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Internet Gambling and the Destabilization of National and International Economies: Time for a Comprehensive Ban on Gambling over the World Wide Web

INTERNET GAMBLING AND THE DESTABILIZATION OF NATIONAL AND INTERNATIONAL ECONOMIES: TIME FOR A COMPREHENSIVE BAN ON GAMBLING OVER THE WORLD WIDE WEB

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INTRODUCTION

As the Internet rapidly gained popularity in the late 1990s, gambling Web sites began to take root, causing numerous social, financial, and political costs. These costs—including the creation of new gambling addicts, bankruptcies, and crime—directly resulted from the widespread proliferation and accessibility of gambling sites on the Internet. Policy-makers worldwide generally failed to identify the large socio-economic costs associated with Internet gambling, as well as the ability of Internet gambling and other forms of cyberspace gambling to destabilize local, national, and even international economies by disrupting financial institutions.

At the turn of the 21st century, Internet gambling exemplified gambling in all cyberspace venues. At that time, Internet gambling promoters claimed that the federal "Wire Act,"[1] which prohibits gambling by wire, did not apply to cyberspace gambling.[2] Simultaneously, Internet gambling operators argued that, as a practical matter, cyberspace gambling could not be "banned."[3] Taken together, these arguments implied that cyberspace gambling could not be practically or functionally regulated.

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†† Dobbins, Fraker, Tennant, Joy, and Perlstein. John K. Palchak, Aron Carnahan, and John D. Bucciarelli provided valuable assistance in editing and cite-checking this analysis. Due to the rapidly developing issues, current periodicals were necessarily utilized. The authors attempted to delete the publications which were too influenced by the gambling industry.

1. 18 U.S.C. § 1084 (2000). This federal statute prohibits one "engaged in the business of betting or wagering [from] knowingly us[ing] a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the plac[ement] of bets or wagers on any sporting event or contest." *Id.* § 1084(a).

2. *See generally* NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT 5-6 to -10 (June 1999), *available at* http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html [hereinafter NGISC FINAL REPORT].

3. *Id.*

Legal scholars, however, almost universally agreed with the U.S. Department of Justice that Internet gambling violated the Wire Act.[4]

Utilizing the basic meta-language model of the McDougal/Lasswell methodology of policy-oriented jurisprudence,[5] this analysis confirmed the policy recommendation that all cyberspace and Internet gambling needed to be banned domestically in the United States and prohibited internationally by a United Nations multinational treaty because of their potential to destabilize regional, national, and global economies.

I. DELIMITATION OF PROBLEMS

A. The Strategic Problems Associated with Gambling Issues

After the legalization of casinos and gambling in New Jersey in the late 1970s, the amount of licensed gambling activity conducted within the United States grew exponentially.[6] For decades, however, the Wire Act specifically prohibited the transmission of wagers by wire in either "interstate or foreign commerce."[7] In 1995, some enterprising gambling proponents claimed this statute did not apply to the Internet because of its virtually wireless nature.[8] The U.S. Justice Department disagreed and maintained that "cyberspace casinos [in particular were] illegal."[9]

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4. *Id.* at 5-9 to -12.

5. This particular article is summary in scope, but the authors conceived it within the penumbra of the McDougal/Lasswell model for decision-making. In the areas of legal and government policy, which subsume strategic socio-economic and business concerns, post-legal realists formulated the classic decision-making models. In particular, Professor Myres McDougal and Professor Harold Lasswell postulated a conceptual framework for legal decision-making in a landmark article directed toward legal educators and law professors. Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); *see also* John W. Kindt, *An Analysis of Legal Education and Business Education Within the Context of a J.D./MBA Program*, 31 J. LEGAL EDUC. 512, 517-18 (1981-82) (examining the legal realist movement); John W. Kindt, *An Analysis of Legal Education and Business Education Within the Context of a J.D./MBA Programme*, 13 LAW TEACHER 12, 14-16 (1979); Harold D. Lasswell & Myres S. McDougal, *Criteria for a Theory About Law*, 44 S. CAL. L. REV. 362 (1971) (providing comprehensive goal criteria for a new theory about law); Myres S. McDougal, *Jurisprudence for a Free Society*, 1 GA. L. REV. 1 (1966) (examining interrelationships of law and public policy). The decision-making concepts introduced by Professors McDougal and Lasswell were later expanded to include international law and U.S. domestic law, as these areas interfaced with "policy-oriented jurisprudence." *See* John N. Moore, *Prolegomenon to the Jurisprudence of Myres McDougal and Harold Lasswell*, 54 VA. L. REV. 662 (1968); Frederick Tipson, *The Lasswell-McDougal Enterprise: Toward a World Public Order of Human Dignity*, 14 VA. J. INT'L L. 535 (1973-74).

6. *See* NAT'L GAMBLING IMPACT STUDY COMM'N, EXEC. SUMMARY 2 (June 1999), *available at* http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html (stating that the U.S. gambling industry grew "tenfold" since 1975) [hereinafter NGISC EXEC. SUMMARY].

7. 18 U.S.C. § 1084(a) (2000).

8. *See, e.g.*, NGISC FINAL REPORT, *supra* note 2, at 5-4, 5-6 to -7.

9. William M. Bulkeley, *New On-Line Casinos May Thwart U.S. Laws*, WALL ST. J., May 10, 1995, at B1, *available at* 1995 WL-WSJ8710212.

In addition, some promoters of Internet gambling began to try to skirt federal laws by establishing online casinos in remote offshore locations, primarily in the Caribbean.[10] By 2000, at least twenty-five foreign jurisdictions had granted Internet gambling licenses.[11] A Canadian man best exemplified this type of Internet gambling promoter when he promised in 1995 to build a "virtual strip" of casinos, available to Internet users merely at the touch of a button.[12] If left unregulated, analysts expected these casinos—the future "Virtual Vegas"—to rapidly develop into a $10 billion per year industry.[13]

During the late 1990s, experts, as well as sectors of the general public, became concerned with the possible social, economic, and political ramifications that could result from these technological developments, including the marked potential for an increase in the number of pathological (addicted) gamblers.[14] In addition to socio-economic ramifications, Internet gambling raised legal and regulatory issues that interfaced with the notions of freedom of speech, freedom of the Internet, and an individual's freedom of choice. Practical issues of taxation, regulation, and competitive fairness further complicated these issues.

Experts refer to the strategic problems associated with gambling activities, particularly government-sanctioned gambling activities, as the ABCs of gambling, specifically:

(1) New pathological (Addicted) gamblers,

(2) New Bankruptcies, and

(3) New Crime and Corruption.[15]

By 2001, the potential existed for these costs of Internet gambling ultimately to compound each other, leading to devastating results.

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10. *Id.*

11. NGISC FINAL REPORT, *supra* note 2, at 5-1, -3. These jurisdictions included: "five territories within Australia, Antigua and Barbuda, Austria, Belgium, Cook Islands, Costa Rica, Curacao, Dominica, Dominican Republic, Finland, Germany, Grand Turk, Grenada, Honduras, the territory of Kalmykia in Russia, Liechtenstein, Mauritius, St. Kitts and Nevis, St. Vincent, South Africa, Trinidad, Turks and Caicos Islands, four territories in the United Kingdom, Vanatu, and Venezuela." *Id.*

12. *See* Joshua Quittner, *Betting on Virtual Vegas: To Get Around U.S. Gambling Laws, the First Online Casinos are Setting Up Their Card Tables Offshore*, TIME, June 12, 1995, at 64, *available at* 1995 WL 9021026.

13. *Id.*

14. NGISC FINAL REPORT, *supra* note 2, at 5-4, -5.

15. *See* John Warren Kindt, U.S. and International Concerns over the Socio-Economic Costs of Legalized Gambling: Greater than the Illegal Drug Problem?, Statement to the National Gambling Impact Study Commission 2 (May 21, 1998), *available at* http://www.library.ucla.edu/libraries/-mgi/campaign/1998gen/props/prop5/website-no2/statements/john_kindt_1998_may_21.html [hereinafter U.S. and International Costs].

In 1996, the U.S. press reported the viewpoint that *de jure* or *de facto* Internet "gambling [was] the fastest way to destroy the credibility of the Internet system."[16] Additionally, the press summarized one author's opinion: "If you lose, you'll lose, and if you win, you could lose because there's no way to collect from these offshore operations."[17] Furthermore, the pervasiveness of personal computers at every workstation, in every school, and in every living room maximized the accessibility and acceptability of Internet gambling—negatively impacting work productivity and financial systems. The online casinos became devastating enticements for the constantly growing numbers of pathological and problem gamblers in the United States and worldwide. "People will be trapped," one author concluded.[18] "They won't be able to get away from it."[19]

1. Costs of Addictions

"America is addicted to gambling – and doesn't even know," stated Bernie Horn, the 1996 political director of the National Coalition Against Legalized Gambling ("NCALG"),[20] a nonprofit watchdog organization similar to Mothers Against Drunk Driving. In support of this statement, Horn pointed to studies indicating that legalized gambling led to an increased problem of pathological gambling.[21] For example, a 1995 study in Iowa determined that "after the state legalized casinos, 5.4% of the state's adults, or 110,000 people, became pathological[, addicted, or problem] gamblers," which represented a 200% increase.[22] Before Iowa legalized riverboat casinos, only 1.7% of Iowans constituted pathological or problem gamblers.[23] The criteria for diagnosing a pathological gambling disorder was first enumerated by the American Psychiatric Association in 1980, and thereafter listed in subsequent editions of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV).[24]

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16. James Sterngold, *A One-Armed Bandit Makes a House Calls* [sic]; *Virtual Casino is Coming, but Regulation is Still a Big Question*, N.Y. TIMES, Oct. 28, 1996, at D1 (quoting John W. Kindt).

17. *Id.* (quoting John W. Kindt).

18. *Id.* (quoting John W. Kindt).

19. *Id.* (quoting John W. Kindt).

20. Melissa Weinstein Kaye, *Smooth Sailing is Expected for Gambling Commission*, CONG. Q., July 20, 1996, at 2053.

21. *See* Melissa Weinstein Kaye, *Gambling: Across the Country . . . Most Popular Game in Town*, CONG. Q., July 20, 1996, at 2055.

22. *Id.*

23. *Id.*

24. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 312.31, at 615-18 (4th ed. 1994) [hereinafter DSM-IV]. The DSM-IV delimits pathological gambling as follows:

A. Persistent and recurrent maladaptive gambling behavior as indicated by five (or more) of the following:

To further compound the problems associated with widespread gambling on the Internet, experts discovered that the dangers of electronic gambling far exceed those of traditional "real-world" forms of wagering for the 1% to 3% of the public most vulnerable to gambling addictions.[25] Howard Shaffer, Director of Harvard Medical School's Division on Addictions, determined that the use of "[e]lectronics as a vehicle of administration for gambling activities changes the experience to make it more dependence producing."[26] Shaffer noted: "As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced."[27] For students and the digital generation in particular, this incarnation of gambling has "all the makings of a disaster," as summarized by one Gamblers Anonymous ("GA") member.[28] GA members warned that "Internet gambling [wa]s a solitary addiction," noting that "[e]ven in action-filled casinos, [addicted/pathological] gamblers [tended to] isolate themselves from their surroundings."[29] "Online gambling [wa]s a further extension of this [isolation]. . . . It [constituted] a way not to have to deal with any people, and it could be very secretive."[30]

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(1) [I]s preoccupied with gambling (e.g., preoccupied with reliving past gambling experiences, handicapping or planning the next venture, or thinking of ways to get money with which to gamble)
(2) [N]eeds to gamble with increasing amounts of money in order to achieve the desired excitement
(3) [H]as repeated unsuccessful efforts to control, cut back, or stop gambling
(4) [I]s restless or irritable when attempting to cut down or stop gambling
(5) [G]ambles as a way of escaping from problems or of relieving a dysphoric mood (e.g., feelings of helplessness, guilt, anxiety, depression)
(6) [A]fter losing money gambling, often returns another day to get even ("chasing" one's losses).
(7) [L]ies to family members, therapist, or others to conceal the extent of involvement with gambling
(8) [H]as committed illegal acts such as forgery, fraud, theft, or embezzlement to finance gambling
(9) [H]as jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling
(10) [R]elies on others to provide money to relieve a desperate financial situation caused by gambling

B. The gambling behavior is not better accounted for by a Manic Episode.

Id. at 618.

25. William H. Bulkeley, *Feeling Lucky? Electronics is Bringing Gambling into Homes, Restaurants and Planes*, WALL ST. J., Aug. 16, 1995, at A1, *available at* 1995 WL-WSJ 9896153.

26. *Id.*

27. *Id.*

28. Gabriella Spinnato, *Online Gambling: Legal, Enticing to College Students*, DAILY FREE PRESS (Boston), Nov. 6, 2000, *available at* www.dailyfreepress.com/main.cfm?include=detail&storyid=8076. Gamblers Anonymous programs parallel Alcoholics Anonymous programs and utilize a similar 12-step procedure. *See* Henry R. Lesieur, *Socioeconomic Impacts and Public Policy: Costs and Treatment of Pathological Gambling*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 153, 158 (1998).

29. Spinnato, *supra* note 28.

30. *Id.* (quoting a GA member) (alteration in original).

