

# Legal and Financial Issues and Disordered Gambling

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It is well-documented that the downward spiral of disordered gambling often leads to serious financial and legal difficulties, including the commission of criminal acts (National Opinion Research Center, 1999; National Research Council, 1999). Faced with mounting bills and limited options, gamblers will often take cash advances on multiple credit cards and borrow from friends and family to fuel continued play. They may begin writing bad checks, stealing or embezzling from employers to pay bookies or bills. Ultimately, most gamblers will adversely impact their credit, some will file for bankruptcy, and many will face arrest or incarceration. This chapter will review the scholarly research and legal decisions in these areas, summarizing major findings in US court cases that provide guidance for those dealing with disordered gamblers with legal and financial problems.

## Gambling and Crime

Gambling opportunities have expanded significantly over the past 20 years. The effect of those opportunities and the relationship to social problems in surrounding communities, however, is poorly understood (National Research Council, 1999). In particular, there is little consensus regarding the impact of casinos on crime, with studies yielding inconsistent or contradictory findings (Miller & Schwartz, 1998; Stitt, Nichols, & Giacompassi, 2003). For example, a study in South Australia found that higher gambling expenditures predicted higher levels of income-generating crimes but not non-income-generating crimes (Wheeler, Round, Sarre, & O'Neill, 2008). However, within this study the influence of gambling was small compared to other variables, such as police strength, the number of alcohol venues in the area, and the proportion of males in the population (Wheeler et al., 2008). Further, in a study of six new casino communities, Stitt and colleagues' (2003) reports of crime rates having increased, remained stable, or decreased depended on the method of analysis. In contrast, compared to non-casino counties, counties in Indiana with

casinos had consistently higher crime rates before and after the initiation of legalized gambling, suggesting that distressed communities might be more receptive to casinos (Koo, Rosentraub, & Horn, 2007).

Grinols and Mustard (2006) assert that these conflictual findings are due to a number of factors, including: (a) the failure to examine the inter-temporal effect of casinos, (b) reaching conclusions without actually examining crime rates; (c) the failure to control for variables that affect crime; and (d) studies driven by the agendas of the sponsoring organizations. In response, the authors modeled crime rates for casino and non-casino jurisdictions between 1977 and 1996 using FBI crime data and concluded that casinos have little effect on crime shortly after they open but ultimately account for about 8% of crime, costing the average adult \$75 per year (Grinols & Mustard, 2006). The authors theorized several possible reasons for the increase: casinos may drain resources, lead to increased crime pay-off and more crime or increased rates of disordered gambling and resulting offenses, may attract criminals to the regions, and/or change the local population (Grinols & Mustard, 2006).

Those findings sparked a heated debate in the literature between the authors and another economist. In his response article, Walker (2008a) criticized the above analysis, stating it: (a) lacked essential data to measure crime; (b) utilized potentially flawed crime data (e.g., included only voluntarily-reported crime statistics, thus failing to account for changes in data reporting); (c) demonstrated self-selection bias in the sample (i.e., poor economies solicit casinos); and (d) skewed interpretations of the empirical results (i.e., failed to account for tourism, problems with crime rate statistics). Several exchanges in the literature followed without resolution (Grinols & Mustard, 2008a, 2008b; Walker, 2008a, 2008b). The outcome of this debate provided clear evidence, particularly to a non-economist, that even the most schooled and sophisticated minds may differ on how to measure the effect of legalized gambling on crime and that no measure or outcome will likely prove definitive in the literature. To address these issues, Reece (2009) included, in a study of casinos in Indiana, measures of casino activity, turnstile counts, number of hotel rooms and other variables to more accurately examine effects, and also to truncate the crime data sample to address limitations suggested by Walker (2008a). Reece's (2009) results indicated that increased casino activity reduced crime rates except for burglary, which rose after a time lag. Determining the relationship between casinos and crime, if possible, will necessitate a comprehensive, critical evaluation of research methods. In addition, such a relationship will be necessitated by the development of a unified, rigorous framework for analysis that incorporates important control variables and relies on primary data collection or comprehensive data sets (for a review of this issue, see Walker, 2010).

