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Standards, Statuses, and Statistics: Carroll Wright and the American Standard of Living

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Much of the legislation that is currently under challenge emerged to "reform" the industrial capitalist society of the late nineteenth and early twentieth centuries, particularly to improve the living conditions that industrial workers enjoyed.

The question of the role of the welfare/regulatory state has been much on the public agenda lately . Since the 1994 Congressional elections, the Republicans have launched a full scale attack on government regulation of the private sector, affirmative action, welfare entitlements, and much of the huge edifice of state policy which affects the everyday lives of Americans. Democrats, the original creators of much of the legislation, have been forced into a defensive posture, fighting rearguard actions to protect the programs from Republican attacks. They have not been terribly successful, but they have been able to point out the hypocrisy in parts of the Republican program. Republicans who extol personal and economic freedom have been quite willing to institute stricter regulation of populations of poor women and children, and recently, to pressure users of Medicare and Medicaid to join managed care networks to cut costs.

As a social historian watching these debates unfold, I have been struck by the way the current legislative battles resonate with the assumptions and memories of earlier ones. If Great Society and New Deal legislative initiatives were wrongheaded, it is imperative to determine whether they were flawed from the outset, have outlived their usefulness, or have been corrupted or perverted by administrative action since their creation. The Republicans are less clear about how and why these programs went wrong, and legislative leaders at both the state and federal levels have been quiet about their previous support for programs they now wish to dismantle.[1]

But the role of the historian is precisely to address such issues, to bridge the past and the present, and to try to throw some light on the discussion. Much of the legislation that is currently under challenge emerged to "reform" the industrial capitalist society of the late nineteenth and early twentieth centuries, particularly to improve the living conditions that industrial workers enjoyed. This paper tells a story of the creation of one small component of the welfare/regulatory state, Carroll Wright's efforts, at the Massachusetts Bureau of Statistics of Labor and in the United States Department of Labor, to measure American working class consumption patterns and to define an "American standard of living" for workers. It is a story of unobtrusive measurement through statistical surveys, which both reflect the "realities" and influence the shape of the societies they measure.

THE DEFINITION OF THE STANDARD OF LIVING

The dictionary definition of the standard of living is "a grade or level of subsistence and comfort in everyday life enjoyed by a community, class, or individual" (*Random House Dictionary of the American Language*, 1966). *The Oxford English Dictionary* (1971) provides examples of usage from the late nineteenth century and defines it as "the view prevailing in a community or class with regard to the minimum of material comfort with which it is reasonable to be content." Thus "standard of living" requires a modifier: a "minimum" standard of living; a "moderate" standard; a "comfortable" standard; an "American" standard. The concept implies both an empirical description of consumption patterns and a normative statement of how people should live.

A "standard of living" is a standard of consumption, not of income or wages. As such, the concept is an inherent challenge to a market-driven conception of wages or income, and of course one of the most common usages in the United States has been in polemical retorts to advocates of market justifications of wage levels. The particular standard of living "with which it is reasonable to be content" is a matter of consensus, the "prevailing" view of a "community or class," or, one might add, of a government. The concept implies some mechanism for deciding on the standard, at arriving at the consensus, and then promulgating and adhering to it, through moral suasion, shaming, or law. Measurement of consumption patterns is the first step in the process.

THE MEASUREMENT OF CONSUMPTION

Government officials, private scholars, and even clergymen and amateur intellectuals, have collected information on what is sometimes called living "levels"—particularly of the poor—for centuries. Until the second half of the nineteenth century, such studies were usually aimed at determining the facts of the lives of laborers during times of distress or social unrest, or with determining the comparative, aggregate living standards of different countries (Zimmerman, 1936). For the individual-level cost of living or budget study, the researcher contacted a family and collected data on income and detailed expenditures for a period of time. Collection of such data is extremely tedious and difficult, and generally the researchers collected information from a relatively small number of households. A set of 200 was very large. The researcher then grouped the expenditures into a small number of standard categories: generally food, clothing, housing expenditures, and a residual category, "sundries." These expenditures were then compared to the household income to determine the proportion of various expenditures in the budget and whether the family had savings or was in deficit. Since the studies were generally done of the working class or the poor, it was not uncommon for the results to indicate that households spent 50 to 70 percent or more of their budgets on food.

Over the course of the nineteenth century, small scattered studies proliferated, slowly accumulating into sufficient numbers that observers began to discern basic patterns among households of different income levels. In particular, it became clear that the proportionate expenditure patterns for the poor were different from those of better off households. In 1857, Ernst Engel formalized what became known as Engel's Law on the relationship between income and food expenditures: namely that the "poorer a family, the greater the proportion of its total expenditures that must be devoted to the provision of food" (Stigler, 1965, 203; Houthakker, 1957). Engel's work, and the increasingly pressing questions of the conditions of the working class—both in Europe and the United States—prompted a spate of new budget surveys in later years and catapulted the study of family budgets into the realm of a full-fledged research tradition.

CARROLL WRIGHT'S WORK

In the United States, Carroll Wright, longtime head of the Massachusetts Bureau of Statistics of Labor (1873-1888) and United States Bureau and Department of Labor (1885-1905) did the most to advance the

study of household budgets. Wright published his first study of 397 Massachusetts workingmen's families in 1875, and oversaw the prodigious effort of the Department of Labor to collect data on 8544 working class households in the United States and Europe in 1888 and 1889. In 1901, the Department collected and analyzed data on more than 25,000 U.S. households, and extended the work to an elaborate study of food prices. During these same years, while Wright was head of the International Association of the Bureaus of Labor, many state labor bureaus also collected cost of living data on workers. With each new, larger and more technically competent study, Wright hoped to put a firm empirical grounding of information under the discussion of working class living standards.[2]

All of Wright's studies were conducted before the development of modern probability sampling methods, but he included a sophisticated discussion of the "representative value" of "our investigations" which give even modern users of the data assurance of their usefulness.

Though Wright was deeply concerned with the issues of measurement, he considered theoretically rigorous, high quality measurement of consumption patterns as fundamentally a means to a larger end. He made clear his vision of the function of his work in the bluntest possible terms. He aimed, as he put it in the 1875 Massachusetts report, "to hold the mirror up to the entire wage system . . . in order that it might see its own deformities, and be led to soften its visage and look with more brotherly feeling upon the laborer, who toils on and ever, and who, being worthy of his hire, should receive it" (MBLS, 1875, p. 450; Leiby, 1960, p. 65). His studies always contained policy recommendations, and his efforts thus had to stand the scrutiny of tumultuous political debate.

Wright's methodology in his three major studies was, as many later scholars have noted, extraordinarily sophisticated for its day. He carefully documented his methodology, thus allowing others to replicate, admire and critique it (Stigler, 1965, p. 207; Williamson, 1967; McClymer, 1986; McClymer, 1989; McClymer, 1990). Over time, the studies became larger and more elaborate, as his career progressed from Massachusetts to the federal level. Other scholars in government and the private sector also contributed to the developing tradition (Gabler, 1992; Zimmerman, 1936; Williams and Zimmerman, 1935). Nevertheless, Wright held the key positions in labor statistics from 1874 to 1905, and there is definite continuity in Wright's work from the initial 1875 study to the massive 1901 effort. His work provides a unifying thread to the development of the official tradition of the measurement of living standards in the United States.

Wright began his efforts to assess the "condition" of workingmen's families in the first report he produced after his appointment to head the Massachusetts Bureau. *The Fifth Annual Report of the Bureau of Statistics of Labor*, published in 1874, presented tables of wages and prices of "essential items entering into a workingman's cost of living." As he reported the following year, the report was misinterpreted since weekly wages could not be reliably multiplied to generate earnings without knowledge of how many weeks the worker was employed. He was accused, as he put it, of trying "to make a fictitiously good showing of the condition of Massachusetts workmen" (MBSL, 1875, pp. 191-192).

The methodology in his study of the "Condition of Workingmen's Families" in the *Sixth Annual Report* was designed to avoid this problem by collecting individual level data on both income and expenditures from 397 representative workingmen's families, and by explicating his method in detail. The report was a monograph by itself, 260 pages long, including some 136 pages listing the original data. From each family he collected information on income, occupation, ethnicity, family size and composition, living arrangements, food consumed for breakfast, dinner and supper, and specific total expenditure amounts for rent, fuel, groceries, meat, fish, milk, boots and shoes, clothing, dry goods, papers, societies, and sundries (MBSL, 1875; pp. 217-354; Gabler, 1992). All of Wright's studies were conducted before the development of modern probability sampling methods, but he included a sophisticated discussion of the "representative value" of "our investigations" which give even modern users of the data assurance of their usefulness. He discussed the cost of living for the 397 families overall, including a discussion of savings and deficits, and then discussed the

various elements of consumption in turn: rent, fuel, food, clothing, boots and shoes, dry goods, and sundries. He concluded the study with a discussion of Engel's law, and developed policy recommendations based upon what he found. [3]

In his discussion of consumption patterns, he concluded that the minimum family income necessary to keep a family from running a deficit was $600; only 10 percent of the 397 workers were in debt. Nevertheless he also discovered another disquieting pattern, namely that "fathers rely, or are forced to depend, upon their children for from *one-quarter* to *one-third* [emphasis in original] of the entire family earnings." He found such a situation objectionable, since he had also postulated a standard for determining if a breadwinner's wages were adequate. "It seems natural and just," he argued, "that a man's labor should be worth, and that his wages should be, as much as with economy and prudence, will comfortably maintain himself and family, enable him to educate his children, and also to lay by enough for his decent support when his laboring powers have failed." He thus concluded that Massachusetts workingmen did not receive sufficient wages to support their families, and recommended setting a "certain minimum yearly or daily rate or wage paid for competent adult labor" through either the force of "public opinion" or "legislation, rigidly enforced." Practically speaking, such a recommendation would have required an increase in adult male wages of over 20 percent (MBSL, 1875 pp. 358, 368, 380, 384, 193, 447, 448). [4]

Wright made his policy recommendations in the midst of the depression of the 1870s; they did not lead to changes in legislation or in "public opinion." But they did define a standard, one far out of reach of most workers, even as it was also defined as the "minimum."

WRIGHT'S FEDERAL STUDIES

In 1884, Wright was appointed head of the new federal Bureau of Labor, and his mandate to investigate the condition of American workers expanded. In the late 1880s, Congress funded a national study of the "cost of production" and "cost of living" in the key industries affected by the tariff. Carroll Wright's Department of Labor conducted the surveys between 1888 and 1890, and published them as the *Sixth* and *Seventh Annual Report[s] of the Commissioner of Labor* (1890 and 1891). The *Sixth Annual Report* covered the pig iron, bar iron, steel, bituminous coal, coke, and iron ore industries; the Seventh Annual Report covered cotton and woolen textiles and glass industries. In all, the data covered 8544 workers, including 1735 European workers for comparison. The three fat volumes that Wright published formed the basis of the famous Aldrich Reports a few years later, as well as many studies of consumer behavior and wages and income since. [5]

Wright's Department of Labor study employed the annual budget estimate method. An interviewer recorded detailed annual expenditures for each family as well as income information for all household members. Again Wright published the individual level data—this time on 102 variables for each case. The survey reported the husband's occupation and nationality, the age and sex composition of the household, and the number of children at "work," "school," "home" or "unknown." There were 33 questions on the quantity and price of food, eight on housing expenditures, three on clothing costs, and 14 on other expenditures.

Wright hoped to describe the "typical" consumer expenditure patterns for skilled and unskilled workers in the nine industries, though he did not collect a sample representative of the proportions of various occupations and skill levels in the industries. He also tried to define a living standard on a "scientific" basis using Engel's law.

Engel's law provided a logic for believing that the distribution of expenditures among various income classes obeyed economic "laws"—to use the nineteenth century concept—in the proportion of income devoted to food expenditures. The proportion of income expended on food for various income cohorts was highly regular. Wright noted that the patterns were very similar to those found in European studies of workingmen's budgets.

The proportion for the lowest income cohorts was around 50 percent, declining to about 30 percent for the upper end of the working class. If, Wright suggested, one could define a set of food expenditures and a budget for a "normal" family which took into account the "chemical and physiological sides of consumption," one could extrapolate from the "scientific" food budget to the amount of income required to produce it, and hence to a wage level for a workingman's living standard (United States Commissioner of Labor, 1891, Part 2, p. 859).

Wright's next task was to define a "normal" family upon which to base the food budget. It contained a working husband, a homemaker wife, no more than five children, none of whom was over 14 years of age, no boarders or lodgers. The "normal" family did not own their home and had "an expenditure given for rent, fuel, lighting, clothing, and food." Of the 8,544 families surveyed, 3,265 met the criteria for "normal families." The remainder were excluded. "Normal" did not mean "typical." Wright defined measures of proportionate food consumption for the family members. Husbands consumed 1 unit; wives and children from 11 to 14 years, .9 units; children 7 to 10 years, .75 units; children 4 to 6 years, .4 units; children 1 to 3 years, .15 units (ibid., p. 857).

Debates over the standard of living continued to develop in labor circles, as the American Federation of Labor began to articulate a standard for a "living wage" for workers.

With these conceptualizations, Wright moved closer to his goal of defining a "scientific" standard of living. At the time he published the *Sixth* and *Seventh Annual Report[s]*, he had not concluded the study of the "chemical differences in like foods that are consumed in different localities." But, as he put it, he was laying the "foundation" for a later "scientific exposition" when he could present "a full exposition of the scientific features of the cost of living" and eventually "the relation of earnings to cost of living" and "the influence of the cost of living or of earnings upon the efficiency of labor." Meanwhile the debates over the standard of living continued to develop in labor circles, as the American Federation of Labor began to articulate a standard for a "living wage" for workers (ibid, p. 859; Glickman, 1993; Rothbart, 1989; May, 1985; Shergold, 1982).

Wright returned to the study of living standards some ten years later with a new massive Department of Labor study (United States Commissioner of Labor, 1904). The raw data have been lost from this study, but it appears from the published results that it closely followed the model of the 1888-89 studies. This time Wright collected data from 25,440 families; 11,156 were categorized as "normal" families, using the same definition as in the 1888-89 study. Wright collected more detailed information on expenditures from 2,567 families; 1,043 of these were "normal" families. He also collected retail price data for 30 key food articles from around the country for the years 1890 to 1903 as a means to crosscheck the expenditure patterns reported by the families, and to develop a time series index of food prices.

Again Wright found that the proportion of expenditures on food was highly stable, representing 42.54 percent of the expenditures of the 2,567 "normal" families. And now that he had retail price data on food, he could provide an estimate of the average annual income necessary to support a "normal" family of a particular size, and he could estimate how that income would have to rise or fall with retail price changes. He reported that retail prices for food had fluctuated over the period by 15.5 percent. He ended his discussion of the tables by noting that "if all classes of family expenditures . . . be taken into consideration, it is apparently a safe and conservative conclusion . . . that the increase in the cost of living, as a whole, in 1903 . . . was less than 15.5%" from the low point in 1896 (ibid., p. 661).

With this report, Wright achieved many of the goals he defined almost 30 years before. He brought statistical regularity and order to the welter of data on working-class consumption patterns. He showed that there was major variability in consumption patterns among the workers' families he analyzed by region, occupation, skill level, ethnicity or nationality, family size and composition. Yet he also showed profound regularity of proportionate expenditure patterns underlying

that variability and diversity, and thus he felt confident in moving forward to suggest "standards" of living, and indices of changes in the "cost of living."

Nevertheless, Wright knew that he was not quite done. In his final word on the cost of living in the 1904 report he qualified his conclusions. Having announced the first run of the series that would eventually develop into the cost of living index, now the consumer price index, Wright hedged. The validity of the index, he suggested, "assumed, of course, always the purchase of the same articles and the same quantities in years of low prices, low wages, and more or less irregular employment, and in years of higher prices, higher wages, and steady employment." (Ibid.) And, we might add, any other changes in the mix of expenditure patterns which are a result of the differences in taste, price, or household composition.

THE PROBLEM OF SETTING THE STANDARD AND DEVELOPING CONSENSUS

All scientific "standards" require an objective and definable measure or grade to validate the standard. The problem is that the logic for setting the standard for "the standard of living" tends to be circular. The "prevailing" view, to return to the dictionary definition, sets the "minimum" standard; but the "minimum" standard is itself determined by the "prevailing" view. As Otis Dudley Duncan (1984) notes about social measurement in general, social measures do not have objective, theoretically-derived referents, as do the "standards" for weight and length. Thus the concept leads to normative judgments on multiple levels: on setting the standard or level, and in requiring compliance with it. For the labor leaders and social reformers who bargained, lobbied, or called strikes under the call of setting or maintaining "an American standard of living," the problem of defining the standard was primarily a matter of politics and power. The court of public opinion or the vote of the legislature could determine the standard.

Government officials like Wright and advocates for the poor sought a different ground to validate their definition, a more clearly scientific one, based upon that perhaps elusive, but still ideal goal of the external, objective referent. The history of the statistical effort to define the "standard of living" is a continuing effort to develop an external referent for setting the standard, and to define a standard based upon a "scientific" rather than a solely moral or political judgment. Particularly in Wright's day, when labor's political voice was weak and inchoate, researchers used a fundamental biological grounding, the food budget, to determine the standard.

Nevertheless, the statisticians' effort has never achieved its scientific goal, despite the development of measurements for all kinds of consumption patterns. Even Wright's and other scholars' efforts to determine a "scientific" and nutritionally sound food budget did not ultimately provide a stable benchmark for a "standard," though such food budget analyses did play a major role in policy debates on labor and wage rates in the Progressive Era (Leiby, 1960: 173; United States Department of Labor, 1918: 1-3). The American standard of living has risen consistently over the course of the century, and the proportion of consumer expenditure on food has declined to 14.4 percent in 1991, according to the 1993 *U.S. Bureau of the Census, Statistical Abstract, of the United States* (p. 454). Persistent income inequality and poverty have kept the political question of the standard of living on both the political and the social scientific agendas. The food budget is no longer the main expenditure item for families, even low income families, and social scientists have not developed a consensus on the "standard" for consumption items to replace it.

Social measures do not have objective, theoretically-derived referents, as do the "standards" for weight and length. Thus the concept leads to normative judgments on multiple levels.

