SOLDIERS OF MISFORTUNE: WHY THE MILITARY SHOULD REMOVE ITS SLOT MACHINES

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INTRODUCTION

“[Gambling] is the child of avarice, the brother of inequity, and father of mischief. It has been the ruin of many worthy families, the loss of many a man’s honor, and the cause of suicide.”

George Washington¹

Many civilians and military service-members alike may be surprised to learn that some overseas military bases have slot machines, but this is not a fledgling enter-

prise. In recent years, military slot machines have averaged \$100,000,000 in revenue *annually* from servicemembers stationed overseas.² George Washington, the nation’s first commander-in-chief, would likely be ashamed of the military profiting off its own servicemembers and doing so with currency emblazoned with his image.³

Sadly, Washington’s quote holds true to this day, and slot machines on military bases can have disastrous consequences. Aaron Walsh was a warrant officer and a decorated Apache pilot in the U.S. Army, until he became addicted to slot machines on a base in South Korea.⁴ His addiction grew to the point that he maxed out his credit cards and financially ruined his family: a wife and two young children.⁵ He became so addicted that he went AWOL and faced court-martial for desertion.⁶ Walsh resigned in shame and returned home to the U.S., but he carried his addiction with him.⁷ “[W]ith his life in a tailspin, the 34-year-old walked into the Maine woods, put a gun to his head and killed himself—after what his wife says was one final ‘gambling binge.’”⁸

As demonstrated by Aaron Walsh’s behavior, “gambling disorder” is “[p]ersistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress,” and is indicated by individuals exhibiting four of eight characteristics in a 12-month period.⁹ In the *Diagnostic and Statistical Manual of Mental Disorders*, gambling disorder is included within the category of substance-related and addictive disorders.¹⁰

Keywords: military, slot machines, Department of Defense, gambling disorder, military law

DOI: 10.1089/qlr2.2020.0004 © 2020 Mary Ann Liebert, Inc.

¹RON CHERNOW, WASHINGTON: A LIFE 135 (2010) (quoting WWR, 483 Letter to Bushrod Washington, January 15, 1783).

²See *infra* notes 128–30 and accompanying text.

³See Statement and Press Release of Tom Grey, Field Director, Nat’l Coalition Against Legalized Gambling/Nat’l Coalition Against Gambling Expansion, regarding CNN News Special on Gambling in the Military, Washington, D.C., June 2007 reprinted in GAMBLING WITH NATIONAL SECURITY, TERRORISM, AND MILITARY READINESS, UNITED STATES INTERNATIONAL GAMBLING REPORT SERIES 1.37 (Research Editors Doctoral Directorate (REDD) on Gambling and J. Kindt ed., 2009) [hereinafter GAMBLING WITH NATIONAL SECURITY].

⁴Diana B. Henriques, *Temptation Near for Military’s Problem Gamblers*, N.Y. TIMES (Oct. 19, 2005), <https://archive.nytimes.com/www.nytimes.com/learning/students/pop/articles/19slots.html>.

⁵*Id.*

⁶*Id.*

⁷Drew Griffin and Kathleen Johnston, *Military Uses Slot Machines to Fund Overseas Recreation*, CNN, (May 23, 2007, 10:03 PM), <https://www.cnn.com/2007/US/05/22/military.gambling/index.html#>.

⁸*Id.*

⁹U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-17-114, MILITARY PERSONNEL: DOD AND THE COAST GUARD NEED TO SCREEN FOR GAMBLING DISORDER ADDICTION AND UPDATE GUIDANCE 7 (2017) (quoting DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013)) [hereinafter GAO MILITARY GAMBLING REPORT]. The characteristics include (1) needs to gamble with increasing amounts of money in order to achieve the desired excitement; (2) is restless or irritable when attempting to cut down or stop gambling; (3) has made repeated unsuccessful efforts to control, cut back, or stop gambling; (4) is often preoccupied with gambling (e.g., having persistent thoughts of reliving past gambling experiences, handicapping or planning the next venture, thinking of ways to get money with which to gamble); (5) often gambles when feeling distressed (e.g., helpless, guilty, anxious, depressed); (6) after losing money gambling, often returns another day to get even (“chasing” one’s losses); (7) lies to conceal the extent of involvement with gambling; (8) has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling. *Id.*

¹⁰*Id.*

An individual may exhibit problematic gambling behavior without rising to the level of gambling disorder. “Problem gambling” is defined as “harmful gambling activity without a dependence on the gambling” or “a lifestyle problem in the absence of a disease or other external cause.”¹¹

This article will show that the military’s policy of slot machines is a costly policy which contravenes both law and history; the military should remove its slot machines. Part I will explore the history of gambling in the U.S. military. Part II will compare the characteristics of problem gamblers and the characteristics of servicemembers to identify why servicemembers are at a higher risk of having issues with gambling. Part III will explore how gambling may be criminalized or discouraged by military laws, regulations, and orders. Part IV will focus on how slot machines are operated by the military, and Part V will discuss recent actions by Congress to address this issue. Lastly, Part VI will argue for change.

I. BACKGROUND: HISTORICAL PERSPECTIVE

Throughout history, soldiers have enjoyed gambling, and American soldiers are no exception. This part will explore the history of gambling in the U.S. military and how it has been addressed by military leaders.

As the quote from George Washington at the beginning of this article indicates, the general was averse to gambling among the ranks of the Continental Army. While encamped at Valley Forge, “Washington often tried in vain to stop the gambling that officers and privates enjoyed.”¹² General orders issued

in 1776 stated, “All Officers, non-commissioned Officers and Soldiers are positively forbid playing at Cards, and other Games of Chance; At this time of public distress, men may find enough to do in the service of their God, and their Country, without abandoning themselves to vice and immorality.”¹³

Violations of orders in the Continental Army, including gambling, were punishable by severe corporal punishment such as being whipped one-hundred times with a cat-o’-nine-tails or being forced to run the gauntlet.¹⁴ Although these were the prescribed punishments, leaders did not administer them uniformly.¹⁵ A leader might simply hit an offender, assign him additional duties, or do nothing at all.¹⁶ The circumstances surrounding the infraction likely played a part in punishment. In one account, starving soldiers at Valley Forge rolled dice made of musket balls for a chance to win acorns to eat—hardly a situation for punishment.¹⁷

Oddly enough, gambling was prevalent in colonial America’s culture.¹⁸ Even George Washington gambled frequently and meticulously recorded his winnings and losses.¹⁹ Despite being acceptable in civilian life, gambling was designated a “vice and immorality” which had no place in a professional army.²⁰

This sentiment continued throughout the early history of the U.S. military. During the Civil War, *Harper’s Weekly* published a sketch showing two Union soldiers being punished for gambling with “greenbacks.”²¹ They were forced to gamble with beans while wearing signs saying “GAMBLER.”²² The two soldiers endured this punishment under an armed guard and without food.²³ The sketch’s caption also

¹¹*Id.* at 2 n.4.

¹²CHARLES ROYSTER, A REVOLUTIONARY PEOPLE AT WAR: THE CONTINENTAL ARMY AND AMERICAN CHARACTER, 1775–1783 248 (1979).

¹³Washington Papers, General Orders, 26 February 1776, NATIONAL ARCHIVES, [https://founders.archives.gov/documents/Washington/03-03-02-0269].

¹⁴ROYSTER, *supra* note 12, at 78. The cat-o’-nine-tails was a multi-tailed, knotted whip made of cotton cord which inflicted tremendous damage to human flesh and made recipients’ backs “like a jelly.” The gauntlet consisted of an offender being forced to march down an alley of soldiers brandishing sticks who would strike him repeatedly. The offender would be marched at bayonet point in order to prevent him from “running the gauntlet” too quickly. *Id.*

¹⁵*See id.* at 78–79, 82–83.

¹⁶*Id.*

¹⁷PAUL N. HERBERT, GOD KNOWS ALL YOUR NAMES: STORIES IN AMERICAN HISTORY 45 (2009). Servicemembers have gone to extraordinary lengths to satisfy their gam-

bling urges by inventing new games or gambling with strange things, such as lice. Keith Miller, *Chance and the Civil War*, CIVIL WAR TIMES, June 2006, available online at <https://www.historynet.com/chance-and-the-civil-war.htm>. Crown and anchor is a dice game which was invented by British sailors and became popular in the U.S. Navy. *Crown and Anchor*, ENCYCLOPEDIA BRITANNICA, available online at <https://www.britannica.com/topic/crown-and-anchor> (last visited Mar. 19, 2020).

