from the slot machines, increasing to 25% after seven years; the bill specifically calls for the Tribe to install at least one-thousand slot machines. On March 31, 2004, S.5670-A passed the senate and was delivered to the assembly.^[140] The bill was introduced with the following rationale:

The Akwesasne Mohawk Casino has operated consistently since 1993 and currently employs approximately 600 employees who reside in the Fort Covington and Massena areas. About fifty percent of these employees are non-Native Americans.

On June 12, 2003 the New York State Court of Appeals issued a decision invalidating the compact on the grounds that it was not approved (either via prior authorization or via ratification) by the state legislature. In its decision, the Court invited the legislature to rectify the situation by ratifying the compact prior to adjournment. Therefore, this act is necessary to validate the 1993 Tribal-State Compact between the St. Regis Mohawk Tribe and the State of New York.

In so doing this legislation ensures that the State of New York will receive a portion of the gaming proceeds according to the following schedule: in years one through four, eighteen percent; years five through seven, twenty-two percent; and in years after seven, twenty-five percent. It is estimated that the state will receive an immediate infusion of \$7 million growing to over \$14 million over the course of the compact.

The counties of Franklin and St. Lawrence shall collectively receive in equal shares a minimum of twenty-five percent of the negotiated percentage of the net drop from slot machines that the state receives pursuant to the compact.^[141]

S.5670-A and Dalton v. Pataki

Should S.5670-A become law, it is unclear that the state, or local communities, will ever realize any revenue. The reason for this uncertainty is twofold: (1) the legality and constitutionality of slot machines has been challenged in state court, in the Dalton v. Pataki case (see Part VI);^[142] and (2) it is unclear as a matter of both state and federal law whether New York State will be permitted to require the Tribe to make the payments provided for in the proposed amendment to the compact.^[143]

It is important to note that S.5670-A is not a *re-negotiation* of the compact; rather, under the bill, the existing compact is ratified, and then amended. Therefore, if either the Dalton case results in the slot machine amendment being found unconstitutional or some future state or federal court decision strikes down the payment requirement, all that would remain of S.5670-A would be the ratification of the compact. The legislature will have ratified a compact that has no sunset provision,^[144] and done so with no benefit to the state.

V. The Lottery Division

The New York State Lottery Division is an independent division of the Department of Taxation and Finance; the Lottery Director is appointed by the Commissioner and is not subject to Senate confirmation.^[145] The stated purpose of the lottery is to fund education.

By dedicating it to education, there is an implied promise that the lottery will increase school aid. This has never happened in New York. The legislative debates on the lottery in the early 1960's consistently described the lottery as being dedicated to education, but promises that it would actually increase the aid that schools would have received anyway were not generally made. Efforts to ensure that the lottery would serve as a supplement were not visible until after the voters had approved the lottery. Over the years, governors have consistently contributed to the public perception that the lottery provided additional funding.

[I]t is clear that the lottery has not acted as a supplement to school aid. General Fund support to public schools has not nearly kept pace with lottery's contribution and the share of school aid to total spending has declined significantly.^[146]

For 2004-2005, the proposed budget for the Lottery Division is \$123.3 million. This level of funding represents a net increase of \$5 million, or 4.2% over the previous fiscal year.^[147]

"The net increase is derived not only from increased expenditures associated with advertising, fringe benefits and indirect costs, but the addition of six funded positions to support video lottery terminal operations at racetracks."^[148]

Lottery Advertising

The proposed advertising budget alone for the Lottery Division for 2004-2005 is \$51.5 million;^[149] the advertising budget has increased dramatically over time,^[150] and annual budgets have been as high as \$60 million in recent years.^[151] This is by far the highest advertising budget in the United States, and is more than twice as much as the budgets of all but two states, California and Texas.^[152] The New York State lottery advertising budget, moreover, represents approximately one-sixth of all lottery advertising in the United States.^[153]

The effect of advertising on who gambles on the lottery and why has been the subject of considerable research.^[154]

As states moved towards promoting more gambling, they found themselves increasingly concerned with the psychology of player behavior to sell their products. Kentucky's lottery director, for example, describing the psychology of people who gamble at the lottery, said they are people who play against enormous odds, and, in doing so, they gamble primarily to "dream" and "have fun." When they lose, he said, they tend to blame themselves and not the state. "If there's any upset, it's with themselves: I didn't pick the right numbers."

State lotteries use sophisticated market research analysis, including consumer surveys, penetration studies and focus groups, in order to stimulate more demand for their products.^[155]

Newsday commissioned a study to determine who plays the lottery in New York State and found that "lower-income communities spend a larger share of their money on lotteries." Also, "the lottery draws far more from people in the state's poorest neighborhoods than from those in the wealthiest ones." The result is that "the state is relying on a revenue source that takes from lower-income households to a far greater degree than the primary way the state raises money, the income tax."^[156]

As a proportion of their income, lower-income families spend vastly more than middle-income or wealthy families on the lottery. Annual lottery spending per \$10,000 of household income was eight times higher in the lowest income areas than the highest. Even in a middle-income range, between \$40,000 and \$50,000 a year, lottery spending as a proportion of household income was nearly three times higher than in the \$75,000 to \$100,000 income range.

Statewide, some of the lowest-income neighborhoods, in places like the South Bronx and Harlem, had higher spending per household than some of the high-income areas, such as Great Neck and Scarsdale. In ZIP codes with an average household income of under \$20,000, lottery spending averaged \$35 a month per household, while in ZIP codes with an average income of over \$100,000, spending averaged about \$29 a month per household.

In [New York City], discrepancies in lottery spending can be stark. In Bedford-Stuyvesant, where income is just over \$22,000 per household, lottery spending is \$49 a month.

Compared with the income tax, which taxes the wealthy at higher rates than the less affluent, the lottery takes a greater share of money from those with lower

incomes. Households making less than \$30,000, about 29 percent of the households in the state, paid only 9.66 percent of income tax. But census tracts with median income of less than \$30,000 accounted for about 33 percent of lottery sales.^[157]

In its study, *Newsday* found that "while Lotto, the most popular game, sells best in census tracts with a household income above the state average, sales of Quick Draw during its first six weeks of operation were highest in census tracts with an average household income far below the state average."^[158]

Quick Draw

Quick Draw is a form of video keno similar to a game found in casinos across the nation. The lottery version has been introduced in states from Massachusetts to California and was introduced in New York State in 1995.^[159] There are over three-thousand Quick Draw outlets operating every day in convenience stores, bowling alleys, restaurants and taverns throughout the state. A player chooses up to 10 numbers between 1 and 80, and selects how many games are to be played. Winners are chosen by matching their numbers to a drawing of 20 numbers. The game is televised on monitors that graphically display the winning numbers as the game progresses. Games are played every four minutes between 10:00 A.M. and midnight, with a one-hour break in the afternoon. There is no limit on how much may be wagered on Quick Draw. The odds for Quick Draw range from 1 in 4 for a \$1 bet yielding \$2 in winnings (which means that over time a player can expect to lose half of his money) to 1 in 8.9 million.^[160]

For 2004-2005, the Lottery Division proposed making the authorization to operate Quick Draw permanent. The Division also proposed eliminating the restrictions placed on the operation of Quick Draw when it was originally passed in 1995, including limitations on the game's hours of operation.^[161]

VLTs

Video lottery terminals, or VLTs, are located at New York's racetracks and involve gambling on so-called "electronic facsimiles" of existing lottery games.^[162] They are similar to casino video gambling devices, which are

typically based on traditional games of chance such as poker, blackjack, craps, and horse racing. Unlike amusement-only video games, video gambling devices are not dependent on any significant degree of skill (i.e., practice will not improve performance). Very little entertainment is derived from the game itself; rather, the game's attraction is the possibility of winning money.^[163]

Video gambling has been reported to be the most addictive form of gambling available to the average gambler.^[164] For example, while it can take gamblers who play the horses as long as twenty years to "hit bottom," as Gamblers Anonymous puts it, video gamblers reach that point in about two years.^[165] According to a Las Vegas clinical psychologist, video gambling has all the elements tending to cause gambling addiction: speed; the built-in ability to keep playing; the perception that skill is involved; and the game's hypnotizing effect.^[166]

The legalization of VLTs has led to the creation of mini-casinos, or "racinos" as they are called, at locations throughout the state, adding to the existing problem described by the New York Council on Problem Gambling, among others, and documented in this report (see Part VIII). By early 2004, there were over 3,000 VLTs in operation at three racetracks. More than 10,000 additional VLTs are scheduled to be added at five additional racetracks by 2005. Aqueduct Racetrack will have the highest number of VLTs when construction there is complete: 4,500.^[167]

For 2004-2005, the Lottery Division proposed licensing eight new facilities in New York State to offer video lottery gambling.^[168] The plan is to install as many as 20,000 VLTs at OTB's throughout the state.^[169] This would bring the VLT total to approximately 35,000 statewide.

Scratch-Off Tickets

In addition to Quick Draw and video lottery terminals, as well as Lotto and several "numbers" games, the Lottery Division markets various instant scratch-off tickets.^[170] Many of these tickets feature simulacra of casino gambling games. For example, a ten-dollar lottery ticket has the name "Casino Fortune" and features simulated betting on roulette, blackjack, poker, dice, and slot machines; in addition are "Monte Carlo," "\$1,000,000 Hand," "Aces High," and "Hot Slots." Past tickets have included "One-Eyed Jacks," "Best of Seven," and "Poker Royale"; a ticket called "Winning Streak" invoked sports betting.

