"Methods" and Milestones in Stan Smith's Career as an Hedonics Expert:

A Chronology

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Introduction.

This paper represents a significant amount of research into the reports, a book written by Michael L. Brookshire and Stan V. Smith, and the testimonies of Stan. Smith. It is factual in nature and does not include discussions of the many reasons this writer believes that hedonic damages testimony should not be allowed in courts of law. Those issues have been considered in other papers. This paper was devoted to providing a history of the various methods Stan Smith has used from 1985 to the present to develop his hedonic damages testimony and to also list several legal decisions that represented milestones in Smith's career. There are contradictions between some testimonies and others. Many of these contradictions seem self evident and have not been specifically pointed out. Stan Smith has been and is the leading proponent of hedonic damages testimony in courts of law. A history of his methods is warranted by the sheer volume of his testimonies.

Stan Smith's first case, *Sherrod v. Berry*[1], was a 1985 wrongful death case. In that case, Smith provided two different calculations that both have become known as "hedonic damage" calculations. The first and most widely known calculation was of Ronald Sherrod's lost

[1]*Sherrod v. Berry*, 629 F. Supp. 159 (N.D.Ill. 1985); Affm'd, 827 F.2d 195 (7th Cir. 1987); Rev'd on other grounds, 856 F.2d 802 (7th Cir. 1988).

enjoyment of life. The second, and less well known calculation, was for the loss of society of Ronald Sherrod's parents as a result of the death of Ronald Sherrod. At some point, apparently in the early 1990's, Smith began using the same methodology in personal injury cases, using percentage reductions in an injured person's annual dollar value for the ability to enjoy life. In some cases, Smith has not reduced loss of society calculations to present value on the basis of supposed state rules against discounting the value of intangibles to present value. In others, Smith has developed specialized ways for calculating losses in states with legally mandated discount rates. This short history of methods is limited to loss of enjoyment of life calculations and does not consider Smith's "loss of society" calculations or calculations made subject to required discount rates. As a general rule, however, such calculations were based on the same methodology as loss of enjoyment of life calculations. The history begins with *Sherrod v. Berry* in 1985.

1985

Stan Smith testified in *Sherrod v. Berry* (Illinois, federal district court). His testimony provided a range in values of life from the value of life literature, showing a range from $66,000 to $11.8 million for the value of life. Smith testified that he thought the correct value of life was in the range of $1.5 million. This testimony did not involve an annual value of life enjoyment calculation. It was Stan Smith's first case as an economic expert testifying in court in a personal injury matter. Judge Leighton, the trial court judge, commented favorably about Smith's testimony.

Calculation Method:

(1) Present range of value of life figures from $66,000 to $11.8 million.

(2) Suggest that $1.5 million is a central tendency of the range.

(3) Suggest that $1.5 million might be a reasonable figure for hedonic damage loss.

1987.

Federal appeals court Judge Cummings commented favorably about Stan Smith's testimony in *Sherrod v. Berry* in upholding the trial court decision.

1988. February.

Stan Smith's report in *Adams v. O'Leary* (Illinois, federal district court) was written on February 26, 1988 and his deposition was taken on February 29, 1988. Stan Smith estimated that the value of the lost enjoyment of life of Randy Adams, a 22.75 year old black male with a life expectancy of 45.1 years, was between $450,000 and $1,620,000. Smith testified that the "cluster" of values of life he considered ranged from $1.5 million to $3.0 million and that the value of the average earning capacity of an American is $600,000. A list of 25 studies that Smith provided as an exhibit to that deposition is also provided as an exhibit for this paper. It does not appear, however, that he actually used this information in calculating his damage range. He said (page 125 of the deposition transcript) that he had used a low end estimate of $10,000 per year and a high end estimate of $60,000 per year. He also said that he used a total offset approach to multiply the number of years of life expectancy by these annual values. This explains his $450,000 because $10,000 x 45 = $450,000. However, it does not explain his $1,620,000 because $60,000 x 45 = $2.7 million. The $1,620,000 in the Adams v. O'Leary transcript appears to actually be based on $36,000 per year for a 45 year period. (As a side note, Smith also uses total offset assumptions for earnings loss in *Adams v. O'Leary*.)