¹⁸*See* CHERNOW, *supra* note 1, at 134.

¹⁹*Id.* at 134–35.

²⁰*See* Washington Papers, *supra* note 13.

²¹A.R. Waud, *Gamblers in the Army*, 7 HARPER’S WEEKLY 716 (1863), <https://archive.org/details/harpersweeklyv7bonn/page/716/mode/2up>.

²²*Id.*

²³*Id.*

reads, “Much harm, no doubt, results from gambling; but it is useless to punish the men while it is so prevalent a vice with the officers. Gambling has always been more or less prevalent in armies.”²⁴ Likewise, gambling was a forbidden but recurring problem in the Confederate Army, and Robert E. Lee ordered that gambling is “wholly inconsistent with the character of a Southern soldier and subversive of good order and discipline in the army.”²⁵ Although still extreme by today’s measure, the punishments imposed for serious gambling offenses in the Civil War paled in comparison to the corporal punishments of the eighteenth century.

Many of the soldiers who fought in the Civil War came from places where gambling was prevalent in the antebellum period, such as New York City, New Orleans, and western settlements along the Ohio and Mississippi Rivers.²⁶ However, despite being accepted at home, gambling was not tolerated in the army camp.

Gambling continued to be a problem throughout westward expansion and the Indian wars. “Some among frontier regulars squandered all their pay in gambling.”²⁷ In Wild West fashion, most soldiers played card games, including games familiar today like poker and blackjack.²⁸

Most soldier gambling was for small stakes, tobacco, and clothing. . . . In the army all forms of gambling were illegal. The average low-stake barrack room games, however, were usually not rigidly policed. The semiprofessional, big-money games were another matter,

and when the “boss gamblers” organized a game, it was generally held in a place safe from official interruption.²⁹

This passage exemplifies the military’s attitude towards gambling in its early history—an absolute ban with selective enforcement for only the most serious violations.

Doughboys in World War I and GIs in World War II continued the military tradition of gambling.³⁰ In a letter home, one doughboy remarked, “Pay-day today and I can hear dice rolling from all quarters. Also the sound of moneys changing hands. It really is funny to see what fools some people can make of themselves. . . . I really am tempted to try my luck sometimes. . . .”³¹ One sailor from WW2 remembered an incident on his ship in which the winner of a craps game received threats from the losing sailors.³² In response, the ship’s captain directly addressed the crew and directed the paymaster to disburse only essential amounts of cash to the crewmembers; the rest of the sailors’ pay was either held on ship or forwarded to their families.³³

Another interesting aspect of military gambling is the attendant civilian response. Throughout history, civilians have provided the services that soldiers desire, including gambling.³⁴ The large numbers of soldiers stationed at Washington D.C. during the Civil War boomed an already thriving gambling economy,³⁵ and during the Mexican-American War, a “[syndicate of Southern gamblers] entered Mexico City on the heels of the American Army” to supply troops with poker cards and gambling opportunities.³⁶ Savvy

²⁴*Id.*

²⁵Robert E. Lee, General Orders No. 127, Hdqrs. Army of Northern Virginia, Nov. 14, 1862.

²⁶HERBERT ASBURY, *SUCKER’S PROGRESS: AN INFORMAL HISTORY OF GAMBLING IN AMERICA*, 128, 162–63, 197 (Thunder’s Mouth Press ed., 1938). One Confederate unit, the Wilson Rangers, was comprised solely of New Orleans river boat gamblers and was described as “one of the best-equipped units, and the most nearly useless, in the Confederate Army.” *Id.* at 259–60. General and future President Ulysses S. Grant was born on the Ohio River and was a talented poker player. Ferdinand Ward, *General Grant as I Knew Him*, NEW YORK HERALD (Dec. 19, 1909) available online at <https://www.granthomepage.com/intward.htm>.

²⁷DON RICKEY, *FORTY MILES A DAY ON BEANS AND HAY: THE ENLISTED SOLDIER FIGHTING THE INDIAN WARS* 208 (1963).

²⁸*Id.*

²⁹*Id.*

³⁰*E.g.*, Unidentified African American Sailors Playing Betting Game, LIBRARY OF CONGRESS (1917), <https://www.loc.gov/item/2017648703/> [<https://lcn.loc.gov/>

2017648703]; Army Corp Game, LIBRARY OF CONGRESS (1918), <https://www.loc.gov/resource/npc.00345/> [<https://lcn.loc.gov/2016819621/>]; Killing Time While the Rest of Their Convoy Loads, Japanese-American Members of the 442nd Combat Team Indulge in a Little of the Great American Game of Galloping Dominoes with the Bed of a GI Truck as Their Table, LIBRARY OF CONGRESS (1943), <https://www.loc.gov/resource/cph.3c27111/> [<https://lcn.loc.gov/00652082/>]; Before Pay Day Shooting Craps for Cigarettes, LIBRARY OF CONGRESS (1944), <https://www.loc.gov/item/2010645926/> [<https://lcn.loc.gov/2010645926/>].

³¹GEORGE BROWNE, *AN AMERICAN SOLDIER IN WORLD WAR I* 31 (David L. Snead ed., 2006).

³²MALCOLM C. AKEY, *ONE SAILOR’S STORY: A NARRATIVE OF WORLD WAR II BY A DESTROYER ESCORT SONAR MAN* 162–63 (2012).

³³*Id.*

³⁴ASBURY, *supra* note 26, at 38–39.

³⁵SHELBY FOOTE, *THE CIVIL WAR: A NARRATIVE: VOLUME 2: FREDERICKSBURG TO MERIDIAN* 152–53 (First Vintage Books ed., 1986) (1963).

³⁶ASBURY, *supra* note 26, at 38–39.

civilians during the Indian Wars, “[r]ealizing soldiers’ pay burned holes in their pockets,” operated gambling devices and games exclusively for soldiers.³⁷ Some civilians even set up tents outside of remote Army camps to operate “roulette wheels and faro banks.”³⁸

A new aspect to gambling in the military emerged when, in the 1930s, the Department of Defense (DOD) first introduced slot machines on bases in both the United States and overseas.³⁹ Unlike the past where soldiers gambled among themselves or in civilian-run establishments in violation of military orders, now the military both authorized and facilitated gambling among servicemembers. However, in 1951, slot machines were prohibited within the “special maritime and territorial jurisdiction of the United States” by the Anti-Slot Machine Act.⁴⁰ In response to this Act, the military removed all slot machines in the United States, but slot machines overseas were not clearly included in the Act and remained in service.⁴¹

During the Vietnam War, the Army, Navy, Air Force, and Marine Corps all operated hundreds of slot machines at clubs in Vietnam.⁴² However, in 1972, the Army and Air Force destroyed their slot machines in response to a congressional investigation regarding machine manipulation and embezzlement.⁴³ The Navy and Marine Corps kept their machines in operation throughout the duration of the war, despite the investigation.⁴⁴ In 1980, the Army and Air Force re-

instated its overseas slot machines “based on *customer* demand and requests of senior commanders.”⁴⁵

II. SERVICEMEMBERS AND PROBLEM GAMBLING

The DOD has not broadly screened servicemembers for gambling behavior; however, based on other DOD surveys,⁴⁶ the National Council on Problem Gambling estimates that servicemembers are twice as likely as civilians to develop problem gambling and gambling disorder.⁴⁷ This figure predicts that over six percent of military servicemembers—approximately 56,000—are currently problem gamblers.⁴⁸ For perspective, there were 58,220 fatal American casualties in the Vietnam War.⁴⁹ This part will compare the characteristics of servicemembers with the characteristics of problem gamblers.

A. Socioeconomic background

The adage used to describe the Civil War, “a rich man’s war and a poor man’s fight,”⁵⁰ holds a lot of truth, even in today’s military. The DOD does not collect data on recruits’ socioeconomic status; instead, it predicts the socioeconomic status of recruits based on the median household income of recruits’ hometown zip-codes.⁵¹ This methodology is clearly flawed and does not accurately represent the socioeconomic background of servicemembers. Another study, utilizing a survey of military service, reached

³⁷Rickey, *supra* note 27, at 209.

³⁸*Id.*

³⁹U.S. DEP’T OF DEF., REPORT ON THE EFFECT OF THE READY AVAILABILITY OF SLOT MACHINES ON MEMBERS OF THE ARMED FORCES, THEIR DEPENDENTS, AND OTHERS 4 (2001), *reprinted in* GAMBLING WITH NATIONAL SECURITY, *supra* note 3, at 1.40, available online at <http://www.ncpgambling.org/wp-content/uploads/2019/01/DOD-Report-on-Effect-of-Slots.pdf> [hereinafter DOD SLOTS REPORT].

