

The Persistence of Pseudo-Facts in the U.S. Casino Debate: The Case of Massachusetts

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IT IS WIDELY RECOGNIZED in the policy process literature that academic policy research is only *one* input into the policymaking process and, therefore, it is only one of the many sources of information that decision makers take into account when making public policy decisions. Social scientists, legal scholars, and policy analysts, however, are more likely to believe that their research findings and recommendations should command special attention from policymakers because of their scientific or empirical basis. While the findings of academic policy researchers are not infallible, they are generally something more than mere opinion, but in the policymaking arena, academic policy research often appears to the decision maker as simply one more opinion to be processed and weighed in the course of decision making. The public policy arena is always crowded with noisy ideas and chatter, including the views of constituents and clients, heart-rending anecdotes and testimonials, personal letters, testimony to committees and task forces, and the minute-by-minute interpretations of “the chattering class,” i.e., talk radio, headline television, newspaper editorials, and the Internet blogosphere.

In addition, elected government officials frequently rely on internal staff research and staff advice. These staff members may or may not be gen-

uine experts on any particular issue, but they will sometimes seek to protect their own positions by working behind the scenes to exclude or discredit “outsiders” (and their expertise) from the information flow that feeds into the decision-making process. Similarly, organized interest groups and bureaucracies may have a vested interest in the status quo, and these political actors may resist policy change not because of academic research findings, but because they fear that policy change will have an adverse impact on their interests. Finally, preconceived beliefs and ideological assumptions lead many decision makers (and others) to think that they “know” things, because these ideas are widely accepted as “common sense” or “conventional wisdom” and, thus, even intelligent and well-intentioned decision makers may resist new ideas or empirical findings simply because they cut across the grain of what is widely assumed to be true by key decision makers.

Thus, not surprisingly, the major textbooks on applied policy research routinely emphasize the importance of establishing and maintaining regular communication with policymakers in one’s area of expertise, while understanding that the politicized context of policy making does not always make it easy for decision makers to distinguish facts from pseudo-facts. The word “pseudo-fact” does not appear in the most recent edition of *Webster’s Dictionary*,¹ although scholars have occasionally used the term since it was introduced by Robert K. Merton as a warning to policy-oriented scholars that “pseudo-facts have a way of inducing pseudoproblems, which cannot be solved because matters are

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¹ Webster’s II Dictionary Office Edition (3d ed., Houghton Mifflin Co. 2005).

not as they purport to be.”² Pseudo-facts are unsubstantiated or false claims that nevertheless become widely circulated in a policy network and come to be accepted as true by many individuals. Even though experts and scholars may have documented that such statements are false, pseudo-facts continue to be repeated for political purposes and are therefore quoted in the media. Once publicized in the mass media, pseudo-facts continue to circulate among policymakers and the general public and these pseudo-facts become “real” to the extent that they influence decision makers and the wider policymaking process.

There are actually two types of pseudo-facts that get inserted into policy debates: exclusionary pseudo-facts and diversionary pseudo-facts. Exclusionary pseudo-facts generally consist of *ad hominem* attacks on researchers, authors, and organizations, but they also include the generic or rhetorical dismissal of policy research. Exclusionary pseudo-facts raise questions about the motives, independence, or competence of researchers by suggesting that the research methodology is “flawed” or that the results were “bought” by an interested sponsor. The intended political effect of exclusionary pseudo-facts is to *exclude facts* from public discussion that are inconsistent with a policy actor’s entrenched issue position.

Diversionsary pseudo-facts consist of claims that are empirically false, but are publicized as “facts.” In less polite terms, diversionary pseudo-facts might be characterized as lies, except that it is altogether likely that many purveyors of pseudo-facts actually believe them. Thus, by strategically combining the use of exclusionary and diversionary pseudo-facts, policy actors can exclude factual information from a policy debate, while diverting the debate onto pseudo-problems.

This is a particularly frustrating characteristic of policy arenas where some political actors routinely use misinformation as part of a political or public relations strategy or where emotions run so high on an issue that rational fact-based communication becomes increasingly difficult with an approaching decision.³ There is probably no policy venue where this problem is more prevalent and persistent than public debates over expanded gambling and casinos. The use of pseudo-facts is not only prevalent in U.S. casino debates, but pseudo-facts persist and travel from one jurisdiction to another despite the best efforts of academic scholars to dispose of

them.⁴ The ongoing debate over casinos in Massachusetts provides an instructive case study of how both types of pseudo-facts continue to be deployed by anti-casino legislators and activists and how new pseudo-facts spring into existence as old ones lose their effectiveness.

MASSACHUSETTS GOV. DEVAL PATRICK’S CASINO PROPOSAL

On Oct. 11, 2007, Gov. Deval Patrick filed legislation that would have authorized up to three destination resort casinos in the commonwealth of Massachusetts.⁵ In his message to the State Senate and House of Representatives, Gov. Patrick indicated that the primary goal of his proposal was “to spur economic development and job growth throughout the Commonwealth.” He stated that along with other initiatives in the life sciences, renewable energy, education reform, and investment in higher education research facilities, casino legislation was considered “a key component” of his plan to create 100,000 new jobs in the commonwealth.⁶ In the month prior to the governor’s announcement, Massachusetts was one of only four states in the na-

² Robert K. Merton, *Notes on Problem-Finding in Sociology*, in ROBERT K. MERTON, LEONARD BROOM, & LEONARD S. COTTRELL JR., *SOCIOLOGY TODAY: PROBLEMS AND PROSPECTS* xv (Basic Books, Inc. 1959).

³ ANN MAJCHRZAK, *METHODS FOR POLICY RESEARCH* 9–22 (Sage Publications 1984); PETER J. HAAS AND J. FRED SPRINGER, *APPLIED POLICY RESEARCH: CONCEPTS AND CASES* 47–68 (Garland Publishing 1998); EUGENE BARDACH, *A PRACTICAL GUIDE FOR POLICY ANALYSIS* 61–90 (2d ed., Congressional Quarterly Press 2005); CATHERINE E. SMITH, *WRITING PUBLIC POLICY: A PRACTICAL GUIDE TO COMMUNICATING IN THE POLICY-MAKING PROCESS* 1–18 (Oxford University Press 2005).

⁴ See Joseph M. Kelly, *The American Insurance Institute, Like THAT Bunny, Keeps Going and Going and Going . . .*, 1 GAMING L. REV. 209–12 (1997); Kathryn Hashimoto & George G. Fenich, *Does Casino Development Destroy Local Food and Beverage Operations: Development of Casinos in Mississippi*, 7 GAMING L. REV. 101–109 (2003); DOUGLAS M. WALKER, *THE ECONOMICS OF CASINO GAMBLING* 139–64 (Springer-Verlag 2007).

⁵ An Act Establishing and Regulating Resort Casinos in the Commonwealth, available at <http://www.mass.gov/Agov3/docs/Legislation/2007_10_11_resort_casino_bill.pdf> (Oct. 11, 2007).

⁶ Letter from Deval Patrick, Governor, Massachusetts, to the Massachusetts Senate and House of Representatives (Oct. 11, 2007) (on file with authors); Press Release, Mass. Gov. Deval Patrick, Governor Patrick Files Resort Casino Legislation (Oct. 11, 2007) (on file with authors).

tion to still have fewer payroll jobs (-46,000) than at the end of the last recession (November 2001).⁷

The governor's plan called for casinos in Greater Boston, Western Massachusetts, and Southeastern Massachusetts. Casino licenses would be put out to bid in each region with all bidders required to pay a \$350,000 application fee to cover administrative and review costs. Each license was expected to cost a minimum of \$200 million with licenses renewable every 10 years, subject to good behavior and economic performance. Each casino would pay a minimum 27% tax on gross gaming revenues, as well as retail sales, meals, and room occupancy taxes on nongaming operations, along with payroll, corporate income, and local property taxes. The governor's staff estimated that the three casinos would generate at least \$3 billion in new capital investment, generate approximately \$2.05 billion annually in gross gaming revenue,⁸ create 20,000 permanent casino jobs, and produce more than \$400 million annually in net tax revenue (after backfilling an anticipated drop in lottery revenue, which funds local aid). The governor's legislation would have used the new tax revenue to support property tax relief for more than one million homeowners and new infrastructure investment, while providing millions of dollars per year in new property tax revenue for the three host communities (estimated at \$8 million to \$12 million for each host community).

The Patrick legislation also required that licensed casinos be sited only in communities that voted favorably in a binding referendum to host a casino. A further condition for receiving a license was that operators would be required to negotiate local development impact agreements with host communities to defray the costs of municipal infrastructure improvements and increased service costs directly attributable to casino development.⁹ The legislation also set aside about \$50 million annually (2.5% of gross gaming revenue) in a community mitigation trust fund to further assist host and surrounding communities to address the local impacts of casino development on an ongoing basis, while another \$50 million annually (2.5% of gross gaming revenue) was set aside in a public health trust fund to provide treatment and education programs for problem gambling, alcohol and drug abuse. The proposed casinos were also required to cover the full costs of state regulation and enforcement through a special assessment, with regulation and enforcement to be conducted by an independent Gaming Control Au-

thority and a new division of enforcement and investigation in the attorney general's office.

During the 2006 Massachusetts gubernatorial campaign, Patrick remained silent on the casino issue, even though one of his chief rivals for the office, businessman Chris Gabrielli, made the legalization of resort casinos a cornerstone of his campaign to raise new revenue without new taxes. Attorney General Tom Reilly, another candidate for the office, and formerly a staunch opponent of expanded gambling, softened his opposition by signaling he was open to revisiting the issue.¹⁰ Following the election, Patrick stated that he had "serious doubts about the social costs associated with gambling," but he conceded that he had "only heard from opponents [of casino gaming] during last year's gubernatorial campaign." Consequently, at a meeting with municipal leaders in January 2007, he expressed his willingness to meet with pro-gaming legislators and municipal officials and agreed "that gaming must be considered as a serious option to help boost state aid to cities and towns."¹¹ In fact, as the newly elected governor was preparing his first budget, the Lottery Commission announced

⁷ U.S. Bureau of Labor Statistics, State and Area Employment, Hours, and Earnings, available at <<http://data.bls.gov/PDQ/outside.jsp?survey=sm>>. At the time, Massachusetts ranked 48th lowest of the 50 states in net job growth during the current business cycle.

