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DttP

Documents to the People

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Environment at a Glance 2013 *OECD Indicators*

9789264181403 | 107 pp | November 2013

This book includes key environmental indicators endorsed by OECD Environment Ministers and major environmental indicators from the OECD Core Set. These indicators reflect environmental progress made since the early 1990s and thus contribute to measuring environmental performance. Organized by issues such as climate change, air pollution, biodiversity, waste or water resources, they provide essential information for all those interested in the environment and in sustainable development.



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9789264194236 | 116 pp | September 2013

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This promise is considered alongside the challenges associated with the development of these resources which exist with complex ecosystems and are fluidly distributed in a vast, largely shared environment. The report makes the case for a new global framework for the sustainable development of marine biotechnology and identifies some areas that will benefit from focused attention as governments develop policies to support it. In addition to this prospective view, this report identifies some early policy lessons learned by the governments which are leading attempts to benefit from bioresources.

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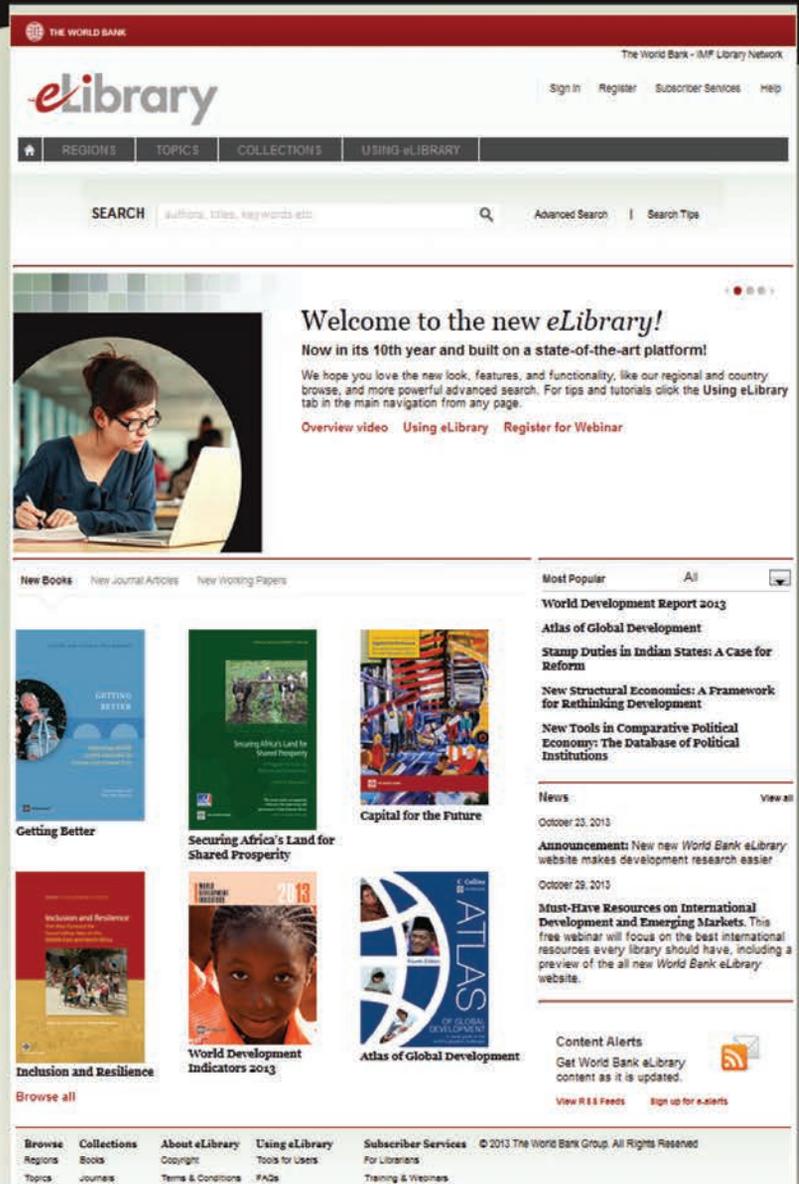
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DtP

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A close-up view of the compass rose and inscription at the US Navy memorial, October 27, 1986

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Editor's Corner

Here Come the Students

Greg Curtis

Welcome to the winter 2013 issue of *DttP*. Once again, with this issue, we present student papers.

We have new names added to the masthead with this issue. The international column has new two new authors. Jim Church is with the Doe Library, University of California, Berkeley, jchurch@library.berkeley.edu and Jane Canfield is with the Biblioteca Encarnación Valdés, Pontificia Universidad Católica, jcanfield@pucpr.edu. We also add a name to the state and local column. Celina Nichols is with the McKeldin Library, University of Maryland, cnichol5@umd.edu. Thank you, all, for stepping forward to take on key writing roles.

With this issue we come to the 2013 edition of student papers. As I said last year, “this exemplifies the future of the profession encapsulated in the writings presented here. First, thank you to all the students whose submissions we reviewed. You all had great ideas and interesting topics; we wish we had space to include all the articles submitted. We had an especially strong group of papers this year. Keep writing, keep discussing, and keep thinking; our profession needs your vitality and insight.”

Thank you, also, to the faculty who submitted the students' works to *DttP*. It shows your dedication and commitment to the students and the profession for taking the time to review and

submit the papers on behalf of the students. Faculty submitted student papers representing University of Washington, Indiana University–Bloomington, and the Pratt Institute.

Student papers this year range from a discussion of the Occupy Wall Street movement, to public participation in the e-rulemaking process, media use in government campaigns and to other topics including Title IX. The articles presented here are about government information, but they also are relevant topics for cogent discussion throughout the intellectual spectrum.

We have continued the format from last year's student issue by increasing the pages devoted to the students. With the strong field of student work again this year, the regular columnists agreed to hold their columns for the next issue to give additional room in the journal to showcase the student articles. Thank you to all the columnists in making this a reality for the additional student space. Regular columns will reappear starting with the spring issue.

Until next time, I hope you enjoy the student papers presented here.

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Give to the Rozkuszka Scholarship

The W. David Rozkuszka Scholarship provides financial assistance to an individual who is currently working with government documents in a library and is trying to complete a master's degree in library science. This award, established in 1994, is named after W. David Rozkuszka, former documents librarian at Stanford University. The award winner receives \$3,000.

If you would like to assist in raising the amount of money in the endowment fund, please make your check out to ALA/GODORT. In the memo field please note: Rozkuszka Endowment.

Send your check to GODORT Treasurer: John Hernandez, Web and Mobile Services Librarian, Northwestern University Library, 1970 Campus Drive, Evanston, IL 60208-2300.

More information about the scholarship and past recipients can be found on the GODORT Awards Committee wiki (wikis.ala.org/godort/index.php/awards).



Importance of Mentoring

Suzanne Sears

I was asked last year what my agenda would be as ALA GODORT Chair. My answer was centered on my feeling that ALA GODORT members are uniquely positioned to play a primary role in fostering collaboration, cooperation, and leadership. All of these are keys to overcoming the challenges faced in the preservation and access of local, state, federal, and international government information resources. In my last column I discussed some of the ways that government information librarians collaborate with their communities to increase access to resources. In this column, I would like to focus on something that I feel is essential for maintaining strong leadership among our community of government information specialists—mentoring.

I believe if you ask any seasoned documents librarian, they would tell you how important at least one person was in helping them to develop their passion and skills for government information. I was very fortunate to have more than one. My first day working for the Tulsa City-County Library (TCCL) System, I was introduced to Doris Westfield, the Government Documents Librarian. As a member of the periodicals support staff, it was my job to check in depository shipments at night while working the service desk. Doris instantly picked up on my interest for government information as I assisted her with the processing of incoming shipments. She took me under her wing and taught me everything I needed to know to manage a documents collection, including how to answer difficult reference questions pre-Internet. She inspired me to pursue a master's degree in library science. When she retired in 1997, she recommended me as her replacement and helped me transition into my first full-time job as a librarian.

It was at Doris's retirement party that I was introduced to John Phillips, professor and head Documents Department at Edmon Low Library, Oklahoma State University, whose influence on me as a professional is second only to that of my father. Where Doris taught me how to focus my passion into a job managing a small documents collection, John taught me to funnel that emotion into forging an entire career. He helped me to expand my network of colleagues and added to my knowledge of government information. He showed me, through his own actions, how to make a difference in the lives of students and colleagues. He also became a treasured friend. When my father passed away in 2003, John became the person I turned to for not only career advice, but personal advice as well. I would not

be where I am today without his guidance and friendship.

Working at a selective depository in Oklahoma also put me into contact with Steve Beleu, regional depository librarian for Federal Government Information, Oklahoma Department of Libraries. Steve's passion for training individuals on how to access government resources is highly contagious. I was fortunate to be able to work with him on a pilot project to integrate geographic information system software into the government documents services at TCCL many years ago. His outreach to small public libraries and tribal libraries even in neighboring states was a great inspiration to me as I was developing my career.

My good fortune continued to overflow when I accepted the position of head government documents for the University of North Texas (UNT). In my new position I was able to work closely with Melody Kelly and Cathy Hartman who had both been in charge of the UNT documents collection before moving up into administration. Melody is a strong advocate for preserving no-fee permanent public access to government information and still teaches the government document course for the UNT School of Library and Information Science. She helped me transition to the academic library setting and continues to advise me on my advocacy efforts.

Cathy Hartman, associate dean UNT libraries, is my current supervisor and continues to push me to set higher goals for myself. She is always willing to listen to me and provides me with sound advice on how to continue to grow my career. Like John, she helped me by introducing me to influential individuals in both the depository community and the federal government. When opportunities come up that she thinks will benefit me, she always sends them my way. She also sets an example for me to follow through her dedication to her own career. Cathy also advises me on how to be a better advocate for the library and preservation of government information. Her support is invaluable to my continued career.

I wanted to share with you my personal story of mentors to illustrate how important mentorship has been in developing my career. It seems impossible to me that I am now counted among the more experienced librarians, but it gives me a chance to be a mentor. At UNT I have had many opportunities to visit with new depository coordinators in the North Texas region and help them with the basics of managing their collections. I have multiple opportunities to work with students and support staff, training them in reference services and encouraging them to pursue a degree in library science. It is extremely satisfying to

watch the careers flourish of librarians that I have had a chance to work with and advise.

There are formal ways to be connected like the ALA GODORT “Buddy” Program that is conducted at both ALA Mid-Winter and Annual Conferences. The program is administered by the Membership Committee and pairs new and prospective GODORT members with active members for a single conference to provide a personal introduction to GODORT. Another way is to encourage up and coming librarians to get involved with GODORT. Helen Sheehy, chair-elect, will be looking for individuals to nominate to committees for 2014–2016. Suggest that they send an e-mail to Helen to communicate their interest or send that e-mail yourself. The Nominating Committee is also looking for individuals to run for elected offices. Sometimes all it takes is a vote of confidence from a colleague to encourage someone to run. They may be doubting that they have enough expertise to contribute.

Informal opportunities to be a mentor are many. When attending conferences, seek out first-time attendees and invite

them to lunch or dinner, introduce them to other experienced documents librarians, encourage them to maintain contact with you throughout the year should they have any questions. If you notice a spark of interest or passion for government information in a library school student or a support staff member, encourage them to pursue a career in documents. Another way to mentor new librarians is by helping them gain confidence in presenting at conferences or serving on committees. Offer to co-author or co-present with them and send them information on call for proposals or papers.

Seeking out opportunities to be a mentor will allow you to continue a legacy established by your predecessors, while at the same time ensuring that someday your name will appear in a paper on shining examples of leadership in the government documents community. My desire is that individuals reading this column will be rededicated to seek out new documents librarians and encourage and inspire them. Mentoring is a huge step forward in developing the next generation of GODORT leaders and keeping the organization strong for the next forty years.

GODORT Membership

Membership in ALA is a requisite for joining GODORT

Basic personal membership in ALA begins at \$50 for first-year members, \$25 for student members, and \$35 for library support staff (for other categories see www.ala.org/Template.cfm?Section=Membership).

Personal and institutional members are invited to select membership in GODORT for additional fees of \$20 for regular members, \$10 for student members, and \$35 for corporate members.

For information about ALA membership contact ALA Membership Services, 50 E. Huron St., Chicago, IL 60611; 1-800-545-2433, ext. 5; e-mail: membership@ala.org.

Classified Information in the Public Sphere

An Examination of Legal Issues Surrounding the NSA Leaks

Robert Clark

Abstract

This paper examines some of the legal issues involved in the recent leaks of classified government documents by NSA contractor Edward Snowden and the publication of those leaks in *The Guardian*. It is intended for an audience of librarians and other information professionals who wish to learn more about the law surrounding government leaks. The story of the leaks to date—how Snowden acquired the documents, how they came to be published, and the public aftermath—is briefly sketched. This is followed by an examination of the theft and espionage charges against Snowden, a look at precedents for using the Espionage Act to prosecute leakers, and an analysis of the government's present case. A similar analysis is given for the possible charges against Greenwald, which are deemed highly unlikely to be pursued.

Introduction

Over the past several years, the issue of government secrecy has been widely debated. One of the questions at the heart of that debate has to do with the role of government employees or agents who leak classified documents to the press in order to inform the public about government actions that the leakers consider abusive, illegal, unconstitutional, or otherwise deserving of greater public scrutiny. One of the most famous and politically divisive of these leakers is Bradley Manning, who was arrested in 2010 for allegedly leaking more than half a million documents to the online anti-secrecy group Wikileaks.¹ Manning's trial in a US military tribunal recently concluded with an acquittal of the most serious charge of aiding the enemy and convictions on the other charges, including multiple counts of violating the Espionage Act of 1917.² On August 21, 2013, Manning was sentenced to thirty-five years in prison and will be eligible for parole in about

seven years.³ More recently, Edward Snowden, a contractor working for the National Security Agency (NSA) in Hawaii, publicly announced his responsibility for the leaking of several documents that revealed the details of secret intelligence-gathering programs run by the NSA.⁴ Federal prosecutors have filed espionage charges against Snowden and are seeking his extradition from Moscow, where he has applied for temporary asylum.⁵

Leakers like Manning and Snowden have been called everything from heroes to traitors. Whether either of these labels applies may depend on one's political point of view. But whatever view one takes of their actions, there can be no question that Manning and Snowden have sparked a national debate about the proper limits of government secrecy, particularly with regard to matters of national security.

This paper will provide a brief introduction to some of the legal issues surrounding leaks of classified government documents, and will focus primarily on Edward Snowden and the journalist Glenn Greenwald, who broke the story of the NSA leaks for the British newspaper *The Guardian*. The paper is intended for an audience of librarians and other information professionals, specifically those whose charge is to provide public access to government documents. Given the proliferation of words like "espionage" and "treason" in media accounts of the Snowden story, and the often nebulous explanations of their legal significance, many librarians will undoubtedly have questions about what all of this means for their profession. What is the legal status of the leaked documents? Can the government prosecute those who publish or otherwise provide access to them? And why should we be concerned about what happens to people like Snowden and Greenwald?

My hope is that by examining the legal implications of this case, I can provide the reader with a greater understanding of its

context. I will begin by looking at the background of the leaks themselves. I will then examine the charges against Snowden, the history of the Espionage Act, and relevant case law. Finally, I will discuss the legal implications for journalists like Greenwald who publish leaked documents, and the constitutional issues raised by their publication.

Background of the Snowden case

Snowden had previously worked on IT security for the CIA, and at the time of the leaks, in June 2013, he was working for the defense contractor Booz Allen Hamilton, under contract with the NSA.⁶ In his position with the company, he had access to classified documents concerning the NSA's intelligence-gathering programs. After copying a number of these documents, he requested a term of medical leave from his supervisor and boarded a plane to Hong Kong. From there, he provided selected documents to Greenwald for publication in *The Guardian*. These documents revealed, among other things, NSA programs for the mass collection of Americans' Internet activity and telephone metadata.

Snowden has said that his motivation for leaking these documents was "to inform the public as to that which is done in their name and that which is done against them."⁷ He has also said that he carefully evaluated the documents before releasing them to make sure that they were "legitimately in the public interest" and that the information they revealed would not put anyone in danger. As we will see in the next section, Snowden's state of mind at the time of the leaks may prove important in determining his guilt or innocence at trial.

The charges against Snowden

Snowden has been charged with theft of government property, unauthorized communication of national defense information, and willful communication of classified communications intelligence information to an unauthorized person.⁸ The first charge is punishable by a fine or up to ten years in prison, or both, unless the value of the stolen property is found not to exceed \$1,000, in which case the maximum prison sentence would be one year.⁹ The other two charges are under the Espionage Act of 1917, a law increasingly used in recent years to prosecute leaks of classified information to the press.¹⁰ Each of the charges under the Espionage Act is punishable by a fine or up to ten years in prison, or both.

The charge of unauthorized communication of national defense information refers to the section of the Espionage Act codified at 18 U.S.C. § 793(d). This section applies to those lawfully in possession of national defense information, and prohibits the communication of such information to an unauthorized

person when "the possessor has reason to believe [it] could be used to the injury of the United States or to the advantage of any foreign nation."

The second charge under the Espionage Act refers to 18 U.S.C. § 798(a)(3). This section prohibits the knowing and willful disclosure of any classified information "concerning the communication intelligence activities of the United States." The term "classified information" is defined as "information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution." The section further stipulates that in order for a violation to occur, the information disclosed must be "prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States."

What § 793 and § 798 have in common is an element of scienter, which is defined by *Black's Law Dictionary* as a "degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission."¹¹ In order for a violation to occur, in other words, the person must act knowingly.

