

Volume 1 Number 1

NIVA JOURNAL

Official Journal of the New International Virtual Association

Name of Publication: **NIVA JOURNAL**
Issue: Volume 51 # 2 ISSN 2154-1745
Frequency: Quarterly
Offices of Publication: New International Virtual Association
Mailing Address
2020 Hills Lake Drive
El Cajon, CA 92020

On Line journals: niva.world
Email: niva.world2@gmail.com

The NIVA Journal is being abstracted in: Cabell's Directory; Eric Clearinghouse; EBSCO, Economic Abstracts; Historical Abstracts; Index to Periodical Articles; Social Science Source; Social Science Index; Sociological Abstracts; the University Reference System.

We wish to thank all authors for the licensing of the articles. And we wish to thank all those who have reviewed these articles for publication



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NIVA JOURNAL

Volume 1 #1

Table of Contents

Publius the Prophet

Danny Atkinson, Oklahoma State University

Black Screven, Georgia in 1950: A Research Note on the Black Population

J. Vern Cromartie, Contra Costa College

The Horn of Africa as a Theater of Global Hegemony and Power Positioning: Who are the Actors and Why?

Walle Engedayeha, Prairie View &M

A Potpourri of Happy Endings: An Analysis of Subgenres of Roman Novels

Patricia M. Kirtley and William M. Kirtley, Independent Scholars

Gamification of History: AI-Powered Educational Games in Social Studies

Steven Grubaugh and Greg Levitt, University of Nevada, Las Vegas

Selecting Presidential Candidates: Staging a Mock Republican Convention on a Modest Budget

Joseph A. Melusky, St. Francis University

The Blues Man, the Blues Woman, and the West African Griot/-te Tradition

Evelyne Delgado-Norris, Chicago State University

Foreign policy, Factionalism, and Chaos in New York, 1790-1815

Harvey Strum, Russell Sage College

A Study of the Influence of Mobile Devices in Elementary Education

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As the popularity of mobile devices such as smart phones and tablet computers has increased, so has their role in education (Murphy, 2015). In fact, according to Franklin (2011), the high degree of mobility and ease of use of these devices allows for educators to readily integrate technology into the instruction at a more rapid pace than previous options such as stand-alone computers. For elementary children, others have found that engagement using the devices has empowered them as learners and resulted in higher success rates (Franklin, 2011; Kiger, Herro, & Prunty, 2012). Likewise, Jakopovic (2010) found that increased teacher collaboration and professional development with technology had a positive effect on teacher motivation to incorporate technology into the curriculum and has led to greater student successes. Additionally, through the incorporation of technology, teachers have more easily differentiated classroom content activities to reach struggling students and meet Individual Education Plan requirements (Stanford, Crowe, & Flice, 2010).

Some school districts either have already or are preparing to deploy mobile devices as a means of integrating technology into the elementary curriculum. While adding technology to the classroom and exposing children to new experiences sounds positive, a district must be able to have evidence to support such a shift in teaching methods. When considering the money required to pay for the devices and the infrastructure to support them, a superintendent and school board must justify the results that will come from such an endeavor. According to Murphy (2015), American schools spent \$8.38 billion in 2014 on software, digital content, and professional development.

The students in school today are digital natives in that they have been raised surrounded by technology (Dietrich & Balli, 2014). Students have an expectation of technology existing everywhere in their world. Schools must work to keep students engaged in their learning, and mobile devices may provide the opportunity to increase student engagement in school work and lead to more successful learning (Schlechty, 2011; Sheninger, 2014).

Additionally, teachers may need proof of success to buy into these new devices and overhaul the way they have taught in the past. While digital learners enjoy quickly accessing information, many educators prefer to control how and when information is delivered (Sheninger, 2014). Integrating mobile devices into learning is much more than putting iPads in a classroom. Teachers must adjust how they teach with this new technology. After reviewing the research on implementation of mobile devices in elementary education, several topics that continue to arise are student engagement, academic benefits, and educator perceptions.

Review of the Literature Student Engagement

According to Schlechty (2011), students who are engaged in their learning are more attentive and retain more of what is learned, leading to greater student success. Students have access to applications that allow them to gain information from experts on the Internet and create digital products which they can share with people around the world. This increased engagement and use of devices may lead to increased student success. The greatest result with these devices is when teachers fully embrace the technology, seek out professional development, are supported by principals and district administration,

and integrate them into the existing curriculum (Al-Alwidi & Alghazo, 2012). The benefits of the devices in the classroom such as engaging work and greater opportunities for higher level learning outweigh the risk of implementation and the cost of the devices (Haydon, Hawkins, Denune, Kimener, & McCoy, 2012). By increasing the student engagement, integrating the technology into the classroom, and providing classroom teacher support, student success is likely to follow (Schlechty, 2011).

Educator Professional Development

For integration of mobile devices to be accepted by teachers in classrooms, administration must support the teachers with professional development and infrastructure. Sheninger (2014), a principal at New Milford High School, stated, “Without this element [professional development] in place, change surely will not occur” (p. 66). Strategic change agendas allow administrators to create a guided strategic thinking process with action steps to support teachers as innovative changes occur within a school district (Schlechty Center, 2015). This process incorporates and engages all stakeholders in the process of achieving a new vision for the school and classrooms and supports the transformation into a learning organization. If schools want to make major changes such as adding mobile devices to the classrooms, administrators should approach the process with a supportive mindset to increase success. By using personal learning networks (PLN) administrators and lead teachers share information and strategies with other staff members to continually reinforce integration strategies (Sheninger, 2014).

Leader and Teacher Feedback

Eanes ISD in Texas implemented a 1:1 mobile device initiative four years ago. The program called LEAP (Learning and Engaging Through Access and Personalization) constantly surveyed teachers regarding their experiences and needs, and the administrators adapted the program based on teacher input (Hooker, 2015). By considering teacher feedback, devices have continued to be incorporated into the classroom environment. This staff empowerment helps to secure buy-in from the teachers and promotes device usage in the classroom (Sheninger, 2014). According to Sheninger (2016), though leaders at schools often do not work directly with students each day, they are essential to creating the capacity for change. Leaders clear obstacles and challenges to empower teachers to carry out the change process. By creating a vision for change and a positive school culture, leaders can support teachers and enable them to transform classrooms by integrating technology (Sheninger, 2016).

Methodology

The focus of this study was to discover the benefits of student engagement through the perceptions of educators related to the use of mobile devices in the elementary classroom. As a result, the research question that guided the study was: How do mobile devices in the elementary classroom affect student success?

Participants in this mobile device study were five fourth grade teachers at two elementary schools in North Texas. The teachers in the pool had classroom experience ranging between 3 and 15 years. One teacher had a Master’s degree while the other four had Bachelor degrees. Included in their classrooms were students categorized as general education, Gifted and Talented, English Language Learners, and Special Education. All teachers who were interviewed on their campuses experienced the transition in the district from a classroom with no iPads to having a partial set of iPads to a 1:1 deployment two years ago.

The school district participating in the study was in northeast Texas and served approximately 6,500 students on ten campuses. Students in the district were primarily Anglo in race, and 53% qualified for free or reduced lunch. The district served five cities located in three counties. The district was rurally located, and the students were spread over a large area. Because of location and socio-economic factors, many students did not have home Internet service.

The superintendent made integrating technology into classrooms a goal when he arrived in the district seven years ago. Initially in the technology upgrade, each classroom was issued one teacher laptop, two student desktop computers, one projector, one document camera, and one SmartBoard. Four years ago, the district purchased 20 iPads for one fourth grade class to test mobile device integration. Later that year, all teachers were issued one iPad. The following year ten iPads per classroom were issued at the lower elementary schools, and carts of iPads were installed at the junior highs and high school for check out. Two years ago, the school district moved to a 1:1 platform where all grades Pre-K-6th had classroom sets

of iPads to serve all students and 7th – 12th grade students were issued an iPad to keep with them until graduation. This was the current model of deployment at the time of the study. Additionally, three new district positions were created to support teachers with mobile device integration and to assist in maintaining iPads and the supporting infrastructure. These Instructional Technology Specialists led trainings during the summer, co-taught classes with teachers, and provided immediate support as questions arose to enhance and continue successful integration.

Data for this phenomenological study was gathered through five individual teacher interviews and utilized a guided protocol for questioning (Creswell, 2013). The researcher obtained access and appropriate permissions for the teachers participating in the research. Once rapport was established, interviews were conducted after iPads had been in use in a 1:1 deployment model for two school years. The interviews were recorded and transcribed. Data comparisons and anecdotal evidence from the different participants were compared to determine differences in approach and results.

Once data gathering was complete, the researcher followed Creswell's (2013) strategies for data analysis of preparing the data and reducing the data to themes and codes. Once the texts and documents were examined, common themes were identified and coded (Creswell, 2013).

Findings

Findings from this study led to the conclusion that mobile devices in the elementary classrooms positively influenced student engagement. However, the influence of mobile devices on student success as defined in this study was primarily positive with some mixed observations from the teachers. Finally, teachers preferred a one-to-one deployment of mobile devices in their classroom, but significant professional development and support were needed for the integration into the learning to be successful.

Most of the teachers reported student grades and test scores increased after the addition of iPads to the classroom. Further, teachers reported that by adding academic games to the iPad, student math scores improved on district benchmark assessments. All the teachers agreed that iPads in the classroom improved student behavior, though it also presented them with some new classroom management challenges. Three teachers noted a positive impact on attendance rates.

This study agreed with the findings from a previous study by Shih, Chuang, and Hwang (2010) regarding elementary student device usage and Cognitive Load Theory. This study found that the iPads did not place an overload burden on students when learning content. Several teachers expressed that knowing how to use the iPads was second nature to the students and often the easiest part of what they did in class. One teacher stated that she often utilized the device more with her academically struggling students to differentiate for their needs and help them to improve their skills.

The findings for this study supported educators feeling positively towards student engagement and the use of mobile devices positively influencing student engagement. Schlechty (2011) stated that when students are engaged in their work, they are attentive, voluntarily committed to the work, persistent through difficulties encountered, and find meaning and value in the work they are doing. All teachers in this study felt that student engagement was extremely important for students to be successful in learning academic content and retaining knowledge. Voke (2002) concluded that students who were engaged in the learning process found greater satisfaction with their school experience. The teachers in this study noted that students were persistent in their work and did not want to stop working at the end of class time. This study found that mobile devices positively contribute to increasing student engagement. Students were excited to use the devices for lessons not possible without the devices. This finding is supported by two studies showing digital natives are more engaged with technology, and the mobile devices increase engagement and motivation (Dietrich & Balli, 2014; Long, 2013). Adding technology to classroom lessons makes students feel as if they are participating in the world and not detaching from it (Sheninger, 2014).

This study found that all five teachers introduced learning centers or stations to their classrooms since receiving iPads, and they believed this change benefited students by allowing more individualized attention. With the iPads as a station, the teachers differentiated for student needs and provided engaging learning activities. All teachers noted that the iPad was not always the best learning tool, and their principals and district administration supported this thinking.

Professional development and technology support were extremely important to all the teachers in the initial integration phase of receiving iPads. They stated that campus professional learning communities (PLC), peer collaboration, and instructional technology specialist support allowed them to become comfortable with the devices and gain confidence in the integration. Miranda and Russell (2012) found that the more frequently technology is used by teachers, the more confidence they will build. Efaw (2005) stated that as teacher confidence and comfort increase with the devices, so will their excitement and ability to use them in class. Their findings were consistent with the teacher statements and findings of this study.

Levin and Schrum (2013) found schools who promote and support technology integration lead teachers to change. This change is consistent with the actions of the school district in the study and supports transformational leadership theory. Finally, teachers in this study prefer one-to-one mobile device deployment in their classrooms because it leads to the greatest usage of the devices in class with the fewest difficulties.

Discussion and Implications

The popularity of mobile devices such as smart phones and tablet computers continues to increase as does their role in education (Murphy, 2015). The study attempted to gain insight to educator experiences with mobile devices and how professional development and technology support assisted them with integrating the devices to increase student success and student engagement. The findings provided information that had the potential to influence school district administrators when making the decision to purchase mobile devices and begin a technology implementation program. The researcher discovered that the mobile devices transformed the learning style in the classroom, and the teachers have adapted their instruction to embrace the technology.

Implementing a mobile device initiative in a school district is very costly both in technology and professional development for teachers. Murphy (2015) reported that in 2014 American schools spent \$8.38 billion on technology and staff professional development. Based on the conclusions drawn from the findings of this study, professional development for teachers at the time of implementing mobile devices to the classrooms is vital for a successful mobile device initiative. Without professional development for teachers, change will not occur (Sheninger, 2014). Teachers need to become comfortable and confident with the devices so they will be excited to implement them into the classroom (Efaw, 2005; Miranda & Russell, 2012). Initial professional development should be offered prior to students receiving the devices and should continue frequently during the first year with monthly face-to-face learning opportunities such as professional learning communities. Further, the addition of ongoing technology support and additional support staff for the campus to continue professional development and maintain the devices will help the teachers to continue integration of the mobile devices and discover new methods for utilization over time. Teachers found comfort in knowing they have someone to call for assistance or advice when attempting a new application. Additionally, campus and district administrators should be clear with teachers regarding the vision for iPads in the classroom and their expectations of usage. If teachers do not feel supported or if they are confused of what is expected, integration may be delayed or not occur. Teachers should be encouraged to initially make small changes in their instruction to include the devices.

Future studies regarding mobile device integration could include study of the following topics:

- Future qualitative studies could include a larger number of teachers from multiple grade levels. Additionally, a study of teachers with one to three years of experience could be insightful regarding the perception of new teachers being more comfortable with technology.
- A study regarding the influence of Professional Learning Communities (PLC) on teacher professional development could be informative, as it seemed to have a successful impact on the teachers of this study.
- A quantitative study on school benchmark grades and standardized test scores showing growth, decline, or stagnation from the implementation of mobile devices would provide useful data for schools to show the impact of mobile devices. Because this is a growing and changing area, many opportunities exist for conducting future research.

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Candidate Perceptions of Faculty Presence in An Online Principal Preparation Program

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Introduction and Background

Faculty presence in an online environment is critical to foster student teaching and learning (Boettcher & Conrad, 2016). Creating a sense of presence in the learner requires the instructor to integrate tools and best practices that will enhance faculty presence (Samuel, 2015). Lamar University, a regional four-year university in southeast Texas, began a master's educational administration principal preparation program in October 2007 with 340 candidates in the College of Education's Department of Educational Leadership. In less than two months, the enrollment increased to over 900 students. A masters of Educational Technology Leadership degree program was added in 2008 and in 2014 the third master's degree, Digital Learning and Leading, began. Currently, the online programs in the department include master's degrees in Educational Administration, Educational Technology Leadership, and Digital Learning and Leadership, as well as Principal and Superintendent Certification programs. The online enrollment in Fall 2016 was 1986 students which included 1098 Educational Administration candidates, 140 Educational Technology Leadership candidates, 79 Digital Learning and Leadership students, 583 Principal Certification candidates, and 86 Superintendent Certification candidates. The purpose of this study was to examine online students' perceptions regarding the usefulness of course tools and practices in an online course to enhance faculty presence.

The simplest description of presence is "being there" (Boettcher & Conrad, 2016).

Faculty presence is the feeling of students that they are being taught by an individual (O'Reilly, 2009). Faculty is present when they are seen as more than just a name on a page or a person assigning a grade. Faculty presence is part of demonstrating personality, knowledge, and understanding. As a significant component of the online environment, faculty presence promotes critical teaching and learning.

In acceptance of Boettcher and Conrad's (2016) assumption that presence is an important best practice in an online course, the researchers examined online Masters of Education students' perceptions regarding the usefulness of course tools and practices in an online principal preparation course to enhance faculty presence in teaching and learning. The research question guiding the study was "To what extent do students perceive course tools and practices used in an online principal preparation course enhance faculty presence and the teaching and learning process?"

Review of the Literature

Hussein, Fareaj, Barak, and Dori (2012) reported that early distance education courses were described as isolating for students without adequate faculty presence. By studying student perceptions and learning experiences, course developers created and adopted interactive and collaborative tools and practices to improve faculty presence in online courses. Konings, et al. (2016) stressed that the addition of online group meetings with video conferencing helped to overcome disadvantages of student and instructors being in different locations. Akyol and Garrison (2011) emphasized the role of social presence in developing a supportive learning environment where students felt comfortable. Yang, Quadir, Chen, and

Miao (2016) recommended the use of engaging tools such as live chat, discussion forums, and weekly Google Hangout meetings to enhance teaching presence as well as learning outcomes. In addition, Wang (2014 p. 357) maintained that with the increasing use of social media and tools for collaborative learning in online courses, student interactions could contribute to the course and to the students' performance. The Hussein, et al. study supported others who observed that the courses' pedagogy and technology could be of better quality if students' social interactions were enhanced by faculty presence in the learning environment.