As the 20th century ended, the Internet quickly evolved into an omnipresent factor around the world. In this context, psychiatrists and psychologists discovered a new obsession—"Internet Addiction."[31] As reported in 2000, Dr. Kimberly Young, the executive director at the Center for On-Line Addiction, studied "496 heavy Internet users and compared their behavior to the clinical criteria used to classify gambling."[32] Young concluded that people with "'Internet Addiction' met four or more of the established criteria and found college students to be particularly at risk."[33] Apparently aware of this phenomenon, elements of the Internet gambling industry actively and blatantly looked to exploit it in order to maximize profits. For example, one popular 1995 Internet gambling site, called the Cozino, offered visitors the opportunity to play various games of chance online, and reportedly had arguably unethical plans to add self-acknowledged "addictive" entertainment in the future.[34] An onscreen message stated: "If you are *addicted* to a particular casino game and would like to see (and play) it in the Cozino, please E-mail to the address below."[35]

2. Costs of Bankruptcies

Presumably, the stereotypical gambling debt enforcer did not immediately concern online gamblers because when a player incurred losses online, those debts accrued on credit.[36] Some sites even allowed gamblers to wager their house mortgages,[37] highlighting that some industry elements obviously marketed to pathological (addicted) gamblers, as well as the extensive and pervasive nature of potential losses. These potentially extensive losses would adversely impact not only the gamblers who incurred them, but also their related financial institutions. Viewed strategically, these economic impacts could destabilize financial infrastructures, particularly in developing economies with less stable financial systems.

In addition to the personal bankruptcies made possible by Internet gambling, businesses also faced significant economic losses due to the presence and accessibility of Internet gambling in the workplace. In the 1990s, businesses with Internet access started experiencing problems as

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31. Alex Weininger, *Doctors Disagree About Existence of Disorder Termed 'Internet Addiction,'* DIGITAL COLLEGIAN (Penn.) (Oct. 11, 2000), *at* http://www.collegian.psu.edu/archive/-2000/10/10-11-00tdc/10-11-00dnews-8.asp.

32. *Id.* Gambling represented "the closest type of addiction to online addiction because it involve[d] failed impulse control without involving an intoxicant." *Id.*

33. *Id.*

34. *See* Quittner, *supra* note 12.

35. *Id.* (emphasis added).

36. *See* Spinnato, *supra* note 28.

37. *Id.*

their employees lost productive job time while "surfing the Net."[38] As workers began to engage in Internet gambling activities, the businesses lost not only productive labor time, but also company assets, as employees became hooked and started to steal from their employers to fund their addictions.[39]

Sociologists almost uniformly reported that legalizing more forms of gambling (known as the "acceptability factor") and making more forms of gambling available (known as the "accessibility factor") lead to the creation of new pathological gamblers in the workforce, who engaged in "addictive behavior" pursuant to the DSM-IV.[40] In one 1987 survey, even before widespread Internet use, pathological gamblers in Gamblers Anonymous were already reporting that 44% had stolen from their employers to gamble, 34% had been fired from work or had quit, 21% had filed for bankruptcy, and 18% had gambling-related arrests.[41]

Legalized gambling activities on the Internet would maximize both the acceptability factor and the accessibility factor, creating new pathological gamblers by placing gambling activities in every household, proximate to children in schools, and at every employee's work station—theoretically.[42] This would create major numbers of new pathological

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38. *See, e.g.*, Lisa Guernsey, *The Web: New Ticket to a Pink Slip*, N.Y. TIMES, Dec. 16, 1999, at G1 (stating that dozens of employees are fired for surfing pornography and gambling sites); *see* Henry R. Lesieur, *Experience of Employee Assistance Programs with Pathological Gamblers*, 19 J. DRUG ISSUES 425, 427 (1989).

39. For two examples of how employee theft resulted in significant losses in the financial industry see Laura Proctor, *The Barings Collapse: A Regulatory Failure or a Failure of Supervision?*, 22 BROOK. J. INT'L L. 735, 741 (1997), examining the 1995 collapse of Barings Bank following a $1 billion loss from an employee's unauthorized use of company funds, and Andrew Pollack, *U.S. Holds Trader in Bank's Big Loss*, N.Y. TIMES, Sept. 27, 1995, at A1, discussing Daiwa Bank's $1.1 billion loss from an employee's unauthorized trading.

40. *See supra* note 24 and accompanying text; *see also* Brett Pulley, *Compulsive Gambling Spreads, Largely Due to Legality*, N.Y. TIMES, Dec. 7, 1997, at A1; *see generally* Howard J. Shaffer et al., *Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-analysis*, Harvard Medical School, Div. on Addictions, Dec. 15, 1997, at 107, app. 2; Press Release, Harvard Medical School, *Harvard Medical School Researchers Map Prevalence of Gambling Disorders in North America: Research Shows that Gambling Disorders Affect a Growing Number of Adults* (Dec. 4, 1997), *at* http://www.hms.harvard.edu/news/releases/-1297gambling.html (Based on studies conducted between 1977 and 1993, 0.84 percent of adults were affected by a gambling disorder. But "the prevalence rate from 1994-1997 grew to 1.29 percent of the adult population."). For a summary of the acceptability factor and the accessibility factor, see John W. Kindt, *U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts of the Legalization of Gambling Activities*, 39 ST. LOUIS U.L.J. 567, 581 (1995).

41. John W. Kindt, *The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?*, 22 MANAGERIAL & DECISION ECON. 17, tbls.A4, A8 & accompanying footnotes [hereinafter *Mega-Lawsuits*]; *see also* Henry R. Lesieur, *Compulsive Gambling*, SOCIETY, May-June 1992, at 43; Henry R. Lesieur, *Pathological Gambling, Work, and Employee Assistance*, 1 J. EMPLOYEE ASSISTANCE RES. 32, 32, 42-45 (1992); Henry R. Lesieur, Measuring the Costs of Pathological Gambling: Saying Too Much With Too Little, Address at the Nat'l Conf. on Gambling Behavior of the Nat'l Council on Problem Gambling (Sept. 1996).

42. U.S. and International Costs, *supra* note 15, at 3, 18-19.

gamblers, at an annual cost to society of $10,000 to $52,000 per pathological gambler.[43] Sociologists indicated that the best blue-collar and white-collar employees, the Type-A personalities, were the most likely to become pathological gamblers, and most pathological gamblers engaged in property crimes, including embezzlement and fraud, to finance their gambling.[44] Before the widespread use of the Internet, reports in 1987 already confirmed that pathological gambling accounted for 33% of all insurance fraud, or $1.3 billion.[45] The advent of Internet gambling created new technologies and new opportunities for gambling-related fraud.[46]

One pathological employee gambler in a million-dollar company could easily bankrupt that business.[47] Reports confirmed substantial increases in the numbers of pathological gamblers and concomitant personal, professional, and business bankruptcies in those states and counties that, during the 1990s, allowed casinos and video gambling machines ("VGMs"). For example, a 1997 report sponsored by the American banking industry concluded that counties with accessibility to casino and video machine gambling had between 18% to 71% more business bankruptcies and personal bankruptcies than the national average—attributing these bankruptcies to gambling losses.[48] The use of VGMs and other electronic gambling devices ("EGDs") represented a substantial step toward Internet gambling.

3. Costs of Crime

While Hollywood often romanticizes gambling and its association with crime as something glamorous or socially acceptable, the real link between gambling and criminal activity deviates quite far from this innocuous portrayal. "Within three years after [casino] gambling was introduced to Atlantic City, the city experienced a tripling of total crime, rocketing from 50th to 1st in crime rate per capita."[49] Similarly, in a "before gambling" vis-à-vis "after gambling" example:

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43. *See id.* at 11-12, 16. These cost estimates were not adjusted to current year dollars.

44. *See id.* at 10, 17; *see also Mega-Lawsuits*, *supra* note 41, at 47 tbl.A8 and accompanying footnotes.

45. Henry R. Lesieur & Kenneth Puig, *Insurance Problems and Pathological Gambling*, 3 J. GAMBLING BEHAV. 123, 134 (1987).

46. *See Unregistered Advisers Barred from 'Net*, NEWS-GAZETTE (Champaign, Ill.), Sept. 5, 1996, at C8 [hereinafter *Unregistered Advisers*].

47. *See* Proctor, *supra* note 39, at 737-41, 750-52 & n.155; *see also supra* text accompanying note 39.

48. SMR RESEARCH CORP., THE PERSONAL BANKRUPTCY CRISIS, 1997: DEMOGRAPHICS, CAUSES, IMPLICATIONS, & SOLUTIONS 119-23 (1997).

49. Cynthia R. Janower, *Gambling on the Internet*, 2 J. COMPUTER-MEDIATED COMM. 1 (1996), *available at* http://jcmc.huji.ac.il/vol2/issue2/janower.html (citing Robin Widgery, *Warning:*

> [T]he state attorney's office in Deadwood, South Dakota indicated that within two years after legalizing casino gambling, child abuse cases increased approximately 42%, domestic violence increased 80%, and burglaries and the writing of bad checks increased; overall, the town experienced a 50% increase in felonies and an 80-100% increase in law enforcement and police costs.[50]

In addition to increases in specific categories of crime, an increased risk of white-collar crime also existed, predicated upon the ease with which gambling facilities laundered money.[51] This factor, coupled with the anonymity of the Internet and lax supervision by government officials in certain countries hosting online casinos, resulted in a strong likelihood of criminal behavior eventually occurring.[52]

As the explosion in the number of Internet casinos developed, U.S. law enforcement agencies, as well as the U.S. State Department, concluded that countries combining lax Internet casino regulations with substantial privacy laws created a recipe for disaster.[53] These factors theoretically allowed organized crime rings and drug cartels a safe haven to launder billions of dollars in illegal profits through the Antiguan offshore gambling establishments.[54] "Antigua's offshore banking [business] -- established in the mid-1980s with only limited regulation -- expanded rapidly in recent years . . . . Unfortunately, inadequate regulation and vetting led to a surge in questionable banking operations -- a number with alleged links to Russian criminal elements,"[55] declared a 1997 U.S. State Department report on international money-laundering and narcotics organizations. "The growing potential for money laundering has been an increasing concern of both the U.S. and Antiguan governments,"[56] the report concluded.

Evidence of the direct relationship between gambling and crime also appeared in the United States. For instance, "[t]he former manager of [Virginia]'s third-largest charitable gambling [organization] pleaded

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Legal Gambling is a Costly Game, CHRISTIAN SCI. MONITOR, May 23, 1994, *available at* 1994 WL 8794061).

50. *Id.*

51. *See Internet Casinos Find a Haven in the Caribbean Islands*, LAS VEGAS REV-J., Nov. 10, 1997, *available at* 1997 WL 4557597 [hereinafter *Casinos Find a Haven*].

52. *See id.* (discussing Internet casinos based in Antigua and Barbuda).

53. *See id.*

54. *Id.*

55. *Id.* (omission in original).

56. *Id.* For a report by the U.S. General Accounting Office on the problems of gambling and money laundering (requested by U.S. Senator Sam Nunn), see U.S. GENERAL ACCOUNTING OFFICE, MONEY LAUNDERING—RAPID GROWTH OF CASINOS MAKES THEM VULNERABLE, REP. NO. GAO/GGD-96-28 (1996).

guilty . . . to nine counts of embezzlement."[57] This case paralleled other charitable bingo corruption cases in Virginia, which resulted in embezzlement-related indictments against two former workers and guilty pleas or convictions on fraud-related charges for four others.[58] Virginia's charitable gambling operations experienced corruption so widespread that "four of the state's 33 [most popular] games [suffered] from either criminal indictments and/or convictions against their officials."[59]

Another case involved "[a] veteran FBI agent who supervised an organized crime squad and placed substantial bets on sporting events with [the] people he was investigating."[60] He became hooked on gambling and eventually pled guilty to embezzling $400,000.[61]

> "My client had a gambling problem," said Mark Schnapp, attorney for [the agent] Jerome R. Sullivan.
>
> . . . .
>
> Court documents show [the FBI agent] took kickbacks from informants [to finance his pathological gambling]. Those documents also show that [the agent] received death threats from an associate of the Lucchese crime family, . . . when he amassed $100,000 in gambling debts.
>
> According to agents who questioned Sullivan, the former agent said he first started placing $100 bets with people he was investigating while on an undercover organized crime assignment in Fort Lauderdale.
>
> [Thereafter, h]e increased his bets to "several thousands of dollars" over time.[62]

This scenario demonstrated a classic pattern of gambling into addiction and highlighted that anyone, even a trained professional, was vulnerable to the lure of pathological gambling.

Gambling-related crime affected many people besides simply the criminal and the victim. Sociologists indicated that each pathological

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57. Matthew Dolan, *Ex-Manager of Bingo Outfit Pleads Guilty to Embezzling the Case Involved the State's Third-Largest Group, Which Pulls Down $2 Million a Year*, VIRGINIAN-PILOT AND LEDGER-STAR, Jan. 27, 1998, *available at* 1998 WL 5534827.