## Gamblers and Crime

Unlike the uncertainty that surrounds potential causal links between gambling opportunities and crime in the community, it is well documented that disordered gambling is associated with a number of adverse consequences, including

the commission of illegal acts (Blaszczynski & McConaghy, 1994; Folino & Abait, 2009; Meyer & Fabian, 2005; Potenza, Steinberg, McLaughlin, Rounsaville, & O'Malley, 2000; Turner, Preston, Saunders, McAvoy, & Jain, 2007). Gamblers who find themselves desperately chasing losses commonly resort to non-violent criminal behaviors, such as writing bad checks, forgery, and embezzlement in the attempt to stem the downward spiral of increasingly limited options and fuel further play.

The nature and extent of gambling-related crimes is largely unknown. While several studies have attempted to examine the phenomena in forensic and non-forensic populations, rates vary dramatically based on methodological and measurement differences, including the use of more or less-restrictive screening instruments and selected geographic location. In the US for example, the Gambling Impact and Behavior Study, a national survey of gambling in the US, reported that 32.2% of pathological and 36.3% of problem gamblers were arrested, compared to just 11.5% of low-risk and 4.5% of non-gamblers (National Opinion Research Center, 1999). In addition, those with gambling problems also reported significantly higher rates of incarceration (disordered: 21.4%; problem: 10.4%) as compared to low risk (3.7%) and non-gamblers (0.4%). Those incarcerated problem gamblers cost the justice system an average of \$2000 per offender. Similar rates have been reported worldwide (see e.g., [Australia] Blaszczynski & McConaghy, 1994; [Argentina] Folino & Abait, 2009; [Germany] Meyer & Fabian, 2005; [Canada] Turner et al., 2007) and in a variety of settings including treatment populations (Ledgerwood, Weinstock, Moraso, & Petry, 2007), Gamblers Anonymous (Abait & Folino, 2008), and hotline callers (Potenza et al., 2000). However, a majority of studies have failed to examine critically the proportion of reported offenses that were directly influenced by consequences of problem gambling.

Forensic populations also report elevated rates of problem gambling. In a New Zealand study, Abbott and colleagues (2005) found that one in five newly-sentenced inmates reported they were currently imprisoned for gambling-related offenses; 21% of the 357 inmates sampled met lifetime criteria for pathological gambling and 16% were probable pathological gamblers in the six months prior to imprisonment (Abbott, McKenna, & Giles, 2005). Similar rates were reported in prison populations in Nevada (Templer, Kaiser, & Siscoe, 1993) and Ontario (Turner et al., 2007; Turner, Preston, Saunders, McAvoy, & Jain, 2009). One Australian study found elevated rates of both disordered and sub-clinical problem gambling in a sample of non-imprisoned participants ( $n = 102$ ) who were on remand, probation or parole at the time of the study (Lahn, 2005). About 34% of that sample met criteria for disordered gambling and 38% were problem gamblers; 25% of those surveyed said their gambling had contributed to their offending, and nearly half reported stealing or obtaining money illegally to finance gambling (Lahn, 2005).

The reasons for high correlations between problem gambling and criminality remain unclear. One long-standing hypothesis holds that gamblers commit crimes to fund their gambling, particularly since studies have concluded that a disproportionately high percentage of gambling revenues are derived from disordered gamblers (Productivity Commission, 1999; Williams & Wood, 2004). However,

it should be noted that estimates vary widely based on the computation formula utilized and other factors, including the type of games offered in the market, game prize structures, and the length of time the games have been in operation (Volberg, Moore, Christiansen, Cummings, & Banks, 1998). Therefore, it is impossible to conclude that chasing money alone accounts for higher rates of criminal behavior without careful examination of the gambling context, individual personality variables, and causal linkages between problem gambling and the commission of gambling-related crimes.

To address these potential confounds, some researchers have begun differentiating crimes committed in response to gambling pressures from those that are unrelated to the gambling. In one study, researchers asked participants in both gambling treatment and Gamblers Anonymous if they had engaged in several illegal acts in the past year, and, if yes, whether the offense led to an arrest and/or was related to their gambling behavior (Ledgerwood et al., 2007). The study found that, in both groups, those who reported engaging in gambling-related illegal behavior had higher levels of gambling problem severity and higher levels of debt than those who had not committed crimes. Similarly, Potenza et al. (2000) reported that more than 20% of hotline callers reported committing a gambling-related illegal act and more than half of that subgroup had been arrested.