Twentieth century efforts to define an "American standard of living" confronted the same problems Wright faced. Wright was able to develop an official index for price change: what ultimately became "the consumer price index for urban wage earners and clerical workers." He was not able to set an official "standard" for wages necessary for a single breadwinner to support his family. After Wright much of the research shifted to setting a lower "minimum" standard—for

If a single earner could not earn sufficient income to afford the market basket of goods and services in the index, was the standard realistic?

poverty, rather than for a family supporting wage. In the 1960s the federal government adopted Mollie Orshansky's methods to define the official, federal "poverty level" standard. Orshansky's standard was a food-based standard which used a multiplier of 3 of the price for an official Department of Agriculture food budget, corrected for family size. As the recent National Academy of Sciences report *Measuring Poverty* demonstrates (Citro and Michael, 1995; Fisher, 1992), this "standard" is no longer adequate, though whether and how to replace it are still highly controversial issues. Federal and state minimum wage laws do not set rates for what Wright called "competent adult labor."

In short, consensus in setting the "American standard of living" has been relatively ephemeral at best, despite almost continuing effort to do so for the past century. And because of the inability to develop a lasting standard, either politically or scientifically, there is a darker legacy to the achievements of the tradition of measuring consumption and defining the "American standard of living."

CONCLUSION

We have already seen several components of Wright's efforts to buttress the scientific character of his studies: using techniques of "authorities" such as Ernst Engel, ensuring an accurate sample, expanding the number of cases to provide more validity and reliability, and defining a nutritionally necessary food budget to ground a standard. Nevertheless, these efforts were not sufficient to silence critics and allay the doubts of skeptics, since his work could always be challenged by another study, in what Peter Shergold (1982) has called a "numerical war of attrition" (p. 11). After all was said and done, Wright's standard still had no scientifically defined, external referent to validate it.

He solved the problem, as did others after him, by resorting to a moral or normative judgment for grounding the standard which could gain consensus of the "prevailing" community. This meant defining, not a universal standard, but a class-, gender-, ethnic-, or race-specific standard. Researchers borrowed ideas from politicians and labor activists who pressed for a higher living standard for workers, and to the extent that those ideas were consensual and effective, built them into their statistical procedures. We have already seen Wright attempt such a technique by arguing for a "male breadwinner/female homemaker, non-working children model" for a family. Any wage level which did not guarantee such a family life he considered substandard. Other researchers used similar techniques, as the practices for benchmarking the consumer price index will illustrate.

After Wright's 1904 report, the Department of Labor initiated a regular survey of food prices of about 30 foods in American cities. The Department stopped the data collection from 1907 to 1911, then resumed and filled in the series with retrospective data, and expanded the survey to include additional non-food items during World War I. The Department conducted another consumer expenditure survey of 12,000 families in 92 cities from 1917 to 1919, and began publication of the official cost of living index between 1919 and 1921. It has been revised periodically since (United States Department of Labor, 1966).

Determining the "market basket" of goods and services which will be priced for the index is a complex and contentious question, since the statisticians must make a normative judgment of what constitutes "necessary" or appropriate expenditures for a household. Over the years, the Department manipulated the households included for determining the market basket of goods and services for the cost of living index to measure the "right" kind of family. The 1901 "average family income after taxes" for the workers "whose expenditures were used in the derivation of index weights" was $827; while the average working-class income for a "normal" family as Wright defined them in 1901 was $651 (United States Department of Labor, 1966; United States Commissioner of Labor, 1904). The higher income level included households with significant income from boarders and lodgers, children and wives, and thus raised

the same question that Wright had wrestled with almost 30 years earlier (see MBSL, 1875). If a single earner could not earn sufficient income to afford the market basket of goods and services in the index, was the standard realistic? And did the gap between the single earner's income and the family income lead to the conclusion that the single earner's wage should be raised, as Wright concluded? Or did it lead to the conclusion that workers lived beyond their means? Or that they should adjust their expenditure patterns? There was no clear answer.

As officials developed the price index in later years, they shifted the definition of the "family" included in the determination of the market basket to avoid these problems. Labor Department officials restricted the definition of families included in response to charges that some families lived more cheaply, consumed a lesser quality diet, and were not appropriate for setting an "American standard." The 1917-19 expenditure families were "White only; in area entire year and in the U.S. 5 years or more; no non-English speaking families" as well as "No slum or charity families." The expenditure families for the 1934-36 market basket were restricted to "White only, except where Negro population was significant part of total; in area 9 months or more," "no relief families, either on direct or work relief," employed "at least 1,008 hours spread over 36 weeks." With such techniques, Labor Department officials benchmarked their "market baskets" for the consumer price index to consumers well above the expenditure "average" (United States Department of Labor, 1966, p. 84).

Today there is still a need to measure consumption patterns and define minimum and "normal" living standards for use in framing social policy. The standards will continue to be contested in terms of the need for and "right" to particular services and consumption patterns. But now other issues are at the center of controversy, particularly health care and its quality and cost rather than meat and its nutritional value. Adult women are no longer normatively defined as wives and mothers; rather they are primarily seen as potential wage earners who owe an obligation to provide income to the household. Yet expenses for "child care" and "family care," substituting for the work that the housewife used to do, have not necessarily been conceptualized as part of the essential categories for household consumption and thus considered a "necessary" expenditure for a family with children and all its adult earners in the labor force. In the Labor Department's 1992-93 Consumer Expenditure Survey, day care or elder care are conceptualized as a subcategory of "Housing," called "Household operations, personal services."

Hence, just as it took Wright years to develop what he believed was a reliable and consensual measure of consumption patterns and living standards, it will take a while now to set new standards—because of both measurement problems and the difficulty in deciding what a "normal" family is and what is "normal" to measure.

The standards will continue to be contested in terms of the need for and "right" to particular services and consumption patterns. But now other issues are at the center of controversy, particularly health care and its quality and cost rather than meat and its nutritional value.

NOTES

1. Bob Dole's shifting position on affirmative action is one of the more notable examples.
2. For Wright's career, see Leiby, 1960; Horowitz, 1985; McClymer, 1989. The shifting names of the federal agency are described in Leiby, 1960 on page 107. For Wright's studies, see Massachusetts Bureau of Statistics of Labor, 1875, pp. 191-450; United States Commissioner of Labor, 1890; United States Commissioner of Labor, 1891; United States Commissioner of Labor, 1904. The raw data from the 1875 and 1888-90 studies are available from the Interuniversity Consortium for Political and Social Research (ICPSR). ICPSR has also recently prepared machine readable cost of living data sets for the 1917-18 and 1935-36 Bureau of Labor Statistics Consumer Expenditure Surveys.
3. Wright also expanded on Engel's Laws—improperly, as it happened. Stigler (1965, pp. 203 ff.) and Williamson (1967) detail the history of Wright's translations of Engel, Engel's translations of Wright, and the ensuing confusion.
4. The average father's income was $575; the average family income was $763.
5. United States Commissioner of Labor, 1890; United States Commissioner of Labor, 1891. For the Aldrich Reports, see Retail Prices and Wages, 1892; Wholesale Prices, Wages and Transportation, 1893. For a discussion and analysis of the 1890 data, see Clubb, et al., 1989; Modell, 1978.

REFERENCES

Citro, C. and Michael, R. (1995). *Measuring Poverty: A New Approach.* Washington, DC: National Academy Press.

Clubb, J., Austin, E., and Kirk, G., Jr. (1989). *The Process of Historical Inquiry: Everyday Lives of Working Americans.* New York: Columbia University Press.

Duncan, O.D. (1984). *Notes on Social Measurement: Historical and Critical.* New York: Russell Sage Foundation.

Fisher, G. (1992). *The Development and History of the Poverty Thresholds.* Social Security Bulletin, 55, 3-14.

Gabler, E. (1992). Gilded Age Labor in Massachusetts and Illinois: Statistical Surveys of Workingmen's Families. *Labor's Heritage* (Fall), 4-21.

Glickman, L. (1993). Inventing the "American Standard of Living": Gender, Race and Working-class Identity. *Labor History*, 34, 221-235.

Horowitz, D. (1985). *The Morality of Spending: Attitudes Toward the Consumer Society in America*, 1875-1940. Baltimore MD: Johns Hopkins University Press.

Houthhakker, H.S. (1957). An International Comparison of Household Expenditure Patterns, Commemorating the Centenary of Engel's Law. *Econometrica*, 25, 532-551.

Leiby, J. (1960). *Carroll Wright and Labor Reform: The Origin of Labor Statistics.* Cambridge, MA: Harvard University Press.

Massachusetts Bureau of Statistics of Labor (1875). *Sixth Annual Report of the Bureau of Statistics of Labor, Part IV, Condition of Workingmen's Families* (pp.191-450). Boston, MA: The Bureau.

May, M. (1985). Bread before Roses: American Workingmen, Labor Unions and the Family Wage. In Ruth Milkman (Ed.), *Women, Work and Protest* (pp. 1-21). New York: Routledge and Kegan Paul.

McClymer, J. (1986). Late Nineteenth-century American Working-class Living Standards. *Journal of Interdisciplinary History*, 17, 379-398.

McClymer, J. (1989). How to Read Wright: The Equity of the Wage System and the Morality of Spending. *Hayes Historical Journal*, 8, (2), 37-43.

McClymer, J. (1990). The "American Standard" of Living: Family Expectations and Strategies for Getting and Spending in the Gilded Age. *Hayes Historical Journal*, 9, (3), 20-43.

Modell, J. (1978). Patterns of Consumption, Acculturation and Family Income Strategies in Late Nineteenth Century America. In Hareven and Vinovskis (Eds.), *Family and Population in Late Nineteenth-Century America*, (pp. 206-40). Princeton NJ: Princeton University Press.

Random House Dictionary of the American Language. (1966). New York: Random House.

Retail Prices and Wages: Report by Mr. Aldrich from the Committee on Finance. Senate Report, 52nd Cong., 1st Sess. (1892).

Rothbart, R. (1989). Homes Are What Any Strike is About: Immigrant Labor and the Family Wage. *Journal of Social History*, 23, 267-284.

Shergold, P. (1982). *Working-class Life: The "American Standard" in Comparative Perspective.* Pittsburgh, PA: University of Pittsburgh Press.

Statistical Abstract of the United States (1993). Washington DC: United States Bureau of the Census, p.454.

Stigler, G. (1965). Essays in the History of Economics. Chicago: University of Chicago Press.

United States Commissioner of Labor (1890). *Sixth Annual Report.* Washington, DC: Government Printing Office.

United States Commissioner of Labor (1891). *Seventh Annual Report.* Washington, DC: Government Printing Office.

United States Commissioner of Labor (1904). *Eighteenth Annual Report, Cost of Living and Retail Prices of Food.* Washington, DC: Government Printing Office.

United States Department of Labor (1966). *The Consumer Price Index: History and Techniques, Bulletin 1517.* Washington, DC: Government Printing Office.

Wholesale Prices, Wages and Transportation: Report by Mr. Aldrich from the Committee on Finance. Senate Report, 52d Cong., 2nd Sess. (1893).

Williams, F. and Zimmerman, C.C. (1935). *Studies in Family Living in the United States and Other Countries: An Analysis of Material and Method, U.S.D.A. Miscellaneous Publication No. 223.* Washington, D.C.: Government Printing Office.

Williamson, J. (1967). Consumer Behavior in the Nineteenth Century: Carroll Wright's Massachusetts Workers in 1875. *Explorations in Entrepreneurial History, Second Series*, 4, (2), 98-135.

Zimmerman, C.C. (1936). *Consumption and standards of living.* New York: Van Nostrand.

Do the Urban Poor Pay More for Food? Issues in Measurement

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Consumer analysts have put forth a considerable effort to identify and examine food price inequity among groups of consumers (Sexton, 1971; MacDonald and Nelson, 1991). However, measuring the real difference in prices paid for food has proven to be a troublesome task. Much of the difficulty in measuring any real difference in the prices paid for food items lies in the limitations of both survey and shelf price data. Survey data allow the researcher to match the food purchase with the characteristics of the consumer. However, the vast number of individual brands, varieties, and sub-groups requires that slightly different foods be grouped together. Shelf data, which might be collected from a supermarket scanner, allow comparisons of identical products, rather than product categories. This study uses a nationally representative survey and attempts to correct categorization problems by removing the possibility of quality differences. Differences in prices that may exist among income levels, races, and levels of urbanization are explored.

BACKGROUND

Higher food prices in poverty areas could be explained by a greater cost of shopping for food, smaller size of food retailers, smaller package size, or the level of market concentration. Mobility constraints (measured by number of cars per household or proportion of single parent families) may make comparison shopping a more costly endeavor (Sexton, 1973). In the smaller food stores where poor families most frequently shop, larger-sized packages of food items (with lower per-unit cost) are rarely stocked (Kunreuther, 1973). MacDonald and Nelson (1991) note the dense concentration of Blacks within low-income urban neighborhoods in comparison with low-income Whites, who tend to be dispersed throughout urban and suburban areas. Benson and Faminow (1984) show relatively immobile consumers living in densely populated areas to be vulnerable to the rent-seeking behavior of food sellers. Merchants know that consumers with limited transportation alternatives will pay more for the convenience of food available locally. Bell (1993) illustrates that many of these conditions have persisted and may constitute a form of price discrimination.

The volume of theories predicting higher food prices in poverty areas suggests that many have encountered a price difference. Surprisingly, one of the most recent and comprehensive studies of food price differences (MacDonald and Nelson, 1991) did not provide statistically significant evidence that nationwide, low-income consumers pay higher prices for food than higher-income consumers within urban areas. The lack of such evidence may be a result of difficulty in matching specific groups of consumers with prices paid for

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identical food items when using scanner or shelf price data. Shelf price comparisons are performed using data calculated by collecting a representative basket of foods or by studying sales statistics from stores in different areas. In order to find out whether some groups pay higher food prices, demographic characteristics of shoppers must be assigned to each store. For example, MacDonald and Nelson classify stores as catering to low- or high-income consumers by the income level of the population living within their zip code. Scanner data from these stores are linked with the population characteristics of those living within the geographic region. Sales data from local stores offer an accurate portrait of the market most shoppers face within the stated region. However, it is difficult to match food price data with the actual food buyer. Grocers located on the edge of one zip code catering to consumers in another zip code, extreme variations of income within a zip code, or instances in which most residents shop outside their zip code all contribute to measurement error.

Using data collected from dietary surveys may also lead to measurement error if foods being compared are not actually identical in kind or quality. Higher-income consumers will purchase more expensive cuts of meat, gourmet coffees, or a greater number of prepared foods than those on a tight budget (Morgan, Johnson, Lee, and Goungetas 1985). Assuming that all foods within a particular food category are of the same real or perceived quality will lead invariably to the conclusion that high-income consumers pay more for food. Wealthy consumers may spend much more money than poor consumers on the same quantities of foods from within the same categories (Morgan, Peterkin, Johnson, and Goungetas, 1985). For example, coffee roasted in a local specialty shop may cost many times as much as the least expensive coffee sold in a grocery store. Variation in quality exists, even in food consumption data sets that include hundreds of separate food categories. Higher prices for premium or highly advertised food brands will cause prices to vary among foods in the same category.

METHOD OF ANALYSIS: MATCHING CONSUMERS WITH THE FOODS THEY BUY AND THE PRICES THEY PAY

Analyzing the 186,181 individual food purchases reported in the 1987-88 Household Nationwide Food Consumption Survey (NFCS), which encompassed a diverse sample of 12,522 individual consumers within 4,495 households, allowed us to match individuals' characteristics with the price paid for actual food items. The 1987-88 NFCS[1] provides prices actually paid by households which could be easily categorized demographically. The data set identifies the purchases from 3,970 different food categories, most of which contain intra-category quality differences. To maximize homogeneity, a basket of foods was chosen which has the fewest perceptible differences within the assigned food category. For instance, sliced bacon was excluded because of the number of different manufacturers and treatments used in production, while bone-in pork chops was included because the end packaged products were nearly homogeneous. Only foods which were consumed with some frequency by members of all relevant demographic groups were considered.

Of those food categories consumed by at least 20 people in each demographic sub-group,[2] nine food categories were chosen as being the most purely homogeneous: **whole milk, white flour, white sugar, large eggs, regular ground beef, pork chops, whole chicken, white potatoes, and bananas.** All were chosen as having the fewest number of perceived (for example brand-name) or actual intra-category quality differences.

Of the 12,522 individuals surveyed, 10,427 were used in this analysis. There was a minimum of 296 individuals in each demographic sub-group analyzed. This smallest group was Black low-income suburban consumers. The largest sub-group of 5,173 was White high-income suburban consumers. For a complete listing of sample size for each demographic sub-group, see Tables 1 and 2.

Low-income households were defined as those whose income falls within the lowest quartile according to 1987 census data.

Other households were designated higher-income. Black households were defined as those which include a Black female head of household when one or two households heads are listed, or in which a Black male is the sole head of household. All other households labeled as any race other than White or Black were not included due to small sample size. Urban and suburban households were included as defined in the NFCS.

The price index was simply the average of all normalized prices paid for each food reported that was in one of the nine homogeneous categories listed above. For each individual, the price paid for each food was normalized with respect to the sample mean price for a given food product. This normalization was necessary due to the large mean price difference between the meats and low-cost products, such as flour and sugar. The consumer paying the exact average price for a product had a price equal to one for that observation. Any consumer paying more than the average price had a price greater than one and any consumer paying below average price for a given product had a price below one. With all prices normalized to mean values of one, each food product could be weighed equally. Once a normalized price had been calculated for each product consumed by each individual, the average of all of these prices was calculated to form the final price index.

Price variation was evaluated through the comparison of sub-population marginal price means, or least-squared means. These least-squared means represented the predicted or expected value of the price variable for an individual sub-group with all other factors used to identify sub-groups set at mean values. The null hypothesis was that the expected value of the price paid by one group is equal to that of another. If the calculated value of the F-statistic is greater than the appropriate critical value then the null is rejected and price differences are evident among groups of consumers.