The Lottery Division regularly markets scratch-off tickets that appeal to children: "Frosty the Dough Man," and "All the Marbles," for example, as well as a game modeled on tic-tac-toe.^[171] Scratch-off tickets, moreover, are sold through vending machines in grocery stores and at other locations throughout the state that children have access to.^[172]

The proliferation of gambling facilitated by the Lottery Division -- through the expansion of Quick Draw, the installation of VLTs, and the instant lottery -- magnified in its effect by the Division's advertising budget, demonstrates what happens when the state shifts its role from gambling regulator to gambling promoter.^[173] The result is an inherent conflict of interest, described by one academic as "a schizophrenic role for government."^[174]

VI. Dalton v. Pataki

Chapter 383 of the Laws of 2001, the single largest expansion of gambling in the history of New York State (see Part II), has been challenged in state court. The lawsuit, Dalton v. Pataki,^[175] was brought by "a broad coalition of state legislators, citizen-taxpayer-voters and various non-profit organizations opposed to the spread of gambling in this state."^[176] According to a legal brief filed by the plaintiffs in the case, Dalton v. Pataki presents the following questions:

Given the prohibitions against commercialized gambling in Article 1, section 9 of the New York State Constitution, and the mandate to the legislature to pass laws to prevent it, could the legislature nevertheless pass a law [Part B of Chapter 383] allowing the governor to enter into compacts with Indian tribes, permitting them to operate Las Vegas-style gambling casinos on lands in this state (including non-Indian lands), by relying on the federal Indian Gaming Regulatory Act, which even the governor has conceded does not require a state to enter into such compacts?^[177]

In enacting Part C of Chapter 383, allowing the Division of the Lottery to install video lottery terminals ("VLTs") at certain racetracks and directing that part of the revenues from the operation be diverted to enhance horse-breeding funds and purses awarded by the tracks, did the legislature violate the constitution, given that Article 1, section 9 allows lotteries to be operated solely to benefit education within the state . . . and [that] the VLTs are, in fact, slot machines which, by definition, cannot be part of the lottery?^[178]

Does Part D of Chapter 383 authorizing the Division of the Lottery to participate in a multi-state lottery violate Article 1, section 9 of the constitution, when such lottery's centralized operation is funded in part by the sale of tickets in New York, and the lottery proceeds support programs in other states that have nothing to do with education in this state, since Article 1, section 9 prohibits all lotteries, except those operated by the state in which the net proceeds are dedicated exclusively to education within this state? ^[179]

Dalton v. Pataki will ultimately be decided by the Court of Appeals. ^[180] In addition to the broader issue of the Indian gambling compacts, the Court will have to address Chapter 383's attempt to legalize slot-machines by circumventing the state's penal law ^[181] by amending the general municipal law. ^[182]

With regard to VLTs, in addition to the argument that they do not properly come within the state constitution's lottery exception, ^[183] the Court of Appeals will have to determine if VLTs are slot machines, defined as

a gambling device which, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value. ^[184]

Finally, the Court will have to determine whether the so-called Mega Millions multi-state lottery violates the constitution since the Mega Millions is operated by a consortium of states, and money raised from the lottery does not stay within New York State, and is not "applied exclusively to or in aid or support of education in this state." ^[185]

VII. The Expansion of Wagering in New York State

A recent analysis of the gambling numbers in New York State reveals that the overall level of wagering is growing at an alarming rate.^[186] Even without new gambling, the state is already third in the nation, behind Nevada and New Jersey.^[187] As the chart on the following page indicates, wagering for all currently authorized gambling is estimated to be over thirty-five billion dollars; for all proposed gambling -- not including Indian casinos or the proposal to amend the constitution -- the level of wagering would rise to nearly fifty billion dollars.^[188]

Currently authorized gambling includes all lottery games, including Quick Draw, \$5.8 billion; pari-mutuel wagering, including OTB's, \$2.6 billion; charitable gambling, \$461 million; and VLTs, \$26.5 billion.

The vast majority of the increase in proposed gambling is from VLTs: the amount wagered on video lottery terminals would jump to \$39.4 billion under the Governor's proposal to place these devices at OTB locations throughout the state. The other significant increase is from Quick Draw: wagering on all lottery games would rise to \$6 billion under the Governor's proposal to remove the current restrictions on where and how Quick Draw is played.

If Indian casinos are included, the projected figure for New York State exceeds seventy billion dollars annually,^[189] ten times the level of wagering in 2002.^[190] This amount of wagering would represent more than the gross state product (GSP) of eighteen states and the District of Columbia^[191] as well as the gross domestic product (GDP) of over one-hundred world countries.^[192]

Money wagered annually in New York State
(not including Indian casinos currently operating or authorized)

	currently authorized ^[193]	proposed by Governor ^[194]
Lottery		
Instant Games (Scratch-Off)	2.684 B	2.815 B
Lotto	358 M	338 M
Multi-State	427 M	422 M
Take-5	373 M	337 M
Daily Numbers	784 M	771 M
Win-4	617 M	617 M
Pick 10	35 M	31 M
Quick Draw (with current restrictions)	500 M	
(without restrictions)		626 M
Lottery Total	5.778 B	5.957 B
Pari-Mutuel Wagering		
Racetracks	769 M	786 M
OTB	1.828 B	1.868 B
Pari-Mutuel Wagering Total	2.597 B	2.654 B
Charitable Gambling		
Bingo	134 M	134 M
Games of Chance	8 M	8 M
Bell Jars	319 M	319 M
Charitable Gambling Total	461 M	461 M
VLTs		
Racetracks (currently authorized)	26.454 B	26.454 B
OTBs (proposed)		12.990 B
VLT Total	26.454 B	39.444 B
All Gambling (not including casino gambling)	35.290 B	48.516 B

VIII. The Dark Side of Gambling

The dark side of gambling is the side that the problem gambler knows; it is the place where politics and corruption meet; it is the dark alley of crime; and it is the black hole of economic loss and the graveyard of missed opportunities.

One academic study found: "A review of the empirical literature that estimates correctly-defined components of social costs and benefits indicates that the costs of casinos are at least 1.9 times greater than benefits."^[195]

Problem Gambling

Three recent findings underscore the danger of gambling proliferation as it relates to problem gambling: (1) "There is abundant evidence that increased gambling opportunities increase problem and pathological gambling"; (2) there is a "tremendous increase in the numbers of gamblers seeking help when casinos enter a market"; and (3) "a small number of pathological gamblers accounts for a significant portion of casino revenues."^[196]

The "Silent" Addiction

Problem gambling has been called the "secret" addiction,^[197] or the "silent" addiction: "Since no substance is ingested, addicted gamblers can maintain their addiction for long periods without discovery."^[198] Its essential features are "a continuous or periodic loss of control over gambling; a progression in gambling frequency and amounts wagered, in the preoccupation with gambling, and in obtaining monies with which to gamble; and a continuation of gambling involvement despite adverse consequences."^[199] It is a disease which, according to the National Institute of Mental Health, afflicts at least four percent of America's adult population,^[200] and experts believe that the number of problem gamblers is on the rise.^[201]

Those who have studied the long-term impact of socially accepted gambling say the price for some individuals will be indebtedness, deteriorated relationships with friends and family, neglect, depression and possibly suicide.

In the work place and community, researchers say that over time, problem gambling contributes to a decline in productivity, unpaid taxes, increased crime, and a higher number of foreclosures [and] bankruptcies.^[202]

But problem gambling affects more than just the bottom-line. It breaks up marriages, tears at the social fabric, threatens communities, and destroys lives. While there certainly are economic costs that arise from problem gambling, even greater is the human cost. Problem gamblers have been shown to have disproportionately high rates of spouse and child abuse, suicide (see below), and substance abuse.^[203]

The "silent" addiction is often denied even by its sufferers, sometimes until it is too late. Dr. Henry Lesieur, a problem gambling expert from Illinois State University, has pointed out that since problem gambling has no obvious symptoms, the problem gambler rationalizes to himself that he has no problem, while convincing others that all is normal. "It's a hidden addiction. It's not on your breath, it's not in your eyes. You could be sitting across from me and have just blown a whole month's savings and I'd never know. Not unless you told me."^[204]

Over time, as gambling opportunities have proliferated, old stereotypes of the problem gambler have been replaced by "a medical model of pure psychological addiction" which can afflict just about anyone in society.^[205]

According to experts, almost anyone can become a compulsive gambler -- from janitors to lawyers to international jet-setters. As the disorder intensifies, it spares no gender, profession, or craft.^[206]

The profile of today's compulsive gambler is truly democratic, all ages, races, religious persuasions, socioeconomic levels and education. Sixteen or sixty, the desperation and devastation is the same.^[207]

Problem Gambling in the United States

The national scope of problem gambling has been well-documented.^[208] The combined rate of problem and pathological gambling in seventeen states with legalized gambling has been reported to range between approximately two and seven percent of the population.^[209] In Oregon,

for example, the lifetime prevalence rate is 4.9%;^[210] in Mississippi and Louisiana, the rate is 7%.^[211] These studies, including the latest study from New York State (see below), are five to ten years out-of-date.^[212] The National Gambling Impact Study Commission released two problem gambling studies in 1999:

The two principal studies sponsored by this Commission found that the prevalence of problem and pathological gambling in America is troubling. [The National Research Council] estimates that, in a given year, approximately 1.8 million adults in the United States are pathological gamblers. [The National Opinion Research Center] found that approximately 2.5 million adults are pathological gamblers. Another three million of the adult population are problem gamblers. Over 15 million Americans were identified as at-risk gamblers.^[213]

Adolescent Gambling

The Commission also cited the alarming trend that "adolescent gamblers are more likely than adults to become problem or pathological gamblers," with as many as 1.1 million adolescents found to be pathological gamblers.^[214] At the same time, the at-risk rate for adolescents was found to be twice that for adults.^[215]

The impact is felt throughout the nation. In a survey of 12,000 Louisiana adolescents, one-quarter reported playing video poker, 17 percent had gambled on slot machines, and one in ten had bet on horse or dog racing. In Oregon, 19 percent of youths ages 13 to 17 reported having gambled in a casino, with 12 percent having done so in the past year. In Massachusetts, 47 percent of

seventh-graders, and three-quarters of high school seniors, reported having played the lottery.