Other researchers have suggested that merely investigating gambling-related crimes may prove misleading, as there are likely characteristics that differentiate subgroups of gamblers with criminality from one another. For example, it is likely that a disproportionate percentage of gamblers who are actually arrested or incarcerated likely belong to the "antisocial-impulsivist" subtype of problem gamblers, characterized by heightened levels of impulsivity and ADHD and a penchant for engaging in a host of maladaptive behaviors, including problem gambling (Blaszczynski & Nower, 2002). More than half (58%) of problem gamblers in one study indicated they had committed a gambling-related offence, however, 21% of the sample had committed criminal offenses that were unrelated to their gambling (Blaszczynski, Strel, & McConaghy, 1997). A study of helpline callers found that those with gambling-related legal problems who had been arrested or incarcerated were more likely to be male, unemployed and single, with higher levels of gambling severity, debt and substance use disorders and prior reported mental health treatment (Potenza et al., 2000). In contrast, those who reported committing illegal acts that did not result in arrests or incarceration were more likely to be female, with higher rates of bankruptcy and more reports of borrowing and family problems, leaving the researchers to speculate that there may be specific subgroups of those who commit gambling-related crimes (Potenza et al., 2000). While these results could lend support to the existence of etiological subgroups by gender, it is equally likely that police and the court systems may treat women more leniently than men, resulting in fewer arrests and incarceration for similar crimes.

The exact mechanisms underlying putative sub-groups of disordered gamblers are likely complex and multi-factorial. Welte, Barnes and Hoffman (2004) found that a single factor of general deviance failed to account for the relationship of gambling, substance use and other maladaptive behaviors in youth, instead concluding

there to be specific, uncorrelated antecedents predicting distinct subtypes of problem behaviors. Similarly, Wanner and colleagues (2009) examined cross-lagged links among gambling, substance use, theft, and violence in two community samples from adolescence to young adulthood. Substance use was longitudinally linked to theft, violence, and substance abuse. In contrast, gambling participation at Time 1 was linked only to gambling participation at Time 2, while gambling problems at Time 1 were linked to both gambling participation and gambling problems at Time 2; gambling problems were linked to theft only in adolescents with deviant peers (Wanner, Vitaro, Carbonneau, & Trembley, 2009). These findings suggest that it is likely that a constellation of yet unspecified etiological factors, including genetic anomalies, neurobiological dysregulation, and personality variables combine with ecological factors, operant conditioning and cognitive perceptions to fuel a trajectory from recreational to problem gambling (Blaszczynski & Nower, 2002).

To fully investigate the linkages between crime and disordered gambling, it is important to conduct additional research that facilitates a number of necessary distinctions. First, simply because a crime such as stealing or bad check writing can be related to gambling does not mean it is a gambling-related offense. Some individuals are bad money managers and others are thieves wholly apart from their gambling. Therefore, both researchers and clinicians would benefit from using a timeline follow-back approach to carefully detail any nature and history of illegal acts before and after the onset of disordered gambling. In addition, that assessment should include specific questions to determine which, if any, illegal acts were committed solely to obtain money to pay off gambling debts or fuel future gambling. In addition, it is important to obtain a similar history of other addictive behaviors, including the relative influence of other factors (e.g., substance abuse, personality disorder) at the time of the commission of a crime, to determine whether the behavior was related to gambling, substance abuse, or other underlying personality variables such as impulsivity and/or narcissistic self-entitlement. For example, many gamblers have alcohol problems, however, if an alcoholic disordered gambler embezzles from his company, the embezzlement may be due to the influence of alcohol or gambling exclusively, or to unrelated factors, such as the desire to maintain an upper-class lifestyle. Therefore, it is clinically important to explore the motivations behind the crime as well as the totality of all contributing and confounding factors, to identify whether there is, indeed, a likely link between gambling problem severity and the commission of the illegal act.