⁴⁰*Id.* 15 U.S.C. § 1175 (2020).

⁴¹*Id.* at 4–5.

⁴²*Id.* Rather than use currency, each club had its own unique set of tokens which had a monetary value and were redeemable for cash. Interestingly, the military contracted with the Japanese company SEGA to produce its slot machine tokens. Chris Bulfinch, *Gaming Token Mule for Vietnam War Era Military Base a Rare Find*, COIN WORLD (Aug. 13, 2019, 10:00 AM), <https://www.coinworld.com/news/precious-metals/gaming-token-mule-for-vietnam-war-era-military-base-a-rare-find>.

⁴³DOD SLOTS REPORT, *supra* note 39, at 4–5.

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*See generally* ROBERT M. BRAY ET AL., U.S. DEP’T OF DEF., 1992 WORLDWIDE SURVEY OF SUBSTANCE ABUSE AND HEALTH BEHAVIORS AMONG MILITARY PERSONNEL; ROBERT M. BRAY ET AL., 1998 DEP’T OF DEF. SURVEY OF HEALTH RELATED BEHAVIORS AMONG MILITARY PERSONNEL; ROBERT M. BRAY ET AL., 2002 DEP’T OF DEF. SURVEY OF HEALTH RELATED BEHAVIORS AMONG MILITARY PERSONNEL *reprinted in* GAMBLING WITH NATIONAL SECURITY, *supra* note 3, at 1.38, 1.39, 1.41.

⁴⁷NATIONAL COUNCIL ON PROBLEM GAMBLING, ISSUE BRIEF ON GAMBLING IN THE MILITARY (2010), <http://www.ncpgambling.org/wp-content/uploads/2019/01/Issue-Brief-on-Gambling-in-the-Military-June-2010.pdf>.

⁴⁸*Id.* The most recent update has the figure at 56,000. Leo Shane III, *Why Gambling Addiction Among Active-Duty Troops May Pose National Security Risks*, MILITARY TIMES, (July 9, 2019), <https://www.militarytimes.com/news/pentagon-congress/2019/07/09/gambling-addiction-remains-a-troubling-problem-among-active-duty-troops-advocates-warn/>.

⁴⁹*Vietnam War U.S. Military Fatal Casualty Statistics*, NATIONAL ARCHIVES, <https://www.archives.gov/research/military/vietnam-war/casualty-statistics> (last visited Mar. 19, 2020).

⁵⁰FOOTE, *supra* note 35, at 651.

⁵¹OFFICE OF THE UNDER SEC’Y OF DEF., PERSONNEL AND READINESS, POPULATION REPRESENTATION IN THE MILITARY SERVICES: FISCAL YEAR 2017 SUMMARY REPORT 21 (2017), <https://www.cna.org/pop-rep/2017/summary/summary.pdf> [Hereinafter DOD PERSONNEL REPORT].

the conclusion that “[t]hose with lower family income are more likely to join the military than those with higher family income.”⁵² This conclusion is consistent with history.⁵³

Multiple studies have found that people with low income have higher rates of problem gambling.⁵⁴ These studies have focused on people who currently have a low income level, rather than those, like many servicemembers, who grow up poor and subsequently earn better wages.⁵⁵ However, gambling disorder is a human behavior, and earning higher wages does not instantly cure that behavior.⁵⁶ A person with gambling disorder is likely to gamble more after suddenly receiving a higher income.⁵⁷

B. Demographics

Military servicemembers are disproportionately young males; additionally, minorities have greater representation in the military than in the general U. S. population. In the 2017 fiscal year, the DOD recorded demographic statistics including age, gender, and race across all services and ranks of the military;⁵⁸ the following statistics represent active duty, enlisted servicemembers.⁵⁹

Just over 69% of servicemembers were 29 years of age or younger, despite the same age group comprising only 31% of the civilian workforce.⁶⁰ The most represented age group was ages 20–24 at over 36% of the entire military.⁶¹ Women made up nearly 16%, whereas women represented 47% of the civilian workforce.⁶²

With respect to race in the military compared with race in the civilian workforce, the survey found that non-Hispanic whites, Hispanic whites, and Asians are underrepresented, but blacks, American Indians-Alaska Natives, Native Hawaiians-Pacific Islanders, and “two or more races” are overrepresented.⁶³ The three largest groups were non-Hispanic whites, blacks, and Hispanic whites at 49%, 19%, and 17% respectively.⁶⁴ Lastly, minorities as a whole represented nearly 43% of the civilian workforce but accounted for just over 50% of the military.⁶⁵ Another interesting aspect of military demographics is the region of the country that servicemembers come from. The South provides the military with most of its recruits.⁶⁶

Age, gender, and minority status influence a person’s likelihood to develop a gambling disorder.⁶⁷ Younger people have higher rates of problem gambling, and “the earlier the onset of gambling, the greater the probability that one will also develop a more severe gambling disorder.”⁶⁸ Men also have higher rates of problem gambling.⁶⁹ Young males are three times as likely as young females to become problem gamblers, and adult males are twice as likely as adult females.⁷⁰ Lastly, several studies in North America have identified minority status as a factor associated with gambling problems.⁷¹

Considering the demographics of the military and studies related to gambling, servicemembers are at a much higher risk than the general population to develop problem gambling and gambling disorder.

⁵²Amy Lutz, *Who Joins the Military?: A Look at Race, Class, and Immigration Status*, 36 J. POL. & MIL. SOC. 167, 184 (2008) (available online at <https://surface.syr.edu/cgi/viewcontent.cgi?article=1002&context=soc>).

⁵³See, e.g., FOOTE, *supra* note 35, at 151 (upper-class men paid a \$300 bounty to avoid the draft during the Civil War).

⁵⁴RESEARCH AND MEASUREMENT ISSUES IN GAMBLING STUDIES 282 (Gary Smith, David C. Hodgins and Robert J. Williams eds., 2007) [hereinafter GAMBLING STUDIES].

⁵⁵*Id.*

⁵⁶See *supra* notes 9–11 and accompanying text.

⁵⁷*Id.*

⁵⁸DOD PERSONNEL REPORT, *supra* note 51.

⁵⁹Active duty officers and reserve component servicemembers were also surveyed and their data was included in separate tables; however, active duty, enlisted servicemembers make up the largest portion of the military and the other groups’ statistics are generally consistent. See *id.*

⁶⁰See *id.* at Table B-15, available online at http://cna7.cna.org/PopRep/2017/appendixb/b_15.html.

⁶¹*Id.*

⁶²*Id.*

⁶³See *id.* at Table B-17, available online at http://cna7.cna.org/PopRep/2017/appendixb/b_17.html.

⁶⁴*Id.* The author did not round up the 49.81% figure for non-Hispanic whites to highlight the fact that minorities make up a slight majority among active duty enlisted servicemembers in the military.

⁶⁵*Id.*

⁶⁶Southerners made up 45% of 18–24 year old’s in the active military despite accounting for only 35% of the U.S. population in the same age group. *Id.* at 7.

⁶⁷GAMBLING STUDIES, *supra* note 54, at 280–82.

⁶⁸*Id.* at 280–81.

⁶⁹*Id.* at 281–82.

⁷⁰*Id.* at 282.

⁷¹*Id.* at 282. See, e.g., Timothy A. Steenbergh et al., *Gambling and Health Risk-Taking Behavior in a Military Sample*, 173 MIL. MED. 452 (2008) (available online at <https://pdfs.semanticscholar.org/89f2/92594a3aab3cd9a4eb0175bd691a7feda6fa.pdf>) (“However, minorities were 1.30 times more likely to be identified as level 2 gamblers and 2.07 times more likely to engage in level 3 gambling. These latter findings support other evidence suggesting that minority group membership is a risk factor for gambling problems.”) (footnotes omitted).