Paring down a large sample to a smaller number of observations that fit our criterion for accurate comparison does involve the loss of an enormous amount of food information. It should be noted that the basket of groceries chosen in this study represents only about a tenth of total expenditure on food reported in the NFCS,[3] and that any observed variation in food prices may not reflect a difference in total expenditure on food. Also, normalization may magnify the importance of price differences among less expensive foods within the basket. Consequently, the results should be taken as an indication of food pricing patterns and not as a precise estimation of increased expenditure on food.

RESULTS AND DISCUSSION

Tables 1 and 2 show the estimated mean prices compared among sub-groups. Table 1 includes the most significantly different prices, while Table 2 highlights those groups whose mean prices are most similar.

The significance of race in the mean price comparison was surprising given that most recent price studies do not identify race or cultural differences as a determinant of variation. Prices paid by low-income urban Blacks appear to differ from any group of Whites, whether urban, suburban, low- or high-income. Even among urban Blacks, a statistically significant difference is observed between low-income and higher-income households. Describing high food prices as purely a race or a class issue based on these results is difficult because higher-income Blacks, low-income urban Whites, and high-income urban Whites do not pay significantly different prices. However, the significant food price gap between low-income Black households and low-income White households must be noted as evidence that racial disparity exists among the poor. That White low-income urban consumers did not pay significantly higher prices than White higher-income urban consumers is consistent with the dispersion of low-income Whites throughout city centers (rather than concentrated in poverty areas) noted in MacDonald and Nelson (1991). The essentially identical mean prices paid by low- and higher-income suburban consumers points to either greater dispersion of all classes or greater similarities

The essentially identical mean prices paid by low- and higher-income suburban consumers points to either greater dispersion of all classes or greater similarities among food sellers in the suburbs.

TABLE 1

NORMALIZED MEAN FOOD PRICES — MOST DIFFERENT GROUPS

Groups of Consumers Being Compared	Sample Size	Comparison of Group Mean Food Prices	Standard Deviation	p-Value for H_0: Mean of First Group = Mean of Second Group
Urban Black Low Income Suburban White Higher Income	5173 540	1.078 0.983	0.020 0.012	0.001
Black Low Income White Higher Income	836 6748	1.051 0.990	0.015 0.006	0.001
Black Urban White Suburban	916 6496	1.045 0.990	0.015 0.007	0.001
Black Low Income White Low Income	836 2167	1.051 0.998	0.015 0.010	0.003
Black Urban White Urban	916 2419	1.045 0.998	0.015 0.009	0.006
Blacks Whites	1512 8915	1.031 0.994	0.011 0.006	0.007
Urban Low Income Urban High Income	1384 1951	1.045 0.997	0.013 0.013	0.009
Urban Black Low Income Urban White Low Income	540 844	1.078 1.012	0.020 0.016	0.009
Urban Low Income Suburban High Income	844 5173	1.045 1.002	0.012 0.012	0.012
Urban Low Income Suburban Low Income	844 1323	1.045 1.004	0.012 0.013	0.018
Urban Black Low Income Urban Black High Income	540 376	1.078 1.012	0.020 0.024	0.032
Low Income Higher Income	3003 7424	1.024 1.000	0.009 0.009	0.052

Communities densely populated by low-income residents within areas characterized by high rent, insurance, and security costs will experience higher food prices.

among food sellers in the suburbs. The small mean price difference between urban and suburban households is not consistent with findings of shelf price and scanner studies which found significant differences. This is almost certainly due to a high percentage of consumers, particularly Whites and higher-income Blacks, traveling outside the city in order to shop at suburban supermarkets. In fact, the comparative mobility constraints of low-income Black consumers may account for much of the difference between races.

A summary of the price comparisons implies that:

1) Black households paid higher food prices than White households.

2) In urban areas, low-income households paid significantly higher food prices than higher-income households, and in suburban areas there was a high probability (92 percent) that higher-income and low-income households paid the same food price.

3) Low-income Whites and higher-income Whites appear to pay equal food prices.

IMPLICATIONS AND CONCLUSION

If consumers can be more precisely matched to the specific food they eat, more accurate price comparisons can be made across demographic groups for similar products. Data that do not contain information using homogeneous food must be excluded in order to remove food quality and kind variation that may be misperceived as real price variation.

Dietary surveys normally include demographic information that can be used to link food prices with an individual consumer based on specific market transactions. Survey participants are normally not required to list food information with enough specificity to allow comparisons of identical food items, relying instead upon grouping foods into categories. Scanner and shelf price data provide the ability to compare prices of same-brand foods without the use of categories, but the researcher often must rely on sketchy assumptions concerning the demographic characteristics of the consumer. Personal information taken from, for instance, a credit card and matched to the food item would provide the most accurate association between buyer and price.

By using data which specifically link food purchases to the demographic characteristics of the buyer, a more distinct pattern of food price variation arises which confirms what many have viewed and experienced: low-income urban Blacks pay more for food. Significant price differences between low-income urban Blacks and low-income urban Whites are consistent with high food prices in areas of concentrated poverty. Prior studies have noted the high costs of operating food stores within low-income urban areas, the relatively high number of smaller convenience-type stores within these neighborhoods, and the disinclination of urban residents to travel long distances or purchase large quantities when shopping for food as economic ratio-

nale for the existence of high food prices. Ultimately, communities densely populated by low-income residents within areas characterized by high rent, insurance, and security costs will experience higher food prices. That low-income Blacks most often live within these areas makes them particularly vulnerable as a group.

Establishing the existence of price disparity is not nearly as important as identifying its underlying causes and possible equitable solutions. Higher food prices faced by the disadvantaged in a society which values equity and fairness may justify government involvement. The effectiveness of programs that provide aid to the disadvantaged through food stamps or income transfers is weakened when the same amount of money will buy more food in the suburbs. Food stamps may also be seen as a way of allowing those living in concentrated poverty areas the ability to buy as much food as they could if they were shopping in other areas. Attention must be focused once again upon studies which identify the roots of food price variation and practical solutions that efficiently narrow the food price gap for those whose resources are most limited.

TABLE 1
NORMALIZED MEAN FOOD PRICES — MOST SIMILAR GROUPS

Groups of Consumers Being Compared	Sample Size	Comparison of Group Mean Food Prices	Standard Deviation	p-Value for H_0: Mean of First Group = Mean of Second Group
Surburban Low Income	1619	1.004	0.013	0.921
SurburbanHigher Income	5473	1.002	0.012	
White Low Income	2167	0.998	0.010	0.478
White Higher Income	6748	0.990	0.006	
White Urban	2419	0.998	0.009	0.473
White Suburban	6496	0.990	0.007	
Black Urban	916	1.045	0.015	0.213
Black Suburban	596	1.017	0.018	
Urban	7092	1.003	0.009	0.149
Suburban	3335	1.021	0.009	
Urban White Low Income	844	1.012	0.016	0.128
Urban White higher Income	1575	0.983	0.012	
Black Low Income	836	1.051	0.015	0.073
Black Higher Income	676	1.011	0.017	

NOTES

1. For complete details see Peterkin, Rizek and Tippett (1988).
2. For example there are at least 20 observations representing an urban White high-income consumer, a suburban Black low-income consumer, etc., choosing all of the foods included in the price analysis.
3. Given that there are 3,970 individual foods reported in the NFCS, the nine foods which are consumed by 20 or more people and considered the most homogeneous that make up the price index are a disproportionately large part of the food budget.

REFERENCES

Aaker, D.A. and Day, G.S. (1971). *Consumerism.* New York: Collier Macmillan Publishers.

Alcaly, R.E. (1976). Information and Food Prices. *The Bell Journal of Economics*, 7, 658-671.

Alcaly, R.E. and Klevoric, A.K. (1971). Food Prices in Relation to Income Levels in New York City. *Journal of Business*, 44, 380-397.

Bell, J. (1993). In Urban Areas: Many of the Poor Still Pay More for Food. *Journal of Public Policy and Marketing*, 4, 268-270.

Benson, B.L. and Faminow, M.D. (1985). An Alternative View of Pricing in Retail Food Markets. American *Journal of Agricultural Economics*, 67, 296-306.

Black, G. (1952). Variations in Prices Paid for Food as Affected by Income Level. *Journal of Farm Economics*, 34, 52-56.

Kaufman, P.R., Newton, D.J., and Handay, C.R. (1993). *Grocery Retailing Concentration in Metropolitan Areas.* Washington DC: U.S. Department of Agriculture.

Kunreuther, H. (1973). Why the Poor May Pay More for Food: Theoretical and Empirical Evidence. *The Journal of Business*, 46, 368-383.

MacDonald, J.M. and Nelson, P.E., Jr. (1991). Do the Poor Still Pay More? Food Price Variations in Large Metropolitan Areas. *Journal of Urban Economics*, 30, 344-359.

Morgan, K. J., Johnson, S. R., Lee, Y. Y., and Goungetas, B. (1985). Use of 12 Groups of Foods in Households Differing in Size, Income and Receipt of Food Stamps. *Journal of Consumer Studies and Home Economics*, 9, 113-131.

Morgan, K. J., Peterkin B. B., Johnson, S. R., and Goungetas, B. (1985). Food Energy and Nutrients per Dollar's Worth of Food from Available Home Food Supplies. *Home Economics Research Journal*, 14, 241-251.

Peterkin, B.B., Rizek R.L. and Tippett K.S. (1988). Nationwide Food Consumption Survey, 1987. *Nutrition Today*, 23 (Jan/Feb), 18-24.

Sexton, D.E. (1973). *Groceries in the Ghetto.* Lexington, MA: Lexington Books.

Sexton, D.E. (1971). Comparing the Cost of Food to Blacks and to Whites—A Survey. *Journal of Marketing*, 35 (July), 40-46.

Smallwood, D. and Blaylock, J. (1981). *Impact of Household Size and Income on Food Spending Patterns* (USDA National Economics Division Technical Bull. No. 1650). Washington, DC: U.S. Department of Agriculture.

Measuring Poverty: A New Approach

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Poverty statistics routinely published by the Bureau of the Census are used in a variety of ways. The media use such numbers to compare trends in poverty over time and differences in poverty among such groups as the elderly and children. Government agencies and assistance programs use the official poverty threshold, or a multiple of that threshold, both in targeting services and resources to disadvantaged persons and as a standard of program eligibility. Academic researchers use the concept as a measure of individual and family well-being. Increasingly, however, there are questions about the soundness of the concepts and methodology from which the official numbers are derived. Given the importance of the official poverty measure, questions about its validity and utility cannot be ignored.

In response to a request of the U.S. Congress, the Committee on National Statistics (CNS) of the National Research Council in 1992 established a study panel to address the concerns about the poverty measure and to consider the conceptual and methodological issues in establishing standards for welfare payments to needy families. What follows is a summary of the panel's report.[1]

ADEQUACY OF THE CURRENT POVERTY MEASURE

The panel assessed how well the official U.S. poverty measure is serving as a barometer and benchmark for policy, research, and general public understanding of economic deprivation. It concluded that the measure is outmoded and no longer accurately characterizes differences in poverty among population groups, across areas of the country, or over time. A few of the panel's concerns are summarized below.

The panel noted that the current definition of family resources, namely, gross money income, assumes that some families have adequate resources for their basic needs when, in reality, tax payments and other nondiscretionary expenses put them below the poverty line. Conversely, the current definition fails to count all of the resources—such as in-kind benefits—that other families have available to meet their needs. More specifically:

- Because of the increased labor force participation of mothers, there are more working families who must pay for child care to earn income. Yet the current poverty measure does not distinguish between the needs of families in which the parents work or do not work outside the home, nor generally between the needs of nonworkers and workers (who typically have commuting and other work-related expenses).
- Because of differences in health status and insurance coverage, different population groups face significant differences in out-of-pocket medical care costs, but the current measure does not take into account this variation.
- Because the current measure defines family resources as gross money income, it does not reflect the effects of government policy initiatives that have significantly altered families disposable income and, hence, their poverty status. Examples are the increase in the social security payroll tax, which reduces disposable income for workers, and the growth in the Food Stamp program, which raises disposable income for beneficiaries. Moreover, the current policy measure cannot reflect the effects of future policy initiatives that may have consequences for disposable income, such as changes in the financing of health care, expansion of the Earned Income Tax Credit, and efforts to move welfare recipients

TABLE 1

ELEMENTS OF THE CURRENT AND PROPOSED POVERTY MEASURES

Element	Current Measure	Proposed Measure
Threshold Concept	Food x a large multiplier for all other expenses	Food, clothing, and shelter, plus a little more
1992 level (2-adult/2-child family)	$14,228	Suggest within range of $13,700 $15,900
Updating method	Update 1963 level each year for price changes	Update each year by change in spending on food, clothing, and shelter over previous 3 years for 2-adult/2-child families
Threshold Adjustments		
By family type	Separately developed thresholds by family type; lower thresholds for elderly singles and couples	Reference family threshold adjusted by use of equivalence scale, which assumes children need less than adults, and economies of scale for large families
By geographic area	No adjustments	Adjust for housing cost differences by region and size of metropolitan area
Family Resource Definition (to compare with threshold to determine poverty status)	Gross (before-tax) money income, plus value of income from all sources	Gross money income, plus value of near-money in-kind benefits (e.g., food stamps), minus income and payroll taxes and other nondiscretionary expenses (e.g., child care and other work-related expenses; child support payments to another household; out-of-pocket medical care expenses,including health insurance premiums)
Data Source (for estimating income)	March Current Population Survey	Survey of Income and Program Time Participation
Period of Measurement	Annual	Annual, supplemented by shorter-term and longer-term measures
Economic Unit of Analysis	Families and unrelated individuals	Families (including cohabiting couples) and unrelated individuals

Source: Measuring Poverty: A New Approach, ed. Constance F. Citro and Robert T. Michael (Washington, D.C.: National Academy Press, 1995), p. 41. Reprinted with permission of the National Academy Press.

into the workforce.

The panel also concluded that there are significant problems with how the poverty threshold, the line separating the poor from the nonpoor, is set:

- The thresholds are the same across the nation, although significant price variations across geographic areas exist for such needs as housing.
- The family size adjustments in the thresholds are arbitrary in many respects, and changing demographic and family characteristics (such as the reduction in average family size) underscore the need to reassess the adjustments.
- Changes in the standard of living call into question the merits of continuing to use the values of the original thresholds updated only for inflation. Historical evidence suggests that poverty thresholds—including those developed according to "expert" notions of minimum needs—follow trends in overall consumption levels. Because of rising living standards in the United States, most approaches for developing poverty thresholds would produce higher thresholds today than the current ones. This is true of the original approach, which based the thresholds on a multiplier for other expenditures applied to

the cost of a minimum food budget, because food expenditures are now a much lower proportion of the total.

The panel concluded that the current official poverty measure will become increasingly unable to inform the public or support research and policy making if it is not revised. It recommended a new measure that more accurately categorizes the extent of poverty across groups, areas, and time. It based its recommendations on scientific evidence to the extent possible, but necessarily used judgment as well.

RECOMMENDATIONS FOR A NEW POVERTY MEASURE

Basic elements of the current and proposed measures of poverty are summarized in Table 1.

REDEFINING THE THRESHOLD

The official U.S. poverty thresholds, concluded the panel, should comprise a budget for the three basic categories of food, clothing, and shelter (including utilities) plus a little more. Data from the Consumer Expenditure Survey (CEX) should be used to determine a threshold for a reference family of four (two adults and two children) as a percentage of median expenditures by such families on these items. This sum should then be increased by a small additional amount for other needs, such as household supplies, personal care, and transportation unrelated to work. However, the threshold should not account for such nondiscretionary expenditures as taxes, child care and other costs of working, and out-of-pocket medical expenditures, which should instead be treated as deductions from income.

The panel chose not to recommend a specific threshold with which to initiate the new poverty measure, believing that to be a matter of judgment. They did, however, suggest that a reasonable range for the reference family of two adults and two children would fall between $13,700 and $15,900 (in 1992 dollars). The lower number equals the expenditures for food, clothing, and shelter ($11,950) by families at the 30th percentile of all two-adult/two-child families, with a multiplier of 1.15 for other needed expenditures; the higher number equals the expenditures for food, clothing, and shelter ($12,720) by families at the 35th percentile of all two-adult/two-child families, with a multiplier of 1.25 for other needed expenditures.

UPDATING THE THRESHOLD

Because poverty measures tend to reflect their time and place, the panel proposed a regular, but conservative, updating procedure that would adjust the thresholds for changes in consumption that are relevant to a poverty budget, rather than for changes in total consumption. Each year, the threshold would be updated to reflect changes in spending on food, clothing, and shelter over the previous three years and then adjusted for different family types and geographic areas.

This updating procedure would automatically, over time, reflect real changes in the consumption of basic goods and services without the need for a periodic, and inevitably disruptive, readjustment of the level. It represents a middle ground between the current approach of simply updating the thresholds for price changes, which ignores changes in living standards over time, and the approach of updating the thresholds for changes in total consumption.

ADJUSTING THE THRESHOLD

The panel recommended that the two-adult/two-child family threshold be adjusted for other family types by use of an equivalence scale. The scale proposed by the panel treats children on average as consuming 70 percent as much as adults and applies a factor to the number of adult equivalents in the family to account for the economies of scale that are available to larger families (e.g., they can jointly use many durable goods and buy food and other items in bulk). The panel suggests that the scale economy factor (which is a power in the formula) should lie in the range of 0.65 to 0.75. The use of such a scale would be an improvement over the scale that is implicit in the current official thresholds, which exhibit many irregularities and anomalies (e.g., in some instances the thresholds for families with children are higher than the thresholds for the same-size families made up of adults).

The panel further recommended that the

thresholds be adjusted to account for differences in the cost of a standard, low-cost rental apartment across regions of the country and among different-sized cities. Available data are not adequate to develop cost-of-living adjustments for all goods and services; however, decennial Census data make it possible to adjust the housing component of the poverty threshold for geographic differences in the cost of a standard rental apartment (including utilities). Research indicates that housing costs exhibit the widest variation across areas, and the panel recommended that a housing cost index be developed for nine geographic regions and, within each region, for several size categories of metropolitan area.