Methodology

This study was approved by the Institutional Review Board of Lamar University. All participants consented to be a part of this study by responding to an email invitation and choosing to respond to the online questionnaire Survey Monkey link. A three-part structured questionnaire was used to collect the following: a) Demographic information, b) Perceptions of faculty presence and support, and c) Open-response questions. Questionnaire data were collected during an online principal preparation five week course in the Summer 2016 semester.

Descriptive statistics were used to analyze the quantitative data collected from the sections A and B of the questionnaire. The frequencies and percentages of students' responses were reported. The open-response questions in section C were examined for overall trends and themes.

Findings and Discussion

The research population targeted for this study was the 317 graduate students who were enrolled in EDLD 5326 School Community Relations during the Summer semester 2016. Of the 317 students, 86 respondents completed the survey for a response rate of 27.1%. Participants for this study were invited to participate through an introductory email during the course. The survey link was distributed in the introductory email. Candidate background information was gathered in the first section of the survey, the second section pertained faculty presence and support. Two open-response questions were asked at the end of the survey. Descriptive statistics were used to analyze the collected data. The open-response questions were examined for overall trends and themes.

The demographics of the student participants were similar to the overall online student population. Data for the population were obtained from information released by the university distance education office. The majority of the respondents were Caucasian females. The largest minority groups were Hispanic students with 16 respondents comprising 18.6% and 4 African American students representing 4.7% of the total population. Approximately 88.4% of the participants were between the ages of 25 and 45. Table 1 displays the demographics of the questionnaire participants.

The survey also collected data regarding the respondents' experience as a student in online courses as well as faculty presence associated with the online environment. The majority of the respondents (46.5%) reported an intermediate level of experience.

Section two of the survey pertained to perceptions of faculty presence and support in an online principal preparation program. Data were collected regarding sense of faculty presence associated within the online environment and the course tools that respondents perceived contributed to support and faculty sense of presence. Table 3 presents that approximately one-half (49.4%) of the participants reported that from the beginning of their program to when they completed the survey, their sense of faculty presence associated within the online environment was satisfactory. The participants' responses to tools used in the online environment to for support and sense of faculty presence are reported in Table 4. While students provided positive feedback on the course tools and practices as a whole, they indicated that course announcements (69.7%), course overviews (68.6%), recorded web conferences (68.6%), and emails (64%) with course professors were most helpful in supporting their course work and creating faculty sense of presence in the online principal preparation program.

Conclusions and Recommendations

Students perceived that the communication tools served to enhance clarification of performance expectations and the students' ability to organize their coursework around their busy lives as they engaged in the five week online courses contributing to faculty presence. Additionally, students' positive comments regarding interactions with the professors, whether through one-to-one emails or in web

conferences where students saw the professor, asked questions, and participated in discussions in 'real time', indicated a desire for and appreciation of tools that humanized the online environment. Students' comments expressing a desire for more discussion time during web conferences and more detailed feedback reinforced the need for tools and strategies which provide personalized support.

The researchers' recommendations for future studies include a study to better understand how faculty actually use the features and options available in web conferencing platforms to effect student engagement, interaction, and collaboration. A study to identify tools and strategies that align with cognitive, social, and teaching presences in online courses to minimize challenges of online learning such as learner isolation, lack of experience with collaborative group work, as well as to develop higher level learning is also proposed. A study examining how faculty use features of the learning management system to effect faculty presence could provide useful insights, as well. As online courses become more prolific, it behooves faculty to experiment with the many tools and strategies available to enhance the online teaching-learning process.

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Table 1
Participants' Demographics

Demographic	Frequency	%
Gender		
Female	61	70.9
Male	25	29.1
Ethnicity		
African-American	4	4.7
American Indian	1	1.2
Asian	0	0.0
Caucasian	64	74.4
Hispanic	16	18.6
Pacific Islander	0	0.0
Two or more races	1	1.2
Age Range		
Under 25	0	0.0
25 – 35	36	41.9
36 – 45	40	46.5
46 – 55	8	9.3
Over 55	2	2.3

Table 2
Participants' Experience as a Student in Online Courses

	Frequency	%
Beginner	15	17.4
Intermediate	40	46.5
Advanced	31	36.0

Table 3
Faculty Presence Associated with the Online Environment

	Frequency	%
From the beginning of your principal preparation program to the present, what option below best describes your sense of faculty presence associated within the online environment?		
None at all	0	0.0
A little sense of faculty presence	3	3.5
Somewhat sense of faculty presence	21	24.7
Quite much sense of faculty presence	42	49.4
Very much sense of faculty presence	19	22.4

Table 4
Tools and Practices Used to Enhance Faculty Presence

Tool/Practice	Frequency	%
Course Announcements	60	69.7
Course Overviews	59	68.6
Recorded Web Conferences	59	68.6
Emails with Professors	55	64.0
Course Welcome Letters from Professors	48	55.8
Synchronous Web Conferences	45	52.3
Report Templates, such as Action Research	41	47.7
Concluding Remarks from Course Professors	35	40.7
Facebook Groups	33	38.3
Personalized Introduction Video	33	38.3
Other	8	9.3
Not Applicable	1	1.2

Executing Executions: The Supreme Court at Its Worst?

*Danny M. Adkison
Oklahoma State University*

Introduction

From the beginning of the United States republic under the Constitution of 1787 until the *Dred Scott* decision of 1857 the Supreme Court of the United States declared only two Congressional laws unconstitutional.¹ In fact, until 1937 the Supreme Court seemed to go out of its way to avoid striking down bills passed by the Congress. As Justice Brandeis, one of the most famous Justices to serve on that Court, put it, “The Court has frequently called attention to the ‘great gravity and delicacy’ of its function in passing upon the validity of an act of Congress... .”² The Court first made that assertion about the “great gravity” involved in declaring a congressional enactment unconstitutional in 1867.³ Justice Brandeis highlighted it in a 1936 decision, just before what would become one of the most memorable moments in the history of the Supreme Court: the switch in time that saved nine.⁴ Just a year later the Court articulated the nature of the “switch” in the Court’s attitude concerning congressional enactments in one of the most important footnotes in the history of the Court: footnote 4 in *United States v. Carolene Products Company*.⁵

What is sometimes forgotten is that Justice Brandeis not only provided the historical evidence for the Court showing deference to the Congress, he also once listed a set of principles that would guide in the Court in making its decisions. He issued four major points concerning this: (1) the Court should not make a constitutional ruling unless absolutely necessary; (2) the Court should not cast a constitutional ruling more broadly than needed to decide a case; (3) if possible, the Court base a decision on statutory rather than constitutional grounds; and (4) if several readings of a statute are possible, the Court prefer that which avoids finding the law unconstitutional.⁶ While Brandeis’ point was made in a concurring opinion, it is generally understood that the Court has, over the years, been guided by these points.⁷

Does this thumbnail description of how the U.S. Supreme Court acts when faced with questions about the constitutionality of a congressional act portray reality? Is decision-making by the highest federal court really that “cut and dried”? Of course, all students of the Supreme Court are aware that Justices use a variety of methods to interpret the Constitution. But “how” the Court reaches a decision is not the same thing as the central guideposts it recognizes in making that decision. Is it because members of the Supreme Court are the only ones in our national government that wear a costume that we are inclined to think they are robotic-like in making their judicial decisions? When the justices put their robes on (which they use to do right in front of the spectators in attendance) does a dove descend from Heaven to sit on the shoulder of each to prevent any untold or unreasonable influences in the decision about to be made? Even if we had the answers to these questions, how could we know if a Justice first decided a case and then sought justification for the decision. Put differently, unless a Justice were to publicly announce such an action, it is unlikely the public could ever know as a certainty that the Justice engaged in result-oriented jurisprudence.

Our U.S. Supreme Court typically is held in high esteem by the public.⁸ A revelation that the Court made up its mind before it had researched all the facts, would most certainly impact the public’s opinion of the Court. Can anyone doubt that were that to happen, the public’s respect for the Court would

decrease? Perhaps that is why the Court has never admitted to engaging in result-oriented jurisprudence. Still, anyone studying the Supreme Court can't help but think that there are times when the Court does just that. That is, that a member or members of the Court first decide how they are going to rule, and then find the legal justification for so ruling. If there is ever going to be an instance in which the Court is "caught" engaging in result-oriented jurisprudence, it will probably be shown by indirect inference. It is unlikely that it will be done by any single justice, or a group of justices, announcing that they did decide a case in such a manner. Is there such a case that would cause the reasonable prudent person to conclude that the Court has engaged in result-oriented jurisprudence? The answer is that a fairly recent case does just that. First, however, some background along with a couple of inferences.

Judicial Activism v. Judicial Self-restraint

It has been known for a long time that one of the most severe criticisms that can be made against a Supreme Court justice is to assert that he or she is engaging in judicial activism. The Justice who spent his entire career in seeking to be identified with this doctrine's opposite approach (judicial restraint) was Justice Frankfurter.⁹ Here is how one student of Justice Frankfurter described this approach:

A judge, according to this ideal, should not turn his favored political beliefs into legal doctrine, but stand aside and allow the people's representatives to pass the laws favored by the electorate.¹⁰

Unfortunately, advocating judicial restraint is like being told you are going to teach a college course on "Methods of Good Teaching". One is all but doomed to suffer not only criticism (often, severe criticism), but ultimately failure. Such, some would say, was the fate of Justice Frankfurter.¹¹ While judicial activism can be manifest in a number of ways, probably the severest manifestation of it would be "result-oriented jurisprudence."¹²

The Light of Day

The first place to begin is with a Supreme Court decision that was made fairly early in the twentieth century but which received a great deal of attention later. The case is *Hammer v. Dagenhart*.¹³ The decision was written by Justice Day, who was the Chief Justice at the time. At issue in the case was authority of Congress to ban the shipment of products through interstate commerce that were manufactured using child labor. Child labor was becoming an issue due to the economic situation at the time and the rather obvious exploitation of children for economic gain. Due to the doctrine of "dual federalism" which the Supreme Court had endorsed, Congress knew the Court would not uphold a federal ban on the use of children in the manufacturing of products. Congress thought that they could indirectly get at the issue by banning the shipment of products produced by children from being shipped across state lines. After all, the Constitution stipulates that Congress has the power to regulate commerce among the states.¹⁴

The Supreme Court, however, ruled [5-4] that Congress lacked the authority to ban the shipment of such products or goods across state lines. The primary reason used by the Court to strike down the law was the Tenth Amendment. Chief Justice Day's major justification for the Court ruling as it did was the wording of the Tenth Amendment: "In interpreting the Constitution, it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the National Government are reserved."¹⁵ This was the "crack" in the Chief Justices explanation of how the Court reached its decision. It was a "crack" that would go unnoticed perhaps because, after all, the Chief Justice had quoted what the Constitution stipulated. Except, Chief Justice Day got it wrong—the Constitution doesn't stipulate this. Eventually, as Mr. Cohen predicted, the light would penetrate this crack.

A popular Canadian musician, whom the *New York Times* recently described as possibly a "New Secular Saint of Montreal," would put what Chief Justice Day did differently. In a song he wrote late in his career called "Anthem", Leonard Cohen noted that "everything is cracked—that's how the light gets in."¹⁶ In the case of Justice Day and the Hammer decision, the crack was the Justice misquoting the U.S. Constitution, a misquote which allowed the Court to reach the decision it wanted.¹⁷ The pertinent portion of the Constitution that Justice Day was referencing *actually* states the following: "The powers not

delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States and to the people.”¹⁸ The word “expressly” is not there and thus does not modify the word “delegated.”

Justice Day inserted the word “expressly” just before the word “delegated” to get the result he wanted. It appears that none of the Justices caught the error. Justice Holmes, in his dissent, hints that he thinks something is askew here, but he does not pinpoint the error or call Justice Day out in making a mistake.¹⁹ Before discussing whether or not Justice Day made a mistake or purposely inserted the word in the Amendment, the first thing to note is how the word changed the meaning of the amendment.

Things have changed

By inserting the word “expressly” before the word “delegated” Justice Day was, in essence, nullifying the Constitution’s “necessary and proper clause.” As the Supreme Court has stated many times, ours is a government of enumerated powers. In *Federalist* 39 Publius notes, “the proposed Constitution cannot be deemed a national one...since its jurisdiction extends to certain enumerated objects only, . . .”²⁰ Congress’ powers are enumerated in Article I, Section 8. At the end of the enumeration of seventeen clauses comes this clause granting a final power to Congress: “To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution . . .” As paradoxical as it sounds, here is an *explicit* constitutional reference to *implicit* constitutional congressional powers. Unless, that is, one places the word “expressly” before the word “delegated” in the Tenth Amendment. Doing that all but nullifies any argument for implied powers. So when Justice Day did that he all but expunged the “necessary and proper clause” from the Constitution. Congress would no longer have the power, as Chief Justice Marshall ruled in the landmark 1819 *McCulloch v. Maryland* decision, to create a national bank.²¹

Why didn’t Chief Justice Day consult Chief Justice Marshall’s opinion in *McCulloch v. Maryland*? He did. But this is all he learned from that decision: “It may be desirable that such laws be uniform, but our Federal Government is one of enumerated powers; ‘this principle,’ declared Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, ‘is universally admitted.’” Yet, Justice Day missed this part of Chief Justice Marshall’s reasoning which was also in the opinion:

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the Articles of Confederation, excludes incidental or implied powers and which requires that everything granted shall be expressly and minutely described.²²

Not only does Chief Justice Day miss this significant point being made by Chief Justice Marshall, he also missed the evidence Chief Justice Marshall gave for asserting it. Notice in the quotation above, Chief Justice Marshall points out that there is no phrase in the Constitution like there had been in the failed Articles of Confederation. The Framers had learned the lesson the hard way. Inserting the “expressly” phrase in the Articles of Confederation is one of the reasons the Articles failed to adequately govern the nation. The Framers were determined not to repeat that mistake.

What Was That About History Repeating Itself?

Here is another thing Chief Justice Day missed. The Framers gave the notion of implied powers a great deal of thought at the Constitutional Convention. There was really no question about implied powers. The legislative branch of the new central government would have to have implied powers. That is why, in *Federalist Paper* No. 44, Madison, writing as Publius, emphatically asserts, “Without the *substance* of this [implied] power, the whole Constitution would be a dead letter” (emphasis in original).²³

Madison points out in that same essay that the Framers in Philadelphia had four options: (1) follow the method used in the Articles of Confederation (that is, use the word expressly); (2) try to list every power they wanted Congress to have (then and for the rest of history); (3) stipulate Congress had all power except ones they listed in the Constitution (which he called a “negative enumeration”); and (4) just refer to implied powers by including the “necessary and proper clause”. The Framers adopted option number 4. Here, though, is the reason Madison gave for why the Framers did *not* follow the example from the Articles (or Justice Day’s reasoning):

Had the Convention [followed the example from the Articles] of Confederation], it is evident that the new Congress would be continually exposed, as their predecessors have been, to the alternative of construing the term “*expressly*” with so much rigor as to disarm the government of all real authority whatever, or with so much latitude as to destroy altogether the force of the restriction. It would be easy to show, if it were necessary, that no important power delegated by the Articles of Confederation has been or can be executed by Congress, without recurring more or less to the doctrine of *construction* or *implication*.²⁴

That is why the word “expressly” didn’t work under the Articles of Confederation. But it would be much worse under the proposed Constitution of 1787. Here is why:

As the powers delegated under the new system are more extensive, the government which is to administer it would find itself still more distressed with the alternative of betraying the public interests by doing nothing, or of violating the Constitution by exercising powers indispensably necessary and proper, but, at the same time, not expressly granted.²⁵

The Verdict?

This is a lot for Justice Day to miss. Could he really miss all that Chief Justice Marshall had to say on this subject in the landmark *McCulloch* case, especially given that he quoted from the case? Did he really not know the history of the Articles of Confederation and the major reason for its failure? Did he neglect to check the one document used by the Supreme Court more than any other except for the Constitution itself—*The Federalist Papers*?²⁶ Did Chief Justice Day miss all of this or did he ignore it? As they say in law, the “reasonable prudent person” would conclude that he got the result he wanted by ignoring the evidence.