One case that addressed the interpretation of the scienter element under the Espionage Act is *United States v. Morison*.¹² Samuel Loring Morison, an employee of the Naval Intelligence Support Center, was convicted under 18 U.S.C. § 793(d) for transmitting classified satellite photographs of Soviet naval preparations to a British publication called *Jane's Defence Weekly*. In appealing his conviction, Morison argued that the statutory phrase "relating to the national defense" was unconstitutionally vague, and that he therefore could not have acted with the scienter required by the statute. The US Court of Appeals for the Fourth Circuit rejected this argument, finding no possibility of vagueness in the district judge's instruction to the jury that in order to prove the photographs were related to the national defense, the government must prove that "the disclosure of the photographs would be *potentially damaging* to the United States or might be useful to the enemy of the United States."¹³

The phrase "potentially damaging," as a criterion of determining that information is related to the national defense, has also been approved in other Espionage Act cases.¹⁴ In *Morison*, the court cites the labeling of the photographs as "Secret" as supporting the conclusion that they are potentially damaging, and notes that the Classification Order defines this designation as being "applied to information, the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security."¹⁵ However, in a concurring opinion, Judge Philips observes: "I assume we reaffirm today, that notwithstanding information may have been classified, the government must still be required to prove that it was *in fact*

‘potentially damaging ... or useful,’ i.e., that the fact of classification is merely probative, not conclusive, on that issue, though it must be conclusive on the question of authority to possess or receive the information. This must be so to avoid converting the Espionage Act into the simple Government Secrets Act which Congress has refused to enact.”¹⁶

The question of whether Snowden had reason to believe that the documents he leaked were potentially damaging to the United States or useful to its enemies is a question of fact rather than law, and therefore must be decided by the jury (assuming the case goes to trial). The government will no doubt argue that Snowden had reason to believe the disclosure would be potentially damaging due to its classified status, and also due to the fact that it revealed specific methods used in the surveillance of terrorists and other enemies of the United States. However, a reasonable argument could be made in Snowden’s defense that the leaks revealed nothing useful to the enemies of the United States, who must have already assumed that the US government was monitoring or attempting to monitor them. What was newsworthy about the leaks was, rather, the revelations concerning mass surveillance of ordinary American citizens.

Legal implications for Greenwald

In the aftermath of the Snowden leaks, there were suggestions in the media that Greenwald may also be subject to criminal liability. In an interview on NBC’s *Meet the Press*, host David Gregory asked Greenwald: “To the extent that you have aided and abetted Snowden, even in his current movements, why shouldn’t you, Mr. Greenwald, be charged with a crime?”¹⁷ On Fox News, US Representative Peter King of New York suggested that “legal action” should be taken against Greenwald in connection with the leaks, claiming that Greenwald had threatened to release the identities of covert CIA agents.¹⁸ Although I have found nothing in my research to suggest that Greenwald has “aided and abetted” Snowden in any crime, nor that he has threatened to release (or even claimed to know) the identities of covert agents, these comments raise an important question: Could Greenwald be charged with a crime for publishing the documents provided to him by Snowden?

Traditionally, the freedoms of speech and of the press guaranteed by the First Amendment to the US Constitution have provided strong protections for journalists in cases involving the publication of classified documents. In fact, a June 2013 report of the Congressional Research Service (CRS) states, “CRS is aware of no case in which a publisher of information obtained through unauthorized disclosure by a government employee has been prosecuted for publishing it.”¹⁹ First Amendment freedoms may be restricted, however, when they conflict with

other legitimate government interests. In cases of content-based restrictions of speech, the Supreme Court applies the standard of “strict scrutiny,” which means that the government interest must be “compelling,” and the means used to further it must be the least restrictive means necessary.²⁰

A landmark case in this area is that of *New York Times v. United States*.²¹ In that case the U.S. government had attempted to enjoin the *New York Times* and the *Washington Post* from publishing the “Pentagon Papers,” a classified study of the government’s conduct of the war in Vietnam. The government claimed that publication of the study would damage national security. The Supreme Court rejected this argument and held that the government had not met its burden of showing justification for a prior restraint of expression. In its *per curiam* opinion, however, the Court left open the possibility that newspapers could be punished for publication of sensitive documents if the government could demonstrate a proper justification.

A later case, *Bartnicki v. Vopper*, provided a further precedent for protection of press freedom in publishing classified or sensitive documents.²² In that case, a radio station had broadcast a telephone conversation that had been recorded by a third party by means of an illegal wiretap. The Supreme Court held that the radio station could not be held liable because it had done nothing illegal to obtain the recording. This suggests that publishers of unlawfully disclosed information cannot be held liable for publishing the information as long as they themselves did nothing illegal to obtain it.

These precedents suggest that any prosecution of Greenwald for his publication of the leaked NSA documents would be unlikely to succeed. As of this writing, no evidence has come to light to suggest that he broke any law in obtaining the documents, and the potential damage to national security in this case would seem to be no greater than the potential damage in the publication of the Pentagon Papers.

Conclusion

Edward Snowden’s leak of classified government documents may indeed lead to a criminal conviction (assuming he can be extradited). Snowden himself has stated that he fully expected to be pursued by the government for his actions, and in this respect those actions may be viewed as a form of civil disobedience.²³ As for the larger context, it is too early to tell what the long-term consequences of the NSA leaks will be. It is possible that others in the intelligence community may be inspired by Snowden, or by public reaction, to leak further details concerning surveillance programs. On the other hand, the government’s hardline response to recent leak cases may create a chilling effect among those who otherwise might have revealed classified information to the press.

One thing is certain: We have not seen the end of Snowden's revelations. In an interview with the Associated Press, Greenwald has stated that over the next several months he will continue to publish stories based on other documents provided by Snowden.²⁴

In the meantime, it is important to remember that the publication of such documents is protected by fundamental principles of constitutional law. And if journalists are free to publish these stories, then libraries are free to provide access to them. The American Library Association has expressed its commitment to "uphold the principles of intellectual freedom and resist all efforts to censor library resources."²⁵ Librarians should therefore be concerned when members of the press are threatened with prosecution for performing their constitutionally protected role as watchdogs over government. The freedoms guaranteed by the First Amendment are vital not only to librarians and journalists, but to the preservation of democracy.

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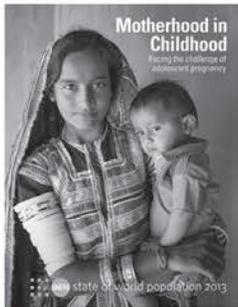
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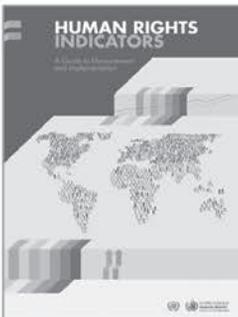
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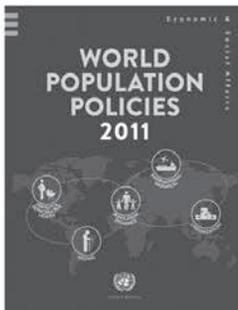
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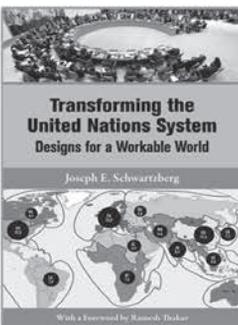
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Opening the Windows to Transparent Government

Public Comments in the E-Rulemaking Process

Tiffany Coulson

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

President Barack Obama, January 21, 2009 ¹

Abstract

In the first days of his presidency, President Barack Obama promoted the idea of a government that would allow more informed participation by the public. Through cooperation by federal agencies, the Open Government Initiative increased access to government records, provided avenues for public feedback, and established a new framework for communication made possible by the widespread use of the internet.² The most formal piece of public participation was built on the legislation of the Administrative Procedures Act (APA), which outlined the means by which federal agencies establish regulations through interaction with the public.³ However, recent studies evaluating the intended communicative purpose of regulation making in federal agencies have shown that public comments are often not solicited, are not considered in the rulemaking process, or go without being responded to in final rules.⁴ Understanding the role of public comments in e-rulemaking and learning how to effectively participate

in this process are vital skills needed to ensure that individuals continue to be considered an important part of the Open Government Initiative.

Public participation in government is the hallmark of a democratic system. Opening government information in a way that facilitates access allows the public to be better informed and more meaningful in their communication. In order to enable public participation in e-rulemaking, individuals interested in contributing to the development of federal regulations must understand the process, basic tools, and skills needed to participate. Those individuals who support the public in these endeavors, such as educators, librarians, and other reference specialists must also understand e-rulemaking.

As shown in figure 1, public comments are an integral part of the informal rulemaking process for federal agencies. To lay the foundation for effective participation, the public must become more informed about issues, learn how to formulate appropriate comments, find the best avenues for filing comments, and learn which kinds of rules accept public comment as part of the rulemaking process.

“After Congressional bills become laws, Federal agencies are responsible for putting those laws into action through regulations.”⁵ Although the evolution of a regulation can be rather involved, including evaluations, changes, withdrawals, and other amendments, the public’s access to the rule follows a basic progression. It is important for the public to understand how to access information at various points in the rulemaking process.

The Reg Map

Informal Rulemaking

Step One

Initiating Events

Agency Initiatives
Agency initiatives for rulemaking originate from such things as:
• Agency priorities and plans
• New scientific data
• New technologies
• Accidents

Required Reviews

Statutory Mandates

Recommendations from Other Agencies/External Groups/State/Federal Advisory Committees

Lawsuits

Petitions

OMB Prompt Letters

Step Two

Determination Whether a Rule is Needed

Administrative Procedure Act Provisions
Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish in the Federal Register:
• Substantive rules of general applicability
• Interpretive rules
• Statements of general policy
• Rules of procedure
• Information about forms
• Information concerning agency organization and methods of operation

Step Three

Preparation of Proposed Rule

Proposed Rule
A notice of proposed rulemaking proposes to add, change, or delete regulatory text and contains a request for public comments.

Administrative Procedure Act Provisions
Under the Administrative Procedure Act provisions at 5 U.S.C. 553, rules may be established only after proposed rulemaking procedures (steps three through six) have been followed, unless an exemption applies. The following are exempted:
• Rules concerning military or foreign affairs functions.
• Rules concerning agency management or personnel.
• Rules concerning public property, loans, grants, benefits, or contracts.
• Interpretive rules.
• General statements of policy.
• Rules of agency organization, procedure, or practice.
• Non-significant rules for which the agency determines that public input is not warranted.
• Rules published on an emergency basis.
Note: Even if an exemption applies under the Administrative Procedure Act provisions, other statutory authority or agency policy may require that proposed rulemaking procedures be followed.

Optional Supplementary Procedures to Help Prepare a Proposed Rule
Advance Notice of Proposed Rulemaking
An advance notice of proposed rulemaking requests information needed for developing a proposed rule.
Negotiated Rulemaking
Negotiated rulemaking is a mechanism under the Negotiated Rulemaking Act (5 U.S.C. 561-570) for bringing together representatives of an agency and the various interests to negotiate the text of a proposed rule.

Step Four

OMB Review of Proposed Rule

OMB Review Under Executive Order 12866
OMB reviews only those rulemaking actions determined to be "significant."
Independent agencies are exempt from OMB review.

Step Five

Publication of Proposed Rule

Administrative Procedure Act Provisions
The Administrative Procedure Act provisions at 5 U.S.C. 553 require proposed rules to be published in the Federal Register.

Step Six

Public Comments

Comments
Under the Administrative Procedure Act provisions of 5 U.S.C. 553, an agency must provide the public the opportunity to submit written comments for consideration by the agency.
As required by Public Law No. 101-347, agencies must provide for submission of comments by electronic means and must make available online the comments and other materials included in the rulemaking docket under 5 U.S.C. 553 (c).
Executive Order 12866 established 60 days as the standard for the comment period.
The holding of a public hearing is discretionary unless required by statute or agency policy.

Step Seven

Preparation of Final Rule, Interim Final Rule, or Direct Final Rule

Final Rule
A final rule adds, changes, deletes, or affirms regulatory text.

Special Types of Final Rules
Interim Final Rule
An interim final rule adds, changes, or deletes regulatory text and contains a request for comments. The subsequent final rule may make changes to the text of the interim final rule.
Direct Final Rule
A direct final rule adds, changes, or deletes regulatory text with a duty to withdraw the rule if the agency receives adverse comments within the period specified by the agency.

Step Eight

OMB Review of Final Rule, Interim Final Rule, or Direct Final Rule

OMB Review Under Executive Order 12866
OMB reviews only those rulemaking actions determined to be "significant."
Independent agencies are exempt from OMB review.

Step Nine

Publication of Final Rule, Interim Final Rule, or Direct Final Rule

Congressional Review Act (5 U.S.C. 801-808)
An agency must submit most final rules, interim final rules, and direct final rules, along with supporting information, to both Houses of Congress and the General Accounting Office before they can take effect.
Major rules are subject to a delayed effective date (with certain exceptions).
Action by Congress and the President could have an impact on the rule.
Administrative Procedure Act Provisions
Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish final rules, interim final rules, and direct final rules in the Federal Register.

Using the Reg Map

The Reg Map is based on general requirements. In some cases, more stringent or less stringent requirements are imposed by statutory provisions that are agency specific or subject matter specific. Also, in some cases more stringent requirements are imposed by agency policy.

In a typical case, a rulemaking action would proceed from step one through step nine with a proposed rule and a final rule.

However, if a rulemaking action is exempt from the proposed rulemaking procedures under the Administrative Procedure Act provisions (explained under step three) or under other statutory authority, an agency may:

- promulgate a final rule omitting steps three through six, or
- promulgate an interim final rule omitting steps three through six, but providing a comment period and a final rule after step nine.

Also, if an agency determines that a rule likely would not generate adverse comment, the agency may promulgate a direct final rule, omitting steps three through six, but with a duty to withdraw the rule if the agency receives adverse comments within the period specified by the agency.

Specific Analyses for Steps Three and Seven

| Regulatory Planning and Review (E.O. 12866) | | |
|---|----------|--|
| Would the rule have a \$100 million annual impact, raise new issues, and/or have other significant impacts? | → If yes | Prepare economic impact analysis. |
| Regulatory Flexibility Act (5 U.S.C. 601-612) | | |
| Is a notice of proposed rulemaking required by law? | → If yes | Prepare regulatory flexibility analysis. |
| Would the rule "have a significant economic impact on a substantial number of small entities"? | → If yes | Prepare regulatory flexibility analysis. |
| <i>Note:</i> Under limited circumstances analyses also are required for certain interpretive rules involving internal revenue laws (5 U.S.C. 602, 604). | | |
| Paperwork Reduction Act (44 U.S.C. 3501-3520) | | |
| Does the rule contain a "collection of information" (reporting, disclosure, or recordkeeping)? | → If yes | Prepare information collection clearance package for OMB review and approval, and prepare request for public comments. |
| Unfunded Mandates Reform Act (2 U.S.C. Chs. 17A, 25) | | |
| Does the rulemaking process include a proposed rule? | → If yes | Prepare unfunded mandates analysis (unless an exclusion applies). |
| Does the rule include any federal mandate that may result in the expenditure (direct costs minus direct savings) by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually)? | → If yes | Prepare unfunded mandates analysis (unless an exclusion applies). |
| Federalism (E.O. 13132) | | |
| Is the rule a discretionary rule that has federalism implications and imposes substantial/unreimbursed direct compliance costs on State and local governments? | → If yes | Prepare federalism summary impact statement. |
| Does the rule have federalism implications and preempt State law? | → If yes | Prepare federalism summary impact statement. |
| Indian Tribal Governments (E.O. 13175) | | |
| Is the rule a discretionary rule that has tribal implications and imposes substantial/unreimbursed direct compliance costs on Indian tribal governments? | → If yes | Prepare tribal summary impact statement. |
| Does the rule have tribal implications and preempt tribal law? | → If yes | Prepare tribal summary impact statement. |
| National Environmental Policy Act (42 U.S.C. 4321-4347) | | |
| Is the rule categorically excluded from review? | → If no | Prepare environmental assessment or environmental impact statement, as appropriate. |
| Does the rule constitute a major Federal action that could significantly affect the quality of the human environment? | → If yes | Prepare environmental assessment or environmental impact statement, as appropriate. |
| National Technology Transfer and Advancement Act (15 U.S.C. 272 note) | | |
| Does the rule contain provisions for which the use of voluntary standards is applicable? | → If yes | Adopt voluntary consensus standards or explain why not. |
| Governmental Actions and Interference with Constitutionally Protected Property Rights (E.O. 12630) | | |
| Does the rule regulate private property use for the protection of public health or safety? | → If yes | Prepare takings analysis. |
| Is the rulemaking a proposed regulatory action that has takings implications (other than regulating private property for the protection of public health and safety)? | → If yes | Prepare takings analysis. |
| Protection of Children from Environmental Health Risks and Safety Risks (E.O. 13045) | | |
| Is the rulemaking a "covered regulatory action"? | → If yes | Prepare analysis of the environmental health or safety effects on children. |
| Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211) | | |
| Is the rulemaking action a "significant energy action"? | → If yes | Prepare statement of energy effects. |

Drafting Requirements for Rulemaking Documents

Regulatory Planning and Review (E.O. 12866)
Rulemaking documents must comply with the specified regulatory philosophy and principles of regulation.

Civil Justice Reform (E.O. 12988)
Rulemaking documents must be written in clear language designed to help reduce litigation.

Presidential Memorandum on Plain Language (63 FR 31885)
Rulemaking documents must comply with plain language principles.

Federal Register Publications
Rulemaking documents must comply with the Federal Register regulations (1 CFR). Additional guidance and requirements are contained in the Federal Register Document Drafting Handbook.