⁸ Gross gaming revenue is the total amount of gaming revenue (win) retained by a casino during a day, month, or year. Gross gaming revenue is the figure most commonly used to determine what a casino, racetrack, lottery, or other gaming operation keeps before taxes, salaries, operating costs, and other expenses are paid by the casino. Gross gaming revenue is the equivalent of "sales" in other industries and should not be confused with "profit." Total revenue consists of gross gaming revenue plus nongaming revenues, including hotel, food and beverage service, retail shops, conference and meeting services, and entertainment venues.

⁹ For examples of such agreements, see Development Agreement By and Between the Town of West Warwick and Narragansett Tribe/Harrah's Casino Project, LLC (draft, Nov. 11, 2006), available at <<http://www.umassd.edu/cfpa/>> and Intergovernmental Agreement By and Between the Mashpee Wampanoag Tribe and the Town of Middleborough, Massachusetts, available at <http://www.middleborough.com/special_town_meeting.htm> (last visited June 16, 2008).

¹⁰ In 1999, Mass. Attorney General Thomas Reilly was "at the forefront of anticasinio forces in Massachusetts[.]" Meg Vailancourt, *Reilly Denounces Casino Gambling*, BOSTON GLOBE, Mar. 17, 1999. In 2001, Reilly had dismissed casino gambling as "bad economic policy[.]" Sean P. Murphy, *Tribe Vows to Press Legislature on Casinos*, BOSTON GLOBE, Dec. 19, 2001.

¹¹ *Mass. Governor Pushes Casino Issue*, CASINO CITY TIMES, Jan. 22, 2007, <<http://www.casinocitytimes.com/news/article.cfm?contentID=163691>>.

that the state's highly successful lottery was facing its first ever year-to-year revenue decline. The lottery is the state's main source of local aid and it was soon reported that Gov. Patrick was "looking hard at casino gambling, but he is hoping to avoid the mistakes of the past."¹²

The "mistakes" of the past consisted of several failed efforts to bring casino or racino gaming to Massachusetts in 1995 (one casino), 1997 (two casinos and four racinos), 1999 (three casinos), 2003 (two casinos and four racinos), and 2006 (four racinos). Despite being a perennial issue in Massachusetts policy debates, the state legislature had never undertaken a serious analysis of the issue and the only executive commission convened in 2003 released its report the day before Acting Gov. Jane Swift left office. Thus, the casino debate in Massachusetts always became rapidly polarized and hyper-emotional as industry lobbyists faced off against anti-casino activists in the state legislature and the mass media with hyperbole and *ad hominem* attacks on both sides.

Gov. Patrick hoped to avoid these "mistakes" by convening a cabinet-level task force on casino gaming that would take "a more comprehensive approach" to the issue. This comprehensive approach would involve a months-long review of existing academic and professional research as well as a review of the impacts of expanded gambling in other political jurisdictions, including interviews with gaming regulators in other states. The new approach would also involve meetings with proponents and opponents of expanded gambling in the state. The task force, led by state Secretary of Economic Development Daniel O'Connell, was charged with delivering its report to the governor by the end of August 2007.¹³ The task force was charged with identifying the pros and cons of expanded gambling, identifying best practices in other jurisdictions, and identifying policy failures or omissions in other jurisdictions. The task force was to review the potential economic and fiscal impacts of different types of gaming, social costs, regulatory and enforcement structures, and potential mitigation measures if the governor was to decide in favor of expanded gambling.

During its six-month review, the task force met with pro- and anti-gaming state legislators, industry executives, race track owners, union officials, academic experts, representatives of the state's two federally-recognized Indian tribes, municipal officials, compulsive gambling advocates, health-care officials, public safety officials, regional planning agencies, and pri-

vate gaming consultants, while collecting gaming-related data from a variety of sources and jurisdictions. Once the task force had completed its review, its source materials and findings were delivered to the governor, who then spent three weeks during an August retreat reviewing the materials and making his decision.

Gov. Patrick announced his proposal for three resort casinos on Sept. 17, 2007. While announcing that casinos would be a "key component" of his plan to create 100,000 new jobs, he also sought to calm the debate by observing that casinos were "neither a 'cure all', nor the end of civilization . . . fundamentally, gaming is a business."¹⁴ The governor's statement was clearly designed to quell the hyperbole on both sides of the issue and to promote an open fact-based public discussion of expanded gambling. Consequently, he repeatedly sought assurances from the speaker of the House, a long-time casino skeptic, for a full and fair hearing on the proposed legislation. The governor also sought to soften opposition to his proposal by acknowledging that there would be social impacts, which he proposed to mitigate with public health and community mitigation funds (5.0% of gross gaming revenue). In fact, the Massachusetts Commission on Compulsive Gambling, which receives \$1 million per year from the State Lottery, voted to remain neutral on the proposed legislation.

Moreover, for the first time in the Massachusetts casino debate, the proposed legislation enjoyed the backing of the State Treasurer Timothy Cahill, who oversees the lottery, the state Attorney General Martha Coakley, and Boston Mayor Thomas Menino. The 450,000 member Massachusetts AFL-CIO spearheaded a pro-casino coalition—the Massachusetts Coalition for Jobs and Growth—that included the Massachusetts Building Trades Council, the Massachusetts Teachers Association, the Massachusetts Latino Chamber of Commerce, and the mayors of several cities.¹⁵ Finally, shortly after the governor announced his plan, a Boston Globe/

¹² Steve Bailey, *Hooked in Mass.*, BOSTON GLOBE, Jan. 24, 2007, at D-01.

¹³ The task force included the state secretaries of public safety, of health and human services, and of administration and finance.

¹⁴ Gov. Deval Patrick, Transcript: Governor Unveils Casino Gaming Plan at 1 (Sept. 17, 2007).

¹⁵ David Kibbe, *Pro-Casino Coalition Widens*, STANDARD-TIMES (New Bedford, Mass.), Feb. 20, 2008, available at <http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20080220/NEWS/8022003_42/-1/SPECIAL35>.

University of New Hampshire poll and a Boston Herald/University of Massachusetts Dartmouth poll both found that Massachusetts residents supported the governor's proposal by a 2-to-1 margin and that popular support was strong across every region of the state and among most demographic groups, whether defined by age, income, sex, or educational attainment.¹⁶

EXCLUSIONARY PSEUDO-FACTS: DISMISSING RESEARCH WITHOUT REFUTATION

Despite strong public support, and a conscious effort to promote a fact-based and civil discussion of the issue, critics instantaneously began shifting the debate away from the governor's economic and fiscal projections through exclusionary pseudo-facts or by engaging in a practice that Doug Walker calls "dismissing research without refutation."¹⁷ Indeed, the day before Gov. Patrick announced his proposal, one highly respected political reporter was already criticizing the governor for justifying "his decision to embrace casinos with the same arguments made by gambling proponents: that licensed casino gambling will create thousands of new jobs, spur growth in travel and tourism, and provide the state with a key stream of new revenue to augment income and sales taxes."¹⁸ The implication was that if the governor used "the same arguments" as gambling proponents then he must have been unduly influenced by industry executives and "biased" pro-casino research. Within two weeks of filing his bill, it was reported that "Governor Deval Patrick's casino proposal has begun to encounter severe turbulence on Beacon Hill," as his jobs and revenue forecasts came "under increasing attack" by key legislators.¹⁹

These accusations led to legislative and media demands that the task force release a copy of its calendar with the names of all individuals and organizations they had met with over the previous six months. When this information was released and the tactic failed to document any glaring "bias" in the task force's meetings, legislative critics then demanded that the governor release copies of all the documents reviewed during his decision-making process. The release of these documents suggested that the governor's economic and financial projections had drawn substantially, though far from exclusively, on work produced by the University of Massachusetts Dartmouth Center for Policy Analysis.²⁰

This research found that Massachusetts residents account for approximately 36 percent of the total annual visits to Foxwoods, 21 percent of total visits to Mohegan Sun, 42 percent of total visits to Twin River, and 43 percent of total visits to Newport Grand (see table 1).²¹ In addition telephone survey research conducted by the Center for Policy

¹⁶ Andrea Estes, *53% in Poll Back Patrick Casinos Plan, But Survey Shows Strong Concerns Over Proposed Locations*, BOSTON GLOBE, Sept. 30, 2007, available at <http://www.boston.com/news/local/massachusetts/articles/2007/09/30/53_in_poll_back_patrick_casinos_plan/>; Scott Van Voorhis, *Mass: Bring on Casinos; poll says majority of residents in favor of gov's plan*, BOSTON HERALD, Oct. 5, 2007, at 19–20.

¹⁷ WALKER, *supra* note 4, at 146–48.

¹⁸ Frank Phillips, *Patrick to Offer 3-Casino Plan*, BOSTON GLOBE, Sept. 16, 2007, available at <http://www.boston.com/news/local/massachusetts/articles/2007/09/16/patrick_to_offer_3_casino_plan/>.

¹⁹ Matt Viser & Andrea Estes, *Casino Proposal Hits a Rough Patch: Governor is Facing Skeptical Legislators*, BOSTON GLOBE, Oct. 18, 2007, available at <http://www.boston.com/news/local/massachusetts/articles/2007/10/18/casino_proposal_hits_a_rough_patch/>.

²⁰ Clyde W. Barrow, *Maximum Bet: A Preliminary Blueprint for Casino Gaming & Economic Development in Massachusetts* (Center for Policy Analysis, Aug. 2007), available at <<http://www.umassd.edu/cfpa/gaming.cfm>>. See also Holly Angelo, *Expert Outlines Casino 'Blueprint'*, SPRINGFIELD REPUBLICAN, Aug. 27, 2007, available at <http://www.masslive.com/news/index.ssf/2007/08/expert_outlines_casino_blueprint.html>.

²¹ Clyde W. Barrow, *New England Casino Gaming Update 2008* (Center for Policy Analysis, Mar. 2008), available at <http://www.umassd.edu/cfpa/docs/gaming_update_2008.pdf>. The methodology employed in the patron origin analysis has been validated by academic peer review and published by Jeffrey Dense & Clyde W. Barrow, *Estimating Casino Expenditures by Out of State Patrons: Native American Gaming in Connecticut*, 41 J. TRAVEL RES. 410–15 (2003). Findings generated by this methodology have been cited as authoritative by regional economists at the University of Connecticut, see Arthur W. Wright, *As the Wheel of Fortune Turns: Casinos Revisited*, THE CONNECTICUT ECONOMY: A UNIVERSITY OF CONNECTICUT QUARTERLY REVIEW, Sept. 2006, at 8–11, and by research economists at the Federal Reserve Bank of Boston, see Memorandum from Heather Brome, Policy Analyst, Federal Reserve Bank of Boston, re Economic impact of casino development, (Sept. 14, 2006), available at <<http://www.bos.frb.org/economic/neppc/memos/2006/brome091406.pdf>>. The University of Connecticut Center for Economic Analysis also conducted a patron intercept survey at Foxwoods from September 7 to 13, 1999, with 496 respondents. Fred Carstensen, William Lott, Stan McMillen, Bobur Alimov, Na Li Dawson, & Tapas Ray, *The Economic Impact of the Mashantucket Pequot Tribal Nation Operations in Connecticut* (University of Connecticut Center for Economic Analysis 2000). The UCCEA survey found that 33% of Foxwoods patrons lived in Massachusetts, 27.5% in Connecticut, 17.2% in Rhode Island, 2.6% in New Hampshire, 1.8% in Maine, 0.8% in Vermont, 9.2% in New York, and 2.0% in New Jersey, and 5.5% in other states.