58. *Id.*

59. *Id.*

60. Associated Press, *Gambling FBI Agent Pleads Guilty to Embezzlement* (Jan. 27, 1998), *at* 1998 WL 6639122.

61. *Id.*

62. *Id.*

gambler affected at least seven, and up to seventeen, other people.[63] The direct link between pathological gambling and the lives of other people may result in tragedy, such as in the case of the Michigan man who returned from Las Vegas "distraught over gambling debts" and killed his pregnant wife, his three children, and then himself.[64]

Pathological gamblers burdened society in a variety of respects. A compulsive gambler's mean gambling debt can range anywhere from $52,000 to $92,000.[65] Some economists argued that these "sterile transfers of money" simply resulted in expenditures elsewhere in the economy and did not constitute losses to the overall economy.[66] Other economists, however, categorized these gambling debts as losses to the "productive" and high-multiplier-effect economy, as they involve transfers into the non-productive or less productive "gambling economy" with its concomitant social costs.[67] A survey of Gambler's Anonymous members revealed that approximately 47% had committed insurance-related fraud or thefts in which insurance companies were obligated to pay the victims.[68]

4. Additional Social Costs

Areas debating whether to legalize gambling should consider what these statistics suggest for the future.[69] Robert Goodman wrote in his book, *The Luck Business*, that gambling's total social cost, calculated by combining the values of bankruptcies, crime, broken families, and treatment, totaled approximately $29 billion annually.[70] By his accounting, these costs totaled twice the amount of the tax revenues generated annu-

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63. Janower, *supra* note 49 (citing John W. Kindt, *The Economic Impacts of Legalized Gambling Activities*, 43 DRAKE L. REV. 51, 61 (1994) [hereinafter *Economic Impacts*]).

64. Jim Suhr, *Farmington Hills Man Kills Family, Himself Over Gambling Debt*, DETROIT NEWS, Nov. 21, 2000, *available at* http://detnews.com/2000/metro/0011/21/-151774.htm; *see also* Sandra Blakeslee, *Suicide Rate Is Higher In 3 Gambling Cities*, N.Y. TIMES, Dec. 16, 1997, at A10 (comparing suicide rates in Atlantic City, Las Vegas, and Reno to other cities where gambling is illegal); Larry Fruhling, *Addiction Leads to Tragic End*, DES MOINES REG., Mar. 25, 1997, at M1, M2 (reporting that a college student killed himself over gambling debts; two and a half years later his stepfather killed himself out of grief); Cam Simpson, *Baby Death Plot Told: Suburb Mom Indicted in Insurance Scheme*, CHI. SUN-TIMES, Mar. 7, 1998, at 1 (reporting that a mother addicted to gambling allegedly killed one and perhaps two of her children in separate instances to collect insurance money in order to continue to gamble).

65. Janower, *supra* note 49 (citing Widgery, *supra* note 49).

66. PAUL A. SAMUELSON, ECONOMICS 425 (J.S. Dietrich et al. eds., 10th ed. 1976). Paul Samuelson won the Nobel Prize in Economic Science in 1970.

67. For a summary, see John W. Kindt, *The Business-Economic Impacts of Licensed Casino Gambling in West Virginia: Short-Term Gain but Long-Term Pain*, 13 W. VA. PUB. AFF. REP. 22, 24-25 (1996) [hereinafter *Business-Economic Impacts of Gambling*].

68. Lesieur & Puig, *supra* note 45, at 123.

69. *Tomorrow Never Dies; Future Costs of Gambling Outweigh Revenue Gains*, PHILA. ONLINE, Jan. 28, 1998, at A14 [hereinafter *Tomorrow Never Dies*].

70. *Id.*; *see* ROBERT GOODMAN, THE LUCK BUSINESS ch. 3 (1995). For a table of costs, see *Mega-Lawsuits*, *supra* note 41, at tbl.A3 and accompanying footnotes.

ally from gambling, and other studies have reported even greater proportional losses.[71]

"The law must keep [pace] with technology," demanded U.S. Senator Jon Kyl at the initial 1997 hearing involving Internet gambling issues before the U.S. Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information.[72] As Chairman of the Subcommittee, Senator Kyl summarized that:

> [g]ambling is either heavily regulated or expressly prohibited in the states. On the Internet, it is neither. Given the tremendous potential for abuse, addiction, and access by minors, online gambling should be prohibited. My bill will protect children from logging on to the family computer, "borrowing" the family credit card, and losing the family home, all before their parents get home from work. And for those people with a gambling problem, my bill will make it harder to gamble away the family paycheck.
>
> . . . .
>
> . . . Gambling erodes values of hard work, sacrifice, and personal responsibility. Although the social costs of gambling are difficult to quantify, research indicates they are potentially staggering. Gambling is a growing industry in the United States, with [wagering] approaching $550 billion last year [1996] – three times the revenues of General Motors Corp. In 1993, more Americans visited casinos than attended a major league baseball game.[73]

The erosion of hard work that Senator Kyl referenced was traceable to the fact that an increase in gambling-oriented Internet sites could negatively impact the workplace in many U.S. corporations.[74] Employee gambling on the Internet represented a serious corporate problem for the 21st century according to Dr. David Greenfield of the Center for Internet Studies and the author of *Virtual Addiction*.[75] "Companies that provide Internet access to gambling sites may incur substantial employee productivity losses . . . . In extreme cases, this may increase the potential for liability from the negative consequences an employee may incur -- in-

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71. *Id.* For a summary of costs versus benefits, see *Mega-Lawsuits*, *supra* note 41, at 38 n.136.

72. Press Release, Sen. Jon Kyl, Chair, U.S. Sen. Subcomm. on Technology, Terrorism, & Gov't. Info., *Kyl Introduces Bill Outlawing Gambling On The Internet* (Mar. 19, 1997), *available at* 1997 WL 4430799.

73. *Id.*

74. *See supra* note 38 and accompanying text.

75. *See Online Gambling a Losing Battle in the Workplace; Sites Show a 209 Percent Increase, According to Websense*, BUS. WIRE, Sept. 7, 2000 [hereinafter *Online Gambling in Workplace*].

cluding compulsive [pathological] gambling problems and financial losses."[76]

An increase in gambling addictions could also impact health care costs, since pathological gamblers are more likely to have problems with alcohol[77] and also evidence a suicide rate that is five to ten times higher than that of the national average.[78] If society decided to rehabilitate gambling addicts, the total cost would range between $17,000 and $42,000 per person (in 1993 dollars).[79] The national cost of pathological gambling in 1996 was therefore estimated to be $56 billion per year.[80]

B. The Proliferation of the Internet and Online Gambling

In 1999, the United Nations Development Programme's ("UNDP") *Human Development Report* catalogued the rapid spread of Internet usage, establishing the United States as the leading country with 88.9 Internet hosts per 1000 people according to 1998 data.[81] Other leading countries included: Norway, 71.8; Australia, 42.7; Switzerland, 27.9; and the United Kingdom 23.3 (1995 U.K. data).[82]

Between August 1995 and April 1999, Internet usage in North America grew from 18 million to 92 million users.[83] In 1994, an amazing 30% of U.S. public elementary schools and 49% of secondary schools already had access to the Internet.[84] Only 5 years later in 1999, the total rose to 95% overall, with 94% of elementary schools and 98% of secondary schools having Internet access.[85]

Financial experts estimated that electronic technology would lead to increases in overall gambling revenues, which had already increased significantly from the 1980s to the 1990s. By 1995, "John Malone, president of cable-television [company] Tele-Communications, Inc. . . . called gambling one of the 'killer applications' for interactive networks,"[86] and he implied that gambling partially justified the cost of developing the

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76. *Id.*

77. Janower, *supra* note 49 (citing *Economic Impacts*, *supra* note 63, at 63).

78. *Id.* (citing Widgery, *supra* note 49).

79. *See, e.g.*, VALERIE C. LORENZ, ET AL., FINAL REPORT OF THE TASK FORCE ON GAMBLING ADDICTION IN MARYLAND (1990), *available at* http://www.nyu.edu/its/socsci/Docs/task_force_4.-html; *see also Economic Impacts*, *supra* note 63, at 65; *Mega-Lawsuits*, *supra* note 41, at 44 tbl.A3.

80. Janower, *supra* note 49 (citing Widgery, *supra* note 49).

81. U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 53 tbl.A1.3 (1999), *available at* http://hdr.undp.org/reports/global/1999/en/.

82. *Id.*

83. *See* http://www.nua.ie/surveys/how_many_online/n_america.html (last visited Sept. 21, 2002) (listing data from Commerce Net/Nielsen Media Research).

84. ANNE CATTAGNI & ELIZABETH FARRIS, NATIONAL CENTER FOR EDUCATION STATISTICS, INTERNET ACCESS IN U.S. PUBLIC SCHOOLS AND CLASSROOMS: 1994-2000 2 tbl.1 (May 9, 2001), *available at* http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2001071.

85. *Id.*

86. Bulkeley, *supra* note 25.

information highway. "Though still in its infancy, [by 1997, online gambling constituted] a $200-million-a-year business,"[87] available on approximately 36 Internet sites. Considering that the annual amount gambled in America already totaled $550 billion, the growth potential became "obvious for virtual casinos and Internet sports betting"[88] (the "gateway" gambling venue considered especially tempting to teens).[89] Gambling online quickly became one of the most rapidly growing industries of the Internet, boasting annual revenues of $1.2 billion in 1999, an increase of 80% from 1998.[90] By 2002, it had the possibility of becoming a $3 billion industry, according to the international investment bank, Bear Stearns.[91]

By 2000, nearly 700 Web sites offered online gambling to users, an industry anticipated "to grow from $1.1-billion in 1999 to $3-billion in 2002,"[92] according to conservative estimates by the online gambling industry. In 2000, a survey of Internet users showed that "1-million Americans gamble online each day, and that 4.5-million Americans—about 5% of those with access to the Internet—have gambled online."[93] According to Websense Inc., a computer company that instructs corporations on how to manage their employees' Internet usage, the number of gambling-oriented sites jumped "from 6,992 in August 1999 to more than 21,651 as of August 2000."[94] This constituted a 209% increase through the course of one year, increasing 136% alone from February 2000 until August 2000.[95] An Internet search in November 2000 on the search engine Google.com yielded approximately 2.4 million sites matching the term "gambling," and approximately 43,800 sites matching the phrase "Internet gambling."[96] In September 2001, less than one year later, there were still about 2.4 million sites matching the term "gambling" on Google.com, but the number matching "Internet gambling" had jumped to 522,000.[97]

Jerry Fiddler, a University of Illinois alumnus and a co-founder of the Wind River Systems software company, addressed University of Illi-

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87. *Trying to Outlaw Internet Gambling*, ROANOKE TIMES & WORLD NEWS, Aug. 27, 1997, at A10, *available at* 1997 WL 7303150 [hereinafter *Trying to Outlaw Internet Gambling*].

88. *Id.*

89. Joseph G. LaTessa, *Internet Gambling and the Regulation of the Internet*, ARK. BUS. & ECON. REV., Mar. 1, 1996, at 11, *available at* 1996 WL 13731939.

90. *Online Gambling in Workplace*, *supra* note 75.

91. *Id.*

92. *House Nixes Ban on Net Gambling* (July 18, 2000), *at* http://news.cnet.com/news/0-1005-200-2279682.html [hereinafter *House Nixes Ban*]; *Internet Gambling Gets Reprieve in House*, ST. PETERSBURG TIMES, July 18, 2000, at 1A, *available at* 2000 WL 5624442.

93. *Id.*

94. *Online Gambling in Workplace*, *supra* note 75.

95. *Id.*

96. Internet search was performed by author, Stephen W. Joy.

97. *Id.*

nois students at the Sixth Annual Student Computing Conference. "'What's the Internet going to look like in 10 years? I guarantee it won't look like it does today,' Fiddler told the audience."[98] He predicted that by 2010, one trillion devices would be connected to the Internet.[99]

Gambling used to involve secretive dealings with unscrupulous bookmakers, or concerted trips to the dog or horse track, or to Atlantic City or Las Vegas.[100] By 1995, however, the Internet broadened access to gambling, making it almost ubiquitous. Speculators used modern computers to extend the reach of gambling—often frustrating regulators.[101] Technology's biggest impact on the gambling industry could be inviting gambling into the home—which *International Gaming and Wagering Business*, a gambling industry trade publication, referred to as "gaming's new frontier."[102] Libertarians sometimes argued that if Internet users chose to risk their money on unregulated Internet gambling with strangers in a foreign land, they got what they deserved when cheated.[103] Internet gambling, however, had another insidious aspect. "Unchecked, it ha[d] the [very real] potential to turn every family room[, office, and school] in America with a . . . computer into an unregulated casino,"[104] according to former Minnesota Attorney General Hubert H. Humphrey, III. Thereby, Internet gambling could send billions of U.S. dollars to dubious foreign jurisdictions (including terrorist organizations), potentially making Internet gambling a national security issue.

II. CLARIFICATION OF GOALS

A. Overall Goals in Legalized Gambling Issues

In gambling issues, the overall strategic goals for government should be to conform to the common-law principle of maximizing the public health, safety, and welfare. In this context, the major goals for governmental authorities and decision-makers should be as follows:

(1) minimize the social impacts of pathological (addicted) gamblers;

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98. Sarah Schlitz, *Conference Focuses on Computer Security: Speaker Comes to Town with News of Hackers, New Technology, Dangers*, DAILY ILLINI (Champaign, Ill.), Oct. 9, 2000, *available at* http://www.dailyillini.com/oct00/oct09/news/news07.shtml.