C. Motivation to gamble

Much research has been devoted to identifying why gamblers gamble.⁷² In survey responses, gamblers have identified social facilitation, emotional regulation, fun and excitement, money, social approval, and acceptance as their primary motivations to gamble.⁷³ Based on this research, experts have divided gamblers into two subtypes: overstimulated gamblers and understimulated gamblers.⁷⁴

The overstimulated gambler is a person in an unpleasant emotional state who gambles in order to dissociate from their surroundings.⁷⁵ These types of gamblers are more likely to be attracted to forms of gambling which are fast-paced and require less “skill” such as slot machines and electronic gaming.⁷⁶ Servicemembers experience overstimulation in a variety of ways that civilians do not. Military culture is very formal and routinely involves communication styles that would seem extremely confrontational in a civilian workplace. For example, a lower enlisted soldier may be accosted by a noncommissioned officer for failing to salute the American flag at the sounding of Reveille or Retreat.⁷⁷

Servicemembers are also more transient than civilians; they may be reassigned to a different military base every few years or deploy to a foreign country for a year or more. The famous phrase, “hurry up and wait,” also demonstrates the volatile nature of life in the military—irrational urgency followed by extreme boredom. Lastly, military operations themselves may be extremely stressful. Danger, horrific experiences, and austere conditions can have lasting impacts on the psyches of servicemembers, potentially resulting in post-traumatic stress disorder or depression.⁷⁸

In contrast, the understimulated gambler seeks arousal to compensate for a lack of excitement in their environ-

ment.⁷⁹ These types of gamblers are more likely to be attracted to gambling which requires close attention and “skill” such as pari-mutuel wagering and casino table games.⁸⁰ Servicemembers experience understimulation in a variety of unique ways. Servicemembers endure long periods of boredom both waiting in lines and waiting to go home. Additionally, their actual duties may be unstimulating. For example, a soldier’s entire duty day may consist of guarding government property with one other person at an isolated firing range.

Feelings of isolation may also contribute to a servicemember’s desire for more excitement, especially while on a deployment. Friends and family members back home may be in a different time zone and are unavailable to communicate with throughout the day. Also, the Internet at foreign bases may be too slow to stream movies, or there may be no Internet at all. In the modern technology age with cell phones and social media, consider how this might affect young servicemembers’ psyches.

Problem gamblers’ intrinsic personality factors also attribute to their overstimulation or understimulation: arousal and sensation seeking, impulsivity, mood regulation, and dissociation.⁸¹ “By joining the military and potentially putting one’s life at risk, veterans in general may be relatively high on the sensation-seeking dimension. . . .”⁸²

Military members, especially those who are deployed, are clearly subjected to overstimulation and understimulation at extreme levels compared with civilians. Therefore, they are also at a higher risk of developing into problem gamblers.

D. Alcohol and tobacco use

Two other traits associated with problem gamblers are alcohol use and tobacco use.⁸³ Members of the

⁷²See GAMBLING STUDIES, *supra* note 54, at 284.

⁷³*Id.*

⁷⁴*Id.*

⁷⁵*Id.*

⁷⁶*Id.*

⁷⁷*Retreat and Reveille: Pay Your Respects to the Flag*, U.S. ARMY (Aug. 8, 2013), https://www.army.mil/article/108998/retreat_and_reveille_pay_your_respects_to_the_flag. The author wishes to express that this statement is in no way a criticism of how the military handles discipline within its ranks. It is the author’s opinion that the observance of military customs and courtesies is important for both tradition and discipline.

⁷⁸Lisa M. James et al., *Risk-Taking Behaviors and Impulsivity Among Veterans With and Without PTSD and Mild TBI*, 179 MIL. MED. 357 (2014) (available online at <https://academic.oup.com/milmed/article/179/4/357/4160697>).

⁷⁹See GAMBLING STUDIES, *supra* note 54, at 284.

⁸⁰*Id.* Examples of pari-mutuel wagering are sports betting and horse track betting. Examples of casino table games are craps, roulette, blackjack, and poker.

⁸¹*Id.* at 286–90.

⁸²James et al., *supra* note 78, at 361.

⁸³See GAMBLING STUDIES, *supra* note 54, at 269–271.

military use alcohol and tobacco at much higher rates than the general population, and their use is ingrained in the military's culture.⁸⁴ One study found, "[a]mong health-risk behaviors, [sampled Air Force recruits] most commonly reported cigarette smoking (23.5% of the sample), frequent binge drinking (9.5%), and riding with intoxicated drivers (9.0%)."⁸⁵ This same study found that health-risk behaviors were predictive of problem gambling.⁸⁶

III. MILITARY RULES AND REGULATIONS

A. The Articles

The Articles of War were the initial body of rules governing military justice in the United States Army.⁸⁷ The first 69 articles preceded the Declaration of Independence, and 101 articles were adopted in 1806.⁸⁸ Although no article was ever ratified to broadly criminalize gambling, it was seriously considered by the War Department and Senate on at least one occasion: "I think [gambling] should not be tolerated at all, but should be driven out of the Army, as duelling has been, by an article of war placing it in a high category of military crimes."⁸⁹

The United States Navy, on the other hand, was governed by the Articles for the Government of the United States Navy,⁹⁰ and Article 8 directly criminalized gambling "or any other scandalous conduct tending to the destruction of good morals"⁹¹ Both services' articles criminalized the disobeying

of orders.⁹² Hence, when a soldier in the Continental Army disobeyed George Washington's general order prohibiting gambling, he was subject to court-martial and the cat-o'-nine-tails.⁹³

B. The Uniform Code of Military Justice

In 1951, the Uniform Code of Military Justice (UCMJ) succeeded the Articles of War and the Articles for the Government of the United States Navy.⁹⁴ The UCMJ governs criminal offenses across all branches of the military.⁹⁵ The UCMJ does not directly criminalize gambling on its own; however, gambling could be violative of several different articles under certain situations and subject the offender to court-martial, nonjudicial punishment under Article 15, or administrative corrective measures.⁹⁶

Article 134 of the UCMJ is catch-all provision which criminalizes acts disrupting "good order and discipline" or acts which "bring discredit upon the armed forces."⁹⁷ Having an inappropriate relationship, such as gambling with a subordinate, is considered to violate this provision, and the maximum punishment is three months confinement with forfeiture of pay.⁹⁸ However, lower ranking servicemembers are not punishable under this provision, and nothing precludes servicemembers of equal rank from gambling with one another.⁹⁹

"Conduct unbecoming an officer and a gentleman" is punishable under Article 133 of the UCMJ and

⁸⁴Robert M. Bray et al., *Standardized Comparisons of the Use of Alcohol, Drugs, and Cigarettes Among Military Personnel and Civilians*, 81 AM. J. PUB. HEALTH 865, 867–68 (1991) (available online at <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.81.7.865>).

⁸⁵Steenbergh et al., *supra* note 71, at 455.

⁸⁶*Id.* at 457.

⁸⁷*Articles of War (1912–1920)*, LIBRARY OF CONGRESS, https://www.loc.gov/r/r/fid/Military_Law/AW-1912-1920.html (last visited Mar. 20, 2020).

⁸⁸*Id.*

⁸⁹U.S. WAR DEP'T, SEC'Y OF WAR ANN. REP. vol.1, at 305 (1880). *See also* S. 212, 45th Cong., 2d Sess.; S. Rep. No. 262 (Apr. 17, 1878); S. 763, 46th Cong., 2d Sess.; S. Rep. No. 638 (May 18, 1880).

⁹⁰These articles were colloquially known as the "Rocks and Shoals" because one article imposed punishment for running a Navy ship upon rocks or shoals. "Rocks and Shoals," NAVAL HISTORY AND HERITAGE COMMAND (June 22, 2018, 11:02 AM), <https://www.history.navy.mil/browse-by-topic/heritage/customs-and-traditions/rocks-shoals-articles-government-usnavy-redirect.html>.

⁹¹DEP'T OF THE NAVY, ARTICLES FOR THE GOV'T OF THE U.S. NAVY, 1930, art. VIII ¶ 1 (1932) (available online at <https://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/a/articles-government-united-states-navy-1930.html>).

⁹²*Id.* at art. IV ¶ 2. CONT'L ARMY, ARTICLES OF WAR, 1775, art. VII (available online at <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/timeline/amrev/contarmy/articles.html>).

⁹³*See discussion supra* accompanying notes 12 to 14.

⁹⁴*Articles of War, supra* note 87. Interestingly, the Uniform Code of Military Justice (UCMJ) went into effect the same year as the Anti-Slot Machine Act. 15 U.S.C. § 1175 (2020).

⁹⁵*Articles of War, supra* note 87. 10 U.S.C. § 802 (2020).

⁹⁶*See generally* 10 U.S.C. §§ 877–934 (2020).

⁹⁷10 U.S.C. § 934 (2020).