White-washing History

The U.S. Supreme Court decided *Bowers v. Hardwick* in 1986, just as the nation was gearing up to celebrate the bicentennial of the writing of the U.S. Constitution.²⁷ Part of that celebration would be a fairly robust discussion on how the Constitution should be interpreted. Interpretation would be a major theme in the *Bowers* case, already controversial due to its subject matter.

Justice White wrote the majority opinion in *Bowers* which upheld Georgia’s law making sodomy between consenting adults a crime. While the facts of the case involved a homosexual couple, the Georgia law made sodomy in all cases, regardless of the sex of the partners, a crime. The crux of White’s opinion rests on the question whether such sexual behavior was a constitutionally protected right. Justice White notes that standards for determining such questions have relied on Justice Cardozo’s standard used in the incorporation of the Bill of Rights to the States using the language of the Fourteenth Amendment: is the right “fundamental to the scheme of ordered liberty.”²⁸ Another standard that has been used in several cases was whether the behavior was “deeply rooted in the nation’s history and tradition.”²⁹

With the latter standard in mind Justice White asserted, what turned out to be the most definitive statement in his opinion: “Proscriptions against that conduct [homosexual sodomy] have ancient roots.”³⁰ The Justice went on to outline that history. He noted that when the Bill of Rights was ratified in 1791 all of the original thirteen states criminalized homosexual sodomy. Furthermore, White pointed out, in the immediate post-Civil War Era, thirty-two of the thirty-seven states made it a crime. In fact, White noted, until 1961 all states made it a crime. Finally, White pointed out that as the Court was deciding the case, twenty-four states and the District of Columbia made consensual homosexual sodomy a crime.³¹

This historical overview led Justice White to just one obvious conclusion: to say that consensual homosexual sodomy was “fundamental to our scheme of ordered liberty” or was “deeply rooted in our nation’s history and tradition” would be “facetious”.³²

Why Does History Take So Long?

The Supreme Court revisited the constitutional issue raised in *Bowers* in a 2003 case out of Texas: *Lawrence v. Texas*.³³ This case gave the Supreme Court the opportunity to revisit its decision in *Bowers* even though, unlike the situation in *Bowers*, the Texas law only criminalized sodomy between homosexuals. Justice Kennedy wrote the opinion for the Court which voted 6-3 to overrule *Bowers*. Why did the Court make this decision?

We've Been Framed!

Professional pollsters will tell you that how you ask a question can have an impact on the response you get. Take the issue of the death penalty, and this question used to measure the public's support for it: "Would you like to see the death penalty enforced more often and more rapidly so that crime will be reduced?" This is an example of a "loaded" question or in more current language, an example of "framing" a question. The question is linked to an assumption that is debatable: that frequent and rapid use of the death penalty reduces crime. That assumption may or may not be true. The point is this: for respondents to answer "No" to the question they must take the position that they do not favor crime being reduced. Thus, they are "guided" to answer "Yes."

Of course, how questions are put can affect answers in all walks of life. Imagine someone in the 1950's (before the "facts" around smoking cigarettes were widely known and accepted) asking their priest: "Is it okay to smoke while praying?" Now, image the same question put differently: "Is it okay to pray while smoking?" It is not hard to imagine getting consistently different answers to the different manner in which the questions are put. What does this have to do with *Lawrence v. Texas*?

Justice Kennedy thought the legal question in *Bowers* had been poorly put or, as a modern pollster might put it, poorly framed. He noted:

The Court began its substantive discussion in *Bowers* as follows: "The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy" That statement, we now conclude, discloses the Court's own failure to appreciate the extent of the liberty at stake. To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse.³⁴

That, however, was not Justice Kennedy's most severe criticism of the Court's previous decision in *Bowers*.

Friends of the Court

While the U.S. Supreme Court does not allow itself to be lobbied, it does allow a way for "outsiders" in a case to state their position. The Court has a set of rules for what it calls *amicus curiae* briefs.³⁵ Translated literally as "friend of the court" briefs, these allow individuals not actually involved as parties in a lawsuit to provide information to the Court in written form. It was to academic research and the "friends of the court" that Justice Kennedy turned to in pointing out the "error" made in *Bowers*:

In academic writings, and in many of the scholarly *amicus* briefs filed to assist the Court in this case, there are fundamental criticisms of the historical premises relied upon by the majority and concurring opinions in *Bowers*.³⁶

Pulling no punches, Justice Kennedy went to the heart of the flaw in the Court's reasoning in *Bowers*: "At the outset it should be noted that there is no longstanding history in this country of laws directed at homosexual conduct as a distinct matter."³⁷ In short, Justice Kennedy, and the five other Justices who joined in his opinion in *Lawrence*, were stating that the Court in the *Bowers* case got the history wrong. Justice Kennedy, however, did not state this conclusion as harshly:

In summary, the historical grounds relied upon in *Bowers* are more complex than the majority opinion and the

concurring opinion by Chief Justice Burger indicate.
Their historical premises are not without doubt and, at
the very least, are overstated.³⁸

Justice Kennedy pointed out several additional points. First, the thinking about sex was evolving rapidly and the Court should place more emphasis on what recent research showed rather than the colonial or Civil War eras. Second, even if there were past laws against such sexual behavior, those laws were routinely being ignored.³⁹ Based on these points the majority in *Lawrence* concluded, “*Bowers* was not correct when it was decided, and it is not correct today.”⁴⁰

As is true with any Supreme Court decision, it is hard to tell if the Court made a mistake in *Bowers* or if the Court found a way to justify the decision they wanted to make.⁴¹ As is clear from the record, the Court in *Lawrence* seemed to weigh heavily the role of the *amici* briefs in their decision. Here is the number of *amicus* briefs filed in each case supporting each side:

<i>Bowers v. Hardwick</i> , 1986	V.	<i>Lawrence v. Texas</i> , 2003
(4)	(9)	(15) (17).

There were about an equal number of *amici* supporting each side in *Lawrence*. Yet, there were over twice as many *amici* supporting the individual (Hardwick) charged with the crime in the *Bowers* decision. Unfortunately, it may not have been so much the number of amici as it was the nature of the *amici*. No *amicus* brief was filed in *Bowers* in support of *Hardwick* by academics. But eighteen academics (several from very reputable universities) filed an *amicus* brief supporting *Lawrence*.⁴² In any case, the majority in *Bowers* seemed to use the information that supported its preconceived conservative position rather than listening to the arguments of those making a case for what would, no doubt, have been an unpopular decision. For example, Justice Powell in his concurring opinion in *Bowers* pointed out some facts that were used in *Lawrence* that he noted were raised during oral argument.⁴³ Those were ignored by the majority in *Bowers*. One cannot, with as much certainty as in the case of the 1918 *Hammer* decision assert that the decision in *Bowers* was clearly a case of result-oriented jurisprudence. But there is enough evidence to assert that the burden of proof would be on demonstrating that it wasn't.

The Death Gap

The final example or result-oriented jurisprudence is, perhaps, the most convincing. It involves the death penalty.

It would not be unreasonable to assert that the U.S. Supreme Court has been getting closer and closer to ruling that execution as a form of punishment for certain crimes is unconstitutional. If the Court does declare the death penalty unconstitutional it will, in all probability, use the Eighth Amendment's "cruel and unusual punishment clause" to do so. Certain points about the death penalty are starting to become accepted "facts" and these are nudging the Court in that direction.

For example, it has all but become settled that there are really only three justifications for executing someone for having been convicted of a serious crime. First, there is the argument that by executing someone you do not have to worry about the person ever committing (assuming they may be so inclined) the crime again. Second, there is the argument that the death penalty is a deterrent to others. Finally, there is revenge. As harsh as it may sound, some people seek and approve of the death penalty because they want revenge and that can only be achieved by executing the criminal. Let's evaluate these three justifications for the death penalty.

As far as preventing someone from ever committing another crime, we are now at the point that that can probably be guaranteed to an almost certainty without using the death penalty. It is true that there is always a possibility that someone would escape from a maximum security facility, but in today's world it is very unlikely. As far as deterrence is concerned, for every study done that "proves" the death penalty is a deterrent, there is another study showing that it isn't. The result is, we just don't know (and possibly never will). That leaves one major justification for the death penalty: revenge. Do we really feel comfortable in the twenty-first century justifying executing people for criminal behavior on the basis of revenge? Do we really want other nations to view our society as one that justifies executing people on the basis of revenge? It seems there will come a point when the answer to that question, including the Supreme Court's, will most certainly be, "No."

The recent botched attempts to execute convicted criminals has modified support for the death penalty, especially given that revenge seems to be the only argument that can reasonably be used in justifying it. The relatively recent actions of the state of Oklahoma, and the fallout from those actions, are especially damning in this regard.

The Means to the End

It should be noted that the authors of the Eighth Amendment did not think the “cruel and unusual punishment clause” would prohibit execution as a punishment for crimes. The First Congress of the United States wrote what would come to be called the Bill of Rights, which includes the Eighth Amendment’s reference to “nor cruel and unusual punishments inflicted.” The proof is in the Fifth Amendment. That is because there are three references to the death penalty in the Fifth Amendment.⁴⁴ Why would the First Congress refer to taking someone’s life three times in the Fifth Amendment and then ban it in the Eighth Amendment? They wouldn’t. So, it is clear that the First Congress did not think they were banning the death penalty when they included the “cruel and unusual punishment clause” in the Eighth Amendment.

This does not mean the U.S. Supreme cannot nor should not *now* rule that the death penalty is unconstitutional (in violation of the cruel and unusual punishment clause). Making that argument leads to unacceptable results in other “settled” areas of the law. Take, for example, the case of racial equality. Using the argument for what was addressed and intended when an amendment (in this case the Fourteenth) was passed would call into question many settled decisions such as the landmark, and now widely accepted, decision of *Brown v. Board of Education*.⁴⁵ That decision prohibited using race in the segregation of public school children. But, clearly, that was *not* what the authors of the “equal protection clause” had in mind when they wrote the Fourteenth Amendment. Knowing *that* did not stop the Supreme Court in 1954 from ruling (in five cases, including one from Washington, D.C.) that racial segregation in public schools was unconstitutional. Likewise, knowing that the First Congress did not have the death penalty in mind when they authored the cruel and unusual punishment clause should not prevent the modern Court from ruling that the death penalty *is* cruel and unusual (especially, in the context of the revenge justification for it).

Another point should be made about the death penalty. The history of the death penalty has been one of constantly seeking ways to make execution as quick and as painless as possible. Thus, we initially relied on such basic (one could say crude) methods as hanging and firing squad. Then, over time, these were replaced with a punishment which was deemed more humane: the gas chamber.⁴⁶ In 1885 David Hill, the Governor of New York, proposed what he considered to be an even more humane form of execution: electrocution.⁴⁷ Finally, in the 1970s, A. Jay Chapman, the Oklahoma State Medical Examiner, came up with lethal injection as the most humane way of executing criminals.⁴⁸ But then came, ironically from Oklahoma, the botched attempts at lethal injection.

Killing the Death Penalty

Oklahoma had four prison inmates set for execution in January of 2015:

Charles Warner,
Richard Glossip,
John Grant, and
Benjamin Cole.

Prior to the execution of these individuals Oklahoma had experienced a “botched” execution in April of the following year (2014) which drew national attention to the issue of lethal injection. The individual who suffered during the execution was Clayton D. Lockett. The prison in McAlester has a window for public viewing of the execution. About ten minutes into Lockett’s execution prison officials announced that the first drug had been administered and that Lockett was unconscious.⁴⁹ Shortly after that, witnesses noticed that Lockett began to “moan and struggle”.⁵⁰ At one point Lockett shouted, “My body is on fire.”⁵¹ After what would be considered an excessive delay in the proceedings, prison officials closed the shade to cover the window, announcing that they would open it shortly. About a half hour later they opened the shade to announce that Lockett had died of a heart attack.

There had been a warning that Oklahoma was having issues with the use of the “lethal cocktail” in executing convicted murders. That came with the execution of Michael Wilson in early January of 2014. Witnesses at his execution stated, that Wilson’s last words before he died were, “I feel my whole body burning.”⁵² These issues were also beginning to occur in other states during their executions. Both Ohio and Arizona reported similar incidents.⁵³ These “botched” executions seem to be due to two primary factors. First, states, like Oklahoma, do not allow physicians to participate in the injection of the “lethal cocktail” due to the pledge physicians take to save life.⁵⁴ This means those searching for veins for the insertion of needles can cause problems that experienced physicians wouldn’t. Second, there is the major issue of pharmaceutical companies not wanting their products associated with death. After experiencing not only problems with obtaining one of the drugs but realizing that it couldn’t obtain one of the drugs used in the lethal injection protocol, Oklahoma (along with other states) substituted and experimented with a different drug. These experiments, it would appear, were not always successful.⁵⁵

The Court’s Death Trap

All of these factors came together in all but forcing the Supreme Court’s decision in the 2015 case of *Glossip v. Gross*.⁵⁶ If it did, it was a classic instance of the Court (or at least a majority of the Court) relying on result oriented jurisprudence. Even more critical, it did so with the result that not only did an individual lose a case argued before the Court but lost his life in the process. Here is how it happened.

As already discussed above, Oklahoma’s “botched” execution of Clayton Lockett forced the issue of the death penalty to the forefront of debate not only in Oklahoma and other states but in the entire nation. Oklahoma was scheduled to execute Charles Warner on the same day as the day of the “botched” Lockett execution.⁵⁷ On the day of his scheduled execution (January 15, 2015), Warner (along with three other inmates) applied for a stay of execution from the U.S. Supreme Court.⁵⁸ The stay of execution was requested due to the “issues” Oklahoma had and was continuing to have with its lethal injection protocol.⁵⁹ In a close 5-4 vote, the Supreme Court denied the stay. The State of Oklahoma continued as scheduled and executed Warner that same day (January 15, 2015).

The next Oklahoman on the list to be executed was Richard Glossip. His execution, scheduled for about a week after Warner’s, was delayed when it appeared the wrong drug had been used in the Warner execution.⁶⁰ Yet, on January 28, 2015 the U.S. Supreme Court granted a stay of execution for Richard Glossip.⁶¹ Why? There is no mystery here. The Court granted the stay because just five days earlier it had granted his lawyer’s request for a writ of *certiorari* to examine the constitutionality of Oklahoma’s use of the lethal injection.⁶² Having voted to grant *certiorari* in Glossip’s case, the Court was forced to issue the stay.

This all but set in place the “perfect storm” (to apply that metaphor in this legal instance) for the Supreme Court to exercise result-oriented jurisprudence. After all, Glossip (whose execution was originally scheduled for only days after Warner’s) was to be executed in the same manner as Warner. It is important to recall that the Court denied Warner’s request for a stay of execution.⁶³ The Supreme Court handed down its decision (*Glossip v. Gross*) on June 29, 2015, the last day of the Court’s 2014 term.⁶⁴ It ruled that Oklahoma’s method of execution did not violate the “cruel and unusual punishment clause.” In doing so, the Court (that is, the five justices voting to uphold Oklahoma’s method of using its particular form of lethal injection) all but announced it was using result-oriented jurisprudence to determine the outcome of its decision.

How could the Court have done otherwise? Had the Court voted in such a way as to rule that Oklahoma’s use of lethal injection was a violation of the Constitution, the Court would have had to explain denying the stay of Charles Warner on the day of his execution. For if the method was unconstitutional when applied to *Glossip*, it would have had to be unconstitutional when applied to Warner. Thus, the vote to deny the stay to Warner meant that the Court had tied its own hands in the matter of the *Glossip* decision. To vote in *Glossip* so as to rule that Oklahoma *had* acted improperly in its use of lethal injection, would have been a recognition that it sent Warner to his death in an unconstitutional manner, with not only six months separating the two separate actions. That, the Court was in no way going to do. For five of the Justices, their vote in denying Warner a stay was going to control their vote in *Glossip*.

A Mere Case of *Stare Decisis*?

It could be argued that all the Court was doing, when it decided *Glossip* was following the precedent in *Warner*. Under this argument, it wasn't a case of result-oriented jurisprudence, it was a case of *stare decisis*. There are several problems with this reasoning.