99. *Id.*

100. Bulkeley, *supra* note 25, at A1.

101. *Id.*

102. *Id.*

103. *See id.*

104. Hubert H. Humphrey III, Editorial, *Internet as a Gambling Casino*, ST. LOUIS POST-DISPATCH, Nov. 25, 1996, *available at* 1996 WL 2805789.

(2) improve the public's overall economic well-being (particularly the poor, the elderly and the disadvantaged), and encourage business/economic development;

(3) repress and punish criminal activities;

(4) promote ethical governmental practices in decision-making;

(5) foster a first-rate education system and an educated public; and

(6) maximize societal quality-of-life.

In 2000, it appeared that eliminating illegal gambling on the Internet could prove impossible, but there existed mechanisms by which it could be legally discouraged and diminished—if existing criminal justice authorities chose to exercise their police discretion and take action. Some postulated that criminal justice authorities could and should initiate "sting" operations, whereby undercover police agents establish accounts with Internet gambling operations (i.e., to "follow the money"), and then get federal indictments against Internet gambling providers.[105] The chilling effect on Internet gambling would be dramatic, and even offshore companies would be severely limited by a federal indictment. Furthermore, since U.S. federal statutes apply to international communications, *a fortiori* the legal impact would be substantial.[106] As a practical matter, a sting operation is relatively easy and inexpensive to institute. Police agents simply log on to various gambling Web sites, establish customer gambling accounts, and then gamble illegally.[107] In the United States, Missouri Attorney General Jeremiah "Jay" Nixon used this procedure to support a lawsuit seeking to prohibit illegal Internet gambling from the Coeur d'Alene Native American reservation in Idaho.[108]

From a social perspective, the accessibility of gambling on the Internet placed an addictive behavior in the hands of millions of previously unexposed people, including adolescents and impressionable children. A majority of the money generated by Internet casinos went untaxed, created more untaxable money flow, and reduced taxable economic activities.[109] Concomitantly, the potential social damages of "maximized accessibility" via in-home gambling alarmed sociologists, criminologists, and even the pre-existing U.S. gambling industry.[110]

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105. *See, e.g.*, Tom Grey & Bernie Horn, *Legalized Gambling—Current Politics & Policy: A Presentation to the National Association of Attorneys General*, Mar. 25, 1996, at 3, *available* via the National Information Center, 1-800-664-2680.

106. *Id.* at 3-4.

107. *Id.*; Bill Lambrecht, *Missouri Fights to Pull Plug on Internet Lottery*, ST. LOUIS POST-DISPATCH, June 8, 1997, at A1, *available at* 1997 WL 3346723.

108. Lambrecht, *supra* note 107, at A1.

109. For early concerns raised in this issue, see Grey & Horn, *supra* note 105, at 2-3.

110. *Id.*

Some experts also argued that the Internet was incompatible with censorship and could not be regulated.[111] They noted that its users "fiercely protect[ed] their freedom and [would] sabotage any efforts at censorship."[112] The Internet, however, like any other highway, needed limits. Since the system failed to discipline itself, it appeared destined for government regulation or prohibition.

B. Secondary Goals in Legalized Gambling Issues

The secondary goals involved in legalized gambling issues and of importance to governmental authorities could be categorized as follows:

(1) taxes—minimize the taxes necessary to achieve societal-governmental goals;

(2) jobs—create new jobs and economic wealth throughout the economy; and

(3) economic development—foster net new regional and/or strategic economic activity and not just a "sterile transfer of money."[113]

Internet gambling challenged the promotion of these goals by allowing the potentially rapid transfer of wealth from pre-existing productive economies with high-multiplier effects into non-productive or less-productive gambling venues. Additional challenges resulted from the ability of Internet gambling activities to transfer billions of dollars to overseas jurisdictions—including illegal international organizations.

C. Regulation of Internet Gambling

"The Internet has taken the gambling world by storm," testified Wisconsin Assistant Attorney General Alan Kesner, before the National Gambling Impact Study Commission ("1999 Gambling Commission").[114] "One of the most heavily regulated industries in the world has crashed with full force into one of the most unregulated, and inherently unregulatable, phenomenon of modern times," concluded Kesner.[115] Montana Attorney General Joe Mazurek further noted that "[w]e have been cautious in our approach to gambling, but [Internet gambling] turns it all upside down . . . . Our policy concern is that we lose control. We

111. *See* Arun Mehta, *Radio Free Usenet. Avoid High Costs and Thwart Censorship: Post it on the Airways*, BYTE MAG., July 1, 1995, *available at* 1995 WL 7911050.

112. *Id.*

113. SAMUELSON, *supra* note 66, at 425.

114. Jeff German, *Fed Panel Focuses on Internet*, LAS VEGAS SUN, May 22, 1998, *available at* http://www.lasvegassun.com/sunbin/stories/text/1998/may/22/507247523.html.

115. *Id.*

have no ability to protect our citizens or the existing businesses that have operated by our rules."[116]

Furthermore, serious concerns surfaced in the specific area of sports gambling on the Internet, particularly as the "gateway" gambling venue for teens and preteens. Representing the National Collegiate Athletic Association ("NCAA") before a hearing convened by the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information, Bill Saum endorsed the Internet Gambling Prohibition Act of 1999, stating, "As the number of online sports-betting sites continues to grow abroad, it is essential that the United States send a clear message that . . . it will be a violation of federal law to accept bets over the Internet."[117]

From the international perspective, in 1999 an Australian parliamentary committee recommended several measures to make online gambling less accessible, addressing the Prime Minister's concern that pathological and problem gambling ills could destroy thousands of Australian lives.[118] The parliamentary committee initiated the inquiry when an official report confirmed that "Australia had one of the world's highest rates of gambling and found that 300,000 of its 19 million people had [gambling problems]."[119] The Australian national government, expressing concern about problem gambling, announced plans to enact legislation "to stop the nation's six states and two territories from issuing any more [gambling] licenses for a year while it [considered] the social and economic costs of [Internet] gambling."[120] The announcement spurred "a rush by defiant states and Australia's richest man Kerry Packer"[121] to get Internet gambling operations up faster, resulting in the issuance of seven licenses in the week after the proposal. Emulating a common gambling industry scare tactic utilizing economic arguments without basis, Steve Toneguzzo, chairman of the Internet Industry Association online gambling taskforce, publicly stated that "[i]f Australia was to ban Internet gambling, those looking to establish in Australia would simply move offshore, taking jobs and the potential of US$9 billion by 2003 in export dollars."[122]

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116. Associated Press, *Montana Wary of Net Gambling*, USA TODAY, Jan. 26, 1999, *available at* http://www.usatoday.com/life/cyber/tech/ctb856.htm.

117. Associated Press, *Modified Net-Gambling Bill Wouldn't Go After Bettors*, WALL ST. J. INTERACTIVE EDITION (Mar. 23, 1999), *at* http://interactive.wsj.com/archive/retrieve.cgi?id=SB922218140651488078.djm [hereinafter *Modified Net-Gambling*].

118. *Australian Web Gambling Faces Controls* (Mar. 17, 1999), *at* http://gamingmagazine.com/managearticle.asp?c=500&a=60.

119. *Id.*

120. Reuters, *Aussies Struggle Over Web Bets* (May 23, 2000), *at* http://www.wired.com/news/politics/0,1283,36520,00.html.

121. *Id.*

122. *Id.*

D. *The Promised Economic "Benefits" of Typical Gambling Establishments and Their Absence from Internet Gambling Operations*

"Too often, public officials view gambling as a quick and easy way to raise revenues, without focusing on gambling's hidden social, economic, and political costs,"[123] President Clinton wrote to U.S. Senator Paul Simon in a 1995 letter endorsing his legislation to establish the National Gambling Impact Study Commission to study the various impacts of widespread legalized gambling. However, the claimed "new revenues" from gambling operations did not materialize when the operation involved Internet gambling.[124] Online casinos cost almost nothing to build or maintain when compared to their brick-and-mortar counterparts. In addition, Internet gambling operations neither employed the numbers of people employed by conventional casinos, nor paid regular taxes.

One Web site that featured a NCAA tournament betting pool cost only $225,000 to create and earned its money through advertising.[125] The Internet's first virtual casino, Internet Casinos, Inc. ("ICI"), reportedly opened for business on August 18, 1995, and offered 18 different casino games, plus online participation in the National Indian Lottery, as well as the planned development of an Internet sports book.[126] While it generally might cost $300 million or more to build a totally new resort-style casino employing thousands, ICI developed its online casino for only $1.5 million and created only 17 new jobs.[127] ICI's founder, Warren B. Eugene, stated that his "house" cut usually averaged around 24%, compared to "the typical U.S. casino house take," which fluctuated between 8% and 16% of every dollar wagered.[128] National Coalition Against Legalized Gambling ("NCALG") political director Bernie Horn summarized, "There are virtually no jobs created and there's no tax revenue derived."[129] He added that cyberspace gambling, exemplified by Internet gambling, "creates kind of a black hole for people's money."[130]

Under legislation passed in 1997, Antigua and Barbuda began charging just $100,000 a year for an Internet casino license, or $75,000 for telephone gambling operations.[131] Antigua and Barbuda thereby

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123. Letter from President William J. Clinton to Senator Paul Simon (Oct. 31, 1995) (on file with author).

124. *See generally* NGISC FINAL REPORT, *supra* note 2, at 5-7 to -10, -12.

125. *See* Michael E. Ruane, *Enjoying a Touch of Madness; NCAA Pools Make Splash on the Web*, WASH. POST, Mar. 13, 1999, at B1, *available at* 1999 WL 2204949.

126. Janower, *supra* note 49.

127. *Id.*

128. *Id.*

129. Mary Ann Akers, *Bill Would Make Gambling on Internet a Federal Crime*, WASH. TIMES (D.C.), Jan. 27, 1998, at A8, *available at* 1998 WL 3438467.

130. *Id.*

131. Brett Pulley, *With Technology, Island Bookies Skirt U.S. Law*, N.Y. TIMES, Jan. 31, 1998, at A1, *available at* LEXIS, News Library, News Group File.

guaranteed minimum governmental regulation and interference, maximum anonymity, as well as a totally tax-free profit.[132] Antigua and Barbuda also had no capital gains taxes or income taxes.[133] This government discouraged outside scrutiny, even when coming from its own citizens.[134] Throughout the 1990s, the Antiguan and Barbudan government "licensed at least 57 offshore banks and at least two major sports-[gambling businesses], and only [the government knew] the names and assets of their owners."[135]

Similar to certain other forms of gambling, Internet casinos provided comparatively little revenue for their host jurisdictions, disappointing local residents with false hopes and broken promises of a rejuvenated economy. For example, while there were over 200 Indian casinos in the United States in 1997, apparently 40% of all Indian gambling revenues went to only eight casinos.[136]

E. Goals Recommended by the 1999 National Gambling Impact Study Commission

In 1999, the National Gambling Impact Study Commission recommended four different methods to prevent the proliferation of, and discourage participation in, illegal Internet gambling in the United States.[137]

First, the 1999 Gambling Commission recommended that the federal government, through the actions of the President, Congress, and the Department of Justice, should prohibit "Internet gambling not already authorized [in 1999] within the United States or among parties in the United States and any foreign jurisdiction,"[138] without permitting new exemptions or the extension of current federal exemptions to other jurisdictions.

Second, the 1999 Gambling Commission recommended legislation to prohibit wire transfers to recognized Internet gambling sites, or to the offshore banks that represent them.[139] Additionally, the Commission recommended legislation to render any credit card debts generated by Internet gambling unenforceable and unrecoverable to the credit lending companies.[140]

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132. *See Casinos Find a Haven*, *supra* note 51.
133. *Id.*
134. *Id.*
135. *Id.*
136. *Tribes Finding it Hard to Reap Windfall from Internet Gaming*, LAS VEGAS REV.-J., Dec. 1, 1997, at D4, *available at* 1997 WL 4557597.
137. NGISC FINAL REPORT, *supra* note 2, at 5-12.
138. *Id.*
139. *Id.*
140. *Id.*

Third, the 1999 Gambling Commission highlighted that the Internet's ubiquitous nature and widespread accessibility from schools, homes, and offices allowed gambling without requiring the participant's physical presence in a casino.[141] Acknowledging a shortage of conclusive evidence proving the social costs of this new form of gambling, the Commission recommended that the states not allow the expansion of gambling into schools, offices, and homes through the use of newly developed technology and the practice of account wagering.[142]

Finally, the 1999 Gambling Commission concluded that since the majority of Internet gambling proliferated most rapidly in and from foreign "host" countries, the federal government should begin encouraging or enabling those offshore governments not to promote or harbor Internet gambling operations that made their services available to U.S. citizens.[143]

III. HISTORICAL BACKGROUND

A. The Strategic Historical Implications of Legalized Gambling Activities

While individualized gambling activities existed throughout the history of mankind, government-sanctioned gambling activities historically resulted in negative socio-economic conditions, far outweighed by any positive results.[144] Furthermore, gambling activities essentially constituted a "sterile transfer of wealth," which not only replaced, but actually hindered, genuine economic growth.[145] The opportunity cost to those governments that legalized gambling activities consisted, in part, of lost "consumer dollars."[146] While the introduction of gambling-oriented dollars into a local economy arguably had a multiplier effect, by the 1990s a growing body of evidence existed showing that in most economic scenarios the multiplier associated with consumer dollars lost by redirection to gambling activities exceeded the gambling multiplier.[147]

Accordingly, governments experimented with legalized gambling activities throughout history, sometimes referred to as "waves" of gambling, but as the public became re-educated to the socio-economic nega-

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141. *See id.*

142. *Id.*

143. *Id.*

144. For a summary of these issues, see John W. Kindt, *Follow the Money: Gambling, Ethics, and Subpoenas*, 556 ANNALS AM. ACADEMY POL. & SOC. SCI. 85, 91-92 (1998) [hereinafter *Follow the Money*]. *See also Mega-Lawsuits*, *supra* note 41, at 38 n.136.