### Gambling-Related Legal Defenses

Given the likely relationship between gambling and criminal acts, a significant proportion of gamblers may encounter the court system and need to mount a defense. Historically, criminal defendants have attempted to utilize their problem gambling status to plead insanity or to receive a sentence reduction through mitigation with claim of diminished capacity. To be criminally responsible for an

offense, a person must have the mental capacity to formulate intent to commit a crime and must understand the nature and criminality of the act committed. A few gamblers have asserted the insanity defense, claiming that "insanity" caused by their gambling led them to commit a crime (See Davis, 2005, for a review). Courts have generally rejected the defense (*U.S. v. Carmel*, 1986). For example, in *State v. Lafferty* (1984), a Connecticut jury found a disordered gambler was insane when he embezzled more than \$300 000 from his employer; subsequently, the state legislature expressly excluded problem gambling from the insanity defense. However, a court rejected a similar contention by a stockbroker in Des Moines, who claimed he embezzled because he was insane due to gambling; the court was not persuaded that disordered gamblers lack substantial capacity to conform their conduct to the requirements just because they choose not to do so (*U.S. v. Lemlynn*, 1983).

Federal courts, bound by uniform sentencing guidelines, have reached contradictory conclusions regarding the potential causal link between behaviors, including gambling and criminal behavior, and the rights of defendants to claim diminished capacity to reduce their sentence (for a review, see Starr, 2003). In *United States v. Hamilton* (1991), the court focused strictly on the cognitive component of mental capacity in finding that a disordered gambler who pled guilty to possession of controlled substances with intent to distribute did not qualify for a downward departure (lesser sentence) because "he was able to absorb information in the usual way and to exercise the power of reason" (*U.S. v. Hamilton*, 1991, p. 193). The court reasoned that the defendant sold drugs illegally not because of an inability to understand his situation but because he needed money.

In 1999, the Sentencing Commission defined the previously undefined term "significantly reduced mental capacity" by clarifying that the defendant must have a significantly impaired ability: (a) to understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason or (b) to control behavior that the defendant knows is wrongful. This clarification expanded the definition to include both cognitive and volitional impairments. However, the court in *United States v. Grillo* (2003) cautioned that such an expansion could permit defendants charged with a wide array of crimes to seek reduced sentences "because they were, for example, compulsive shoppers who turned to stealing, running a house of prostitution, or insider trading, among other crimes, only after spending all their assets" (*U.S. v. Grillo*, 2003, p. 2).

The case that followed, *United States v. Sadosky* (2000), allowed such a departure for a regional carpet manager for Sears who fraudulently credited his personal credit card for nearly \$40 000 in returned merchandise in order to pay off about \$30 000 in gambling debts. The defendant pled open to the court (i.e., allowed the judge to impose sentence without a recommendation from the Government) and requested that the judge mitigate his sentence, because he suffered from a significantly reduced mental capacity as a result of his gambling problems. The judge agreed, the defendant received five years probation rather than a prison term. However, the Government appealed. The Court rejected the Government's position, citing the following example: "If someone with an eating disorder stole food, he or she would be entitled to a downward departure . . . If, however, that same person

stole money to buy food, he or she would not be entitled to a downward departure. In the latter situation, the link between the crime, stealing money to buy food, and the [impairment], an eating disorder, is no longer technically direct. Nonetheless, no one can dispute that the eating disorder is the driving force behind the crime." (*U.S. v. Sadosky*, 2000, p. 943). The Court upheld the sentencing, stating that the sentencing guideline does not require a direct causal link between the mental impairment and the crime charged; rather, it requires that the Defendant was a disordered gambler (impairment), and that his gambling was the driving force behind the fraud after he had maxed out his credit cards.

The Seventh Circuit Court of Appeals agreed with the rationale of the *Sadosky* court but found against a defendant who claimed her compulsive shopping led her to embezzle more than \$240 000 from her employers over a three-year period (*U.S. v. Roach*, 2002). The *Roach* court concluded that shopping may have been the motive behind the crime, nevertheless, it revealed little about her mental capacity at the time of the crime. Citing *United States v. Dyer* (2000), the Court cautioned against accepting weak causation: "But for [defendant's] having been born, he wouldn't have operated a Ponzi scheme; but it would be odd, in fact incorrect, to say that his birth... caused the crime" (*U.S. v. Dyer*, 2000, p. 570). Rather, the Court reasoned, the defendant's behavior here failed to support a lack of control: her compulsive shopping was episodic and occurred over 10 years without any prior criminal activity, and her submission of hundreds of falsified expenses that took several forms (e.g., air fares already paid, conferences not attended, personal examples) appeared more opportunistic than desperate to the Court.

