

Compulsive Gambling as a Criminal Defense

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IMAGINE FINDING OUT your attorney has misappropriated a settlement that was paid as a result of the lawsuit you filed last year. Better yet, he has now asserted as his defense that he has a gambling problem. His compulsion has caused him to lose all control and head to the local slot machines. Surely, this cannot be a legitimate legal strategy. While the courts, as well as social scientists, are split regarding the matter, litigants have asserted this type of defense for over a decade. Courts which initially rejected the concept are beginning to give it more attention.

BACKGROUND

For a game to be a form of gambling, it must consist of three elements: consideration, chance, and reward.¹ The actual word "gambling" is a derivation of the word "gamen" which means to amuse oneself.²

Evidence of gambling is present throughout recorded history.³ Although over the years there have been numerous types of restraints and regulations associated with gambling, it has always remained prevalent in society.⁴ Compulsive gambling also dates back to the most ancient of all civilizations.⁵

COMPULSIVE GAMBLING RECOGNIZED BY SCIENCE

Mental disorder

In 1980, the American Psychiatric Association (APA) first recognized compulsive gam-

bling as a mental disorder.⁶ The APA's Diagnostic and Statistical Manual of Mental Disorders lists and classifies pathological gambling as an "impulse control disorder not otherwise classified."⁷ An impulsive control disorder is a "failure to resist an impulse, drive, or temptation to perform some act that is harmful to the person or others."⁸ The APA states:

¹ See Ronald J. Rychlak, *Lotteries, Revenues and Social Costs: A History Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 14 (1992). The main reason that most mail sweepstakes state that no purchase is necessary is that otherwise it would constitute consideration and all three elements would be present making it a form of gambling. *See id.*

² *See id.*

³ *See id.* History shows the ancient Egyptians, Chinese, Japanese, Romans, Hebrews, and Greeks all participated in forms of gambling. *See id.* at 15. Even Queen Anne enjoyed horse racing. *See id.* at 19.

⁴ *See id.* Even prior to the Statute of Queen Anne, one commentator noted, "Unless one gambled freely it was quite impossible to be counted a gentlemen, or, for that matter, a lady of fashion." *Id.* There is evidence in India that as long ago as 321 B.C. there were attempts by the government to regulate gambling activity. *See id.* at 16.

⁵ *See id.*

⁶ See American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 324 (4th ed. Rev. 1994).

⁷ *Id.* Other sources define problem gambling as a type of behavior that causes disruption in major areas of one's life: psychological, physical, vocational, or social. National Council on Problem Gambling, Inc. (<http://ncpgambling.org/>). "The term 'problem gambling' includes, but is not limited to the condition known as 'pathological' or 'compulsive' gambling, a progressive addiction characterized by increasing preoccupation with gambling, a need to bet more money more frequently, restlessness, or irritability when attempting to stop, 'chasing' losses, and loss of control manifested by continuation of the gambling behavior in spite of mounting, serious negative consequences." *Id.*

⁸ American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 324 (4th ed. Rev. 1994).

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The essential features of this disorder are a chronic and progressive failure to resist impulses to gamble, and gambling behavior that compromises, disrupts or damages personal, family or vocational pursuits. The gambling preoccupation, urge and activity increase during periods of stress. Problems that arise as a result of the gambling lead to an intensification of the gambling behavior. Characteristic problems include extensive indebtedness and consequent default on debts and other financial responsibilities, disrupted family relationships, inattention at work, and financially motivated illegal activities to pay for gambling.⁹

This description reflects the APA's belief of the connection between this disorder and crime.¹⁰ The World Health Organization has followed the APA and also recognized compulsive gambling as a mental disease.¹¹

Other syndromes and defenses

It is understandable that many courts and people in general are speculative of compulsive gambling as a mental disorder, much less as a legal defense. Defendants in criminal cases have similarly asserted addictions to narcotics and to alcohol, although usually unsuccessfully.¹² There are many factors that at first blush depict similarities between compulsive gambling and substance abuse of alcohol and narcotics.¹³ Like substance abuse, compulsive gambling activity has phases and stages.¹⁴ On the other hand, numerous factors distinguish compulsive gamblers from alcoholics and drug addicts.¹⁵ Most notably, a pathological or compulsive gambler cannot overdose because there is no saturation point.¹⁶