145. *See, e.g.*, SAMUELSON, *supra* note 66, at 425.

146. For a summary of these issues, see John W. Kindt, *Legalized Gambling Activities: The Issues Involving Market Saturation*, 15 N. ILL. U.L. REV. 271, 273 (1995). *See also* John W. Kindt, *Legalized Gambling Activities As Subsidized By Taxpayers*, 48 ARK. L. REV. 889, 899 (1995) [hereinafter *Gambling Subsidized*].

147. *See Business-Economic Impacts of Gambling*, *supra* note 67, at 24-25 and accompanying footnotes.

tives, governments invariably re-criminalized and suppressed gambling activities.[148] Sometimes social movements, including but not exclusively involving ethical and religious support from Judeo-Christian and Muslim elements, supported governmental activities to recriminalize gambling.[149] Unlike most governmental authorities, these ethical religious elements often had extensive historical records and traditions highlighting the folly of gambling activities—particularly government-sanctioned gambling.[150]

With shorter institutional memories, misguided governmental organizations periodically sanctioned various forms of gambling—often prompted by the lure of "painless" governmental revenues without additional taxation.[151] However, within a period of years, governmental authorities usually relearned the painful socio-economic lessons already ingrained with economic historians. In this context, modern economists often paraphrase Georg Hegel: "Those who forget the economic lessons of history, are condemned to relive them."[152]

B. The 1990s Proliferation of Offshore Online Casinos

Internet Casinos, Inc. ("ICI"), the world's first online casino, opened for business on August 18, 1995, with a total of 18 different casino-style games and also provided Internet access to the National Indian Lottery.[153] In 1998, two primary types of Internet gambling Web sites existed.[154] One type required the user to download special software to play, while the other allowed immediate online gambling using games created with the Java computer language.[155] These Web sites required users to create accounts either by providing credit card information[156] or by actually opening an offshore bank account.[157] Additionally, the Web sites required users to pick a user name and password.[158] During the

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148. *Id.* at 24.

149. *Follow the Money*, *supra* note 144, at 93.

150. *Id.* For examples of historical opposition to government-sanctioned gambling by a representative denomination, see UNITED METHODIST CHURCH, THE 1996 BOOK OF DISCIPLINE, para. 67, G, 72 (1996); UNITED METHODIST CHURCH, THE 1996 BOOK OF RESOLUTIONS 444 (1996).

151. *See, e.g.*, *Business-Economic Impacts of Gambling*, *supra* note 67, at 23; *see also Gambling Subsidized*, *supra* note 146, at 892.

152. J. BARTLETT, FAMILIAR QUOTATIONS 507 (14th ed. 1968); *see also The National Impact of Casino Gambling Proliferation: Hearing Before the House Comm. on Small Business*, 103d Cong. 77, 81 (1994) (statement of Prof. John W. Kindt).

153. Janower, *supra* note 49.

154. Chauncey Hollingsworth, *Loaded dice? Odds are Regulators Can't Stem Tide of Internet Gambling*, CHI. TRIB., Dec. 4, 1998, § 5, at 1, *available at* 1998 WL 2922631.

155. *Id.*

156. *Id.*

157. *See* Janower, *supra* note 49.

158. Hollingsworth, *supra* note 154.

1990s, most Internet gambling sites had a minimum transaction amount ranging anywhere between $20 and $500.[159]

While casino-style gambling initially favored a medium like the Internet, in 2000, the horse racing industry prepared to test market a means of gambling that merged "television, telephones and the Internet."[160] Executives in the horse racing industry argued that merging these technologies would cultivate "a new generation of fans," watching races from their living rooms on their television sets while using the Internet to gather information on horses and to place their bets.[161]

With developing Internet technology spreading across the globe, the gravitation of Internet gambling Web sites to the Caribbean and Central American countries resulted in part from (1) the relatively minimal fees that those countries charged to establish such operations; (2) the fact that those countries legalized Internet gambling; and (3) the largely unregulated atmosphere perpetuated by those governments.[162] "Everyone says it's a banana republic over there, and no one will regulate,"[163] summarized Kerry Rogers, who ran an offshore operation known as WagerNet. Another Internet gambling site operator, Bob Ermian, who reportedly worked as a Boston bookie for 11 years prior to moving to the West Indies, explained, "The reason I'm here in this country is because I can't do what I want to do in the U.S. . . . . It feels great. I don't have to worry about the police coming and breaking the door down."[164]

Warren Eugene, a citizen of Canada who operated an Internet gambling site out of the Caribbean, claimed that he felt secure from prosecution by any U.S. agencies.[165] However, his Web site, ICI, warned Americans:

> At this time you may not be legally able to gamble at this casino site. Call your local authorities and check to see if you can enjoy our casino. If not, call and complain to your senators, congressmen, and attorney generals! Democracy does exist in America. Do not let your first amendmant [sic] and constitutional rights be taken away from you! Act Now![166]

Images representing American democratic ideals followed this disclaimer, as did additional pleadings to help change U.S. law.[167] This site

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159. *Id.*

160. *See* Thomas E. Weber, *Click, Place or Show: Playing the Ponies in Your Jockey Shorts*, WALL ST. J., May 1, 2000, at B1.

161. *Id.*

162. *See* Quittner, *supra* note 12.

163. *Id.* (referring to Belize).

164. Pulley, *supra* note 131.

165. *See* Janower, *supra* note 49.

166. *Id.*

167. *Id.*

only allowed U.S. residents to use the site if they agreed to establish an offshore bank account, which then qualified them as "no longer Americans," according to Eugene and his attorneys.[168] However, many users of gambling Web sites played for fun without wagering any money, making it difficult for authorities to enforce U.S. laws.[169]

C. Unfair Odds and Other Potential Frauds at Internet Gambling Sites

Internet and cyberspace gambling presented obstacles, not only because of their accessibility and wide ranging acceptability, but also because of their "virtual" nature, especially when combined with an offshore location.[170] Offshore virtual casinos had no significant incentive to refrain from manipulating the odds in their favor because they operated without any regulatory supervision.[171] Although computerized gambling could technically generate more random play and therefore be less susceptible to forms of cheating like card counting, player protection required that the software used in Internet gambling also be secure from potential alteration.[172] Steve Bourie, a former gambling industry executive for over twenty-five years, warned gamblers that a casino operator only had to remove a few 10-value cards from any standard deck to dramatically increase the house's advantage over a player.[173] "Since players don't get to examine the deck how do they know all 52 cards are there?" he queried.[174] Quasi-government authorities supposedly regulated video gambling machines used in real (as distinguished from "virtual") casinos, insuring that the machines generate the established odds (but not necessarily "fair odds") by limiting access to the machines, monitoring accounting and revenues generated by the machines, and keeping the electronic specifications tightly regulated.[175]

Despite questions concerning the states' ability to maintain the efficacy and integrity of state-sanctioned gambling activities and regulations (as well as who determined what was "fair" as states changed the odds more in the owners' favor), generally states authorizing such activities tried to provide standards and concomitant regulation.[176] The gambling industry euphemistically termed this process as "maintaining the integ-

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168. *Id.*

169. *See* Bulkeley, *supra* note 9.

170. Janower, *supra* note 49.

171. *See id.*

172. *Id.*

173. *Are Internet Casinos Honest? 'Don't Bet On It' Says Gambling Expert*, PRNewswire, Feb. 4, 1999, *available at* LEXIS, News Library, News Group File [hereinafter *Internet Casinos Honest?*].

174. *Id.*

175. *See* Janower, *supra* note 49.

176. NGISC FINAL REPORT, *supra* note 2, at ch. 3.

rity of the games."[177] Even so, when U.S. states initially sanctioned gambling activities, they attempted to provide some regular standards—although those standards generally deteriorated over time.[178] Nevada, for example, implemented a certification requirement for all video gambling machine service personnel, which included a background check.[179] Montana used security seals on the logic boards of all machines to prevent and detect tampering.[180] Offshore Internet gambling operations, however, did not employ these types of protections. "All of these [Internet gambling] sites say they offer honest games, but in reality you'll never know if that's true,"[181] concluded Steve Bourie. Some sites tried self-regulation to assuage public fear, using accounting firms to monitor their activities.[182] Although good for public relations, this type of voluntary self-regulation lacked the quasi-security of government regulation.[183]

The honesty of the Web site operators themselves did not solely determine the honesty of Internet gambling. Computer hackers could infiltrate the systems and change the algorithm to boost payouts or even steal the credit card numbers from other users' accounts.[184] Aware of this security problem, Web site administrators admonished users to guard their passwords.[185] In the eventuality that a hacker illegally obtained another person's credit card information, of course, the offshore sites claimed that they could not be held responsible.[186]

The potential for fraud and other crimes latent in Internet gambling operations may have seemed minimal upon initial consideration, but closer examination revealed the vulnerability of the whole system.[187] In 1996, Minnesota Attorney General Hubert H. Humphrey III summarized these problems:

> Same scams, different medium. That's what I thought as I perused the Internet on my home computer one sleepless night . . . and found the same kind of phony cancer cures and get-rich-quick schemes I have prosecuted for years under state consumer fraud laws.

177. *See, e.g., id.* at 3-7.
178. *Id.* at 3-1 to -2, 3-17 to -19.
179. Janower, *supra* note 49.
180. *See id.*
181. *Internet Casinos Honest?*, *supra* note 173.
182. *See* Janower, *supra* note 49.
183. *See id.*
184. *Id.*
185. *See id.*
186. *Id.*
187. *See* Humphrey, *supra* note 104.

> But nothing quite grabbed my attention like the Internet gambling sites -- virtual casinos touting the convenience of gambling right in the home or office.[188]

"From the days of Bugsy Siegel, casinos worldwide have been ripe grounds for money laundering,"[189] concluded Charles Intriago, ex-federal prosecutor and publisher of the *Money Laundering Alert* newsletter. Looking to major problems in the future, he predicted that Native American casinos would become increasingly problematic and noted that "[w]ith the proliferation of Indian casinos, there's more opportunity [for money laundering]."[190] When comparing the less-regulated nature of the offshore Internet sites to the scant regulation in American Indian gambling operations, the possibilities for money laundering increased dramatically.

A 1996 Commodity Futures Trading Commission statement highlighted some commercial concerns by concluding that "[t]he Internet and the Web enable unscrupulous operators to commit fraud or other violations of federal commodity futures laws with virtual anonymity, and then disappear quickly into cyberspace, leaving behind little or no evidence of wrongdoing."[191] By 1997, the Federal Trade Commission warned over 500 Web sites about the operation of "potentially illegal pyramid schemes," and filed 15 separate lawsuits with allegations of online scams.[192] One particular lawsuit, filed by Attorney General Dennis Vacco in the New York Supreme Court, charged that World Interactive Gaming Corp. of Bohemia, N.Y. raised almost $2 million through "illegal solicitations" of "unknowing investors by means of false representations, omissions of material facts, use of unregistered salespeople and other fraudulent and deceptive practices."[193]

"Another big problem with Internet casinos [wa]s the risk of not getting paid,"[194] said one former casino executive. "A story about one of the worst incidents was posted on a web site [in 1998] where an operator

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188. *Id.*

189. Eric Schine, *First Gambling, Then A Bank: California Has Reservations The Viejas Band's Bid to Diversify Draws Flak From the State*, BUS. WK., Sept. 9, 1996, at 47, *available at* 1996 WL 10770429.

190. *Id.*

191. *Unregistered Advisers*, *supra* note 46, at C8.

192. Carol Levin, *Beware the Backlash: Is the Web Risky Business?*, PC MAG., Feb. 18, 1997, at 28.

193. Patrick McGeehan, *New York Officials Act Against Operator Of Internet Gambling*, WALL ST. J., July 13, 1998, at C18, *available at* 1998 WL-WSJ 3501351 (noting that as of July 13, 1998 no formal charges were filed against any officer of the company or against the company itself).

194. *Internet Casinos Honest?*, *supra* note 173.

wouldn't pay off on a $25,000 roulette win because they said there was a 'glitch' in the software."[195]

Other concerns revolve around privacy issues and invasive "cookies." Cookies are the equivalent of ID cards used by Web sites to identify users and gather information about them such as their Web browsing habits.[196] These cookie systems can store vast amounts of information on a user's computer and also distribute the information to others without the user's knowledge or consent.[197] Cookies can also learn the passwords and credit card numbers of unsuspecting Internet users.[198] This can create a particular hazard when dealing with offshore Web sites such as gambling sites, where both passwords and credit card numbers are used.