These cases suggest that asserting diminished mental capacity may persuade some courts to reduce sentences if the gambler can successfully establish that the criminal behavior resulted from or was directly related to gambling disorder. Critics like Starr (2003) have argued against permitting downward departures for disordered gambling, because the disorder is difficult to diagnose and seemingly parallels drugs and alcohol, which are excluded from consideration under the sentencing guidelines. Such contentions highlight the fact that most members of the state and federal bars are uneducated about disordered gambling, underscoring the need to utilize gambling-specific expert witnesses in these cases. In addition, the argument wholly ignores the influence of chasing and impulse dysregulation that is characteristic of gambling but not substance-based disorders. The guidelines exclude crimes resulting from the voluntary use of intoxicants primarily to distinguish those who suffer from reduced capacity from those who voluntarily adopt it, and to preclude those who commit crimes after a single bout of substance use or drinking from claiming diminished capacity. In contrast, disordered gamblers typically offend in a state of desperation, following a protracted downward spiral where attempts to stave off creditors, continue gambling, and hide and/or chase gambling losses finally become futile. In those cases, the frantic need for money and the loss of impulse control directly drive the criminal enterprise. Ensuring equitable treatment of disordered gamblers in the court system will require a systematic effort, not only to educate court personnel and officials, but also to include uniform screening for disordered gamblers on police reports and intake forms for probation

and parole and the public defender's office. Ideally, triaging disordered gamblers with gambling-related offenses to specialty courts such as a drug court would also ensure that gamblers receive specialized counseling services and the opportunity for targeted probation.

### Debt and Bankruptcy

The drug that fuels disordered gambling is money. For that reason, disordered gamblers historically accumulate staggering amounts of debt. For example, the Gambling Impact Behavior Study estimated that gamblers who met criteria for disordered gambling had rates of indebtedness that were 25% greater than those of recreational gamblers and 120% greater than non-gamblers (NORC, 1999). Comparing debt to income, the study concluded that the average disordered gambler owed \$1.20 for every dollar of annual income, compared to \$0.80 for social gamblers and \$0.60 for non-gamblers (NORC, 1999). Recently in the US, Grant and colleagues (2010) found that clinical research trial-enrolled disordered gamblers who reported declaring bankruptcy were more likely to be single, to have an earlier age of problem gambling onset, higher rates of depressive and substance use disorders, and to report more financial, marital, work-related and legal problems resulting from their gambling than those who did not declare bankruptcy (Grant, Schreiber, Odlaug, & Kim, 2010). In Canada, Ladouceur and colleagues (1994) found that one-third of disordered gamblers had either filed for bankruptcy or accrued debts of \$75 000 to \$150 000 (Ladouceur, Boisvert, Pepin, Loranger, & Sylvain, 1994). Studies in Scotland and Great Britain have reported that disordered gamblers suffer increased divorce rates and family breakdown as a result of the burden of gambling-related debt (Downs & Woolrych, 2009; Edwards, 2003). A 2009 study in Great Britain found that disordered gamblers had an average of £60 000 (about U.S.\$97 000 in debt, resulting in more credit consolidation of secured and unsecured debt, debt collection visits, and court proceedings (Downs & Woolrych, 2009). In addition, the study found that gambling-related debt was more likely than other forms to lead to relationship problems and to engender resentment and bitterness among family members. Other studies have identified debt as one significant factor associated with suicidality in disordered gamblers (Battersby, Tolchard, Scurrah, & Lyndall, 2006; Nower & Blaszczynski, 2008).

As with the relationship between gambling and crime, it is similarly unclear whether legalized gambling opportunities have led to overall increases in rates of personal bankruptcy. This is largely due to the fact that governments rarely require debtors to provide specific details of the reasons that led to the bankruptcy in filing documents; rather, debtors typically provide these reasons in court as part of an individual case record. In the US, there are no official government statistics on gambling-related bankruptcies (U.S. Department of the Treasury, 1999). In Australia, for example, debtors are required to indicate in writing the "primary causes" of personal bankruptcy (Insolvency and Trustee Service Australia, 2010). In 2009, about 4% of filers ( $n = 1147$ ) cited "gambling, speculation, or extravagant



in living" as the primary cause, though the exact proportion attributed to gambling alone is unspecified (Insolvency and Trustee Service Australia, 2010).