DEFINING FAMILY RESOURCES

The panel recommended that the resources of a family or individual that are compared with the appropriate threshold to determine poverty status should be consistently defined to include money and near-money disposable income. The definition should include money income from all sources, as well as the value of such in-kind benefits as food stamps and public housing. It should exclude out-of-pocket medical care expenditures, including health insurance premiums; income and payroll taxes; child care and other work-related expenses; and child-support payments to another household. The child care deduction should be capped and should apply only to families in which there is no adult at home to provide the care; the deduction for other work expenses should be a flat amount per week worked.

Researchers in general agree about the appropriateness of such adjustments to income as deducting taxes and work expenses, which are a cost of earning income and cannot be used for consumption, and about adding the value of in-kind benefits that support consumption. The treatment of medical care benefits and costs is a more difficult issue. Trying to account for private and public medical insurance benefits in the same way as in-kind benefits for such items as food and clothing would greatly complicate the poverty measure and cloud its interpretation. Health care needs vary greatly: some people have high medical costs,

CASE 1: Three-person family in big New England city

Official threshold:	$11,304
Revised threshold:	$13,522
Gross regular money income:	$ 6,662—from AFDC; maximum benefit
Disposable income:	$ 9,583—from AFDC; food stamps, school lunch and breakfast
Poverty status, current:	Poor
Poverty status, proposed:	Poor

CASE 2: Three-person family in rural area of upper Midwest

Official threshold:	$11,304
Revised threshold:	$ 9,322
Gross regular money income:	$ 6,390—from AFDC; maximum benefit
Disposable income:	$ 9,385—from AFDC; food stamps, school lunch and breakfast
Poverty status, current:	Poor
Poverty status, proposed:	Not poor

CASE 3: Three-person family in big New England city

Official threshold:	$11,304
Revised threshold:	$13,522
Gross regular money income:	$13,000—wages from full-time job paying $6.50 per hour
Disposable income:	$ 9,798—wages plus EITC minus payroll taxes, child care, work expenses, out-of-pocket medical expenses
Poverty status, current:	Not poor
Poverty status, proposed:	Poor

CASE 4: Three-person family in rural area of upper Midwest

Official threshold:	$11,304
Revised threshold:	$ 9,322
Gross regular money income:	$10,000—wages from full-time job paying $5.00 per hour
Disposable income:	$ 7,969—wages plus EITC minus payroll taxes, child care, work expenses, out-of-pocket medical expenses
Poverty status, current:	Poor
Poverty status, proposed:	Poor

Figure 1: Poverty status of hypothetical three-person (one adult/two child) families under current and proposed poverty measures; revised thresholds based on the 0.75 scale economy factor and the relevant housing adjustment factor.

some very few. Also, medical care benefits do not substitute for money income in the same way as do, say, food stamps. (A person who has an expensive operation does not have many more resources freed up for basic consumption than does a person who makes a visit to the doctor.) Hence, the proposed poverty measure does not include an allowance for medical expenses, either those that might be covered by insurance or those paid for out of pocket, for consistency, therefore, the proposed family resource definition does not add the value of health insurance. It does, however, subtract out-of-pocket medical care expenses from income; many people must pay out of pocket to obtain that insurance or to receive care, and such expenses reduce disposable income.

The proposed poverty measure will reflect changes in health care policy that affect

TABLE 2

GOVERNMENT ASSISTANCE PROGRAMS THAT LINK ELIGIBILITY OR BENEFITS TO THE CURRENT POVERTY MEASURE, BY PROGRAM TYPE AND POVERTY CUTOFF FOR ELIGIBILITY, FISCAL 1992

Programs that provide all-or-nothing service	Poverty cutoff for eligibility (%)
Commodity Supplemental Food Program	100 (for elderly people)
Community Services Block Grant	100; 125 at state option
Follow Through	100
Foster Grandparents	125
Head Start[a]	100
Job Corps[a]	100
Legal Services	125 (up to 187.5 for people with excessive medical or child care expenses)
Medicaid [a,b]	100 for some people; 133 for others (up to 185 at state discretion for others)
Senior Community Service Employment Program[a]	125
Senior Companions	100
Special Milk Program	130
Special Programs for Students with Disadvantaged Backgrounds (TRIO programs)	150
Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)	100 to 185 at state discretion
Summer Food Service Program for Children	185 (applies to service areas, not applicants)
Summer Youth Employment Program[a]	100
Training for Disadvantaged Adults and Youth[a]	10
Vocational Educational Opportunities, Disadvantaged Activities[a]	100
Weatherization Assistance[a]	125
Programs that relate benefits to income or charge for services on a sliding scale	
Child and Adult Care Food Program	130 for free meals; 185 for reduced price
Community Health Centers	100 for free care; sliding scale up to 200
Food Stamp Program [a,b]	130 (gross income); 100 (net income)
Low-Income Home Energy Assistance Program (LIHEAP)[a]	150
Maternal and Child Health Services Block Grant	100 for free care; sliding scale for others
Migrant Health Centers	100 for free care; sliding scale up to 200
School Breakfast Program[a,b]	130 for free meals; 185 for reduced price
School Lunch Program[a,b]	130 for free meals; 185 for reduced price
Title X Family Planning Services	100 for free care; sliding scale up to 250

Source: Measuring Poverty: A New Approach, ed. Constance F. Citro and Robert T. Michael (Washington, D.C.: National Academy Press, 1995), p. 322. Reprinted with permission of the National Academy Press.

[a] Program also accords eligibility on bases other than the poverty guidelines (e.g., children on AFDC are automatically eligible for Head Start).

[b] Entitlement program; eligible applicants cannot be denied benefits.

disposable income (just as it will also reflect changes in child care subsidies that affect net out-of-pocket child care expenses by working parents). For example, if changes in health care financing reduce out-of-pocket medical expenditures and thereby free up resources for food, housing, and other consumption, the proposed measure will show a lower poverty rate; the current measure will not show this effect. Conversely, the proposed measure, but not the current measure, will reflect health care policy changes, such as premium increases, that reduce disposable income. The panel also suggested that a separate measure of medical care risk be developed, which would assess the adequacy of health insurance coverage for the population. (People lacking health insurance are not necessarily poor if they have adequate income for such needs as food and shelter and are healthy during the year; however, they are definitely at risk should they become ill or have an accident.)

EFFECTS OF PROPOSED MEASURE

Poverty rates under both the current and the proposed measures were estimated with data from the March 1993 Current Population Survey (CPS), supplemented with data from the Survey of Income and Program Participation (SIPP) and other sources.

In one set of comparisons, the overall poverty rate was kept the same for both measures: 14.5 percent in 1992. (For the proposed measure, this was accomplished by determining a two-adult/two-child family threshold that, together with a scale economy factor of 0.75 and all of the panels other recommendations, gave the official poverty rate for the total population.) The results show important distributional effects on the make-up of the poverty population under the proposed measure; most strikingly, they show

higher poverty rates for families with one or more workers and for families that lack health insurance coverage and lower rates for families that receive public assistance. The results also show higher poverty rates in the Northeast and West and lower rates in the South and, to a lesser extent, in the Midwest (see Table 1).

USE OF THE POVERTY MEASURE IN GOVERNMENT PROGRAMS

How would changing the measure of poverty affect eligibility for government programs? Of 70 federal and federal-state programs that provided cash or in-kind benefits to people on the basis of an explicit test of low income in 1992 to 1994, 27 programs linked their need standard for eligibility to the U.S. Department of Health and Human Services poverty guidelines, which are derived from the official poverty thresholds (Table 2).

Use of the proposed poverty measure for programs that already use the current measure would more effectively target benefits to needy families. The proposed measure has an internally consistent equivalence scale by which to adjust the poverty thresholds for different types of families, it reflects geographic differences in the cost of housing, and its definition of family resources as disposable money and near-money income is consistent with the basic needs concept underlying the thresholds. However, not all federal agencies would find the measure equally appropriate to their needs. For programs such as the Food Stamp program that require a very detailed determination of both gross and net income in order to determine financial eligibility and benefit amounts, implementing the proposed measure would not complicate administration—indeed, that definition is similar to the one already in use. In contrast, other programs have a simple application procedure in which a crude measure of gross money income determines eligibility. Many of these programs—Head Start, for instance—provide an all-or-nothing service. Others charge recipients for services on a sliding scale, depending on the broad income-to-poverty ratio category into which the family falls. In these cases, full implementation of the proposed family resource definition could impose a burden on applicants and program administrators alike. However, the panel commented that there are ways to simplify the proposed definition for programs in which a simple application process is valued.

Another issue is that the thresholds developed under the panel s proposed procedure may increase faster than thresholds that are simply adjusted by the Consumer Price Index. Clearly, there are budgetary consequences that flow from an annually updated measure, particularly for entitlement programs that must provide benefits for all applicants who meet the eligibility criteria.

Updating the poverty thresholds for real growth in annual consumption of basic needs makes a great deal of sense for a statistical measure, but the design of government assistance programs must take into account many factors, only one of which is a statistical standard of need. Funding constraints, competing uses for scarce tax dollars, and the desire to provide incentives to low-income families to reduce welfare dependency may well dictate program eligibility levels that are lower than the statistical poverty thresholds.

NOTE

1. This summary is excerpted from "Measuring Poverty: A New Approach" Focus 17(1), 2-14, with permission from the Institute for Research on Poverty, University of Wisconsin-Madison. The full report of the committee is published in the book, *Measuring Poverty: A New Approach*, ed. Constance F. Citro and Robert T. Michael (Washington, D.C.: National Academy Press). Members of the panel who contributed to this article are as follows: Robert T. Michael (University of Chicago), Anthony B. Atkinson (Oxford University), David M. Betson (University of Notre Dame), Rebecca M. Blank (Northwestern University), Lawrence D. Bobo (University of California, Los Angeles), Jeanne Brooks-Gunn (Columbia University), John F. Cogan (Stanford University), Sheldon H. Danziger (University of Michigan), Angus S. Deaton (Princeton University), David T. Ellwood (Harvard University), Judith M. Gueron (Manpower Demonstration Research Corporation, New York, N.Y.), Robert M. Hauser (University of Wisconsin), Franklin D. Wilson (University of Wisconsin), and Constance F. Citro (Study director for the project).

Remembering Betty Furness and "Action 4"

Edith J. Cahill

She had been a movie and stage actress, Westinghouse pitch-woman, TV hostess and panelist, nightclub performer, radio personality, and consumerist extraordinaire. But in 1974 Betty Furness stepped into the role she cherished most, TV journalist, to the delight of a legion of frustrated shoppers.

Broadcast executives were not receptive to women anchors ten years earlier when she approached them in the hope of becoming a "news interviewer." They told her she was too closely identified with Westinghouse products and one vice president even suggested, unkindly, that she was "over the hill." It was therefore a surprise when NBC, which was expanding its local news program, invited her to preside over the newly-created consumer affairs segment: "Action 4."

Betty Furness, "BF" in staff memos, swiftly captivated the TV audience in the tri-state viewing area. Her casual mention that consumer complaints would be welcome in writing (stamped, self-addressed envelopes, please) triggered an avalanche of letters from residents of New York, New Jersey, and Connecticut that eventually reached 1000 a week. The "Action 4" post office box sagged, along with an undersized staff striving to cope in an increasingly zany atmosphere. Her crisp reporting on local news led to weekly "spots" plus occasional anchor duty on the network's "Today" show seen nationwide. Even Jane Pauley, the new young host of "Today," welcomed BF as friend and role model.

During the Great Depression of the 1930s, BF grew up on New York's Park Avenue. She was the only child of Florence (Sturtevant) and George Furness, a Union Carbide executive, and was named Elizabeth Mary. Encouraged by her strong-willed father to do "something useful" during summer vacations from the fashionable Brearley School in New York City and Bennett Junior College in Millbrook, N.Y., she found work as a teenage model for the John Roberts Power agency. Impressed by her poise and diction, Power arranged a screen test and the ingenue went west with her mother. She made 35 films, only two of them notable: "Swing Time" with Fred Astaire and Ginger Rogers,

and "Magnificent Obsession" with Robert Taylor and Irene Dunne. Bored with Hollywood and B movies, she switched to the stage, playing in summer stock and road companies.

The diminutive ash blonde was appearing in a small role in a Studio One production when Westinghouse, in a prescient move combining her appeal with its household appliances, signed her in 1949 for live commercials. It was a lucrative job that kept her opening refrigerator doors for nearly a dozen years. The slogan, "You can be sure if it's Westinghouse," and the spokeswoman became famous across the land. Betty was immortalized as "the face that launched a thousand refrigerators."

Westinghouse also sponsored national political conventions in 1952, 1956, and 1960. The famous saleslady met Walter Cronkite and Charles Kuralt and became fascinated with television news and public affairs. Television technology was rolling along; teleprompters came into existence and canned commercials were on the way. Betty decided to leave Westinghouse to pursue a career in news, but diverged to appear prominently in a WNTA-TV panel show, "At Your Beck and Call." It was a solid success, but was discontinued after the station was sold and transformed into public television. Next came a nightclub act, which failed, and inevitably she turned to politics, helping promote VISTA and Head Start and doing radio and TV commentary.

She was again knocking at newsroom doors when President Lyndon B. Johnson, intent on improving the country's business practices, selected Betty as his special assistant for consumer affairs in 1967. Professional consumer protection groups criticized LBJ's appointment because of Furness' lack of experience. Admittedly, she had not spent much time in grocery stores or her kitchen. One year just before Thanksgiving, an "Action 4" staff member asked Betty for her recipe for preparing the holiday bird. BF replied promptly, "I get a nice, fat turkey in the pan and I hand it to Les [her husband], and I say 'here.'"

Behind the demure image was an astute and resolute force that won over the National Consumers League, Ralph Nader, the AFL-CIO, and members of Congress. LBJ's special assistant, Joseph Califano, Jr., called Furness "the cheerleader for the golden age of consumer protection." According to Califano, "When Betty went to work she got thousands of letters from housewives complaining about the low quality and high cost of home appliances. Without a second thought, she publicly called upon the industry she had championed to shape up."

BF testified and lobbied for all sorts of legislation from the Flammable Fabrics Act to the establishment of the Products Safety Commission. She pushed hard for the Child Safety Act. She can be remembered particularly, said Califano, for the law that virtually makes it impossible to open pill bottles.

Betty urged supermarkets to open stores in urban ghettos, attacked retailers for gouging residents of poor neighborhoods, chastised banks for mailing unsolicited credit cards to individuals; and even took on opponents on their own turf. She accepted an invitation to speak to the National Retail Merchants Association when the group was battling President Johnson over his Truth in Lending Bill. When the head of a major retailer rose to complain how complicated it would be to disclose the cost of credit, Betty retorted, "I can't see why it is difficult to explain the full interest charges on revolving credit. One and a half percent per month certainly adds up to 18 percent for 12 months."

BF won an important victory for consumers during the Senate's consideration of the administration's bill requiring federal inspection of all meat and poultry. She was appalled when Agriculture Secretary Orville Freeman told Senator Walter Mondale, the bill's sponsor, that the administration should settle for a much weaker version. She talked to President Johnson who directed her to testify before the Senate Agriculture Committee. She did, supporting the strong bill, while senators trying to kill it demanded to know who spoke for the president. "I speak for the President," Betty replied curtly. Her response delighted Johnson and the Senate passed the meat inspection bill.

At the close of LBJ's administration in 1969, Betty accepted the post of executive director of the New York State Consumer Protection Board. She quit when it appeared that the State Legislature was not serious about enacting consumer legislation. (Said best friend, writer-producer Judy Crichton, "She was murder on flim-flam.") In 1973 Mayor John Lindsay asked her to fill Bess Myerson's unexpired term as New York City Commissioner of Consumer Affairs, and in April 1974 the unexpected call from NBC followed, launching the longest of her many careers.

Although she implored "Action 4" viewers not to send personal effects or defective merchandise, packages arrived regularly with unusual contents: a flawed refrigerator drip pan, adulterated tomato juice, outsized uniform pants, checks, legal documents, white insects from contaminated food, and, anonymously, a pair of men's shoes and several envelopes stuffed with cash.

"Action 4" quickly discovered that dozens of enterprises were established solely for the purpose of fraud while many legitimate firms routinely tormented customers via habitual mix-ups. The most frequent targets of consumer pique were Con Edison, Nutrition Headquarters, American Consumers (publishers), Blue Cross-Blue Shield, the Record Club of America, Macy's, Medicare-Medicaid, Parking Violations Bureau, and Kaufman Carpets. Con Ed was variously accused of misidentifying power users, misreading meters, and overbilling.

BF's staff was uniquely adept at recovering funds and merchandise for viewers victimized by non-delivery. A high percentage of firms cooperated after being contacted by the consumer unit. Among them was "Brand Names" which offered samples of popular cosmetics and household cleansers for a bargain price of $1, but failed to fill orders. Buyers sampled only frustration until they turned to "Action 4." The manufacturers of Bazooka bubble gum responded graciously after Ethan Montag, 11, complained he had not received a promised magnet set in exchange for 175 gum wrappers. But, alas, "Action 4" was unable to help teenager Diane Kucek who sent $16.95 to a fictitious Miami "Animal Farm" for a live pet monkey.

Often problems were resolved quickly simply by invoking the name of the redoubtable high priestess of consumerism. Betty took her TV camera to the front door of stores in the metropolitan area that cheated customers and reported on short weights, fatty hamburger, overpricing, questionable warranties, unworkable gadgets, shoddy auto repairs, and synthetic items like potato-less potato chips. Her special insight was augmented by her close ties to Consumers Union, publisher of *Consumer Reports*. For 24 years she was a beloved and revered member of CU's board of directors. Consumers Union president, Rhoda H. Karpatkin, exolleed BF as "fair, smart, and unrelentingly in the consumer's corner."

Betty Furness died on April 2, 1994 of stomach cancer. She was 78. She left a grieving husband, Les; a daughter, Mrs. Barbara (Babbie) Snyder; and a granddaughter, actress Liza Snyder.

Whither Consumer Representation?

In this section we present three distinct perspectives on the critical issue of the consumer representation in government and quasi-government agencies. Silber looks at the historical development of the concept, analyzing the roots of today's limited formal participation of individuals labeled consumer representatives. The insights of Reverby and Cude demonstrate the diverse and at times conflicting roles contemporary consumer representatives play. We welcome your contributions to this discussion, which may be published in subsequent issues of *ACI*.