Criminal defendants assert addiction to narcotics as a defense to crimes dealing primarily with drugs, or to crimes committed as a result of trying to support their addiction.¹⁷ Likewise, as a defense to public drunkenness, defendants have attempted to assert an alcoholic addiction.¹⁸ Courts have rarely allowed these types of defenses to stand, much less be successful.

However, the assertion of new defenses in

the judicial system is not a novel idea. Compulsive gambling, narcotics addictions, and alcoholism as defenses seem well grounded in light of other defenses that have confronted the courts in the past years. The courts have faced battered wife syndrome,¹⁹ premenstrual syndrome,²⁰ and post-traumatic stress disorder.²¹ Other excuses to criminal activity include diseases such as "rotten social background" and

⁹ *Id.*

¹⁰ See Lawrence S. Lustburg, *Sentencing the Sick: Compulsive Gambling as the Basis for a Downward Departure Under the Federal Sentencing Guidelines*, 2 SETON HALL J. SPORT L. 51, 52 (1992).

¹¹ See Robert Custer and Harry Milt, *When Luck Runs Out: Help For Compulsive Gamblers and Their Families*, 22, 35-36, 39-41 (1985).

¹² See Ronald J. Rychlak and Joseph F. Rychlak, *Mental Health Experts on Trial: Free Will and Determinism in the Courtroom*, 100 W. VA. L. REV. 193, 226 (1997).

¹³ See Arizona Council on Compulsive Gambling, Inc. (visited February 27, 2000) (http://www.azcg.org/about-gambling/sim_and_dif.html). Other similarities between compulsive gambling and alcohol and substance abuse include: inability to stop, denial of the addiction by the abuser, "chasing" the win, experiencing a high, blackouts, memory of first win or first drink, addiction used to escape from some type of pain, preoccupation, a low self esteem coupled with a high ego, use of rituals, and dysfunctional families. *See id.*

¹⁴ *See id.* The phases and stages faced by the compulsive gambler often exist with mood swings and severe depression. *See id.*

¹⁵ *See id.* Unlike the addictions to drugs and alcohol, gambling addictions are often hidden from plain view. *See id.* Additionally, excessive financial problems often require immediate attention. *See id.* Compulsive gamblers can often perform their jobs and likewise there is no equivalent to the typical drug test to determine if employees are compulsive gamblers. *See id.* Finally, the general community does not welcome perceptions of the disease, nor the prevention message. Arizona Council on Compulsive Gambling, Inc. (visited February 27, 2000) (http://www.azcg.org/about-gambling/sim_and_dif.html). As a result, there are a fewer number of resources available for both compulsive gamblers and their families. *See id.*

¹⁶ *See id.* There is no requirement that a person ingest a chemical to become addicted to gambling. *See id.*

¹⁷ See Arizona Council on Compulsive Gambling, Inc. (visited February 27, 2000) (http://www.azcg.org/about-gambling/sim_and_dif.html). *See also* Commonwealth v. Sheeman, 383 N.E.2d 1115 (1978).

¹⁸ *See id.* *See also* Powell v. Texas, 392 U.S. 980 (1968).

¹⁹ See People v. Gindorf, 512 N.E.2d 770 (Ill. App. 1987).

²⁰ See Aleta Wallach & Larry Rubin, *The Premenstrual Syndrome and Criminal Responsibility*, 19 U.C.L.A. L. REV. 209 (1971).

²¹ See C. Peter Erlinder, *Paying the Price for Vietnam: Post-Traumatic Stress Disorder and Criminal Behavior*, 25 B.C. L. REV. 712 (1984).