A number of studies have found statistical correlations between the introduction of casino gambling and overall increases in per-capita bankruptcy filings (Nichols, Sirtt, & Giacompassi, 2000). For example, Nichols and colleagues (2000) reported that filings rose significantly in five of eight counties studied, however, the analysis failed to control for unemployment rate, percentage of males in population, and other variables that may significantly impact rates. In another analysis, Garrett and Nichols (2006) found that visits to casino resorts in other states resulted in 10% increases in bankruptcy filings in the debtor's home state; however, when controlling for a variety of factors, Mississippi casinos emerged as the only resort destination to result in significant differences, possibly because a majority of visitors to Mississippi casinos come from lower income states in the south. Similarly, Barron, Staten, and Wilshusen (2002) modeled the association of bankruptcy filing rates around casinos and reported that removing casinos would result in a 5% decrease in bankruptcy filing locally and a 1% decrease in the national bankruptcy rate. While intellectually interesting, all of these studies rely on drawing conclusions about relationships from statistical models which may not include all variables necessary to clearly delineate associations. This is also true of other studies that failed to find associations between casinos and bankruptcy. For example, an analysis of panel data collected in 100 counties in 36 states found that unemployment rates were more closely related to bankruptcy filings than were casino openings (de la Vina & Bernstein, 2002). Similarly, Thalheimer and Ali (2004) found no significant relationship between access to pari-mutuel or casino gaming and personal bankruptcies, though socio-demographic factors, such as age, race, divorce and unemployment rates, and the ratio of debt-to-disposable personal income were significant determinants.

Given the conflictual findings regarding the relationship between bankruptcy and gambling, should gambling debt be dischargeable in bankruptcy? A discharge releases a debtor from all unsecured debt accrued prior to filing the bankruptcy petition; therefore, a gambler who amasses credit card debt can seek to have that debt forgiven. Early versions of the US Bankruptcy Code prohibited courts from discharging gambling debts, which was seen as a voluntary waste of assets (see Masterson, 2009, for a review of gambling-related bankruptcy). Beginning in 1898, judges were allowed to decide the issue on a case-by-case basis, weighing the potential fraudulent intent of the debtor and the totality of the circumstances, that is, whether it was more probable than not that the debtor intended to deceive the creditor by soliciting money s/he had no ability or intent to repay (*In re Almajani*, 2002).

There are several theories that govern dischargeability (for a review of issues, see Aaron, 2005). The "implied representation" theory holds that using a credit card implies that the holder has both the intent and the ability to pay for charges and cash advances; the representation is fraudulent only when made without the accompanying intent to perform (see *In re Murphy*, 1995). If either is untrue then, by using the card, the debtor has made a false representation and should not be allowed to avoid paying the debt just by declaring bankruptcy. A second theory, the

"assumption of the risk" approach, suggests that issuing credit is a risky business in which the creditor knows that a certain proportion of debtors exceed the limit or fail to pay; for that reason, debts accrued before the creditor informs the debtor of card revocation should be dischargeable (*First National Bank of Mobile v. Raddenberry*, 1983; *In re Eashai*, 1994).

Other courts adopt a far more complex list of factors to consider, including: (a) the length of time between the charges and the filing of the bankruptcy; (b) whether or not the debtor consulted an attorney about bankruptcy before the charges were made; (c) the number of charges; (d) the amount of charges; (e) the financial condition of the debtor at the time of the charges; (f) whether charges were above the credit limit of the account; (g) whether the debtor made multiple charges on the same day; (h) whether or not the debtor was employed; (i) the debtor's prospects for employment; (j) the financial sophistication of the debtor; (k) whether there was a sudden change in the debtor's buying habits; and (l) whether the purchases were made for luxuries or necessities (see *In re Dougherty*, 1988; *In re Troutman*, 1994). Some courts have criticized the factor approach as constituting a litmus test that precludes other factual considerations (e.g., *In re Eashai*, 1994), however, other courts suggest that the factors can help determine the debtor's state of mind and whether s/he had an intention to repay the debt (e.g., *In re Rembert*, 1998). The court in *Anastis* (1996) reasoned that a person facing bankruptcy may have made a series of unwise financial choices but dischargeability rests on whether the person incurred the debt maliciously and in bad faith (*In re Anastis*, 1996). In contrast, the court in *In re Ashraf* (2007) concluded that a debtor abused the creditor by embezzling company funds to gamble, then secretly transferring stock to a friend when the crime was uncovered.