First, it should be kept in mind that during the time when all these events were taking place, states (not just Oklahoma, but several states) were having problems with the effectiveness of the so-called "lethal cocktail". This was due to several factors. One was the difficulty in obtaining the drugs used in that injection. They were either becoming unavailable in the United States or even if available in Europe they were becoming very expensive to procure. This was a problem that, if anything, was getting worse, not better. Second, the death penalty itself was becoming less acceptable. This was manifest in two ways. First, fewer states were using the death penalty, and second, the public was less acceptable of the death penalty. Today, a mere three years later, only 31 states allow the death penalty. Nineteen states do not allow it, and governors in four states currently have a moratorium on use of the death penalty.⁶⁵ Of the nineteen states that no longer allow the death penalty, seven of these states made this decision since the turn of the century. Concerning executions, these have been on a steady decline since 1995. In that year there were over 300 death sentences imposed nationwide.⁶⁶ That number fell to less than 100 in 2013.⁶⁷ It is widely known that several states account for most of the executions in the United States. Furthermore, certain counties in those states are known for having the greatest number of executions. The county responsible for the most executions year-in-year out is Harris County in Texas, yet that county did not sentence or execute a single person in 2017.⁶⁸

Concerning the public's position on the death penalty, a Gallup poll taken in October of 2017 showed that fifty-five percent of the public currently supported the death penalty.⁶⁹ This was a five percent decline from the previous year (with a ten percent decline among Republicans). This is the lowest support for the death penalty since just before the Supreme Court announced its famous death penalty decision in *Furman v. Georgia* in 1972.⁷⁰

Finally, the rate of exonerations of those on death row has also changed. From 1973 to 1999 there the nation averaged 3 exonerations a year.⁷¹ That rate increased to an average of 5 a year from 2000 to 2011.⁷² This may be due to more efficient policing or evidence gathering on the part of law enforcement, including increasing use of DNA evidence.

The point is that the Supreme Court is privy to this evidence. Indeed, some of it was presented by the justice filing a dissent in the *Glossip* decision. It is what led Justice Breyer to conclude, "But rather than try to patch up the death penalty's legal wounds one at a time, I would ask for full briefing on a more basic question: whether the death penalty violates the Constitution."⁷³ These trends were basically known when the Supreme Court denied the stay in the case of Charles Warner. So, let's review the timeline of these events in Oklahoma.

First, Oklahoma, experimenting with a new drug as part of the "lethal cocktail" botched the execution of Clayton Lockett. Oklahoma had scheduled the execution of Charles Warner that same day, but due to the problems with Lockett's it delayed Warner's execution. The state then executed Warner, after the Supreme Court denied his request for a stay of execution, on January of 2015. The state, it was found, used an unauthorized drug in that execution. A grand jury investigating those two executions concluded that the State of Oklahoma's actions were "careless, negligent, and reckless."⁷⁴ When Oklahoma was about to use the same unauthorized drug in the execution of Richard Glossip (shortly after Warner's execution) the Supreme Court granted him a stay of execution, after having, just a few days earlier, granted his request for *certiorari*.

Again, this raises the question, could anyone seriously doubt that the Court was going to reject Glossip's challenge to Oklahoma's death penalty? Had the Court ruled in Glossip's favor it would have then been open to the criticism that it had just previously allowed the execution of a similarly situated individual.⁷⁵ It is only reasonable to assume that the Court felt bound to support the decision it made to allow the execution of Warner (whose execution it failed to deny by a single vote) by ruling as it did in *Glossip*.⁷⁶ This decision was made in spite of all of the changes in both the practice and opinions toward the death penalty in America. The reasonable prudent person would conclude the U.S. Supreme Court

engaged in what has been called the worst form of judicial activism.
jurisprudence.

It relied on result oriented

Notes

¹ The first was *Marbury v. Madison* in which the Court found Section 13 of the Judiciary Act of 1789 unconstitutional (5 U.S. 137, 1803). The second was *Dred Scott v. Sandford* is 60 U.S. 393 (1857).

² Charles Gardner Geyh, *When Courts & Congress Collide* (University of Michigan Press, 2006), p. 226.

³ The case was *Ex Parte Garland*, 71 U.S. 333 (1867).

⁴ The case in which Brandeis made this statement is *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936). The decision referred to as “the switch in time that saved nine” is *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

⁵ 304 U.S. 144 (1938).

⁶ These (articulated in the *Ashwander* case—see Note 4 above) are taken from (some slightly re-worded) Richard S. Randall, *American Constitutional Development: The Powers of Government*, Vol. 1 (Longman, 2002), p. 388.

⁷ *Ibid.*

⁸ Of the three branches of the national government, the public consistently gives higher approval ratings to the Supreme Court. See John Coleman, Kenneth Goldstein, and William Howell, *Cause and Consequence in American Politics* (Penguin Academics, 2012), p. 345.

⁹ Noah Feldman, *Scorpions* (Twelve, 2010) p. 31 and pp. 117-118.

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 160. The result was manifest in the two Pledge of Allegiance cases Frankfurter participated in: *Minersville School Dist. v. Gobitis*, 310 U.S. 586 (1940) and *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). He wrote the majority opinion in the first case (upholding requiring the Jehovah Witness students to Pledge the flag (fist drawn), and dissented in the second one in which the Court overruled (using, this time, free speech instead of free exercise of religion).

¹² John Messina, “Result-Oriented Judging,” found @ <http://jpm-law-chicago.com/essays/result-oriented-judging.html>. The point of the essay was that whereas some scholars defended “judicial activism” there was “no one willing to defend result-oriented judging” (last comment of IV. A.).

¹³ 247 U.S. 251 (1918).

¹⁴ Article I, Section 8, Clause 3. It is popularly referred to as the power to regulate interstate commerce.

¹⁵ Majority opinion from the *Hammer* decision: 247 U.S. 251 (1918) at page 275.

¹⁶ Dan Bilefsky, “Is Leonard Cohen the New Secular Saint of Montreal?” *The New York Times*, March 3, 2018.

¹⁷ The “error” Justice Day made was first pointed out by C. Herman Pritchett in his book, *The American Constitution*, 3rd, ed. (New York: McGraw-Hill, 1977), pp. 50-51.

¹⁸ *The Constitution of the United States*, the Tenth Amendment.

¹⁹ Here is Justice Holmes’ expressing somewhat mildly, his shock at the Court’s decision: “I should have thought that the most conspicuous decisions of this Court had made it clear that the power to regulate commerce and other constitutional powers could not be cut down or qualified by the fact that it might interfere with the carrying out of the domestic policy of any State” (See Court’s opinion in *Hammer* at p. 278).

²⁰ Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (Signet Classic, 2003), pp. 241-242.

²¹ See, *McCulloch v. Maryland* at 17 U.S. 316 (1918).

²² See, *McCulloch v. Maryland* at p. 406.

²³ *Federalist Paper* No. 44, p. 280.

²⁴ *Ibid.*, p. 281.

²⁵ Ibid.

²⁶ This was the conclusion reached by Professor Pierson, in his study of extra-constitutional sources used by the Supreme Court (See, Godfred Dietze, *The Federalist: A Classic on Federalism and Free Government* (Greenwood Press, 1960) p. 7 (note 14).

²⁷ 478 U.S. 186 (1986).

²⁸ See, for example, *Palko v. Connecticut*, 302 U.S. 319 (1937).

²⁹ See, for example, *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) and *Griswold v. Connecticut*, 318 U.S. 479 (1965).

³⁰ *Bowers* decision at p. 192.

³¹ These historical facts can be found on pages 192-193 of the *Bowers* case.

³² *Bowers*, p. 194.

³³ 539 U.S. 558 (2003).

³⁴ *Lawrence*, p. 566.

³⁵ See Rule 37, *Brief for an Amicus Curiae*, pp. 50-52, found at www.supremecourt.gov.

³⁶ *Lawrence*, p. 567.

³⁷ Ibid., p. 568.

³⁸ Ibid., p. 571.

³⁹ In what became perhaps the most controversial portion of Justice Kennedy's opinion he even cited international law to support the majority's position (see pp. 573 and 576).

⁴⁰ Ibid., p. 578.

⁴¹ Indeed, the same could be said about the decision in *Lawrence v. Texas*.

⁴² Among these were the following: Bruce A. Ackerman (Harvard University; Derrick A. Bell, Jr. (Yale University); Ervin Chemerinsky (University of California); Sanford Levinson (University of Texas); Paul Brest (Stanford University; David Cole (Georgetown University); Frank Michelman (Harvard University); and Geoffrey R. Stone (University of Chicago).

⁴³ See, *Bowers*, p. 199.

⁴⁴ There is a reference in the Fifth Amendment to a capital offense, not putting a person's life in jeopardy twice for the same offense, and not taking someone's life without due process of law.

⁴⁵ *Brown v. Board of Education*, 347 U.S. 483 (1954). Four other cases (in three different states and one from Washington, D.C.) were similarly decided the same day.

⁴⁶ Of course, Hitler's use of gas chambers in World War II made this method suspect.

⁴⁷ Fred Friendly and Martha Elliott, *The Constitution: That Delicate Balance* (Random House, 1984), pp. 161-162.

⁴⁸ Max Kutner, "Meet A. Jay Chapman, 'Father of the Lethal Injection'," *Newsweek*, May 1, 2017 (read online at: <http://www.newsweek.com/jay-chapman-inventor-lethal-injection-arkansas-592506>).

⁴⁹ Mark Berman, "What it was like watching the botched Oklahoma execution," *The Washington Post*, May, 2, 2014.

⁵⁰ Adam Liptak and Erik Eckholm, "Justices to Hear Case Over Drugs Used in Executions," *The New York Times*, January 23, 2015.

⁵¹ Mark Berman, "Oklahoma may have used the wrong drug to execute an inmate this year," *The Washington Post*, October 8, 2015.

⁵² Mark Berman, "What it was like watching the botched Oklahoma execution," *The Washington Post*, May, 2, 2014.

⁵³ Mark Berman, "Oklahoma may have used the wrong drug to execute an inmate this year," *The Washington Post*, October 8, 2015.

⁵⁴ This is known as the Hippocratic Oath.

⁵⁵ See, Mark Berman, "Oklahoma governor halts execution of Richard Glossip due to 'last minute questions' about the drugs involved," *The Washington Post*, September 30, 2015 and Mark Berman, "Oklahoma may have used the wrong drug to execute an inmate this year," *The Washington Post*, October 8, 2015.

⁵⁶ *Glossip v. Gross*, 576 U.S. ____ (2015).

⁵⁷ Along with three other inmates in quick succession: Richard Glossip, John Grant, and Benjamin Cole.

⁵⁸ *Charles F. Warner, et al. v. Kevin J. Gross, et al.*, 574 U.S. ____ (2015).

⁵⁹ In addition, in the case of Richard Glossip, additional evidence relevant to his innocence was announced.

⁶⁰ Mark Berman, “Oklahoma may have used the wrong drug to execute an inmate this year,” *The Washington Post*, October 8, 2015.

⁶¹ See, Order 574 U.S. ____ (January 28, 2015).

⁶² See, Order 547 U.S. ____ (January 23, 2015).

⁶³ See, 574 U.S. ____ (January 15, 2015). Also, this request included all four individuals on death row: Warner, Glossip, Grant, and Cole. At this point in time only Warner has been executed.

⁶⁴ *Glossip v. Gross*, 576 U.S. ____ (2015).

⁶⁵ See, www.deathpenaltyinfo.org.

⁶⁶ See, Justice Breyer’s dissent in *Glossip*, Appendix A, p. 42.

⁶⁷ Ibid. Likewise the number of actual executions also fell although the numbers here were considerably fewer (see, Breyer’s dissent in *Glossip*, Appendix A, p. 43).

⁶⁸ See, www.deathpenaltyinfo.org.

⁶⁹ Ibid.

⁷⁰ See, www.deathpenaltyinfo.org.

⁷¹ Ibid.

⁷² Ibid.

⁷³ See, Justice Breyer’s dissent in *Glossip*, p. 1. Justice Ginsburg joined that dissent.

⁷⁴ See, www.deathpenaltyinfo.org.

⁷⁵ It should be noted that it only takes the vote of four Justices on the U.S. Supreme Court to grant certiorari while it takes five of the Justices to issue a stay of execution. Of course, typically if there are four Justices that reach the determination that a stay should be issued, a fifth Justice will invariably vote to do so (typically referred to as a “courtesy vote”). The vote denying the “stay” in Warner’s case was 5-4. No Justice stepped up to issue the fifth “courtesy vote”. This is additional evidence that the Court used result-oriented jurisprudence in the *Glossip* decision. After refusing to save Warner’s life by one vote, how could the Court *really* review the question at hand in *Glossip*? See, also, Adam Liptak, “Execution Case Highlights the Power of One Vote,” *The New York Times*, January 25, 2015.

⁷⁶ See Note 74.

Using NVivo Software in Teaching and Learning Qualitative Research

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Introduction

In this paper, we will talk about challenges that emerged in both teaching and learning NVivo, one of the most widely used software suites in Qualitative Data Analysis (QDA). One of the authors teaches NVivo in a graduate-level Qualitative Research Methods course at The University of Texas at Dallas; the other author was a graduate student enrolled in the course and learning NVivo for the first time. NVivo, created and sold by QSR International, seeks to provide an environment for users with unstructured data, using Qualitative Data Analysis as a framework to understand their data within an electronic space. Users of NVivo can code field interviews and observations to show patterns, and build themes in the service of addressing research questions while building theory.

We will focus on the students' point of view. We also will talk about solutions we put into place to address challenges in learning the software students identified. The challenges and solutions are both technical and pedagogical. The remedies we created grew out of students' reports, beginning with the author who was learning NVivo at the time, of technical challenges they faced, as well as pedagogical challenges in the instructor's initial course design for teaching the software. The feedback loop, or communication and problem-solving loop, proved to be the key to creating solutions. These were successful because they put students' point of view at the center of class and encouraged communication and problem solving as a powerful strategy in teaching and learning NVivo.

The challenges students faced were: 1) Students attempted to learn the basic functions of NVivo without an instruction manual; the manufacturer did not provide one at the time. 2) Students found the preloaded example, titled "Down East," a qualitative ecology research project at Duke University, difficult to follow because it is complete, showing data management, or organization, and data analysis as a finished product, and it does not translate to students' own research data and methods. See Figure 1. And 3) students were unable to learn how to use NVivo in only two weeks, prior to collecting their own data, as dictated by the original course calendar.

The solutions the authors created to meet the challenges were: 1) Creating TipSheets, or guides, enumerating the locations and use of NVivo's basic functions. 2) Students' using the TipSheets to load, organize, and analyze their data using the software. 3) Creating regular computer lab sessions across the semester, designed with students' concerns in mind to learn the software while they gathered and analyzed their data.

The challenges in teaching NVivo were: 1) Readings and other resource materials on NVivo were limited in their availability. 2) The preloaded "Down East" example did not translate to the qualitative

research fluid process of data collection and analysis, presenting an additional challenge in teaching NVivo. 3) The already full course calendar did not allow sufficient time to meet the necessity of introducing the software early in the course.

The added solutions we created to meet the challenges of teaching and NVivo were: 1) Creating TipSheets and making them available. 2) Preserving the fluid approach of Qualitative Analysis by integrating NVivo throughout the course objectives. 3) Making TipSheets available to students at the start of the course calendar; students could choose to become familiar with NVivo's basic capacities before they import their data.

The TipSheets and hands-on computer lab time became a key part of the feedback loop. During an Independent Study during the semester that followed the course, we planned for future classes based on the initial feedback loop. The author learning NVivo reviewed literature on QDA software and NVivo in particular (Beekhuizen, Nielsen, and von Hellens, 2010; Duff and Seror, 2005; Gibbs, 2014; over and Koepper, 2011; Hutchison, Johnston, and Breckon, 2010; Leech and Onwuegbuzie, 2011; and Walsh, 2003) to expand the initial TipSheet – to a total of eight TipSheets that would be made available to students learning NVivo during the following school year. We collaborated on a redesigned course syllabus and calendar, introducing the TipSheets and appropriate links to tutorials and readings on NVivo across the semester. The author teaching NVivo used this revised syllabus in the course the following school year, but the initial challenges remain.