Analysis in October 2006 confirmed these estimates and found that Massachusetts residents made approximately 6.9 million visits to Foxwoods and Mohegan Sun in 2006 and another 722,000 visits to Twin River and Newport Grand in the same year.²² It was estimated that Massachusetts residents annually spend about \$1.1 billion at Connecticut's and Rhode Island's gaming facilities,²³ while the gaming and nongaming expenditures by Massachusetts residents in Connecticut and Rhode Island directly underwrite about 6,500 hospitality jobs in those two states and indirectly contribute more than \$220 million annually to the two states' general treasuries (see table 1). It was estimated that in addition to the potential to recapture a significant share of this revenue, there was still approximately \$1.5 billion in unmet casino gaming demand in New England depending on the types and locations of new facilities. Moreover, another well-respected industry expert pointed out that this and the governor's estimates were quite conservative, because they were based on a policy of limited market entry.²⁴

While these research findings and the underlying methodology had been extensively peer reviewed, a leading anti-casino legislator dismissed the findings as "pro-casino data" simply for pointing out that Massachusetts residents gamble at out-of-state casinos.²⁵ Rep. Daniel Bosley (D-North Adams), who co-chairs the Joint Committee on Economic Development and Emerging Technologies, has co-chaired the House committee that oversees casino legislation in Massachusetts, since it was first introduced and defeated in the state in 1995. In a 1997 "Con-

fidential Memorandum" to former Speaker of the House Thomas Finneran, Rep. Bosley stated that his skepticism about casino gaming was based on "feelings . . . just a gut feeling I possess about the entire industry."²⁶ In the same memorandum, he complains about the "lack of independent research" on casino gambling and therefore insists that "we need to rely on anecdotal evidence where available."²⁷ Yet, during the 10 years that this committee has overseen multiple casino and racino bills, the committee has never sought to sponsor what it might consider an "independent study." Instead, the lead-

²² Clyde W. Barrow, *Taking the Gamble III: Who Gambles at Connecticut's Casino?* (Center for Policy Analysis 2007) and Clyde W. Barrow, *Taking the Gamble IV: Who Gambles at Rhode Island's Two Racinos?* (Center for Policy Analysis 2007). The 2d New England Gaming Behavior Survey was conducted from Sept. 29, 2006, to Nov. 2, 2006, using a survey instrument developed by the Center for Policy Analysis. A total of 1,041 telephone interviews of Massachusetts residents were conducted for a margin of error of $\pm 3.1\%$. See Center for Policy Analysis, New England Gaming Research Project Reports, <http://www.umassd.edu/cfpa/gaming_reports.cfm>, for additional results of the survey.

²³ Clyde W. Barrow, *New England Casino Gaming Update, 2007* (Center for Policy Analysis, Mar. 2007), available at <http://www.umassd.edu/cfpa/docs/gaming_update_2007.pdf>.

²⁴ Eugene Martin Christiansen, *A Perfect Storm*, INSIGHT: J. N. AM. GAMBLING INDUSTRY, Jan. 17, 2008, at 2–12.

²⁵ State House News Service, *Speaker: Patrick Didn't Do Good Job Selling Casino Plan*, N. ADAMS DAILY NEWS TRANSCRIPT, Mar. 25, 2008.

²⁶ Confidential memorandum re gaming proposals from Rep. Daniel Bosley to Speaker of the House Thomas Finneran I (Apr. 28, 1997) (on file with authors).

²⁷ *Id.* at 11. Cf. Walker, *supra* note 4, at 145.

TABLE 1. ESTIMATED PATRON ORIGINS BY STATE, 2007

	<i>Foxwoods</i>	<i>Mohegan</i>	<i>Twin River</i>	<i>Newport</i>	<i>Hollywood</i>
Massachusetts	36.0%	20.7%	42.3%	43.1%	3.6%
Connecticut	33.0%	53.8%	1.4%	1.8%	—
Rhode Island	13.0%	4.2%	54.6%	52.7%	—
New Hampshire	3.1%	1.5%	0.6%	0.2%	1.9%
Maine	1.4%	0.6%	0.1%	0.0%	94.2%
Vermont	0.4%	0.3%	0.0%	0.1%	—
New York	9.2%	14.8%	0.3%	0.9%	—
New Jersey	1.9%	1.9%	0.1%	0.2%	—
Other	2.0%	2.2%	0.6%	1.0%	0.3%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Center for Policy Analysis.

Note: The statistical margin of error for the Foxwoods, Mohegan, Twin River, and Newport survey is $\pm <1\%$. The margin of error for the Hollywood Slots survey is $\pm 2.4\%$.

ing representative overseeing casino legislation simply dismisses the available scholarship as “flawed and biased toward building casinos.”

Rep. Bosley told various media outlets that he did not “put much stock” in the available numbers, because they “don’t make sense” or were derived from a “flawed methodology” even though he admitted that he “had not seen the report.”²⁸ Other times, he dismissed the research findings as “speculative” or “flawed research,” while also falsely suggesting to reporters that the research was secretly sponsored by “casino interests” or that the lead researcher was “one of Harrah’s paid consultants.” This tactic culminated with the legislator “registering his concerns” to the university’s system and campus level administrations about the use of university funds to sponsor the New England Gaming Research Project.²⁹

Thus, despite assurances of a fair and open public discussion, Speaker of the House Salvatore DiMasi (D-Boston) soon dismissed the governor’s revenue and jobs projections as “just rhetoric” and accused the governor and his staff of “failing to do their homework.”³⁰ The public opinion polls documenting widespread support for the governor’s proposal were also cast aside as “a popularity poll with no relevance to public policy.”³¹ Soon thereafter, an opposition group called Casino Free Mass was formed around a coalition of the Massachusetts Restaurant Association, the Massachusetts Council of Churches, and the League of Women Voters.

Casino Free Mass hired Dennis Bailey of Savvy Inc. of Maine and Doug Bailey of Boston-based DBMMediaStrategies to spearhead an anti-casino strategy and “to take on the governor.” The Bailey brothers were nicknamed the “casino killers” because of their successful anti-casino campaigns in Maine (2003) and Rhode Island (2006). Similarly, Casino Free Mass quickly dismissed the empirical analysis underlying the governor’s revenue and jobs projections as “propaganda” that “lacks credibility.” The publicly stated anti-casino campaign strategy was to sidestep existing reports and analysis by merely asserting that “casinos do not provide an economic benefit” because they “cannibalize each other and all the local business.”³²

The governor’s revenue and jobs projections, as well as the underlying analysis, were dismissed without any substantive refutation by critics. However, after voicing unsubstantiated skepticism in the media, Speaker DiMasi and Chairman Bosley be-

gan calling for an “independent study” to review the governor’s projections. In response, the secretary of economic development issued a competitive request for proposals that eventually led to the hiring of Spectrum Gaming on Feb. 22, 2008 as “an independent third-party firm with specific expertise in the gaming industry.” Spectrum Gaming was charged with examining the saturation point for gambling in New England, revenue projections based on the governor’s proposal, and the potential impact on the state lottery. Doug Bailey, the spokesman for Casino Free Mass, issued a preemptive dismissal by labeling Spectrum Gaming as “biased” and stating that “this study, whatever it says, will be dead on arrival.”³³

Shortly before this time, the Greater Boston Chamber of Commerce, which had taken no posi-

²⁸ Peter Schworm, *Mass. Residents Spent \$1.1B at Nearby Gambling Venues, Study Says*, BOSTON GLOBE, Mar. 24, 2008, available at <http://www.boston.com/news/local/massachusetts/articles/2008/03/24/mass_residents_spent_11b_at_nearby_gambling_venues_study_says/>. Similarly, in the 2004 Rhode Island casino debate, Gov. Don Carcieri dismissed an independent university-based economic and fiscal impact analysis commissioned by the state Senate to review a legislative proposal for a Harrah’s Narragansett Indian casino. The governor dismissed the study as “garbage” and claimed “it’s one of the weakest, poorest studies I’ve seen.” The irony is that Gov. Carcieri had literally not even received, nor therefore seen, a copy of the Senate-sponsored report. Scott Mayerowitz, *Carcieri: Casino Study is ‘Garbage’*, PROVIDENCE J., May 8, 2004, at A-06.

²⁹ Sean P. Murphy, *Mass. Casino Backers Playing Numbers Game*, BOSTON GLOBE, June 11, 2007, available at <http://www.boston.com/news/local/articles/2007/06/11/mass_casino_backers_playin_g_numbers_game/>. Ironically, the New England Gaming Research Project is funded entirely by the University of Massachusetts Dartmouth specifically to insure its independence from the gaming industry.

³⁰ Steven LeBlanc, *DiMasi Dismisses Patrick Casino Claims as ‘Just Rhetoric’*, STANDARD-TIMES (New Bedford, Mass.), Mar. 14, 2008, at A12; Sean P. Murphy, *DiMasi Scoffs at Casino Job Plan; Says Governor’s Bid ‘Losing Credibility’*, BOSTON GLOBE, Mar. 4, 2008, available at <http://www.boston.com/news/local/massachusetts/articles/2008/03/04/dimasi_scoffs_at_casino_job_plan/>.

³¹ Ken Hartnett, *Gambling Critic Isn’t Hedging His Bets*, STANDARD-TIMES (New Bedford, Mass.), Feb. 11, 2007, available at <http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20070211/NEWS/7021103_69/-1/news07>.

³² Alice C. Elwell, *Hired Guns Take Aim at Governor’s Casino Campaign*, BROCKTON ENTERPRISE (Mass.), Feb. 15, 2008, available at <<http://www.enterpriseneews.com/business/x406670514>>.