Similarly, the court in *In re Briese* (1996) reasoned that people often use credit cards because they lack the ability to pay, so requiring debtors to guarantee their ability to pay gives an unfair advantage to credit card companies. The gambler in that case, Noreen Briese, was a part time nurse's aide, earning \$16 000 per annum. She spent both her and her husband's assets on casino gambling, obtaining about \$30 000 in cash advances on several credit cards. The creditor in this case sent her a pre-approved credit card, despite the fact that her family had outstanding debts totaling 66% of their income. In considering dischargeability, the *Briese* court required the creditor to prove "justifiable reliance" on the debtor's fraudulent representations of intent to pay (*In re Briese*, 1996, p. 449). The judge reasoned that Briese had an "honest if questionable and undoubtedly foolish" belief that she could win enough to repay her debts and the creditors should have known she couldn't pay (*In re Briese*, 1996, p. 453).

Citing these inconsistencies, Duns (2007) has argued against dischargeability for disordered gamblers. He asserts that because gamblers know about the peril of their financial situation but creditors do not, gamblers have an incentive to run up debts in a reckless fashion. Duns also argues that gambling creates a "perverse incentive" in which gamblers are encouraged to use other people's money in the hopes of winning large amounts of money or alleviating debt. These arguments, while true in some cases, oversimplify the complex factors considered by the courts. Some courts have refused to discharge debt when the pattern of the gambler's

behavior appears more like a spending spree (*In re Anderson*, 1995) than a frantic attempt to win back losses (*In re Briere*, 1996). Similarly, gamblers may be forced to pay debt if they fail to keep adequate records (*In re Bressler*, 2005), unless that failure results from incompetence rather than deceit (*In re Hirsch*, 1984). In deciding against a gambler, one court maintained that "intent to repay requires some factual underpinnings which lead a person to a degree of certainty" of the ability to repay (*In re Claggh*, 1993, p. 698). Another used the gambler's income, combined with the speed at which he spent large amounts of money, to conclude that the gambler had no reasonable expectation or intent to repay his debts and, therefore, committed fraud (*In re Nahas*, 1994). However, other courts have cited a long course of money mismanagement and a protracted period of gambling as evidence that the gambler had intent to repay. For example, the court in *In re Albi* (1996) concluded that the gambler's long history of gambling, coupled with the fact that, until losing his job, he paid off his credit card gambling debts each month in full, were evidence that he planned to repay his debts with his winnings. Another court concluded that sending pre-approved credit cards to those whom the creditor should have known could not repay does not constitute fraud, because the debtor did not intentionally make false representations to the creditor to obtain the card (*In re Pressgrove*, 1992).

Overall, court decisions are mixed regarding credit issues, though courts appear to focus on a number of specific issues. Did the gambler have a long history of gambling or did s/he gamble large amounts of money on a "spree"? Did the creditor extend credit to someone they should have known couldn't pay? Did the gambler evidence some factually-based belief, however misguided, that s/he could win back losses, demonstrated by instances of repayment in the past? Or did the gambler engage in behavior that suggested intent to defraud? These are among the issues gamblers will face when attempting to extricate themselves from the debt that inevitably results from disordered gambling.

## Conclusion

Disordered gamblers will inevitably face a number of legal and financial decisions and consequences that result from their spending behavior. Navigating the process of debt management, bankruptcy and resolution of any criminal charges will invariably impact the basis for future recovery. Research in these areas is in its infancy, however, counselors and service providers who deal with disordered gamblers would benefit from educating themselves on the legal precedents for successful resolutions and developing a network of legal and financial professionals who could assist gamblers in navigating the process and mounting defenses that promise the greatest degree of success.

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