First Challenge: Lack of or Inadequate Materials or Resources

Few scholarly readings on NVivo are available. Virtually none that integrate the software into qualitative research exist. With rare exceptions, the readings that do exist are sketchy at best (See Creswell 2013 and Gibbs 2014; compare Bryman 2012). The problem is duplicated in available textbooks. While otherwise excellent, the textbook the author teaching NVivo uses (Creswell 2013), only briefly discusses QDA software, NVivo or otherwise. It gives only the most general information about advantages of different software suites. Furthermore, and compounding the problem, textbooks do not discuss how to integrate NVivo into qualitative research design; textbooks treat the software as something that stands apart from conducting qualitative research, rather than as a tool that can be integral to the fluid process of collecting and analyzing data.

The instructor author also had arranged with QSR International staff members to present two real-time, online sessions in NVivo during class time. Although the staff members fielded students' questions, the students were not very knowledgeable about the software and were uncertain about what questions to ask. This partly grew out of students not having started to collect their research data and the fact that using NVivo was optional. In addition, the demonstrations present information in rapid fire, also making it difficult for students to follow.

Second Challenge: Applying NVivo to Students' Own Research

A challenge that we discovered was the process of student learners using the software for their own research data. No matter how many practice sessions students had, they necessarily started with a blank slate. It is one thing for students to follow the fully built-out "Down East" example. Applying NVivo to students' own data is another challenge that must be met.

One obvious drawback of using the NVivo example during the initial course was that it did not come with a set of applied instructions. Although many of the functions of NVivo are intuitive – the setup looks like Microsoft Outlook – others were not. The manufacturer made it clear that users must learn the software by exploring their "Down East" example (QSR 2015). The problem was subsequently addressed with the publication of instructions in how to use the software by the manufacturer. Problems remain, however.

Although the example is helpful in exploring both basic and complex functions of NVivo, it offers little help to students seeking to apply the software to their research; they must infer how they would

input and analyze their own data. In addition, the example is static and does not address how to use the software with the flowing methodology required in qualitative research.

As a student who was familiar with research design and research software, but still a student, the author learning NVivo at the time utilized documentation provided by NVivo as well as peer-reviewed journal articles and created simplified TipSheets that offer students a basic level of structured functionality. The “Down East” project presents a completed model that is sometimes ambiguous and unclear. It is therefore confusing when students are presented with options that may or may not fit their dataset. Here is where the TipSheets became valuable. As a set of step-by-step instructions, the TipSheets offered a kind of manual to the basic functions, benefits, and pitfalls of NVivo. The goal of the TipSheets was to provide detailed and exact methods, with appointed tasks designed for the then current version of NVivo, taking students through all of the steps needed to input, organize, and analyze data while not imposing methodology.

The TipSheets were as follows.

- Importing Data into NVivo (See Figure 2.)
- Creating Node Structure
- Transcript Management,
- Analyzing Data Sources
- Queries for Data Exploration / Saturation Verification
- Classifying Data
- Using Tools to Summarize Data
- Data Visualization Reports and Extract.

Although this author created the first TipSheets for graduate students in the Qualitative Research Methods course, he had the first-hand opportunity to engage students in a feedback loop by teaching NVivo to undergraduate students enrolled in a Field Research Methods course taught by the instructor author.

The initial Qualitative Research Methods course and syllabus focused on teaching the basics of qualitative analysis and then, once that foundation was set, the concept of QDA software was introduced. The feedback loop led to the discovery that any course that requires both scientific methodology and research software skills demands that the disparate goals be merged into a single lesson plan. The ongoing integration of software and methodology is required. The initial pedagogical strategy introduced a challenge to students, by forcing them to see and treat the actions as separate, not as an integrated process that led to an outcome. To overcome this, we found that a method of “teaching while learning” proved helpful. This process allows the instructor to be more closely tied to those students who are trying to get the most out of their class. The flow of the TipSheets took student learners from the first step of moving data into the software to organization, and finally applying methodology supporting qualitative data analysis allowing the exporting of data for reporting and review.

Instead of having two goals, the merged process requires students to understand the software as part of their educational journey. Similar to how word processing or statistical software is taught alongside the materials covered in the class, so must QDA software become integrated with the research it supports. As the instructor author taught the course to a new class of students in later Qualitative Research Methods and the new follow-up qualitative research courses, with new data, new questions, and new research, the challenge remains to update and invite a new feedback loop to determine what improvements can be made in teaching and learning NVivo.

Third Challenge: Teaching with a Time Limit

Closely related to the first challenge of how to go about getting started teaching and learning NVivo in a qualitative research course is the practical and pedagogical challenge of knowing at what point to

introduce the software to students. Students seeking to explore and break into the world of QDA software face a number of challenges that must be overcome, often in a semester-long time constraint.

Due to the time limits, the goal must be for students to learn to trust the software quickly. Overcoming the hurdle of trusting NVivo to store and generate useful materials comes not from preloaded materials, but from students' own data. To mitigate this challenge and find a way for students to trust the software quickly, students are encouraged to use their own sources of data. Using sources that they are familiar with allows them to verify that the software is indeed capturing what is expected and that simple reports are returning expected results.

Until students have become familiar with their data in the NVivo system and make their way through TipSheets, or use the more recent instruction manual supplied by the manufacturer, they will not have had the experience of inputting research data, organizing, and analyzing them. NVivo provides a unique opportunity to do this, and it allows students to continue and build upon their work after the conclusion of their pilot study or final exam. See Figure 3.

Ongoing Questions

Based on our findings and our goal to improve on our solutions, we have several ongoing questions. The first is the time limit. Should the material be broken into two courses: A) data collection and data entering, and B) data analysis? Feedback from students in a later Qualitative Research Methods course helped us decide to teach NVivo in a second follow-up semester's course while students are collecting and analyzing their data and drafting their research proposals. The first semester's course – Qualitative Research Methods – became devoted strictly to learning what qualitative research is, and the approach (narrative, phenomenology, grounded theory, case study, ethnography, content analysis, or another approach) that best fits the students' research problem and research design. The second semester, devoted to teaching and learning NVivo while students gather, manage, analyze, and interpret their data, came to build on the foundation of the Qualitative Research Methods course offered the first semester. The question remains whether it might be better to break down teaching and learning NVivo into two separate courses: A) data collection and data entering, and B) data analysis? This would add an additional semester's work.

How do technical challenges that we have identified drive the feedback loop? As we have found, when you bring a software suite into the Qualitative Data Analysis classroom, the process for student learning has an added layer of complexity. The manufacturer, QSR International, released a new version of NVivo the year after the initial Qualitative Research Methods course, and later versions in years that followed, after the authors taught and learned NVivo together. These technical issues may be seen as problems, if the software itself is a hurdle, or a challenge to be met if the expected outcome can be seen as an opportunity to drive the feedback loop. The question that has yet to be answered concerns how to achieve this. New versions of the software mean that new materials along with teaching and learning methods must be reevaluated frequently.

Making learning the software a course requirement gives students opportunities to ask technical questions driving the feedback loop. The students going through the class in the school year following the initial course had the updated syllabus and provided real-time evaluation of our work; dictating how we updated our materials and methods.

The final question we addressed is: With all we have learned, how do we strengthen the feedback loop? Students are the center of the feedback loop. Using QDA software has become a requirement at most research institutions. As the level of complexity for qualitative curricula for students increases, the feedback loop of increased lines of communication has become critical. It is important to realize that without the back-and-forth between student and faculty, progress may stall and the materials may become stale. Allowing and fostering the interaction between students and the instructor improves the feedback loop, one of the goals we set out to achieve using NVivo software in teaching and learning qualitative research.

We are presenting our paper as a way of reaching out to our wider community of educators to solicit your input as our project continues to develop. We invite your questions and comments.

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Figure 1. NVivo Preloaded Down East Project

Figure 2. TipSheet for Importing Data into NVivo

Figure 3. NVivo Word Cloud

No Dirt on Donald: Politics and the *National Enquirer*

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Abstract

“FBI Plot to Impeach Trump,” warned the lurid red, yellow and white headline of the *National Enquirer* (8 January 2018). You may believe this publication single-handedly created our celebrity culture or argue it is a threat to democracy. Either way, it is a force worthy of academic analysis. The first part of this paper looks at the history of the world’s most famous supermarket tabloid. It details its change from a sensationalistic scandal sheet to a celebrity gossip newspaper at home in every supermarket in America. This paper analyzes this magazine and its readers. It provides data on the tabloid’s make-up, composition, writing style, and readers. It examines its scoops and suits. At this point, this paper focuses on two friends, both brash New York businessmen, President Donald J. Trump and the publisher of the *Enquirer*, David J. Pecker. Their friendship, founded on loyalty and mutual-benefit, led to a host of supportive stories by and about the Wharton School of Business graduate, as a TV personality, candidate, and President. Their relationship resulted in a plethora of stories condemning Trump’s Republican opponents in the primaries, and assorted Democrats, especially Hillary Clinton, Barack Obama, and his wife and children. These stories all carry the signature style associated with both men: caustic, negative, and aggressive. Lastly the paper details with a story perfect for the tabloids but never covered, an alleged affair between Trump and a Playboy bunny. Pecker negotiated a non-disclosure agreement with Karen McDougal in an effort to suppress information about this dalliance. After a tangle of legal maneuvers, she finally told her story. Information continues to emerge as reporters gain access to documents seized by the FBI or subpoenaed by a Federal Court. It is easy to trivialize a supermarket tabloid that titillates and provokes. Another story lurks behind the lurid headlines. The easy to understand prose, written with one purpose, is to convince the American public of the correctness of the President’s agenda. Our democracy rests on a public informed, not by propaganda, but by the truth. The future of our democracy depends on the honesty and accuracy of the Fourth Estate and an educated public that can read critically.

Introduction

Rachel Maddow, MSNBC anchor, described the *National Enquirer* as “weird, outrageous, and fantastically false” (Emery, 2017). She observed the most dangerous thing about this celebrity news magazine was, not so much whether what they said was true or not, but how they said it. She read the headline from the 26 October 2016 copy of the weekly to demonstrate her point. “Hillary Blackmailed FBI to Kill Corruption Probe, Gay Sex Sting.” She contrasted the tabloid’s vicious attacks against Clinton with their obsequious stories about the Republican candidate for President. She concluded the *Enquirer* was definitely a news outlet for Trump.

Those who confront the *Enquirer* should be aware their writers retaliate. “Enquirerman” counter-attacked in an article, “Rachel Maddow’s Brain-Dead Enquirer Attack” (20 January 2017). He chided the political journalist for getting the price of the supermarket tabloid wrong. It costs \$4.99 not \$1.99. He insisted the story clearly stated it was Hillary’s “fixers” who setup the sting on federal agents, not Hillary herself. “Enquirerman” suggested the host of an Emmy award winning news show, dig deeper than the

headlines and sent her a free subscription. Rob Shuter in his “Number One in America Gossip Column,” subtitled “Naughty but Nice” reported a make-up artist working on the MSNBC news host for a cover of a *Rolling Stone* magazine described the popular political commentator as a vain diva who did not like her face touched (29 July 2017). In their latest jab, the scandal magazine falsely reported it was “Claws out!” in a fight between Maddow and Megyn Kelly (*Enquirer*, 16 May 2018).

Social science theory helps one understand why all this is of importance. President Thomas Jefferson (1789) emphasized the value of an informed electorate in a letter to Ricard Post. He wrote, “Whenever the people are well-informed, they can be trusted with their own government” (1). Leaders in a democracy break down the walls separating the people from their government and build bulwarks of trust.

Jurgen Habermas (1991), the German philosopher, wrote in *The Structural Transformation of the Public Sphere*, of a dam erected by democratic societies to protect the public. He described this phenomenon as “made up of private people gathered together as a public and articulating the needs of society with the state” (p. 176). Dialogue, debate and discussion in the public sphere legitimizes authority. For Habermas, the major danger was manipulative publicity (p.178). This type of propaganda “manages views, fosters political theater, and conveys authorized opinions to assert the dominance or entitlement of those in authority” (Soules, 2007).

The *Enquirer’s* coverage of President Trump, lies solidly within political scientist and communications expert, Harold Dwight Laswell’s, definition of propaganda as “the expression of opinions or actions carried out deliberately by individuals or groups with a view to influencing the opinion or action, of other individuals or groups for predetermined ends and through psychological manipulations” (cited by Ellul, p. 11). Jacques Ellul, a French sociologist, noted that modern propaganda operates on, “half-truth, limited truth, and truth out of context,” a perfect description of the stories in the *Enquirer* (Ellul, p.2). Ellul identified the following effects of propaganda on individuals: limited and rigid personality, prejudices hardened, self-righteousness accelerated, self-justification, increased anxiety, propensity to violence, and belief in the hero as model and father (Ellul p. 172). These characteristics apply equally to Trump’s base, as well as to readers of the *Enquirer*.

Anthropologists Debra Spitulnik and Thomas Tufte (2014) called for “more ethnographic investigation of the relations across media, nation and publics.” The analysis of one of these tools, the celebrity/sensational tabloid, *The National Enquirer*, starts with an investigation of how this publication resonates with the everyday life of real people who buy the paper on impulse and discuss its stories in bars, beauty shops, and breakrooms. The President relies on social media, Fox News, the Sinclair TV station chain, and the *National Enquirer* to communicate the goals and policies of his administration. The more we know about how these tools work and how they are used, the better we can understand their lasting effect on our country.

Blood and Gore

William Griffin, a colleague of yellow journalist William Randolph Hearst, founded the *New York Enquirer* in 1926. It cost 10 cents a copy and featured stories about horses to watch at the racetrack. Generoso (Gene) Pope Jr., a graduate of MIT, bought the paper in 1953, for \$75,000, reputedly with mob money (Calder, 2004, p. 55). He renamed the newspaper, *The National Enquirer* and extended its circulation to New York, New Jersey and Connecticut, and then nationally.

He changed the format of the paper from an eight-column broadside to a tabloid less than half the size. This innovation saved money on printing costs. Readers found the new format more convenient to read while traveling to work on the subway or bus. Pope had an uncanny ability to “recognize what stories would sell and what kind of stories the average person wanted to read about” (Connolly, 2017). He focused on sex, gore, and crime stories. By the 1960s, his newspaper became a dominant tabloid, with a loyal fan base, strong financial cushion, and lucrative national distribution contracts.

Pope instituted practices still in use at the *Enquirer*. He authorized reporters to pay up to \$2,500 for tips without prior authorization. He paid \$18,000 for a picture of Elvis in a white suit lying in a copper coffin snapped by a distant teenage cousin (*Newsweek*, 2008). He negotiated with celebrities to bury

harmful stories in exchange for an interview, gossip about another famous person, or other favors. He paid his writers well and rewarded them with lavish bonuses for sensational scoops. Pope pressured reporters to produce. He established a grading system to assure the quality and quantity of their work. If writers did not measure up, he fired them.

Pope anticipated sociological changes in the 1950's and 60's. People moved to the suburbs. They no longer bought their paper at a newsstand or small grocery store. Pope conceived the idea of selling the *Enquirer* at supermarkets. He had to tone down the carnage on the cover to sell his tabloid in a marketplace where women shoppers predominated. In a 1972 interview Pope observed, "We had saturated the gore market, and since this is a business, I knew we had to change" (Morton, 2009, p. 33). He diversified the content. The tabloid featured stories about celebrities, especially new TV personalities. Yet the *Enquirer* remained true to its heritage. The tabloid's writers continued to write stories that provoked and aroused a negative emotional response.

Supermarkets proved a tough market to enter until Pope hired blond movie star, Jane Mansfield, to promote the paper at a convention of supermarket executives. He also offered them 25% off cover price of every *Enquirer* sold and promised to buy back unsold copies (Calder, 2004, p. 56). It was a retailer's dream. They had only two points of contact, when a clerk rang up the sale of the tabloid at the cover price and when they remitted the agreed upon fee for the *Enquirers* they sold.

Pope moved the publication to Florida in 1955 after his mob connections warned he could get hurt if he stayed in New York (Connolly, 2017). More likely, the cost savings effect of non-union labor and favorable back-haul freight rates to distribute his tabloid nationally figured in his decision. In the 90s, the supermarket tabloid business went through a period of rapid consolidation. Pope's heirs sold the *Enquirer* and other affiliated newspapers that originally cost \$73,000 for \$412 million on Pope's death in 1968. The publication suffered an anthrax attack in 2001, filed for bankruptcy in 2010 with \$1 billion in debt, and moved back to New York in 2015.