The first and most highly publicized U.S. prosecution of an Internet gambling site was that of World Sports Exchange.[199] Jay Cohen, co-owner of the company, was once a self-appointed spokesperson for the industry, eager to discuss his offshore gambling enterprise based in Antigua.[200] He gave many interviews, submitted testimony to the U.S. Senate Judiciary Committee on possible methods to regulate online casinos, and even publicly debated the attorney general of Wisconsin on CNBC.[201] In 1998, the U.S. indicted Cohen and 21 co-defendants on charges alleging their involvement in illegal offshore betting operations.[202] By August 2000, ten defendants pled guilty to conspiring to break wagering laws, three defendants pled guilty to relating misdemeanors, and seven of those indicted, including World Sports Exchange director of wagering and vice president Steve Schillinger, remained fugitives from the law.[203] All of the defendants were charged with violating the Federal Wire Act of 1961,[204] which made using telephone lines for wagering purposes illegal.[205]

The defense planned to portray "Cohen and Schillinger as young entrepreneurs" who got their start working as traders on the Pacific Stock Exchange when they first envisioned running an Internet gambling site.[206] They realized the potential for a lucrative Internet gambling ser-

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195. *Id.*

196. *See* Richard P. Klau, *Is a Cookie a Treat or a Threat? Is a Code Chip a Friend or a Foe? Internet Privacy Issues are Complex*, STUDENT LAW., May 1999, at 13.

197. *Id.* at 13-14.

198. *See id.* at 13.

199. Benjamin Weiser, *Bookmaker Loses Federal Appeal in Internet Sports Betting Case*, N.Y. TIMES, Aug. 1, 2001, at B5, *available at* www.osga.com/Cohen.htm.

200. Elliott Almond, *Borderless Betting*, SEATTLE TIMES, Jan. 24, 1999, at D1, *available at* 1999 WL 6253025.

201. *Id.*

202. Gail Appleson, *Man Jailed in 1st U.S. Online Gambling Conviction* (Aug. 11, 2000), *at* http://www.gamblingmagazine.com/articles/37/37-117.htm.

203. *Id.*

204. *See* 18 U.S.C. § 1084 (2000).

205. *Id.* § 1084(a).

206. *See* Almond, *supra* note 200.

vice after Schillinger gained notoriety "by selling options on the verdict of the O.J. Simpson trial."[207] In fact, Schillinger reportedly left the Exchange under threat of permanent "banishment in 1996 after exchange officials" learned that he was "running a sports betting operation from the floor."[208] The other defendants charged also planned to argue that since the Internet did not exist in 1961, the Wire Act did not apply to it.[209] Despite these types of defensive arguments, Cohen was convicted and sentenced to 21 months in prison plus a $5,000 fine.[210] Similarly, in 2000, the first case was filed "in Nevada for Internet gambling violations" against American Wagering, Inc., which "agreed to pay a fine" of $10,000.[211] Furthermore, the company agreed to sell its business based in Australia that allegedly allowed users to place illegal sports bets.[212]

D. The Interests of Nevada and the Gambling Industry Regarding Internet Gambling

Since their inception in the mid 1990s, the number of Internet casinos has skyrocketed. Only 15 such sites existed in 1996, burgeoning to over 700 by 2000.[213] According to gambling industry research, the approximately 200 companies that owned and operated Internet gambling sites generated revenues estimating almost $1.5 billion in 2000, and $3 billion by 2002.[214] To put these amounts into perspective, according to the gambling industry's lobbying group, the American Gaming Association ("AGA"), the 450 commercial casinos in the United States generated revenues of $20 billion in 1998, and the 160 Indian casinos generated $7.2 billion in revenues.[215]

In 1998, the Nevada Resort Association publicly stated their official position opposing the expansion of gambling on the Internet.[216] According to Wayne Mehl, a representative in Washington, D.C. for the Nevada Resort Association, Las Vegas casinos were not interested in the Internet, and he was unaware of any casinos attempting to diversify into the world

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207. *Id.*

208. Tom Somach, *FBI Hunts Ex-S.F. Stockbroker*, S.F. EXAM'R , May 4, 1998.

209. *Id.*

210. *See* Appleson, *supra* note 202.

211. Cy Ryan, *LV Company Agrees to Fine, Will Sell Internet Gambling Subsidiary*, LAS VEGAS SUN, July 13, 2000, *available at* http://www.lasvegassun.com/sunbin/stories/text/2000/jul/13/510500492.html.

212. *Id.*

213. *See* Associated Press, *Net Gaming Scrutiny Affects State*, LAS VEGAS REV.-J., Mar. 13, 2000, *available at* http://www.lvrj.com/lvrj_home/2000/Mar-13-Mon-2000/business/13140760.html [hereinafter *Net Gaming Scrutiny*].

214. *Id.*

215. *Id.*

216. Steve Tetreault, *Experts: Casino Giants Would Own Net Betting*, LAS VEGAS REV.-J., Feb. 5, 1998, *available at* http://www.lvrj.com/lvrj_home/1998/Feb-05-Thu-1998/business/6899037.html.

of online gambling.[217] He stated that "[o]ur board unanimously adopted a resolution opposing the expansion of gaming on the Internet because they don't feel it is appropriately regulated at this time."[218] Harrah's president, Hector Mon, expressed similar sentiments when addressing the issue of Internet gambling.[219] He conveyed his uncertainty and reluctance as a function of the lack of regulations employed to monitor Internet gambling.[220] "[T]here are so many issues related to the fact this industry is unregulated, uncontrolled and illegal based on the regulatory framework within which we are controlled," he said.[221] Also in 1998, Frank Fahrenkopf, the AGA's main lobbyist, testified before a U.S. Congressional hearing and indicated that the gambling industry opposed the expansion of Internet gambling.[222] He expressed concern that gambling-oriented Web sites could easily get around federal and state laws that constrain conventional gambling operations in the United States.[223]

In 2000, U.S. Representative James A. Gibbons (R-Nev.) argued to Congress that: "In states like Nevada, the gaming industry is well regulated, and its activities are tightly monitored. However, allowing gambling to be allowed on the Internet would open the floodgates for corruption, abuse and fraud."[224] Arguing on behalf of Nevada interests and the AGA, Representative Gibbons pushed for a practical ban on Internet gambling during the floor debate in the U.S. House of Representatives.[225]

Internet gambling presented a difficult dilemma for U.S. casino operators.[226] They viewed the enormous profit potential of Internet gambling, but worried that Internet gambling would cannibalize their pre-existing multi-million-dollar gambling operations.[227] During the late 1990s, U.S. casino operators almost uniformly favored banning Internet gambling; however, by 2000, they became more divided between banning Internet gambling and rushing into their own Internet gambling operations, with many gambling interests unsure of which approach to take.[228] U.S. casino operators wanted to prevent new Internet competitors

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217. *Id.*
218. *Id.*
219. *See id.*
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.*
224. *House Fails to Pass Internet Gambling Ban, New Vote Expected* (July 17, 2000), *at* http://www.cnn.com/2000/ALLPOLITICS/stories/07/17/internet.gambling/index.html [hereinafter *House Fails*].
225. *See id.*
226. *See, e.g.*, Matt Richtel, *Companies in U.S. Profiting From Surge in Internet Gambling*, N.Y. TIMES, July 6, 2001, at A1.
227. *Id.*
228. *See* Edward C. Baig et al., *Outlaw Online Betting? Don't Bet On It*, BUS. WK., Dec. 15, 1997, at 44.

from invading their niche, but they also tried to hedge their bets by establishing a means to get in on the action and the Internet money themselves.[229] "We'd be crazy not to view this as an opportunity for the company,"[230] announced Phil Cooper, a vice-president of Caesars Palace in Las Vegas.

This sort of reluctant acceptance after the initial opposition and skepticism toward Internet gambling operations left many gambling officials in Nevada uncertain. Steve DuCharme, the Chairman of the Nevada Gaming Control Board, said in 1999 that as long as gambling companies based in Nevada restricted their Internet gambling services to jurisdictions where it was legal, there would be no violations of the rules of the Board.[231] However, this equivocation resounded like a convenient changing of the rules to increase company profits at the expense of public health, safety, and welfare. In any event, the Gaming Control Board uncovered a troubling situation when evaluating the renewals of licensees with interests in the online gambling industry. In 2000, the Board determined that some of the most powerful and prolific individuals and companies involved in legal, licensed Nevada gambling were becoming involved in Internet gambling ventures.[232] The biggest concern among the Nevada Gaming Control Board was that federal action against an illegal offshore Internet betting establishment maintained by an entity with a Nevada state gambling license could seriously tarnish the state's reputation for upholding regulatory mechanisms.[233]

In the mid-1990s, a magazine dedicated to Internet gambling, *Rolling Good Times On-Line*, was established.[234] Editor Sue Schneider became involved in the attempts to legitimize Internet gambling.[235] She contributed to the formation of the Interactive Gaming Council ("IGC"), an informal organization of gambling Web site operators who claimed that they could regulate and sanction themselves, in an effort to establish credibility and trust with potential online bettors.[236] These Internet operators lobbied for regulations to help maintain fairness and honesty among the industry, instead of outright prohibition.[237] Exemplifying the efforts to espouse the virtues of Internet gambling, Schneider argued that "[t]here are three casinos a mile from my (St. Louis) office,"[238] adding,

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229. *Id.*

230. *Id.*

231. John Wilen, *IGT Joins Emerging Internet Gaming Industry*, LAS VEGAS SUN, Jan. 28, 1999, *available at* http://www.lasvegassun.com/sunbin/stories/text/1999/jan/28/508337864.html.

232. *See Net Gaming Scrutiny*, *supra* note 213.

233. *See id.*

234. *See Rolling Good Times Online*, *at* http://www.rgtonline.com (last visited Oct. 3, 2002).

235. Almond, *supra* note 200.

236. *Id.*

237. *Id.*

238. *Id.*

"I can do a whole lot of damage on my bank account, and nobody would be the wiser."[239] However, she justified, "[w]ith the Internet, [the flow of money is] all traceable."[240] While this argument was an interesting exercise in public relations, monies gambled on the Internet were obviously less "traceable" than monies from U.S. bank accounts, which were subject to U.S. legal discovery procedures in the event of litigation.[241] These types of arguments and efforts to build consumer support for Internet gambling operations led to questions involving what interests were financing the start-up costs for *Rolling Good Times Online* and the IGC.[242]

E. The Interests of Opponents to Internet Gambling

There were as many different sorts of people interested in preventing the spread of Internet gambling, as there were reasons to do so. Religious organizations opposed gambling on social and moral grounds; casino, hotel, and restaurant owners, as well as others in the hospitality industry, all worried about losing visitors to their establishments; convenience stores and gas stations feared that their lottery ticket customers would begin purchasing their tickets from home; and athletic organizations, both professional and collegiate, opposed all betting in general because of the potentially disastrous effects that it would have on the integrity of sports.[243]

Anti-gambling groups and individuals worried that legitimate and legal Internet gambling would allow addicted gamblers and children using their parents' credit cards to bankrupt themselves and their families via home computers.[244] One authority on problem and pathological gambling suggested that the "young, affluent males," who already composed much of the Internet's population, comprised the demographic that "we know from research are probably most likely to develop difficulties related to gambling."[245]

The gambling industry sometimes tried to draw parallels to developed countries such as Australia, England, Germany, New Zealand, and South Africa, which, as of 2000, had either sanctioned Internet gambling or were contemplating doing so.[246] Opponents countered that those countries were misled by industry public relations efforts and that invalid

239. *Id.*

240. *Id.*

241. *See, e.g.*, NGISC FINAL REPORT, *supra* note 2, at 5-5 to -6, 5-12.

242. *See generally id.* at 5-3, 5-12.

243. *See House Fails*, *supra* note 224; *see generally* John W. Kindt & Thomas Asmar, *College Amateur Sports Gambling: Gambling Away Our Youth?*, 8 VILL. SPORTS & ENT. L.J. 221 (2002) (analyzing the legality of gambling on college and amateur sporting events) [hereinafter *Sports Gambling*].

244. *See* Bulkeley, *supra* note 9.

245. *Id.*

246. *See* Almond, *supra* note 200.

economics were still invalid, regardless of which countries were making the mistakes.[247] In any event, the U.S. government deemed it important to consider its own citizens' best interests when determining which course of action to take, and in 1999 the National Gambling Impact Study Commission recommended a de facto criminalization of all gambling via the Internet.[248] South Dakota Attorney General Mark Barnett summarized the majority opinion of his colleagues when he concluded that "[t]he fact is it's bad news from start to finish."[249] Barnett highlighted his colleagues' opinions and the National Association of Attorneys General opinion, stating, "In our view, there is not a single upside to Internet gambling, and we think it's worth a [prosecutorial] challenge."[250]

IV. TRENDS AND CONDITIONING FACTORS

A. Advertising and Marketing of Internet Gambling

While 18 U.S.C. § 1084[251] expressly prohibited the use of wire communication facilities for the use of transmitting information relating to wagering,[252] illegal bookmaking, according to the Nevada Gaming Commission, was still approximately an $80 billion to $100 billion per year business in the United States in 1999.[253] Furthermore, law enforcement agencies estimated that $2.5 billion was wagered on the NCAA tournament championship game in 1995 alone.[254] With these kinds of numbers, it was obvious that U.S. illegal bookmaking was a widespread and lucrative business. When coupled with the Internet's wide reach, appeal, and accessibility, such gambling activities could easily spiral out of the control of both the regulatory agencies and the gamblers themselves.