³³ Matt Viser, *Casino Foes Rap Patrick Choice for Gambling Consultant*, BOSTON GLOBE, Feb. 24, 2008, at B-3; Scott Van Voorhis, *Deval Hires Consultant on Casino Bill; Analysts Will \$189G*, BOSTON HERALD, Feb. 23, 2008, at 19.

tion on the governor's casino proposal, had also agreed to sponsor an \$80,000 independent study that was conducted by Boston-based UHY Advisors. UHY Advisors is an internationally recognized tax and business consulting firm with no prior consulting ties to the gaming industry. Consequently, it would have seemed to be exactly the type of independent report that legislative and media critics had been demanding for months. The Boston Chamber/UHY Advisors report reviewed the relevant academic, industry, and grey literature, while doing additional comparative research that placed the potential Massachusetts gaming market in a larger national and regional context. It also relied heavily on publicly accessible data sources that are verifiable by any third party. Finally, its assumptions are clearly articulated and its calculations, estimates, and forecasts are transparent and easy to follow by a serious reader.³⁴

In the end, the Boston Chamber of Commerce/UHY Advisors study concluded that the governor's projections were correct in their estimates of gross gaming revenues, permanent casino jobs, and state gaming tax revenues, while also reaffirming the accuracy of previous academic studies that had been repeatedly dismissed by Rep. Daniel Bosley as "flawed." While conducting the study, UHY Advisors did not have any contact with the governor's staff, or others involved in the legislation, so on its own merits the study should have put to rest the whole debate about the governor's jobs and revenue projections. Instead, critics continued with a strategy of exclusionary pseudo-facts by similarly dismissing this report as one that was "flawed" and based on "recycled" information.³⁵

Thus, rather than reassess his previous position on the issue only a day before formal legislative hearings, Chairman Bosley continued to assert that the governor's proposal was "simplistic" and that "it would take an epiphany and some new statistics from the administration" to change his mind about the proposed casino legislation.³⁶ When Gov. Patrick sought to extend the discussion and postpone a House vote on his bill so that additional data could be presented to the committee pending the results of the analysis by Spectrum Gaming, Rep. Bosley dismissed the overture. He went on to state that any new data to come from the study would be "stale" by the time new legislation could be introduced in January of 2009.³⁷

DIVERSIONARY PSEUDO-FACTS: ASSERTIONS WITHOUT EVIDENCE

In Massachusetts, the use of exclusionary pseudo-facts was coupled to the systematic dissemination of diversionary pseudo-facts. While unfairly dismissing the governor's revenue and jobs projections as biased, inflated, or unsupported by "independent" research, three diversionary pseudo-facts were disseminated to further confuse and clutter the casino debate among state legislators and the general public. Legislative opponents of the governor's casino proposal argued that his jobs projections were illusory, because casinos do not generate "real" economic growth, but merely divert economic activity from existing local businesses to out-of-state gaming corporations. Thus, with no net economic growth, the exorbitant cost of regulating casinos would actually cost the state revenues, while the introduction of a casino culture would discourage business investment in other sectors of the economy and thus cost jobs in the long run. This was a logically coherent set of arguments except that each step in the argument was based on a pseudo-fact.

The Atlantic City Myth

Atlantic City is often invoked in casino debates to "prove" the claim that casinos cannibalize or divert consumer spending from existing small businesses, particularly retail food and beverage establishments. Eugene Christiansen makes a persuasive

³⁴ UHY Advisors FLVS, Inc., *Casino Gaming in Massachusetts: An Economic, Fiscal, and Social Impact Analysis* (Greater Boston Chamber of Commerce, Mar. 2008), available at <http://www.umassd.edu/cfpa/docs/boston_chamber.pdf>.

³⁵ Rep. Daniel Bosley Chair, Joint Committee on Economic Development & Emerging Technologies, quoted by State House News Service, Mar. 7, 2008. Matt Viser, *Casino Study Backs Patrick: Chamber Supports Revenue Projections*, BOSTON GLOBE, Mar. 7, 2008, available at <http://www.boston.com/news/local/massachusetts/articles/2008/03/07/casino_study_backs_patrick/>; Scott Van Voorhis, *Chamber Looks at Casinos: Study Boosts Gov's \$, Job Claims*, BOSTON HERALD, Mar. 7, 2008, available at <<http://news.bostonherald.com/business/general/view.bg?articleid=1078441>>; Editorial, *Casino Study Royale*, BOSTON GLOBE, Mar. 7, 2008, available at <http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2008/03/07/casino_study_royale/>.

³⁶ Matt Murphy, *Reps Meet Tomorrow on Casinos, But Odds Are Not Favorable*, LOWELL SUN (Mass.), Mar. 17, 2008, available at <<http://nl.newsbank.com/>>.

³⁷ Sean P. Murphy, *Despite Bill's Defeat, Governor Continues Study on Casinos*, BOSTON GLOBE, Mar. 25, 2008, at B-1.

theoretical case for rejecting the cannibalization argument, but in the end the use of anecdotal case studies by casino opponents makes it an empirical (or anecdotal) question for most policymakers.³⁸ The Atlantic City myth has had a long shelf life and it resurfaced in the Massachusetts casino debate despite recent studies that should have sounded the death knell for this pseudo-fact.³⁹ The Atlantic City myth seems to originate in a series of stories in the *New York Times*, although it appears that the misinformation printed in the *Times* was given to reporters by the Atlantic City Restaurant and Tavern Association as part of a public relations campaign to win more concessions for its members from the city's casino hotels.

In July 1994, the *New York Times* ran a lengthy story entitled "Gambling Nation," which reported that "since the first casino hotels opened there [in Atlantic City] in 1978, 100 of the city's 250 restaurants closed."⁴⁰ A few months later, the Florida Department of Commerce stated its opposition to proposed casino legislation in that state on the grounds that "almost half of Atlantic City's restaurants closed in 10 years of casino gambling."⁴¹ Shortly thereafter, an editorial in the *Washington Post* opposing casino legislation in Maryland claimed that in Atlantic City "the number of restaurants dropped from 243 in 1977 to 146, largely because tourists spent their dollars in casinos and casino-owned restaurants and gift shops."⁴²

The following year (1996), newspapers in the mid-Atlantic area published a number of similar stories. The *New York Times* quoted Johan Vroegop—"Atlantic City's most arrogant chef"—who stated that "when the first casino opened in 1978, the city had 243 restaurants. Now, fewer than 50 non-casino restaurants remain."⁴³ The *Philadelphia Daily News* also reported that Atlantic City's casino hotels had "been a disaster for its non-casino restaurants and taverns. Most have gone out of business. Of the 46 restaurants with 10 tables or more that existed in 1976, 17 remain, according to the Atlantic City Restaurant and Tavern Association."⁴⁴ Likewise, the *New York Times* again reported in December 1996 that "the number of non-casino restaurants in Atlantic City has plummeted to barely more than 50, from 279 in 1976."⁴⁵

Thus, various iterations of the casinos' negative impact on Atlantic City's food and beverage sector had gained widespread currency with the East Coast print media by 1996. However, a crucial turning

point occurred when Joseph Faldetta, president of the Atlantic City Restaurant and Tavern Association, gave official testimony to the National Gambling Impact Study Commission at its Atlantic City hearings on Jan. 22, 1998. While reiterating that the restaurant and tavern association was "without question, still in favor of casino gambling in Atlantic City," Faldetta claimed that "Atlantic City restaurants and taverns experienced staggering declines in the past 19 years of casino gaming." He went on to state: "The 1978 directory listed 311 taverns and restaurants in Atlantic City. Nineteen years later, there are only 66 remaining, despite the promise that gaming would be good for the city's own."⁴⁶

It is not clear whether Faldetta's reference to "the directory" was referring to the tavern association's membership directory, a metropolitan telephone directory, or a city business directory, but it is clear that his statement was not based on any official gov-

³⁸ Eugene Martin Christiansen, *In Massachusetts Studies Proliferate as Casino Debate Grinds On*, INSIGHT: J. N. AM. GAMBLING INDUSTRY, Mar. 28, 2008, at 1, 6–15.

³⁹ George G. Fenich & Kathryn Hashimoto, *The Effect of Casinos on Local Restaurant Business* 13 (1997) (unpublished manuscript). See also Donald Siegel & Gary Anders, *Public Policy and the Displacement Effects of Casinos: A Case Study of Riverboat Gambling in Missouri*, 15 J. GAMBLING STUD. 105–21 (1999); Kathryn Hashimoto & George G. Fenich, *Does Casino Development Destroy Local Food and Beverage Operations?: Development of Casinos in Mississippi*, 7 GAMING L. REV. 101–109 (2003); George G. Fenich & Kathryn Hashimoto, *Perceptions of Cannibalization: What is the Real Effect of Casinos on Restaurants*, 8 GAMING L. REV. 247–59 (2004); Iver Peterson, *After 20 Years, Atlantic City Starts to Reap Casinos' Benefits*, N.Y. TIMES, Dec. 26, 1995, available at <<http://query.nytimes.com/gst/fullpage.html?res=9C00E3DA1139F935A15751C1A963958260&scp=1&sq=&st=cse>>.

⁴⁰ Gerri Hirschey, *Gambling Nation*, N.Y. TIMES, July 17, 1994, at A-36.

⁴¹ Sally Deneen, *Florida's Hoteliers Clash Over Casinos*, 209 HOTEL & MOTEL MGMT. 1-2 (Nov. 7, 1994).

⁴² *Casinos in Maryland: The Stakes*, WASH. POST, Feb. 13, 1995, at A-20.

⁴³ Bill Kent, *Atlantic City; Johan's the Sixth*, N.Y. TIMES, June 23, 1996, available at <<http://query.nytimes.com/gst/fullpage.html?res=9B00EFD71539F930A15755C0A960958260&scp=7&sq=&st=nyt>>.

⁴⁴ *Play or Fold: Casino-Hotels Overwhelm Atlantic City's Eateries*, PHILA. DAILY NEWS, Oct. 21, 1996, at 20.

⁴⁵ Bill Kent, *What Has Gambling Wrought? Ask the Man Who Wrote the Rulebook*, N.Y. TIMES, Dec. 15, 1996, available at <<http://query.nytimes.com/gst/fullpage.html?res=9907E5DE173EF936A25751C1A960958260&scp=2&sq=&st=nyt>>.