The conclusion is startling, but confirmed by every study: children are gambling, even before they leave high school.^[216]

It has been shown that as gambling opportunities proliferate, prevalence rates increase dramatically;^[217] for example, Nevada has a 6.4% prevalence rate.^[218] It is therefore not surprising that proximity to legalized gambling affects gambling rates among adolescents: "One study found that college students in New York, New Jersey, and Nevada had significantly higher rates of gambling than did students in Texas and Oklahoma."^[219] A Harvard study concluded that

compared to adults, youth have had more exposure to gambling during an age when vulnerability is high and risk-taking behavior is a norm; consequently, these young people have higher rates of disordered gambling than their more mature and less vulnerable counterparts.^[220]

"This is the first generation of kids exposed to widespread gambling advertising and gambling opportunities," one expert has said. "Some kids are now seeing gambling as a rite of passage."^[221] The *San Francisco Chronicle* has reported: "Researchers say the hype around huge lottery payoffs is helping to draw young children into a culture of gambling."^[222] A 1998 survey found:

While participation in all forms of gambling is illegal for individuals under the age of 18 in New York State, 86% of the New York adolescent respondents said

that they had bet on one or more types of gambling at some time, 75% had gambled in the past year, and 15% had bet on one or more types of gambling on a weekly basis.

Despite restrictions on underage gambling in New York State, nearly one-third of the adolescent respondents have been able to purchase lottery tickets, 9% have been able to wager at horse races, 6% have been able to participate in Quick Draw, and 5% have been able to gamble at a casino.^[223]

Problem gambling is also increasingly affecting the elderly.^[224] In Arizona in 2000 "about 40 percent of the calls to a hotline for problem gamblers came from senior citizens, nearly twice as many as two years earlier."^[225]

Meanwhile, casinos are trying harder than ever to attract retirees: some are dispatching buses to senior centers, or vans to trailer parks -- and timing their offers for free rides to coincide with the arrival of monthly Social Security checks. Some are staging midday entertainment to suit elderly tastes. Casinos are also using direct mailings to entice seniors with stipends to play slot machines or offering discounts for food, drinks or lodging.^[226]

Suicide

Suicide has historically been found to be associated with problem gambling behavior.^[227] The National Council on Problem Gambling has reported that one in five pathological gamblers attempts suicide, a higher rate than for any other disorder.^[228] Two-thirds of Gamblers Anonymous members said in one survey that they had contemplated suicide.^[229] Nevada has

consistently had the highest suicide rate in the nation; in 1995, the rate was twice the national average.^[230] In Atlantic City, during one fifteen-month period, as many as seven gamblers were reported to have committed suicide by jumping from a casino.^[231]

In April, 2004, the intersection of problem gambling and the New York State lottery resulted in both murder and suicide:

John Treacy, 62, of the upstate village of Stillwater, murdered his wife in their home before hanging himself. Their adult son found the bodies.

Treacy wasn't a known psychotic or a crazed drug addict -- he was considered an upstanding member of his community. Treacy was once a village trustee, and he volunteered for the local historical society.

But Treacy did have one life-destroying addiction: the New York State Lottery. Police in Stillwater said that Treacy spent more than \$200 each *day* on lottery tickets at a convenience store near his home. His wife flipped out because they had no money -- so, police believe, he killed her.^[232]

A spokesman for the Lottery Division was quoted in 1996 as saying: "We don't throw something out that millions of New Yorkers enjoy and can control because of the minuscule number that might have problems."^[233]

The New York Council on Problem Gambling

In 1996, the New York Council on Problem Gambling commissioned a study to determine the prevalence rate of problem gambling in New York State. That study found that 7.3% of New Yorkers are lifetime problem gamblers or potential problem gamblers, as compared to 4.2% found in a 1986 study.^[234] The 7.3% rate is the highest in the country,^[235] and translates into 1.4 million New Yorkers.^[236] The president of the Council's board of directors, characterized the situation succinctly: "New York has a problem."^[237] The Council's Executive Director at the time summarized the Council's findings:

According to a 1996 Council prevalence study conducted among adults (18 and older) and a 1998 Council review among adolescents (ages 13-17), more than one-quarter million adult residents (3.6%) and as many as 41,000 adolescents (2.4%) are currently experiencing serious to severe difficulties due to gambling. In addition, as many as 193,000 adolescents (14%) are at risk of developing gambling problems. (Note: these statistics do not reflect the millions of residents adversely affected by the gamblers' activities, such as spouses or partners, other loved ones or friends.)^[238]

The Council found "a significant increase in overall gambling participation as well as specifically in lottery gambling, casino wagering, and wagering on sports."^[239]

The Prevalence Rate and Gambling Proliferation

Although 7.3% of New Yorkers are lifetime problem gamblers or potential problem gamblers, about half that number, 3.6%, were found to be actually experiencing a problem with gambling.^[240] Therefore, there is a considerable potential for increased problem gambling behavior as gambling opportunities proliferate.

Gambling is a behavior that is dependent upon structured opportunity. The state permits legal gambling opportunities to exist and they are, of course, taken advantage of by the compulsive gambler. Given this, it would be difficult to deny that a relationship does exist between legal gambling opportunities and the prevalence of compulsive gambling.

From everything I have reviewed, the more gambling opportunities there are, the greater the risk among the [problem] gambling population.^[241]

Valerie C. Lorenz, Executive Director of the Compulsive Gambling Center, in Baltimore, Md., has stated:

The formula is quite simple: Availability leads to more gamblers which leads to more compulsive gamblers. Casino gambling is particularly onerous because of the allure of escaping into fantasy, the fast action, and emphasis on quick money, all of which are basic factors in gambling addiction.^[242]

The Council's prevalence studies have found that

state-sponsored lottery games are among the top three forms of gambling presenting the greatest risk among adult and adolescent residents. Further, although Quick Draw was only in the marketplace for a period of seven months at the time the 1996 study was conducted, it documented prevalence rates similar to those associated with illegal forms of gambling (e.g., sports betting). While clinical evidence reveals that it typically takes a person three to five years to experience problems due to particular forms of gambling, prevalence rates for Quick Draw revealed that this game was likely to present implications in the future among the problem gambling population in New York State.^[243]

In March, 2004, the Executive Director of the New York Council on Problem Gambling, James Maney, in testimony before the Senate Committee on Racing, Gaming and Wagering, reported that the problem in New York is getting worse as a result of gambling proliferation: "Within 50 miles of all new casinos and VLTs, the numbers [of problem gamblers] will double."^[244] Arguing that a new prevalence study is needed, Mr. Maney identified the source of New York's increasing problem: "It's much more a gambling culture now."^[245] He added: "Because of Quick Draw, the Mega Millions, Internet gambling, VLTs and racinos, the state is becoming very gambling oriented."^[246] The new casino in Niagara Falls alone, Mr. Maney testified, has been responsible for a 53% increase in calls to the Erie County hotline.^[247]

Political Corruption

The modern corollary of the famous maxim^[248] coined by Jesse Unruh, the storied Speaker of the California Assembly, may well be that *gambling* money is the mother's milk of politics.^[249] For one two-year period in the late 1990's, for example, the gambling industry spent \$22.5 million lobbying congress, more than the powerful alcohol and gun lobbies spent during the same period. "They've got the money," says Professor William Thompson, of the University of Nevada at Las Vegas, "and the opposition doesn't. The casinos make contributions to every viable candidate."^[250] The result is more gambling, with fewer restrictions:

One of the most problematic long-term consequences of legalizing gambling is the difficulty, if not impossibility, of undoing it. Gambling isn't an economic policy that can be turned on and off, at least not easily. New gambling ventures create powerful new political constituencies that will fight to keep gambling legal and expanding. These operations can radically alter the balance of power in the state and local political landscape.

Once the novelty of a new casino or a new game wears off, as it inevitably does, revenues tend to fall or flatten, forcing legislators to look for new gambling ventures and gimmicks to keep their budgets afloat. And as enterprises suffer lower revenues from increased competition or fading consumer interest, they naturally turn to government for regulatory relief and sometimes direct subsidies.^[251]

The Gambling Lobby in New York State

In 2003, the total amount of gambling-industry money spent lobbying in New York State exceeded \$3 million, twice the amount spent in 2000. This money "is funding a successful campaign," says NYPIRG's Blair Horner.^[252]

International Game Technologies, based in Nevada, hired former state Lottery Division official Jeff Perlee to be its lobbyist at a rate of \$10,400 per month plus expenses. In 2002, IGT spent \$170,000 on lobbying.

GTECH Corp., which runs Quick Draw, spent \$316,633 over the last two years. The Rhode Island-based company, which has a 10-year contract to run games for the state, has earned about \$43 million annually on lottery games, officials have said. It gets 1.5% of every Quick Draw sale. The new, quicker [every four minutes] Quick Draw should generate more money for GTECH.

Yonkers Raceway spent \$110,000 over the last two years. Monticello Raceway spent \$90,000. Mid-State Raceway spent \$50,000. Finger Lakes Racetrack spent \$98,000 while the Finger Lakes Horsemen Association, which represents owners and trainers, spent another \$90,000.