Agendas for Rules Under Development or Review

Unified Regulatory Agenda
The Unified Regulatory Agenda provides information concerning agency rules under development or review.
The Unified Regulatory Agenda is published in the Federal Register in the spring and fall of each year.

Regulatory Plan
The Regulatory Plan provides information concerning the most important significant regulatory actions that the agency is planning to take.
The Regulatory Plan is published in the fall of each year.

Regulatory Flexibility Agenda
The Regulatory Flexibility Agenda provides information concerning any rule that an agency expects to propose or promulgate that is likely to have a significant economic impact on a substantial number of small entities.
Agency regulatory flexibility agendas are published as part of the Unified Regulatory Agenda in the spring and fall of each year.



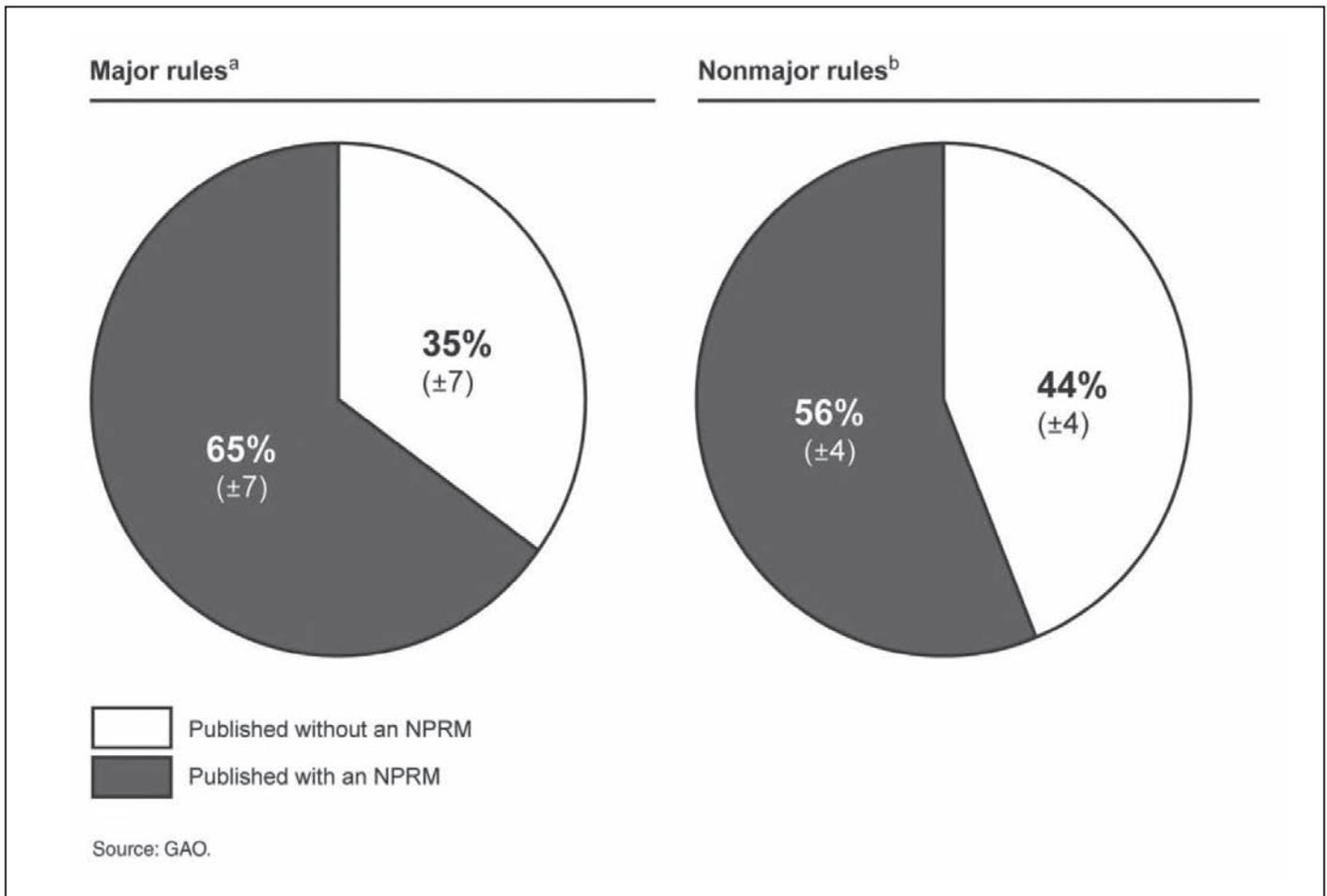
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- The process by which regulations are enacted begins within the assigned federal agency. It is then reviewed by the Office of Information and Regulatory Affairs (OIRA) before being approved for public disclosure in the Federal Register.⁶
- Certain issues slated for rulemaking are first released to the public by a federal agency in its biannual Regulatory Agenda. These are compiled for sixty federal agencies in the Unified Agenda and are made available for viewing at Reginfo.gov. The Regulatory Information Service

- Center compiles the Unified Agenda for OIRA, part of the Office of Management and Budget (OMB).⁷
- In most cases, a Notice of Proposed Rulemaking (NPRM) then appears in the Federal Register for public inspection before being submitted officially to the Federal Register.⁸
- Details of the issue are presented in summary in the Federal Register, on agency websites, and through other government portals.⁹
- Notices, proposed rules, or interim/final rules are then



published on Regulations.gov where public comments may be filed with the associated documents under a Docket Number. Comments filed with the agency may also be added to Regulations.org under the Docket Number.¹⁰

- Public comments are to be considered in evaluating the proposed rule. Changes are then made to the rule as needed.¹¹
- The agency then issues a final rule with a date when the regulation will take effect. In issuing the final rule, the agency is expected to describe public comments and how they may have affected the formulation of the regulation.¹²
- The rulemaking process may be tracked through the federal agency where it originated, the Federal Register or Reginfo.org.

According to summary statements issued by the Government Accountability Office (GAO), cultivating public involvement in rulemaking is important. “The benefits of public participation in notice-and-comment rulemaking have been cited by the courts and others to include: generating higher quality rules; ensuring

the fair treatment of persons affected by the rules since all parties potentially affected have a chance to participate; and promoting the political accountability of the agency by giving affected parties the ability to comment at an early stage and having a public record of the agency’s response to those comments.”¹³

Although the general rulemaking process is outlined by the APA, there are noticeable deviations that exist. For example, sometimes a Notice of Proposed Rulemaking is not published, and the regulation appears only as an interim or a final rule without being presented for public comment. Agencies may use their discretion in deciding whether to publish an NPRM and may cite exceptions to the rule. Exceptions may include situations where Congress prescribes the contents of the rule, where an emergency situation exists, where the public interest is best served by not accepting comments, or when the commentary process may hamper agency work.¹⁴ The pie charts in figure 2 summarize a study of regulations issued over a seven year period, in which the GAO found that agencies issued 35 percent of major rules and 45 percent of nonmajor rules without an NPRM.¹⁵

A response to public comments is required for rules issued with an NPRM. However, while most agencies still allowed

public comments to be made on final rules that were issued without an NPRM, the absence of an original notice meant that no response to comments was required.¹⁶ Those wishing to see their comments considered as part of the rulemaking process should be aware that only “Proposed Rules” make comments an active element in producing final regulations.

Another important consideration in submitting comments is taking the time to make sure they are thought out and well written. Some agencies make an effort to guide the public in the content of and the vehicle for their comments. For example, The National Oceanic and Atmospheric Administration (NOAA) dispels the idea that more submissions mean more influence on an issue. “While public support or opposition may help guide important public policies, NOAA Fisheries makes determinations for a proposed action based on sound reasoning and scientific evidence, not a majority of votes. A single, well-reasoned comment may carry more weight than a thousand irrational and poorly researched form letters.”¹⁷ The Food and Drug Administration (FDA) suggests that public comments also be made in the form of petitions. “Another way to influence the way FDA does business is to petition the agency to issue, change or cancel a regulation, or to take other action. The agency receives about 200 petitions yearly.”¹⁸ In fact, Regulations.gov provides a “Commenter’s Checklist” that outlines what agencies look for in effective public comments.¹⁹ Using data, listing professional credentials, sharing personal experiences, and offering alternatives or solutions all make agency officials more likely to consider comments. Form letters, complaints, short comments, and those written without addressing specifics of the regulation may mean a comment submission will not carry as much credibility since it cannot be used to evaluate the regulation.

There are three main portals for finding rules and submitting public comments. The Federal Register (www.federalregister.gov) is most likely the first place one will see proposed rules listed. Although the homepage only displays information for the current day, the “Browse” tab at the top of the page allows users to choose “Agencies” in order to access a list of over 400 federal agencies.²⁰ The “Federal Communications Commission”, for example, may be chosen in order to access a page which lists current published regulations.²¹ Scrolling down the page, the user will see regulations coded according to whether they are a “Notice”, “Proposed Rule,” or a “Final Rule.”

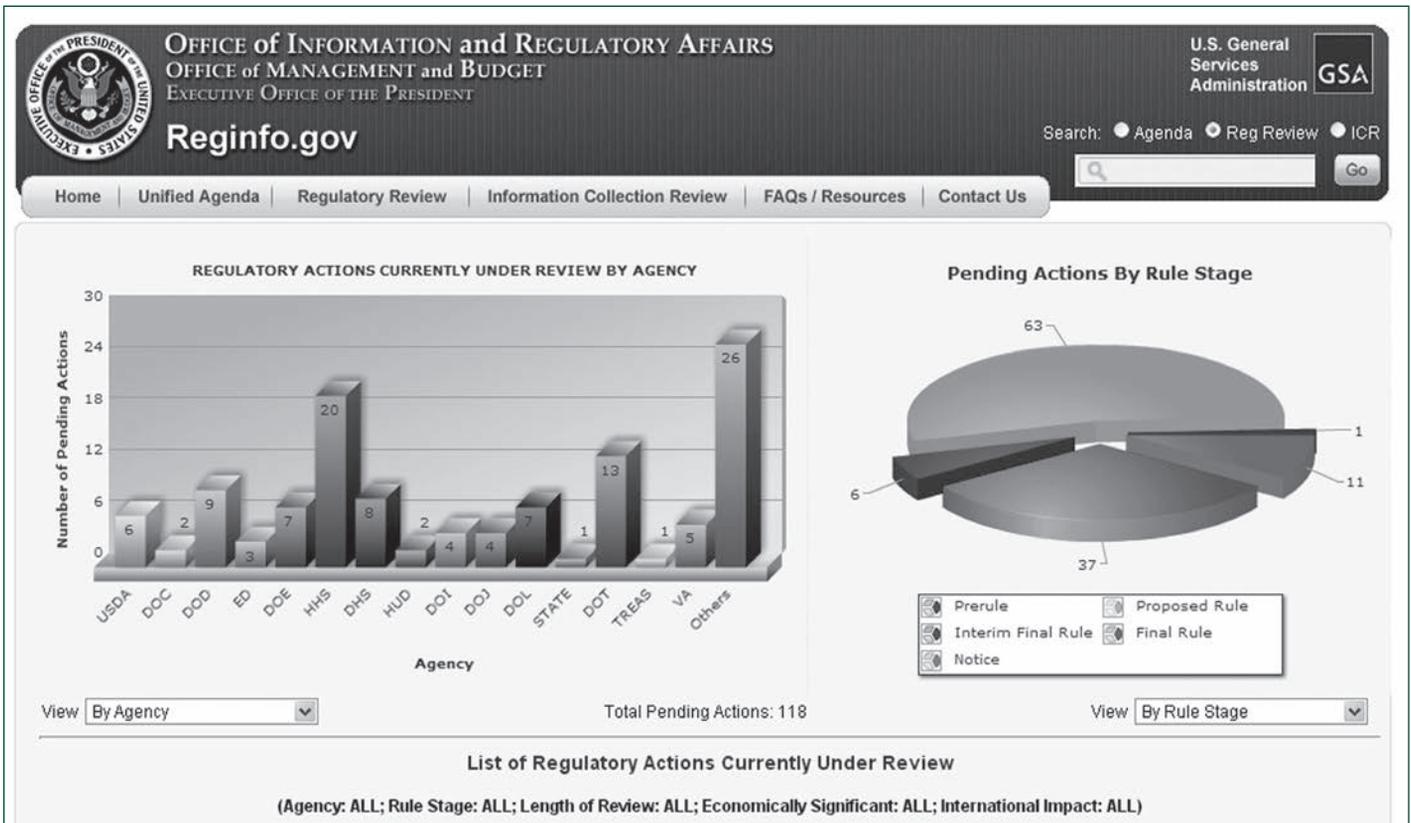
Each item provides a link to details for that regulation. On June 6, 2013, a notice extended the comment period for a proposed rule is listed as “FCC Extends Pleading Cycle for Indecency Cases Policy.” Clicking on the title of the notice will produce the detail screen for that notice.²² The most important details for this regulation are located in a gray box on the right edge of the screen where various codes and numbers help identify the item. For a

person submitting a comment, the “Agency Docket Number” is imperative because this must be used for all correspondence related to that issue. Various other numbers can be used to search for related information, or to find the issue in another online tool, but the “Docket Number” should be used at the top of any comment submitted. A green “Submit a Formal Comment” link at the top of the page will take the user to Regulations.gov along with the appropriate “Document Number” for submitting a comment.²³ Because this particular “Notice” merely extends the comment period for a proposed rule, the “Document Number” that appears in Regulations.gov will not match the document number of the original proposed rule. This is to be expected, given that each notice or rule will have its own “Document Number.” However, each of these documents and all associated comments and petitions will be filed in a “Docket” folder in Regulations.gov, so it is important to include the “Docket Number” for the original proposed rule. By clicking on the title of the notice, and reading the content description, one will find a clearly marked phrase that actually states “All comments should refer to GN Docket No. 13-86”.²⁴ This is the same “Docket Number” present in the details of the notice. While the original document is closed for comments, it is through the extension notice that the public can continue making comments for the issue.

Launched in 2003, Regulations.gov is the portal whereby the public may look up regulations and submit comments or petitions as part of a formal process.²⁵ Regulations in their various stages may be searched by item numbers, by subject or agency. The site is somewhat simpler than the Federal Register and is designed as a user-friendly interface for the public. Searches and an accompanying filter allow greater flexibility in finding information. But results are not as easy to read as those in the Federal Register’s web journal format and it may be frustrating to work with for someone who is unfamiliar with the regulations process. Nevertheless, this is the official site that coordinates e-rulemaking and public commentary so those wishing to participate in this process should spend some time learning to use this tool.

Reginfo.gov is another interesting place to launch queries about the regulation process. Sponsored by the OIRA, this site provides interactive overviews of agency regulations in progress.²⁶ Viewing agency regulations by stage allows the bars in figure 3 to act as clickable links that will then launch lists of associated rules. For the person who may be browsing for particular kinds of rules, or by agency, this is a good way to navigate the regulations process.

As called for in the Open Government Directive, most agency websites will direct users to access Regulations.gov for submitting formal comments as part of e-rulemaking and almost all provide a link for doing so.²⁷ However, some agencies have



developed their own systems for handling comments. For example, the Federal Communications Commission (FCC) has a system called ECFS, which can be found from the “Take Action” and “Comment” link at the top of the homepage.²⁸ Comments on the ECFS also require the official “Docket Number” so that the FCC can submit public comments to Regulations.gov. This is not mandatory, however, and while they may upload comments into the official government system, it could take several weeks before they appear on Regulations.gov.

Perhaps the most motivating aspect of commenting on proposed agency rules is the idea that a single individual could help change how a law is implemented through regulations. Unfortunately it is not always possible to determine whether comments made a difference.²⁹ It has been suggested that face-to-face, discussion and deliberation are better ways for the public to become involved in the rulemaking process, since they provide more immediate feedback.³⁰

After spending some time in the system, it is apparent that the public participation process in e-rulemaking really suffers from a provision of too much information. While myriad definitions, graphic representations, and other informational “helps” are made available to the public, there does not exist a simple avenue recommended for filing comments to regulations. The maze of links, acronyms, and codes makes it difficult to imagine that the average citizen would have the time or

inclination to pursue participation in the regulation of federal agencies. Attempts at explanation and simplification at agency and other government portal levels has been moderately successful in making the public comment process more accessible. However, more outreach is needed to offer these skills to diverse groups and those for whom barriers of technology may prevent them from participation.³¹ Websites are not designed with elderly users in mind nor individuals unfamiliar with government codes and the use of links and search engines. Apart from work needed by the government, access to this basic feature of open government should be publicized and taught in libraries, community workshops, and within the educational system.

Tiffany Coulson, MLIS online Graduate Candidate 2015, University of Washington, coulst@uw.edu.

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Title IX: Tee it Up

Anna Shelton

A 1973 study of the athletic program offered by a school district in one Southwestern city revealed that of \$10 million worth of athletic facilities and equipment, girls were permitted use of only the tennis courts and tennis balls.¹

Abstract

This paper analyzes three elements of Title IX of the Education Amendments of 1972, with specific regard to athletics. Early implementation guidelines and practical materials are discussed, followed by a look at datasets available for public research on this topic, and finally a brief exploration of how Title IX anniversaries have been recognized by the government. The paper concludes by calling for a user-friendly portal of government publications and historic documents related to the law.

Introduction

In 2012, Title IX of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 235 (subsequently referred to as Title IX) celebrated forty years since passage.² While this legislation addressed many broad areas relating to discrimination on the basis of gender in education, Title IX is perhaps most widely recalled for the impact it had on women's opportunities to participate in athletics.