"sociopathy."²² Defendants have asserted mob defense, Black Rage defense, urban psychosis, anti-abortion psychosis, cultural evidence defense, and financial, emotional, and work-related pressure syndrome.²³ Other defenses asserted in hopes of being found not guilty by reason of insanity include epilepsy,²⁴ somnambulism,²⁵ and the "Twinkie" defense.²⁶

Due to the similar personality characteristics and the similarities between the proposed treatments of the addictions, compulsive gambling compares easily to alcohol, sex, tobacco, and work addictions.²⁷ A compulsive gambler is "driven by an overwhelming and uncontrollable impulse to gamble. The impulse persists and progresses in intensity and urgency . . . until, ultimately, it invades, undermines and often destroys everything that is meaningful in the gambler's life."²⁸ Unable to learn from her losses, the gambler is pathologically optimistic about her ability to win.²⁹ If she ever starts to win, she simply cannot stop.³⁰ Therefore, she risks more than she can afford to risk as she is trying to obtain some type of unknown joy or even pain that overtakes any other interests she normally seeks.³¹

PRIOR CASE LAW

The law remains unclear on how the courts should deal with the problem of pathological gambling.³² The holdings in the judicial system are inconsistent.³³ Judges normally base their decisions on their personal belief of whether pathological gambling is really a disease or mental disorder as the APA asserts, or whether the judge views it as merely a moral weakness.³⁴ Judges are often willing to forgive individuals, but they tend to shy away from this leniency if they think their decision will set legal precedent.³⁵

Although the APA has recognized pathological gambling as a mental disorder for twenty years, few courts have held that it is sufficient alone to establish legal insanity.³⁶ In a 1984 Connecticut case, *State v. Lafferty*, the Superior Court judge recognized compulsive gambling as a defense.³⁷ Recognizing it specifically as an insanity defense, the jury returned a not guilty verdict by reason of insanity.³⁸ However, Con-

necticut destroyed this ground-breaking precedent when shortly thereafter the state passed legislation stating that compulsive gambling cannot be the basis for an insanity defense.³⁹

²² Louis Michael Seidman, *Points of Intersection: Discontinuities at the Junction of Criminal Law and the Regulatory State*, 7 CONTEMP. LEGAL ISSUES 97, 117 (1996). See *United States v. Alexander*, 471 F.2d 923, 957-65 (D.C. Cir. 1972). See also Richard Delgado, "Rotten Social Background": Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation?, 3 LAW & INEQ. 9 (1985).

²³ See Rychlak and Rychlak, *supra* note 12, at 226. See also Rachael J. Littman, *Adequate Provocation, Individual Responsibility, and the Destruction of Free Will*, 60 ALB. L. REV. 1127, 1162 (1997); Note, *Feasibility and Admissibility of Mob Mentality Defenses*, 108 HARV. L. REV. 1111, 1112-13 (1995); Junda Woo, *Urban Trauma Mitigates Guilt, Defenders Say*, WALL ST. J., Apr. 27, 1993 at B1, B7.

While alcohol and drugs can produce physiological effects on an individual, gambling cannot. Ronald J. Rychlak, *The Introduction of Casino Gambling: Public Policy and the Law*, 64 MISS. L. REV. 291, 362 n.279 (1995). Additionally, gambling is not physiologically addicting. See *id.* Any alleged withdrawal symptoms felt by a compulsive gambler must be psychological. See *id.* Nonetheless, highly educated commentators continue to discuss gambling in terms of social and personal pathology. See *id.*

²⁴ See *People v. Grant*, 46 Ill. App. 3d 125, 360 N.E.2d 809 (App. Ct. 1977), *rev'd*, 71 Ill.2d 551, 377 N.E.2d 4 (1978). In *Virgin Islands v. Smith*, 278 F.2d 169 (3d Cir. 1960), the court held that epilepsy was not a defense to the charge of involuntary manslaughter.

²⁵ See *Tibbs v. Commonwealth*, 128 S.W. 2d 871 (1910). See also *People v. Hardy*, 198 P.2d 865 (1948) (holding somnambulism defense is separate from insanity defense).