Internet gambling Web sites obviously generated more money for themselves if they could successfully "hook in" inexperienced gamblers and Web surfers.[255] Accordingly, many Web sites were carefully and subtly arranged to "make it look as though you're simply playing a game."[256] Ohio Attorney General Betty Montgomery spent time investigating some of the nearly 300 online casinos that her staff discovered on

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247. NGISC FINAL REPORT, *supra* note 2, at 5-10 to -12.

248. *Id.* at 5-12.

249. *See Barnett Seeks Internet Gambling Ban*, ARGUS LEADER (Sioux Falls, S.D.), Oct. 2, 1997, at D1.

250. *Id.*; *see also* NGISC FINAL REPORT, *supra* note 2, at 5-9.

251. *See* 18 U.S.C. § 1084(a) (2000).

252. *Id.*

253. *See* Almond, *supra* note 200.

254. *Id.*

255. *See* Spinnato, *supra* note 28.

256. *Id.*

the Internet.[257] "It all feels just like a video game," she complained, adding that this marketing made it easy for the player to ignore the fact that real money was at stake.[258]

In a related scenario, the president of dot com Entertainment Group, Inc. optimistically hoped for a Web site that would allow players in North America to play a bingo game online called CyberBingo (in English, French, or Spanish) linked with players from Germany, Japan, and other countries around the world.[259] He hoped to replicate the amicable atmosphere of bingo halls by allowing players to play and talk to one another simultaneously in a chat room.[260]

Although casino gambling was still illegal in Israel in 1999, another company looking to profit from the international appeal of offshore Internet gambling was Israel's PrincessNET Technologies and Software Ltd., which its founders claimed was being heavily marketed toward those Internet users fond of games, not big spenders.[261] PrincessNET's online gambling site was called Bet&Chat, in the hope that the option of chatting with other players while gambling would attract customers.[262] Players were even offered the ability to register according to their nationalities in order to "sit" together with other players at "tables" and chat while gambling.[263]

Another marketing strategy that Internet gambling sites hoped to employ successfully involved creating partnerships with prominent non-gambling Internet-related companies.[264] Kerry Packer, Australia's wealthiest man, envisioned one such attempt in 1999.[265] He owned a controlling share in Publishing & Broadcasting Ltd. ("PBL"), which operated numerous Australian communications media outlets, including television stations, broadcasting companies, newspapers, and magazines, as well as the Australian Internet portal Web site, NineMSN ("ninemsn.com2"), in an equal partnership with U.S. based Microsoft.[266] PBL also announced that it was going to acquire Crown Ltd., the parent company of Melbourne's sole licensed casino.[267] This acquisition was

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257. *See Modified Net-Gambling*, *supra* note 117.

258. *Id.*

259. *See* dot com Entm't Group, *Bingo: The World's Most Popular Gambling Game Storms the Internet* (Apr. 5, 1999), *at* http://www.DCEG.com/info_media.asp.

260. *Id.*

261. *See* Michele Gershberg, *Gambling Firms Say They Target Web-Game Players, Not Gamblers*, WALL ST. J. INTERACTIVE EDITION (Feb. 19, 1999), *at* http://interactive.wsj.com/archive-/retrieve.cgi?id+SB919364735677915500.djm.

262. *Id.*

263. *Id.*

264. *See* Barton Crockett, *U.S. Companies Eye Web Casinos in Australia* (Feb. 10, 1999) (on file with author).

265. *Id.*

266. *Id.*

267. *Id.*

fostered in a reported attempt to corner the market for Internet gambling.[268] Although Microsoft spokespeople declined to comment on the matter, Bill Gates had previously mentioned an interest in Internet gambling in his book, *The Road Ahead*, published in 1995.[269] Gates wrote that "[g]ambling is a highly regulated industry, and we can't be sure what kinds will be allowed on the Net, or what the rules will be."[270] Yet he concluded it was certain that "[t]he global interactive network [of the future] will make gambling far more difficult to control than it is today."[271]

B. The Impacts and Dangers of Internet Gambling on Children, Teenagers, and College Students

One of the most pressing concerns regarding the development of easily accessible Internet gambling involved the impossibility of Web sites, even those Web sites acting in good faith, to verify that the user was of legal age to gamble. This situation suggested dangerous possibilities that children were going to begin gambling on the Internet. In an effort to demonstrate the ease with which a child could access an online casino, the 1996 president of CORE Capital Management, one of the pioneers of the Internet gambling community, conducted a demonstration for *U.S. News and World Report*.[272] First, he easily accessed a British Web site specializing in sports wagers, and then he easily completed a form stating that he was 18 or older and was "not using the software to encourage others to play."[273] After completing the form, he was issued a user name and asked to select a password, at which point he was given a list of upcoming wagering opportunities and it was "child's play" from there.[274]

While a criminal justice professor at Illinois State University, Henry Lesieur explained that since there were virtually no controls in place to verify the age and competency of the user, anyone with a credit card and a minimal amount of Internet savvy could gamble online. "There's no way to stop teenagers," [275] according to Professor Lesieur. "My God, they're already hacking into the Pentagon."[276] The availability to children posed a very serious problem, since experts believed that Internet gambling could be very appealing to teenagers, a demographic market seg-

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268. *Id.*
269. *Id.*
270. *Id.*
271. *Id.*
272. *See* Jim Impoco, *Laying Off Bets on the Internet: Computers vs. Casinos*, U.S. NEWS & WORLD REP., Jan. 15, 1996, at 60, *available at* 1996 WL 7810064.
273. *Id.*
274. *Id.* (quotations added).
275. Lambrecht, *supra* note 107.
276. *Id.*

ment "already fond of video games as well as being especially prone to becoming addicted."[277] These factors were of particular concern given the results of a study by Dr. Howard Shaffer of Harvard Medical School.[278] One of his studies found a quickly increasing incidence of problem gambling in adolescent populations,[279] and he concluded that during the 1990s gambling addiction was the "fastest growing" teenage addiction—surpassing drug addiction.[280]

In addition, growing beyond adolescence was not a panacea for avoiding gambling addictions. U.S. Census Statistics reported that people between the ages of 18 and 24 also exhibited the most threatening form of gambling disorders (i.e., pathological/addicted gambling) at a level between two and three times greater than that of the remaining adult population.[281] Census Bureau statistics also revealed that between 8% and 20% of all college students surveyed had previously dealt with a gambling problem.[282]

When evaluating Internet gambling as it interfaces with these sobering statistics of gambling problems among college students, the deleterious effects become even more obvious. By 1999, research indicated that a majority of college students had ready access to computers and the Internet and also owned credit cards.[283] These components synergized to provide all of the elements necessary for students to gamble on the Internet via offshore casinos. Officials became concerned that the Internet was cultivating deleterious gambling habits and problems in the secrecy of dormitory rooms, where problems could develop rapidly without anyone else knowing about them until it was too late.[284] For example, 19-year-old Jason Berg became addicted to regular casino-style gambling, including electronic gambling devices, lost his tuition and savings money, and committed suicide.[285] Despondent over Jason's suicide, his stepfather committed suicide two and a-half years later.[286] Experts extrapolated that if regular casino-style gambling was addictive to students,

277. LaTessa, *supra* note 89.

278. *See Tomorrow Never Dies*, *supra* note 69.

279. *Id.*

280. *See* Nat'l Coalition Against Legalized Gambling, *The Case Against Legalized Gambling* (Sept. 10, 2002), *at* http://www.ncalg.org/case.htm.

281. Spinnato, *supra* note 28.

282. *Id.*

283. *See* Elliott Almond, *Online Betting Hitting College Campuses*, SEATTLE TIMES, Jan. 24, 1999, at D7, *available at* 1999 WL 6253227 [hereinafter *Hitting Campuses*].

284. *Id.*

285. *See* Larry Fruhling, *Addiction Leads To Tragic End*, DES MOINES REG., Mar. 25, 1997, at M1 (Jason Berg, $6,000 in debt, pawned almost everything he owned, while trying to keep secret the fact that he was a compulsive gambler.).

286. *Id.*

a fortiori Internet gambling was more addictive, particularly to the "Nintendo generation."[287]

According to one college student, the attraction to Internet gambling was quite tempting to students and difficult to resist:

> College students are often attracted to the convenience and numerous gaming options that online gambling has to offer. . . . There is a great variety of the different sports you could gamble on with online gambling. . . . It also helps me with bills. . . . Once they are out of the way, I am not going to do it anymore.[288]

This potentially devastating influence was particularly frightening to the parents of college students. "You send your daughter to college and are aware of date rape and binge drinking," said Washington, D.C. NCAA lobbyist Daniel Nestle in 1999.[289] "Now there is another addiction, but it doesn't seem to be on the radar screen."[290] The developing trend of Internet gambling among college students also alarmed Michael Frank, an expert on underage gambling and a psychologist at Richard Stockton College in Pomona, New Jersey.[291] He explained: "If I play poker with friends and lose $100, my rent gets paid and my children still have food. I'm not sure the same thing can be said of college students."[292] One Harvard graduate student, in an interview with CNN, summarized the fascination with Internet gambling: "You have this expectation of potentially making money, which is thrilling for someone like me."[293] From inside the comforts of his dormitory room, this student and his peers wagered up to $1,000 a day on various sporting events, such as college basketball games.[294]

C. *The Impact of Internet Gambling on Collegiate and Professional Sports*

Within their jurisdictions, the NCAA and the professional sporting leagues outlawed betting on games throughout much of their histories in efforts to preserve the integrity and honesty of the competitions.[295] Due to betting and point-shaving scandals during the 1990s, for example, at Arizona State, Northwestern University, and Boston College, athletic

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287. NGISC FINAL REPORT, *supra* note 2, at 5-4 to -5.

288. Spinnato, *supra* note 28.

289. *Hitting Campuses*, *supra* note 283, at D7.

290. *Id.*

291. *Id.*

292. *Id.*

293. *Should Online Gambling Be Regulated?* (Mar. 12, 1998), *at* http://www.cnn.com/TECH/computing/9803/12/internet.gambling/index.html.

294. *Id.*

295. *Hitting Campuses*, *supra* note 283, at D7. For an in-depth analysis, see *Sports Gambling*, *supra* note 243.

officials were increasingly concerned that gambling interests were threatening sporting events.[296]

Another threat involved the confusion among adolescents fueled by the widespread but disingenuous gambling advertisements by state governments.[297] Most state governments utilize taxpayer dollars to market various gambling activities as not just "acceptable," but "smart" and even "patriotic."[298]

Every time Bill Saum, the director of agents and gambling for the NCAA, testified under oath during the 1990s, he referred to a study of 684 men's football and basketball players in Division I competition conducted by the University of Cincinnati.[299] The results of this study showed that 25% of the athletes had wagered money on games other than their own, 3.7% had admitted to placing bets on their own games, and 0.4% of those surveyed—three athletes—had admitted that they had previously received money from a gambler in return for not playing well.[300]

Alan Kesner, the Assistant Attorney General of Wisconsin and the chairman of the committee on Internet gambling for the National Association of Attorneys General ("NAAG"), expressed the concern of the U.S. Attorney Generals with the development of Internet gambling, pointing out that "[y]ou can keep the bookies out of the locker room, but not off of e-mail."[301]

Dean Smith, the winningest coach in the history of college basketball, who retired after 879 victories over thirty six seasons as the coach of the University of North Carolina Tarheels, testified before Congress in an attempt to outlaw any form of gambling on college sports.[302] He was joined by Tubby Smith, the University of Kentucky men's basketball coach as well as Lou Holtz, the football coach for the University of South Carolina, who all contended that their players were under a lot of pressure to throw games or to shave points.[303]

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296. *Id.*

297. *See generally* NGISC FINAL REPORT, *supra* note 2, at 2-14 to -15, 3-8 to -11.

298. *Id.*

299. *Hitting Campuses*, *supra* note 283, at D7.

300. *Id.*

301. *Id.*

302. *See* Associated Press, *Smith Endorses Gambling Ban*, DAILY ILLINI (Champaign, Ill.), Sept. 13, 2000, at 30.

303. *Id.*

D. Significant Lawsuits Stemming from Internet Gambling

Alerted by experts, by Congressional hearings during the 1990s, and finally by the 1999 *NGISC Executive Summary*,[304] savvy credit card companies and financial institutions cut off their customers from gambling Web sites.[305] As predicted, Internet gambling debts were stinging the uninformed companies in well-publicized cases at the close of the twentieth century. In one lawsuit that could potentially cause the *de facto* end of Internet gambling, *Providian v. Haines*,[306] Ms. Haines accumulated over $70,000 in debt on twelve credit cards used at Internet gambling websites.[307] She filed suit to avoid paying the credit card debts, claiming that since gambling over the Internet was illegal, the credit card companies should not bind her to her debts.[308] The fact that she could win her case seriously jeopardizes the income and future of Internet gambling Web sites.[309] Another significant suit was pending in 2000 against American Express Co., Visa International, and MasterCard International, Ltd., filed by a number of people who lost money to Internet gambling sites and used credit cards to pay off their debts.[310] This suit also had the potential of eventually becoming a class action, wherein "hundreds of thousands" of online gamblers could join as parties to the suit.[311]

In 2000, one plaintiff sued the West Virginia Music and Vending Association for supporting the video poker industry, Derrick Music Company the owner of the video poker machines in question, and the convenience store that kept the video poker machines.[312] The plaintiff named these defendants for their role in allegedly leading a man to become a pathological (addicted) gambler as a result of playing the identified video poker machines and losing a substantial amount of money.[313]

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304. *See* NGISC EXEC. SUMMARY, *supra* note 6, at 20-21 (finding that gambling is more appropriately assessed at the state, tribal and local levels, while recommending a pause in the expansion of gambling to allow for a more accurate analysis of its costs and benefits).