⁹⁸DEP'T OF DEF., MANUAL FOR COURTS-MARTIAL UNITED STATES, 103.e., Appendix 12-7 (2019 ed.) (available online at [https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20\(Final\)%20\(20190108\).pdf?ver=2019-01-11-115724-610](https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20(Final)%20(20190108).pdf?ver=2019-01-11-115724-610)) [hereinafter MCM].

⁹⁹*See, e.g.,* United States v. Burgin, 30 C.M.R. 525, (A.B.R. 1961); United States v. Villiados, 32 C.M.R. 561 (A.B.R. 1962).

applies only to commissioned officers and cadets.¹⁰⁰ Additionally, this provision covers conduct not only in an officer's official capacity, but also conduct in their private capacity.¹⁰¹ "There are certain *moral* attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty, unfair dealing, *indecenty*, *indecorum*, lawlessness, injustice, or cruelty."¹⁰² The maximum punishment for this violation is confinement up to a year or dismissal from the military.¹⁰³ Examples of this type of act include cheating on a test or being disorderly in public.¹⁰⁴ Excessive or problem gambling is not explicitly included in the examples of Article 133 conduct, but an officer who gambles with a subordinate is subject to punishment under Article 133, in addition to punishment under Article 134.¹⁰⁵ Therefore, there are scenarios in which problem gambling could hypothetically lead to court-martial under Article 133.

Considering the seriousness of court-martials and the time involved, it is highly unlikely that a servicemember would face court-martial solely for an offense related to gambling with a slot machine. However, this issue often comes up in instances where servicemembers write bad checks in order to play slot machines on base and are court-martialed.¹⁰⁶ Historically, courts held that failure to pay gambling debts was not criminal conduct. Because gambling was considered immoral and against public policy, courts were unwilling to enforce gambling debts and find servicemembers' conduct "dishonorable" under Article 134.¹⁰⁷ This was called the "gambler's defense," but the defense was subse-

quently overruled with shifting attitudes towards the morality of gambling.¹⁰⁸ Ironically, by holding that gambling is no longer against public policy and overruling the gambler's defense, a servicemember who writes bad checks to play slot machines is more likely to be court-martialed.¹⁰⁹

Disobeying lawful orders or regulations is punishable under Article 92 of the UCMJ and the maximum punishment includes dishonorable discharge, confinement up to two years, and forfeiture of all pay and allowances.¹¹⁰ If a servicemember falls under an order forbidding gambling, then they may be subject to court-martial under this Article for gambling with another servicemember.

In lieu of court-martial, military commanders may nonjudicially punish their subordinates for "minor offenses" with wide discretion under Article 15.¹¹¹ "Nonjudicial punishment provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in Servicemembers without the stigma of a court-martial conviction."¹¹² Punishments under Article 15 include, but are not limited to, reduction in rank, forfeiture of pay, and the performance of extra duties.¹¹³

Although not included within the UCMJ, commanders may also utilize "administrative corrective measures" to "promote efficiency and good order and discipline such as *counseling*, admonitions, reprimands, exhortations, disapprovals, criticisms, censures, reproofs, rebukes, extra military instruction, and *administrative withholding of privileges*."¹¹⁴

¹⁰⁰10 U.S.C. § 933 (2020).

¹⁰¹MCM, *supra* note 98, at IV-134, IV-135.

¹⁰²*Id.* at IV-135 (emphasis added).

¹⁰³*Id.*

¹⁰⁴*Id.*

¹⁰⁵*Id.* at IV-147.

¹⁰⁶*See* United States v. Wallace, 15 C.M.A. 650 (1966) 1966 WL 4432 (CMA) (Army major wrote bad checks to play slot machines at the base officers' club in Germany); Owings v. Sec'y of the Air Force, 298 F. Supp. 849 (D.D.C. 1969) (Air Force staff sergeant wrote bad checks to cover gambling debts accumulated playing slot machines at the base NCO club in Japan). *Contra* United States v. Eatmon, 49 M.J. 273 (C.A.A.F. 1998) (trial court did not err by not extending gambler's defense to appellant because she circumvented club protocols to cash her bad checks). *See also* Dew v. United States, 48 M.J. 639 (A. Ct. Crim. App. 1998) (trial court did not err in accepting the guilty plea of an Army Master Sergeant who used bad checks to gamble with slot machines at a NCO club in Panama); United States v. Ewing, 50 M.J. 622 (A.F. Ct. Crim. App. 1998) (gambler's defense did not apply to airman who cashed bad checks at Las Vegas Casinos because the checks were

cashied for currency which in turn had to be converted into instruments to facilitate gambling).

¹⁰⁷Wallace, 15 C.M.A. 650. Making and uttering checks is criminalized on its own under Article 123, but the gambler's defense was extended to that Article as well, at times. 10 U.S.C. § 923a (2020). *See* United States v. Falcon, 65 M.J. 386 (C.A.A.F. 2008).

¹⁰⁸Falcon, 65 M.J. 386. ("In this environment, when the military allows gambling at service clubs around the globe, it is inconsistent for this court to continue to classify legal gambling as being against public policy.")

¹⁰⁹*See id.*

¹¹⁰MCM, *supra* note 98, at IV-27, IV-28. 10 U.S.C. § 892 (2020).

¹¹¹10 U.S.C.A. § 815 (2020).

¹¹²MCM, *supra* note 98, at V-1.

¹¹³*Id.* at V-4, V-5.

¹¹⁴*Id.* at V-2.

“Formal counseling” is a documentary process in the military which allows commanders to warn servicemembers following negative events and create a paper trail of infractions.¹¹⁵ A military commander has clear authority to counsel servicemembers and withhold their gambling privileges, assuming gambling is not already forbidden by an order or regulation.

C. Orders and regulations

Servicemembers fall under a variety of different orders and regulations; examples include branch, post, and unit regulations. For example, it is not uncommon for military bases to “blacklist” certain off-post establishments and ban servicemembers from visiting them.¹¹⁶ In addition to verbal orders, a unit commander may also publish a memorandum which prohibits certain activities by his or her subordinates.¹¹⁷

Army, Navy, Air Force, and Marine Corps regulations may also prohibit certain activities by servicemembers. Navy regulations state that no person will gamble “with playing cards, dice, internet web sites, or other apparatus or methods on board naval units.”¹¹⁸ Therefore, sailors are prohibited from gambling aboard ships. The DOD must also comply with the Code of Federal Regulations: “While on Government-owned or leased property or while on duty for the Government, an employee shall not conduct, or participate in, any gambling activity including the operation of a gambling device, conducting a lottery or pool, a game for money or property, or selling or purchasing a numbers slip or ticket.”¹¹⁹ Under this regulation, gambling is prohibited on military bases in the United States; however, the military does interpret “Government-owned or leased property” to include

overseas bases which are operated under a Status of Forces Agreement (SOFA) with the host nation.¹²⁰

“SOFAs are multilateral or bilateral agreements that generally establish the framework under which U.S. military personnel operate in a foreign country and how domestic laws of the foreign jurisdiction apply toward U.S. personnel in that country.”¹²¹ If the laws of a host nation forbid gambling, then gambling is not authorized on U.S. military bases within that country.¹²² For example, gambling is not authorized on military bases in Kuwait because that nation’s laws prohibit gambling under Sharia law.¹²³

IV. SLOT MACHINES ON MILITARY BASES

Recall that slot machines are prohibited within the “special maritime and territorial jurisdiction of the United States” by the Anti-Slot Machine Act.¹²⁴ Despite this language, which seemingly prohibits slot machines on foreign military bases, the DOD currently operates thousands.¹²⁵ This practice contradicts an opinion given by the DOD’s legal counsel when posed with the question of whether slot machines at Guantanamo Bay violated the Anti-Slot Machine Act:

Section 5 of the Anti-Slot Machine Act, 15 U.S.C. § 1175, prohibits the installation or operation of slot machines on any land where the United States government exercises exclusive or concurrent jurisdiction, including military bases outside the United States. This interpretation of the plain words of § 1175 finds support in its legislative history, which reveals that Congress intended it not only to assist the states in

¹¹⁵ *E.g.*, DEP’T OF THE ARMY, THE COUNSELING PROCESS, ATP 6-22.1 1–2, 2–8 (2014).

¹¹⁶ *E.g.*, *Off-Limits Locations*, FORT BENNING: U.S. ARMY FORT BENNING AND THE MANEUVER CENTER OF EXCELLENCE, <https://www.benning.army.mil/MCoE/Newcomers/Off-Limits.html> (last visited Mar. 19, 2020).