²⁶ See Kimberly Waldron, Note, *Postpartum Psychosis as an Insanity Defense: Underneath a Defense Lies a Garden Variety Insanity Defenses Complicated by Unique Circumstances for Recognized Culpability in Causing*, 21 RUTGERS L. J. 669, 683 (1990). The "Twinkie defense" refers to a defendant that alleged his compulsive diet of cupcakes, candy, and soda aggravated a chemical imbalance in his brain. See *id.* Dan White was convicted of murdering the Mayor of San Francisco, and court reduces his charge to manslaughter after he presented evidence of his compulsive sugar diet. See *id.*

²⁷ See Captain Michael J. Davidson, "Aces over Eights"—*Pathological Gambling as a Criminal Defense*, 1989-NOV ARMY LAW 11, 12 (1989). Common belief is that most pathological gamblers begin this type gambling before their fourteenth birthday. See *id.* Pathological gamblers often face drug and alcohol addictions as well. See *id.*

While it is true that compulsive gamblers are in every age group and profession, and are both male and female, the Council on Compulsive Gambling of New Jersey profiled what they believed was a typical pathological gambler as a 34-year-old married male with children. See *id.* See also Profile of a Typical Gambler Developed, N.Y. TIMES, December 6, 1987, at 8, col. 5. However, Arizona reported that 40% of the members of Gamblers Anonymous were women. *Profile of Compulsive Gamblers* (visited Feb-

The second successful case was in New Jersey.⁴⁰ In *State v. Campanaro*, the jury acquitted the defendant by reason of insanity.⁴¹ After determining under the state's version of the M'-Naghten rule that the defendant could not distinguish from right or wrong, the jury acquitted him of the charge of writing bad checks.⁴² However, like the Connecticut decision, commentators highly criticized this decision and expressed concern that allowing an acquittal

due to a volitional control disorder was too broad.⁴³

With so much criticism regarding these two cases, the federal courts soon followed this reasoning as well. The federal courts have basically completely rejected compulsive gambling as a defense to criminal activity, especially as an insanity defense.⁴⁴ Generally, the federal courts have avoided hinging their decisions on whether compulsive gambling constitutes a

ruary 27, 2000), (http://www.azcg.org/about_gambling/profiles.html/). Additionally, Arizona reported that 53% of all of their crisis calls are either from or about women gamblers. *See id.*

There are two types of gamblers. Most men are action gamblers while the majority of women are escape gamblers. *See id.* Action gamblers normally begin gambling early in life and are presumed to be very intelligent. *See id.* They experience a high when gambling and become compulsive after only a few years of gambling. *Profile of Compulsive Gamblers* (visited February 27, 2000), (http://www.azcg.org/about_gambling/profiles.html/). However, normally in order for them to become compulsive, they must experience a fair number of wins. *See id.* Often an action gambler prefers to play a game that requires more skill like poker or blackjack. Action gamblers normally suffer from the disease for ten to thirty years before seeking any type of treatment. *See id.*

The second type of gambler is the escape gambler. Most women are in this classification. *See id.* Escape gamblers normally develop this lifestyle after the age of thirty. *See id.* While "euphoric" describes the action gambler's feelings, "number" better describes the escape gambler. *See id.* This is also reflected by the characteristic of co-dependency that most escape gamblers also exhibit. *See id.* The money won while gambling simply serves as a means to continue gambling. *See id.* Normally, an escape gambler has the disease between six months to three years before seeking treatment. *See id.*

²⁸ R. CUSTER AND H. MILT, *When Luck Runs Out* 34 (1985). Not only do compulsive gamblers tend to lack good parenting skills, but also children of compulsive gamblers are more likely to become problem gamblers. *See Rychlak, supra*, note 1, at 67. Additionally, while compulsive gamblers are often spending a large amount of money at casinos, they tend to be late with their child support payments. *See id.* A study of children and spouses of compulsive gamblers showed that 84% of the spouses and children considered themselves emotionally ill. *See id.* at 81 n.325. Of the spouses, 78% had threatened divorce or separation. *See id.* Twenty-five percent of the children experienced significant behavioral or adjustment problems. *See id.*

²⁹ *See E. Berger, The Psychology of Gambling* 7 (1985). *See also* Captain Michael J. Davidson, *supra*, note 27, at 12.