The Accountant Giveth and Taketh Away

David J. Pecker, born in 1952, was the son of a bricklayer from the Bronx. He graduated from Pace University in business administration and passed the CPA exam. After a succession of accounting jobs in the media business, he, along with investors from the Evercore Corporation, purchased the publishing conglomerate American Media Incorporated (AMI) in 1999, for \$850 million. He became Chairman, President and Chief Executive Officer of the company (Borchers Keep, 2017). The CEO oversees a collection of more than a dozen magazines and newspapers including the *National Enquirer*, *Star*, *Us Weekly*, *Globe*, *OK!* and several men's fitness magazines.

In a 20 June 2018 article in the *New Daily*, Larry Hackett, former editor of *People Magazine*, reported AMI's acquisition of 13 gossip and celebrity magazines owned by a German firm, Bauer media. AMI now owns every tabloid on the rack in the supermarket, except for *People* magazine. Hackett worried a company that controls so many different magazines with an estimated readership of thirty-eight million people has unprecedented power to influence the electorate. He warned it was time to take the tabloid/celebrity sector seriously (Hackett, 2018).

Pecker portrays the image of a bon vivant, but at heart he is a clever bookkeeper trying to stave off further losses in an overcrowded and declining magazine sector. The *Enquirer* sold an average of 4.5 million copies a week in the 1980s. Five people read each issue sold, meaning almost 25 million people read it every week, more than 10 percent of the U.S. population (Connolly, 2017). Today, one can read celebrity gossip at TMZ.com on the internet or watch it on television. The *Enquirer* is overpriced in a competitive marketplace. At the beginning of 2018, the scandal sheet had a weekly circulation of 260,000 copies, a 13 percent drop from the previous six-month average, according to publisher data provided to the Alliance for Audited Media (Rutenberg Investigator, 2018).

The answer was simple for an accountant specializing in turning around troubled media companies: restructure through bankruptcy, slash staff, and force each member of the remaining staff do the work of three or four people. Amy Wicks, a reporter for *WWD (Women's Wear Daily)*, quoted Pecker as saying. "We encourage accountability and aggressive reporting, and if you make a mistake, that's

OK.” Colleagues added, “If you succeed you get credit, if you fail, it can get ugly” (Wicks, 2011). Wicks reported that Pecker had the first and last word at meetings. The staff always remembered Pecker’s pronouncement, “I’m the chairman of the tabloids. You giveth and taketh. Believe me, I understand that” (Wicks, 2011).

The bright contrasting colors and lurid headlines of the *National Enquirer* attract the attention of shoppers in the lines near checkout stands. One supermarket in Florida, Publix, found the covers so offensive, they ordered them covered (Sorentrue, 2017). Typically, a tabloid headline focuses on who did what, forsaking the why for development in the story itself. Every cover features a picture, a headline telling the story as unambiguously as possible, and a sub-headline called the money line. The 7 May 2018 edition of the *Enquirer* featured the stern visage of President Trump. The main headline read “Trump Fixer’s Secrets and Lies.” The money line developed a favorite theme of the tabloid, “Payoffs & Threats Exposed.” An analysis of the story itself showed there were seven individual stories, each with its own sub-headline. Each story had a slant, sometimes for and sometimes against Michael Cohen, the President’s beleaguered personal lawyer. Of the seven stories, six were less than one-hundred words long (p. 16).

Pecker devised a proprietary database of the covers of all celebrity magazines, including those of his competitors, called “cover explorer” (Toobin, 2017, p. 36). Trump, the Royals, and Heidi Klum lead the list in the Spring of 1918. Trump or his enemies appeared in 39% (N=71) of the covers from 6 March 2017 to 12 July 2018. Like most newspapers, there are actually three headlines on the front page: a banner or skybox, the main story, and a footer. Headlines on Trump or his opponents appeared in the Skybox 20% of the time, the center 52% of the time, and the footer 27% of the time (N=44). Twenty-eight percent of the time there is no mention of Trump in any of the three headlines (N=25), but there is a story related to Trump somewhere in the body of the tabloid (See Appendix A). The issue date 4 June 2018 contained a story on facts about the presidents. It related Trump has a \$29 million yacht on which he has not spent a night. The billionaire explained, “It makes me nervous to relax” (Sheridan).

Each issue contains ads, a tremendous amount of gossip about A and B list celebrities, news, games (cross words and puzzles) health watch, market place, (psychics and New ID) oddities, horoscope, a giveaway, and pet vet. For a detailed content analysis see Appendix B. The *Enquirer* is a direct-response retailers dream. The most common and largest ads are for weight loss products, including a weight loss recliner. There is an equal number of ads for collector dolls. Impulse buyers can even purchase one with a birth certificate. Other popular products for sale include commemorative coins and memorabilia, including a cat dressed in a Marine Corps uniform or a Queen Elizabeth statue. Usually, this celebrity gossip magazine touts products designed for seniors especially life-alert bracelets, easy to read computers, and phones. Ads tempt readers to purchase model cars and non-snoring bracelets.

Give Them What They Want

Enquirer executives pride themselves on knowing their audience. One editor argued, “The big news organizations tell people what they think they should be interested in, whereas we try to give them stories that they *are* interested in” (*Newsweek*, 2008). Pecker described the weekly’s target audience as, “People that live their life failing, so they want to read negative things about people who have gone up and then come down” (Borchers Why, 2016). The writers for the tabloid stoke the anxieties and feelings of inadequacy of their readers with gossip, guilt, and victimization. Paula E. Morton (2009) in *Tabloid Valley*, stated the *Enquirer*, “Frequently, in the process of exposing personal hypocrisy or impropriety, it inflames a public outrage that the mainstream media pursue in depth” (p. 156).

The National Enquirer’s readership is female, older and conservative (Kludt, 2018). Global Direct Response, a subsidiary of AMI, sells advertising for the publication. Their website stated the average age of readers is 52.3. The ratio of women to men is 62/38. The average household income of the inquiring minds who purchase the weekly is \$76,319, well above the average (Global, 2018). If they bought the *Enquirer* on impulse, they can afford to purchase a direct mail order item advertised in the tabloid.

Jack Shafer, *POLITICO*'s senior media writer, in his Jan/Feb 2017 article, "Pravda on the Checkout Line," offered two contrasting views of *Enquirer* readers. He sees them as representatives of the emerging post-truth era, reliant on their own beliefs and indifferent to the facts accepted by the mainstream. In contrast he views them as a pre-truth group, drawn by arguments based on emotional appeal able to spread its message by word-of-mouth and other organizations to main stream newspapers. Walmart accounts for 23% of the sales of the *Enquirer* and Kroger, the largest supermarket chain in the US, for 10% (Toobin, 2017, p. 45). It appeals to buyers with stories of celebrity extra-marital affairs, surgeries, sudden weight losses and gains, and, increasingly, Donald Trump.

The *Enquirer* and its fellow AMI tabloids emit a constant cultural background noise to American life. There are 37,000 supermarkets in America, with an average of about ten checkout stands. Each one has a wire rack displaying the *Enquirer* and other AMI magazines. According to an industry study, American households make an average of 1.5 trips to the supermarket each week. Every customer passes by the checkout stand, which means even people who never purchase a tabloid absorb the ambient headlines, and those headlines can shape their view of the world (Shafer, Jan/Feb, 2017).

Embrace Your Inner Gossip

Enquirer writers are well paid and consider themselves some of the best in the business. Their writing is easily understood with slang and gripping language. Some say the best way to read it is to leave your logic at the door. Note the headlines and read the stories twice; first to observe the emotional impact on the target audience and second how well the story is written. In their own words "FBI Coup to Take Down Trump," a "Double-dealing" FBI agent secretly orchestrated a sinister plot causing "incalculable havoc." This was allegedly done while Hillary Clinton was "rubbing her hands with glee" (6 January 2018). The 18 June 2018 issue of the *Enquirer* shows examples of the writer's use of colloquial English to identify with readers. Stars "keep it on the down-low." Romps are always wild. "Perps" are usually busted. Husbands are "Hubbys." and women who are pregnant are "knocked-up" (18 June 2018, p. 15).

After Carol Burnett won her suit for \$10 million in the early 1980s, AMI policy called for two lawyers to review every story. "And these lawyers don't advise. They decide" (Kludt, 2018). *Carol Burnett v. the National Enquirer* made legal history on its journey to the Supreme Court. A California judge decided it was not a newspaper entitled to full first amendment rights. The Supreme Court ruled Burnett could sue for defamation in California, even though the AMI printed the tabloid in Florida

Dr. Phil McGraw and his wife Robin filed a 42-page suit for defamation of character against the *National Enquirer* and AMI in July 2016 asking for damages of \$250 million. Dr. Phil declared "Enough is enough. It's time for them to own up" (McLaughlin, 2016). The psychologist and TV host claimed "AMI published the false and defamatory accusations without reasonable investigation, with actual knowledge of falsity, and with reckless disregard for truth or falsity" (McGraw, 2016). Various stories accused McGraw of child abuse, marital infidelity, and making one of his guests feel weird. The cover of the 14 March 2016 *Enquirer* warned of "Dr. Phil, Raging Monster." The sheer number of stories enraged McGraw. The *Enquirer* published a total of 85 articles about Dr. Phil from 2003 to 2016, an average of 6.5 articles per year at a rate of approximately one article every other month (McGraw, 2016).

Other stars sued the scandal sheet. Charlie Sheen called the claims he sexually assaulted a younger actor "ridiculous" and "disgusting." (Associated Press, 2017). Sheen later admitted he did have AIDS. A Los Angeles Superior Court judge dismissed Richard Simmons' defamation suit against the *National Enquirer*. Simmons vehemently denied the accusation and sued the publication in May 2017 over a story alleging he was in the process of becoming a woman. Judge Gregory Keosian ruled being misidentified as transgender did not inherently expose someone to "hatred, contempt, ridicule or obloquy," and therefore, did not rise to the level of defamation (Maddaus, 2017). He ordered Simmons to pay \$130,000 for the court costs incurred by the tabloid.

In the September 2017 issue, the *Enquirer* issued an apology to Judge Judy Sheindlin for a story stating she suffered from "brain disease," was fighting both Alzheimer's and depression, and was "hiding a heartbreaking medical crisis" (Taylor Apology, 2017). The tabloid also stated Sheindlin cheated on her husband. Their apology stated, "None of these statements are true, and we unequivocally retract them"

(Taylor Apology, 2017). Most celebrities ignore stories in the *Enquirer*, suing only when the mainstream press picks them up. Their record of success is mixed. Most times they are content to accept an apology.

The *Enquirer* made its reputation for professional journalism with solid stories like the murder of Ennis Cosby (1997), Gary Hart's extra marital affair with Donna Rice in 1987, and the salacious details of the Lewinski-Clinton affair in 1998. They paid \$60,000 for a picture of Rice sitting on Hart's lap aboard his yacht named Monkey Business. Hart denounced the celebrity newspaper's reports as "lies, tabloid trash," but the evidence was overwhelming and he withdrew from the Presidential race within sixty days (*Newsweek*, 2008). The tabloid broke the Clinton pardon scandal, Jessie Jackson love child stories, and Bob Dole's affair in (2001). In 2007, the celebrity scandal magazine had scoops on OJ Simpson's book, *I Did It!* and John Edwards' affair with filmmaker Rielle Hunter, stories given little credence until proven true. In 2008, they broke a story of the pregnancy of vice-presidential candidate, Sarah Palin's unwed daughter and continued to reveal interesting tidbits about the Palin family, despite the protestations of the McCain campaign committee.

Shocking Love Affair

A prominent real estate developer in New York in the 80s and 90s, Trump developed a fondness for tabloid gossip. He basked in the publicity, even if the headline announced, "Trump's Mistress Cheats on Donald with Tom Cruise" (Gillette, 2016). When Pecker became CEO of AMI in 1999, the negative Trump stories ceased. The tabloid gave glowing coverage of Trump before and during this campaign. In early 2015, the tabloid revealed encouraging poll results.

Trump authored several stories in the newspaper revealing, "the most intimate details in my amazing life," "I am the only one who can make America great again!", "and, on a personal note, my wife, Melania would make a terrific first lady!" (Suebsaeng, 2016). In another article, that appeared in his book *The Art of the Deal*, the Republican candidate for President appealed to the cult of the hero, telling the story of how he punched his music teacher in the eye "because I didn't think he knew anything about music. I'm not proud of that, but it's clear evidence that even early on I tended to make my opinions known in a forceful way" (Trump, 2015). One campaign staffer described the tabloid as a "campaign mailer" (Hensley, 2018).

The 2016 Presidential candidate received only a few newspaper endorsements, one of them from the *Enquirer*. Pecker explained, "I made the decision to endorse Donald Trump. Nobody influences the editorial decision-making process at the *National Enquirer* other than myself and our editors" (Toobin, 2017, p. 47). An article using the *Enquirer's* folksy term for the candidate from Queens trumpeted, "TRUMP MUST BE PREZ!" The celebrity tabloid declared, "Nobody understands the economy better than this self-made billionaire, and only he is willing and able to fix it." The *Enquirer* promised "He will chase down illegal immigrants," and "stand up to foreign leaders like Vladimir Putin" (*Enquirer*, 14 March 2016).

POTUS has a short attention span, expressing himself in provocative blocks of speech. The *Enquirer* and the President both ignore facts and indulge in outrageous self-promotion. It is not hard to imagine President Donald J. Trump personally writing for the supermarket tabloid, which in fact, he has. Amy Peck, senior reporter for *Huffington Post*, stated Trump's campaign committee, White House staff, and the *National Enquirer* writers are remarkably similar in approach. They spent the time before and after his election "sharing blatantly false articles with reckless abandon, knowing their audience had a high tolerance for half-truths and whole lies" (Peck, 2018).

One person close to the campaign recalled a meeting at Trump Tower in February 2015 between Pecker and Trump about how AMI could promote embarrassing information about Bill and Hillary Clinton during a general election. The person, who requested anonymity, said Cohen was also present. The following year Cohen, helped suppress the candidate's crude remarks on the infamous Access Hollywood tape (Rutenberg investigators, 2018).

Trump loved a weekly publication with national reach. The *Enquirer* printed stories like, "Natural-born leader Donald Trump is a highly focused, driven and charismatic genius who thinks outside the box and is almost too smart for his own good" (Taylor Magzter, 2017). The editors of the *Enquirer*

felt free to name-call and exploit resentments if it furthered Trump's agenda. The Prez wondered, "Why didn't the *National Enquirer* get the Pulitzer Prize for Edwards?" (Borchers Trump, 2018). He claimed that the publication was "very respected" and suggested Pecker would make a 'brilliant Choice' for Time Magazine CEO (Eglash, 2017).

The Perfect Friendship

The *Enquirer* staff wrote a self-congratulatory piece after the election declaring, "Only one magazine told the world all along how Americans REALLY were feeling about the 2016 election! As the world of professional pollsters spend today in humiliation, we look back at the figures that showed Trump was winning over America" (9 November 2016). An online readership poll conducted 31 May 2016 showed 58% favored Trump and 42% favored Clinton. The tabloid crowed, "Although the *Enquirer* polls did not follow the strict rules of statistical samples, one thing is certain: We had our finger on the pulse of the nation all along, and always will!" (9 November 2016).

"David thought Donald walked on water," a former *Enquirer* employee told the *New Yorker* (Levine, 2017). "Donald treated David like a little puppy. Donald liked being flattered, and David thought Donald was the king. Both have similar management styles, similar attitudes, starting with absolute superiority over anybody else" (Levine, 2017). "We used to go after newsmakers no matter what side they were on," a former *Enquirer* staffer told Jeffrey Toobin, a reporter for the *New Yorker*, "And Trump is a guy who is running for President with a closet full of baggage. He's the ultimate target-rich environment. The *Enquirer* had a golden opportunity, and they completely looked the other way" (Levine, 2017).

Pecker has no strong political views and a fascination with celebrity (Toobin, 2017, p. 45). "My duty is to my readers," Pecker said. "Few presidential aspirants in recent history have generated the kind of discussion Donald Trump has," Pecker told *The Daily Beast*. "It's no surprise that the readership of the *Enquirer* recently told us that they wanted to read more about Trump than any other 2016 candidate" (Suebsaeng, 2016). Trump often acted as a source for the publication. "When there was something going on in New York, David would talk with Trump about it (Toobin, 2017, p. 46). An American Media (AMI) employee told Toobin, "if Donald didn't want a story to run, it wouldn't run. You can put that in stone" (Toobin, 2017, p. 46).