While $2.7 million is not mentioned in *Adams v. O'Leary* and is in contrast to the $1,620,000 figure he was explaining, the $2.7 million figure later appears in his 1990 book, as will be described below. The $2.7 million figure also appeared in his deposition transcript in

Strong v. County of Mendocino (Superior Court in California) taken on April 3, 1989. The $60,000 figure also appears later in Smith's writings with two completely different derivations. In *Adams v. O'Leary* it appears as an unexplained top range for the annual value of life without any indication of how it might have been derived.

Calculation Method:

Multiply $10,000 per year and $36,000 per year times the plaintiff's life expectancy to provide a range between $450,000 and $1,620,000.

1988. November.

A second federal appeals court decision reversed *Sherrod v. Berry* for reasons unrelated to Stan Smith's testimony. This meant that the *Sherrod* case, in which two federal judges had commented favorably about Stan Smith's value of life testimony had no precedential value.

1988. June.

Stan Smith provided two ways of estimating hedonic loss in *Charles Walters v. Lincoln Electric* (Illinois, state or federal not known) said:

> The first way is based on the decedent's ability to pay to avoid wrongful death in connection with the earning ability, premised upon a willingness to pay to avoid the loss. That estimate is $823,394. . . Secondly, my model of societal value provides an estimate based on many economic studies on what others are willing to pay to avoid wrongful death. These studies examine incremental pay for risky occupations as well as a multitude of data regarding expenditure for live savings by individuals, industry, and state and federal agencies. Based on societal value, the range is from $370,000 to $2,220,000. The range reflects that there is no precise consensus as to the value of life.

The $823,394 figure is equal to Smith's projection of lost earnings plus lost fringe benefits of Charles Walters, but without reduction for personal consumption, as with his projection of lost earnings and lost fringe benefits. This calculation is done in real terms, with a projected real growth rate of 0.76 percent and a real discount rate of 1.15 percent. The logic of

this calculation is not explained in Smith's report, but it must be that Charles Walters' ability to pay to avoid death equaled the value of his lost lifetime earnings plus fringe benefits.

Calculation Methods (two methods used in this case):

Method One:

Argue that plaintiff's willingness to pay equaled the present value of plaintiff's lost earnings plus lost fringe benefits.

Method Two:

Argue that the reasonable range in the value of life literature was between $370,000 and $2,220,000.

1988. December.

Stan Smith became famous overnight with a front page story in the *Wall Street Journal* about Stan's methods written by Paul M. Barrett and published on Monday, December 12, 1988. This story comprised the entire left hand column on the front page, continuing on page A6 for approximately equal length. This story is, by a very large margin, the most extensive coverage ever given to the opinions of any forensic economist in a major popular media outlet.

1989. April.

Stan Smith testified in deposition in *Strong v. County of Mendocino* (California, state superior court) on April 3, 1989. He testified to using $60,000 in 1987 dollars (the year for which the $60,000 annual life enjoyment figure is sometimes attributed to 1987, 1988 and 1989 in various transcripts and writings.). He also testified that the total value of the enjoyment of life of a person with an average 45 year life expectancy is $2.7 million (page 97). He described the source of that figure as follows:

The literature produces many different results and a broad range of results. It is

> my judgment that a conservative estimate that those results show as to what we are willing to pay for living saving is, at least, two point seven million. We sometimes pay less than that and we also pay more of statistically unknown others. The range is into the tens of millions in many instances.

(It is important to note that the $2.7 million figure in Strong v. County of Mendocino is a "whole life" figure, not a "net life" figure as appears in his book the next year.)

Calculation Method:

(1) Determine that $2.7 million is a reasonable central value for the value of life literature.