⁴⁶ *Meeting*, National Gambling Impact Study Commission, Jan. 22, 1998 (testimony of Joseph Faldetta), available at <<http://govinfo.library.unt.edu/ngisc/meetings/jan2298/jan22p9.html>>.

ernment data source. Nevertheless, this testimony was highlighted in the National Gambling Impact Study Commission's *Final Report* to exemplify small business owners' anecdotal testimony about "the loss of their businesses when casinos came to town."⁴⁷ Once ensconced in this official document, Faldetta's numbers have repeatedly resurfaced in casino debates, not as the inaccurate testimony of a disgruntled tavern owner, but as a "fact" reported by the National Gambling Impact Study Commission.

The National Gambling Impact Study Commission testimony made its way to Massachusetts within a few months, where it quickly became part of the state's casino debate and a part of the debates in Rhode Island and Maine as well.⁴⁸ But what are the facts? In part, the facts depend on whether one collects data for Atlantic City, the Atlantic City Metropolitan Statistical Area, or Atlantic County. Given the wide variation in numbers disseminated in the media by casino critics, it rapidly becomes clear that none of the numbers are consistent with any recognized government data collection unit.

Nevertheless, the numbers cited by Faldetta in his testimony seem to be most consistent with *county* level data. Kathryn Hashimoto and George Fenich were the first scholars to test the media claims about Atlantic City by examining data in the U.S. Census Bureau's *County Business Patterns*. Hashimoto and Fenich found that the number of eating and drinking establishments in Atlantic County was actually declining in the years *prior* to the opening of the first casinos. However, this decline was actually reversed after the first casinos opened, when the number of non-casino eating and drinking places increased from 415 in 1978 to 569 in 1994 (+37%) (the year the *New York Times* first reported the Atlantic City pseudo-fact). Similarly, the number of employees in this sector increased from 4,439 in 1978 to 6,624 in 1994 (+50%).⁴⁹ Payroll rose by two and one-half times the rate of employment, which indicates that wages improved in this sector due to competition from the casinos; a fact that explains why state restaurant associations routinely oppose casino legislation. It is not because they will go out of business, but because they will have to offer their employees better wages and benefits. Moreover, in the 11 years since the Hashimoto and Fenich study, the number of non-casino eating and drinking places in Atlantic County has continued to increase to 625 (+9.8%) in 2004 with 9,020 employees (+36%).⁵⁰

However, even if one narrows the unit of analysis to Atlantic City, the critics' assertions do not fare any better. According to the most recent U.S. Economic Census (2002), there are actually 145 food service and drinking places in Atlantic City (off-site from casinos) or nearly three times as many as claimed by the skeptics (see table 2). There were also 36 non-casino hotels and motels in a city of only 40,000 residents. If one compares the number of food, beverage, and lodging establishments to comparably sized cities in Massachusetts, Atlantic City seems to have robust local food, beverage, and lodging sectors that are only matched in Massachusetts by the city of Salem and the town of Plymouth, which are also tourist destinations.

For more up-to-date data, the authors compiled a list of all bars, taverns, and restaurants with an Atlantic City address that are currently listed in the B2BYellowpages.com. This data indicates that there are currently 172 (+18.6% since 2002) independent bars, restaurants, and taverns in Atlantic City compared to 60 casino-owned establishments in this sector. Moreover, the variety of establishments is strik-

⁴⁷ National Gambling Impact Study Commission, *Final Report 7-5* (1999), available at <<http://govinfo.library.unt.edu/ngisc/reports/5.pdf>>.

⁴⁸ The Rev. John Mueller claimed that, "In Atlantic City, the number of restaurants declined from 243 in 1977, the year after casinos were legalized, to 146 in 1987." Rev. John Mueller, *Should Fall River Voters Approve a Wampanoag-Owned, High-Stakes Bingo Hall?*, PROVIDENCE JOURNAL-BULLETIN, May 22, 1998, at C-1; see also John Thorp, *Nevada Offers Facts About Casino Effect*, PROVIDENCE JOURNAL-BULLETIN, Mar. 15, 1999, at B-5, ("The number of independent restaurants in Atlantic City dropped from 48 the year casinos opened to 16 in 1997"). In the 2004 Rhode Island casino debate, it was asserted that "[t]he Atlantic City Restaurant and Tavern Association reports that 78 percent of local restaurants and bars have gone out of business since the first casino opened in Atlantic City[.]" William DeAngelus III, *Casino Would Hurt Twin Oaks*, PROVIDENCE JOURNAL-BULLETIN, June 30, 2004, at B-5.

⁴⁹ George G. Fenich & Kathryn Hashimoto, *The Effect of Casinos on Local Restaurant Business 13* (1997) (unpublished manuscript, on file with authors). See also Kathryn Hashimoto and George G. Fenich, *Does Casino Development Destroy Local Food and Beverage Operations?: Development of Casinos in Mississippi*, 7 GAMING L. REV. 101-109 (2003); George G. Fenich, & Kathryn Hashimoto, *Perceptions of Cannibalization: What is the Real Effect of Casinos on Restaurants*, 8 GAMING L. REV. 247-59 (2004); Iver Peterson, *After 20 Years, Atlantic City Starts to Reap Casinos' Benefits*, N.Y. TIMES, Dec. 26, 1995, at 1.

⁵⁰ U.S. CENSUS BUREAU, COUNTY BUSINESS PATTERNS: NEW JERSEY, 2004 387-90 (U.S. Department of Commerce, Economics and Statistics Division, 2006).

TABLE 2. ATLANTIC CITY: COMPARISON TO SIMILAR-SIZED CITIES AND TOWNS IN MASSACHUSETTS

<i>Town/City</i>	<i>Population</i>	<i>722-Food Svcs. & Drinking Places</i>	<i>721-Accomodation (non-casino hotels & motels)</i>
Everett	38,037	71	2
Billerica	38,981	68	3
Fitchburg	39,102	85	1
Holyoke	39,838	80	7
Beverly	39,862	98	1
Westfield	40,072	61	3
Salem	40,407	123	6
Plymouth	51,701	121	15
Atlantic City	39,958	172	36

Source: Population: 2000 U.S. Census; Units: Es202 Annual 2006 & B2BYellowpages.com.

ing, with everything from A Touch of Italy to the Whiskey Grille.

Finally, if one collects data for the Atlantic City Metropolitan Statistical Area, where more than 37,000 of the state's casino employees reside, one finds a similarly robust local food and beverage sector. The New Jersey Department of Labor and Workforce Development reports that there are 11,800 people employed in the Atlantic City Metropolitan Statistical Area's food service and drinking sector, which is up from 8,100 in 2004 (+46%)⁵¹ and the vast majority of these employees (at least 9,000) work at off-site non-casino establishments.⁵² Not only does one find no evidence of economic diversion or cannibalization, but the local food, beverage, and lodging sectors have continued to grow with the casino industry in New Jersey.

Even though reputable scholarly research had already been published to debunk the Atlantic City myth, these facts were not sufficient to prevent casino critics in Massachusetts from resurrecting the old claim.⁵³ For example, Rep. Daniel Bosley sounded a familiar refrain in a memorandum circulated to members of the Mass. House of Representatives, asserting that: "In Atlantic City, there were 311 bars, restaurants, and taverns in 1978. Today, there are less than 50 left."⁵⁴ Dennis Bailey, a consultant to Casino Free Mass, told an even more extreme version of the same story; by claiming that "There were over 100 restaurants before slot machines [in Atlantic City], and when the casinos came that dropped to like 12."⁵⁵

While Atlantic City is a favorite whipping post

for casino critics, it was not uncommon in the Massachusetts debate to extrapolate this pseudo-fact to the entire casino industry by asserting that comparable "examples of economic diversion are abundant."⁵⁶ However, Fenich and Hashimoto have analyzed the local and regional impact of land-based, floating riverboat, and dockside casinos (both com-

⁵¹ N.J. Department of Labor & Workforce Development, Labor Market & Demographic Research, CURRENT EMPLOYMENT STATISTICS (Feb. 2008).

⁵² The coding system used to collect data on industry employment has a code (722) for food services and drinking places and a separate code for casino hotels (721120). Employment in food services and drink activities at hotels and motels are included in the 722 subsector "only if these services are provided by a separate establishment primarily engaged in providing food and beverage services[.]" EXECUTIVE OFFICE OF THE PRESIDENT, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM, UNITED STATES, 2002 . 858 (Office of Management and Budget, 2003). Otherwise, the employees are classified as casino hotel employees (721120).

⁵³ Even a Harvard University report on the economic impacts of casinos uncritically reproduced Faldetta's testimony as "fact," rather than checking the facts. See Phineas Baxandall & Bruce Sacerdote, *The Casino Gamble in Massachusetts* 5, 37-38 (Rappaport Institute for Greater Boston, Harvard University, Jan. 2005).

⁵⁴ Memorandum from Rep. Daniel Bosley (D-North Adams), Chair, Joint Committee on Economic Development & Emerging Technologies, to the Mass. House of Representatives, *The Governor's Casino Gambling Proposal: An Exaggeration of State Revenues*, Mar. 11, 2008 [hereinafter, Bosley, *The Governor's Casino Gambling Proposal*].

⁵⁵ Dennis Bailey quoted in Aimee Dollof, *Slots linked to \$20M in hospitality income*, BANGOR DAILY NEWS, July 31, 2007, at A-01.

⁵⁶ Bosley, *The Governor's Casino Gambling Proposal*, *supra* note 54.

mercial and Indian) on local food and beverage and retail establishments in 20 jurisdictions, including Colorado, Connecticut, Illinois, Indiana, Iowa, Louisiana, Mississippi, Missouri, New Jersey, and South Dakota. Their overall findings are unequivocal about the fact that:

[A]cross the U.S., from mountains to beachfront to the industrial northeast, from small rural towns to large urban areas, the legalization and subsequent development of casino gaming did not drive all the restaurateurs out of business. Casinos did not cause the predicted drop in the number of businesses, nor the drop in people employed, nor the drop in payroll. In fact, they have just the opposite effect. When casinos are developed, all aspects of local food and beverage business increase: the number of establishments increases, the number of people employed increases, and payroll increases at a greater rate than the first two.⁵⁷

Despite the fact that Fenich and Hashimoto had already examined this question in relation to Connecticut's two Indian casinos, the Massachusetts Legislature's leading casino critic was not content to merely repeat the Atlantic City myth, but sought to replicate and extend it to nearby Foxwoods Resort and Mohegan Sun Casinos. In the official memorandum circulated to members of the Mass. House of Representatives, it was asserted that the towns of Ledyard and Montville, Conn., which host Foxwoods Resort and Mohegan Sun Casinos, respectively, "have seen declines in overall business activity" since the opening of the casinos.⁵⁸ Yet, the *New London Day*, which covers Connecticut's casinos almost daily, was reporting at the same time that Montville was considered "the place to be" for a growing number of nongaming businesses because of its robust local economy.⁵⁹ New businesses, including banks, pharmacies, office buildings, a hotel, a restaurant, cluster retail development, and other establishments, were opening in Montville's commercial area.