This paper seeks to analyze three aspects of Title IX with regards to athletics. First, I explore rich government documents preserved from around the time of Title IX's passage and early, turbulent period of implementation. Examining these sources may help people understand how much has changed in the

intervening forty years regarding public perception of women and girls in athletics. Second, I analyze currently available data sources that track statistics about the impact of Title IX. Data collection and analysis is particularly important for legislation that seeks to end historic discrimination in order to understand whether the anticipated impact of the policy is actually occurring. The final section of this paper looks at ways in which public officials and agencies have marked legislative anniversaries of Title IX. Anniversaries of important legislation are one of the primary ways through which the public learns backstories behind current government policies.

Overview

Title IX was passed in 1972 (20 USC 1681 et seq.). In 2002, it was also named the "Patsy Takemoto Mink Equal Opportunity in Education Act," for one of the legislators who helped secure its passage.³ With regard to athletics, guidance from Title IX can be found in the Code of Federal Regulations:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient.⁴

In 1975, implementing regulations were released by the Department of Health, Education and Welfare, followed by a memorandum to chief state school officers, superintendents

and college and university presidents that laid out a three-year window to comply.⁵ Guidance provided by the memorandum touched on nondiscrimination in athletic scholarships; identified the importance of surveying men's and women's interest in various sports; and broke down the definition of "equal opportunity in athletic programs" to include factors such as levels of competition offered, equipment, scheduling, travel funds, coaching and tutoring, compensation of coaches and tutors; locker rooms, medical services, housing, and publicity.⁶

Further policy interpretation has since been provided periodically by the department, including notably on the topic of intercollegiate athletics (45 CFR Part 86) in 1979.⁷ Today, additional guidance is provided by "Dear Colleague" letters that specifically address sex discrimination in athletics, produced by the Office of the Assistant Secretary for Civil Rights, Department of Education.⁸ An excellent chronology of Title IX with regards to athletics is available in a 2010 Report from the Congressional Research Service, entitled "Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview."⁹

Changing times: Early years of implementation

The interpretation of Title IX with regard to athletics brought sweeping changes to elementary schools, high schools, universities, and colleges. It impacted school administrators, physical education teachers, coaches, and of course, students. In an attempt to help people understand and prepare for this sea of change, the Department of Health, Education and Welfare, Office of Education created many resources to communicate the legislation's intent. Intensive workshops and curriculum materials were created for school staff and administrators, including significant emphasis on adapting to change. A guide illustrated with hand-drawn cartoons was produced to help students understand historic discrimination on the basis of gender and explain their rights under the new legislation.¹⁰

Selected illustrations from *A Student Guide to Title IX* published by the U.S. Department of Health, Education and Welfare Office of Education are illustrations that accompany a fictional story about "Celestine Jackson," a girl who wants to play tennis but isn't allowed to try out for the tennis team, which is only open to boys. "The Athletics Block" is from a section of the guide that includes text introducing the ways girls have historically been excluded from school athletics. The illustration of a girl in a football uniform appears alongside question and answer case examples of schools' obligations and student rights in athletics.

Other materials produced by the Department of Education included extremely detailed technical assistance manuals to help schools evaluate their current programs and policies, complete with samples of fictitious grievance forms, as well as case studies to generate reflection and discussion on existing sexist practices in physical education.¹¹ A series of Title IX "Equity Workshops" were held across the country, and guides were prepared to help facilitators anticipate the types of questions they would field during the sessions. One such curriculum for physical activity specialists in schools prepared facilitators to answer the frequently asked question, "Won't participation in active sports with men cause women to develop bulging muscles and injure their reproductive organs?"¹² The same curriculum includes serious discussion of whether coaches of girls' basketball should receive the same pay as coaches of boys' basketball.¹³ The volume of materials, as well as the wide range of audiences targeted, implies a massive education and dissemination campaign to help people understand and implement the provisions of Title IX intended to prevent sex discrimination in athletics. Browsing through these federal publications provides a fascinating glimpse into public perception of women and girls in sports during the mid-1970s.

The next section moves away from the practical materials that helped implement Title IX athletic provision, and examines federal data available to chart the progress of women and girls' participation in athletics since Title IX's passage.

Data available regarding women and girls' participation in athletics

Opening a congressional hearing on Title IX in 2007 in the House Subcommittee on Higher Education, Lifelong Learning, and Competitiveness Committee on Education and Labor Chairman Ruben Hinojosa stated:

Since the enactment of Title IX, the number of women participating in intercollegiate athletics has increased fivefold. The number of female high school athletes has grown almost 900 percent. . . . Despite these successes we still have work to do to achieve the promise of full equality and freedom from discrimination that is at the heart of Title IX.¹⁴

How can Congress and members of the public track whether the goals of Title IX athletics provisions are being met? Collecting and disseminating data is an important part of measuring the effects of legislative actions to correct historic discrimination. Several government sources can be used to find related statistics.

At the collegiate level, data about women's participation in athletics is reported annually by postsecondary institutions in compliance with the Equity in Athletics Disclosure Act, which was passed in 1994.¹⁵ The datasets are made available by the Office of Postsecondary Education of the US Department of Education via the Equity in Athletics Data Analysis Cutting Tool, provided at the site: www.ope.ed.gov/athletics. Data can be searched by state, institution, athletics division, size of undergraduate enrollment, type of institution, and institution name. The database covers 2003–2011, and includes information about athletic participation by gender; coaches; athletically-related student aid; recruiting expenses; and more. The primary limitation of this otherwise useful dataset is that coverage is not currently available (online) for the first eight years during which the statistics were collected (1994–2002).

Regarding athletics participation in high school, the Department of Education Office of Civil Rights has recently revamped the public-facing tool for the Civil Rights Data Collection (CRDC), available at ocrdata.ed.gov. In a recent report using data from 2009–2010, the study found that girls represent 49 percent of school enrollment, but 42 percent of participation in interscholastic athletics.¹⁶ With data collected from over 10,000 high schools, the tool allows gender-based comparison of school enrollment contrasted with athletic participation, for years including 2000, 2002, 2004, and 2006. Unfortunately, the analysis tool does not appear to provide any further detail, such as the types of athletic opportunities available at each school or expenditures on athletics by gender.

Data from three non-federal entities are frequently cited in government publications, apparently due to lack of government statistics on the same topic. Further research would be required to determine whether this trend is unusual, or ordinary in government publications. Based on my findings, the NCAA, the National Federation of State High School Associations, and the Women's Sports Foundation have played historically important roles in collecting and/or analyzing athletics-related data over the past forty years.

To illustrate this trend, I will provide several examples. A chart from a 1980 Report from the US Commission on Civil Rights on the Number of Boys and Girls Participating in Interscholastic Athletics during the decade of the seventies; the data source is listed as the National Federation of State High School Associations.¹⁷ Twenty years later, in a major report on gender equity in education, the General Accounting Office provided analysis of men's and women's participation in collegiate sports, but the raw data was from the NCAA.¹⁸ As the final example of this trend, an excellent recent analysis of high school athletics participation from the Women's Sports Foundation

is found in the report, *Progress without Equity: The Provision of High School Athletic Opportunity in the United States, by Gender 1993-94 through 2005-06*.¹⁹ This report actually does utilize US Government data from the National Center for Education Statistics Common Core Data and the Civil Rights Data Collection, but the value comes from analysis provided by the non-governmental entity, making the data accessible and understandable to the public in ways that can't be easily accomplished using publicly available online datasets.

While it would appear that data exists to chart the progress of women and girls' participation in athletics, including some data that is federally mandated to be collected, this data is not as easily accessible to the public as would be helpful. The next section of analysis examines ways that Title IX's accomplishments in athletics are publicly recognized by the federal government.

Celebrating Title IX: Anniversaries

Title IX has been remembered and celebrated many times by Presidents, Congress, and public officials over the years, most recently coinciding with the legislation's 40th anniversary in June 2012. President Obama wrote an op-ed for *Newsweek* reflecting on the legislation's achievements and the personal significance Title IX holds for him as father of two young girls.²⁰ Previously, on the 25th anniversary of Title IX, President Clinton made a public statement accompanying his memorandum to Heads of Executive Departments and Agencies strengthening the enforcement of Title IX.²¹ In recent years, while attention has been paid during these events to the widely recognized achievements of women and girls in sports, presidents and public officials have used the hook of the public's attention on athletics to more greatly spotlight the need to advance the standing of women and girls in science, math, engineering and technology.

Despite this shift, achievements in sports are still a big part of the celebrations. For the most recent anniversary, the White House highlighted a moving personal blog post from Valerie Jarrett, chair of the White House Council on Women and Girls; produced a video that included Madeline Albright talking about the role of athletics in her life; and hosted a women's basketball game emceed by Health and Human Services Secretary Kathleen Sibelius and Interior Secretary Ken Salazar.²² The gender-based analysis of the Civil Rights Data Collection referenced above was timed to coincide with the 40th anniversary of Title IX. In comments for the same 2012 anniversary, Education Secretary Arne Duncan connected women's achievements and participation in sports with broader social issues, saying "As all of you know, Title IX's benefits stretch far beyond the playing field. Women athletes are more likely to graduate from college than female students who don't play sports. They are less likely to use

drugs, get pregnant as teenagers, or become obese.”²³

Looking ahead to Title IX’s 50th anniversary in 2022, perhaps a female president will be in office to reflect on the achievements of this legislation, as well as the remaining challenges. Based on the significant publicity and recognition by public officials and agencies for previous anniversaries, one can only imagine that the anniversary will coincide with new initiatives to examine the effectiveness of the legislation’s intent and the societal position of women and girls, grounded, as in the past, by reflecting on gender equity achievements in athletics.

Conclusion

In a blog post on the Library of Congress webpage in celebration of Title IX’s 40th anniversary, guest blogger Pamela Barnes Craig points out this amazing fact about the demographic makeup of Congress at the time of Title IX’s passage: “Remember in the 92nd Congress (1971–1972), of the 435 members of the House of Representatives, only 13 were women.”²⁴ It is truly remarkable to see the accomplishments of this piece of legislation with regards to athletics, as well as the massive output of related federal documents. This paper did not even discuss court cases, congressional hearings, challenges to Title IX during the late 1980s, or the short-lived “Secretary’s Commission on Opportunity in Athletics.”

With such valuable resources including practical implementation manuals from the 1970s, datasets, and a wealth of public reflection and discussion around Title IX’s major anniversaries, it would be wonderful to see a portal created that draws these materials together for the public along with oral histories and visual materials. At present time, non-expert users must turn to many different government sources to piece together a fuller picture of Title IX’s achievements.

This topic holds special significance to me. I attribute much of my success, confidence, and good health to the opportunities I had to compete in high school athletics during the mid-1990s, nearly twenty years strong into Title IX’s implementation. I would like to see government publications on this important topic presented in a format that is easy to explore, such as the American Memory Project. With regard to the data available on women and girls’ participation in athletics, more can be done to open these valuable collections for user-friendly access by the public. The issue of partial digitization of records is certainly not a challenge unique to this topic, but it remains important to address. One challenge to aggregating materials on Title IX may be that the office most closely associated with the law today, the Office of Civil Rights of the Department of Education, is primarily dedicated to enforcement. Perhaps the new White House Council on Women and Girls could be a natural partner

in the effort to preserve and disseminate this historical and current information. Working together, federal agencies have an opportunity to “tee up” information for the public on Title IX.

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Errata

The article on the American state papers appearing in the fall issue of *DttP* is a table on the miscellaneous series duplication. A link to the online version including all of the series duplication was not included in the article. The link to all of the series files may be found at: http://wikis.ala.org/godort/index.php/DttP_Full_Text. Our apologies for any inconvenience this may have caused you.



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Using Modern Media to Reach America's Youth

The Government's Anti-Drug Campaigns, 1980s to Present

Jessica J. Blanchard

Abstract

Since the 1980s, the US government has tried to combat drug use in America's youth through heavy media campaigns, starting with Nancy Reagan's "Just Say No" program to the current "Above the Influence" campaign by the White House Office of National Drug Control Policy (ONDCP). This paper aims to explore the history of these campaigns, the laws that brought them about, their financial extent, and their effectiveness through congressional documents, public and private research reports, and partnership websites. It will conclude with a discussion of the information issues brought about by these campaigns.

Introduction

It is 2013 and America's War on Drugs has been taking place for several decades. Part of this effort has included media campaigns to encourage teens and young children to avoid using recreational drugs. The current campaign, "Above the Influence" is playing out positively in many teens' lives. Most recently in the media this can be seen in efforts to keep kids drug-free during the spring prom/graduation season. Indian River County, Florida high schools have signed pledges to remain Above the Influence during their spring celebrations.¹ In Michigan, students had the opportunity to display their interpretation of being Above the Influence in an art exposition.² These projects can did not happen by accident, they are the result of aggressive marketing on the part of the US government specifically targeted at children and teens.

How did this campaign get started? The purpose of this paper is to relay to the public a brief history behind the

campaign, what now constitutes "media" and its part in getting the word out, and what, if any, effects this media has had on kid's choices. It will outline such important legislation as the Anti-Drug Act of 1988 and the creation of the ONDCP, what budgets cover the project, and its alliances with organizations such as the Partnership at Drugfree.com (formerly Partnership for a Drug-Free America).

"Just Say No"

This phrase will be very familiar to anyone who was a child during the 1980s. In 1982, First Lady Nancy Reagan launched the "Just Say No" anti-drug campaign aimed at preventing young children and teens from using recreational drugs such as marijuana. Mrs. Reagan used media tools such as public service announcements, public appearances, and televised speeches.³ Her efforts were deemed so important that in a proclamation in 1986, President Reagan called the week of May 18, 1986 "Just Say No to Drugs Week." He proclaimed, "These young people of America are demonstrating that healthy and productive lives are possible when you 'Just Say No.'"⁴ He went on to repeat this measure in 1987⁵ and again in 1988, when he said, "The 'Just Say No' movement, which grew out of public concern and strong and effective encouragement from the First Lady is now a rallying cry for those who want to say 'Yes' to life and to the future."⁶ Also in an effort to publicize this issue, President Reagan gave a radio address to the nation encouraging a drug-free youth.⁷ By 1988, Nancy Reagan's efforts had yielded over 12,000 Just Say No clubs worldwide.⁸

P.L. 100-690, “The Anti-Drug Abuse Act of 1988”

Introduced in August 1988 by Rep. Thomas Foley of Washington as H.R. 5210, and signed into public law by President Reagan by November 1988, the Anti-Drug Abuse Act established a national drug control policy.⁹ An important measure affecting many agencies, it covered a wide range of drug issues such as addiction and treatment, prosecutions, border control, and of course, prevention. One of these measures was the establishment of the Office of National Drug Control Policy, under the Executive Office of the President.¹⁰ The ONDCP was meant to be disbanded within five years of its establishment; in 1998 it was re-established with the Reauthorization Act of 1998 (and again in 2006) and then given power to conduct the anti-drug propaganda with the Media Campaign Act of 1998.¹¹

This reauthorization was important. Some thought that after the Reagans left the White House, the drug prevention measures were lax. In 1996, just two years before the Reauthorization Act, a hearing was held before the Subcommittee on National Security, International Affairs, and Criminal Justice entitled “Losing America’s Drug War: “Just Say No” to “Just Say Nothing” (a title that effectively says it all). This hearing contained testimony from parents, former drug users, narcotics enforcement personnel and medical practitioners, and called for “setting the course for a national drug policy to reverse the recent dramatic upward trend in drug use amongst our youth.”¹² With the Reauthorization Act, public prevention measures were amped up with the National Youth Anti-Drug Media Campaign. This campaign consists of drug-prevention propaganda efforts on television, radio, the Internet, and social media and is currently called “Above the Influence.”

“Above the Influence”: a new campaign

“Above the Influence” moves beyond the simplicity of “Just Say No” and aims to instill positive aspirations and goals in teens as reasons to stay away from drugs, and uses a very simple and easily recognizable upward arrow logo (see figure 1). A fact sheet published by the ONDCP in 2012 states that the campaign, which was relaunched in 2010, aimed to “provide sound information to young people about the dangers of drug use and strengthens efforts to prevent drug use in its communities.”¹³ Originally started in 1998 with local test groups, it went national in 1999 with “anti-drug ads on television, radio, print and outdoor media” (see www.abovetheinfluence.com/ads to view some of the more current TV ads).¹⁴

The media

Different styles of media have been used over the years, reflecting

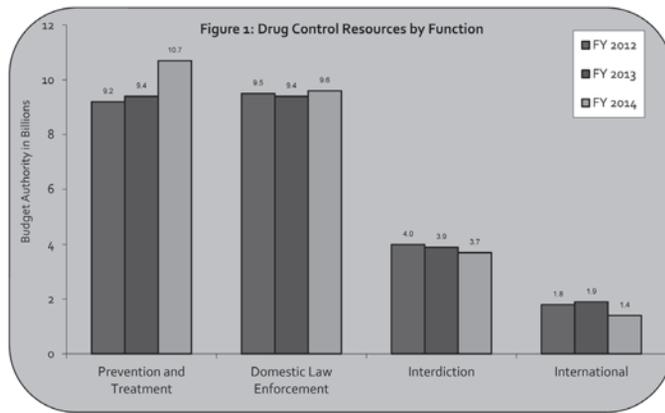


Figure 1. “Above the Influence” logo and a teen’s uploaded rendition¹⁵

the changing face of technology and where teens are most apt to get their information. Nancy Reagan started with the most direct route, using personal appearances and making personal appeals on television to get out her “Just Say No” ideas (see www.youtube.com/watch?v=QALu_tj1skU for her PSA with Clint Eastwood from 1986). Over the last couple of decades the campaign has consisted of partnerships with private organizations such as Partnership for a Drug-Free America, a group which has produced the ads. This group hires outside agencies to create the ads and has been called the “single largest public service initiative in the history of advertising.”¹⁶ The campaign has branched out in recent years to social media sites, extending themselves to a YouTube channel (www.youtube.com/user/abovetheinfluence, 25 videos as of this writing), a Facebook page, with more than 1,850,000 “likes” as of this writing, which also includes a page where kids can upload their pictures from Instagram; and a Twitter account (the Twitter account seems less successful than the others, so far they have only 300-plus “followers”). These sites are far from television ads; they are places where teens and tweens can interact with each other and with the information, with the ability to make it more relevant to their own lives. *Abovetheinfluence.com* also has spaces for sharing. In addition to merely “getting out the message,” the sites also include links to resources if a person needs help with substance abuse.