Park Place Entertainment spent \$604,207 during the last two years. It has worked with the St. Regis Mohawks to build one of the three scheduled Catskills casinos. Hudson Valley Resorts, a competitor, spent \$346,401.^[253]

The Temporary State Commission on Lobbying has reported that the Seneca Nation of Indians, which has a compact with the state and is seeking to expand its gambling operations,

was ranked third by total lobbying for 2003, behind 1199/SEIU and United Teachers.^[254] The influence of Indian gambling is problematic, especially as more tribes seek federal recognition.^[255] "Money is driving the federal tribal recognition process," says Connecticut Attorney General Richard Blumenthal. "Each of these tribes has wealthy, powerful investors who have made a very big debt on gaining recognition, because the payback is potentially unending and immeasurable. We're not talking about hundreds of millions here. We're talking about billions."^[256]

[I]f just a fraction of [the tribes] receive sovereign status, they instantly become a vessel for a casino mogul to enter a state that otherwise does not permit casino gambling. So if you are a South African businessman or and Asian financier or a Las Vegas corporation, this is your vehicle to crack into a market that you can't otherwise get into.^[257]

GTECH

The opportunity for corruption when politics and gambling intersect is obvious and well-documented.^[258] In 2002, GTECH paid the lobbying commission a \$90,000 fine to settle an inquiry involving its lobbyist, Virgilio Perez, who was suspended from lobbying in New York State for three years for exceeding limits on gifts, and for filing false reports.^[259] As we have documented in previous reports, such violations have become a pattern for GTECH, and the fines they pay are apparently a cost of doing business;^[260] some of that history is chronicled on the following page.

GTECH's History of Corruption

In 2004, a scandal involving GTECH rocked the administration of Brazilian President Luiz Inacio Lula da Silva. The government has "strong evidence" that a former cabinet aide "helped [GTECH] extend contracts in the South American country." The aide, a former head of the Rio state lottery, was reported to have "used his position in the government to help GTECH."^[261]

In 1998, a British jury found that then GTECH chairman Guy Snowden had bribed a competitor for the contract to run Britain's lottery, leading to his resignation.^[262]

In 1996, the Texas Lottery Director came under fire amid charges of impropriety and favoritism, as the result of a state contract awarded to GTECH.^[263]

In 1994, a former sales-manager for the company was indicted for bribery, fraud, conspiracy and money-laundering.^[264]

In 1992, a California state senator admitted accepting bribes from a GTECH lobbyist in exchange for his vote on lottery legislation.^[265]

In 1991, as part of its bid for the Maryland lottery contract, GTECH promised subcontracts to politically well-connected businesses, including a former numbers runner with ties to the state's governor.^[266]

The Justice Department has in the past considered opening up a broad inquiry into the company; and the British government has investigated GTECH's effort to win a contract to run the national lottery on charges of influence-peddling.^[267]

As we reported in 2001, it is not unusual for GTECH to take a proprietary interest in those who run the lotteries they service:^[268] "GTECH's motive is always to own the lottery director," the former head of the Arizona lottery said in 1993. "If they can't, they try to get the lottery director fired."^[269] More recently, it seems that lottery directors move from state to state as if they are GTECH junior executives being reassigned to a new branch office. In December, 2003, for example, it was announced that New York's lottery director was being chosen to head the Georgia lottery.^[270] The previous year, GTECH had been "awarded a [seven-year] contract by the Georgia Lottery Corporation to provide equipment for an online gambling system and related services." The contract was scheduled to take effect just prior to the new lottery director taking over.^[271]

Crime

Crime has historically been associated with gambling.^[272] A Maryland state study concluded that

casinos would bring a substantial increase in crime to our state. There would be more violent crime, more juvenile crime, more drug and alcohol-related crime, more domestic violence and child abuse, and more organized crime. Casinos would bring us exactly what we do not need -- a lot more of all kinds of crime.^[273]

"Earl Grinols, an economist at Urbana-Champaign, has documented that about six years after a casino is built in a county, violent crime rates are 10 percent higher than in counties

without casinos, while property crimes tend to be 8 percent higher."^[274] Another study found that, holding all other variables constant, the levels of all crimes in Atlantic City were higher in the post-casino years, 1978 to 1984, than in the years just prior to the coming of the casinos, 1972 to 1977. The same study demonstrated that even in outlying suburbs and beyond, crime rates were higher; the greatest increase overall was in violent crimes and auto thefts. The authors of the study suggest that what proponents of legalized casino gambling most often leave out of any cost-benefit analysis is "the anticipated costs of inter-jurisdictional crime spill-over."^[275] The crimes which saw a rise included murder, aggravated assault, rape, robbery, larceny and prostitution.^[276]

In March, 2004, *The New York Times* reported that federal authorities in New Jersey had broken up an international prostitution ring operated by at least six employees of Atlantic City casinos, including two casino executive directors. The ring was "designed to procure women for high-rolling gamblers at several Atlantic City casinos [and] recruited more than 20 women to travel to the United States from Asia."^[277]

Manhattan District Attorney Robert Morgenthau has concluded succinctly: "casino gambling breeds crime."^[278]

The experience of other states has demonstrated that the economic benefits of casino gambling will be outweighed by the inevitable infiltration of organized crime and political corruption. In addition, casino gambling will raise funds from compulsive gamblers and others who should not be encouraged to gamble under state sanction. It is, quite simply, the wrong way to raise revenue.^[279]

Deadwood, South Dakota, where casino gambling was legalized in 1988, provides a further example of the relationship between gambling and crime. The prosecutor for Lawrence County, which includes Deadwood, witnessed the "overnight transformation" of the town, and saw his "case load more than double."^[280]

Our office has also seen an increase in the number of child abuse and neglect cases as a result of gambling. These run the spectrum from the children left in their cars all night while their parents gamble, to the children left at home alone while their single mothers work the casino late shift, to the household without utilities or groceries because one or both parents have blown their paycheck gambling.^[281]

Crime and Problem Gambling

Gambling and crime often intersect at the problem gambler: "As access to money becomes more limited, gamblers often resort to crime in order to pay debts, appease bookies, maintain appearances, and garner more money to gamble."^[282] In New London, Connecticut, for example, police officials reported an increase in various crimes following the opening of the nearby Foxwoods Casino, including "fraud, theft, and embezzlement in the greater community, both by employees at their places of business and by the public at retail and other establishments."^[283] Police also reported a marked increase in counterfeiting and forgery in the area, "a trend that coincides with the rapid growth and success of Foxwoods Resort Casino."^[284]

In a survey of nearly 400 Gamblers Anonymous members, 57 percent admitted stealing to finance their gambling. Collectively they stole \$30 million, for an

average of \$135,000 per individual. One witness before the [National Gambling Impact Study] Commission indicated that 80 to 90 percent of people in Gamblers Anonymous will tell you they did something illegal in order to get money to gamble. "A lot of them do white collar crimes, fraud, credit card and employee theft."^[285]

Organized Crime

One significant academic finding is that the legalization of various forms of gambling does not displace illegal gambling, but may actually make the problem worse: the so-called "thrill factor" and better odds "associated with illegal gambling dictate that once a form of gambling is legalized the thrill is generally lost, and the illegal gamblers must then move their dollars into other forms of illegal gambling to recapture the thrill -- thereby promoting a vicious cycle toward harder and harder forms of gambling."^[286] At the same time, the state, by actively promoting legal forms of gambling, has broken down people's natural inhibitions regarding gambling, thus perpetuating the cycle.

By giving better odds and nontaxable payouts, organized crime, far from being eliminated from gambling, has remained an active provider of gambling products with its own market niche. According to some experts, legalization has increased the number of people who gamble, providing organized crime with access to a larger consumer pool. One FBI expert explained about legalizing more betting opportunities. "All it would do," he said, "is make still more people gamble, and that would make even more business for bookmakers."

Since most lotteries use some form of the older illegal "numbers" game, players are recruited to illegal playing through a familiarity with government lotteries. According to Arnie Wexler, executive director of the New Jersey Council on Compulsive Gambling, some of the people that learned the game legally are now playing it illegally.

In testimony to the Chicago Gaming Commission, William Jahoda, a former operator of gambling ventures for organized crime in the Chicago area, said, "there always existed one solid constant -- any new form or expansion of legal gambling always increased our client base."

The greatest benefit to illegal gambling, according to Jahoda, were gambling "agency marketing and media advertising blitzes promoting gambling." Such publicity, he said, gave people a perception of gambling as "healthy entertainment." In 1992, Bob Walsh, Assistant Director of the FBI in Chicago, told the Chicago Metro Ethics Coalition, that organized crime had been continuously involved in gambling. "Gambling generates new gambling. The more accepted it becomes, the more all forms of gambling benefit."^[287]

It has been pointed out by federal law enforcement officials that gambling "is probably the biggest producer of money for the American La Cosa Nostra [that] there is."^[288] A General Accounting Office study confirmed this, finding a direct relationship between the rapid rise of casino gambling and a proliferation of money-laundering.^[289] "The extraordinary growth of the gambling industry in recent years -- especially riverboat and Indian gambling -- may create new scenarios for money-laundering for which we are not prepared."^[290]

[T]he gambling industry is a very cash-intensive industry. Vast sums of cash are handled, often by the casinos, even more than banks handle on a daily basis. These factors, coupled with organized crime's historical involvement in illegal gambling, make any gambling activity attractive to organized crime. They will attempt to infiltrate the operation or industry, not just gambling, but all aspects that go along with gambling that they believe are vulnerable.^[291]

Social Costs

Countless studies have demonstrated that any potential benefits of gambling are outweighed by economic and social costs, and that gambling consumes more wealth than it creates.^[292] One study found that costs are nearly twice the benefits;^[293] there is general agreement among economists that gambling is at best a "zero-sum game":^[294]

gambling offers only illusory benefits to most state and local governments. That's because the tax revenues they derive directly and indirectly from gambling are more than offset by the social costs of lost productivity, crime and embezzlement by addicted gamblers and the loss of tax revenues from other businesses like restaurants, entertainment venues and retail establishments with the diversion of discretionary spending to gambling.^[295]

The term for this phenomenon is "cannibalization" of resources.^[296] "Money for gambling is usually diverted from people's discretionary expenditures. Not only are dollars diverted from other products and services, but governments often also lose the sales taxes which would have

been spent on those products and services."^[297] Economists assume that about 8% of consumer dollars are lost to gambling from existing forms of entertainment.^[298]

A comprehensive and sophisticated analysis in the State of Florida using a regional input/output measurement model (but analyzing the issue from a statewide perspective) concluded that there was much to lose and little to gain if legal casinos were introduced in that state. Costs were greater than seven times the net revenue that the state would realize.