(2) Divide $2.7 million by a 45 year average life expectancy for a person alive in 1987 to get an annual value of $60,000 per year.

1990.

Smith joined Michael L. Brookshire in publishing *Economic/Hedonic Damages: The Practice Book for Plaintiff and Defense Attorneys* [Brookshire and Smith, 1994]. In the Brookshire-Smith book, pages 170-172, Smith provided a calculation that results in an annual life value of $60,000 as of 1989.

Calculation Method:

(1) Start from $3.5 million as the "central tendency" for the value of life literature as of 1989.

(2) Subtract $800,000 as the human capital for the average individual.

(3) Treat the residual of $2.7 million as the total present value of the ability to enjoy life.

(4) Assume that the life expectancy of an average living person at about age 33 is 45 years.

(5) Divide $2.7 million by 45 years to obtain $60,000 as the annual value of life.

(6) Project that $60,000 in 1989 has increased by both a real growth rate based on the growth in labor productivity and by the CPI-W from 1989 to the present year in one's analysis to get the

starting value for lost enjoyment of life in the current year.

(7) Project the enjoyment losses of the injury victim or decedent to grow from that current year annual rate at a real growth rate based on a 20 year period over the life expectancy of the victim or decedent and reduce to present value at a real discount rate based on a 20 year period. (In the early years, Smith sometimes used periods of less than 20 years.)

There is a calculation error in this process that is described in Brookshire and Ireland [1994]. If one uses the method described to derive an annual value of $60,000 as of 1989 and then projects the value as described in the book for an individual with a 45 year life expectancy, one should arrive at a present value of $2.7 million. The derivation is merely being reversed for an individual with a 45 year life expectancy. However, if one follows the procedure described in Brookshire and Smith, the present value is much smaller than $2.7 million for an individual with a 45 year life expectancy. The Brookshire and Ireland paper derives the correct method for converting a present value lump sum into a stream of future payments, using the error in the Brookshire and Smith book as an example to illustrate how the calculation should have been done. As will be noted in the next section, Smith apparently realized his error shortly after the publication of the book and shifted from $2.7 million to $2.3 million as the basis for calculating his $60,000 per year annual value of life as of 1988 (not 1989, as in the Brookshire-Smith book).

1991. August 29.

Stan Smith testified *Baptiste vs. Blumenshine*, Superior Court Judge, in Juneau, Alaska that the range in the value of life literature fell between $2 million and $3 million and that the figure he used was $2.3 for the statistically average person as of 1988. He pointed out that $2.3 million for an average life expectancy would yield annual value for life enjoyment of $60,000 as of 1988, which had become $66,000 as of 1989. He also testified to a 50 percent reduction in

Wilfred Baptiste's ability to enjoy life.

Calculation Method:

(1) Determine that the reasonable value of a whole life is $2.3 million.

(2) Determine from $2.3 million that the annual ability to enjoy life in 1988 was $60,000.

(3) Project a percent increase from 1988 to 1989 from $60,000 to $64,200.

(4) Multiply by 50 percent to account for a 50 percent reduction in Wilfred Baptiste's ability to enjoy life.

(5) Project a total loss of $675,000 for Mr. Baptiste's life expectancy.

1991. December 20.

Stan Smith wrote his report for *Mitchell v. Stevens,* State Court of Chatham County, Georgia, on 1/20/91. His deposition in that matter was taken on deposition on 1/15/92. In his deposition transcript, Dr. Smith testified that he reviewed the value of life literature again 1988 and arrived at a "central tendency" for the value of life literature of $3.1 million. From this $3.1 million figure, Smith subtracts $800,000 for human capital and financial security to get $2.3 million. From that figure, he determined an annual value for the enjoyment of life of $60,000. Smith has no notes from this reconsideration of the value of life literature and does not remember exactly which studies were considered. He has said, however, that the studies are essentially the same studies that were considered by Ted Miller, who published papers in the *Northwestern Law Review* and the *Journal of Forensic Economics* in 1989 and 1990. It is to be noted that this is the first case the author has seen in which $3.1 million was used as a starting point for the "whole life" value from the value of life literature. The $2.3 million figure had been used earlier as a "whole life" figure, but became in this case a "net life" figure after the reduction of $800,000 for human capital and financial security.