¹¹⁷ *See* DEP’T OF THE ARMY, PREPARING AND MANAGING CORRESPONDENCE, AR 25-30, 29-30 (2002).

¹¹⁸ DEP’T OF THE NAVY, OPNAV INSTRUCTION 3120.32D ¶ 5.1.9(a) (2012).

¹¹⁹ 5 C.F.R. § 735.201 (2020).

¹²⁰ *See* OpJAGAF 2019/20, Opinion Letter on Gaming Devices on Military Installations Located in the United States (Apr. 30, 2019), available online at <https://www.afjag.af.mil/LinkClick.aspx?fileticket=hyNz-fAeQPA%3D&portalid=77>.

¹²¹ R. CHUCK MASON, CONG. RESEARCH SERV., RL34531, STATUS OF FORCES AGREEMENT (SOFA): WHAT IS IT, AND HOW HAS IT BEEN UTILIZED? 4–5 (2012) (“Under the shared jurisdiction framework, each of the respective countries is provided exclusive jurisdiction in specific circumstances, generally when an offense is only

punishable by one of the country’s laws. In that case, the country whose law has been offended has exclusive jurisdiction over the offender. When the offense violates the laws of both countries, concurrent jurisdiction is present and additional qualifications are used to determine which country will be allowed to assert jurisdiction over the offender.”) (footnotes omitted), available online at <https://fas.org/sgp/crs/natsec/RL34531.pdf>.

¹²² DOD SLOTS REPORT, *supra* note 39, at 4.

¹²³ Although Morale, Welfare, and Recreation (MWR) locations in these countries are allowed to operate “casino” style games for prizes as long as servicemembers give no consideration to play, *see Welcome Packet*, AREA SUPPORT GROUP-KUWAIT 7, 23 (2017), <https://www.usarcent.army.mil/Portals/1/Units/ASG%20Kuwait/Kuwait%20Welcome%20Packet.pdf?ver=2017-06-13-223518-033> (last visited Mar. 20, 2020).

¹²⁴ *Supra* note 40 and accompanying text.

¹²⁵ GAO MILITARY GAMBLING REPORT, *supra* note 9, at 31.

enforcing their anti-slot machine laws, but also to establish a uniform federal policy against the use of such gambling devices in areas under federal jurisdiction.¹²⁶

The congressmen who debated the Anti-Slot Machine Act were aware that foreign military bases possessed slot machines, and one congressman proposed, unsuccessfully, amending the Act to create an exception for social clubs on military bases.¹²⁷

In 2016, the DOD operated 3,141 slot machines in ten different countries.¹²⁸ The countries with the most slot machines were Japan, Germany, and South Korea with 1,159, 782, and 599 respectively.¹²⁹ These machines have generated, on average, over \$100,000,000 *per year* for the MWR (Morale, Welfare, and Recreation).¹³⁰

As the name implies, the MWR is a military organization which is responsible for providing recreation and other morale-boosting opportunities for servicemembers.¹³¹ Slot machines are generally operated within bowling alleys and recreational clubs on military installations.¹³² The revenues are split between the installations' MWR funds and the military branches' MWR funds.¹³³ The stated uses of slot machine funds include capital purchases of equipment and vehicles, facility repairs and construction, and entertainment for servicemembers.¹³⁴

The machines belonging to the Army, Navy, and Marine Corps are jointly operated by the Army Re-

creation Machine Program, and those belonging to the Air Force are operated by the Air Force Gaming Program.¹³⁵ The slot machines are nickel and quarter machines, and they average a 92.5% payout, considerably higher than the 75% minimum payout for machines in Las Vegas.¹³⁶ For an average year with \$100,000,000 in revenue, this would mean that servicemembers actually gambled over \$1,333,333,333.¹³⁷

In 2014, over 171,000 servicemembers and DOD civilian employees were stationed in countries with slot machines on at least one base within that country, and they lost approximately \$573 per person.¹³⁸ For comparison, in the same year, the average American civilian lost \$505 from gambling.¹³⁹ This represents 13.4% more gambling loss, despite the much higher payout settings on DOD slot machines and the many more different gambling opportunities available in the United States.

Naturally, with so much money being collected, the potential for fraud and abuse is elevated. To reduce risk, the DOD maintains control measures which are comparable to those utilized in casinos.¹⁴⁰ Like a casino, the MWR maintains a "cash cage" in its facilities where patrons can exchange their currency for coins to be used in the machines.¹⁴¹ In one recent instance, the control measures prevented an MWR employee's attempts to steal nearly \$100,000 from a cash cage in Japan.¹⁴²

¹²⁶U.S. Dep't of Def., Gen. Couns., Opinion Letter on Installation of Slot Machines on U.S. Naval Base, Guantanamo Bay 236 (Mar. 29, 1982), available online at <https://www.justice.gov/file/23016/download>.

¹²⁷*Id.* at 241–42.

¹²⁸See GAO MILITARY GAMBLING REPORT, *supra* note 9, at 31. Diego Garcia and the Azores are not independent countries.

¹²⁹*Id.*

¹³⁰See *id.* at 32–33.

¹³¹DEP'T OF THE ARMY, MORALE, WELFARE, AND RECREATION, AR 215-1, 1-10 (2010). This is similar to the mission of the United Services Organizations (USO), which is a private organization that precedes the MWR. *The Organization*, USO, <https://www.uso.org/about> (last visited Mar. 20, 2020).

¹³²GAO MILITARY GAMBLING REPORT, *supra* note 9, at 31.

¹³³DOD SLOTS REPORT, *supra* note 39, at 8–9.

¹³⁴*Id.*

¹³⁵GAO MILITARY GAMBLING REPORT, *supra* note 9, at 32.

¹³⁶DOD SLOTS REPORT, *supra* note 39, at 4. NEV. GAMING REG. 14.040 (1)(a) (2020).

¹³⁷\$100,000,000 divided by .075.

¹³⁸Military and Civilian Personnel by Service/Agency by State/Country (Updated Quarterly), DEP'T OF DEF., DEF. MANPOWER DATA CTR., https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp (follow "December 2014" hyperlink). This does not include the servicemembers stationed on the Azores and Diego Garcia due to the DOD not including those separate statistics within its report. However, those two locations represent a very small portion of the DOD slot machine revenue and likely would not change the calculation significantly. The numerator in this calculation is \$98,100,000 and is derived from the DOD's slot machine revenue in 2014. GAO MILITARY GAMBLING REPORT, *supra* note 9, at 33.

¹³⁹*Global Gambling Industry in Recent Years*, CASINO.ORG, <https://www.casino.org/gambling-statistics/> (scroll down to subheading, "Who's Doing Worst?") ("Americans are a distant third on \$505.44 per capita . . .") (last visited Mar. 20, 2020).

¹⁴⁰DOD SLOTS REPORT at 9–10.

¹⁴¹*Id.* *Former Cashier for U.S. Navy Morale Welfare and Recreation Center in Japan Pleads Guilty to Theft of Nearly \$100,000*, U.S. ATTY'S OFF. W.D. MO., (Aug. 22, 2017), <https://www.justice.gov/usao-wdmo/pr/former-cashier-us-navy-morale-welfare-and-recreation-center-japan-pleads-guilty-theft>.

¹⁴²*Id.*

Lastly, another important aspect of slot machine gambling on military bases is that servicemembers must only be 18 years of age or older to gamble.¹⁴³ This policy gives young servicemembers the opportunity to gamble for the first time in their lives.