The major revenue factors included in this analysis are new gambling tax revenues, existing pari-mutuel and lottery revenue, sales taxes, and local property taxes. Costs include law enforcement, adjudication, incarceration, and rehabilitative therapy.^[299]

Gambling and Local Communities

It has been demonstrated that casinos hurt local economies and local businesses.^[300]

Local costs include law enforcement; costs related to problem gamblers; infrastructure costs; and losses in sales tax and other potential revenue sources.^[301] The Turning Stone casino provides a case study, as *Newsday* reported:

The casino has spurred marital disharmony and problem gambling. "They're sucking up all the disposable income around here," complains [Assemblyman David] Townsend. Local residents blame business failures, embezzlements and suicide on problem gambling at the casino. Most of the casino's gamblers come from a 75-mile radius.

"I would say there's been very little positive economic impact," said Dwight Evans, the mayor of Sherrill, a city of 2,500 three miles from the casino.

Evans also is concerned about a more insidious problem -- compulsive gambling. "My police department and the Oneida department indicate there's an increase in domestic calls," Evans said. "There's been an increase in bad checks. Bankers have told me there have been instances when people have destroyed their finances."

Local attorneys say that the casino has begun to figure heavily in divorce actions. "It has become a source of matrimonial strife," said attorney Peter Antonowicz of Rome. "Spouses are going to the casino and running up credit cards. I've seen it as an allegation in divorce complaints at least a dozen times."^[302]

Eventually, Turning Stone's impact on the surrounding community forced the Mayors of both the City of Sherrill and the City of Oneida to seek help from the state:

The relentless assault on the financial integrity of the City of Oneida, together with surrounding communities, by the Oneida Indian Nation of New York is a very real situation. When this city of 10,900 people suffers a loss of approximately one-quarter of a million dollars (\$250,000) in property taxes not paid and sales taxes not collected and remitted for just this year of 2001, to whom do I turn to make up this loss? This number will continue to grow as additional properties and businesses are purchased; three properties since January 1st.^[303]

It has been said that "a casino acts like a black hole, sucking money out of the local economy."^[304] The experience in other states that have legalized gambling has been that casino

owners are from out-of-state, typically from Nevada.^[305] Meanwhile, local businesses, including for example restaurants, find themselves in direct competition with the casinos.^[306]

As a way of enticing players to stay on the premises, casino owners generally include a variety of low priced food services and restaurants within their casino/hotel complexes. Food prices are often subsidized or "comped" -- that is, given free to the more avid gambler. As a result, independent restaurants close by have difficulty competing with those in the casinos.^[307]

In the early 1990's, the Louisiana legislature legalized video gambling in restaurants and bars throughout the state; at first, the number of gambling devices was small.

Today, you have to scream to make yourself heard over the awful din of those poker machines. The terminals have been installed in every corner of virtually every Louisiana bar.

Minimum-wage workers -- often single mothers -- sit at those green screens for hours. They squander their hard-won salaries before those paychecks can even make it home to families.

This routine can't even be rationalized as a source of economic growth -- because that money goes right to the machines, not to local businesses and workers.^[308]

Atlantic City

Atlantic City's history of failed promises has been well documented:^[309] "The glittery casinos along the shore abut slums where local restaurants and shops are dying."^[310] Twenty

years after casino gambling was legalized in New Jersey, a state legislator who favored gambling admitted that "the pace [of economic development] has been an embarrassment . . . I used to tell people, come back in 20 years, you won't recognize us. Now I have to say 30."^[311] On the 25th anniversary of the legalization of casino gambling, it was reported:

There are still ugly parts of town, unemployment is more than double the state average, and critics blame casinos for compulsive gambling and bankruptcies.

The casinos are self-contained pleasure palaces, making it difficult for visitors to venture outside and patronize local businesses. Away from the Boardwalk, redevelopment has lagged, leaving some neighborhoods with shabby row-houses and glass-strewn lots. Unemployment [in 2002] averaged 11.4 percent, well above the state average of 5.4 percent.

The number of purse-snatchings, assaults, rapes, robberies and murders skyrocketed after the casinos opened. FBI statistics show the crime rate per 1,000 residents went from 134.3 in 1978 to a peak of 450.3 in 1988.^[312]

In March, 2004, the *New York Post* reported that Donald Trump's "gambling meccas have been suffering for years from the steady decline of Atlantic City."^[313] In 1994, we noted the oft-repeated observation that Atlantic City used to be a slum by the sea, while now it's a slum by the sea with casinos,^[314] that hasn't changed.

The Hidden Costs of Gambling

In terms of the costs and benefits of casino gambling, whether on Indian reservations or elsewhere, New York State has an additional problem not facing Atlantic City: economists warn that casino gambling is especially problematic "if the money bet at the casino comes from people living within 50 or 60 miles."^[315] If the casino fails to "import" gamblers, then it "merely transfers money that would be spent at other local businesses, to the casino operators."^[316]

It has been said that gambling in New York State should be expanded because "New Yorkers are already betting out-of-state"; Governor Pataki said this as recently as April, 2004.^[317] However, in 1995, the Governor's own Task Force on Casino Gambling, looking at a proposal to place casinos in Niagara Falls and Buffalo, acknowledged that

none of the visitors to either casino would come from Canada because of the proposed casino [since opened, in 1996] to be located in Niagara Falls, Ontario.

Canadians would most likely not bypass the nearer casino which would also have tax free winnings and a favorable rate of exchange. In fact, the Canadian market analysis done by Coopers & Lybrand assumes that a substantial number of New Yorkers would bypass their local casinos for the very same reasons.

Because a larger percentage of the casino visitors in Western New York will be from the region and because its out-of-state draw is expected to be limited by the opening of a competitive casino in Niagara Falls, Ontario, the negative effects are expected to be more pronounced.^[318]

John W. Kindt, a professor of commerce and legal policy at the University of Illinois, has recently begun to make the argument that an outright ban on gambling might actually stimulate the economy. "Gambling is a catalyst for economic downturn," he has said. "If you want your 401(k) to come back, re-criminalize gambling."^[319] Professor Kindt, who is a nationally recognized authority on the economic and social effects of gambling, bases this recommendation on his observation that the expansion of gambling in the modern era has led to increased taxes; overall job loss; economic disruption of the non-gambling business sector; increased crime; and higher social costs generally. "For every \$1 that gambling contributes in taxes, it costs taxpayers at least \$3," he concludes.^[320]

Finally, economists warn that among the hidden costs of gambling -- and government's reliance on gambling as a strategy for economic development -- may be what are called "missed opportunity costs."

By focusing so much of their energy on the use of gambling as an economic development strategy, government and business leaders are shifting their attention away from supporting and developing other existing and new business enterprises. These other ventures may be more difficult to establish, but they are potentially more productive over the long term.^[321]

IX. Problem Gambling Treatment in New York State

As we have reported, New York State has the highest problem gambling prevalence rate in the United States, and there is reason to believe that the problem is getting worse (see Part VIII). Since that finding, in 1996, gambling opportunities have proliferated (see Parts I and II), while the overall level of wagering in the state has exploded (see Part VII). As a result, treatment centers are reporting an increase in the number of calls from problem gamblers,^[322] and we are told that "the numbers will double" when currently authorized gambling venues become operational.^[323] In April, 2004, the New York Council on Problem Gambling announced the results of a Zogby poll:

One-fourth of respondents say they know someone who has run into debt problems, job problems, legal problems or family problems because of gambling or betting too much.

Two-thirds of adults in New York State feel that expanding gambling by the state will definitely or probably increase the number of people with gambling problems.^[324]

However, a careful study of treatment in New York State reveals that the needs of problem gamblers are not being met. Specifically, the State of New York is failing to address the problem that it has created through its own policies (see Part V).

New Yorkers have experienced the greatest expansion of gambling in our state's history. Gambling revenue is being touted as the panacea for New York's budget shortfall woes. Unfortunately, the New York Council on Problem Gambling's year-to-year set aside funding is insufficient in meeting the existing needs of New Yorkers, and will not adequately address treatment needs as gambling opportunities proliferate.^[325]

The Helpline (800) 437-1611

The New York Council on Problem Gambling is under contract with the Office of Mental Health,^[326] and is the organization that the Lottery Division refers people to for problem gambling treatment.^[327] The Council defines its mission, however, as "increasing public awareness about problem and compulsive gambling and advocating for support services and treatment for persons adversely affected by gambling";^[328] the Council is neither equipped nor funded to directly treat problem gamblers. Nevertheless, the only help that the Lottery Division offers to problem gamblers is to place the Council's toll-free Helpline number where its games are played, on its instant scratch-off tickets, and on its web site.^[329]

At the same time, it is unlikely that most gamblers are even aware of the Helpline: prominent placement of the toll-free number at vendor locations requires enforcement, for which the Lottery Division lacks adequate staff;^[330] and the Helpline number appears on the *back* of scratch-off tickets, where most people don't look.

It is not insignificant to note the difficulty in even finding the Helpline number on the Lottery Division's web site. Upon first clicking on to the web site, *nylottery.org*, the telephone

number does not appear anywhere on the screen: the screen showcases the latest instant scratch-off games; reports on "WINNER NEWS"; and, prominently, provides information on how to find out, "ARE YOU A WINNER?". After scrolling down to the bottom of the screen, the words "Play Responsibly" appear, in the smallest type on the web site; there is no obvious indication that these words are "clickable" for further information, however. (Information that is obviously "clickable" includes the "Past Year's Numbers" for Lotto and other such games, and the "Past Week's Numbers" for Quick Draw.) If a visitor to the web site does happen to click on the words "Play Responsibly," then and only then does the following information appear:

New York Lottery games are designed to be a fun, low-cost form of entertainment in support of education. While most of our players experience them in this way, for some, gambling of any kind can be a problem. The Lottery's Problem Gambling Awareness Program reflects the Lottery's commitment to addressing this issue.