"Pecker has the power through his media properties to influence public opinion," said Stu Zakim, a public relations executive who worked at AMI for three years. "Donald being the media manipulator that he is — it's a perfect friendship" (CNN, 2018). The media mogul is emphatic about Trump, "The guy is a personal friend of mine" (Borchers Trump's (2018). Toobin noted the friendship has lasted for decades and the publisher boasts about helping his friends (2017, p. 40). According to Pecker, a cover depicting Donald Trump as a hero, lambasting his opponents, boosted sales by 23% (Shafer, 2017). The readers of the *Enquirer* voted for Trump," Pecker told the *New Yorker*. "And 96 percent want him reelected today." (Borchers Why, 2016).

The Weather Vane Effect

No Republican challenger to Trump was safe during the primary. The *Enquirer* published a story in March 2016 about "boozin" Ted Cruz's five mistresses and his father's involvement in John F. Kennedy's assassination (Suebsaeng, 2016). When asked about it Trump said he did not know if it was true, but he did read it in the *Enquirer* which had a good reputation. They paper also ran a story about "bungling" Ben Carson claiming he left a sponge in a patient's brain. The scandal sheet also ran a story on 31 December 2015 alleging "nerdy" Mario Rubio, Senator from Florida, had a relative who had connections with cocaine smugglers. The celebrity newspaper reported Jeb Bush was a dope smoker and had an affair with a Playboy bunny (Suebsaeng, 2016).

Stories about the health of the first woman in history to run for President as the candidate of a major political party amplified those appearing in far-right publications and talk shows. In "Hillary's Full Medical File," published (8 September 2016) the tabloid ran a cover with a seemingly photoshopped picture of Clinton that made her appear on the verge of death. The publication erroneously alleged she

was suffering from or had suffered from muscular dystrophy, multiple sclerosis, Alzheimer's, liver damage, brain damage, seizures and strokes.

Former president Barack Obama and his family were subjects of disparaging stories. One wrongly alleged the Obamas were divorcing. Another headline screamed "Malia Obama – Out of Control" reported Obama's daughter was missing. The accompanying story speculated she was in treatment for cocaine addiction (14 December 2016). The *National Enquirer* ran a cover story claiming Obama was secretly trying to get Trump impeached (8 February 2017).

The *Enquirer* acts as a weathervane signaling who is out of favor with the President. Once the news broke that the FBI raided the home of Paul Manafort, the *National Enquirer* reported the president's former campaign chairman cheated on his wife (Siegel, 2017). The President distanced himself from Cohen after a Federal Court indicted his attorney. Readers discovered the extent of Cohen's fall from grace in the 7 May 2018 edition of the *Enquirer*. It promised it will reveal "TRUMP FIXER'S SECRETS & LIES!" The fixer is Cohen and The President wants us to know the attorney did very little legal work for him. *National Memo* writer Oliver Willis announced in one of the articles, "Afraid he will squeal to Feds, Trumps Tabloid Pals' Attack Cohen" (8 June 2018).

Catch and Kill

Reporter Callum Borchers of the *Washington Post* observed "The Enquirer practices a type of transactional journalism known as catch and kill" (Borchers Keep, 2017). *Gawker*, a bankrupt blog, reported David Pecker paid enormous amounts of money to suppress negative coverage of Arnold Schwarzenegger, executive editor of AMI's Men's fitness magazines (Pecker, 2010). A CNN poll showed 56% of Americans think the *Enquirer* is covering up for Trump (Kludt, 2018). The *Enquirer* paid \$30,000 to doorman, Dino Sajudin, to stop a story about Trump allegedly fathering a child with a Trump Tower maid in 2016 (Pearson and Horowitz, 2018).

Pulitzer prize winner Ronan Farrow in his 16 February 2018 article, "A Playboy model and a system for concealing identity" in the *New Yorker*, reported an employee of the *Enquirer* observed about catch and kill, "There's no question it was done as a favor to continue to protect Trump from these potential secrets. That's black-and-white." In June 2017, reputedly White House officials pressured television hosts Joe Scarborough and Mika Brzezinski to apologize to the President for their comments. In return, the *Enquirer* would not publish a story about their relationship. The same month the scandal sheet agreed to drop a negative story about Tiger Woods after he agreed to a cover story in *Men's Fitness*.

Jonathon Chait of the *National Interest* observed, "So, we know Trump habitually pays for sex, and we also know he is willing to pay to keep embarrassing secrets from going public. He counted on Pecker and the *Enquirer* to do just that" (Chait 2018). Jerry George, a former senior editor at the *Enquirer*, said "We never printed a word about Trump without his approval" (Farrow, 2018). Pecker knows where the bodies are buried and has the power to run stories or not to run them (Farrow, 2018). Farrow, son of Mia Farrow and Woody Allen, related the following story told by Pecker. When Karen McDougal first appeared on the scene, everyone wanted to hear her story. "At the same time, she was launching her own beauty-and-fragrance line, and I said that I'd be very interested in having her in one of my magazines, now that she's so famous" (Farrow, 2018).

The Prez, The Playmate, and the Tabloid

McDougal born in 1971, grew up in a small town in Michigan. She attended two years of college majoring in elementary education and took a job as a preschool teacher. She began a modeling career after winning a swim suit competition. She was the Playboy centerfold in December 1997. Hugh Hefner chose her as Playmate of the year in 1998. She described the key to her personality as "I've always put the feelings of others first. I'm just very nurturing and love to take care of people" (IMDb).

McDougal met Trump at a pool party at the Playboy Mansion. He asked for her telephone number and they soon began chatting on the phone. Their first date was dinner in a private bungalow at the Beverly Hills Hotel. McDougal wrote Trump impressed her. "I was so nervous! I was into his intelligence + charm. Such a polite man," she wrote. "We talked for a couple hours – then, it was "ON"!"

We got naked + had sex” (Farrow, 2018). As the model and actress was getting dressed to leave, Trump surprised her. “He offered me money,” she wrote. “I looked at him (+ felt sad) + said, ‘No thanks - I’m not ‘that girl.’ I slept with you because I like you - NOT for money’ - He told me ‘you are special’” (Farrow, 2018).

McDougal and Trump continued their relationship during the American Celebrity Golf Tournament in July, 2006 at Lake Tahoe. Allegedly, “the Donald” had sex with adult entertainer Stormy Daniels at the same event. McDougal claimed she had intercourse with Trump dozens of times during their affair from June 2006 to April 2007 (Cooper, 2018). Trump flew McDougal to public events across the country but hid the fact he paid for her travel so as not to leave a paper trail. He introduced her to members of his family and took her to his private residences. While visiting Trump Tower in New York, Trump pointed out Melania’s separate bedroom. He said Melania “liked her space to read or be alone” (Farrow, 2018). McDougal ended the relationship because of her paramour’s derogatory statements about her mother, a black friend, and feelings of guilt in April, 2007. Trump denied the affair.

Collusion and Manipulation

Nine years passed. On 7 May 2016, a friend of McDougal tweeted about the affair. McDougal’s friends told her this was the perfect time to take control of her story, earn some well-deserved compensation, and advance her career. On 13 June she hired Keith Davidson, a Hollywood celebrity lawyer, who represented adult-entertainment star Stormy Daniels in a similar case. Davidson suggested a non-disclosure agreement (NDA) would not hurt Trump, for whom McDougal still professed affection. In July, Trump received the Republican Party nomination for President.

AMI offered McDougal \$150,000 and promised her opportunities for career advancement. She signed a NDA on 5 August 2016. Davidson collected 45% of their offer as his commission. AMI paid for exclusive rights to her story, along with promises of publicity and marketing opportunities through its fitness magazines. The contract did not identify Trump and required her to keep quiet about any relationship with a married man. Pecker boasted, “Once she’s part of the company, then on the outside she can’t be bashing Trump and American Media” (Farrow, 2018).

The *Wall Street Journal* published a story about the adulterous relationship and the NDA on 4 November 2016, four days before the Presidential election. However, without corroboration the story soon died out. McDougal, a Republican, voted for Trump. At this point, she had the “inkling that she had been duped, especially when AMI threatened her with a \$10 million penalty if she breached the contract” (Weis, 2018). McDougal fired Davidson because he did not tell her about the contract’s fine print and negotiated with Michael Cohen without her knowledge. She contacted a well-known first amendment lawyer, Ted Boutrous, who renegotiated the contract to allow her to respond to legitimate inquiries about Trump without fear of penalty.

In a democracy, candidates have a right to privacy, but the electorate needs to know if a candidate has a life-threatening illness or significant moral flaw. Jefferson warned in his first inaugural address in 1801 that a man who “cannot be trusted with the government of himself. Can he then be trusted with the government of others?” (Jefferson). Many allege Trump covered up several affairs while he sought the top political office in the country. Non-disclosure agreements such as the one used to silence McDougal are common practice in the corporate world. But this is not the problem according to Heidi Kitrosser, a professor of constitutional law at the University of Minnesota Law School. It is the fact “Donald Trump is acting like he personally owns this information, as though he can act like a king and take any measures to control the way people talk about him” (Peck, 2018).

Karen McDougal hired a third lawyer, Peter Stris who filed suit in Los Angeles Superior Court on 20 March 2018 to void her non-disclosure agreement. Stris, stated, “Through efforts including the collusion of her own lawyer, AMI has consistently deceived and manipulated Ms. McDougal through an illegitimate contract” (Conley, 2018). In her suit, the former Playmate charged Davidson did not explain to her that allowing her to write stories for AMI did not mean they would publish them. She argued Davidson, Cohen, and Pecker conferred without her knowledge to protect the President. Furthermore, the suit claimed her payout amounted to an illegal corporate contribution intended to influence the election.

On the Rachel Maddow Show, Stris suggested legal action against Davidson and Cohen for fraud and ethics violations.

AMI counsel, Jean-Paul Jassy, fought back with a motion to strike McDougal's suit. He contended AMI had a First Amendment right not to publish her story and its editors "who chose not to publish it cannot be punished for exercising that right" (Briquelet National). In rebuttal, Stris said. "As we have learned through brave truth-tellers like Ms. McDougal, the tabloid went to great lengths to silence her and others, and they are now attempting to silence her again with the absurd claim that their own free speech was violated" (Briguelet National, 2018).

McDougal revealed telling details about her alleged affair on the Anderson Cooper show aired three days after she filed her suit. She expressed affection for Donald Trump, who, she said, was always a gentleman, and paid her compliments. She recalled Pecker invited her to lunch after she signed the NDA and thanked her for her loyalty. She realized too late Pecker did not want to help her and had lied to her. She said Davidson, promised her "many millions of dollars," but she signed the NDA, not for the money, but a chance to transition from modeling to writing (Cooper, 2018). She expressed regret for the illicit relationship and offered an apology to Melania.

Playboy Model Freed from Contract

On April 17th, 2018, Karen McDougal announced she was happy with the settlement. She noted, "I am relieved to be able to tell the truth about my story when asked, and I look forward to being able to return to my private life and focus on what matters to me" (Dedaj, 2018). She anticipated working again with the *National Enquirer*. The tabloid announced, "Ms. McDougal has always been free to talk about her relationship with President Trump" (Weis, 2018). They agreed to everything they promised in the original non-disclosure agreement. AMI agreed to publish five additional health and fitness columns by McDougal and retained the right to publish articles about her in the normal course of journalism. Lastly, they maintained a financial interest up to \$75,000 in any re-sale of an exclusive on McDougal's personal story.

Rachel Maddow tried to make sense of it all on her 18 April 2018 show. She could not understand why McDougal settled when her lawyer was on the verge of obtaining documents and depositions that further implicated the President. The television host's guest, former US Attorney Chuck Rosenberg warned, "It was not for us to decide. We do not know her goals." He added Stris represented the wishes of his client and this settlement would not affect a criminal case brought by the U.S. Attorney's Office for the Southern District of New York against Cohen for possible campaign finance law violations and improper lobbying activities (Maddow President, 2018).

Pecker is also facing a Federal Election Commission complaint claiming the \$150,000 payment to Karen McDougal represented an illegal campaign contribution. AMI denied any wrongdoing, while also saying its cooperation with investigators would not extend beyond its constitutionally protected status as a news organization. "It's easy to look down at the work product of celebrity magazines and assume they are not entitled to the same protections as the mainstream media," said Cameron Stracher, a lawyer for AMI (Briquelet National, 2018).

New York Times writer Matt Apuzzo in "Lawyer's Secret Tape Reveals Trump's Talk of Payments to Model," tapes and emails seized from Michael Cohen's office and subpoenaed from Pecker proved that Cohen, Pecker, and Davidson colluded before and after the settlement with Davidson (21 July 2018, p. A1). They passed on information to Trump who considered buying the rights to McDougal's story to reimburse his friend Pecker. The evidence revealed Pecker had a long-standing relationship with Cohen who reviewed all stories about the candidate/President, and ensured only the best photos of Trump appeared in the *Enquirer*. Pecker fulfilled his settlement with McDougal. She appeared on the September 2018 cover of *Men's Journal*. The issue contained her story, "Four Moves for Stronger Abs," (September 2018) despite the protestations of the magazine's CFO that it would hurt advertising revenue (Maddow, 10 August 2018).

Conclusion

Most Americans are familiar with the *National Enquirer*. It has a long history of UFO's, aliens, gore, and celebrity scandals. Many times, its writers scooped the mainstream press. It is ubiquitous, seemingly in every supermarket in the United States. Its bright colors and garish sensationalistic headlines call out to the public. "Discover secrets and find out the truth." So why take notice, besides a chuckle at a headline or schadenfreude over the fall from grace by film, TV, or political celebrities?

One reason the *Enquirer* is worthy of scholarly investigation is because of its unwavering support of President Donald J. Trump who lacks the endorsement of the mainstream press. He relies on a few select media outlets to broadcast his message to the American people. He uses the 140 characters of Twitter, the "Fair and Balanced" approach of Fox News, the many local TV stations of Sinclair Broadcasting, and the *Enquirer*. The President loves and respects the *Enquirer* and has a long relationship with the tabloid. It was the first national publication to endorse his bid for the Presidency. It published articles written by the candidate himself. The scandal weekly bashes Trump's enemies and supports his every policy. David Pecker, is a loyal friend, willing to pay money to buy and kill stories detrimental to Trump.

The friendship between Pecker and Trump involves convenience, style, and mutual interests. The messages of both are short, easy to read, and designed to elicit an emotional response. Both men are brash and utilize name-calling, conflict, and division. Both employ the argot of the streets of New York. This paper analyzed how Trump has "Enquirerized" politics using the headlines, covers, and words of the writers of the tabloid. Habermas believed an informed democracy thrived on contention, debate, and discussion, but needed protection from manipulative publicity. Sociologist Ellul pointed out that propaganda closes the minds of its recipients and provides them with a set of prejudices and beliefs as well as objective justifications (p. 166). Democracy's safeguards lie in what people read and how they react. The electorate must read critically, from more than one source. The press should foster discourse, not anger and resentment. Incivility is a toxic virus. Americans can avoid the disease it carries only by listening, accepting, and respecting one another. If democracy is to prevail it needs a healthy prescription of liberty, equality, and especially, fraternity.

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Appendix A

Facts and Statistics for Enquirer

Shocking news – America Media Inc. owns celebrity and health & Fitness magazines, Purchased (1999) by David J. pecker, chairman & CEO, Friend of Prez
Income up from 2014-2016, # of employees down (statista.com).
House of Horrors - Enquirer weekly tabloid founded in 1926. based in NYC.

Be the first to know – Circulation weekly 250,000,
23% Wal-Mart, 10% Kroger,
2 to 15% increase in circulation for Trump story,
96% are Trump SUPPORTERS
(Toobin, “Feeding the Beast,” *New Yorker*, 3 July 2017).

Getting it right – READERSHIP Declining,
Aging, Median Age 52.3,
Ratio women to men 62/38,
Average House Hold Income \$76,319, disposable income,
Easily understood,
Engages EMOTIONS, gossip.

We pay for tips – TYPICAL Enquirer contains Ads, Celebrity gossip,
News, Games (Crosswords & puzzles), Stars & Stumbles, Health Watch,
Market place (psychics & New id), Oddities, Horoscope, give away, Pet Vet.

World EXCLUSIVE! – Trump covers 39% (N=71) from 6 March 2017 to 12 July 2018,
sky box 20%, center 52%, footer 27% (N=44).

Trump story not on cover 27% (N=25).

Statistics from 2017-2018.