³⁰ *See id.*

³¹ *See id.*

³² *See* Nelson Rose, *Gambling and the Law—Update*, 15 HASTINGS COMM./ENT. L.J. 93, 111 (1992). *See also* Nelson Rose & V. Lorenz, *Compulsive Gambling and the Law*, J. OF

GAMBLING BEH., Winter 1988 (discussing generally the numerous struggles courts are facing regarding pathological gambling).

³³ *See* Nelson Rose, *supra*, note 32, at 111.

³⁴ *See id.*

³⁵ *See id.* The gaming industry should consider the recognition of compulsive gambling by the mental health community a threat. *See id.* Theoretically, a compulsive gambler could avoid paying a casino money he owed by claiming he had a mental illness. *See id.* However, no area of practice has achieved this. *See id.*

³⁶ *See* Captain Michael J. Davidson, *supra*, note 27, at 13.

³⁷ *See* *State v. Lafferty*, No. 44359 (Connecticut Superior Court, June 5, 1981), *rev'd on other grounds*, 192 Conn. 571, 472 A.2d 1275 (1984).

³⁸ *See id.* However, a large number of courts have found in favor of individuals who owed casinos gambling debts relying on a different reason. Whereas gamblers have often failed when trying to assert the insanity defense, gamblers have frequently found refuge under the Statute of Anne. *See* *Weisbrod v. Fremont Hotel*, 326 P.2d 1104 (Nev. 1958), *GNOG v. Golden Nugget*, 715 F. Supp. 644 (D.N.J. 1989), *United States v. Wallace*, 15 U.S.M.C. 650 (C.M.A. 1966); *See also* *United States v. Allbery*, 44 M.J. 226 (C.A.A.F. 1996), *Resorts Int'l Hotel v. Agresta*, 569 F. Supp. 24 (E.D. Va. 1983).

The Parliament passed the statute of Queen Anne in an effort to curb the large amounts of money that individuals were transferring as a result of gambling debts. *See* Rychlak, *supra*, note 1, at 19. A second motive of the statute was to stabilize the British society. *See id.* The statute voided any payment made toward a gambling debt. *See id.* Additionally, within the boundaries of the statute, a gambler could sue to recover a gambling loss. *See id.* If by chance the gambler decided not to utilize this benefit, anyone else could sue the individual that had won for up to three times the amount that was lost as a result of the gambling incident. *See id.*

³⁹ *See* Note, *Beating the Odds: Compulsive Gambling as an Insanity Defense*, 14 CONN. L. REV. 341, 342 (1982).

⁴⁰ *See* *State v. Campanaro*, Nos. 632-79, 1309-79, 1317-79, 514-80 & 707-80 (Superior Court of New Jersey Crim. Div., Union County, 1980) cited in Cunnien, *Pathological Gambling as an Insanity Defense*, 3 BEHAV. SCI. & L. 85, 101 (1985).

⁴¹ *See id.*

⁴² *See id.*

⁴³ *See id.*

⁴⁴ *See* Captain Michael J. Davidson, *supra* note 27, at 13.

mental disorder or disease that deserves recognition as an insanity defense.⁴⁵ Rather, most federal courts have relied on the causation element, determining that there is no evidence of a causal connection between compulsive gambling and the gambler's inability not to participate in criminal activity as a means to obtain money.⁴⁶ In *United States v. Shorter*, for example, the defendant asserted compulsive gambling as his defense to the charge of tax evasion.⁴⁷ In its causation analysis, the appellate court stated that the "causal link between pathological gambling and failure to pay taxes was not generally accepted by mental health professionals."⁴⁸