Working cooperatively with the New York State Office of Mental Health and the New York Council on Problem Gambling, we are developing educational programs to increase awareness, taking a proactive approach for those who may desire help.^[331]

In addition to the Council, a visitor to the Division's web site is referred to (1) the Office of Mental Health,^[332] whose own web site contains no apparent information that would be of use to a problem gambler seeking treatment; (2) the *National* Council on Problem Gambling,^[333] which has a toll-free number that essentially refers people back to New York; and (3) Gamblers

Anonymous,^[334] which employs the widely admired 12-step-program, but receives no state funding and does not involve treatment by health-care professionals.

Which brings us back to the Helpline, the toll-free number upon which the Lottery Division rests its so-called "Problem Gambling Awareness Program."

The Helpline provides 24-hour staffed daily telephone coverage, supportive intervention and resource and referral information to persons seeking assistance regarding problem gambling.

The Helpline number is accessible from any location within New York State and staff are trained to handle crisis and non-crisis calls addressing diverse concerns, such as family, financial or work-related problems, alcohol or substance abuse, medical concerns and/or suicidal thoughts.^[335]

This sounds reassuring, and the Helpline no doubt provides comfort to problem gamblers in the short term; what is missing is real treatment in the long term, or for that matter in any term.

Treatment Centers

The Council's web site lists eleven "gambling treatment, education, outreach and referral programs in New York State."^[336] Some are small, rarely-staffed offices; only seven are state-funded. Of the seven state-funded programs, one is educational, and provides no treatment; the others include one on Long Island, one in New York City, one in Albany, one in Buffalo, one

in Utica, and one in Rochester. These six offices serve the entire state. The Albany office, for example, serves 14 counties.

The 2004 Zogby poll highlights the problem: "Only 9% of respondents are aware of a problem gambling treatment center in their area. This includes almost one-fifth of those who personally know someone who has run into problems due to gambling or betting too much."^[337]

For the entire City of New York, there is one treatment center: St. Vincent's Catholic Medical Centers of New York, located on Staten Island. This is a wonderful facility, but its gambling center is not equipped to serve the entire city. There are two satellite-offices, one in Manhattan and one in Queens, which are only rarely if ever staffed; Queens, for example, has two part-time social workers. The Bronx and Brooklyn have no treatment presence whatsoever. St. Vincent's Medical Center has psychiatrists on staff, but their role with regard to problem gamblers is essentially limited to making the initial diagnosis. The gambling center has perhaps one full-time and three part-time counselors on staff to treat problem gamblers. In Queens and Manhattan, for example, there is a "waiting list" to schedule appointments, and treatment in the city has been described as "at the saturation point."

Calling the Helpline

The Helpline process is as follows: assuming that the problem gambler knows that he has a problem, and wishes to get help, *and* knows about the toll-free number, he will call and speak to someone in the Council's Rochester office, which mans the Helpline. At that point, the caller

will be given contact information for the nearest treatment center and for Gamblers Anonymous, the latter which is essentially a self-help method of dealing with the problem.

Specifically, with regard to treatment: if the problem gambler lives in Queens, for example, he may have the opportunity to make an appointment to meet with someone at the borough's satellite-office. This would require someone from St. Vincent's traveling to that office, at some future date. At that point -- assuming that the problem gambler does not become discouraged and actually keeps the appointment -- any meaningful treatment program becomes problematic, given the small size of the staff at St. Vincent's.

It is important to note that the staffs of the state's few treatment centers consist of dedicated, hardworking people. However, their task is overwhelming: counselors and social workers who treat problem gamblers are not getting support from the state commensurate with either New York's prevalence rate or the state government's complicity in driving the rate up.

New York, which made \$4.75 billion in lottery sales in [2001-2002], targeted just \$1.7 million for treatment and education -- one-third of 1/1,000th of 1 percent (or 0.000347) of lottery income -- said James Maney, Executive Director of the New York Council on Problem Gambling.^[338]

The proposed advertising budget for the Lottery Division for 2004-2005 is more than thirty times that amount (see Part V). Mr. Maney has compared the state to "bookmakers":

Yet they only spend \$1.7 million a year on treatment. Out of \$1 billion [in proposed new revenue], the state won't dedicate \$4 million more for treatment. Just give us back some money for the people who get hurt.^[339]

The Center for Problem Gambling Treatment in Albany serves clients who drive as much as two-hours for treatment. The center's director argues that the state needs at least one center per county:

Until New York steps up to the plate and recognizes it as a problem, nothing's going to change. If we're going to expand gambling, we need to make a commitment to treatment.

There's a whole realm of roadblocks for people to access treatment . . . and they get further into debt. That needs to change, or else we're going to have a huge problem on our hands in less than five years.^[340]

The *Albany Times Union*, the state capital's newspaper-of-record, last year ran an exposé on the problem that "accurately portrayed New York as a state that is itself becoming more addicted to gambling as a source of tax revenue":

Addicted gamblers are as much in need of help as those fighting alcoholism or drug abuse. And compulsive gamblers are as hooked on their highs as any drug addict on his. But while the state supports an extensive support network to help other addicts beat their habits, gamblers are left pretty much on their own.^[341]

X. Amending the Constitution: S.6126

The latest attempt to amend the constitution to legalize casino gambling, S.6126,^[342] would authorize casino gambling, including slot machines, in the Catskills and Buffalo; and "electronic or electromechanical facsimiles of any games of chance" and slot machines at racetracks throughout the state.^[343] The bill was introduced with the following rationale:

Casino gaming exists in various parts of New York State. Those casinos are operated by or under the authority of Native American tribes. Additional Native American casinos have already been authorized by the Legislature, subject to a compact with the State, in Sullivan and Ulster Counties, as well as Western New York.

While authorized in October, 2001, nearly two and one half years have gone by without a Native American casino opening in the Catskills. The establishment of casinos in that region has been an elusive process. Authorizing non-Native American gaming, while requiring a Constitutional Amendment, would create another option for gaming in that region.

Neighboring states presently allow casino gaming and other gaming opportunities. New Jersey and Connecticut presently have casino gaming. In addition, there is gaming in Canada within walking distance of some American cities.^[344]

These are the same arguments we've heard countless times before: "New Yorkers are already betting out-of-state";^[345] and New York State has no choice in the matter.^[346] These were

the arguments in 1997, for example, when the gambling interests attempted to amend the constitution to permit an unlimited number of casinos in at least three areas of the state^[347] (see Part I). However, New York State does have a choice, particularly when it comes to Indian casino gambling (see Part IV). In addition, these arguments ignore the economic realities of relying on gambling, either as a means of economic development or as a source of sustainable revenue.^[348] Countless economic studies, including Governor Pataki's own study,^[349] have demonstrated that competing with neighboring casinos does not work (see Part VIII). At the same time, legalizing casino gambling will have the effect of reducing revenue from the lottery and horse racing,^[350] "robbing Peter to pay Paul."^[351] Finally, these arguments ignore the obvious danger of "market saturation."

The growth of competing gambling ventures is leading to market saturation, putting some ventures in danger of collapse. Charitable gambling revenues are being negatively affected by this growth.

A major result of market saturation has been a tendency towards more lax government regulation of the gambling industry and subsidies to help competing private gambling operations survive. There are likely to be serious economic and social costs to communities as the result of boom and bust type of development.^[352]

Conclusion

In updating what we know about gambling in New York State, this report has revealed that the current proliferation of gambling opportunities threatens both our economic and social well-being. As late as 1992, gambling in New York State was comprised of pari-mutuel wagering; charitable gambling; and the state lottery. By 1993, one Indian casino had been added: Turning Stone, which did not have slot-machines, and was a small, isolated facility that did not serve alcohol.^[353]

Today, there are three Indian casinos in operation, one of which has slot machines, while there is legislation pending to install slot machines at one other; five additional Indian casinos are authorized, as are additional slot machines. There are VLTs at racetracks; there is the Mega Millions lottery; there is Quick Draw every four minutes; and instant scratch-off tickets alone account for \$2.7 billion in wagering.

In addition, there is the proposal to amend the constitution to authorize still more casinos, and still more slot machines, as well as expanded video gambling. The 2004-2005 Executive Budget proposes that the state install additional VLTs, at OTB's, while removing all restrictions from Quick Draw.

It seems almost fantastical to recall that in 1967, the state lottery was limited to a monthly drawing with a top prize of \$100,000. It is painfully poignant to go back further still and read

what the framers of our state constitution said about gambling, "the manifest and enormous evils of which are notorious."

This report has revealed that the level of wagering in New York State is increasing at a rate incompatible with true economic growth. This state has gone from seasonal horse racing at a few racetracks, a monthly sweepstakes, and the occasional bingo game or "Las Vegas Night," to all gambling all the time.

The expansion of gambling in New York State has proceeded apace by what social scientists refer to as the "ratchet-effect"; engineers know that a ratchet is a device consisting of a toothed-wheel that engages in such a way as to permit motion in one direction only.^[354] In other words, one type of gambling leads to another; as old forms of gambling fail to live up to their promise, new forms are added. However, gambling is never scaled back.

Pari-mutuel wagering, passed in response to the Great Depression, has spawned OTB's, harness-racing, simulcasting, and telephone-betting accounts; and racetracks are now the venue for video gambling devices that are slot-machines by another name. Charitable gambling, begun as a way to aid worthy causes, has become the means by which Indian casinos have been introduced into the state; ironically, subsequent forms of gambling are threatening the viability of charitable fundraising. The lottery, envisioned as a sweepstakes and as a means of aiding education, is neither; at the same time, it has been transformed into a sprawling gambling enterprise that preys upon those who can least afford it. The Lottery Division alone oversees \$32.3 billion in wagering annually.