Consumer Participation in the Law-Drafting Process: Past, Present, and Future

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Consumers seldom realize how often their rights and responsibilities are determined by law-drafting committees. Routinely such committees draft laws, regulations, and standards for consumer conduct at the request of law-making bodies. Committees often present their proposals to elected legislative or executive bodies. Others report their recommendations to regulatory officials. Drafting work by committees of knowledgeable experts as well as by representatives of affected interests is also sponsored by private professional or industrial associations which adopt proposed laws and rules as part of a professional or an industrial standard.

Remarkably, it is the exception rather than the rule that consumer affairs professionals participate formally in drafting committees. A cynic might conclude that their absence reflects determined efforts to avoid acquainting consumer professionals with decisions that frequently are intended to affect consumers adversely. Today there is no legal or cultural expectation that consumer professionals should participate routinely in committee drafting efforts in order to confer legitimacy on them or improve their results. In this article, I explore past and present attitudes about participation by consumer professionals and attitudes about how the consumer interest is represented when they are absent. I conclude by suggesting how consumer affairs professionals might do more to increase respect for their expertise and to formalize their role in law-drafting committees.

A recent personal experience illustrates the problem. The chair of a bar association task force asked me for a consumer perspective on several proposed changes the drafting committee had made to a uniform state law governing securities.[2] At the time I didn't know very much about the subject but that the drafting usually involves the participation of leading academics and lawyers who are experts. I decided not to oppose the law if consumer problems already had been systematically identified by consumer participants in the drafting process and fairly dealt with by the law drafters.[3] Therefore, I asked whether the new law was "the product of a process of drafting in

which there was notable consumer representation." (P. Shupack, personal communication, June 6, 1995[4].)

The chair consulted with the chief draftsman or "reporter" and replied that consumer organizations were not represented, but consumer participation had been adequate:

> I raised this question [and the reporter] half-jokingly pointed to the list of members of the drafting committee [principally securities industry attorneys and government officials from the Federal Reserve Board and the Securities and Exchange Commission] and asked me to draw my own conclusions. ... I have met a couple of the Commissioners [and] *I know that they do not have special connections to the securities industry, and I believe they are prosperous enough to have portfolios. So long as they looked out for their personal interests as they contemplated Revised Article 8, there were consumer advocates involved in the drafting process.* (P. Shupack, personal communication, June 13, 1995, emphasis added.) According to the chair, lack of "formal consumer representation" was not important because some members of the drafting committee held a "consumer perspective."

THE "CONSUMER PERSPECTIVE" ARGUMENT

The reply presented a clear and superficially logical syllogism: Since (1) anyone who exercises a consumer role with regard to a particular product or service may claim a "consumer perspective" with regard to it; and (2) anyone with a personal consumer perspective will reflect that perspective in a law-making process in which she or he is involved; therefore (3) consumers can be said to participate meaningfully in many contexts even where formal consumer representation is missing. In my example, this logic rationalized the complete absence of formal, identifiable consumer participants in an important, lengthy private law-making process that had considered matters of importance to consumers. Indeed, the product left consumers in a position inferior to their position under existing law. (Facciolo, 1996, p. 1.)

Consumer advocates mainly would agree, I think, that the "consumer perspective" argument is flawed. It does not suffice to assert that an interest has been adequately considered because of the inclusion of the personal sympathies of individuals with other distinctive formal roles and responsibilities—especially roles that require them to try to *separate* themselves from such sympathies. To make the point personally, I may go swimming every week at the university pool but when I attend the university's senate I do not watch out for the budget of the athletic program or lobby for the building of an indoor swimming center. In the securities case, the fact that some drafters had their own stock portfolios tells us little or nothing about whether they represented the interests of consumers.

The intensity of feeling, the depth of experience, and the quality of a putative consumer participant's training matter intensely in assessing whether the participant's involvement demonstrates that there was adequate consumer participation. The matter of proportional advocacy or voting strength also should be taken into account. If a few people in a drafting group have a "consumer outlook" but not enough votes among them to make a significant difference in the outcome, or enough strength to make a significant impact on debate, it is an exaggeration to describe consumer participation as meaningful.

THE POLITICAL COHERENCE ARGUMENT

The securities law proponents (returning to my example) advanced other arguments for not formally including consumer participants. Earlier attempts to involve consumer participants, they claimed, demonstrated it was too difficult to choose participants with sufficient legitimacy to defuse consumer opposition after any legislative compromise was reached. The consumer interest, they said, was so amorphous, with so little "political coherence," that no matter who the consumer participants chosen were, others with different consumer agendas disavowed the representativeness of the participants.

This political incoherence argument is not persuasive because drafting and negotiating bodies seem to value the participation of other interest groups despite *their* weak coherence. They value bona fide environmental group participants in negotiations about environmental regulations, and they value labor unions in labor negotiations, despite the fact that leaders cannot always "deliver" their constituencies, and despite the fact that there are many different views of the "labor interest" or the "environmental interest." Moreover, there are almost always a limited number of authentic consumer organizations interested in discrete consumer problems, and a finite number of persons with expertise about discrete kinds of consumer transactions who are unaffiliated with regulatory or industry interests—and who can be said to hold a consumer viewpoint. The field of appropriate candidates is narrowed further because few of these organizations and individuals have the resources and the incentive to take part in drafting processes which require a substantial commitment of time, energy, and money.

No single consumer participant can always reflect a multiplicity of competing consumer priorities. When chosen as consumer participants, however, those who are genuine and skilled consumer participants try to anticipate the reactions of others in whose interest they

believe they are acting. They are not always successful, but, like their counterparts who represent other interests, they at least do some highly important work: they bring a consumer's point of view to law-making discussions.

Though the rationalizations of "consumer perspective" and "political coherence" may be weak, they resonate with a great many people. For much of our history, policymakers have on similar grounds resisted the suggestion that consumer participation is essential to legitimacy, or they have limited participation to the opportunity for any member of the public to be heard at an open hearing or two. They have accepted the absence of consumer participation as the political science equivalent of a normal, natural phenomenon. (See Olson, 1967.) They have argued that consumers are too diverse a group to be represented by one or two consumer affairs professionals or one or two leaders from consumer advocacy organizations and they have argued that lawmakers have the public interest at heart and so they take the consumer interest into account without formal assistance from others.

Why has the absence of consumer participation in law-drafting and rulemaking processes been easily tolerated by lawmakers and the public generally, more easily than comparable omissions of other interests? At the broadest level it is because the theoretical underpinning for interest-group activities in law drafting, and for an appreciation of the role of consumer participants and their unique contributions to developing rules, has not been broadly accepted. This problem merits further discussion.

THE DISTRUST OF SPECIAL INTERESTS

The idea of the participation of discrete interest groups in lawmaking, whether through parties or other special groups, began early in our history. It even frightened the framers of the Constitution. Political parties and their tendency toward "faction" were considered threats to the viability of a democracy. (See Wood, 1969.) Disinterested, knowledgeable, and objective persons of property and substance were ideally the makers of law. The early American political theorists, furthermore, largely subscribed to a theory of *virtual*, as opposed to *actual* representation of their constituents, basing their votes not on the views of their constituents but rather on their own consciences. Virtual political representation and the danger of factions have remained powerful elements of American political thought, working against the idea that any legislative or deliberative body must include a membership whose views or physical characteristics correspond to those of the population.

Along with the widespread effects of mass production, mass consumption, and with the rise of views we identify as Populist, Progressive, or Socialist, in the later nineteenth century the perception of a discrete *consumer* viewpoint began to emerge in politics, journalism, and literature. Social reformers urged consumers to assert their interests by making their views known through their pocketbooks, through boycotts and labor actions, and by organizing to elect sympathetic political representative to work for a more "open" political process. The first of the government agencies charged during the Progressive Era with significant consumer responsibilities, the Food and Drug Administration and the Federal Trade Commission, were tasked by Congress to look after the "public" interest in health and in fair competition; but in their early years they were not authorized to solicit consumer opinions or invite consumer participation in the regulatory process. (See Williams, 1960.)

THEORETICAL JUSTIFICATIONS FOR CONSUMER PARTICIPATION

During the New Deal the first special offices charged with protecting the consumer interest developed and the intellectual rationalization for professional consumer representation matured. Franklin D. Roosevelt created a Consumers Advisory Board to the National Recovery Administration (NRA), as well as to the Council of Economic Advisors and the Agricultural Adjustment Agency, and Consumers Counsels to the Coal Commission and the Public Service Commission. Some in his Administration even proposed a Department of the Consumer, which did not come to pass either then or later. As these offices were being established a negative, oppositional reaction to specialized consumer representation mounted. Critics questioned the purpose or need for these offices, the opportunities for political opportunism which they created, and the logic behind the appointment of any "John" or "Jane Does" to represent consumers separately from government officials charged with representing the public interest. "Who is a consumer? Show me a consumer," demanded General Hugh Johnson, the head of the NRA (Silber, 1983, p. 15).

I know of two pioneering consumer economists of this era who tried to respond to prevailing concerns and provide a theoretical underpinning for explicit consumer advice by consumer professionals to rulemakers and lawmakers. In her book *Consumption in Our Society*; Elizabeth Hoyt (1938), a professor of economics at Iowa State College, addressed the matter of consumer representation as a mechanism for (1) preserving Adam Smith's consumer sovereignty in the face of governmental interference with competition (through such acts as the passage of trade laws), and as (2) a way to develop consumer-friendly rules in those "fields in which free private enterprise could not be expected to operate competitively." Aggressively asserting that the consumer interest was identical to the public interest, Professor Hoyt argued that "In the

consumers' interest alone do we find the interest of all." She contended that consumer participation in lawmaking was essential to create market rules that permitted meaningful consumer choices (pp. 85-86). Professor Persia Campbell, also an economist and a consumer advocate, complemented Hoyt's analysis by trying to give consumer lobbyists a better reputation than their industry counterparts. She believed that the representation of special interest groups had become "an integral part of our extra-legal machinery of government" (Campbell, 1949, p. 556) recognizing that it took "knowledge and experience on a continuing basis to bring opinion effectively to bear on the vast range of operations that affect the consumer interest, but as yet consumer opinion is not sufficiently well organized." (p. 562).

Campbell's works—which include *Consumer Representation in the New Deal* and *The Consumer Interest* — along with those of Professor Hoyt, were among the serious efforts of that period to explore the development of consumer advisory institutions within governmental units. These did not challenge the treatment of everyone as a consumer, and in many ways they affirmed the viewpoint that anyone could present her or his own general view of consumer welfare. They equated the consumer interest and the public interest, with the public interest transcending narrow interests. Nonetheless, while "everyone" was a consumer, they recognized that people with "knowledge and experience" needed to come forward and to advocate actively the consumer/public interest.

EXPANSION AND CONSTRICTION OF CONSUMER PARTICIPATION

By adopting the consumer interest/public interest equation and reminding elected officials that all voters were consumers, leaders of the consumer movement in later years successfully increased the participation of advisors to governors and to Presidents (Morse, 1993; Peterson, 1982). Government agencies and rulemaking bodies at lower levels, too, slowly became aware of the need to solicit the opinions of consumer experts. In 1953, the Food and Drug Administration initiated a "Consumer Consultant Program," hiring "highly qualified women, carefully chosen for their professional background," as part-time consultants to seek out consumer opinions (Williams, 1960). President Kennedy kept his campaign pledge and added consumer advisors to the Council of Economic Advisors, and a consumer counsel in the Office of the President (Morse, 1993, p. 173, n. 156). The single biggest expansion of consumer participation in lawmaking occurred in 1979, when President Jimmy Carter, spurred by his Consumer Affairs Council (chaired by Esther Peterson), issued an executive order, requiring most federal agencies to improve their consumer programs.

With exceptions, however, many of the consumer boards established pursuant to the Executive Order and through other means in this period were not composed mainly of knowledgeable consumer affairs professionals (one wonders, of course, where Peterson might have found many of them at that time) or of persons who had made any serious study of consumer problems before they began to provide their "consumer input." My impression is that Peterson mostly nurtured existing government officials who did not have any special consumer affairs expertise, as well as "John and Jane Does" who were chosen because they had an inclination to serve and no obvious commercial axe to grind. The involvement of "average consumers" added currency to the idea that everyone or anyone could serve as a consumer representative. It de-emphasized expertise as a minimum qualification for a legitimate consumer participant. A thorough analysis of the plans that were established by Carter's Executive Order would show whether agencies established participating roles for consumer affairs professionals or merely were more open to grass roots complaints from consumers.

During the Reagan and Bush years there was a backlash against consumer protection initiatives at the federal level and some sense that consumer affairs professionals might be biased in favor of intrusive regulatory actions (see Pertschuk, 1982). Formal consumer participation did not end, since popular sentiment required that an agency provide satisfactory service to consumers, who were, after all, taxpayers and voters. But public cynicism about the self-interest of public interest lobbyists and their special pleading and their misplaced paternalism became deeply entrenched. Severed from identification with the overall public interest, consumer groups came to be understood as simply another interest group whose leaders needed either to organize to achieve protection or else to leave consumers to bear the consequences of underparticipation themselves.[5] Subsequently, law drafters generally declined to acknowledge an obligation for consumer interests to be vigorously asserted in lawmaking, or to make any special place for consumer professionals in the process of law drafting.

TOWARD BROADER ACCEPTANCE OF FORMAL CONSUMER PARTICIPATION

The challenge for consumer affairs professionals is to develop models for appropriate consumer participation that are broadly acceptable in today's political environment and legal culture. Ironically, consumer specialists advocating formal participation have played into the hands of their opponents by communicating a number of problematic positions about the nature of con-

sumer participation.

Consider the fact that we often have dwelled on the enormity of the task of identifying the consumer interest, when the task should in my view be described as manageable by competently trained consumer affairs professionals. In her 1949 book, for example, Persia Campbell emphasized the difficulties involved:

> The formulation of a consumer point of view is itself likely to be a controversial process. It involves clarification of issues by recognized leaders, followed by discussion and opinion making by those especially conscious of the problems involved; and they are tremendous (p. 9).

In the process of emphasizing the enormity of the task, she and other consumer leaders and academics communicated to some a sense of futility about the value of a specialization in consumer studies. This may well have led to an underestimation of the contribution of professionals. It is a misunderstanding that needs to be addressed.

Consider that we academics and consumer leaders have sometimes argued, in the opposite vein, that consumer interests are readily apparent and that consumer interests are identical to the public good, which often is a matter of intuitive knowledge of "what's right." This has fueled the argument that we are all able to spot the consumer interest—and that no special consumer representation ought to be necessary.

In my view, we might instead work harder to disentangle consumer interests from other discrete interests (labor, environmental, and civil rights interests, and even economic efficiency interests come to mind) which at times compete with consumer interests when legislative drafting demands viable and appropriate rules. Doing so would create the profile of credible consumer affairs professionals who seek responsible solutions to complicated problems. Consumer organizations, educational programs, and professional associations might do much more than at present to train and help to identify qualified consumer participants who are able to speak out for and protect consumer interests within this context.[6]

I have here only outlined some directions in which consumer affairs professionals might move intellectually and pragmatically to improve consumer participation: establishing that not everyone has a "consumer perspective"; defining the consumer interest in clear terms; and teaching about the attributes that will make consumer affairs professionals valued and necessary participants in law-drafting efforts. There remains much work to be done to understand how consumer affairs professionals can be included more regularly and formally in the process of consumer law drafting.

NOTES

1. This article is adapted from a lecture presented to the University of Wisconsin Department of Consumer Science and the University of Wisconsin Law School on October 24, 1996. Thanks to Rima Apple, Professor of Consumer Sciences for her resourcefulness; to Rima Apple, Robin Douthitt, Tom Garman, Cathy Zick, Stephen Meili, Robert Mayer and Richard L.D. Morse for sharing their insight; and to faculty and students at UW-Madison.
2. See Article 8, Uniform Commercial Code, Revised. This is a set of statutory rules that a year earlier had been approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws after a lengthy process which had gone on for several years. Because these rules must be enacted by state legislatures to become effective, and because consumer-rights oriented legislators inhabit some state legislatures, proponents of the UCC occasionally seek the endorsement by consumer advocates of new legislative initiatives.
3. Designation as a "participant" in law-making processes generally confers not more than the opportunity to offer evidence or opinions to others who hold decisive authority about a matter. Designation as a "representative" in a law-making process generally establishes a larger role than mere participation which in many representative processes include voting or veto powers.
4. When this letter was written, Professor Norman Silber was chair of the ABCNY Consumer Affairs Committee, and Professor Paul Shupack was chair, ABCNY Task Force to Study Revisions to Article 8 of the UCC.
5. The contemporary argument that would leave consumer interests to fend for themselves was explored and rejected twenty years ago. It is no longer acceptable to suggest that interest groups will organize whenever those interests require protection. Mancur Olson's classic book *The Logic of Collective Action*.
6. An organization such as ACCI, for example, might consider appropriate ways to credential consumer participants and attempt systematically to reach out to law-drafting committees; and to suggest that drafting efforts include the formal participation of persons with training in consumer studies who are without ties to affected commercial interests.

REFERENCES

Apple, R.D. (1990). *Women, Health and Medicine in America*. New York: Garland Publishing Inc.

Campbell, P. (1949). *The Consumer Interest, A Study in Consumer Economics*. New York: Harper.

Campbell, P. (1940). *Consumer Representation in the New Deal*. New York: Columbia University Press.

Facciolo, F.J. (1996). Legislature Mulls Change of Article 8. *New York Law Journal* (October 17, 1996), p.1.

Hoyt, E. (1938). *Consumption in Our Society*. New York: McGraw-Hill Book Co.

Morse, R.L.D. (Ed.). (1993). *The Consumer Movement, Lectures by Colston E. Warne*. Manhattan, KA: Family Economics Trust Press.

Peterson, E. (1982). Consumer Representation in the White House. *In Consumer Activists: They Made a Difference*. Mount Vernon, NY: National Consumers Committee for Research and Education, Consumers Union Foundation.

Olson, M. (1965). *The Logic of Collective Action*. Cambridge, MA: Harvard University Press.