V. CONGRESSIONAL ACTION

While serving on the Senate Armed Services Committee, Senator Elizabeth Warren spearheaded an effort to address problem gambling in the military.¹⁴⁴ In 2017, the Government Accountability Office (GAO) issued a report: *DOD and the Coast Guard Need to Screen for Gambling Disorder Addiction and Update Guidance*.¹⁴⁵ In creating this report, the GAO investigated the DOD to determine the prevalence of gambling disorder among servicemembers and how it is addressed.¹⁴⁶ Additionally, the GAO researched slot machines on military bases.¹⁴⁷

The DOD concluded that the prevalence of gambling disorder among servicemembers was low because an average of only 117 servicemembers per year entered the Military Health System due to gambling.¹⁴⁸ The GAO found that external research on the subject provided context but was not directly comparable with DOD data, due to differing methodologies.¹⁴⁹ Accordingly, the GAO recommended the DOD “incorporate gambling disorder questions in a systematic screening process” during servicemembers’ annual health check-up, called the Periodic Health Assessment (PHA).¹⁵⁰ Additionally, the GAO found that the DOD did not address gambling disorder like it addressed other addictive disorders such as sub-

stance abuse.¹⁵¹ The GAO recommended that all military branches update their regulations to include gambling disorder so that nonmedical personnel would have clear guidance.¹⁵²

The DOD agreed with the recommendation to update branch regulations;¹⁵³ however, the DOD disagreed with the recommendation to screen for gambling disorder in the PHA.¹⁵⁴ A bipartisan contingent of senators then introduced the Gambling Addiction Prevention Act of 2018 “[t]o require policies and programs to research, prevent, and address the harmful consequences of gambling disorder among members of the Armed Forces and their dependents, and for other purposes.”¹⁵⁵ The crux of this Act was included in the John S. McCain National Defense Authorization Act For Fiscal Year 2019 which mandated that the DOD screen for gambling disorder in the next year of PHAs and report to Congress.¹⁵⁶

To comply, the DOD recently issued guidance for healthcare providers at PHAs to administer “the 3-question Brief Biosocial Gambling Screen.”¹⁵⁷ Servicemembers typically meet with a healthcare provider at the end of the PHA process, after completing different health examinations.¹⁵⁸ Healthcare providers question servicemembers concerning a variety of potential health and behavioral issues, such as substance abuse and suicidal thoughts.¹⁵⁹ The 3-question Brief Biosocial Gambling Screen probes servicemembers to uncover potential gambling disorder in the past 12 months.¹⁶⁰

In addition, military branches have begun updating their regulations to include gambling disorder.¹⁶¹ The Air Force also recently updated its regulations

¹⁴³DOD SLOTS REPORT, *supra* note 39, at 12.

¹⁴⁴See Preventing and Treating Gambling Disorder in the Military Act of 2017, S. 1439, 115th Cong. (2017) (sponsored by Senator Warren); Gambling Addiction Prevention Act, S. 2841, 115th Cong. (2018) (sponsored by Senator Warren).

¹⁴⁵GAO MILITARY GAMBLING REPORT, *supra* note 9.

¹⁴⁶*Id.*

¹⁴⁷*Id.* at 31.

¹⁴⁸*Id.* at 9–10 (representing only .03% of all servicemembers).

¹⁴⁹*Id.* at 9–15.

¹⁵⁰*Id.* at 15.

¹⁵¹*Id.* at 20.

¹⁵²*Id.* at 49–52.

¹⁵³*Id.* See also National Defense Authorization Act for Fiscal Year 2020, H.R. 2500, 116th Cong. § 740 (2019).

¹⁵⁴GAO MILITARY GAMBLING REPORT, *supra* note 9, at 49–52. The DOD maintained its position that gambling disorder was a very uncommon problem in the military and that the related costs of incorporating a gambling screen into the PHA was unnecessary. *Id.*

¹⁵⁵See Gambling Addiction Prevention Act, S. 2841, 115th Cong. (2018); Gambling Addiction Prevention Act, H.R. 3658, 116th Cong. (2019).

¹⁵⁶John S. McCain National Defense Authorization Act For Fiscal Year 2019, Pub. L. No. 115-232 § 733 (2018).

¹⁵⁷DEF. HEALTH AGENCY, INCLUSION OF GAMBLING DISORDER ON THE PERIODIC HEALTH ASSESSMENT (PHA), DHA PI 6200.07 (Dec. 20, 2019).

¹⁵⁸*Periodic Health Assessment*, MIL. HEALTH SYS., <https://health.mil/Military-Health-Topics/Health-Readiness/Reserve-Health-Readiness-Program/Our-Services/PHA> (last visited Mar. 20, 2020).

¹⁵⁹*Id.*

¹⁶⁰DHA PI 6200.07.

¹⁶¹E.g., DEP’T OF THE A.F., ALCOHOL AND DRUG ABUSE PREVENTION AND TREATMENT (ADAPT) PROGRAM, A.F. INSTRUCTION 44-121 ¶ 3.3 (2018) (“The Air Force

pertaining to the Air Force Gaming Program which operates the Air Force's overseas slot machines:

Controlling access to machines, limiting the amounts of money played, and limiting potential winnings helps reduce the risk of excessive and unaffordable participation. This publication provides guidance to the field regarding these controls, and instruction for identifying and referring individuals with potential gambling abuse issues for help which must be followed.¹⁶²

This instruction forbids advertising and slot tournaments which incentivize the use of slot machines.¹⁶³ Additionally, it requires MWR staff to notify servicemembers' leadership if they gamble excessively.¹⁶⁴ Lastly, it directs installation commanders to suspend or terminate slot machine privileges for those exhibiting problem gambling.¹⁶⁵ The Army has yet to update its regulations for gambling disorder or the Army Recreation Machine Program.¹⁶⁶

VI. ARGUMENT: THE MILITARY SHOULD REMOVE ITS SLOT MACHINES

Recent actions to address gambling disorder in the military are steps in the right direction; however, for legal, historical, and policy reasons, the military should remove its slot machines and put an end to sponsored gambling among its servicemembers.¹⁶⁷ Including gambling disorder in regulations and asking three questions about gambling disorder at servicemembers' PHA is a nominal solution to a problem which, in many instances, could be prevented altogether.

A. The law supports a ban of slot machines

The Anti-Slot Machine Act clearly bans gambling devices on "lands reserved or acquired for the use of the United States, and under the exclusive or *concurrent jurisdiction*"¹⁶⁸ Even if the Act's text was not clear, the legislative record also supports a ban. Congress's intent was to forbid "one-armed bandits" on all government lands, including foreign military bases.¹⁶⁹ Congressmen debated the existence of slot machines on military bases, and one congressman even introduced an amendment to except military bases from the Act:

[A] prohibition against the use or possession of slot machines in all phases on land reserved or acquired for the use of the United States, *which includes, of course, Army camps, Navy camps, and Marine camps*. It is common knowledge to anyone who has in any way been connected with the Armed Forces that your clubs are operated by the money received from slot machines. . . . I am just as opposed to gambling as anyone, but if a soldier can *get his mind off of the horrors of war* and still have *what little money he may lose* used for his own enjoyment to equip the club, the matter is somewhat reconciled.¹⁷⁰

The amendment failed and the Act was passed to include military bases. Today, servicemembers play slot machines in countries which are far from the front lines, such as Germany, and lose millions of dollars every year, so the congressman's argument is even weaker with respect to the modern practice.

The prohibition of gambling on "Government-owned or leased property" under the Code of Federal

recognizes that addiction diagnoses such as Gambling Disorder and other non-substance addictions are problematic, may impact readiness, and should be treated as a mental health concern."); DEP'T OF THE NAVY, MARINE CORPS SUBSTANCE ABUSE PROGRAM, MARINE CORPS ORD. 5300.17A Refs & Annos 2(h) (2018) ("SACC Counselors assess all Marines referred for SACC services for gambling disorder and provide gambling disorder counseling services, as appropriate."). The Navy included gambling disorder within a financial rather than medical regulation. DEP'T OF THE NAVY, U.S. NAVY PERS. FIN. MGMT. PROGRAM, OPNAV INSTRUCTION 1740.5D, 9 (2017) ("Gambling disorder has been identified by the medical community as an addiction similar to drug or alcohol use. Gambling disorder can also develop in conjunction with other addictions. . . . [I]ndividuals with a suspected gambling disorder must be referred to a military treatment facility for evaluation.").

¹⁶² DEP'T OF THE A.F., A.F. GAMING PROGRAM, A.F. INSTRUCTION 34-148 ¶ 3.4 (2018).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See DEP'T OF THE ARMY, THE ARMY SUBSTANCE ABUSE PROGRAM, AR 600-85 (2016); DEP'T OF THE ARMY, ARMY RECREATION MACHINE PROGRAM, AR 215-1 ¶ 8-8 (2010).

¹⁶⁷ A bill to this effect was introduced in the House of Representatives in 2007, and it proposed an explicit ban of gambling devices on DOD property. See Warrant Officer Aaron Walsh Stop DOD-Sponsored Gambling Act, H.R. 4497, 110th Cong. (2007).

¹⁶⁸ 18 U.S.C. § 7 (2020) provides the definition for "special maritime and territorial jurisdiction of the United States" within the Anti-Slot Machine Act. 15 U.S.C. § 1175 (2020).