However, rather than rely on anecdotal evidence to support either claim, the authors collected data from the U.S. Bureau of Labor Statistics on average annual employment and unemployment in the Norwich-New London Labor Market Area, which includes Ledyard, Montville, and other towns adja-

cent to Connecticut's two casinos. In the Norwich-New London Labor Market Area, total employment increased from 123,700 in 1997 (a year after Mohegan Sun opened) to 136,300 in 2007 (+10.2%) (ES-202 data) (see table 3).

Similarly, the Conn. Department of Labor's Local Area Unemployment Statistics for the town of Ledyard show that average annual employment increased from 7,719 in Ledyard in 1997 to 8,569 in 2007 (+11%), while the town's unemployment rate fell from 4.5% to 3.5%, which is lower than the state average for Massachusetts. The town of Montville, where Mohegan Sun is located, saw its average annual employment increase from 9,329 in 1997 to 10,423 in 2007 (+12%), while the town's unemployment rate fell from 5.9% to 4.1%, which is also lower than the state average for Massachusetts. Thus, employment growth in both the local and regional vicinity of Connecticut's two casinos suggests a very healthy business climate and strong business growth even after the two casinos were in full operation and despite a significant decline in the shipbuilding industry at the same time.

However, the day before the Joint Committee on Economic Development and Emerging Technologies was scheduled to hold hearings on Gov.

TABLE 3. LEDYARD AND MONTVILLE: EMPLOYMENT AND UNEMPLOYMENT, 1997 AND 2007

	1997	2007
Ledyard		
Employed	7,719	8,569
Unemployment Rate	4.5%	3.5%
Montville		
Employed	9,329	10,423
Unemployment Rate	5.9%	4.1%
Massachusetts		
Employed	3,158,858	3,255,617
Unemployment Rate	3.8%	4.3%

Source: Connecticut Department of Labor, Local Area Unemployment Statistics; Mass. Division of Unemployment Assistance.

⁵⁷ Fenich & Hashimoto, *The Effect of Casinos on Local Restaurant Business*, *supra* note 49.

⁵⁸ Bosley, *The Governor's Casino Gambling Proposal*, *supra* note 54.

⁵⁹ Amy Renczkowski, *For Many Businesses, 'Place to Be' is Montville*, *NEW LONDON DAY*, Feb. 9, 2008.

Patrick's casino bill, the *Boston Herald* produced a rare example of the mass media cutting through a pseudo-fact. Only as the casino debate was coming to a temporary end, was it finally reported that Rep. Daniel Bosley, "who has blasted casino supporters for playing fast and loose with numbers, is guilty of bungling some of the facts himself." It was pointed out that he had "mixed up the number of casinos in New Jersey"—sometimes it was 17 and other times it was 14⁶⁰—and misstated "the impact Atlantic City's casinos have had on neighborhood restaurants." The state legislature's "top expert" on casino gaming finally owned up "to making a few factual slip-ups . . . It's a dumb thing to do."⁶¹

The Cost of Regulating Casinos

Under Gov. Patrick's 2007 casino legislation, licensing and regulation of casinos and casino employees would be performed by a Gaming Control Authority, while investigations and enforcement of gaming laws would be conducted by a new division of enforcement in the attorney general's office to be staffed by attorneys and state police. This is identical to the regulatory and enforcement structure employed by the state of New Jersey to oversee its 11 casinos and 42,000 casino employees.

Yet, even before Gov. Patrick introduced his casino bill, Rep. Bosley was admonishing legislators that "It would take \$80 million to \$90 million a year just to run a gaming commission."⁶² Rep. Jeffrey Sanchez, a vice-chairman of the committee reviewing the governor's casino bill, echoed the view that "It could cost the state \$80 million to put in place new regulatory systems. This is an incredible bureaucracy that would have to be built."⁶³

It was never clear how these estimates were derived, except in one blog where Rep. Bosley claimed that these estimates were "comparable to what other states spend" on gaming regulation and enforcement. However, as the casino debate unfolded, no one in the media, the legislature, or the governor's office ever checked to see "what other states spend" even though it is public data and is easily obtained from the annual reports of the pertinent agencies (and even posted on the World Wide Web). Based on data made public in the annual reports of the 11 states with commercial casinos, the opponents' estimates of regulatory and enforcement costs were wildly exaggerated in comparison to other states.

The *fact* is that states with commercial casinos

spend the equivalent of from 0.3% to 1.4% of gross gaming revenues on casino licensing, regulation, and enforcement with New Jersey spending more than any other state, including Nevada, in absolute terms, at 1.4% of gross gaming revenue (see table 4).⁶⁴ In 2006, New Jersey managed to license more than 42,000 casino employees and to license, regulate, investigate, and enforce gaming law for 11 casinos with \$5 billion in gross gaming revenue at a total cost of \$68.3 million. New Jersey spends about \$28 million to support the New Jersey Casino Control Commission and \$40.3 million is provided to the attorney general's gaming enforcement division.

Using the New Jersey ratio, which is not only one of the highest regulatory ratios in the country, but the model for Gov. Patrick's proposal, it should have cost no more than \$28 million to regulate three casinos and enforce gaming laws in Massachusetts (\$2,000,000,000 gross gaming revenue \times 0.014 = \$28 million), and it may well have been much less than that figure if Massachusetts funded regulation at a level comparable to the average state. Thus, not only were the casino skeptics' estimates off-base, their inaccuracy raised the question of how anyone could reasonably assert that Massachusetts would

⁶⁰ According to the New Jersey Casino Control Commission, there are currently 11 casinos in Atlantic City. see N.J. Casino Control Commission, Quarterly Financial Reports, 2008-2003, <<http://www.state.nj.us/casinos/financia/qtrincome/>> (last visited June 22, 2008). Yet, according to Rep. Daniel Bosley, there are "14 casinos in New Jersey[.]" Bosley, *The Governor's Casino Gambling Proposal*, *supra* note 54, at 4, while elsewhere he states that there are 17 casinos in New Jersey. See Dan Bosley, Why I have Opposed Casinos in the Commonwealth, Blue Mass Group blog, available at <<http://www.blue-massgroup.com/showDiary.do?diaryId=7433&view=print>> (May 25, 2007). The Blue Mass Group blog is the leading liberal blog in Massachusetts. Its commentators, including Rep. Daniel Bosley, were early supporters of Gov. Patrick's election campaign. However, the blog quickly turned into a venue for criticizing the governor's casino proposal, which was portrayed as a "betrayal" of the liberal agenda.

⁶¹ Scott Van Voorhis, *UMass Gambling Prof: Bosley's Figures Don't Add Up*, BOSTON HERALD, Mar. 17, 2008, at 22.

⁶² Rep. Daniel Bosley (D-North Adams), Chair, Joint Committee on Economic Development & Emerging Technologies, quoted in Ken Hartnett, *Gambling critic isn't hedging his bets*, *supra* note 31.

⁶³ Rep. Jeffrey Sanchez (D-Boston), Vice-Chair, Joint Committee on Economic Development & Emerging Technologies, quoted by State House News Service, Mar. 12, 2007.

⁶⁴ The Michigan Gaming Control Board also provides regulation and enforcement for 16 Indian casinos through a special assessment. If revenues from Indian casinos are included, then Michigan's regulatory and enforcement costs are 1.3% of total gross gaming revenue.

TABLE 4. COMMERCIAL CASINOS: COST OF LICENSING, REGULATION, AND ENFORCEMENT, FY2006

State	Licensing, regulation, & enforcement (millions)	Commission & enforcement employees*	Gross gaming revenues (millions)	No. casinos	Lic, reg, & enforc costs as % of GGR
Colorado	\$ 8.7	72	782	46	1.1%
Illinois	\$14.4	138	1,924	9	0.7%
Indiana	\$12.6	180	2,577	10	0.5%
Iowa	\$ 3.1	—	1,173	13	0.3%
Louisiana	—	—	—	—	—
Michigan	\$28.8	148	1,303	3	2.2%
Mississippi**	\$10.0	—	2,780	29	0.4%
Missouri	\$18.4	228	1,592	11	1.2%
Nevada	\$39.4	—	12,460	317	0.3%
New Jersey***	\$68.3	693	5,219	11	1.3%
South Dakota	\$ 1.1	—	90	36	1.2%

Source: Annual reports of state gaming regulatory commissions.

*Licensing, regulatory, and enforcement staff includes managers and supervisors, investigators, state police, auditors, accountants, clerical personnel, attorneys, financial analysts, technicians, information systems, and all other personnel.

**Mississippi data is pre-Katrina.

***New Jersey = 324 licensing and regulatory employees in the New Jersey Casino Control Commission and 369 employees in the Attorney General's Division of Gaming Enforcement.

need to spend nearly 50% more than New Jersey to regulate one-fourth the number of casinos (3 as opposed to 11) and less than half as many employees (20,000 as opposed to 42,000).

Moreover, based on the facts, the \$80 million to \$160 million estimate for regulation and enforcement asserted by legislative leaders was at a minimum clearly not “comparable” to what other states spend on those activities. Furthermore, the claim that these costs would reduce the net gaming tax revenue available to the state blatantly ignored the fact that in most states, as well as in Gov. Patrick's proposed legislation, these regulatory and public safety costs do not get subtracted from gaming tax revenues, but are defrayed by an additional special assessment on the casinos.

The Casino Culture

The day that Gov. Patrick submitted his casino bill to the Mass. House of Representatives, Speaker of the House DiMasi immediately voiced his skepticism “about introducing a ‘casino culture’ to the state.”⁶⁵ Two weeks later, he again voiced his concern that “The governor has proposed opening the door to a casino culture in the Commonwealth.”⁶⁶ On Mar. 18, 2008, the day of the committee hearing, Speaker DiMasi blasted the “casino culture” at a breakfast meeting of the Greater Boston Chamber of Commerce as a culture that would overwhelm and destroy the “Athens of America . . . the birth-

place of public education, the epicenter of world-wide higher education . . . the best in arts, culture, and history.”⁶⁷

Despite Speaker DiMasi's frequent references to casino culture, he was never challenged by the media to define the term. It simply floated through media stories and statehouse memoranda as a vague specter until Gov. Patrick challenged the idea at a Dec. 18, 2007 hearing of the Joint Committee on Bonding, Capital Expenditures, and State Assets. Gov. Patrick opened his testimony by pointing out that lottery revenue had been used to finance the American Revolution. John Hancock, the first gov-

⁶⁵ Matt Viser & Andrea Estes, *Competition Heightens for Potential Casino Developers*, BOSTON GLOBE, Oct. 12, 2007, available at <http://www.boston.com/news/local/articles/2007/10/12/competition_heightens_for_potential_casino_developers/>.