305. *See Safe Bet Against Suckers*, CHI. SUN-TIMES, Nov. 25, 1999, at 47.

306. No. CV 980858 (Cal. Super. Ct. Marin Cty.) (The cross complaint was filed July 23, 1998.).

307. *See* Ryan D. Hammer, *Does Internet Gambling Strengthen the U.S. Economy? Don't Bet on It*, Oct. 31, 2001, at 115, *at* http://law.indiana.edu/fclj/pubs/v54/no1/Hammer.pdf.

308. *Id.*; *see also* NGISC FINAL REPORT, *supra* note 2, at 5-10.

309. *See* David I. Gold, *Internet Gambling Debt Liability: Trouble Ahead? A Consideration of* Providian v. Haines, 22 T. JEFFERSON L. REV. 219, 234 (2000) (analyzing in relevant part the relationship between Internet gambling's legality and the debt liability associated with it).

310. *See* Colleen DeBaise, *American Express Named in Online Gambling Suit*, DOW JONES NEWSWIRES, May 18, 2000, *available at* http://interactive.wsj.com/archive/retrieve/.cgi?id=BT-CO-20000518-001513.djml.

311. *Id.*

312. *See* Chris Stirewalt, *Vending Ass'n Says Suit Over Gambling Losses Lacks Merit*, CHARLESTON DAILY MAIL, Aug. 3, 2000, at 9A.

313. *Id.*

In addition, in December 1997, Florida Attorney General Robert Butterworth pressured Western Union into refusing to service many offshore Internet gambling companies.[314] This development could have seriously affected many of these gambling businesses because of their reliance on Western Union as a conduit for many of their financial transactions.[315] When questioned about the effectiveness of the move, Internet gambling Web site operators claimed that the ban constituted only an inconvenience and that they would simply rely more heavily upon overnight mail, cashier's checks, and bank wires.[316] However, after only a week of the ban, Western Union re-established its business with the Internet gambling Web sites, reportedly because they were so lucrative.[317]

V. POLICY ALTERNATIVES AND RECOMMENDATIONS

A. Policy Arguments

In 1996, Minnesota Attorney General Hubert H. Humphrey III concluded that government officials needed to demystify and debunk the widely popularized notion of the Internet as the Wild West, where there was no form of law enforcement.[318] He noted that just as the Wild West ultimately required the rule of law to advance and prosper, the international territory of the Internet needed the same type of regulation in order to inspire total confidence from its users to reach its fullest social and business potential.[319]

Opponents of regulating Internet gambling argued that as a practical matter, a handful of government bureaucrats would not succeed in regulating the Internet, which was designed to allow the computers of the world to maintain communication with one another in the event of a world-wide catastrophe such as nuclear war.[320] However, Wisconsin Assistant Attorney General Alan Kesner concluded that just because the task of Internet regulation was inherently difficult, did not automatically mean that adopting a policy banning gambling from the Internet was inappropriate.[321] He emphasized that it was not a reasonable approach for the government to allow activity on the Internet that it did not permit in the real world.[322] Jeremiah "Jay" Nixon, the Missouri Attorney General,

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314. *See* Heather Pauly, *Online Gambling Draws Lawmakers' Attention*, CHI. SUN-TIMES, Jan. 5, 1998, at 4.
315. *Id.*
316. *See* Pulley, *supra* note 131.
317. *See* Pauly, *supra* note 314.
318. Humphrey, *supra* note 104.
319. *Id.*
320. *See* German, *supra* note 114.
321. *Id.*
322. *Id.*

paralleled this point of view in the context of responding to Native American Internet gambling proponents in 1997 who suggested that their supposedly illegal Internet gambling revenues could be taxed in order to generate funds for public use.[323] Attorney General Nixon asked: "Are they saying that just because the proceeds from a bank robbery go to some purported public purpose that we should allow it to occur?"[324] The Missouri Attorney General's office effectively suppressed this Native American Internet gambling operation.[325]

Another argument often utilized by the Internet gambling interests involved the invalid and pejorative comparison of gambling to the prohibition of alcohol. The argument focused on the fact that prohibition only pushed the taboo underground, where the same people who wanted the substance or service in question would obtain it despite its illegality, just without the benefit of governmental regulation.[326] This logic was flawed in several respects. Since gambling was legal in many forms in many states, those who wished to engage in it could still do so, under some degree of regulatory supervision. Furthermore, all that a ban on Internet gambling would do was prevent people from gambling in their homes, offices, and schools, as well as prevent minors from gambling illegally. Additionally, it was argued that for the same reasons that there were laws preventing minors from obtaining alcohol (while adults could still obtain it), Internet gambling should be prohibited.

In summary, the only group that had a potentially valid interest in preventing a ban on Internet gambling sites was the Internet service providers, who argued that they would be thrust into the role of a regulatory force on the Internet by blocking objectionable sites.[327] This role had worked reasonably well during the 1990s in other countries. For example, Germany effectively regulated pornographic and neo-Nazi Web sites.[328] U.S. service providers, however, argued that they did not wish to engage in blocking Internet gambling sites and were incapable of doing so effectively.[329]

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323. *See* Lambrecht, *supra* note 107.

324. *Id.*

325. *See* Nixon v. Coeur D'Alene Tribe, 164 F.3d 1102, 1108-09 (8th Cir. 1999) (explaining why the court procedurally rejected the Tribe's contention that the court lacked jurisdiction while remanding for a determination as to whether the Tribe's Internet lottery was a gaming activity on Indian land).

326. Pauly, *supra* note 314.

327. *Id.*

328. *See Portals Under Fire for Offensive Material*, GLOBAL NEWS WIRE, Aug. 30, 2000, *available at* LEXIS, News Library, News Group File.

329. *See generally The Internet Gambling Prohibition Act: Hearing on H.R. 2380 Before the House Comm. on the Judiciary*, 105th Cong. (June 24, 1998), *available at* 1998 WL 344427 (F.D.C.H.) (testimony of David G. Jemmett, President, Winstar Goodnet, explaining in relevant part why Internet Service Providers cannot and should not block Internet gambling sites).

B. Legislative and Regulatory Efforts

The efforts of lawmakers during the late 1990s to enact legislation rendering Internet gambling illegal met with much resistance. A House bill sponsored by U.S. Representative Robert Goodlatte (R-Va.), which would have banned many forms of gambling from the Internet, won a majority of the House vote in 2000, but failed to attain the required procedural two-thirds vote necessary for passage.[330] Representative Goodlatte urged its passage by likening Internet gambling to child pornography: "Just like child pornography has to be dealt with on the Internet, so does unregulated, out-of-control, illegal gambling."[331] The Senate voted in favor of similar legislation in 1999 with a bill sponsored by U.S. Senator Jon Kyl (R-Ariz.).[332] The bill sought to modernize the 1961 Wire Communication Act to apply to the Internet; however, it lapsed because similar legislation failed in the House.[333]

Subsequent legislation in the 107th Congress included H.R. 3215, the Combating Illegal Gambling Reform and Modernization Act, sponsored by U.S. Representative Bob Goodlatte (R-Va.).[334] Even provisions of H.R. 3004, the Financial Anti-Terrorism Act of 2001, sponsored by U.S. Representative Michael Oxley (R-Ohio),[335] were subsequently incorporated as Title III in H.R. 3162, the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (contained in the USA PATRIOT Act),[336] in an effort to prevent Internet gambling from being used as a device to launder money to terrorist organizations.[337] Congress enacted the USA PATRIOT Act immediately in response to the events of September 11, 2001.[338]

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330. *See House Fails, supra* note 224.

331. *House Nixes Ban, supra* note 92.

332. *See* The Internet Gambling Prohibition Act of 1999, S. Res. 692, 106th Cong. (1999).

333. *See House Nixes Ban, supra* note 92.

334. *See* Combating Illegal Gambling Reform and Modernization Act, H.R. 3215, 107th Cong. (2001) (expanding and modernizing the prohibition against interstate gambling). Similar and complementary legislation included H.R. 556, the Unlawful Internet Gambling Funding Prohibition Act, introduced by U.S. Representative James Leach (R-Iowa), and H.R. 2579, the Internet Gambling Payments Prohibition Act, introduced by U.S. Representative John LaFalce (D-N.Y.). Both bills aimed to prevent the use of various bank instruments for unlawful Internet gambling.

335. *See* Financial Anti-Terrorism Act of 2001, H.R. 3004, 107th Cong. (2001) (criminalizing the smuggling of bulk cash while prescribing guidelines for determining the amount of property subject to such forfeiture).

336. *See* International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, H.R. 3162, 107th Cong. (2001) (increasing the strength of the United States in preventing, detecting, and prosecuting international money laundering and the financing of terrorism).

337. *See* Denise Couture, *Muted Response to U.S. Law*, INT'L HERALD TRIB., Oct. 31, 2001, at 21.

338. *See U.S. Treasury's First Patriot Act Regulatory Salvo Covers Entire World*, MONEY LAUNDERING ALERT, Jan. 2002, at 4.

C. Possible Solutions

In 1996, Minnesota Attorney General Hubert H. Humphrey III suggested that state computer crime laws could be strengthened in order to combat fraud committed by Internet gambling sites by simply applying existing criminal and consumer fraud statutes covering advertising in other formats to the Internet.[339] Thus, the first possible solution would have been to transfer law created for one medium to another and utilize preexisting statutory resources.

A second possible method would have been to allow only Internet gambling sites based in the United States to market and operate in foreign jurisdictions that permitted such activities.[340] In 1998, Gambling Technologies Holdings Corp. ("G-TECH"), the largest lottery firm in the world, planned to pursue this tactic with its Internet based lottery games, via software that would prevent Americans from accessing its gambling sites.[341] However, demonstrating the general regulatory problems in any gambling activity, in 2000 G-TECH was threatened with the loss of the largest lottery contract, the U.K. lottery, when Britain's regulatory commission revealed concerns over G-TECH's "secretive behavior," announcing that the commission "remains extremely concerned about the behavior of G-[TECH]."[342] Even so, the company thereafter succeeded in retaining the U.K. account.[343]

A third policy would have been to attempt to forge an international agreement regarding the rules and regulations of Internet gambling worldwide.[344] However, the net economic effect of such a treaty would be to make poor countries poorer, destabilize their financial infrastructure, and create new governmental corruption.[345]

The only workable solution appeared to be a total prohibition against cyberspace gambling, including Internet gambling, via not only a multilateral U.N. Treaty, but also bilateral treaties or amendments to existing treaties of friendship, commerce, and navigation ("FCN" treaties).[346]

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339. Humphrey, *supra* note 104.

340. *See* NGISC FINAL REPORT, *supra* note 2, at 5-1.

341. *See* Associated Press, *GTECH Plans Internet-Based Lotteries*, LAS VEGAS SUN, July 16, 1998, *available at* 1998 WL 6696471.

342. *See* Marc Champion, *World's Biggest Lottery Put Up for Grabs*, WALL ST. J., Aug. 24, 2000, at A17.

343. Sean Farrell, *Camelot Beats Branson's Bid for U.K. Nat'l Lottery*, BLOOMBERG NEWS, Dec. 19, 2000, *available at* LEXIS, News Library, News Group File.

344. *Trying to Outlaw Internet Gambling*, *supra* note 87.

345. *See generally* U.S. and International Costs, *supra* note 15 (analyzing socio-economic costs of gambling).

346. *Compare id.*, *with* NGISC FINAL REPORT, *supra* note 2, at 5-12, recs. 5.1 to .4.

Ironically, one final method to prevent the proliferation of Internet gambling would have been to leave it completely unregulated.[347] According to a consultant for Christiansen Cummings Associates, Inc., a New York consulting firm for the gambling industry, "With on-line casino games, you're never really sure if the game is rigged or not."[348] Therefore, if Internet gambling Web sites developed a bad reputation for cheating their customers or reneged on their promised winnings, theoretically, online gamblers would eventually realize that gambling on the Internet was a losing proposition.[349] However, such a libertarian self-learning experience should be avoided in the nuclear interdependent world, because these interests would be outweighed by the extent of the socio-economic trauma, which could and probably would occur to financial systems and concomitant governmental national security interests.

CONCLUSION

Utilizing the basic McDougal/Lasswell methodology of policy-oriented jurisprudence and applying these methods to the issues involving Internet gambling revealed that only a policy of "totally banning" Internet gambling was practically feasible. Exceptions eventually led to wide-open Internet gambling and an overwhelming litany of economic ills and social consequences—increased addicted gamblers, bankruptcies, and crime and corruption.

Accordingly, all cyberspace and Internet gambling needs to be banned domestically in the United States and prohibited internationally by a United Nations multinational treaty. Implementing this policy is essential because of Internet gambling's very real potential to destabilize regional, national, and even global financial systems and economies.

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347. *See* Peter H. Lewis, *Lawmakers Gear Up to Try to Control the Surging On-line Gambling Industry*, N.Y. TIMES, Sept. 22, 1997, at D4.

348. *Id.*

349. *See id.*