The financing

The 2014 Fiscal Year Budget calls for 10.7 billion dollars to be spent on prevention and treatment measures.¹⁷ While this includes

Figure 2.²¹

all of the agencies involved in drug control, the ONDCP will be allotted 95.4 billion for “other drug control programs” (this does not include the budget for the programs in High Intensity Drug Trafficking Areas).¹⁸ See figure 2 for a table of the differences in spending on drug prevention from 2012 to present. This is much higher than the more than one billion stated by Senator Chuck Grassley (Iowa) as being spent since the ONDCP’s inception in 1998 to 2007, in a congressional statement about the doubt of effectiveness of the campaign to that date.¹⁹ In 1999, the prevention request was for only 1.725 million.²⁰ While it is hard to discern exactly how much of these budgets were spent on advertising, the ONDCP is very open with its budget information, and all of the requests and summaries since 1999 can be found on the “Budget and Performance” link under the “About” tab of the website for the ONDCP.

The effects

There are differing reports on the effectiveness of these campaigns. A report by the Committee on Government Reform and Oversight in 1996 states “drug use fell markedly between 1981 and at least early 1992, following what most agree was a concerted federal, state, community and parental counter narcotics activity, as well as strong national leadership on the issue by Presidents Reagan and Bush, and First Lady Nancy Reagan.”²² A search of the Centers for Disease Control and Prevention (CDC) statistics site provides a table that shows this is true in part; reported cocaine use among high school seniors was at a high in 1985 at 6.7 percent, that number went to 1.8 percent in 1995.²³ The same table shows a similar pattern for marijuana use among high school seniors, however after dropping to a low in 1990, the numbers began to climb back up in 1995. There was no data for younger adolescents.²⁴ This same committee report makes it clear that they see the rise as an effect of the loss of a good public anti-drug campaign, stating “The 1994 and 1995 White House ONDCP

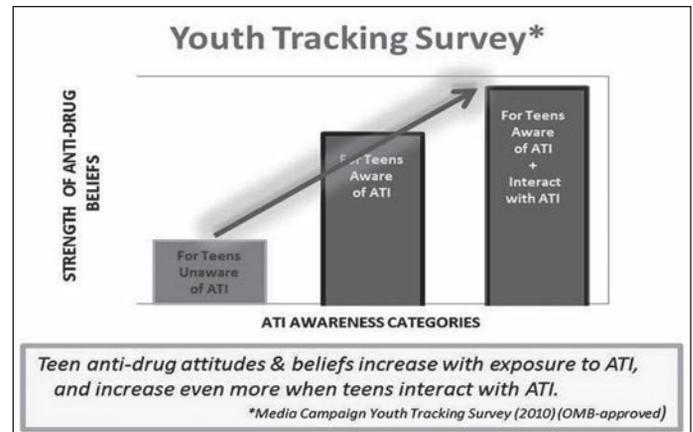


Fig. 3, “Campaign Effectiveness”, from www.whitehouse.gov/ondcp/campaign-effectiveness-and-rigor.

strategies consciously endeavored to shift resources away from priorities set in the late 1980’s, namely the prior emphasis on prevention . . . to a post-1993 increase emphasis on treatment of “hard-core addicts.”²⁵ Conversely, according to an independent study done in 2002 using thirty anti-drug PSAs and more than 3,000 fifth to eighth graders, it was exactly the ads aimed at “hardcore” drug-use that *did* have more of an effect; the ads attempting to reduce marijuana use were deemed “the least effective.”²⁶

In 2006 the Government Accountability Office issued a report of the findings of independent contractor Westat on the effectiveness of the campaign. Westat used multiyear longitudinal surveys and found, simply, that “the campaign was not effective in reducing youth drug use, either during the entire period of the campaign or during the period between 2002 and 2004 when the campaign was redirected and focused on marijuana use.”²⁷

The outlook has gotten slightly better since then. According to the ONDCP website’s Campaign Effectiveness page (www.whitehouse.gov/ondcp/campaign-effectiveness-and-rigor), Above the Influence is “working and is having a positive effect on teen drug use” (see figure 3). They list several independent sources, including a study published in 2011 that found anti-drug ads reduced marijuana use in eighth-grade girls.²⁸ Another study done in 2011 focusing on the Above the Influence and a separate “Be Under Your Own Influence” campaign found that “self-reported exposure to the ONDCP campaign predicted marijuana use, and analyses partially support indirect effects of the two campaigns via aspirations and autonomy.”²⁹ Most recently, the campaign won a silver Effie Award (Most Effective Advertising in North America) in 2012. Of this award, the deputy director of Creative Development at Partnership at Drugfree.org said, “The ‘Above the Influence’ campaign has been an outstanding example of public/private partnership, and our recent studies have shown it to be effective . . . because it’s not only teen targeted but teen inspired.”³⁰

Evaluation

There are two information issues at hand. One is the dissemination of the anti-drug campaign itself and the other is dissemination of information *about* the anti-drug campaign. The latter could be split into a couple of sub-categories such as scientific information, financial information, statistics, and reports. The treatment of information is different in each case.

Depending on the sub-category, information *about* the campaign can be easy to find or like looking for a needle in a haystack. A look at the ONDCP and Above the Influence websites shows comprehensive information, often well cited, about the statistics and the positive effects of the campaign. Although not directly related to Above the Influence, the National Institute of Drug Abuse (NIDA) has its own teen page called “NIDA for Teens,” which is full of scientific information about drug abuse and appropriate resources.

While important reports such as that by the Government Accountability Office are available online through government sources, the Above the Influence page or the ONDCP page make no mention of these. A better dissemination of information would be to have access to all available reports on these sites in order to get a more balanced view of the issues and aims behind the campaign, and what could be or is being done better in the future. A more full history on the “About” tabs of these pages may also be an appropriate approach to a better understanding of these campaigns and the agencies that are involved.

Financial information is especially daunting to the casual researcher, and could be important for someone deciding whether or not to support a campaign. While all ONDCP’s budget summaries are available on their website, trying to understand exactly how much is allotted to the National Youth Anti-Drug Media Campaign (Above the Influence) is difficult, and it is harder from there to understand how much of that campaign’s money is spent on advertising (since it is a media campaign one would guess that should make up most of their budget). Fiscal year budgets are even harder for a layperson to understand. In order to have a completely open policy, all of this information should be available to someone searching each website.

Conclusion

Social media is a very persistent presence in the lives of today’s teens, much the way the television played a large role in the lives of kids in the 1980s. Anyone who owns a TV will have seen an anti-drug ad in the last thirty years. The current campaign’s use of popular social media sites means that it can be guaranteed to at least reach its intended audience. As we have seen, that may or may not mean it has its intended effects, but the campaign is a recognizable presence in today’s media. A look at the website or Facebook page for Above the Influence leaves no doubt that it is

having a positive effect on many teens. It is good that the government has made use of the awesome power of social networking to allow teens to be a part of the campaign rather than just passive recipients of the information. The push to reach America’s youth has made quite a transition from the “Just Say No” days to now, but no doubt Nancy Reagan is impressed.

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Creating Awareness of Celiac Disease

US Government Resources and Programs

Rebecca Vernon

Abstract

Celiac disease is a genetically inherited disease that affects the small intestine's ability to absorb nutrients. There are severe long-term consequences for those who are not diagnosed early, including anemia, osteoporosis, and intestinal cancer. A recent survey shows that many celiac disease sufferers in the United States remain undiagnosed. As a result, the US government, specifically the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and Congress, have recognized the need for and taken steps to increase public awareness about celiac disease. A variety of useful resources, search portals, and surveys are available to the general public. However, the US government agencies tasked with creating public awareness about celiac disease must now focus on ensuring permanent public access to materials and creating proactive campaigns for the general public, not just for healthcare professionals.

Introduction

Celiac (pronounced SEE-lee-ak) disease is a genetically inherited disease where sufferers have an allergic reaction to gluten, a protein found in wheat, barley, and rye. This allergy affects the digestive system. Gluten causes the villi of the small intestine (see figure 1) to inflame and prevents the absorption of nutrients by the body. There are many symptoms of celiac disease, including diarrhea, vitamin deficiencies, abdominal pain, and skin rashes.

Long-term effects of undiagnosed celiac disease include anemia, osteoporosis, and intestinal cancers.¹ Gluten is an important component of wheat, barley, and rye as it is the elastic protein that allows bread to rise and gives bread its consistency.²

According to *The American Journal of Gastroenterology's* recent article, "The Prevalence of Celiac Disease in the United States," 1 in 141 (0.71percent) Americans have celiac disease and many have not been diagnosed. They also concluded that 35 survey participants actually had celiac disease and 29 of these participants had not been diagnosed.³ This study demonstrates that while celiac disease exists in the United States, the knowledge of celiac disease is not widespread. Although it is not as prevalent in the United States as other health conditions, such as diabetes, heart disease, and cancer, the early diagnosis of celiac disease can prevent the development of severe health conditions, removing some of the burden on the healthcare system.

To increase early diagnosis, the federal government has taken steps to provide accurate information about celiac disease to the public and developed outreach campaigns to promote awareness of the condition. This issue is very personal as I was diagnosed with celiac disease in 2003, and most of my immediate family also has the disease. The purpose of this paper is to review the current strategies of the federal government to create awareness among the general public, not just researchers or health professionals, about celiac disease.

Celiac disease and the federal government

The National Institutes of Health (NIH), whose parent agency is the US Department of Health and Human Services, is tasked with the support of and conducting their own biomedical and behavioral research. In terms of public awareness of celiac disease, the most important directive of the NIH is that it “develops and disseminates credible, science-based health information to the public.”⁴ The NIH accomplishes this in a variety of ways, including several web-based services provided by the National Library of Medicine (NLM), ClinicalTrials.gov, and the National Health and Nutrition Examination Survey (NHANES). While these services also provide information on other health topics, the Celiac Disease Awareness Campaign, managed by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), specializes in providing celiac disease information.

The Celiac Disease Awareness Campaign

The Celiac Disease Awareness Campaign came about as the result of the 2004 NIH Consensus Development Conference on Celiac Disease.⁵ The conference panel detailed celiac disease symptoms, treatments, long-term complications, and the current estimated statistics. As a result, several recommendations were made to the NIH about celiac disease. The first recommendation was for the “Education of physicians, dietitians, nurses, and the public about celiac disease by a trans-National Institutes of Health (NIH) initiative, to be led by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), in association with the Centers for Disease Control and Prevention.”⁶ As a result of this recommendation, the NIDDK launched the Celiac Disease Awareness Campaign in 2006.⁷

The Celiac Disease Awareness Campaign consists of several methods for distributing information to the public. The first is with a webpage⁸ findable by commercial search engines. The site provides general celiac information, recent and archived news, gluten-free diet information, outside links to research and clinical trials, campaign news and history, and links to professional organizations that specialize in celiac disease (For the list of professional organizations see Appendix B). These resources are meant for healthcare providers, researchers, and the general public. Most website content is in English, but one educational resource is also available in Spanish.

The National Digestive Diseases Information Clearinghouse (NDDIC), the NIDDK’s resource coordination office,⁹ is in charge of developing and distributing free PDFs (for an example publication, see figure 2) and website versions of publications for the Celiac Disease Awareness Campaign.¹⁰ A variety of topics are covered in these publications, duplicating most of the website content, including very basic information about celiac

disease, diagnostic tests, the gluten-free diet, and research and news. People have permanent public access to these campaign publications, which can be found in the form of PURLs by searching the *Catalog of U.S. Government Publications* (CGP). How to find these PURLs is not made public on the Campaign website. These publications are also meant to stock the third aspect of the Celiac Disease Awareness Campaign, the traveling exhibit.¹¹ This exhibit is set up at meetings and conferences for doctors and other healthcare professionals.

With the exception of the travelling exhibit, the Celiac Disease Awareness Campaign is passive in its outreach methods. It relies solely on commercial search engines, government search portals, and links in other resources to distribute its information to the public. Only people who have access to the Internet, and think to perform a search for celiac disease, are able to access the information provided by the Celiac Disease Awareness Campaign. The traveling exhibit only targets healthcare professionals, relying on the doctors and nurses to diagnose more patients and redistribute information. While this may happen on some scale, there is no guarantee healthcare professionals will do so. If the campaign wishes to truly reach the public, the Campaign should also set up exhibits in the waiting areas of hospitals and clinics.

The National Library of Medicine

As a part of the NIH, the National Library of Medicine (NLM) is charged with providing “extensive Web-based information resources . . . to scientists, practitioners, and the general public.”¹² To do this, the NLM produces several different services, both to general medical information and to government and commercial publications. These include MedlinePlus, PubMed Health, Genetics Home Reference, PubMed Central (PMC), and PubMed.

MedlinePlus, Genetics Home Reference, and PubMed Health are services produced by the NLM in order to disseminate information about medical conditions. Each service provides basic information about celiac disease, including what it is, symptoms, treatments, and some very basic genetics. The services make themselves unique by each specializing in an area or offering unique services. MedlinePlus provides a research guide with government and professional web-based resources with language meant for the general consumer.¹³ Genetics Home Reference provides much more specific genetic information about celiac disease, along with answers to general genetics concepts.¹⁴ PubMed Health provides much more detailed information about celiac disease as a medical condition, including entries from the *A.D.A.M. Medical Encyclopedia*.¹⁵ Used together, these three services can answer almost any question the public may have about celiac disease.

PubMed Central (PMC) and PubMed both provide the ability to search and read biomedical and life sciences literature available at the NLM for free. There are slight differences between the two collections. PMC focuses on journal articles and always provides access to the full-text. The available journals include government publications and participating commercial publishers.¹⁶ PubMed's searchable collection includes journal articles and books, but does not guarantee access to the full text.¹⁷ Most of the literature available is filled with medical jargon and covers topics more complicated than people outside the medical profession can understand. However, the access they provide to federally funded research makes them worth promoting to the public.

While these services provided by the NLM are excellent sources of reliable information, they also rely solely on passive methods to distribute celiac disease information. The general public has to already want the information and go in search of it on the Internet. Since the NLM services cover more topics than just celiac disease, the NIH should not create a separate celiac specific campaign involving only the NLM services. Instead, the NIH should either create proactive programs highlighting the individual services as means to access reliable medical information or incorporate more about the services into the Celiac Disease Awareness Campaign.

ClinicalTrials.gov

Congress passed the Food and Drug Administration Modernization Act of 1997 (FDAMA), requiring the creation of a data bank that would include clinical trials funded both privately and federally.¹⁸ As a result, the NIH created the database ClinicalTrials.gov, which opened to the public in 2008.¹⁹ The Food and Drug Administration Amendments Act of 2007 (FDAAA) further modified the law, requiring more clinical trials to register and certain types of trials to submit results.²⁰ It is still not required that all trials must submit results, one of the negative aspects of ClinicalTrials.gov. This resource allows the public and researchers to see what clinical trials have been completed, are presently occurring, and are soon starting. The general public then has the information they need to contact the researchers in charge in order to participate in clinical trials and access some research results. The search tool was simple to use and the results were very clear, especially in labeling the stage of research.

The National Health and Nutrition Examination Survey

The government currently does not have many official government documents available from the Centers for Disease Control and Prevention (CDC) with celiac disease prevalence statistics. The main survey with such celiac disease statistics is the

National Health and Nutrition Examination Survey (NHANES) 2009-2010. There are two more recent NHANES, but their questionnaires and data documents are not currently available on the CDC's website or Data.gov. More current data is available for researchers to access on CD-ROMs and through scientific and technical publications.²¹ Only two questions on the 2009–2010 survey relate directly to celiac disease:

- MCQ082—Ever been told you have celiac disease?
- MCQ086—Are you on a gluten-free diet?²²

The survey from 2009–2010 is the first NHANES to ask people questions about celiac disease prevalence and awareness. It is from these questions, in conjunction with NHANES blood sample results,²³ that the government derives its estimates for prevalence and diagnosis of celiac disease in the United States.²⁴ Past NHANES have relied only on identifying levels of very specific antibodies in the blood. The NHANES is planning on collecting data for four to six years in order to have more accurate population estimates. The NHANES has a few downsides, including delays in the posting of results and questionnaires and no permanent access, PURLS or otherwise, to these documents. It is also very confusing to navigate to the document with the desired data. Adding brief explanations by NHANES document links would easily solve this problem.

Government search portals

The first step for the many Internet users when searching for information is to perform a search on a commercial search engine. However, the first page of results in a Google search in July 2013 for “celiac disease” only contained three government results, PubMed Health information, MedlinePlus' page on celiac disease, and one of the Celiac Awareness Campaign's publications. They were also not the highest results on the page. The rest of the page had results from Wikipedia, the Mayo Clinic, WebMD, and some professional organizations. A better way to find government resources is by using government search portals.