⁶⁶ Andrea Estes, *Hearing to Focus on Ills of Gambling; Some Question House's Timing*, Boston Globe, Oct. 31, 2007, available at <http://www.boston.com/news/local/articles/2007/10/31/hearing_to_focus_on_ills_of_gambling/>.

⁶⁷ *Prepared Remarks of House Speaker Salvatore F. DiMasi*, BOSTON GLOBE, Mar. 18, 2008, available at <http://www.boston.com/news/local/breaking_news/2008/03/prepared_remark_2.html>. Similarly, Rep. Daniel Bosley had earlier said, “We have a state that has a very diverse economy, one of the top five tourism destinations, and that has more cultural amenities than any other state in the United States, and that would all suffer,” quoted in Stephanie Ebbert, *Patrick Has Much Riding on Casino Gaming Issue: Weighs Impact on Aid, His Legacy*, BOSTON GLOBE, Sept. 2, 2007, available at <http://www.boston.com/news/local/articles/2007/09/02/patrick_has_much_riding_on_casino_gaming_issue/>.

error of Massachusetts, had raised money from a lottery to rebuild historic Faneuil Hall in Boston after a fire in the 18th century. Patrick pointed out that his dormitory at Harvard University, and other dormitories at the university, had been financed in the 1800s with a lottery.

Today, Massachusetts operates the most productive lottery in the United States with 7,343 outlets and another 1,750 keno outlets. Meanwhile, Massachusetts residents were already making approximately 7.6 million visits a year to casinos in Connecticut and racinos in Rhode Island. Thus, Patrick noted that “for a very long time now, gaming has been in practice in Massachusetts, and gaming revenues have been used to support public projects.”⁶⁸ It was factually incorrect, if not hypocritical, to suggest that gambling was not already woven into the fabric of Massachusetts culture. At the same time, Patrick observed that Wisconsin has “nearly 30 casinos and nobody thinks of Wisconsin as having a ‘casino culture’.”⁶⁹

What is a casino culture? The term “casino culture” appears to have been coined in the mid-1980s, possibly by investment guru Warren Buffet, as a derogatory term to describe the emergence of day-trading on the NASDAQ and New York Stock Exchange, where traders were focused on quick profits and short plays.⁷⁰ It has more recently been extended to describe unregulated or poorly regulated emerging stock markets.⁷¹ Wordspy.com defines casino culture as “a culture in which low-percentage money-making schemes – such as high-tech stocks, day trading, lotteries, and domain name speculation – become mainstream investment vehicles.”⁷² In this respect, however, Joseph Boskin, a Boston University professor of American popular culture, notes that “the idea of attaining riches quickly has always been part of the American psyche,” although the vehicle for this ideal shifted from land ownership to financial speculation during the 1980s.⁷³

The term took on a new meaning in the 1990s with the advent of the Las Vegas strip and the construction of the new megaresort hotels and casinos.⁷⁴ The casino was no longer a seedy “community of obsession,” focused on gambling, but it was about “top-notch restaurants, well-appointed hotel suites, luxurious spa services, boutique retail outlets, free-flowing alcohol, and, of course, gaming galore—in most cases at all hours.”⁷⁵ The “new casino culture” of the mega-resort, as opposed to the

“tawdry casino culture” of the old Las Vegas and early Atlantic City, transformed the casino from a “gambling den” into an “adult amusement park” or even a family resort.⁷⁶

In Massachusetts, the term’s meaning was inverted when Speaker DiMasi unleashed “a 3-page anti-casino blast” aimed at Governor Patrick’s casino proposal just five days before a scheduled legislative hearing on the bill. DiMasi questioned whether House members wanted “to usher in a casino culture—with rampant bankruptcies, crime and social ills.”⁷⁷ He reiterated his position five days later before the Greater Boston Chamber of Commerce, where he claimed the “cost of creating a

⁶⁸ Dan Ring, *Patrick Touts Casino Plan*, SPRINGFIELD REPUBLICAN, Dec. 19, 2007, at A-01. Wisconsin actually has 26 Indian casinos. See ALAN MEISTER, INDIAN GAMING INDUSTRY REPORT, 2007-2008 at 12 (2008).

⁶⁹ *Mass. Weighs Casino Gambling Bill*, FORBES.COM, Mar. 24, 2008, <<http://www.forbes.com/markets/feeds/afx/2008/03/24/afx4806828.html>>.

⁷⁰ “[Q]uotations are the quotidian diet of the day trade, forging a casino culture where quickness of action, fed by irrational impulses displace both quality and quantity of thought.” LAWRENCE A. CUNNINGHAM, HOW TO THINK LIKE BENJAMIN GRAHAM AND INVEST LIKE WARREN BUFFET xi–xii (McGraw Hill 2001). See also, WARREN BUFFET, THE ESSAYS OF WARREN BUFFET: LESSONS FOR CORPORATE AMERICA (selected, arranged, & introduced by Lawrence A. Cunningham, Cardozo Law Review 1997).

⁷¹ Willy Wo-Lap Lam, *China’s Dice-Roll on Casino Culture*, CNN.COM (Feb. 21, 2001), <http://edition.cnn.com/2001/WORLD/asiapcf/east/02/20/stockmkt.reform.html>

⁷² Wordspy, *Casino Culture*, (posted Feb. 8, 2000), <<http://www.wordspy.com/words/casinoculture.asp>>.

⁷³ Kathy McCabe, *Wannabe Millionaires*, BOSTON GLOBE, Jan. 30, 2000, at 1.

⁷⁴ Shannon Bybee, *History, Development, and Legislation of Las Vegas Casino Gaming*, in LEGALIZED CASINO GAMING IN THE UNITED STATES: THE ECONOMIC AND SOCIAL IMPACT 15–17 (Cathy H.C. Hsu, ed., Haworth Hospitality Press 1999).

⁷⁵ Richard Corliss, *That Old Feeling: Casino Culture*, TIME, Nov. 8, 2003, available at <<http://www.time.com/time/columnist/corliss/article/0,9565,538884,00.html>>.

⁷⁶ Renee Graham, *Casino Culture: New England’s Gambling Mecca is More Mall Than Vegas*, BOSTON GLOBE, Apr. 5, 1994, at 21; Lauren Viera, *New Buffalo Casino Brings a Crowd to Harbor Country*, CHICAGO TRIB., Nov. 25, 2007, at 1; *Tales Chiseled Into Finely Tuned Thrillers*, SACRAMENTO BEE, Feb. 17, 1985 at 19E; Jonathan Van Meter, *The New Casino Culture, Travel + Leisure* (Aug. 2005), available at <<http://www.travelandleisure.com/articles/the-new-casino-culture/page/1/print>>; RICHARD A. MCGOWAN, GOVERNMENT AND THE TRANSFORMATION OF THE GAMING INDUSTRY 3–47 (Edward Elgar Publishing, Inc. 2001).

⁷⁷ Scott Van Voorhis, *Casino Culture’ Clash; DiMasi: Crime, Bankruptcies, Social Ills Will Rise*, BOSTON HERALD, Mar. 14, 2008, at 20.

casino culture is too high. . . . Casinos will absolutely cause human damage on a grand scale. . . . We will absolutely have increased bankruptcies, foreclosures, divorce, broken families, increased property crimes, domestic violence, and on and on and on.”⁷⁸

The concept of casino culture became a verbal shortcut to invoke a litany of negative images that are controversial in their own right and were certainly never “proven” during the Massachusetts casino debate. Indeed, it was the ability to exclude a fact-based discussion from the policy process that gave these images the same status as any other “opinion” on the issue.

Although such claims are debatable at the level of hyperbole advanced by Speaker DiMasi, another purpose of the casino culture pseudo-fact was to create the false impression that incorporating casinos into the state’s long-term economic development strategy was incompatible with the state’s high tech high wage economic development strategy. Soon after Gov. Patrick announced his casino proposal, Speaker DiMasi told a group of 200 business leaders that lawmakers “should maintain their focus: manufacturing, life sciences, and encouraging filmmakers to come to Massachusetts by offering tax breaks.”⁷⁹ In a Mar. 13 letter to members of the House of Representatives, DiMasi insisted that “there is a difference between the false promises of casinos . . . and real, solid economic development policy.”⁸⁰

Ironically, two weeks after the casino debate concluded in Massachusetts, the state Department of Revenue released a cost-benefits analysis, which documented that the state’s film and movie investment tax credits had *cost* Massachusetts taxpayers \$120 million over the last three years even after accounting for increased economic activity in this sector. Speaker DiMasi’s response to one of his favorite “real, solid” economic development policies was a new proposal to further increase investment tax credits for the film industry at additional cost to the commonwealth.⁸¹

Rep. Daniel Bosley frequently echoed a similar argument by claiming that casinos are “not an economic boon to a state, but may stifle other investments.”⁸² This was the same argument that the committee chair had employed in 1997 after scuttling Gov. William Weld’s proposal for two resort casinos and slot machines at the state’s four racetracks. After the 1997 casino debate, the House leadership

appointed Rep. Bosley to chair a special legislative task force charged with making recommendations for state-sponsored local economic development initiatives to “blunt the blow by promising help for towns that had sought salvation in slot machines.”

However, more than a year after the task force released its recommendations, the *New Bedford Standard-Times* reported that “the recommendations remain words in a report gathering dust on Beacon Hill.” When Rep. Bosley was questioned about the lack of progress on “real economic development” proposals for outlying regions of the state, he replied that “I know there are people who are going to say ‘Hey, Dan, here we are a year later and you haven’t done anything for me. That’s not my job.’”⁸³

Yet, broken promises aside, a key element to sustaining any high-tech economy is its ability to attract venture capital investment. In 2007, venture capitalists invested \$29.4 billion in 3,813 investment deals throughout the United States. The top areas of venture capital investment were software, biotechnology, medical devices, energy, media and entertainment, semiconductors, IT services, networking and equipment, electronic instrumentation, computers and peripherals, and health care.⁸⁴ These areas are certainly critical to the future development of the Massachusetts economy, and the commonwealth ranked second in the nation in the amount of venture capital attracted to the state in 2007 (see table 5).

⁷⁸ Prepared Remarks of House Speaker Salvatore F. DiMasi, *supra* note 67.