Pertschuk, M. (1982). *Revolt Against Regulation: The Rise and Pause of the Consumer Movement*. Berkeley: University of California Press.

Silber, N.I. (1983). *Test and Protest*. New York: Holmes & Meier Publishers.

Williams, C.S. (1960). The FDA's Consumer Consultant Program. *Food, Drug, Cosmetic Law Journal*, 15, pp. 748).

Wood, G. (1969). *The Creation of the American Republic: 1776-1787*. Williamsburg VA: Published for the Institute of Early American History and Culture by the University of North Carolina Press.

What Does it Mean to be a Consumer Representative?

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In 1994 I was selected as a funded consumer representative to the National Association of Insurance Commissioners (NAIC). This article offers some of the insights I have gained from this experience as well as questions it prompted for which I am still seeking answers.

WHAT IS NAIC?

NAIC is the association of the chief insurance regulators of the 50 states, the District of Columbia, and four territories. It seeks to improve state insurance regulation by facilitating a certain degree of uniformity of regulation among the states. To do this, it drafts and adopts model bills and regulations; there are currently over 200 models. NAIC also designs the annual statement form that insurance companies must file with insurance departments, examines insurance companies, and values the securities held in insurance company portfolios.

NAIC accomplishes its purpose through a rather sophisticated system of task forces, committees, subcommittees, working groups, and technical assistance groups. Each of their two-day quarterly meetings is actually a four- or five-day period in which over 100 different meetings are held. In these meetings, groups work on specific charges they have identified or that have been assigned to them by their parent group.

WHAT DOES IT MEAN TO REPRESENT CONSUMERS?

In the three years I have served as a funded consumer representative to NAIC, I have followed many issues including those related to life insurance, insurance availability and affordability, credit insurance, extended warranties and service contracts, long-term-care insurance, and state insurance department information and education programs. Occasionally I am the only consumer representative that follows an issue through to the end but more often at least one other attends and participates in NAIC discussions of an issue. My experiences, and especially my contact with other consumer representatives, have forced me to think seriously about my role in representing consumers. The section that follows poses some of the many questions I've asked myself these last three years.

What does it mean to represent consumers? Am I representing all consumers or just some of them? If it is the latter, which ones? As a consumer educator and especially as a Cooperative Extension Service specialist, I have always viewed myself as representing the interests of all consumers. In contrast, most of the other NAIC consumer representatives are there to speak on behalf of a specific segment of consumers. One works almost exclusively on senior issues and often presents the needs of the seniors in her state (California) as unique. Another represents consumers who have been (or might be) discriminated against by genetic testing. Still another consumer representative champions the cause of middle-class, minority, urban residents.

I've been forced to ask myself whether anyone can really represent the interests of all consumers. I've concluded the answer is usually no. More often, one must identify the population most at-risk in a particular issue and speak on their behalf.

Should consumer representatives publicly air their differences? At a typical NAIC meeting, there are about 400 to 450 regulators, 1000 to 1100 industry representatives, and 12 consumer representatives. With so few to speak on behalf of consumers, can we ever afford to disagree with each other? What happens when the needs of two segments of consumers collide? For example, one regulator group wanted to create consumer education materials in response to insurance availability problems. I wanted those materials to be written so the average consumer could read and understand them and advocated an eighth grade (or below) reading level. A consumer representative who spoke for people of color saw that suggestion as a prejudiced assumption about racial minorities and an affront to her constituencies. Should I have given up on the idea of easy-to-read materials to help make the point that middle-class minority urban residents are often well-educated? My response was to continue to call for attention to

readability but I tried to do it in a way more sensitive to the other consumer representative's view.

What does it mean to "represent" consumers? At the end of the first year of my participation in the program, three of the consumer representatives prepared a report on the issues our group had been following. They titled the report the "Consumer Advocates' Report." I was appalled by the title but at the same time somewhat taken aback by my reaction. Apparently, I didn't want to be a consumer "advocate." I saw myself as an educator, a researcher, but apparently not an advocate. In fairness, Cooperative Extension discourages its employees from advocating for or against political points of view. But I was representing ACCI and it still seemed inappropriate to represent ACCI as a "consumer advocacy organization" as the other consumer representatives had described it. Ultimately, I removed my name from the report. The range of differences among our group was even more apparent when I found that several of the consumer representatives were surprised to learn that the title of the program we were participating in was the Consumer "Representatives" Program, not the Consumer "Advocates" Program.

In reality, much of what NAIC consumer representatives do to represent consumers is to educate regulators. Often regulators are struggling like the rest of us to keep up with the ever-changing marketplace, and industry is usually far more available than consumer groups to share information. If regulators learn about issues only by listening to the industry, their knowledge is unquestionably biased.

To be a consumer representative, must we make friends (and enemies) and if so, with whom? Issues at NAIC are discussed in meetings of the regulators. It's their meeting; the rest of us are observers. The regulators decide who speaks; they are the only ones who vote. It's been my position, however naive, that regulators and consumer representatives are on the same side—they both champion the cause of consumers. My conversations with other consumer representatives have forced me to rethink that point of view. Regulators frequently work for the insurance industry before or after their stint in state government (see "How Insurers Stack the Deck" in the August 1996 issue of Money for more on this). This revolving door between government and industry must bias their point of view. One consumer representative believes strongly in keeping a hands-off relationship with regulators. Her perspective is that if she comes to see regulators as her allies she may be less likely to challenge their positions. I've learned to proceed cautiously, assessing which regulators are more likely to be supportive on the specific issues I'm following.

My experiences have taught me that the lines separating government, industry, and consumers aren't nearly as clearly drawn as I thought. On some issues, industry's position is clearly one in opposition to that of any consumer group, but in other cases, industry's position aligns with consumers. I've found that some communication with industry representatives is not only possible but actually beneficial even with industry representatives who hold opposing views. For example, the insurance industry has stood firmly on the point that they have incontrovertible proof that one's credit history is a valid underwriting factor for property and casualty insurance. They see no compromise position on that issue. Yet when I worked closely with a trade association to write a consumer disclosure statement on creditor-placed insurance (the insurance lenders buy to protect themselves, at the consumer's expense, lest the consumer's insurance coverage lapses or is canceled), we both wanted consumers to know what they were buying. Should I have pushed regulators to make it more difficult for the industry to sell this product? Should I have taken that position even if it meant that I lost and the consumer disclosure statement was unreadable because I refused to work on it? I don't know.

If you know what you want, how do you get it? I've saved this question for last because it's one for which I still don't have a satisfactory answer. Should consumer representatives push for everything consumers could ever hope for, knowing we won't get it but hoping for a little progress? Or does that make us seem to be wild-eyed radicals whose positions are too extreme to be considered? If we assess what's realistic (what industry won't strongly oppose and regulators are likely to support), are we being lazy? If we agree with industry, are we doing our jobs? I don't know.

My experience representing consumers at NAIC and in other similar opportunities has been invaluable in not only clarifying my own views but also opening my eyes to the positions of others. I recommend that others consider taking advantage of similar opportunities.

What Does it Mean to be an Expert? A Health Activist at the FDA

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"Are you afraid of experts?" the voice at the other end of the phone inquired. I was being interviewed by a member of the U.S. Food and Drug Administration's (FDA) consumer consortium to be *the* consumer representative on the FDA's Obstetrics and Gynecology (OB-GYN) Devices Panel, the group of outside experts that makes recommendations to the FDA for approval or non-approval of new devices. With a natal family full of health care providers that served medical talk as often as pot roast, and nearly twenty-five years as a health activist, historian, and women's studies scholar, I suppose I could have answered "I am an expert." But instead I laughed and said, "No, they don't scare me. I know what doctors look like in their underwear." I'll never know if it was my résumé or my sense of humor, but I got the position.

I knew the experience would be challenging. What I did not expect is how much it forced me to really consider what kind of "expert" I was and what this meant when there were conflicts. Nor did I realize I would have to think about women's relationship to medical devices when, as social theorist Donna Haraway has defined it, we are all becoming "cyborgs . . . creatures simultaneously animal and machine, who populate worlds ambiguously natural and crafted" (1989, p. 174).

My education in health activism had started not only at the family dinner table but also at an organization in New York in 1970 called Health PAC (the Health Policy Advisory Center). A collective of "D.P.'s" (displaced professionals), Health PAC served as the intellectual nerve center of the burgeoning radical health movement beginning in the late 1960s. It was through this experience that I first really learned about women's health politics (as well as nursing politics) and came to respect the demands women across the country were making to be listened to and treated differently by health care providers.[1] I came to see how much medicine's uncertainty and art was covered by its paeans to science. But I also saw how much women often pressured their doctors or each other to find quick or easy solutions to what were often much more complex political or scientific problems.[2]

It was this uncertainty that drove me back to graduate school in American Studies and to learning more about the history of gender and health care. It was during these years that I was taught that many physicians had historically been as divided as their patients over the meaning of science for medicine, often worried about how the findings in the laboratory could make meaning at the bedside (Rosenberg and Vogel, 1980; Warner, 1986). I discovered that even the best of medical science could prove dangerous and deadly to women and that much of what made medicine work were the beliefs that doctors and patients shared about efficacy. I learned that women, in the name of control over their bodies, might "choose" to oppose birth control devices or demand heavy drugs in hopes of creating a painless daze during childbirth (Gordon, 1990; Leavitt, 1986).

Thus, my experiences as a health activist and an historian of women and health care had taught me that I could not assume that all women would view medical technology in the same way, nor that the medical profession was always united in its attitudes and practices toward women. Nor could I be sure that "safety and effectiveness"—the watchwords that control the actions of the FDA—were so easy to determine. It was this commitment to women's control over our own health care and my historian's skepticism and knowledge that I brought to the so-called expert panel.

On this panel, one of over forty that the FDA convenes, sat engineers, medical practitioners, academic ob-gyns, a midwife, a representative from the medical devices industry, and me. Neither the industry representative nor the consumer representative have a formal vote, but we are allowed to participate fully in the public (and sometimes televised) proceedings. At the hearings there is usually testimony from concerned consumers, arguments

put forth by device company representatives and their doctor/researchers, as well as reports from the FDA staff members. There are often long technical questions back and forth between committee members themselves and the speakers before the vote.

The complexity of what it meant to be an "expert" and a consumer representative became obvious to me when we began to focus on a device used when there is concern during a woman's pregnancy over her possible pre-term labor and/or pre-term delivery before the fetus or fetuses are fully formed. A recent study noted that preterm labor occurs in two out of ten pregnancies with one in ten resulting in pre-term births, while "two-thirds of the 40,000 infants who die before their first birthday were born prematurely" (Narrigan, 1993, p. 6).

To try to prevent such deliveries there is now on the market a device called the Home Uterine Activity Monitor or HUAM. The monitor is taken home by a pregnant woman when her provider is concerned she is in danger of going into pre-term labor and delivery. The HUAM sends tracings of the woman's uterine activities over a modem to a nurse at the other end of the transmission. If there is concern, the patient is often told to come into a hospital for the administration of what are called tocolytic drugs to try to stop the labor.

Uncertainty surrounds medical practice around possible pre-term delivery. The drugs that are used to attempt to stop the labor sometimes do not work while the meaning of increased uterine activity is far from clear. The HUAM serves primarily as an alarm clock to alert the woman, her nurse, and her physician that contractions are going on and they *may* have consequences for the pregnancy, but the monitor in and of itself does not cure anything, although one company actually claimed it could "prevent pre-term births." (Author's notes taken of Cynthia A. Pearson's testimony at FDA hearings on Home Uterine Activity Monitors, September 2, 1994, Bethesda, Maryland.) Indeed, as some studies have shown, it may be the daily contact with the nurse, rather than the monitoring and drugs, that affects the outcome of the pregnancy.

Despite the uncertainty, this sounded, on the surface, like a device an advocate for women would want to support. It is a home-based technology, gives women a sense of control, did not appear to harm anyone, etc. Several years earlier one company's device had been approved by the FDA and now others were clamoring to have theirs accepted in what was becoming a lucrative market. However, the ob-gyn establishment itself never went as far as approving the device as a "standard for practice," suggesting their own uncertainty as to its role in changing a pregnancy outcome.

At the hearings, numerous women testified why the machine was so important and necessary. Condensed into their three- and five-minute statements was enormous pain and suffering. They brought pictures of the babies who had died or suffered in the neonatal units, sometimes wearing the child's nursery bracelet pinned to their chests. They sometimes held the hands of the children who had lived, asserting that after numerous miscarriages or premature deaths, this child's life was made possible by the monitor. They carried with them hundreds of letters from women who made similar claims.

Their arguments were both emotional and compelling. They spoke of feeling as if the babies' deaths were their "fault" because they could not feel their own contractions. They pointed out their stress and difficulties with their preemies who had died. They spoke in the language of *Roe v. Wade* about control, asserting, as one woman did, "it is time to listen to the mothers and babies this helps" since "any kind of control over my life makes me feel better." They called the machine "their best friend that provided emotional reassurance." (Author's notes taken at FDA hearings on Home Uterine Activity Monitors, September 2, 1994, Bethesda, Maryland.) As they told their stories, I could tell that several of the other "experts" on the panel, although they listened respectfully, were made increasingly uncomfortable by the level of testifying and emotion, while it seemed to me as familiar as those tough days in my women's studies classrooms.

In contrast, the men (and they were all men) of science spoke in a seemingly far different language. When we listened to them we were evaluating claims about clinical trials, meta-analysis, biostatistical fine points about proper "endpoints" for studies, and so on. They came with their slides, their histograms of data, their serious demeanors. It was far easier for the panel members (and even for me) to question them dispassionately and debate their findings.

But then began my dilemma. We were in reality dealing with notoriously subjective clinical judgments. Although we talked in the language of clinical science there was some recognition that even with numbers (mean cervical dilation at time of diagnosis of x number of women in each arm of the study and so forth), we did not yet have clear clinical significance. It was as if, one physician honestly noted, "we were trying to evaluate the effectiveness and safety of a thermometer when you haven't yet understood what a fever means." (Author's notes taken of Dr. Iams' testimony at FDA hearings on Home Uterine Activity Monitors, September 2, 1994, Bethesda, Maryland.)

As I listened, my years in history, women's studies, and health activism clashed. I thought about how close we were, in some ways, to the 19th-century therapeutic relationships where effectiveness really was measured by the meanings and beliefs shared by doctors and their patients. I considered how I used to take as a cardinal belief that the experience and words of women were what I was supposed to believe in. Yet I knew enough to remember that the women's voices I heard had their experiences mediated by fear, unproven beliefs, the negotiated meaning they and their physicians created about science and the birthing process.

Where were the voices, I thought, of the women who had used the devices and still lost their babies, those who could not afford a seemingly high-tech fix, or those who used the devices unnecessarily? What did it mean that the women who did speak felt they needed a machine to feel what was happening in their own bodies? Yet if I opposed the device, was I taking some simplistic Luddite-like view that assumed "naturalness" was a given and that our cyborg future was not happening right now?

I knew that the techno-mechanical language of science invaded women's talk as much as assumed beliefs about gender shaped the voices of science (see, e.g., Stanworth, 1987; Treichler and Carwright, 1992). I thought about the physicians in clinical practice who responded to the fear of losing or maiming a child in delivery by grasping at the seemingly provable numbers for an unproven technology, even if it turned out that the data was what I came to think of as "old doctors' tales" and their responses as emotional as any story the women had told. I thought a good deal about what counted as "anecdotes" and what as "data" and how we drew that line.

In the end, I realized I had to continue to raise questions about safety and effectiveness that questioned *both* the physician/researchers and the testimony of women. I had to work to make the committee members understand that feminist critics of medicine and science have shown that the world of science and culture mutually create one another. I came to grasp that my task was to accept the instabilities of the medicine/gender borderland. At the same time, I had to redefine my "representation" of women consumers to allow for the uncertainties of "choice" and the continued reformulation of the machine/body connection. In sum, I had to become a more peculiar, and different, kind of cyborg "expert" than I had ever imagined.

NOTES

1. Collective members put out a monthly newsletter, edited three different books on health politics, and traveled across the county speaking with, and for, women and men health activists. Health PAC finally closed in 1994. The three books are: Barbara and John Ehrenreich, *The American Health Empire* (New York: Vintage, 1970); David Kotelchuck, ed. *Prognosis Negative* (New York: Vintage 1979); Nancy F. McKenzie, ed. Beyond Crisis: *Confronting Health Care in the United States* (New York: Meridian/Penguin, 1994).

2. For a contemporary discussion of this, see Susan Reverby, "Review of Our Bodies, Ourselves" by the Boston Women's Health Book Collective, *University Review* #28 (April 1973): 25-27.

REFERENCES

Ehrenreich, B. and Ehrenreich, J. (1970). *The American Health Empire*. New York: Vintage Books.

Gordon, L. (1990). Woman's Body, *Woman's Rights: Birth Control in America* (rev. and updated ed.). New York: Penguin.

Haraway, D. (1989). A Manifesto for Cyborgs: Science, Technology and Socialist Feminism in the 1980s. In E. Weed (Ed.), *Coming to Terms* (pp. 173-204). New York: Routledge.

Kotelchuck, D. (Ed.). (1979). *Prognosis Negative*. New York: Vintage.

Leavitt, J. (1986). *Brought to bed: Childbearing in America*, 1750 to 1950. New York: Oxford University Press.

Mckenzie, N. (Ed.). (1994). *Beyond Crisis: Confronting Health Care in the United States*. New York: Meridian/Penguin.

Narrigan, D. (1993). Preterm Labor: Miracle Drug Revisited. *The Network News* (March /April), pp. 6-7.

Reverby, S. (1973). Review of "Our Bodies, Overselves" by the Boston Women's Health Book Collective. *University Review* 28 (April), pp. 25-27.

Rosenberg, C. and Vogel, M. (Eds.). (1980). *The Therapeutic Revolution*. Philadelphia: University of Pennsylvania Press.

Stanworth, M. (Ed.). (1987). *Reproductive Technologies: Gender, Motherhood and Medicine*. Minneapolis: University of Minnesota Press.

Treichler, P. and Carwright, L. (Eds.). (1992). Imagining Technologies, Inscribing Science [Special issue]. *Camera obscura*, 28 (January).

Warner, J. (1986). *The Therapeutic Perspective*. Cambridge MA: Harvard University Press.