Smith compared his methods with those of Ted Miller, who found a value of life or $2.2 million. Smith found that Ted Miller's $2.2 million for the whole value of life and his own $2.3 million for the net value of life were similar and tended to confirm each other. (Miller's analysis used age 38 for projections as the average value of persons whose values of life are measured in the value of life studies, with a shorter life expectancy, and found about $450,000 for human capital.) Smith testified that he later derived reassurance from the similarity of the Smith and Miller values.

Calculation Method:

(1) Start from "central tendency" of $3.1 million for the value of life literature as of 1988.

(2) Subtract exactly $800,000 for the human capital of an average living person.

(3) Treat the residual of $2.3 million as the total present value of the ability to enjoy life.

(4) Assume that the life expectancy of an average living person at about age 33 is 45 years.

(5) Assume a projected real growth rate of about 1 percent and a real discount rate of something over 2 percent such that one arrives at a starting annual value of life such that when you project that value into the future at the rate of real growth that was assumed and discount it back to present value, you get a present value of $2.3 million. (How one can do that is discussed in a paper by Brookshire and Ireland [1994]. Stan Smith claimed to have derived an annual figure of $60,000 for the year 1988 by this method.

(6) Project that $60,000 in 1988 had increased by a real growth rate based on the growth in labor productivity and by the CPI-W to the current year to get the starting value for lost enjoyment of life in the current year.

(7) Project the enjoyment losses of the injury victim or decedent to grow from that current year annual rate at a real growth rate based on a 20 year period over the life expectancy of the victim

or decedent and reduce to present value at a real discount rate based on a 20 year period. (In the early years, Smith sometimes used periods of less than 20 years.)

Possible Alternative Calculation Method:

Assume that Smith wanted the starting value to be exactly $60,000 and that Smith wanted to use a real growth rate, a real discount rate, and 45 year life expectancy that was already known. Calculate that the starting present value needs to be $2.3 million to be consistent with all of these known variables. Add $800,000 to $2.3 million for human capital. Report $3.1 million as the "central tendency" for the value of life literature that Smith re-reviews to find that central tendency. Since Stan Smith was already using $60,000 before his new methods of calculation were explained, one interpretation may be that the other figures were developed to justify $60,000, rather than the other way around.

1991.

Judge Zagel excludes the testimony of Stan Smith based on a lack of scientific reliability in *Mercado v. Ahmed*, 745 F.Supp. 1097 (1991) in a federal district decision; Judge Bowman, speaking for the Appellate Court of Illinois, upholds a trial court decision to exclude the testimony of Stan Smith for similar reasons in Fetzer v. Wood, 211 Ill. App. 3d 70 (1991).

1995.

Judge Shadur, using the standards of *Daubert v. Merrell Dow*, 113 S. Ct. 2786 (1993), reviews the entire basis of Stan Smith's testimony and denies its admissibility in a caustic and vigorous manner in *Ayers v. Robinson*, 887 F. Supp. 1049 (N.D.Ill. 1995).

1997. April 3.

Stan Smith wrote his report on behalf of David Mauer on April 3, 1997. His calculations from December 20, 1991 to the date of this report for David Mauer that this author has seen

contined to use the methodology Smith described in his report and deposition in *Stevens v. Mitchell.* He projected annual losses based on $60,000 as of 1988 by the CPI to bring the value up to the year of his analysis. He added an annual real growth factor of about 1 percent (varying from year to year based on a 20 year average of labor productivity increases) to each year after 1988. This was projected for the life expectancy of the plaintiff and reduced the future stream of growing real future annual values of life enjoyment to present value by a real discount rate that was in the range of 2 percent (varying from year to year based on a 20 year average for 90 Day Treasury Bill interest rates).