⁷⁹ Matt Viser, *DiMasi Steps Up Casino Criticism; House Speaker Wants Focus Maintained on Other Economic Areas*, BOSTON GLOBE, Sept. 29, 2007, at B-1.

⁸⁰ Van Voorhis, *supra* note 76.

⁸¹ Todd Wallack, *Tax Breaks Draw Films, but Cost State \$120M Revenue Loss Over 3 Years; Fuels Critics’ Call for Cuts to Program*, BOSTON GLOBE, Mar. 27, 2008, at E-1; Bruce Mohl, *Subsidizing the Stars: More Than Ever the State is Using Tax Breaks to Attract Favored Industries – From Life Sciences to Moviemaking*, COMMONWEALTH: POL., IDEAS, & CIVIC LIFE MASS., Spring 2008, 36-47.

⁸² *What Now? Players in the Casino Competition Contemplate Next Steps After House Torpedoes Patrick’s Proposal*, STANDARD-TIMES (New Bedford, Mass.), Mar. 23, 2008, at B-01.

⁸³ Patrick Collins, *No Help is No Surprise: South Coast Laments Unkept Promises of Casino Opponents*, NEW BEDFORD STANDARD-TIMES, Aug. 30, 1998, available at <<http://archive.southcoasttoday.com/daily/08-98/08-30-98/a01sr002.htm>>.

⁸⁴ National Venture Capital Association, *Money Tree Report, Q4/Full Year 2007 2–3*, available at <http://www.pwc-moneytree.com/MTPublic/ns/moneytree/files/source/exhibits/National_MoneyTree_full_year_Q4_2007_Final.pdf>.

TABLE 5. CASINO V. VENTURE CAPITAL, 2007

State	No. of deals	Venture capital invested (millions)	Casinos in state*
California	1,564	\$13,803	57
Massachusetts	430	\$3,489	0
Texas	166	\$1,416	0
Washington	170	\$1,315	29
New York	191	\$1,195	11
Pennsylvania	150	\$835	6
Maryland	99	\$635	0
New Jersey	91	\$625	11
Florida	63	\$608	9
North Carolina	69	\$577	2

Source: National Venture Capital Association; American Gaming Association; Alan Meister, Indian Gaming Industry Report, 2007–2008.

*Includes commercial casinos, Indian casinos (Class III), and racetrack casinos.

However, when one asserts that casinos are in competition with a high-tech economic development strategy, then one should not find high levels of venture capital investment in states with casinos. In fact, when measured by their ability to attract venture capital investment, seven of the top 10 “high tech” states already have casinos (see table 5). In 2007, California, with its 57 Indian casinos and 94 card rooms, attracted nearly four times as much venture capital investment as Massachusetts when measured in dollars and it closed over 1,100 more venture capital deals than Massachusetts. The State of Washington—the home to Microsoft and a major competitor with Massachusetts in the marine science and technology industry—attracted more than \$1.3 billion in venture capital investment.

Furthermore, the high tech v. casinos argument ignores the fact that the statewide economic development strategy trumpeted by Speaker DiMasi and his followers as an alternative to casinos has not been particularly successful, especially in those areas of the state seeking authorization to license casinos. From 2001 to 2007, average annual employment actually declined by 1.9% in Massachusetts, which makes it one of only four states in the nation to report a net job loss during the most recent business cycle.⁸⁵ The situation is much worse in cities, such as New Bedford, Springfield, Chicopee, and Holyoke, which have previously voted to host casinos by wide margins.

Yet, in contrast to the continuing economic stagnation in these locales, a statistical analysis of casinos and employment released by the Rappaport Institute at Harvard University in 2005 found that across the United States in “populous counties more akin to those in Massachusetts . . . employment rates in counties that introduced casinos rose almost 2 percent faster than state averages.”⁸⁶ Since this report had been specifically requested by former Speaker of the House Thomas Finneran (a casino opponent) and Rep. Bosley, it is inconceivable that the House leadership was not aware of these facts when making the casino culture argument. Not coincidentally, the Rappaport Institute study did not figure prominently in the most recent Massachusetts casino debate.

REPLACING PSEUDO-FACTS WITH DATA

The Massachusetts House of Representatives rejected Gov. Patrick’s casino proposal on Mar. 20, 2008, by a vote of 108 to 46 despite the fact that Massachusetts residents now regularly gamble at the casinos in Connecticut and the racinos in Rhode Island. Moreover, Gov. Patrick’s estimates of gross gaming revenues, permanent employment, and gaming tax revenues were not only consistent with national and regional averages for the casino gaming industry,⁸⁷ but were confirmed by an independent analysis.⁸⁸ Nevertheless, Gov. Patrick’s economic and fiscal projections, and those of every other independent expert, were quickly dismissed without refutation by key legislative leaders, who controlled the flow of information within the House of Representatives.

While working to insulate their members from substantive information by the use of exclusionary pseudo-facts, the same leadership worked diligently

⁸⁵ U.S. Bureau of Labor Statistics, State and Area Employment, Hours, and Earnings, available at <<http://data.bls.gov/PDQ/outside.jsp?survey=sm>>.

⁸⁶ Phineas Baxandall & Bruce Sacerdote, *The Casino Gamble in Massachusetts* 7 (Rappaport Institute for Greater Boston, Harvard University, Jan. 2005).

⁸⁷ Clyde W. Barrow, *Casino Economics in the U.S. and New England*, 10 MASSBENCHMARKS: J. MASS. ECON. 11–20 (Spring 2008).

⁸⁸ UHY Advisors FLVS, Inc., *Casino Gaming in Massachusetts: An Economic, Fiscal, and Social Impact Analysis* (Greater Boston Chamber of Commerce, Mar. 2008), available at <http://www.umassd.edu/cfpa/docs/boston_chamber.pdf>.

to insure that diversionary pseudo-facts were disseminated at opportune times to House members and the mass media. The Atlantic City myth had already been decisively refuted by academic scholarship, the regulatory costs of casino gaming were grossly inflated by House leaders, and the casino culture argument was an unsubstantiated red herring. Yet, these pseudo-facts continue to be repeated by media outlets simply because individuals in positions of political authority make a statement. Is there a solution to the problem of pseudo-facts?

Most public policy texts today include a section on “communicating public policy” in dealing with the media, legislators, and other public policymakers. These texts emphasize the importance of clarity, accuracy, and terseness, but they also tend to presume good will and rationality on the part of listeners and decision makers. They presume that decision makers want to receive good information and avoid misinformation. Unfortunately, when policy positions are entrenched in ideological assumptions, moral values, or some tangible interest that is threatened by a new policy initiative, it is a mistake to assume open-mindedness on the part of decision makers. Academic and other policy research becomes a form of trench warfare where one is talking past entrenched decision makers and trying to reach the genuinely undecided, whether in a state house, the news media, or the general public.

Moreover, it is always important to remember that policy reports by independent consultants and academic think tanks are only one stream of information (as opposed to knowledge) feeding into the policymaking process. The opinions of colleagues, constituents, media talking heads, preconceptions, business lobbies, and personal values are all forms of “information” taken into account by policymakers. Amidst this cacophony of information, pseudo-facts find a ready audience in the policymaking process, particularly when pseudo-facts are deployed as part of a political and media strategy designed to purposely mislead policymakers, the media, and the public. The use of pseudo-facts is an extremely effective way of forcing proponents of new policy initiatives to chase after problems that do not really exist or to divert intellectual and political energy into beating back phantoms, rather than pressing the new initiative. Pseudo-facts will continue to be used in policy debates because they work.

Amidst confusion and uncertainty, most policymakers will likely decide in favor of the status quo,

which makes pseudo-facts particularly appealing to the opponents of new policy initiatives. Moreover, even after academic scholarship has long ago refuted them in academic journals, pseudo-facts continue to circulate in the media, because if something is stated by elected officials or political activists, it will be reported and these pseudo-facts will become a part of the public discussion and the policymaking process. Once reported in the media, pseudo-facts circulate with remarkable speed as reporters and activists re-circulate them in new jurisdictions.

Unfortunately, rebutting pseudo-facts in a *politically* meaningful way is exceptionally difficult, because of the fundamental disjuncture between academic scholarship and the policymaking process and between academic and political styles of discourse. Pseudo-facts are ready-made sound bites that can be disseminated quickly in an era of headline news, rapid-fire talk shows, and Internet blogs. They can be secretly circulated in legislative memos, emails, and hallway gossip. Once put into the policy arena, pseudo-facts become widely disseminated and get repeated much faster than scholars can document their falsehood. Pseudo-facts take a second to throw into a policy arena, but it generally requires meticulous research and lengthy arguments to unravel them and then those empirical arguments have to be disseminated often long after a policy debate is terminated by legislative or other political decisions.

In addition, Ann Majchrzak has observed that traditional academic research “relies almost exclusively on the use of written materials (e.g., journal articles) to disseminate research findings,” but in policy research “it is usually the spoken, rather than the written word, which is one of the most effective media for communication.”⁸⁹ Similarly, Jo Fraatz finds that policy research is received more enthusiastically by policymakers “if disseminated by people rather than papers.”⁹⁰ Legislators in particular tend to respond more readily to the spoken word, whether through lobbying, committee testimony, or newspaper quotes, because as Majchrzak notes:

Policymakers are generally very busy people who do not have the time or motivation to read

⁸⁹ ANN MAJCHRZAK, *METHODS FOR POLICY RESEARCH* 100 (Sage Publications 1984)

⁹⁰ Jo M. Fraatz, *Policy Analysts as Advocates*, 1 J. POL’Y ANALYSIS & MGMT. 275 (1982).

lengthy documents. By presenting the information verbally, in a concise format, policymakers can grasp the new information as quickly as possible. In addition, oral presentations allow policymakers to ask questions on the spot to enhance their understanding of the research findings. Finally, since an essential skill of a good policymaker is the effective use of speeches and oral arguments, policymakers typically feel much more comfortable and less defensive in settings which utilize their verbal rather than reading talents.⁹¹

Academics, and even private consultants, are generally reluctant to engage in combative be-

havior with policymakers, but it is still necessary to be aware of the persistence of pseudo-facts in specific policy arenas, especially gaming policy, and to anticipate them in advance, rather than waiting for them to surface at an inopportune time. Unfortunately, it will always be easier to assert a pseudo-fact in the heat of a policy debate than to collect, analyze, organize, and disseminate the data necessary to rebut it in time for that information to be politically relevant to the policy debate.

⁹¹ MAJCHRZAK, *supra* note 89 at 101.