In the past, courts have also tended to reject the assertion that pathological gambling should be a factor that mitigates criminal sentencing under the new Federal Sentencing Guidelines.⁴⁹ However, many feel this area has the greatest potential to offer assistance for compulsive gamblers.⁵⁰ In *United States v. Bono* the court did allow the defense attorney to present evidence regarding the defendant's mental condition before sentencing.⁵¹ The Rules for Courts-Martial allow individuals to admit evidence to help explain circumstances surrounding the crime.⁵² This evidence is admissible regardless of whether or not it provides a legal justification.⁵³

CHANGE IN THE COURTS

Despite the fact that judges are hesitant to rule in favor of a compulsive gambler because they fear their rulings will set legal precedent, alternatives are being used by judges.⁵⁴ It is becoming common for a judge to order a pathological gambler who faces charges of a nonviolent property crime to enroll in a type of preconviction diversion program.⁵⁵ Normally, part of the agreement is that if the defendant remains in therapy and continues to avoid trouble, all charges will be dropped after an agreed amount of time.⁵⁶ However, if the defense attorney asks the judge to produce a published opinion reflecting his or her decision, and thus the impact of compulsive gambling, the judge will most likely rule that compulsive gambling is an irrelevant factor.⁵⁷

There are certain cases where casino patrons

in general have asserted successful claims. For example, claims alleging that a casino allowed a visibly intoxicated gambler to continue gambling have been successful.⁵⁸

Additionally, specific to the legal profession,

⁴⁵ See *id.*

⁴⁶ See *id.* *United States v. Carmel*, 801 F.2d 997 (7th Cir.), *cert. denied*, 474 U.S. 1036 (1985) (asserting compulsive gambling as defense for forged and converted governmental checks); *United States v. Torniero*, 376 F.2d 725 (2d Cir. 1984), *cert. denied*, 469 U.S. 1110. (1985) (denying pathological gambling as defense to interstate transportation of stolen goods); See also *United States v. Lewellyn*, 723 F.2d 92 (5th Cir. 1971) (making false statements, mail fraud, and embezzlement); *Iachino v. United States*, 437 F.2d 92 (5th Cir. 1971) (disallowing compulsive gambling as defense to tax evasion); *People v. Baade*, 194 N.Y.L.J. 12 (1985) (holding pathological gambling disorder not recognized as insanity defense in New York).

⁴⁷ See *United States v. Shorter*, 809 F.2d 54 (D.C. Cir. 1985), *cert. denied*, 484 U.S. 817 (1987).

⁴⁸ *Id.* at 55. The court, using the Frye test of admissibility, relied on this lack of causal connection to exclude expert testimony regarding compulsive gambling. See *United States v. Gillis*, 733 F.2d 549 (4th Cir. 1985) (holding that there was not enough evidence to conclude that compulsive gambling caused people to buy cars with bad checks and transport them across state lines); *United States v. Davis*, 772 F.2d 1339 (7th Cir. 1985) (noting expert could not explain alleged connection).

See also *United States v. Carmel*, 801 F.2d 997 (7th Cir.), *cert. denied*, 474 U.S. 1036 (1985) (asserting compulsive gambling as defense for forged and converted governmental checks); *United States v. Torniero*, 375 F.2d 725 (2d Cir. 1984), *cert. denied*, 469 U.S. 1110. (1985) (denying pathological gambling as defense to interstate transportation of stolen goods); *United States v. Lewellyn*, 723 F.2d 92 (5th Cir. 1971) (making false statements, mail fraud, and embezzlement); See generally *Iachino v. United States*, 437 F.2d 92 (5th Cir. 1971) (disallowing compulsive gambling as defense to tax invasion); *People v. Baade*, 194 N.Y.L.J. 12 (1985) (holding pathological gambling disorder not recognized as insanity defense in New York).

⁴⁹ See *United States v. Hamilton*, 949 F.2d 190 (6th Cir. 1991).

⁵⁰ See *Captain Michael J. Davidson*, *supra*, note 27, at 14.

⁵¹ See *United States v. Bono*, 26 M.J. 240 (C.M.A. 1988).

⁵² See *Manual for Courts-Martial, United States*, 1984,

Rule for Courts-Martial 1001(c)(1)(A).