Cheryl Russell (1996), *The Official Guide to Racial and Ethnic Diversity.* Ithaca, NY: New Strategist Publications, Inc., $89.95.

Susan Mitchell (1996), *The Official Guide to the Generations.* Ithaca, NY: New Strategist Publications, Inc., $69.95.

With these volumes, New Strategist Publications adds two comprehensive reference guides to its series on the American consumer. While designed for use by businesses seeking greater knowledge of consumers, they also serve consumer educators and students well. Previous volumes in the series include the "official guides" to American attitudes, the American marketplace, household spending, and American Incomes. Both new guides extract U.S. Census, Current Population Survey, and Consumer Expenditure Survey data and present it in a neatly organized format around each book's focus. The introductions and highlights which preface the chapters are insightful summaries of major trends. A minor detraction is that at times the authors oversimplify the factors influencing consumer behavior in their quest for snappy endings.

The Official Guide to Racial and Ethnic Diversity covers similar ground to that in the earlier Official Guide to the American Marketplace, but presents data separately by racial and ethnic group. Separate chapters summarize characteristics of Asians, Blacks, Hispanics, Native Americans, Whites, and the total population. Each chapter begins with highlights, followed by sections on education, health, households and living arrangements, housing, income, labor force, population, and wealth and spending. The final chapter on attitudes presents data from the 1994 General Social Survey covering a wide spectrum of opinions relating to ethnic groups and immigrants. Wherever possible, data are the latest available, usually from 1993 or 1994, although some data on smaller ethnic groups is from the 1990 Census. Data sources and definitions are explained well in the introduction and glossary.

The Official Guide to the Generations illustrates differences in household structure, education, labor force, income and spending, housing, health, and attitudes and behavior by age, one of the most important influences on consumer spending behavior. A brief introduction presents the generations in 1995: Generation X, 19 to 30 years old and 17 percent of the population; baby boomers, 31 to 49 years old and 30 percent of the population; the swing generation, 50 to 62 years old and 12 percent of the population and the WWII Generation, 63 years and older and 14 percent of the population. The generation of those under age 19 (17 percent of the population) is yet unnamed. One difficulty in examining these "generations" is that most census age categories do not match those generations who share common experiences and behavior in the eyes of marketers. The authors handle this by preceding most tables with a one page description of some characteristic, e.g., "Boomers Soon to Become Grandparents," or "Younger Generations of Women Flock to College." Tables that follow use standard five or ten year age groupings. As with other guides, most data are from the latest U.S. Census Bureau reports and summarized in a highly readable format. Data in the chapter on attitudes and behavior come from a variety of nongovernment surveys. Government data sources are only briefly discussed in this volume, although definitions are well covered in a glossary.

An improvement from previous volumes is the full citation of the source of data in each table. Besides government data, the authors have assembled a remarkable collection of information, particularly in the attitudes sections. One caveat—no information is provided on the accuracy, reliability or validity of the surveys cited, so the nongovernment survey data, while tantalizing, should be cited and judged accordingly. Especially in the *Guide to Generations,* the attitude data take the form of marketing "sound bites" with little overall coherence. In both guides, the solid compilations of comprehensive consumer characteristics, income, and spending patterns are the most relevant features for readers of this journal.

Both these guides and previous volumes in the series are excellent resources for consumer researchers and educators. They provide the most recent data, often from unpublished Census tables, and save the considerable time and effort of locating and extracting data from government publications. I have found previous guides useful for teaching students to read and summarize tabular data on consumption patterns. The authors of both guides have kept the tables simple by presenting data on only one generation or one racial or ethnic group in each table. This presents the opportunity to ask students to compile and summarize data for direct comparisons between two or more groups or for analysis of factors affecting behavior. While the cost of each guide is prohibitive for use as a supplementary text, the entire series should be recommended for purchase as a library reference for students and faculty.

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Ann Cavoukian and Don Tapscott (1997), *Who Knows: Safeguarding Your Privacy in a Networked World.* New York: McGraw-Hill Companies, Inc. $24.95

Don Tapscott (1996), *The Digital Economy: Promise and Peril in the Age of Networked Intelligence.* New York: McGraw-Hill Companies, Inc. $24.95

As a consumer economist, I sometimes wonder whether corporate America has forgotten that without the almighty dollar and the support of a loyal customer base, profits and market share are unattainable goals. I applaud the authors of these two books as they return us to the basic principles of consumer sovereignty in their presentation and discussion of various issues related to the rapidly changing world of technical information and "networked intelligence." Although the target audience of each book differs, the message in both is clear: as the information age moves forward, many of us are unknowingly providing information to both the public and private sectors where "net-dwelling agents" may be using this information for their own personal gain.

Both books are very well written and well organized. *Who Knows* caters to a general audience of consumers and is presented as a layman's guide to protecting information rights. Throughout the book there are helpful hints for consumers so that they can implement processes to secure their privacy and control the dissemination of their personal data. *The Digital Economy* is more technical and caters to corporate leaders and managers as they prepare their organizations for the future. Tapscott clearly outlines the major issues and components of effective information management in an orderly and logical fashion. Highlighted sections enable the reader to refer to the book as a text as well as an interpretative essay.

Who Knows is divided into three main sections. The first focuses on how various cultures interpret the fundamental right to privacy, with emphasis on the United States and Canada. Guidelines for protecting personal information are presented, ranging from "opting-out" of providing information in the first place to controlling who may have access to data one might choose to provide to selected groups. The authors note that the right of access to information and the protection of information often seem to be conflicting goals, but should be viewed as complementary, distinguishing between public record holding and private sector usage. Ways in which technology, specifically the use of computers and enhanced surveillance capabilities, have introduced new concerns and questions regarding privacy are also addressed. In general, this section presents a broad overview of current privacy issues resulting from increased information gathering techniques. The personal experiences of consumers are intertwined with both objective and subjective interpretations.

Section Two uses specific examples and case studies to illustrate the scary reality of how personal information is used by marketers, the government, medical personnel, and employers. One might conclude after reading this section that we are better off remaining anonymous in terms of both providing information and accessing information. The authors then suggest that "we must guard against the creation of distinct groups of information haves and have-nots and the emergence of an information elite." It appears, however, although not specifically mentioned, that one way to guard against being in the data pool of the information "elite" is to divorce oneself from data collection and usage completely. Of the three sections, this one offers more political commentary related to information privacy in general, rather than specifically tied to advances in information technology.

Specific guidelines to help consumers through the advancing information age are presented in Section Three. Descriptions of such processes as encryption, digital signatures, and national identification cards are presented. The authors raise questions and cite consumer experiences that should give us all cause for concern. Appealing to the corporate ideal that profits are top priority, they then offer what seems to be a viable solution to appease both the marketers (who want to know all they can to increase market share) and the consumers (who want to protect their privacy). By selling and insuring privacy through voluntary privacy codes, a firm will gain consumer loyalty; the return of consumer sovereignty just makes good business sense. Sample voluntary business privacy codes are presented. However, it seems a bit ironic that the only way to insure that corporations do not exploit the personal information of their customers (which is traditionally viewed as necessary to efficiently identify target markets) is to initiate programs that make the safeguarding of this same information profitable. This last section of the book, focused on the handling of customer information files to promote rather than abuse information, offers general audiences some insights into how technology may be altering corporate philosophy. It is precisely this corporate philosophy that Tapscott addressed a year earlier in *The Digital Economy.*

The Digital Economy is more technical than Who Knows, and is targeted toward a professional corporate/management audience or for academics in the social sciences or applied business fields.

The first of four sections describes how technology is affecting the way in which corporations restructure themselves, set goals, and implement change. Tapscott explores how technology is affecting various aspects of the economy, ranging from product innovation and "smart products" at the micro level to globalization priorities. The author presents a corporate information and feedback model (an expanded version of the *Paradigm Shift,* which he co-authored) with the addition of two levels: interactive multimedia and the public information highway. Throughout the book, the author applies this expanded model to private and public sector management.

Section Two, "Internetworking," identifies certain sectors that have benefitted from information technology. Examples such as travelers having their medical information easily accessible anywhere in the country in the event of an emergency, or tracing FedEx customer success and failure rates are cited and analyzed using the expanded *Paradigm Shift* model. How the government processes information is cited as another area in which information technology could lead to disintermediation, in the interest of more efficient operations. The last chapter in this section may be of interest to educators; Tapscott notes how future learning and teaching needs will be affected by the digital economy.

Sections Three and Four look to the future of internetworked business. Although the majority of the book is written for a corporate audience and looks toward efficiently restructuring operations to accommodate the digital economy, Tapscott also identifies some external social issues created by such an economy. Included are concerns about customer privacy, the creation of structural unemployment, universal access to information technology, and the safeguarding of the democratic process. It is almost as if the last section of *The Digital Economy* was setting the stage for *Who Knows.*

From Paradigm Shift, to The Digital Economy to *Who Knows,* the authors have captured key issues that will affect us all. By reading books such as these, consumers can begin to maintain their sovereignty in this rapidly advancing period where public and private information are easily coded into "digits" of accessible data. I recommend *Who Knows* to everyone and *The Digital Economy* to the corporate and academic community.

REFERENCE

Tapscott, D. and Caston, A. (1993). *Paradigm Shift: The new promise of information technology.* New York: McGraw-Hill.

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Donna Folkemer, Allen Jensen, Linda Lipson, Molly Stauffer, and Wendy Fox-Grange (1996), *Adult Foster Care for the Elderly: A Review of State Regulatory and Funding Strategies.* Washington, DC: American Association of Retired Persons. No price given. To receive a copy of either volume of the publication, write to Joan Gonda, Consumer Team, Public Policy Institute, AARP, 601 E. Street NW, Washington, DC 20049.

Adult Foster Care for the Elderly is a two-volume report about adult foster care (AFC) in the United States. The report is based on a study commissioned by the American Association of Retired Persons "to determine who lives in AFC, who provides this care, how states regulate it, what sources are available and in what amounts, and what major trends and concerns about this family-life form of supportive housing are anticipated" (p.vii). Data are presented on AFC programs in 26 states. In addition, eight states provided information on more limited programs; eight reported no programs and eight did not respond. Thus, although not fully representative of the whole country, the study is an excellent reflection of the diversity in this model of care.

The authors of this report have developed a comprehensive description of AFC that is impressive in its thoroughness and comparability. In Volume One, the authors provide an overview chapter in which they describe the development of AFC and discuss findings from previous surveys and methods used to gather data for this study. Subsequent chapters include discussions of the regulatory infrastructure, funding and policy issues, and profiles of the programs in six states. Volume Two has detailed tables of summary information on whether providers are required to reside in the home; on requirements for resident self-medication; on care plans and inspections; and on levels and sources of public funding and total expenditures for direct care. Detailed information is given for each of the 26 states providing full information on agencies involved in AFC, provider services and training, eligibility criteria, placement and monitoring, program quality oversight, issues in provider recruitment, and reimbursement and funding.

It is clear from this report that AFC programs differ widely. Some of these differences are disturbing. For example, although AFC is assumed to occur in a "homelike and family-like environment," 40 percent of the states reporting allow care to be provided in other than family-operated settings. Clearly, questions such as whether the evolution from family settings to corporate ownership is inevitable and whether this move is problematic must be addressed as the

number of AFC settings increases. As well, the authors highlight issues such as inadequate screening of operators and lack of procedures to monitor quality of care. Although they point out that consumer advocates have called for a shift from enforcement of regulations as a focus to a more consumer-oriented focus on quality of care, it is not apparent in programs described in this document.

This report should be required reading for seniors and advocates for seniors needing residential care. The report will be extremely useful for practitioners and educators who work with seniors needing residential care and with their family members who wish to be informed about the risks and benefits of various residential care programs in their state. It will also be useful for health and social policy advocates whose mandate is to lobby for the enhancement of care options for seniors. This is a critical time in the development of residential care for seniors. The authors of the report raise many questions about AFC. Although they carefully couch their discussion in terms of evolving state approaches and changes to strengthen regulation, the impression is one of a process without clear goals or direction.

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TRUTH IN LENDING ACT

Purtle v. Eldridge Auto Sales, Inc., Case No. 95-5631 (6th Cir. 1996).

On July 23, 1993, Renee Purtle purchased a 1986 Chevrolet Blazer from Eldridge Auto Sales, Inc. (Eldridge). Purtle requested financing from Eldridge and filled out a credit application because she did not have enough cash to pay for the car. Based on the information that Purtle gave on her application, Eldridge agreed to extend credit to her to purchase the car. However, Eldridge later discovered that Purtle allegedly made several material misrepresentations about her employment on the application.

Purtle was to make weekly payments of $60 to Eldridge until the balance of $6,890.60 was paid. Purtle made some payments to Eldridge but many were late and several checks were worthless. Eldridge repossessed the car after Purtle defaulted on her payments for several consecutive weeks.

Then, Eldridge filed a state civil warrant against Purtle to recover the $823 remaining on the Blazer. However, Purtle filed a separate action in federal district court against Eldridge for various violations of the Truth in Lending Act (TILA). The federal district court granted Purtle's motion for partial summary judgment on Eldridge's TILA liability, leaving damages as the only issue to be litigated at trial.

The federal district court found that Eldridge had violated TILA because: (1) Eldridge failed to disclose the finance charge and the annual percentage rate in violation of 12 C.F.R. §226.18(d) and (e); (2) Eldridge used the term "total credits" as opposed to "amount financed" in violation of 12 C.F.R. §226.18(b); and (3) Eldridge failed to disclose the total sale price in violation of 12 C.F.R. §226.18(j).

The federal district court entered a final judgment awarding Purtle $1,000 in statutory damages and $5,444.05 in attorney's fees and costs. Eldridge then appealed to the United States Court of Appeals for the 6th Circuit.

First, Eldridge's principal argument against the award of statutory damages was that Purtle's alleged misrepresentations in her credit application are a defense to Eldridge's technical violations of TILA. Eldridge argued that TILA only applies to credit transactions which create a contractual relationship between consumer and creditor according to 12 C.F.R. §§226.2(a)(13) and 226.17(c)(1). Thus, Eldridge contended that no disclosure was necessary because fraudulent inducement of a contract invalidates a contract under Tennessee law. Eldridge also pointed out that neither TILA's express language nor its legislative history indicate that state law defenses to the enforcement of a contract would not be a defense to disclosure requirements.

The Court of Appeals rejected these arguments. Relying principally on the case of *Grant v. Imperial Motors*, 539 F.2d 506 (5th Cir. 1976), the Court held that once a court finds a TILA violation, regardless of how technical, the court must impose civil liability. The Court concluded, therefore, that unless one of the defenses enumerated in TILA is applicable to the transaction (no enumerated TILA defenses were applicable in *Purtle*), statutory damages under TILA are appropriate.

Eldridge also argued that the federal district court's award of attorney's fees to Purtle was excessive. First, Eldridge argued that because Purtle fraudulently induced Eldridge to enter into the credit agreement, the award of attorney's fees will encourage perpetration of fraud. Second, Eldridge contended that because Purtle suffered no actual damages and fully understood her credit terms, awarding of attorney's fees in this case undermines the Congressional purpose behind TILA, which is to

assure meaningful disclosure of credit terms and to ensure fully informed consumers. Third, Eldridge argued that the federal district court should have considered Eldridge's lack of culpability or bad faith as a factor in awarding attorney's fees. Finally, Eldridge contended that the district court should not have awarded attorney fees so greatly in excess of her recovery.

The Court of Appeals rejected these arguments and held that the federal district court did not abuse its discretion in awarding attorney's fees to Purtle. The Court reasoned that (1) the awarding of attorney's fees is mandatory under TILA, (2) TILA does not require that consumers suffer actual damages in order to recover under TILA, and (3) the amount of attorney's fees is not limited by the amount of a successful plaintiff's recovery. The Court of Appeals held that the federal district court had made a complete review of all relevant factors and subtracted those portions of the requested attorney's fees which were unnecessary. Accordingly, the Court of Appeals affirmed the federal district court's award of attorney's fees.

UNFAIR DEBT COLLECTION PRACTICES

***United States v. National Financial Services, Inc., et al.*, 98 F.3d 131 (4th Cir. 1996).**

National Financial Services (NFS) is a collection agency for American Family Publishers (AFP). AFP sells magazine subscriptions, and NFS sends out computer-generated form letters to customers who have not paid their bills. These form letters varied, but most stated that if the bills remained unpaid by the deadline date, appropriate action will be taken. The letters also asked the customers for immediate payment or asked them to pay by a certain date. The back of the letter contained a "validation notice," which gave the consumer 30 days to dispute any or all of the debt; if the debt was not disputed, it would be assumed valid.

NFS also sent out letters on "N. Frank Lanocha, Attorney at Law" letterhead. There were several variations of this letter; four letters referred to Lanocha's authority to file suit in case of nonpayment and demanded payment in full within ten days. Lanocha never signed or reviewed any of the letters prepared by NFS. In January 1991, the U.S. Government, following a long investigation of the defendants' collection practices by the Federal Trade Commission, filed an action for civil penalties and injunctive relief against NFS for violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §1692 *et seq.*

The district court found that NFS violated the FDCPA by improperly threatening consumers with legal action in violation of §1692e(5), making false threats to sue in violation of §1692e(10), and sending notices containing contradictory information about the consumers time to dispute the debt, in violation of §1692g.

NFS appealed the district court decision to the 4th Circuit Court of Appeals.

First, the defendants argued that their notices did not threaten legal action because they never state that a suit will be filed or is going to be filed; they only state that Lanocha has the authority to do so.

In rejecting this argument, the Court of Appeals adopted the least sophisticated consumer standard, the purpose of which "is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd." Thus, the Court upheld the district court's finding that both a reasonable and the "least sophisticated" debtor would perceive the language "your account will be transferred to an attorney if it is unpaid after the deadline date," to mean that the defendants intended to sue. Moreover, the Court of Appeals held that the language "remember your attorney will want to be paid," implied that the consumer will need an attorney to defend against a debt collection lawsuit.

Similarly, the Court also found that Lanocha's letters threatened legal action. The Court concluded that statements that Lanocha was considering legal remedies, that "only your immediate payment will stop further legal action," and that "I have filed suits and obtained judgments on small balance accounts just like yours" connote that a real attorney had considered the debtor's file and concluded in his judgment that the debtor is a candidate for legal action.