Contrary to what the gambling interests disingenuously argue, New York State has a choice in the face of all this gambling. The Indian gambling cases highlighted in this report, for example, demonstrate that the current casinos are operating illegally and may be shut down at any time; nor is New York State required to allow new casinos. The Court of Appeals, moreover, is set to decide the constitutionality of legalized slot-machines, VLTs, and the multi-state lottery, among other gambling issues.

This report has revealed the dark side of gambling: the "silent" addiction of problem gambling; political corruption; crime; suicide; and hidden economic costs. This is the side that the gambling interests don't want anyone to see. Theirs is the lie that soft-pedals gambling as "gaming"; it is the false promise of economic salvation; and it is the glib dismissal of people who are suffering as a direct consequence of state action.

The dark side is *known* to the gambling interests, but it is not where they live. These are the people who have corrupted our political process; who are responsible for the highest rate of problem gambling in the country; and who are draining the state's resources to benefit their bottom-line. However, they remain insulated from the problems they have created by a wall of indifference.

This report has revealed that the needs of problem gamblers are not being met by the State of New York. The answer to the problem is obvious: more treatment; the problem created by the state, must be addressed by the state. But there is an even more obvious solution, one that will prove more efficacious in the long term: stop expanding gambling. This was the

recommendation of the National Gambling Impact Study Commission, for a variety of reasons. One practical reason for the state to roll back its gambling operations is that to do so will *save* money: the studies cited by this report demonstrate that any economic benefit realized from gambling is far outweighed by its economic and social costs.

At a minimum, the state must fully fund its obligation to treat problem gamblers. However that is not enough: in addition to providing the cure, the state must stop spreading the disease. It is no longer acceptable for the state to knowingly turn New Yorkers into problem gamblers, to grudgingly throw them a lifeline, and then to blithely go about making more problem gamblers. The cycle of more gambling and more problems; of broken and forfeited lives; of corruption and crime; and of false promises and outright lies, must finally come to an end.

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Notes

- [1] See *The New Dictionary of Thoughts, A Cyclopedia of Quotations*, Standard Book Co., 1961, p. 228.
- [2] See, e.g., *Daily News*, February 10, 1994, p. 37, quoting the sports writer Frank Deford.
- [3] George Orwell, "Politics and the English Language," in *Shooting an Elephant*, 1950; see *The Columbia World of Quotations*, 1996.
- [4] See Frank Padavan, "Rolling the Dice," April, 1994; "Rolling the Dice, Part 2," July, 1994; "The Dice are Rolling: Gambling With New York State's Future," January, 1997; and "Quick Draw: It's Time to Pull the Plug," May, 2001.
- [5] *Ibid.*
- [6] See, e.g., S.6126, introduced February 11, 2004; S.5557, introduced June 28, 1995.
- [7] See U.S. Department of Commerce.
- [8] See *Information Please*, 2001.
- [9] See, e.g., Frank Padavan, "Quick Draw: It's Time to Pull the Plug," May, 2001, p. 11; and see "Gambling and Problem Gambling in New York: A 10-year Replication Survey, 1986 to 1996," Rachel A. Volberg, Ph.D., July, 1996.
- [10] See, e.g., "Bill Would Provide Funding to Treat Compulsive Gambling," *Legislative Gazette*, March 22, 2004, p. 10.
- [11] "Expert Says Gambling Ban Would Stimulate Economy," *Associated Baptist Press*, October 1, 2002, quoting John W. Kindt, University of Illinois, Urbana-Champaign.
- [12] See Frank Padavan, "The Dice Are Rolling: Gambling With New York State's Future," January, 1997, p. 39.
- [13] N.Y. Const. Art. 1, section 9.
- [14] *Ibid.*
- [15] The history set forth herein is based on Charles Z. Lincoln, *The Constitutional History of New York*, Vol. III, 1906.
- [16] Record of the Constitutional Convention, 1894.
- [17] S.762, introduced January 15, 1997; first passage was S.5557, introduced June 28, 1995, passed by both the Senate and the Assembly, June 29, 1995.
- [18] New York State Senate, January 28, 1997, debate, S.762, transcript, pp. 347-348, Senator Roy M. Goodman, Manhattan.
- [19] *Ibid.*, pp. 390-391, Senator Olga A. Mendez, Manhattan.
- [20] *Ibid.*, p. 321, Senator Nicholas A. Spano, Westchester.
- [21] *Ibid.*, p. 434; ayes 19, nays 41.
- [22] For the history set forth herein, see "The New York Lottery," Senate Research Service, *Issues in Focus*, Number 103-6, January 21, 2003 (Jason Wheatley, Analyst), pp. 2-3.
- [23] N.Y. Const. Art. 1, section 9(1).
- [24] New Hampshire Sweepstakes Commission; California Research Bureau, "Lotteries," January, 1997.
- [25] "Whatever Happened to the Irish Sweepstakes?," *allaboutirish.com*.
- [26] Division of the Lottery.
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- [28] For the history set forth herein, see "Racing and Wagering," Senate Research Service, *Issues*

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- [29] N.Y. Const. Art. 1, section 9(1).
- [30] See *Black's Law Dictionary*, sixth edition, 1990, p. 1115.
- [31] H. Carl McCall, "New York State Gambling Policies," February, 2000.
- [32] See, e.g., *westernotb.com*.
- [33] N.Y. Const. Art. 1, section 9(2).
- [34] General Municipal Law Art. 14-H.
- [35] "Racing and Wagering," Senate Research Service, *Issues in Focus*, I96-31, December, 1996 (Art DiLello, Analyst), p. 8.
- [36] *Ibid.*, p. 7.
- [37] "2003 Annual Report by the Senate Racing, Gaming and Wagering Committee," chart after p. 38.
- [38] See 25 USC 2702.
- [39] See "Gambling Expansion Under Scrutiny," *Albany Times Union*, December 17, 2003.
- [40] S.5828, A.9459, introduced October 24, 2001.
- [41] *Ibid.*, summary, Legislative Bill Drafting Commission.
- [42] *Ibid.*, status; voting, ayes 52, nays 8.
- [43] *Ibid.*, status; voting, ayes 92, nays 41.
- [44] *Ibid.*, status.
- [45] See, generally, New York State Senate, debate, S.5828, October 24, 2001.
- [46] See, e.g., *Ibid.*, transcript, pp. 11682-11683.
- [47] See, e.g., *Ibid.*, pp. 11680-11681.
- [48] For the gambling provisions of Chapter 383 as outlined herein, see S.5828, introduced October 24, 2001, pp. 5-11.
- [49] Executive Law section 12.
- [50] See "Nation-State Gaming Compact," April 12, 2002.
- [51] S.5828, p. 6.
- [52] *Ibid.*
- [53] *Ibid.*, p.7.
- [54] *Ibid.*, pp. 8-9.
- [55] *Ibid.*, p. 9.
- [56] *Ibid.*, P. 10.
- [57] *Ibid.*, p. 11.
- [58] *Ibid.*, pp. 8, 10, and 11, respectively.
- [59] California Research Bureau, "Gambling in the United States," January, 1997.
- [60] See Frank Padavan, "The Dice Are Rolling: Gambling With New York State's Future," January, 1997, pp. 23-25.
- [61] California Research Bureau, January, 1997.
- [62] See "The Rise and Fall of the Third Wave," I. Nelson Rose, 1991.
- [63] For the history set forth herein, see California Research Bureau, "History of Gambling in the United States," January, 1997.
- [64] National Conference of State Legislatures.
- [65] *Ibid.*
- [66] "Sweepstakes," *Columbia Encyclopedia*; see *bartleby.com*.

- [67] National Conference of State Legislatures.
- [68] *Ibid.*
- [69] *Ibid.*
- [70] "Gambler Nation," George Will, June 27, 1999.
- [71] Frank Padavan, "Rolling the Dice," April, 1994, p. 2.
- [72] National Conference of State Legislatures.
- [73] "The States Bet More on Gambling," *New York Times*, Week in Review, May 18, 2003, p. 1.
- [74] *Ibid.*
- [75] "Tight Times for States Improve Gambling's Odds," *Washington Post*, August 5, 2002, p. A1.
- [76] *Ibid.*
- [77] "The States Bet More on Gambling," *New York Times*, Week in Review, May 18, 2003, p. 1.
- [78] "Gaming the Budget," *Governing*, March, 2003, p. 32; see also "Slot Machine Bill Killed in Maryland," *New York Times*, April 13, 2004, p. A23.
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- [80] See "Gambling Spreads to 33 States," *Gambling Newsletter*, Issue 5, March 30, 2000.
- [81] Public Law 104-169; see "Gambling Reform: Is It In The Cards?," *Christian Science Monitor*, September 19, 1996.
- [82] *Ibid.*
- [83] Focus on the Family, Newsletter, July, 1999, p. 1.
- [84] "National Gambling Impact Study Commission Report," Overview, p. 1.
- [85] *Ibid.*
- [86] *Ibid.*, pp. 4-5
- [87] *Ibid.*, Recommendations, # 3-2.
- [88] *Ibid.*, # 3-7.
- [89] *Ibid.*, # 5-1.
- [90] *Ibid.*, # 5-3.
- [91] *Ibid.*, # 3-12.
- [92] *Ibid.*, # 7-1.
- [93] *Ibid.*, # 3-11.
- [94] *Ibid.*, # 3-19.
- [95] *Ibid.*, # 3-14.
- [96] *Ibid.*, # 3-6.
- [97] *Ibid.*, # 3-4.
- [98] *Ibid.*, # 3-18.
- [99] *Ibid.*, # 3-5.
- [100] Focus on the Family, *Newsletter*, July, 1999, p. 2.
- [101] See, e.g., "The States Bet More On Betting," *New York Times*, Week in Review, May 18, 2003, p. 1.
- [102] See Task Force, "Report to the Governor," August 30, 1996.
- [103] *Ibid.*
- [104] *Ibid.*; see Frank Padavan, "The Dice Are Rolling: Gambling With New York State's Future," January, 1997, pp. 8-10 and *passim*.