¹⁶⁹ See U.S. Dep't of Def., Gen. Couns., Opinion Letter on Installation of Slot Machines on U.S. Naval Base, Guantanamo Bay 238-42 (Mar. 29, 1982) (quoting 96 CONG. REC. 15,108 (1950).), available online at <https://www.justice.gov/file/23016/download>.

¹⁷⁰ See *id.* (quoting 96 CONG. REC. 13,651 (1950)).

Regulations also indicates that the DOD should not sponsor gambling activities for servicemembers on foreign bases.¹⁷¹ It is inconsistent for the military, on one hand, to have an absolute gambling ban on properties in the U.S., but on the other hand, to *facilitate* gambling on select foreign properties—as long as they do not have local laws prohibiting gambling. Rather than skirting around both U.S. and foreign laws, the DOD should have one uniform ban.

Lastly, the UCMJ does not support gambling in the military. Although there is no explicit prohibition of gambling in the Code, it is targeted as an activity which is immoral and erodes military discipline. Again, it is inconsistent for the military to discourage gambling in some situations but profit from it in others. Undoubtedly, were it not for Article 134's prohibition against servicemembers of different ranks gambling with one another, some foreign bases would attempt to have table games in addition to slot machines.

B. History supports a ban of slot machines

The historical policy in the military of having an absolute gambling prohibition should not have been abandoned. Although, societally, gambling has become more prevalent in recent years, it was also prevalent at different points in history while still being prohibited in the military. George Washington, the first commander in chief and a peace-time gambler himself, realized the dangers of gambling in the military and its negative impacts on soldier discipline.

Gambling negatively impacts military discipline for many different but related reasons. First, the obvious, it has the potential to cause a servicemember to lose his money and subject himself to personal embarrassment. He may be unable to perform his duties adequately or may become depressed and commit suicide. Second, for a servicemember in a

leadership position such as an officer, this may cause his subordinates to doubt his character and judgement. Subordinates may lose their respect for the leader and disregard his commands. Third, “familiarity breeds contempt.”¹⁷² A servicemember of a higher rank might ordinarily refrain from having any type of inappropriate relationship with a servicemember of a lower rank; however, temptation might cause him to gamble and fraternize with lower-ranking servicemembers. The lower-ranking servicemembers may begin to see their superior as an equal. Lastly, a hierarchical organization like the military cannot operate with private debts between its members.

Threats and violence also often accompany gambling in the military; “the gambler’s code enforces the payment of the so-called ‘debts of honor’ with merciless exaction.”¹⁷³ This potential for violence was illustrated in the WW2 sailor’s anecdote of when a sailor won \$400 playing craps and received threats from the losing sailors: “I kid you not there were people there who were capable of murder. . . . [I]f someone turned up missing for several hours, out in a dark ocean, you knew that they sure weren’t going to find any bodies. . . . You were a little careful of who you got crossways with.”¹⁷⁴ Although these harmful effects to discipline are not all present in slot machine gambling, the first two are, and they can significantly impact a military unit’s discipline. Gambling among servicemembers has been a historical issue which can never be completely eradicated from the military, but, just as George Washington dictated in 1776, gambling is still a “vice and immorality” in today’s society which should not be promoted by the military.¹⁷⁵

Two branches of the military have destroyed their slot machines once already, during the Vietnam War, due to fraud and corruption. Today, servicemembers lose millions of dollars annually and at least one MWR employee has recently attempted to keep some of those proceeds for herself. History

¹⁷¹See *supra* notes 119–20 and accompanying text.

¹⁷²DEP’T OF THE ARMY, RELATIONSHIPS BETWEEN SOLDIERS OF DIFFERENT RANK, DA PAMPHLET 600-35 ¶ 1-4 (a) (2000).

¹⁷³U.S. WAR DEP’T, SEC’Y OF WAR ANN. REP. vol.1, at 306 (1880).

¹⁷⁴AKEY, *supra* note 32, at 163.

¹⁷⁵Washington Papers, *supra* note 13.

has shown that the negative aspects of slot machines on military bases outweigh the positive.

C. Policy reasons to ban slot machines

As an organization which relies on maintaining a positive image with the citizenry it defends, the military suffers greatly from a policy of having slot machines. The title “U.S. Military” should elicit positive images, like *Raising the Flag on Iwo Jima* or *Washington Crossing the Delaware*, which instill pride and confidence in the military. Publicized instances of servicemembers gambling away their money and committing suicide tarnish the reputation of the military and dishonor those who served in the past.

Also, slot machines on bases pose a threat to national security. Military units’ readiness may be adversely impacted by discipline issues, suicides, other personnel losses, or compromised security. The DOD itself considers a servicemember’s “compulsive or addictive gambling” in determining whether to grant a security clearance.¹⁷⁶ “Compulsive gambling is a concern as it may lead to financial crimes including espionage.”¹⁷⁷ Professor John Warren Kindt concluded that the military itself gambles with national security by allowing its servicemembers to gamble on base: “In the Twenty-First Century’s Age of Terrorism, the \$127 million in recreational funds generated by the machines were miniscule compared to the larger policy issues involving military readiness.”¹⁷⁸

Supporters of slot machines, including the DOD, might dispute Professor Kindt’s net utility loss argument, citing the low prevalence of gambling disorder among servicemembers. Additionally, they may argue that revenues all go back to the servicemembers, in the form of MWR and base improvements. Also, if servicemembers cannot gamble on base, they will just gamble off base and may engage

in even riskier behavior. Lastly, why should America’s fighting men and women not be allowed to gamble in their free time while citizens back home can?

Historical and empirical evidence demonstrates that servicemembers do gamble more than civilians, and they are twice as likely to develop problem gambling or gambling disorder. The DOD has been accused of whitewashing this issue on more than one occasion.¹⁷⁹

Additionally, the revenue that the MWR collects from slot machines benefits the DOD directly, rather than servicemembers. The claim that the DOD could not otherwise procure those funds to improve MWR programs is misleading, considering it would represent only .00014% of the hundreds of billions of dollars spent by the DOD annually.¹⁸⁰

Also, the claim that servicemembers will just go off base to gamble is irrelevant. Undoubtedly, servicemembers stationed in Europe partake in off-base activities which are immoral or even illegal in the United States, but that does not mean that the military should sponsor those activities on base. Besides, base commanders have the authority to forbid off-base conduct and ban soldiers from patronizing certain establishments.

Lastly, servicemembers are held to a different standard of conduct than most civilians because they are responsible for the nation’s defense. Servicemembers already give up a wide variety of personal liberties when deployed to a foreign base, such as their privacy. The same comparison could be made between a soldier who happens to be stationed in Germany and a soldier who happens to be deployed to Iraq. Why should the soldier in Germany be allowed to play slot machines while the soldier in Iraq cannot? Civilians also have more freedom to disengage from gambling than “personnel trapped on military bases with . . . slot machines.”¹⁸¹ The

¹⁷⁶E.g., DEP’T OF THE ARMY, PERSONNEL SECURITY PROGRAM, AR 380-67 app. 1-8 Guideline F: Financial Considerations (b)(9) (2014).

¹⁷⁷*Id.* at (a).

¹⁷⁸John Warren Kindt, *Gambling with Terrorism and U.S. Military Readiness: Time to Ban Video Gambling Devices on U.S. Military Bases and Facilities?*, 24 N. ILL. U. L. REV. 1, 39 (2003).

¹⁷⁹GAMBLING WITH NATIONAL SECURITY, *supra* note 3, at 1.40 (“[I]t served as an example of another scandalous cover-up of gambling problems among U.S. military personnel.”).

¹⁸⁰\$100,000,000 divided by \$705,400,000,000. *DOD Releases Fiscal Year 2021 Budget Proposal*, U.S. DEP’T OF DEF. (Feb. 10, 2020), <https://www.defense.gov/Newsroom/Releases/Release/Article/2079489/dod-releases-fiscal-year-2021-budget-proposal/>.

¹⁸¹GAMBLING WITH NATIONAL SECURITY, *supra* note 3, at 1.37.

risk to servicemembers is high, and there is no real reward.

CONCLUSION

Until the DOD or Congress bans slot machines, servicemembers will continue to gamble on foreign military bases, and servicemembers will continue to develop problem gambling or gambling disorder. History and science show that service-

members are too susceptible, and laws and regulations already in place, such as the Anti-Slot Machine Act, contradict current policy. The costs to servicemembers, military readiness, and national security far outweigh the benefits of military slot machines, and this cost is exemplified in tragedies like the suicide of Aaron Walsh. The military should heed the words of George Washington and remove this “vice and immorality” from its bases for good.