The government search portals that have the best results for general celiac disease information are Science.gov and USA.gov. Each portal's results include a wide variety of resources, such as MedlinePlus, PubMed, and NIH and NIDDK resources. Science.gov's only drawback is that it includes Wikipedia results. Although Healthfinder.gov is not primarily a government search portal, it does not have any of its own celiac disease content. It is included here because it only provides a list of links to outside sites, including NIH, NIDDK, and professional organization resources. In this way, it acts more like a search portal than a separate resource. Other government search portals, like TOXNET,

produce results more geared toward healthcare professionals and researchers, with titles like “Celiac node failure patterns after definitive chemoradiation for esophageal cancer in the modern era” and “Epidemiology of Celiac Disease: A Population Based Study.” While TOXNET is an excellent portal, only the most committed celiac sufferer would find this information useful.

The biggest issue with relying on government search portals is that many in the general public are unaware these portals even exist. This prevents people from using one of the primary methods for accessing the plethora of government resources. Instead, the individual websites are reliant upon linking to the other resources available. The public then has to find some way into one of the resources before being able to access the rest. To increase the visibility of these government search portals, the NIH should include access to the search portals on government websites that are high profile on Google and in informative pamphlets at the Celiac Disease Awareness Campaign travelling exhibit.

Congress

Congress has also recognized the need for more public awareness of celiac disease. Since the 108th Congress (2003–2004), the two houses have made several separate attempts, with only one success, at passing resolutions that would designate a National Celiac Awareness Day/Month. In addition to designating a National Celiac Awareness Month, the latest resolution²⁵ would provide funding for research and recognize those who already work to increase public awareness. While only one of these resolutions has actually passed, this demonstrates that both representatives and senators know more about celiac disease themselves and recognize the public’s need for more information.

Conclusion

Current federal government programs and services have begun counteracting the lack of public awareness about celiac disease, in order to prevent the long-term health consequences of the undiagnosed disease. The programs and resources already contain incredibly helpful information. Several issues, however, still need to be resolved. One issue with government resources about celiac disease is the ephemeral nature of most of the resources. Almost all of the resources are websites or web-based resources and, without proper maintenance or personal Internet access, the public’s access to this information could be lost at any time. Creating permanent access to them on the Internet and in print should be a high priority.

Another issue with federal government celiac disease awareness programs is the passive nature of their outreach techniques. The current methods are to develop web resources that might

appear in the results of commercial search engines and educating health professionals who will, hopefully, pass on what they learn to the public. The government should make more resources available as PURLS in the CGP and implement proactive campaigns for the general public, making print materials and topic guides available to clinics, hospitals, and even libraries. Materials would then be permanently available for consumers and the government would be actively reaching out to the public, not just healthcare professionals. By addressing these two problems, the federal government would improve the current programs and resources, making them truly effective at creating public awareness of celiac disease.

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Appendix A.**Library of Congress Subject Headings***Celiac Disease*

Variants: Coeliac disease

Broader Terms: Diarrhea, Digestive organs—Diseases, Malabsorption syndromes

Narrower terms: Gluten-free diet

Celiac Disease in Children

Broader Terms: Pediatric gastroenterology

From: Library of Congress. "Library of Congress Subject Headings—LC Linked Data Service (Library of Congress)." Accessed July 2013. <http://id.loc.gov/authorities/subjects.html>.

MeSH Subject headings*Celiac Disease*

Entry Terms: Disease, Celiac; Sprue, Celiac; Gluten

Enteropathy; Enteropathies, Gluten; Enteropathy, Gluten; Gluten Enteropathies; Gluten-Sensitive Enteropathy; Enteropathies, Gluten-Sensitive; Enteropathy, Gluten-Sensitive; Gluten Sensitive Enteropathy; Gluten-Sensitive Enteropathies; Sprue, Nontropical; Nontropical Sprue; Celiac Sprue
See Also: Sprue, Tropical; Wheat Hypersensitivity; Enteropathy-Associated T-Cell Lymphoma

MeSH Categories: Diseases Category—Digestive System Diseases—Gastrointestinal Diseases—Intestinal Diseases—Malabsorption Syndromes—Celiac Disease; Diseases Category—Nutritional and Metabolic Diseases—Metabolic Diseases—Malabsorption Syndromes—Celiac Disease
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Appendix B.

(As listed at the website Celiac Disease Organizations—Celiac Disease Awareness Campaign www.celiac.nih.gov/OrganizationResults.aspx?category=0&name=AllOrganizations)

Academy of Nutrition and Dietetics
(formerly American Dietetic Association or ADA)
120 South Riverside Plaza, Suite 2000 Chicago, IL 60606-6995
Fax: 301-899-0008 **Web:** www.eatright.org

American Celiac Disease Alliance
2504 Duxbury Place Alexandria, VA 22308
Phone: 703-622-3331 **E-mail:** info@americaneliac.org
Web: www.americaneliac.org

American Gastroenterological Association
4930 Del Ray Avenue Bethesda, MD 20814
Phone: 301-654-2055 **Fax:** 301-654-5920
E-mail: member@gastro.org **Web:** www.gastro.org

Celiac Disease Foundation (CDF)
20350 Ventura Blvd., Suite 240 Woodland Hills, CA 91364
Phone: 818-716-1513 **Fax:** 818-267-5577
E-mail: cdf@celiac.org **Web:** www.celiac.org

Celiac Sprue Association/USA Inc. (CSA)
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The Gowanus Canal: A Superfund Site

150 years of stagnation in South Brooklyn

Lauren Reinhalter

At a meeting of the Board of Health yesterday the attention of the Mayor and Common council was called to the condition of the Gowanus Canal, which was pronounced to be offensive and dangerous to the health of the people residing in the vicinity.

—New York Times, 1887¹

Superfund the canal now. It should have been done years ago... but, as was the case when the canal was built, no one wanted to get in the way of commerce or real estate. Without Superfund designation nothing will happen for another 100 years.

—Allison Prete, Public Comment, 2009²

Almost immediately upon its completion in the 1860s the Gowanus Canal in South Brooklyn became known as a local offense, a neighborhood blemish, and a health hazard. For more than 150 years the canal has functioned as a busy industrial waterway lined by manufacturing plants and other commercial sites that were continuously introducing a variety of chemicals and industrial waste into the water.³ On March 4, 2010, after a long era of degeneration and political paralysis, the Gowanus Canal was added to the National Priorities List as Superfund Site NYN000206222, thereby making it eligible for remedial action funded by the federal government.⁴ Relying primarily on publicly available government documents, this paper will examine the role of local and federal government in the development and cleanup of the Gowanus Canal and explore the political life span of an environmentally hazardous site in the United States.

History, development, and use

The Gowanus Canal is a 100 foot wide man-made inlet that runs 1.8 miles from Gowanus Bay into South Brooklyn at Butler Street.⁵ Historically one of the nation's shortest but busiest waterways, the canal is presently bordered by commercial industrial sites and vacant lots surrounded by residential neighborhoods.⁶ Originally a tidal creek running through Dutch-settled saltmarsh, the Gowanus Canal was converted into an industrial-use shipping channel in the 1860s at the suggestion of a local developer named Colonel Daniel Richards.⁷ The New York State legislature created "The Gowanus Canal Improvement Commission of 1866" to oversee the transformation of the historic creek through a process of dredging and draining the adjacent marshlands to construct a bulkhead lined with docks.⁸

Deepened and widened, the Canal soon became part of the vital commercial infrastructure providing access to manufacturing plants for lumber, coal, brick, stone, flour, and plaster.⁹ This "genuine water highway" was purported to carry the power of "the sea-water right into the city," but in fact, the dead-end canal was a semi-stagnant body of water with limited tidal flow to flush its contents out into Gowanus Bay and the Atlantic Ocean.¹⁰ Despite the lack of a current, the Gowanus Canal became home to heavy industry as sites expanded to include manufactured gas plants (MGPs), coal yards, cement makers, soap makers, tanneries, paint and ink factories, machine shops, chemical plants, and oil refineries, introducing chemicals and sediment to the water

system.¹¹ It became clear to the local community that something must be done, and in 1889 the *New York Times* reported,

The commission appointed by the Legislature to examine into the condition of the Gowanus Canal, Brooklyn, submitted its report to Mayor Chapin yesterday, and in it declared emphatically that the only way to better the canal was to close it up... it is detrimental to health...and therefore an injury in its present condition.¹²

Rather than close the stagnant canal to the swell of commerce, in 1911 the City of New York built the Gowanus Flushing Tunnel to pump in water from the nearby Buttermilk Channel thus increasing the flow of water through the canal.¹³ The Flushing Tunnel partially assuaged the noxious odor of sewage emanating from the canal until a mechanical failure in 1960. With city funds spread thin, the tunnel was not reactivated until 1999, by which time barge transport was replaced by trucks and 50 percent of the industrial sites along the canal had become vacant and derelict.¹⁴ During the Flushing Tunnel's four decades of disrepair, community awareness increased, and several local organizations became active. In 1978, a not-for-profit neighborhood organization, the Gowanus Canal Community Development Corporation (GCCDC), began to advocate for the revitalization of South Brooklyn, focusing on the sustainable development of the communities surrounding the Gowanus Canal.¹⁵

Local government and army corps of engineers involvement

Faced with increasing pressure from the community, the City of New York and New York State established several grant-funded assessments, studies, and development plans to address the condition of the New York-New Jersey Estuary, which contains the Gowanus Canal. A 1977 assessment by the New York State Department of Environmental Conservation (NYS DEC) found a significant raw-sewage problem affecting the water quality of areas such as the Gowanus Canal but found a significant gap in the state's authority to intervene in city matters.¹⁶ The City of New York adopted the *Waterfront Revitalization Plan* of 1982 as its primary coastal management tool to coordinate local, state and federal legislation that would "preserve, protect, develop, and where possible, to restore or enhance the resources of the nation's coastal zone."¹⁷ Revised and renewed in 2002, the *New Waterfront Revitalization Plan (NWRP)* gives joint responsibility for managing the Gowanus Canal's development to the NYS DEC and the Army Corps of Engineers (ACOE).¹⁸

The ACOE's involvement in the Gowanus Canal's existence long predates the *NWRP* of 2002; in fact, the ACOE was part of the original dredging and widening of the canal to make way for large industrial vessels in 1881.¹⁹ More than 100 years later, the ACOE began conducting numerous investigations, and in 2000 issued a reconnaissance report for the Hudson-Raritan Estuary stating, "there is a Federal interest for further studies for the Gowanus Canal."²⁰ Entering into a 50/50 funding agreement with the NYS DEC, the ACOE dedicated approximately \$1 million of budgetary appropriations between 2002 and 2005 to investigate "ecosystem restoration, including contaminate reduction measures, creation of wetlands, water quality improvements, and alteration of hydrology/hydraulics to improve water movement and quality."²¹ The result of the ACOE investigations was a plan called the Gowanus Facilities Upgrade of 2008, which proposed improvement of the Gowanus Flushing Tunnel and sewer overflow screening system.²² To fund this plan, the NYS DEC and the US Environmental Protection Agency (EPA) called for the US Congress to declare the Gowanus Canal a Superfund site, but it would take years before Congress acted on the advice of these environmental agencies.²³

Developments in federal environmental law

While decades of bureaucratic investigations and unrealized plans languished in Brooklyn, in Washington, D.C. the federal government was developing a mechanism to clean up the nation's most hazardous sites. On December 11, 1980, Congress passed Public Law 96-510, the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA.²⁴ CERCLA is the federal government's principal program for cleaning up the nation's most polluted sites through a process of surveys, assessments, and either short-term removal or long-term remediation.²⁵ CERCLA contains a liability clause that holds past and current owners and operators of contaminating facilities financially responsible for cleanup costs.²⁶ If these Potentially Responsible Parties (PRPs) cannot be found, or cannot financially support the cleanup, the EPA has authority to use funds from a public trust financed by taxes on petroleum, chemicals, and a corporate environmental income tax, commonly known as the Superfund.²⁷

CERCLA's response and liability enforcement powers were expanded and modified in 1986 by Public Law No. 99-499, the Superfund Amendments and Reauthorization Act, or SARA.²⁸ Section 105(a)(8)(B) of CERCLA, as amended by SARA, "requires that the EPA prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States."²⁹ The most potentially dangerous sites are added to the

National Priorities List (NPL) annually based on an evaluation of a site's hazardous materials conducted by the EPA with authorization from the president.³⁰ SARA established the Hazard Ranking System (HRS) to outline criteria for adding sites to the NPL, making them eligible for remedial actions financed by the Superfund.³¹ Once a site is placed on the NPL, long-term remedial response actions can begin to significantly and permanently reduce the dangers associated with the release of hazardous substances.³²

Gowanus Canal gets Superfund designation

In early 2009, the EPA conducted a preliminary assessment of the Gowanus Canal using the criteria for the Hazard Ranking System (HRS).³³ The HRS score for the canal was 50 (above the 28.5 required for inclusion on the NPL), and the study discovered the presence of Polycyclic Aromatic Hydrocarbons (PAHs), Polychlorinated Biphenyls (PCBs), heavy metals, and volatile organic compounds throughout the length of the canal.³⁴ Information about health dangers associated with chemicals most commonly found at facilities on the NPL is available to the public via a list of toxicological profiles compiled and released by the Agency for Toxic Substances and Disease Registry. According to the EPA, contact with PAHs and PCBs can cause acute respiratory and skin conditions and long-term effects such as cancer and birth defects.³⁵

With conclusive toxicology results and an appropriate HRS score, on April 9, 2009, the EPA proposed adding the Gowanus Canal to the NPL and opened a sixty-day comment period during which the public could submit opinions and reactions to the proposed rule.³⁶ Community members, corporations, environmental engineers, and scores of other people submitted more than 1,000 comments, with the overwhelming majority voicing support for designating the Gowanus Canal as a Superfund site.³⁷ While many public comments, community groups, and the NYS DEC urged for Superfund designation, the City of New York, under the leadership of Mayor Michael Bloomberg, feared that this designation would stigmatize the area and drive away the interest of real estate developers.³⁸ Despite the city's concerns, on March 4, 2010, the Gowanus Canal was added to the NPL as a Superfund site, allowing the EPA to further investigate and develop an approach to address the contamination.³⁹

There are several steps to the Superfund process, from discovery and designation of a site to hazardous waste removal.⁴⁰ In December 2009, less than a year after the Canal's Superfund designation, the EPA—in conjunction with the ACOE and the National Grid—began the first step in the Superfund cleanup

process: a Remedial Investigation (RI) to assess health and ecological risks associated with the Canal.⁴¹ By February 2010, the EPA reported that “the results of this RI indicate that chemical contamination in the Gowanus Canal sediments presents unacceptable ecological and human health risks” and it was therefore necessary to proceed with a Feasibility Study (FS) to explore remediation alternatives.⁴² The FS was completed in late 2011, faster than expected, and a report was presented to the community in January 2012.⁴³ The highly technical study evaluates seven possible remediation alternatives, all of which include some form of dredging and capping, based on a matrix of factors such as effectiveness, cost, and implementability.⁴⁴ The public was encouraged to comment on the alternatives, and multiple public meetings were held at local community centers to discuss the proposed plans and answer questions.

According to CERCLA, Potentially Responsible Parties (PRPs) are liable for funding the cleanup of a Superfund site. The manufacturing company Chemtura Corp. has already paid \$3.9 million toward cleanup activities, and as of October 2012, the EPA had sent notices of potential liability to thirty-one companies, the City of New York, the US Navy, the US Postal Service, and the US General Services Administration.⁴⁵ A published list of notified PRPs can be found at www.epa.gov.

When will the Gowanus Canal be clean?

At a recent community meeting, Walter Mugdan, director of the Division of Environmental Planning and Protection, stated that since its Superfund designation, the Gowanus Canal cleanup effort “is being done 2 or 3 times faster than it was plausible to expect, but the heavy lifting is yet to come.”⁴⁶ This “heavy lifting” has been complicated by both the environment and the economy. As Hurricane Sandy ravaged the East Coast in October 2012, the Gowanus Canal breached its bulkhead, flooding many surrounding buildings and raising concerns about further development of land around the dirty waters of the Canal.⁴⁷ The EPA conducted an ad-hoc sampling of the flood waters and found high levels of bacteria.⁴⁸

The effects of natural disasters are not the only potential setbacks for the Gowanus Canal. President Barack Obama's 2013 budget would reduce the Hazardous Substance Superfund Remedial program by \$33 million, targeted largely at non-time-critical activities that address long-term remediation goals, like those laid out in the Gowanus Canal Feasibility Study.⁴⁹ It is possible that funding levels will remain constant, since the Government Accountability Office (GAO)—often called the “congressional watchdog”—released a report confirming that almost \$2 billion in the EPA's Superfund special accounts remains unused, without any plans for its allocation.⁵⁰

Despite the malodorous state of the Canal, residents of South Brooklyn should not presume immediate reprieve, as the EPA projects will take at least eight to eleven years for Superfund cleanup.⁵¹ Any interested person or party may access documents relating to the cleanup of the Gowanus Canal by visiting the Superfund Records Center in New York City, or online at www.epa.gov/region2/superfund/npl/gowanus.⁵² At the end of 2012, the Superfund Site Progress Profile reads, “Physical cleanup activities have not started.”⁵³

Update

In March 2013, after completion of this paper, the EPA published a final \$500 million remediation plan to “remove approximately 307,000 cubic yards of highly contaminated sediment” from the Gowanus Canal by 2022 through a process called dredging and capping. After the sediment is dredged, it will be turned into vapor by heating the contaminants to temperatures high enough to destroy them. The Canal floor will be then capped with multiple layers of clean materials to avoid contaminants from seeping up from below.⁵⁴

Despite decades of public outcry for the remedial process to begin, community members are not completely satisfied with the EPA’s plan. Specific concerns regard where to put the necessary Confined Disposal Facility and where sediment will be temporarily placed to “dewater” before being transported out of the area. Locals fear not only the noxious smell of such a facility, but also the spread of airborne pollutants to neighboring parks, pools, and homes.⁵⁵ While the public comments period closed in April 2013, the physical cleanup has not yet begun; the impasse of the Gowanus Canal continues.