- [105] "National Gambling Impact Study Commission Report," Future Research Recommendations, p. 2.
- [106] S.16, introduced January 8, 2003, would raise the gambling age to 21.
- [107] Racing and Wagering Board.
- [108] See Frank Padavan, "Quick Draw: It's Time to Pull the Plug," May, 2001, p. 12; S.48, introduced January 8, 2003, would ban lottery advertising.
- [109] Ibid., p. 14; "New Game Attracting Those Least Able to Lose, And They Do," *Daily News*, October 22, 1995; see "Lottery Sales High in Poor Areas," *Utica Observer Dispatch*, July 16, 1999.
- [110] S.29, introduced January 8, 2003, would require the odds of winning to be printed on lottery tickets.
- [111] See "Lobbyists Opened Wallets Wider in Albany Last Year," *Albany Times Union*, March 24, 2004.
- [112] Racing and Wagering Board; see, e.g., *westernotb.com*.
- [113] See Tax Law sections 1612, 1617-a.
- [114] See 2004-2005 Executive Budget.
- [115] Ibid.
- [116] "National Gambling Impact Study Commission Report," Future Research Recommendations, p. 2.
- [117] 25 USC sections 2701-2721.
- [118] 480 US 202 (1987).
- [119] See "The Legal Environment of Indian Gambling," by Stephanie A. Levin, Esq., in Robert Goodman, "Legalized Gambling as a Strategy for Economic Development," 1994, p. 177.
- [120] 25 USC section 2701(5).
- [121] 25 USC section 2702.
- [122] 25 USC section 2703; IGRA creates three classes of gambling: Class I includes those "social games solely for prizes of minimal value or traditional forms of Indian gambling engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations"; Class II includes bingo and card games (excluding banking card games) that are operated in accordance with state law limits on the amount of wagers and hours of operation; Class III includes all other forms of gambling.
- [123] 25 USC section 2710.
- [124] See "Tribes High-jacked by States Demanding Revenue," *indiancountry.com*, December 19, 2003.
- [125] "Nation-State Compact," March 5, 1993.
- [126] "Tribal-State Compact," June 2, 1993.
- [127] 517 US 44 (1996).
- [128] See Frank Padavan, "Rolling the Dice," April, 1994, pp. 4-5.
- [129] See Frank Padavan, "Rolling the Dice, Part 2," July, 1994, p. 2.
- [130] For the background of the case set forth herein, see the Court of Appeals decision, 2003 N.Y.LEXIS 1470.
- [131] Index No. 5507-99, "Decision and Order," p. 7.
- [132] See the Appellate Division decision, 293 AD2d 20 (2002).
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- [134] See, e.g., "Feds Close Iowa Casino in Tribal Dispute," *Associated Press*, May 23, 2003.
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- [137] See S.5670, introduced June 18, 2003.
- [138] *Ibid.*, senate vote, June 19, 2003, ayes 55, nays 6; died in assembly, January 7, 2004.
- [139] See S.5670-A, amended February 10, 2004; cal. 434, March 9, 2004.
- [140] *Ibid.*; ayes 55, nays 6; Senators Duane, Hassell-Thompson, Hoffmann, Krueger, Padavan, and Stavisky, voting in the negative; Senator Mendez, excused.
- [141] Introducer's Memorandum in Support, S.5670-A.
- [142] New York State Supreme Court, Index Number 719-02.
- [143] *Ibid.*; and see New York State Senate, March 31, 2004, debate, S.5670-A, transcript, pp. 1593-1598, 1618-1619.
- [144] See "Tribal-State Compact," June 2, 1993.
- [145] Tax Law section 1603.
- [146] H. Carl McCall, "The New York Lottery: Role in Financing Education," April, 1998, pp. 1, 10.
- [147] 2004-2005 Executive Budget, Appendix I, p. 193.
- [148] "Staff Analysis of the 2004-2005 Executive Budget," Mary Louise Mallick, Secretary, Finance Committee, January, 2004, p. 210.
- [149] 2004-2005 Executive Budget.
- [150] See Robert Goodman, "Legalized Gambling as a Strategy for Economic Development," 1994, p. 142.
- [151] "U.S. Lotteries' Fiscal 1999 Ad Budgets as % of Sales," National Conference of State Legislatures.
- [152] *Ibid.*; for 1999: New York, \$60.5 million; Texas, \$40.0 million; California, \$33.5 million; Florida, \$29.5 million; Illinois, \$23.0 million.
- [153] *Ibid.*; for 1999: New York, \$60.5 million; United States total spending, \$369.2 million.
- [154] See, e.g., "Promoting and Countering Consumer Misconceptions of Random Events: The Case of Perceived Control and State-Sponsored Lotteries," Miyazaki, Brumbaugh and Sprott, *Journal of Public Policy and Marketing*, 2001, Vol. 20, No. 2, p. 254.
- [155] Robert Goodman, "Legalized Gambling as a Strategy for Economic Development," 1994, pp. 134-135.
- [156] "And the Poor Get Poorer," *Newsday*, December 4, 1995; for its study, *Newsday* obtained figures for 143 weeks of lottery sales from more than 17,000 machines across the state, along with data on more than 1 million lottery winners. The newspaper then used computer-assisted mapping techniques to look at lottery spending by various demographic groups.
- [157] *Ibid.*, p. A5.
- [158] *Ibid.*
- [159] For a full discussion of the Quick Draw lottery game, see Frank Padavan, "Quick Draw: It's Time to Pull the Plug," May, 2001.
- [160] Division of the Lottery.

- [161] 2004-2005 Executive Budget.
- [162] *Ibid.*; Tax law sections 1612, 1617-a.
- [163] "Video Lottery Terminals," Senate Research Service, *Issues in Focus*, Number 102-28, May 8, 2002 (Jason Wheatley, Analyst), p. 2.
- [164] See Frank Padavan, "Quick Draw: It's Time to Pull the Plug," May, 2001; and see, e.g., "Quick Draw Players in New York State: A Comparison of Data from 1996 and 1999," Rachel A. Volberg, Ph.D., July 1996.
- [165] "They Call It Video Crack," *Time.com*, June 1, 1998.
- [166] *Ibid.*
- [167] "Staff Analysis of the 2004-2005 Executive Budget," Mary Louise Mallick, Secretary, Finance Committee, January, 2004, p. 115.
- [168] 2004-2005 Executive Budget.
- [169] See "OTB Video Gambling Considered," *Buffalo News*, November 2, 2003.
- [170] See *nylottery.org*.
- [171] *Ibid.*; the game is called "Lucky 7's" and is played on a tic-tac-toe grid.
- [172] See "Gambling Exacts a High Price," *Syracuse Herald Journal*, December 23, 1997; S.27, introduced January 8, 2003, would ban the sale of lottery tickets by vending machine.
- [173] See Frank Padavan, "Quick Draw: It's Time to Pull the Plug," May, 2001, pp. 12-15.
- [174] Robert Goodman, "Legalized Gambling as a Strategy for Economic Development," 1994, p. 133.
- [175] Index No. 719-02 (Albany Co. Sup. Ct.); for the background and a full discussion of the arguments involved in Dalton v. Pataki, see "Brief for Appellants in Action No. 1," Appellate Division, Third Department.
- [176] *Ibid.*, "Brief for Appellants in Action No. 1," Appellate Division, Third Department, p. 1.
- [177] *Ibid.*, p. 6.
- [178] *Ibid.*
- [179] *Ibid.*, p. 7.
- [180] See "Gambling Expansion Under Scrutiny," *Associated Press*, December 17, 2003.
- [181] Penal Law section 225.00(7).
- [182] See S.5828, introduced October 24, 2001, p. 8.
- [183] N.Y. State Const., Art. 1, section 9.
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- [185] N.Y. Const. Art. 1, section 9(1).
- [186] See "Slots Plan Would Need Eye-Opening Gambling," *Patriot-News* (Harrisburgh, Pa.), May 1, 2003, for a similar analysis done in Pennsylvania.
- [187] *Empire State Report*, January 19, 2003, p. 19.
- [188] 2004-2005 Executive Budget; "2003 Annual Report of the Senate Racing and Wagering Committee"; "Staff Analysis of the 2004-2005 Executive Budget," Mary Louise Mallick, Secretary, Senate Finance Committee, January, 2004.
- [189] *Ibid.*; see "Padavan: New York Wagering to Jump Another \$13 Billion," press release, Office of Senator Frank Padavan, March 8, 2004; see also "Nevada of the East," *Buffalo News*, January 22, 2004.
- [190] *Empire State Report*, January, 2003, p. 19.
- [191] See U.S. Department of Commerce.

- [192] See *Information Please*, 2001.
- [193] Based on Executive Budget estimates for 2003-2004 and for all currently authorized VLTs.
- [194] Based on Executive Budget projections for 2004-2005 and for all proposed VLTs; see also "2003 Annual Report by the Senate Racing, Gaming and Wagering Committee"; and "Staff Analysis of the 2004-2005 Executive Budget," Mary Louise Mallick, Secretary, Finance Committee, January, 2004.
- [195] "Business Profitability Versus Social Profitability: Evaluating Industries With Externalities, The Case of Casinos," Earl L. Grinols, in *Management and Decision Economics*, 2001, p. 144.
- [196] *Ibid.*, p. 156.
- [197] "Secret Addiction Becoming Issue of Public Health," *The Day* (New London, Conn.), April 30, 1995; see, generally, "National Gambling Impact Study Commission Report," Chapter 4.
- [198] "Task Force on Gambling Addiction in Maryland," 1990, p. 13.
- [199] American Psychiatric Association, 1994.
- [200] "Secret Addiction Becoming Issue of Public Health," *The Day* (New London, Conn.), April 30, 1995.
- [201] *Ibid.*
- [202] *Ibid.*
- [203] See Frank Padavan, "The Dice Are Rolling: Gambling With New York State's Future," January, 1997, pp. 16-20 and *passim*.
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