1998. June 10.

Stan Smith wrote his report for *Wright v. The Vons Companies, Inc.*, District Court of Clark County, Nevada on June 10, 1998, and testified in trial in November, 1999. In this report, Smith did not add real growth to his 1988 starting annual value of $60,000 for life enjoyment and added only cost of living increases based on the CPI-W. By this time, he had taken criticism for his assumption that people are getting happier each year at the rate of real growth in productivity for wages. Whether that was the reason for his decision to switch from projecting productivity increases to projecting only cost of living increases is unknown.

Calculation Method:

The steps are the same as those described for *Stevens v. Mitchell*, described above, except that there area no real increases in the value of the ability to enjoy life based on increases in labor productivity.

2000. January 21.

Stan Smith's report in *Tonsgard v. State of Alaska*, dated January 21, 2000 showed an annual value of the ability to enjoy life of $118,000. This was 41 percent higher than his annual

value of the ability to enjoy life in *Wright v. The Vons Companies, Inc.*, that he had testified to just two months earlier at trial. Smith was asked to explain this difference in his deposition in *Tonsgard v. State of Alaska* on June 12, 2000. Smith testified that he had been under compensating his attorney's clients for years because the real interest rate had increased significantly from 1988 to 1998. He testified that he finally "bit the bullet" and realized that he needed to make changes even though they might look awkward. This author had issued an affidavit describing the probable change in Smith's methodology. Smith acknowledged in his deposition that Ireland's affidavit had correctly anticipated the change in Smith's methodology.

The essence of the new method was a change in the variable being increased by the CPI-W. In *Wright v. The Vons Companies, Inc.*, Smith had reached his $83,000 annual figure by adding increases based on the CPI-W to $60,000 as of 1988. He switched from increasing the $60,000 per year in 1988 to increasing the $2.3 million net life value as of 1988 by the CPI-W to get $3.2 million. He then applied a modern larger net discount rate, using the method developed in Brookshire and Smith [1994] to determine that $118,000 was the starting annual value need to obtain a $3.2 million present value for a statistically average person with 45 years of life expectancy.

Calculation Method:

(1) Start from "central tendency" of $3.1 million for the value of life literature as of 1989.

(2) Subtract exactly $800,000 for the human capital of an average living person.

(3) Treat the residual of $2.3 million as the total present value of the ability to enjoy life.

(4) Assume that the life expectancy of an average living person at about age 33 is 45 years.

(5) Increase the $2.3 million by the CPI-W to find the value of $2.3 million in 1989 as of the current year. In one recent case, the value of $2.3 million in 1989 now has a purchasing power

equivalent of about $3.3 million in 2000.

(6) Use the resulting present value of $2.3 million to derive an annual value of the enjoyment of life that will result in a present value (How one can do that is discussed in a paper by Brookshire and Ireland in the *Journal of Forensic Economics*, "Converting From a Present Value Lump Sum to a Future Payment Stream," 1994, 4(2):19-38.) In 2000, this yielded a starting annual value of life of $120,000. ($134,676 as of April, 2002)

(7) Project that starting annual value over the life expectancy of the injured person or decedent in constant real terms, discounted to present value at a real discount rate based on a 20 year average of interest rates on 90 Day U.S. Treasury Bills.

2002.

The Mississippi Supreme Court upheld a trial court decision to allow Smith's testimony in a death case in *Choctaw Maid Farms, Inc. v. Hailey*, 2002 Miss. LEXIS 181, after having done so in a personal injury case in *Kansas City S. Ry. v. Johnson*, 798 So. 2d 374 (Miss. 2001). This appeared to be a major victory for Smith in the state of Mississippi. However the Mississippi Legislature passed a tort reform act in November 2002 that went into effect on January 1, 2003. That act, among other provisions, specifically prohibited expert testimony about hedonic damages.