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Solyndra

Rhetoric and Reality in a Partisan Age

Eloise Flood

Solyndra's rise and fall

On September 23, 2011, the US House of Representatives held a hearing to examine the dramatic failure of the solar panel manufacturer Solyndra. Weeks earlier, the company had abruptly declared bankruptcy and closed its offices and factory. Soon after that, the FBI raided the Solyndra offices, seeking evidence of possible malfeasance on the part of the executives. Two days before the hearing, Brian Harrison and Bill Stover, the CEO and CFO (respectively) of Solyndra, invoked their Fifth Amendment right to remain silent to avoid self-incrimination.¹

In the hearing, Republican Representative Fred Upton of Michigan compared the failure of Solyndra to the Great Train Robbery, and referred to the US Government as “collaborators, maybe even co-conspirators” in a “tax-payer ripoff.”² Over and over again, as they were questioned by House members, Harrison and Stover repeated, “On the advice of my counsel, I invoke the privilege afforded by the Fifth Amendment to the United States Constitution and I respectfully decline to answer any questions.”³

Two-and-a-half years earlier, Solyndra was flying high. It had been the first company to be awarded a government loan guarantee by the Department of Energy (DOE). The loan guarantee program had been established by the Republican-controlled Congress and the Bush administration in 2005, but had not awarded any loans during the remainder of President Bush's time in office. A short two months after President Obama took office, however, the DOE announced, with great fanfare, the award of

a \$535 million loan guarantee to Solyndra.⁴ Private investors had already invested almost \$1 billion, and more was to follow. The following year, *MIT Technology Review Magazine* named Solyndra one of the “50 most innovative companies in the world.”⁵

Now, in 2011, the company was bankrupt and its executives had taken the Fifth.

What happened?

To understand the story fully we will need to start with the Energy Policy Act of 2005 (EPAAct). This act was passed by Congress and signed into law as Public Law 109-58 by President George W. Bush on August 8, 2005.⁶ The act mandated various things, but the part that is significant in this context is Title XVII, “Incentives for Innovative Technologies,” which established loan guarantees for new energy technologies that either avoided or reduced greenhouse gases. The bill was introduced by Republican Representative Joe Barton of Texas, and was passed by the Republican-controlled House and Senate within four months.⁷ One of the main goals of Republicans in Congress and of the Bush Administration, according to newspaper reports, was to give a boost to the domestic nuclear power industry through the loan guarantee program.⁸

However, the loan guarantee program languished for the remaining years of the Bush administration, hampered by the lack of an organizational structure within the DOE.⁹ Both Republicans and Democrats had complained about the glacial

pace of the program, and when President Obama took office, his new DOE Secretary, Stephen Chu promised swift, bold action.¹⁰

Solyndra was one of several solar technology companies that started up in the mid-2000s in California's Silicon Valley. They had noted a shortage of high-purity polysilicon, necessary to make conventional solar panels, and had hoped to take advantage of "thin-film" technology using less expensive materials to revolutionize the solar market.¹¹ Solyndra, in addition, had a proprietary design that utilized tubes instead of flat panels, allowing for higher efficiency, a more compact installation, and greater protection from high winds.¹²

Private investors such as Argonaut Ventures (associated with the Kaiser Family Foundation) and Madrone Partners (associated with the Walton family of Walmart) saw a lot to like in Solyndra.¹³ So did the DOE, which in 2006 invited Solyndra to apply for a loan guarantee under EPCAct. Solyndra did so. But, as noted above, the application reached the DOE...and languished. The initial review of the application was not completed by DOE's Credit Committee until early January 2009 (shortly before the Obama Administration came in). At that point the application was sent back for further review.

Then came February, and the Senate hearing at which Secretary Chu was encouraged to speed up the process of the Loan Guarantee Program. This happened to fit with the priorities of the Obama Administration, which was eager to jump-start green technology initiatives. Perhaps because the Solyndra application was already well along in the review process, it was fast-tracked, and on March 20, 2009, DOE awarded the company \$535 million. The press release that announced the award had this to say about the timing:

Secretary Chu initially set a target to have the first conditional commitments out by May—three months into his tenure—but today's announcement significantly outpaces that aggressive timeline. Secretary Chu credited the Department's loan team for their work accelerating the process to offer this conditional commitment in less than two months, demonstrating the power of teamwork and the speed at which the Department can operate when barriers to success are removed.¹⁴

The term "conditional commitment" in the paragraph above would turn out to be significant in hindsight. In 2010, the Government Accountability Office (GAO) issued a study of the Loan Guarantee Program that pointed out that DOE, while it had made improvements to its organizational infrastructure, was still failing to follow best practices in some respects,

notably in the way it offered preferential treatment like "conditional commitments" to some applicants before the external review process had been completed.* Furthermore, after the collapse of Solyndra, the Inspector General's Office of the Treasury Department conducted an audit of the loan guarantee review process and concluded that it was rushed, and that Treasury was not asked for its recommendations until DOE had already completed its work and (by implication) made up its mind. Indeed, the press release was apparently already prepared before Treasury even saw Solyndra's application. And once they had been given the application, DOE pressed Treasury to complete its review at lightning speed so that the press release could go out in time for Vice President Biden to talk about it at an event he was attending. The Treasury audit, however, seems to conclude that this unseemly rush was due to the fact that no process had ever been put in place for conducting an orderly review. In essence, it never occurred to anyone at DOE that Treasury ought to be consulted until they were prompted to do so by the Office of Management and Budget (OMB).¹⁵

Here it is worth noting the politically charged language used in the House Majority Report, *The Solyndra Failure*, that was issued in August of 2012. Among the key findings of the report was this: "DOE failed to consult with the Department of the Treasury during the course of its [sic] review of Solyndra's application, as required by the Energy Policy Act of 2005, and the consultation that did occur was rushed."¹⁶ One wonders how consultation can be rushed if no consultation occurred.

Back now to the events of 2009. The loan guarantee was finalized in September, and Solyndra, flush with cash, immediately ramped up operations. It hired a thousand workers to construct a second, larger plant and began planning for an Initial Public Offering of stock in 2010.

The attitude of the DOE and the Obama Administration toward Solyndra during the months when the guarantee was being finalized is a matter of some dispute. I was unable to find the original documents in question, so the analysis that follows is pieced together from secondary sources (newspaper accounts and statements made by Republican and Democratic Congressmen during the hearings that followed Solyndra's collapse). It is certain that people within the Obama Administration raised questions about the company's cash flow. Republicans interpreted these questions as meaning that the administration knew early on that the company was a bad risk. Others, however, have argued that the questions were raised as a routine

* Interestingly, the GAO report focuses on preferential treatment that the DOE gave to nuclear power projects over other types of technology. Solyndra is not mentioned in this context.

part of the due-diligence process and that the questions were answered to the satisfaction of all, including career officials with no political motivation one way or another.¹⁷

For the next several months, Solyndra moved ahead with its ambitious plans. In early 2010, the company was hailed by the *MIT Technology Review* and the *Wall Street Journal* as a company on the rise.¹⁸ In May of that year, President Obama visited the company's new plant and praised it as "leading the way to a brighter and more prosperous future."¹⁹

At the same time, however, the solar energy industry was in a period of extreme volatility. Silicon prices, which had been high for the previous five years, plunged.²⁰ At the same time, the prices of indium, gallium, and selenium—three of the key ingredients of the copper-indium-gallium-diselenide (CIGS) mixture used by Solyndra and many other thin-film manufacturers—shot up.²¹

On top of the price fluctuations in the mineral markets, Solyndra's proprietary tubular design proved to be far more complex and costly to manufacture than expected. New machines had to be invented simply to manufacture the parts that went into a tubular array.²² Inevitably, the high manufacturing costs raised the price of Solyndra's products.

A third factor was China, which began to flood the market with conventional solar panels made cheaper not only by the dropping price of silicon but also by the low cost of Chinese labor and by huge subsidies from the Chinese government.²³ Indeed, in May 2012, the U.S. Commerce Department announced that China had distorted the market by "injurious dumping and subsidization" of crystalline silicon photovoltaic solar cells and that Commerce was imposing tariffs forthwith on Chinese solar cells.²⁴ In November, the U.S. International Trade Commission upheld the finding and the tariffs.²⁵ But in 2010 these modes of redress were in the future, and Solyndra was suffering in the present.

There were hints, too, that the Obama Administration was starting to get nervous about their investment. The day before the president traveled to California, a campaign contributor e-mailed an Obama advisor to say that Mr. Obama might want to cancel the trip.²⁶ Stronger warnings were coming from the OMB, which was increasingly concerned with the way DOE was monitoring the Solyndra loan. As one OMB official wrote to another: "DOE's 'system' for monitoring loans is quite problematic (barely any review of materials submitted, no synthesis for program management, inherent conflicts in origination team members monitoring the deals they structured, etc) and does not seem to be a program priority."²⁷

As the year wore on, Solyndra's financial situation worsened. In November the company was forced to take several drastic

steps. Not only did it replace its founding CEO, Chris Gronet, with former Intel executive Brian Harrison, it also canceled its already-pushed-back Public Offering and announced that it was shuttering one of its plants and delaying a planned expansion for the other. Some 175 company employees were laid off.²⁸

Now the DOE was worried. Solyndra was close to running out of cash. DOE officials argued that another round of financing could pull the company out of the hole it was in and save it from default. They began to explore the possibility of restructuring the government loan so that, if Solyndra was able to get its private investors to kick in more money, they would be guaranteed to recoup the new investment before the government did.

OMB analysts presented a competing scenario, in which Solyndra received another round of financing and then defaulted anyway. It would cost the taxpayers far less to pull the plug now, they argued, than to wait until Solyndra was even deeper in debt.²⁹

In March 2011, disregarding the advice of the OMB, DOE proceeded to restructure the loan, hoping the new infusion of cash would rescue Solyndra. When the congressional hearings were held, Republicans raised the question of whether this loan restructuring was a violation of the law.³⁰ However, DOE was able to produce memos from its in-house counsel as well as from an independent law firm, both of which opined that—regardless of the merits of the plan—the restructuring was, in fact, legal.³¹

It was not, however, enough to save Solyndra. Though the company's executives put up an optimistic front until well into July, Solyndra was unable to meet its obligations on the loan repayment schedule. On August 31, employees came to work to find the office and factory locked. That day, Solyndra declared bankruptcy.³²

It had been clear for some time that the potential for political ugliness was extremely high. Congressional Republicans had been poking at the edges of the Solyndra loan since February, when the loan was restructured. At that point, the House opened an investigation into the DOE Loan Guarantee program in general and the Solyndra guarantee in particular. Their first hearings on the subject were held June 24, 2011, and focused on the role of OMB.³³ It is obvious from reading the transcript that the Republicans were interested in political theater. The committee chairman, Representative Cliff Stearns of Florida, cast aspersions and hinted at serious improprieties without actually making outright accusations. For example, before making his opening statement he lamented the fact that the invited witness, OMB Deputy Chairman Jeffrey Zients, had not seen fit to attend. However, as Democratic Representative Diana DeGette of Colorado pointed out in her opening statement, Zients was given short notice on the date of the hearing and informed the committee that he was unable to attend on that date, while providing other dates that he was available.³⁴ Stearns complained

repeatedly of obstructionism on the part of OMB and DOE, and claimed that OMB was willfully withholding key correspondence in an attempt to stymie the investigation.³⁵

When Solyndra actually collapsed, the Republican majority in the House went into what can only be described as a feeding frenzy. They immediately scheduled another round of hearings, at which they deluged the silent Solyndra executives with questions that were clearly designed to stimulate maximum outrage, rather than actually investigate what happened, replete with terms like “lied” and “duped” as well as the aforementioned “collaborator” and “co-conspirator.”³⁶ They hinted that George Kaiser, an Obama campaign contributor who was connected to one of the private investment groups backing Solyndra, had improperly influenced the loan guarantee.³⁷ They described routine matters in sinister or misleading terms, as when Mr. Stearns implied that Jeffrey Zients, the OMB official, was flouting Congress by not appearing to testify when asked. The investigation that had begun in February went on for eighteen months, culminating with a House majority report, *The Solyndra Failure*, that sought, without making actual accusations, to cast every action of the DOE and the Administration in the darkest, most clandestine terms. Finally, House Republicans introduced a bill, the “No More Solyndras” Act, that would gut the DOE loan program.³⁸ It passed along strict party lines in the House, and then went to the Senate, where it died a quiet death in Committee.

There is no question that 2010–2011 was an *annus horribilis* for the American solar technology industry. The combination of cheap Chinese imports and soaring component prices proved fatal not only to Solyndra: the chart in figure 1 gives a graphic view of how the industry was bloodied.³⁹

Equally, there is no question that Solyndra and its backers counted too much on innovative design and not enough on market realities. As one analyst pointed out, the modest efficiency improvements that Solyndra offered were simply not enough to offset its high-end prices.⁴⁰

What is in question is to what extent the situation might have been mitigated if the entire situation had not been so politicized. Both the Obama Administration and congressional Republicans treated Solyndra, from beginning to end, in an almost unbelievably partisan way.

It seems clear from the documentary evidence that the White House and the DOE pressed for a decision on the initial loan in order to accommodate a political opportunity. Likewise, President Obama’s trip to the Solyndra plant in 2010 was staged to score political points, and cautions about the company’s financial health were ignored because they did not serve the political agenda. One newspaper article reported that Solyndra was asked to delay the announcement of its layoffs in fall of

2010 until after the midterm elections, to avoid damaging the prospects of congressional Democrats.⁴¹

Republicans in their turn did their utmost to turn a fairly simple matter of government miscalculation into a criminal conspiracy. But the documentary evidence makes it clear that there was no conspiracy. (The conspiracy-minded might be better off looking at China, now the leader in solar panel production in the world. China also happens to be by far the leading producer of silicon, indium, and gallium—minerals that played a large part in this story—and the price fluctuations in these three commodities track the outline of Solyndra’s fall precisely.⁴²)

The truly unfortunate thing about this story is the time and money that were wasted, by both sides, and the shadow that has been cast over the US solar industry. In his testimony before the House, Secretary Chu of the DOE stated that the U.S. was in a “fierce global race to capture this market.”⁴³ For now, it appears China has won that race; it would be a shame if the misfortunes of one company prevented the US from becoming a serious contender again.

Methodology

I began my search with a news run from LexisNexis, selecting articles from 2009 forward that dealt with Solyndra. These gave the broad outlines of the story I wanted to tell.

I also ran general searches on government websites to find background documentation on the solar industry. The Homeland Security Digital Library (HSDL) yielded some Congressional Research Service reports on the solar industry and US energy policy. The Departments of Energy and Interior also had good background reading on solar power.

Once I had the articles and the outline of the story, my main task was to find the government sources the articles referred to and use those sources to construct my own interpretation of events.

Since much of the Solyndra story played out in House hearings, I used FDsys.gov to track down transcripts. I was able to find most, but not all, of the hearings referred to in the paper. One that seems to be missing from FDsys is the November 17, 2011 hearing where Secretary Chu testified; however, his planned testimony was posted on the DOE website, which maintains an archive of documents relating to the Solyndra case. This is also where I found the memo from DOE Counsel Susan Richardson regarding the legality of the loan restructuring.

The House hearings often referred to correspondence that had been subpoenaed from DOE, OMB, GAO, and other government agencies. These documents were not included in the hearing transcripts, but in many cases I was able to find them on the websites of the agencies in question. One hearing mentioned a Treasury audit of the Solyndra loan process; I found that report

on the site of the Inspector General of the Treasury Department.

One particularly interesting search—seeking damning e-mails between OMB staff members referred to by the Republicans—was initially fruitless. Then, I went to the house.gov website and started exploring, I found the House page of Henry Waxman, the ranking Democrat on the House Energy and Commerce Committee. His site had a trove of memoranda and other documents relating to the Solyndra hearings, and though I didn't find the original e-mails themselves, I did find them extensively quoted.

Some searches led me pretty far afield. To learn more about silicon pricing, I Googled “silicon USGS commodity” and was directed to a page of links to annual reports on mineral commodities A to Z. Out of curiosity, I looked up the annual reports for copper, gallium, indium, and selenium (diselenide)—the ingredients Solyndra used in its thin-film arrays—and was intrigued to see the price fluctuations mentioned in the conclusion of my story. China produces more than half the world supply of all three minerals. It would require further investigation, but from what I have seen it seems reasonable to suspect that China manipulated the pricing and availability, not just of silicon, but also of gallium and indium, and was a direct contributor to Solyndra's failure.

I also wanted to understand the origins and politics of the loan guarantee program. The Treasury audit and a CRS report helped with that, and references in both of them led me to a GAO report (on the GAO website) written during the Carter Administration, laying out the reasons why government loan programs in innovative technology were especially perilous. I did not end up using this in my paper, but it provided useful background nonetheless.

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Occupy Wall Street

A Brief History of the 99 Percent

Julia Marden

The Occupy Wall Street movement began September 17, 2011, when protesters set up a tent city in Zuccotti Park in the middle of New York's financial district. The movement spread quickly across the country and around the globe, as protesters declared support for the group in Zuccotti Park and used its methods to demonstrate for change in their own communities. The Occupy Wall Street movement's two-month occupation forced the country to pay attention and demand a change to the federal policies that had led to bank bailouts, ballooning personal debt, record-high levels of home foreclosures, and a sharp increase in the wealth gap.