The Court also rejected the defendants' argument that the letters were sent with the intention of bringing suit. First, NFS had no internal procedure to obtain authorization from AFP to file suit. Moreover, NFS repeatedly conveyed its belief to AFP that filing suit in a given case would be impractical. The Court also found that Lanocha had filed no lawsuits during the period of time covered by the lawsuit, admitted that small claims lawsuits were not feasible, never looked over the files or had any part in sending out the letters, and never discussed any accounts that warranted legal action with AFP.

Therefore, the Court held that defendants' notices threatened to take legal action which they had no intention of doing so in violation of §1692e(5).

The Court also concluded that the defendants violated §1692e(10), which prohibits "the use of any false representation or deceptive means to collect or attempt to collect any debt." The Court found that references to the use of an attorney is a false threat where there is no intention to file suit.

The third claim in the lawsuit was that NFS violated §1692g, which requires a debt collector, in its initial

communication with a consumer or within 5 days of that time, to provide a debt validation notice informing the consumer of his or her right to dispute the validity to the debt. The notice must also inform the consumer that if the claim is not disputed within 30 days of receiving the notice, the debt collector will assume the validity of the debt. In addition, according to the Court, §1692g(a)(3) requires that the validation notice must be easily readable and discernible to the unsophisticated consumer. The notice must not be overshadowed or contradicted by other messages.

The district court found that the defendants' deadline notices, which demanded payment within ten days or demanded "immediate payment," violated §1692g(a). The ten-day demand contradicted the statutory thirty-day window period for disputing claims, which was printed on the back of the letter.

Finally, the Court of Appeals upheld the district court's award of $550,000 in damages, and suggested that, in light of the millions of consumer accounts involved, it would have been justified in imposing a larger penalty. As the Court noted: "Without a real sting, the defendants would be unlikely to be deterred from violating the Act, in light of the substantial profit to be made using aggressive and improper collection practices."*Brannan v. United Student Aid Funds, Inc.,* 94 F.3d 1260 (9th Cir. 1996).

On June 15, 1988, April Brannan executed a promissory note with the Bank of Horton for a student loan of $2,625. The loan was under the former Guaranteed Student Loan program (GSL), established by the Higher Education Act. A private guaranty agency, USA Funds (the defendant in this case), guaranteed Brannan's loan. The U.S. Department of Education insured USA Funds. After Brannan was declared in default, USA Funds paid the loan and began collection efforts against Brannan. USA Funds sent collection notices and contacted Brannan by telephone.

On September 1, 1992, Brannan filed suit alleging that USA Funds had violated the Fair Debt Collection Practices Act (FDCPA) and the Oregon Unfair Debt Collection Practices Act (Oregon UDCPA). Brannan alleged that USA Funds threatened to cause her to lose her job by telling third parties about her debt, and by refusing to communicate about the debt through her attorney. USA Funds counterclaimed, seeking collection costs and attorney fees under the promissory note that she signed.

The district court ruled in favor of USA Funds, holding that it is exempt for the FDCPA under the "government actor" exemption of 15 U.S.C. §1692a(6)(c). The court also held that Higher Education Act completely preempts the Oregon UDCPA.

Brannan appealed to the 9th Circuit Court of Appeals. The Court first held that the FDCPA does not provide an exemption for guaranty agencies that acquire a student loan after default in order to pursue its collection. In support of this holding, the Court cited a statement by the U.S. Secretary of Education that GSL debt collectors "remain subject to the FDCPA." The Court held that the governmental actor exemption applies only to individual government officials or employees who collect debts as part of their government employment responsibilities. Since USA Funds is a private, nonprofit organization rather than a government agency or employee, it is subject to the FDCPA.

USA Funds also contended that the Higher Education Act preempts application of the Oregon UDCPA to its debt collection activity. The Court of Appeals, once again relying on the Secretary of Education, held that GSL regulations governing collection activity preempt all inconsistent state laws, including case law, statutes, and regulations. The court held that GSL guaranty agencies need to be exempt from any state laws which prohibit or restrict the activity of the third party collectors. In this case, since the Oregon UDCPA "consists of nothing but prohibitions, restrictions, and burdens on collection activity," it is preempted.

The Court justified its preemption holding on the grounds that GSL loan holders must be protected from 50 separate sets of laws and court systems, which otherwise might make them reluctant to make new student loans. The Court also cited the need for diligent student loan collection, which could be hampered without federal preemption of inconsistent state law. Finally, the Court held that the Secretary of Education's regulations and interpretations of the Higher Education Act were valid, given Congress' recognition of the rigorous collection methods to reverse the high default rate for student loans.

RENT-TO-OWN CONTRACTS

***Fogie v. Thorn Americas, Inc.*, 95 F.3d 645 (8th Cir. 1996).**

Each of the plaintiffs in this class action entered into rent-to-own transactions for various household goods from the defendant, Thorn Americas, Inc., which operate stores under the name of "Rent-A-Center" (RAC). RAC allowed customers to lease goods on a monthly or weekly rental basis. The customer is able to "renew" the lease at the end of each "rental term," by paying a monthly or weekly payment, in addition to a rental fee. The customer is able to acquire ownership by renewing the lease for a specified number of consecutive rental terms.

The cash price of an item is set at 55 percent of the total payments necessary to purchase the item by renewing their monthly or weekly agreement to ownership. RAC refers to this differ-

ence between total payments and the cash price as the "cost of lease services." The plaintiffs in this case had already successfully contended that this "cost of lease services" is entirely interest.

The plaintiffs filed suit alleging that their rent-to-own contracts violated the Minnesota General Usury Statute, the Minnesota Consumer Credit Sales Act (CCSA), and several federal statutes. The district court held that RAC's rent-to-own contracts were consumer credit sales, that the usury statute does apply to them, and that RAC's contracts were usurious. The court then issued an order prohibiting RAC from entering into credit sales transactions within Minnesota which have an interest rate higher than that permitted under Minnesota law.

RAC appealed this decision to the 8th Circuit Court of Appeals. Minnesota's usury statute sets forth four elements for proof of usury: (1) a loan of money or forbearance of debt; (2) an agreement between the parties that the principal shall be repayable absolutely; (3) the exaction of a greater amount of interest than is allowed by law; and (4) the presence of an intention to evade the law at the inception of the transaction. *Miller v. Colortyme*, 518 N.W.2d 544, 549-50 (Minn. 1994). The district court has held that under the decision in *Miller*, the first two elements of usury are satisfied by the CCSA and the general usury statute. RAC argued that this interpretation of usury renders the CCSA and the usury statute unconstitutionally vague, thus depriving RAC of the "fair notice" required by the due process clause of the U.S. Constitution. However, the Court of Appeals held that the Miller decision does not render either of the laws unconstitutionally vague because the statutes' prohibitions are clearly defined, and because the decision did not change the existing law.

Next, RAC contended that its "sales" cannot be "consumer credit sales" because the seller does not extend credit and the buyer does not incur debt. However, the Court found that RAC's rental purchase agreements allow a buyer to acquire possession of products while deferring payments over time, the essential attributes of an ordinary credit sale. Therefore, the court found RAC's transactions to come within the definition of a "consumer credit sale" and subject to the CCSA.

The Court of Appeals also found that the plaintiffs satisfied the third criteria for usury because RAC charged an illegal interest rate. In determining this, the court looked at the difference between the total payments needed to obtain ownership of an item and the cash price in all the plaintiffs' contracts (which was labeled in the contracts as the cost of lease services). The Court found that the annual percentage rates ranged from 46 percent to 746 percent (Minnesota's usury limit is 6 percent, unless the rate is contracted for in writing, in which cases the limit is 8 percent). RAC contended that this cost of lease services is not entirely interest because it included delivery, maintenance, repair, and contract options. However, the Court of Appeals concluded that the plaintiffs never knowingly agreed to pay for any of these additional services as "cost of lease services" and that the plaintiffs reasonably believed that the services provided under the cost of lease services were free of charge. Moreover, the Court held that even if the cost of lease services was included, it would not reduce the interest rate to a nonusurious level.

The Court of Appeals found that the plaintiffs satisfied the "intent" criteria for usury because RAC's contracts provide for RAC to exact interest in excess of the usury rate, and there was no evidence that RAC did not intend to collect less money than is stated in its contracts.

Next, RAC contended that rent-to-own contracts fall within the time-price doctrine, which states there can be no usury without a loan or forbearance of money and that the sale of property in a time-price transaction involves no loan. However, the Minnesota Supreme Court had previously ruled that Minnesota's usury statute applies to rent-to-own contracts, and that the loan or forbearance element of usury was satisfied by operation of statute.

Last, RAC argued that the district court abused its discretion by permanently enjoining RAC from entering into usurious rent-to-own consumer credit sale contracts. The Court of Appeals disagreed since the plaintiff class had succeeded on the merits and the public interest "overwhelmingly favors" enjoining RAC's contracts. The only harm to RAC from the injunction is the loss of the usurious portion of its income. Therefore, the district court's judgment was affirmed.

TRUTH IN LENDING ACT

***Veale v. Citibank*, F.S.B., 85 F.3d 577 (11th Cir. 1996).**

Carl and Mary Veale borrowed money from Citibank in order to refinance their home, on which the Veales had one mortgage from Citibank and two mortgagees from other lenders that the Veales wanted to replace with a single mortgage from Citibank. The proceeds of the loan went to the prior mortgagees to pay off their mortgages. The loan included a $21.00 Airborne fee for express mail charges. In the Truth in Lending Act (TILA) Disclosure Statement, Citibank included the $21 Airborne charge in the Amount Financed, but did not include that amount under the Finance Charge. The loan also included a $723.60 Florida "intangible tax." In the TILA Disclosure Statement, Citibank did not include the Florida intangible tax in the Finance Charge. Additionally, the note contained a typographical error regarding the number of payments, but the

TILA Disclosure Statement listed the correct number of payments. Pursuant to TILA requirements, Citibank used a standardized rescission notice form in connection with the loan refinancing.

The Veales defaulted on their loan. Citibank sued for foreclosure in state court and eventually purchased the property at the state court foreclosure sale. The Veales brought a separate suit in federal court, alleging that Citibank violated TILA disclosure requirements and demanding rescission. At the close of the Veales' case during a non-jury trial, Citibank moved for judgment as a matter of law. The court granted Citibank's motion and entered judgment for Citibank. The Court of Appeals addressed four specific issues. First, the Court of Appeals held that an express mail charge that was not imposed as incident to credit, and that consumer borrowers could avoid by having the document sent via regular mail, was not a "finance charge" that had to be revealed in a TILA Disclosure Statement. Second, the Court of Appeals held that an intangible tax that Florida required by law to be paid to a public official for perfecting a bank's security interest was likewise not a "finance charge" and did not have to be revealed in a TILA Disclosure Statement. Third, the Court of Appeals held that the typographical error in the home mortgage note as to the required number of payments did not rise to the level of a TILA violation, where the TILA Disclosure Statement listed the correct number of payments and accurately reflected the mortgage borrowers' obligations. Finally, the Court of Appeals held that the standard TILA notice form used by the bank in a refinancing situation to advise consumer borrowers of their right to rescind only the new value portion of the transaction was reasonably clear to satisfy TILA notice requirements, when applied to the particular facts of this case. Although the form was not specifically designed for use in a refinancing situation, by specifying that the borrowers had the legal right under federal law to cancel "this transaction," the form provided adequate notice. While a better practice would have been for the bank to use a non-standard notice form, TILA required only notice which was reasonably clear. Additionally, TILA does not require perfect notice, but only clear and conspicuous notice of the borrower's rescission rights.

***Hubbard v. Fidelity* Federal Bank, 91 F.3d 75 (9th Cir. 1996).**

The plaintiff borrowers brought a class action lawsuit against Fidelity Federal Bank for breach of contract, violation of the Truth in Lending Act (TILA), and fraud in connection with adjustable-rate mortgage loans. The loan interest rate was to be adjusted semi-annually, while the payment amounts were to be adjusted only once a year, on January 1. Fidelity agreed to provide "notice of an adjustment to the payment amount at least 30 but not more than 45 days before it becomes effective." In 1991, Fidelity changed its practice and sent payment adjustment notices approximately 65 days prior to January 1. Fidelity attributed the change to a revision of federal regulations. Contrary to Fidelity's claim, federal regulations had not changed.

Hubbard filed a class action lawsuit in July 1992. The district court granted summary judgment in favor of Fidelity on all of the Hubbard's claims. Hubbard appealed to the 9th Circuit Court of Appeals.

The Court of Appeals held that the borrowers' claims for breach of contract and violation of TILA were not mutually exclusive, where Fidelity breached the loan contract by calculating interest incorrectly and sending notices on the wrong date. Further, Fidelity's disclosures were not sufficiently clear or accurate to satisfy TILA.

Regarding TILA's initial disclosure requirements, the Court of Appeals held that TILA's one-year statute of limitations period barred the plaintiffs' claims that Fidelity failed to make appropriate initial disclosures in connection with adjustable-rate mortgage loans where one borrower filed suit more that eight years after obtaining a loan, other borrowers filed suit six years after obtaining loans, and nothing prevented plaintiff borrowers from comparing loan contracts, lender's initial disclosures, and TILA's statutory and regulatory requirements. Thus, TILA's one-year statute of limitations barred some of the class members' claims that Fidelity failed to make appropriate initial disclosures.

Regarding TILA's subsequent disclosure requirements (i.e., disclosures that "reflect the terms of the legal obligation between the parties"), the Court of Appeals held that Fidelity's annual payment adjustment notices were required to reflect the loan agreement. The Court determined that there was an unresolved issue of disputed fact as to whether Fidelity breached Hubbard's loan contract and miscalculated the interest rates and payment amounts. On remand, if the district court rules in Hubbard's favor, Fidelity's annual payment adjustment notices would violate TILA's requirement that disclosures "reflect the terms of the legal obligation between the parties."

The Court of Appeals also held that, ordinarily, Hubbard would have one year from each inaccurate disclosure to file suit. Because Fidelity did not conceal its alleged breach of contract before it sent the August 22, 1991 letter to Hubbard, any TILA claims for inaccurate disclosures before August 22, 1990 are barred. Fidelity's August

22, 1991 letter to Hubbard attributed the change in payment practice to a revision of federal regulations; however, federal regulation remained unchanged and Fidelity's August 22, 1991 letter was misleading and tended to dissuade Hubbard from suing. The Court of Appeals held that the misleading letter halted TILA's one-year statute of limitations period and, thus, Hubbard may sue for any inaccurate notice of payment adjustment after August 22, 1990.

CONSUMER LEASING ACT

***Channell v. Citicorp National Services, Inc.*, 89 F.3d 379 (7th Cir. 1996).** Persons whose automobile leases had been assigned to Citicorp National Services, Inc. (Citicorp) and terminated before their expiration filed a class action lawsuit alleging violations of the Consumer Leasing Act. The district court certified a class comprising persons whose automobile leases have been assigned to Citicorp and terminated before their expiration. A subclass included lessees whose terminations were involuntary. Merrilou Channell (and her former husband Thomas Kedziora) represented both the class and the subclass. Their leased automobile was totaled in a collision, an event that the lease treated as an early termination. Channell's accident occurred 23 months into a 60 month lease. Citicorp charged Channell an early lease termination charge of $12,994.14. Despite assigning their insurance proceeds to Citicorp, Channell and her former husband still owed $2,688.14 to Citicorp. Instead of paying, they sued Citicorp alleging violations of the Consumer Leasing Act.

Citicorp counterclaimed to recover the money still owed by Channell. The trial court determined that (1) referring to the name of the method to calculate unearned interest in a lease satisfied the Consumer Leasing Act, (2) Citicorp's method for calculating unearned interest violated the Consumer Leasing Act, and (3) the court lacked jurisdiction over Citicorp's counterclaim. The case was appealed to the Court of Appeals for the 7th Circuit. The Court of Appeals made numerous holdings.

First, the Court of Appeals held that naming the "sum-of-the-digits method" in the lease as the method used to calculate unearned interest satisfied the Consumer Leasing Act. The Consumer Leasing Act requires that leases clearly and conspicuously state conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination. For purposes of the Consumer Leasing Act requirement that the method used to calculate unearned interest upon termination be named or described in the lease, "clear and conspicuous manner" means visible, not simple, with manner referring to mode of presentation, not the degree of comprehension. The plaintiffs argued that consumers could not understand the Rule of 78s method (the sum-of-the-digits) of determining the early termination charge. The Court of Appeals held that Citicorp was allowed to simply name the method without providing an elaboration of the method's operation.

Second, the Court of Appeals held that Citicorp's use of an actuarial method instead of the "sum of-the-digits method," which was stated in the lease as the method to determine unearned interest when lessee experienced total loss of vehicle, violated the Consumer Leasing Act. Although Citicorp stated that it would use the Rule of 78s method, it did not. Instead, Citicorp used the actuarial method (an exact calculation) to determine unearned interest when the lessee experienced total loss of the vehicle. The Court of Appeals held that this is a violation of the Consumer Leasing Act.

Third, the Court of Appeals held that Citicorp's counterclaim seeking money still owed by Channell was sufficiently connected to Channell's claims to allow the district court to bestow jurisdiction and decide the claim. Since the parties, lease, clause, and terminations were common, the district court could properly decide Citicorp's counterclaim.

Finally, the Court of Appeals remanded the case to district court to determine whether that court should decline jurisdiction and not decide Citicorp's counterclaim. The Court of Appeals held that it was within the district court's discretion to determine if "compelling reasons" mandated not hearing Citicorp's counterclaim.

On remand, as directed by the Court of Appeals, the district court exercised its discretion and once again dismissed Citicorp's counterclaim and reinstated its previous judgment. *Channell v. Citicorp National Services, Inc.*, 1996 WL 563536 (N.D.Ill.). The judgment against Citicorp required Citicorp to pay $100 to each of the 96 plaintiff class members. The $100 judgment was to be setoff of any amounts owed by each of the 96 class members to Citicorp. The district court believed this was the only fair and just manner to bring a long-awaited end to this litigation.

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