Conclusions

In September 1985, Stan Smith became the first reported economic expert to try to place a specific dollar value on lost enjoyment of life and on the loss of society in *Sherrod v. Berry*. Word of that testimony apparently began to circulate among plaintiff attorneys, but he did not become famous for this testimony within the community of forensic economists until Paul Barrett's front page story in the Wall Street Journal on December 12, 1988. His initial method

was quite simple compared with methods he used later. His testimony was that the value of life literature, with values ranging from $66,000 to $11.8 million, with central figure he regarded as reasonable of $1.5 million. He used that figure as a "benchmark" for the value of Ronald Sherrod's lost enjoyment of life and for Ronald Sherrod's parents loss of society with Ronald Sherrod. In a written decision, the federal trial court judge commented favorably about Smith's testimony. In the first appeal of that case, the decision was upheld and the federal appeals court judge also spoke favorably of Stan Smith's testimony. The decision was ultimately reversed after a second appeal and the first two decisions lost their precedential value, meaning that they had almost no standing in law as a precedent for future decisions. Nevertheless, this was heady success for Stan Smith in what was his first case as an independent economic consultant.

As of 1988, Stan Smith had begun experimenting with ways to make this testimony even more effective. Changes in his methodology came in rapid order from 1988 to 1991, as was shown in the discussion of Smith's reports and testimonies during that period. The "central tendency" of the value of life literature rose from $1.5 million in Sherrod to $3.5 million in the Brookshire/Smith book and then back down to $3.1 as of 1988 in testimonies as of 1991. The mistake that was made in the calculations in his book in 1990 had been corrected in his testimonies in 1991 by the reduction of the central tendency in the value of life literature from $3.5 million to $3.1 million, as discussed in this paper.

Over time, Smith provided various various different accounts of how he arrived at his "central tendencies" for the value of life literature. In recent years, he has testified that he has no notes and has no list of the studies he considered in 1988 when developing his opinions. The list that is attached to this paper, however, makes it clear what studies he was considering in February 1988 when he prepared his report for *Adams v. O'Leary*. That list seems to have long

since been put aside because the number of items was only 25 and many of those items do not provide annual values of life. Smith has found it much more convenient to claim that the studies he looked at were essentially those discussed in Ted Miller's 1989 and 1990 papers. Smith has always claimed, however, that he had done his own survey and that he did not and has not relied on the list provide in Miller's studies [1989, 1990] other than the reassurance he took from Miller supposedly having arrived at similar conclusions. Even that claim, however, does not stand up when one realizes that Miller arrived at a $2.2 million "whole life" figure as of 1988. Smith was using a "whole life" figure of either $3.5 million (in his book) or $3.1 million (in his testimonies after 1991).

Before 1990, Smith did not make subtractions for human capital from the value of life. He treated the "whole" value of life as a proxy for the value of lost enjoyment of life of an average person. In the Brookshire/Smith book, he subtracts $800,000 for the human capital of an average person to get from "whole life" value of $3.5 million to $2.7 million, which is then used to derive his $60,000 annual value of life as of 1989. As seen in the discussions above, however, Smith was already using $60,000 per year as the top of a range for the annual value of life enjoyment (with $10,000 per year as the low end) in *Adams v. O'Leary* in 1988. The $2.7 million figure does not appear in that case, but is the correct value based on $60,000 per year for 45 years, which was the method used to calculate the low end value of life figure of $450,000 in that case. It appeared that Smith made a mistake in his calculations and actually used $36,000 per year to get $1,620,000 as his top end figure.