Why Wall Street?

In 1932, the Bonus Army, a group of World War I veterans and their families, were waiting for their paychecks. They had certificates that promised money plus interest for the time they had served, but they would not come due until 1945. In the middle of the Great Depression, they could not afford to wait, so they set up camp near the US Capitol to demand that Congress and President Hoover pay their bonuses. In 2011, almost a century later and three years into a major economic downturn, people turned instead to the financial district of New York City as the symbolic site to launch their movement.

In 2008, Congress established TARP, the Troubled Asset Relief Program, as part of the Emergency Economic Stabilization Act.¹ The program bailed out banks and gave them opportunities to repay loans while restructuring their business practices to avoid future instability. However, the TARP program did not

have as much oversight of the banks as originally anticipated. Many larger banks bristled against the regulations and resented having to change certain business practices, such as paying bonuses to top executives.²

Despite the reforms, executives in the finance industry took home \$18.4 billion in bonuses at the end of 2008.³ While this was less than in previous years, it was still the sixth largest bonus payout for Wall Street executives on record. In October of 2008, the Department of the Treasury released an interim rule meant to curb the bonuses for executives at Wall Street banks participating in the TARP program, but left the cap at \$500,000. This bonus level was well above the median income for Americans, an estimated \$52,029 per household.⁴

President Barack Obama urged Congress in March 2009 to curtail these bonuses while Americans were still out of work and struggling, and media outlets expressed outrage at the high take-home pay of executives seen as responsible for the fiscal crisis.⁵ But in 2011, the bonus pool for New York's financial sector was reported to be \$20.8 billion.⁶

In addition to the TARP Program, Congress also created a position for Special Inspector General of the Troubled Asset Relief Program (SIGTARP), appointed to oversee banks' compliance with the new regulations. The inspector general's role was designed to investigate and ensure that banks who accepted TARP funds changed their business practices, looked out for customers facing foreclosures, and made fewer risky profit-driven decisions.

The inspector general issues quarterly reports intended to update Congress and the American people on the behavior

of TARP-funded banks. The report that came out in October 2011, during the height of the Occupy Wall Street movement, only served as a reminder that the Treasury was ineffective at holding the largest banks accountable:

The Department of Treasury (“Treasury”), and by extension the American taxpayer, became investors in UCB’s holding company when it received more than \$298 million in TARP funds. UCB was the first TARP bank to fail and the taxpayers’ entire TARP investment is lost.⁷

Additionally, SIGTARP reported that many banks were exiting the program prematurely, without having met standards to ensure they would continue to be stable. The report stated that the Treasury allowed banks to leave TARP early so that executives could, “. . . avoid executive compensation restrictions and the stigma associated with TARP.”⁸

The Emergency Economic Stabilization Act also included provisions to help homeowners with underwater mortgages, or people who owned more on their home than it was worth. However, by the beginning of the Occupy Wall Street movement there was an estimated \$750 billion in negative equity, and one in four homeowners had mortgages that outpriced the value of their homes. Foreclosure rates were still at historically high levels, bolstered by a second wave of foreclosures brought on by long-term unemployment.⁹

These economic hardships were not felt by all Americans. At the heart of the Occupy Wall Street movement was the motto, “We are the 99%.” Between 1979 and 2007, income for the top 1 percent (many of whom were Wall Street executives) rose by 275 percent compared to only an 18 percent increase for the poorest 20 percent of Americans.¹⁰

These developments in US policy led the Occupy Wall Street movement to begin in Lower Manhattan rather than Washington. But within weeks, cities, towns, and universities across America had formed their own Occupy movements in parks, town squares, and other open spaces.

Right to assemble

The right for Occupy Wall Street to exist was protected by the First Amendment, the right to assemble, and the right to political speech.¹¹ However, in New York City, protesters are required to get a permit to protest on city property and a separate permit to use amplified sound.¹² The Occupy Wall Street organizers had no permit, but since Zuccotti Park is privately owned, the protesters found themselves exempt from city regulations. The protesters worked around their lack of a sound permit by using a

human microphone technique to amplify the voices of speakers without technology.

As the movement spread, local agencies and parties within the federal government struggled with how to respond. Analysts at the Department of Homeland Security exchanged e-mails with emergency responders in Pittsburgh. The sender of one e-mail, whose name was redacted from record, wrote:

... [T]he Occupy Wall Street-type protesters mostly are engaged constitutionally protected activity. We maintain our longstanding position that DHS should not report on activities when the basis for reporting is political speech. We would also be loath to pass DHS requests for more information on the protests along to the appropriate fusion centers without strong guidance that the vast majority of activities occurring as part of these protests is protected. To do otherwise might give the appearance that DHS is attempting to circumvent existing restrictions, policies, and laws. To a large degree, these protests are no different from any other protests/events from civil liberties, civil rights and privacy perspectives.¹³

Evidence shows the Pittsburgh Office of Emergency Management and Homeland Security, which reports to the Department of Homeland Security, did not engage with the protestors. Their Twitter feed makes no mention of the movement at all in the fall of 2011 and their public safety updates focus mainly on weather events and road closures.¹⁴

Meanwhile, in Boise, Idaho, a US District Court granted an injunction to Occupiers saying that they could continue to maintain a symbolic tent city in support of the Occupy Wall Street movement. The judge ruled, “Occupy Boise’s tent city is a political protest of income inequality. As such, it is expressive conduct protected by the First Amendment.”¹⁵

Back in Washington D.C., Congress, which has a Constitutional mandate to legislate the affairs of the District of Columbia, held a hearing about the Occupy D.C. group camped in McPherson Square.¹⁶ The National Park Service had nominally given permission for the movement to erect a campsite on the property, a square block surrounded by the office buildings of government agencies and lobbyists.

This appears to be the only time that members of the Occupy Movement directly addressed members of Congress. They delivered a statement in absentia, saying, “That we have to ask a member of Congress to speak here for us is symbolic of the

disenfranchised and top down nature of the government we are fighting to democratize.”¹⁷

Occupy D.C.’s encampment lasted until mid-February 2012. The original Occupy Wall Street camp at Zuccotti Park was emptied on November 15, 2011, and other prominent Occupy sites across the country were mostly shut down by the beginning of 2012 after local government agencies found legal avenues to evict the occupiers. Although a few violent incidents made national news, the Occupiers and their relationships with law enforcement and government officials were largely peaceful during the multi-month long protests. As the camps shut down, the work of the Occupy movement continued online, and in Washington some officials began to address the concerns of the 99 percent.

Influence and impact

The extent to which new policies will address the wealth gap, financial reform, debt relief, and other issues raised by the protesters remains to be seen. But there can be no doubt that America’s leaders paid attention to the Occupy Wall Street movement.

On November 2, Representative Charlie Rangel addressed the House:

Mr. Speaker, today I rise in support of the Occupy Wall Street Movement and to bring the voices of the long-oppressed 99% back to the Representatives who are supposed to represent them. Truly, when I think of the vision of democracy today, instead of our gridlocked Congress, where we can hardly speak to each other because of deeply polarized political differences, I look to the Occupy Wall Street groups burgeoning across the country. They took to heart the value of the freedoms of speech and assembly consecrated in the Bill of Rights, and put them to practice.¹⁸

Not all government officials agreed so heartily. An additional report was commissioned to put Occupy Wall Street into historical perspective. The report, perhaps intended to downplay the claims of the protesters, stated:

American politics has a demonstrated history of attacks on Wall Street and financiers whose great personal fortunes appear disproportionate to their contribution to national prosperity. This tradition, which goes back at least to Thomas Jefferson, accuses high finance of siphoning off resources that could be better used elsewhere.¹⁹

The report claims that much evidence against the overpaid Wall Street executives is anecdotal, but acknowledges an increasing wealth gap in the country, and points out that “economic research no longer stands squarely opposed to the proposition that increasing concentration of income and wealth in the top 1% might have negative macroeconomic consequences.”²⁰

Meanwhile, the White House attempted to turn the conversation toward the policies on President Obama’s agenda. In one briefing, Press Secretary Jay Carney commented on the Occupy protesters:

The President has said that he understands people’s frustrations. He understands that those frustrations are felt very broadly by the American people -- at least those frustrations that have to do with the fact that the economy isn’t strong enough, the fact that unemployment is too high, and the fact that Washington is dysfunctional because of obstructionism by Republicans in Congress.²¹

In the early days of the Occupy Movement, officials offered political responses to the movement. But other officials were already at work on policies meant to address the economic needs of the 99 percent. This next section is not meant to be a comprehensive look at any one policy initiative, but instead to illustrate a few examples of the work being done during the same time period as the Occupy Wall Street protests. It is difficult to prove that the Occupy Movement did or did not impact these policies, but they are certainly related.

Foreclosures

By the beginning of the Occupy protests, President Obama had already introduced the Making Home Affordable program. It included three parts, one of which was the Home Affordable Refinance Program (HARP) meant to offer those with Freddie Mac or Fannie Mae loans the chance to refinance their mortgages. The administration projected it would help between four and five million homeowners, but only 93,000 refinanced in the first six months of the program.²² Meanwhile, more than 300,000 homes received foreclosure notices in June 2009 alone.²³

In late October 2011, one month into the Occupy movement, the Federal Housing Finance Agency announced new changes to HARP that would allow more people to take advantage of the program.²⁴ The program refinanced almost twice the number of loans in the first nine months of 2012 as in all of 2011.²⁵

Student debt

In 2005 Congress passed a law making it extremely difficult for

people with private student loan debt to file for bankruptcy.²⁶ In the following years, student debts grew at unprecedented rates, and unemployment, especially for recent graduates, rose. One report stated:

In 2009, the unemployment rate for private student loan borrowers who started school in the 2003-2004 academic year was 16%. Ten percent of recent graduates of four-year colleges have monthly payments for all education loans in excess of 25% of their income. Default rates have spiked significantly since the financial crisis of 2008. Cumulative defaults on private student loans exceed \$8 billion, and represent over 850,000 distinct loans.²⁷

In May 2011, Senator Dick Durbin of Illinois introduced a bill to relax those restrictions and help Americans with student loan debt have access to the same bankruptcy protections allowed other debtors, including gamblers.²⁸ No major action has been taken since the bill's introduction. However on October 25, 2011, President Obama introduced the Pay As You Earn plan intended to cap the amount of monthly loan payments to 10 percent of a borrower's discretionary income.²⁹ The rule became finalized on November 1, 2012, and will be in full effect by July 1, 2013.³⁰

Wall Street reform

In 2010, Congress passed the Dodd-Frank law to regulate the financial industry and prevent another economic crisis.³¹ That same year, President Obama proposed the Volcker Rule as a means to restrict banks from proprietary trading, or trading with their own money instead of soundly investing their clients' savings. This was meant to be a major step towards preventing American banks from becoming, "... too big to fail."³²

The Volcker Rule was included in the Dodd-Frank legislation but not defined until after a lengthy commenting period. On November 7, 2011, the Volcker Rule was opened to public comments.³³ From then until February 13, 2012, the rule received more than 17,000 comments, including some from members of the Occupy the SEC, an offshoot of Occupy Wall Street.³⁴ The Volcker Rule went into effect in July 2012, and its effects remain to be seen.

Conclusion

On October 29, 2012, Hurricane Sandy hit New York City, flooding coastal areas, knocking out power for hundreds of thousands of residents and requiring massive emergency response. In the days after the storm, the Occupy Wall Street movement reformed

as Occupy Sandy, using their experiences from building a tent city to Zuccotti Park to coordinate emergency response centers in the hardest hit areas, often getting there before FEMA or the city's emergency management teams. Using social media, an Amazon wedding registry site, and a number of ad hoc volunteer sites, the revamped Occupy Sandy group funneled donations to where they were most needed.³⁵

They quickly made a name for themselves as one of the quickest and most efficient responders, gaining respect from the New York City agencies that had once opposed them. Today, the New York City Public Advocate's Office solicits volunteers for Occupy Sandy's cleanup efforts in Red Hook and the Rockaways.³⁶

At the core of the Occupy Wall Street movement, protesters had a vision for a governing society that supported the needs of its citizens. Occupy Sandy offered an alternative to typical emergency response, built upon existing community infrastructures, and demonstrated that it was possible to share information and supplies efficiently to people who needed them most.

The impact of the Occupy Wall Street movement is debatable. On one hand, the protesters shined a spotlight on the problems of those most affected by the Great Recession, and claimed a right to free speech from a begrudging government. On the other hand, FBI documents suggest the Occupiers were under surveillance throughout the duration of the encampments,³⁷ and the wealth gap has not lessened significantly. Perhaps the Occupy Movement reinvigorated Americans' enthusiasm for political participation as evidenced by the citizen-led response to Hurricane Sandy. And perhaps effects from the movement will continue to be seen in the coming months and years. Most noteworthy, however, is the fact that a fairly in-depth history of the movement can be pieced together entirely from freely available government documents. This suggests a democracy that is not only open to critique from its citizens, but also perhaps to change.

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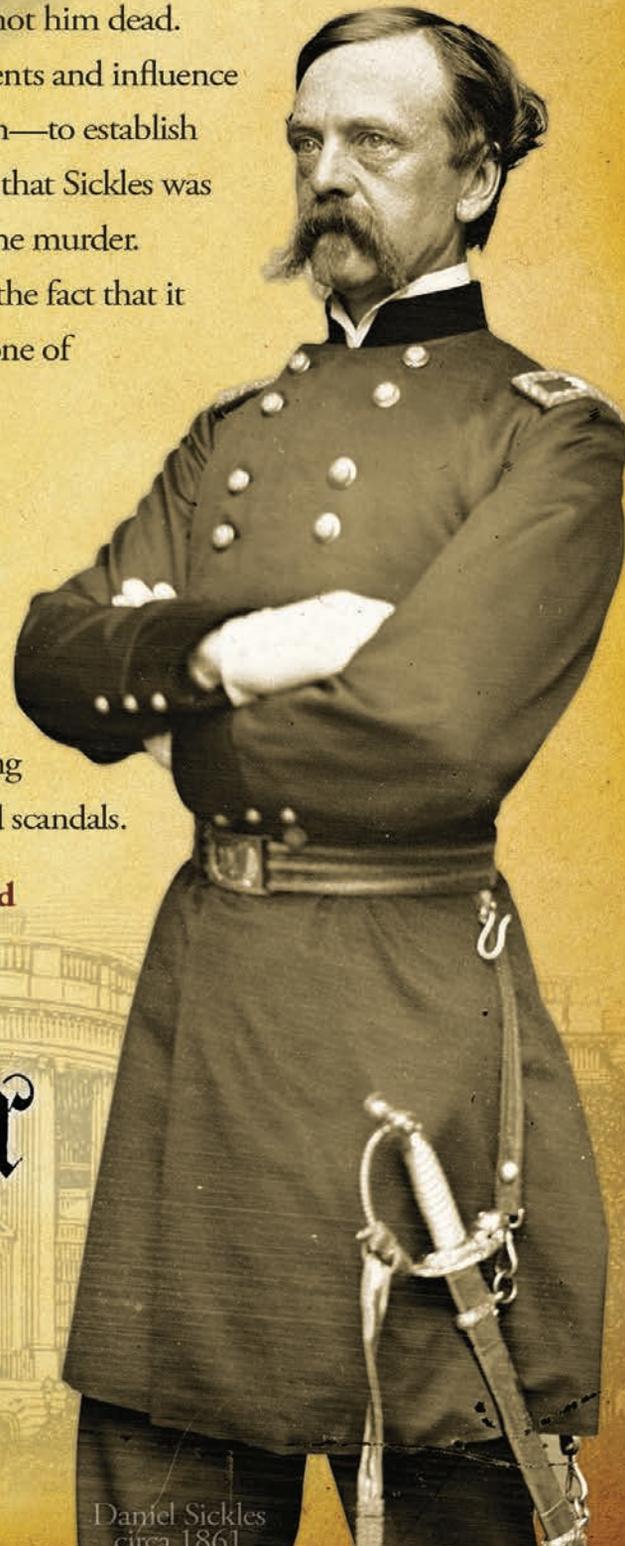
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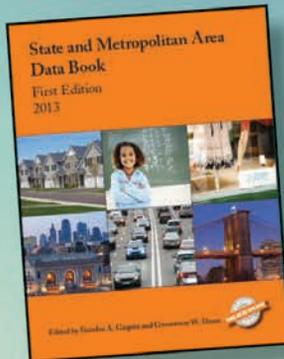
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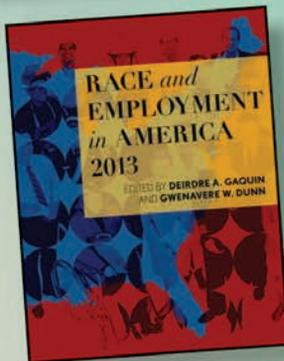
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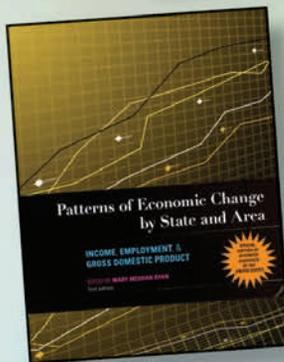
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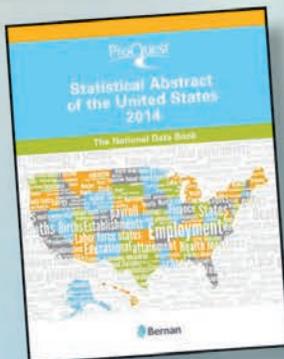
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