⁵³ See *id.*

⁵⁴ See *Rose*, *supra*, note 32, at 111.

⁵⁵ See *id.*

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See *Joy Wolfe, Casinos and the Compulsive Gambler: Is There a Duty to Monitor the Gambler's Wagers?*, 64 *Miss. L. J.* 687, 690 (1995). See also *GNOC Corp. v. Aboud*, 715 F. Supp. 644, 655 (D.N.J. 1989). Following this rationale, in *Great Bay Hotel & Casino v. Tose*, No. 91-600, 1991 WL 639131, at *6 (D.N.J. Dec. 16, 1991), the court noted that the *Aboud* holding had now set the stage for negligence claims by gamblers against casinos.

the case of *In Re Goldberg* was the first time the courts addressed the issue of whether compulsive gambling was grounds for leniency by the courts in a misappropriation case.⁵⁹ From the holding of the case the court was clear that a compulsive gambling addiction would not prevent an attorney from being disbarred if clients' monies had been misappropriated.⁶⁰ Goldberg was indicted on twenty-three counts of misappropriating property entrusted to him and twenty-three counts of theft because he had not properly deposited money he had received.⁶¹ Goldberg asserted an insanity defense and claimed that his gambling had overtaken his sense of what was right and wrong.⁶² Although a jury found him guilty of eleven counts, it acquitted him on the remaining counts.⁶³ The court stated that it was not holding that "compulsive gambling can never impair an individual's state of mind to such an extent that he or she is incapable of understanding the nature of his or her actions or lacks the capacity to form the intent required for 'knowing misappropriation' of client's funds."⁶⁴ However, Goldberg simply had not met that standard in this specific case.

CONCLUSION

The mental health professional has recognized compulsive gambling as a mental disorder for over twenty years. The courts have just begun to give any deference to the American Psychiatric Association regarding this matter. Reviewing the case law over the past two decades reflects the unwillingness of many judges to accept what in their eyes was just another skeptical defense. However, as the years have progressed, as well as the research in this seldom explored area, judges have become more open to considering compulsive gambling in the judicial system. The courts are more willing to recognize that established, credible scientists perceive compulsive gambling as a legitimate mental disorder that can control an individual's life, thus giving defendants a viable defense, or at least a basis to have sentences mitigated.

This new openness of the court system to consider compulsive gambling will affect not only defendants, but it will affect casinos as well. No court has yet articulated the acceptable level of responsibility of casinos for compulsive gambling. However, if the courts remain willing to hear expert testimony regarding pathological gambling and to consider it in their analysis when deciding a case, the courts likely will face this issue as well.

Courts have yet to determine whether compulsive gambling as a criminal defense will truly serve as a viable defense. For that matter, whether or not it should be *allowed* has not been seen. However, courts have the responsibility to allow research in this area, as well as to grant the same amount of deference to social scientists regarding compulsive gambling as they now do regarding other types of defenses. If research determines that courts should not uphold the compulsive gambling defense, then it should find its place among the list of random defenses that prevail only in limited numbers with heavy criticism. However, if the list eventually includes compulsive gambling, it should be because the evidence supports that outcome and not because judges personally view gambling as a moral weakness.

Gambling has always been embedded in our culture. With the casino industry continuing to grow, there is no reason to believe a change will surface in the coming years. Therefore, compulsive gambling likewise will continue to be a part of our communities and our court system. Side stepping the problem will not remove it from the courtrooms across our nation.

⁵⁹ See *In Re Goldberg*, No. D-11 (N.J. Jan. 22, 1988).

⁶⁰ See *id.*

⁶¹ See *id.* The total amount of money Goldberg misappropriated was over \$600,000. See *id.*

⁶² See *id.* There was a significant amount of evidence to show Goldberg's rehabilitation and his active participation in Gambler's Anonymous. See *id.*

⁶³ See *id.* However, the court determined that due to the amount of money involved and their duty to protect the profession's integrity, Goldberg should be disbarred. See *id.*

⁶⁴ *Id.*

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