A student of his methods gets the impression that Stan Smith was experimenting during this period to try to find a method that had more solid theoretical underpinnings than his initial and quite successful *Sherrod* testimony. Numbers he had used earlier reappear, but with

different meanings and different derivations the second time. There are three different derivations of his initial $60,000 annual value of life and it is attributed in different sources to 1987, 1988 and 1989. The first derivation is from Adams v. O'Leary as a reasonable top end of a range for the annual value of life from $10,000 per year to $60,000 per year. The second is from the Brookshire/Smith book in which one starts with a $3.5 million "central tendency" for the value of life, subtracts $800,000 for an average person's human capital to get a "net value of life" of $2.7 million. That figure is then divided by 45 years to get $60,000 per year. The third method, appearing in testimonies in 1991 is to start from $3.1 million, subtract $800,000 to get a "net value of life" of $2.3 million. Then determine that the starting annual value of life, based on the growth rate in real productivity and the real discount rate one has assumed must be $60,000 (by a method equivalent to the one explained in Brookshire and Ireland [1994].

As of 1991, Smith seemed to settle into a basic methodology that remained constant until 1998. He had never explained how the $800,000 figure for human capital in his book could remain the same in his 1991 calculations when his starting value of life fell from $3.5 million to $3.1 million and net value of life fell from $2.7 million to $2.3 million. He had also never explained how he had gotten round numbers like $800,000 for lifetime human capital and $60,000 per year for life enjoyment. He did settle into using $60,000 per year as of 1988 instead of 1987 or 1989. His deposition testimonies show great effort to avoid discussions of what he had done to come up with these starting values. Nevertheless, he continued to use them.

In 1998, in *Wright v. Vons Industries,* he stopped increasing the annual value of life enjoyment by a real productivity factor, but continued to rely on $60,000 as of 1988. Sometime within the next year and a half, he made the decision to give up $60,000 as of 1988 and to instead reconstruct his figures from the $2.3 million figure for the net value of life in 1988. By

increasing the $2.3 million figure by the CPI-W to $3.2 million and using then his current real discount rate of 2.45, he was able to increase his projected annual value of life from $83,000 to $118,000 in *Tonsgard v. State of Alaska*. When asked about this change in methodology, which this author had figured out and described in affidavit in that case, Smith acknowledged the change in his methodology.

In reports and testimonies, Smith has tried to focus on the $2.3 million "net value of life" as of 1988 and will only discuss the $3.1 million whole value of life as of that year when pushed to do so. Part of this may be the contradiction between the $3.1 million and the $3.5 million in the Brookshire/Smith book. Part of it may be that his $2.3 million "net life" figure is quite close to Ted Miller's $2.2 million whole life figure. Part of it may be the difficulty of justifying the $800,000 figure for an average person's human capital as of 1988. However, it seems clear that Smith does not bring up his $3.1 million "whole life" figure unless pushed to do so. It is difficult to escape the impression that Smith, having just gotten started in forensic economics, found himself on top of a testimonial gold mine in "hedonic damages analysis." Having done so, he has tried to make adjustments in his testimony over time that would both increase its apparent credibility and increase the annual values for life enjoyment that he could offer plaintiff attorneys.

Stan Smith's hedonic damages testimony has traditionally been challenged on the basis of theoretical objections to deriving any value of life enjoyment from the value of life literature. Because of his testimonies, a substantial literature has grown up pointing out the flaws in using the value of life literature to derive even the most remote guesses about dollar values of the enjoyment of life or of the society of another person. Until this paper, practical problems with the claims Stan Smith has made over the years about *how* he has used the value of life literature

to derive his testimonial values. This paper has shown quite dramatic changes, particularly from 1985 to 1991 and then again after 1998. Even if the underlying concept was reasonable, which is not, the methods used by Stan Smith could not be justified as having any scientific accuracy. One cannot escape the simple conclusion: He makes up his calculations as he goes along.

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Appendix

[The appendix appearing on the next page consists of an exhibit Stan Smith brought to his deposition in *Adams v. O'Leary*. It is a list of the value of life literature he considered relevant in February of 1988.]

ECONOMIC LITERATURE

RE: RELATIONSHIP BETWEEN INFLATION RATE AND INTEREST RATE

Stocks, Bonds, Bills, and Inflation: 1987 Yearbook
(Ibbotson Associates, Chicago)

RE: VALUE OF LIFE

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