Secrets and Lies – Catch and kill

Karen McDougal lawsuit settled April 2018

(Farrow, “A Playboy Model”, *New Yorker*, 16 February 2018)

Appendix B

Content Analysis for Enquirer (N=5)

Ads – Weight loss (5x), Life alert, Disney pin, weight loss recliner, dolls (5x), coins, cat with Marine uniform, facial hair remover, computer for seniors, Queen Elizabeth statue, model car, non-snoring bracelet, eternity ring, zippo lighters, weak bladder pills, acupuncture shoes, debt control, dream chaser statue, snow globe, personalized checks, knit night shirts.

Celebrity gossip – Adele, Amarosa, Kristen Bell, Drew Barrymore, David Beckham, Halle Berry, Justin Bieber, Drew Carey, John Cena, George Clooney, Anderson Cooper, Bill Cosby, Matt Damon, Glada De Laurentis, Neil Diamond, Carmen Diaz, Shannen Doherty, Tammy Dombeck, Megan Fox, Michael Fox, Gal Gadow (Wonder Woman), Lady Gaga, Sarah Gilbert, Selena Gomez, Tonya Harding (2x), David Hasselhoff, Hugh Jackman, Janet Jackson, Kate Jackson, Paris Jackson, Elton John, Angelina Jolie, Kloe Kardashian, Mariah Kerry, Nicole Kidman, Jimmy Kimmel, Hoda Kotb, Heidi Klum (5x), Jenifer Lawrence, Matt Lauer, Heather Locklear, Lindsay Lohan, Eva Longoria, Madonna, Lisa Marie, Paul McCartney, George Michael, Abby Lee Miller, Lisa Minelli, Jason Momoa (Aquaman), Malia Obama, Roy Orbison, Maria Osmond, Sarah Jessica Parker, Danica Patrick (2x), Kate Perry, Nancy Pelosi, Brad Pitt, Erin Rogers, Royal Family (5x), Jean Simmons, Will Smith, Jada Smith, Scary Spice, Meryl Streep, Suzanne Summers, Taylor Swift, John Toones, John Travolta, Denzel Washington, Barbara Walters, Natalie Wood, Tiger Woods, Scott World.

News – Weird sex swap, Trump cleared Russia probe, Plot to blackmail Royals, Murder of Lee Harvey Oswald, O.J. Simpson’s Nephew is a pedophile, Kid catches carjacker, Gory stories (2x), FBI coup, North Korea, Sex molester Olympic gymnasts, Meghan Kelly vs. Ann Curry vs. Hoda Kotb.

Games, Crosswords, and Puzzles

Stars and Stumbles – Best dressed vs. worst dressed women

Health Watch – Easy ways to look younger and feel better, What you can tell from the color of your urine.

Market Place – Penis enlargement, psychics, fake ID

Oddities – Upside down Christmas tree, gravy cocktails

Horoscope – Sign up for newsletter and receive free lucky money pouch

Pet Vet – Tips for caring for your dog or cat

Listening for Healing: Introducing Educators to the Use of Children's Books for Bibliotherapy and Self-to-text Strategies.

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Dr. Kathleen B. Wheeler
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Abstract

The book *Fox* (2001) by Margaret Wild and Ron Brooks provides a storyline that allows the reader to determine the meaning, and conclusion, of the narrative. The characters encounter the themes of struggle, hurt, and love, multiple times in the story. These are relatable feelings for many of life's experiences and social constructs. The conclusion of the story is open and allows the reader to determine the outcome of the characters' relationships and destinies. It is due to this relatable and open dialogue that Wild and Brooks create that allows the reader to become engaged, and motivated, to participate in the narrative as Fisher (1987; 1994) presents in his paradigm, permitting for a Self-to-text (STT) understanding of self to take place, and also provides evidence that this children's book could be used for Bibliotherapy.

Introduction

After encountering the children's book *Fox* by author Margaret Wild and illustrator Ron Brooks (2001) and learning of its positive therapeutic use in a drug recovery group, a formal interest in Bibliotherapy, using this text, was initiated. Wild and Brooks' picture book was read by several individuals outside of the drug recovery setting, and because of its universal nature and powerful storyline, each person revealed a personalized reaction. "*Fox* challenges such prejudices, and its publication acknowledges the importance of mature, emotional investigation in the picturebook form" (Sheahan-Bright, n.d.).

In this research, middle-level education majors were asked to be participants in a study involving a reading of the book *Fox* (Wild & Brooks, 2001) and engage in self-reflective questioning. The goal of this research is to understand if Bibliotherapy could be used informally in a classroom setting using a relatable narrative. The researchers found value in revealing if an individual could better understand their life story as they were listening to an engaging storyline and perhaps find a sense of self-healing through the storytelling process.

Literature Review

Bibliotherapy

The term Bibliotherapy was first coined by Samuel Crothers in 1916 when he referenced books as tools for healing (Pardeck, 1994). Bibliotherapy is a phenomenological method and a process where individuals must tap into their consciousness and relate to the subjective experience they are processing (Marlowe & Maycock, 2000). Ultimately, Bibliotherapy is meta-analysis (Macdonald, Vallance, & McGrath, 2013). For this study we will use a definition by Stamps (2003) which defines "Bibliotherapy is a strategy that helps students overcome or deal with a current problem or issue in their lives" (p. 26). Bibliotherapy is seen as very economical and encourages patient involvement within this therapy process (Hallstead, 2002; Chamberlain, Heaps, & Roberts, 2008).

Counseling in Educational Settings

Educational settings often allow students to ponder new questions of information and their own self-efficacy. According to Allen (et al., 2012) even libraries could be the perfect setting, due to the access to books and to education professionals, for one to look for introspection.

Narrative Paradigm

Walter Fisher's Narrative Paradigm (1987; 1994) reveals that narration is part of basic human nature and that stories can explain the human condition. Due to the social construction (Berger & Luckman, 1967) of storytelling, the completion of one's interaction with narrative (Fisher, 1987; 1994) can take on many forms as the interpretation process is individualized. It is in this individualization of the story, due to one's own lived experiences, that stimulates the accomplishment of catharsis (Allen, et al., 2012). Bibliotherapy is a self-help method that can be used for minor health problems (Macdonald, Vallance, & McGrath, 2013). "Perhaps the terminology itself is what is most problematic for nonclinical practitioners because it is easily associated with licensure and medical treatments" (Ya-Ling, 2008, p. 48).
Self-to-Text

In the education field, Self-to-Text (STT) is a term which describes how readers will interact with a text, often in a book or paper form, in a way that allows for individuals to understand themselves and their peers (Falk-Ross & L'Allier, 2006). The technique of STT, or connecting with the text that they are reading, can be taught to students for both intellectual and emotional understanding (Harvey & Goudvis, 2000). In addition, individuals experiencing STT tend to be highly motivated to continue to read and connect to the text because the readers are engaged, they feel they understand the situation and/or characters in the story, and they feel as though the time invested in reading is purposeful (Tovani, 2000; Irwin, 2003).

When evaluating the reader's response, it is important to understand that the style and technique the author employs in the story is influential (Rosenblatt, 1978) "Children, however, will hear and remember a story differently than how it is read to make it better fit their needs" (Allen et al., 2012, p. 47). Hayes and Amer (1999) agree that children will discuss their experiences freely when narrative is used as a mediation. However, a person's behaviors must change, accompanying the emotional response, for there to be proof that a STT experience has occurred (Marlowe & Maycock, 2000).

Method

In this qualitative study fourteen participants engaged with Margaret Wild and Ron Brooks' book *Fox*. The researchers engaged in purposeful sampling by gathering intense data from small group(s) (Patton, 2002). The participants in the purposeful sample presented here were all above 18 years of age and Education Majors in a small, private University in the Midwest using purposeful sampling (Patton, 2002). The researchers were invited to a university classroom where the participants were read the book, *Fox*, out loud.

Summary of *Fox*

The book *Fox* begins when characters Dog and Magpie meet after enduring a bushfire. A slow and deliberate friendship begins due to the persistent kindness of Dog and mutual physical injuries that complement one another as they embark on a journey. Fox enters the story and is welcomed by Dog, but not by Magpie. Fox makes Magpie uncomfortable. Fox exploits the insecurities of Magpie by tempting her three times to join him on a journey which separates her from Dog. Fox reveals his emotional abuse intentions to hurt Magpie and to destroy the friendship between Dog, Magpie, and Fox. Thus, all three characters are left in solitude. Magpie hops away on a journey home. The resolution of all the character's dilemmas is left to the reader as they reflect on their personal optimism or pessimism as constructed by their own life experiences.

Qualitative Interview Process

An interview guide was prepared in advance for this research and approved by the University IRB. The participants were given a list of questions concerning their feelings about the book, characters, genre, picture, and text. Each question asked for comment concerning the participants' feelings and interpretation of the book's storyline. and immediately. Participant responses were anonymous.

Data Analysis

This qualitative case-study was designed to observe the phenomenology of the how the participants processed the story, *Fox* (Patton, 2002, p. 104). The data was collected in this case-study and each set of participant responses were analyzed and coded in order to identify emerging themes

(Cresswell, 2009). This study could easily be replicated for comparison of themes providing evidence of validity and reliability.

Husserl (n.d.), a philosopher of phenomenology, believed humanity could only know things that they experienced through their senses. This study predicted that individuals experiencing a reading of the book *Fox* (2001) may encounter a phenomenological bibliotherapeutic experience when the participants heard the story, and thus the questions were formulated with analytic induction (Patton, 2002, p. 94). Thus, the following research questions were hypothesized for this case-study:

RQ1: Does Margaret Wild and Ron Brook's book, *Fox*, bring a person to realize their life story?

RQ2: Could Bibliotherapy be used in an educational setting?

Findings

After reviewing the findings that were gathered from the participants, transcribing the interviews, and coding the results, themes were revealed in this case-study. The insight from the students, as concluded through the gathered interview responses, generated valuable discernments to how the book *Fox* (2001) created phenomenological bibliotherapeutic experiences for the participants. This section will introduce and describe the themes that emerged from the examination of the transcripts.

Pictures and Text

Nine of the participants mentioned that the illustrations within the book that captured their attention the most was the close up of Fox's eyes. The other image significantly noted was the image of Dog and Magpie sitting together and looking at their reflections in the water. The text on the page says, "Dog is waiting. He persuades her to go with him to the river bank. 'Hop on my back,' he says, 'Look into the water and tell me what you see.'" (Wild, 2001, p. 3). One participant interpreted this page to convey, "There, the animals realize they can work together despite their disabilities and be what each needs to continue on" (personal communication, November 16, 2016).

The print in the book *Fox* (2001) is rough, laid vertically at times, lacks uniformity in size, style, and positioning, written in scratchy writing and requires the reader to physically turn the book at times to read the text. When asked for a reaction to the book's colors and print the participants identified that they were generally more comfortable with traditional print order but found themselves intrigued and at times bothered with the style the author and illustrator chose. Words commonly found describing the words and the text included: curiosity, unconventional, haunting, engaging, and child-like. The readers felt that the colors in the artwork were also appealing. The book provides mostly illustrations using large amounts of red, orange, brown, and black which seemed unconventional to the readers.

Relation to Characters

There are three main characters in the story: Dog, Magpie, and Fox. Six participants stated they related the most to Magpie. Five of the participants related the best to Dog. Two of them felt they were most like Fox. Of the fourteen participants only one shared that they didn't enjoy the book and when asked if they related to any of the characters the participant shared that they did not relate to the characters as, "[T]hey were all depressing in their own way" and that the ending of the story was, "Awful, too depressing for a Children's book" (personal communication, November 16, 2016). The rest of the participants conveyed a positive experience with reading the book and enjoying the storyline and the characters in the book. Thirteen of the participants also categorized themselves as individuals with a generally optimistic worldview.

Individuals who relate to Magpie revealed internal reflections of temptation, straying from loving relationships, and stories of trauma influencing life choices. Individuals who relate to Dog revealed internal reflections of being loyal in unfaithful relationships, jealousy, and displaying trust. Individuals who relate to Fox revealed internal reflections of desiring to be understood, being on the outside of relationships, having hurt which leads them to take desperate measures in interpersonal interactions.

Story Ending

Margaret Wild ends the book *Fox* (2001) abruptly leaving the reader to determine the fate of the characters. This hasty ending bothers the readers but they are each able to articulate what they believe happened to the characters beyond the written words. The participants show their optimism by revealing themes of hope, perseverance, redemption, and the ability for friendships to overcome obstacles. The

interviewees felt that each of the characters would be doing self-reflection while evaluating the value of their friendships and complications to mending them. A few of the participants, who struggled with the hasty resolve of the book wrote out a happy ending the author should consider.

Life Story

For this study, it is important to understand if the participants were able to use *Fox* (2001) to relate to their life-story. Again, with the exception of one participant, the interviewees were easily able to present detailed reasons why this book related to their life-story. Participants detailed stories of toxic boyfriend/girlfriend relationships, disobeying parents, lies that have gone poorly, being hurt by others, or experiencing jealousy.

Several of the participants spoke about their spiritual journeys when reflecting about how this book related to their life-story. Themes of temptations and redemption took on Christ-story narrative in the participant responses. Again, it should be noted, that this study was conducted at a private Christian University. Six of the participants specifically spoke about how a Christ-story, or themes of God's forgiveness, are found within Margaret Wild's book.

Bibliotherapy

The interviewees in this study are legal adults and being trained to be professional educators. When the participants were asked if Bibliotherapy could be used in an educational setting these young professionals were cautious yet optimistic. Several suggested that it was important for the educator to find the right text for the students to relate to both in age and in topic. Many felt that using Bibliotherapy in the classroom was a way to avoid singling a student out while addressing and talking about important issues.

The themes revealed in this case-study were strong and created insight to the participant reaction to the book *Fox* (2001). With the exception of one participant, the interviewees seemed open to the idea of relating the book to their own lived experience and contemplating the uses of Bibliotherapy.

Conclusion

The book *Fox* (2001) by Margaret Wild and Ron Brooks provides a storyline that allows the reader to determine the meaning and conclusion of the narrative. The characters encounter the themes of struggle, hurt, and love multiple times in the story. The conclusion of the story is open and allows the reader to determine the outcome of the characters' relationships and destinies. It is through this relatable and open dialogue that Wild and Brooks create that allows the reader to become engaged, and motivated, to participate in the narrative as Fisher (1987; 1994) presents in his paradigm, permitting for a Self-to-text (STT) understanding of self to take place, and also provides evidence that this children's book could be used for Bibliotherapy. After examining the findings of the qualitative interviews conducted, it is evident that Margaret Wild and Ron Brooks' book, *Fox* (2001), is able to bring people to realize their life story.

After examining the findings of the qualitative interviews conducted, it is also evident that Bibliotherapy may be used in an educational setting in two ways. First, the participants, although volunteers, were read the story in a classroom setting. The book was presented and the students listened and were given some questions to reflect upon. The students could use their senses to interact with the physical book, hear the book read to them, and see the pictures and words projected on a large screen in front of the room. Due to the majority responses, the participants were able to articulate how the book related to them and emotional items they were working through individually. Second, as these individuals happened to be aspiring teachers, they wanted to respond to the concept of Bibliotherapy being used in the classroom. The participant responses were futuristic as they reflected on how they may use this tool with their impending students. It should be noted that future interviewees may not have this reaction as they may lack teacher-education training. However, as every individual, consciously and unconsciously, searches for an outlet for catharsis perhaps reading and listening can be an outlet suggested for individual healing. Bibliotherapy in the classroom setting may be a source for exploration.

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Students with Emotional Disorders and Their Television Viewing Habits: A Case Study

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Calvin, of Calvin and Hobbes (Watterson, 1994), escapes the plight of his Mom and Dad (never named) and his teacher (also, never named) by fleeing into a vivid fantasy world of aliens, monsters, and transmorgaphying machines. When reality becomes overwhelming, Calvin jumps into his cardboard box, better known as the “Great and Wonderful Transmorgaphying Machine,” and becomes a speckle of dust that can float disconnected from his body, instead of dealing with his Mom’s insistence that he clean his room.

Fantasy and internal dialogue can be part of everyone’s experience. But, not all fantasies are adaptive or self-enhancing. Consider Beavis and Butthead (Judge, 1996), while this show provided many people with an entertaining/humorous -- albeit skewed -- glance at the world of two teenagers, how would someone (e.g., a teacher) outside the show’s constructed reality describe their behavior? And what of the adult cartoon South Park (Parker & Stone, 1999)?

The children of South Park (Parker & Stone, 1999) provide a politically driven, child's view of American society and culture; that is if the child's view was first filtered through a Kafkian Prism. South Park may seem astute to the adult viewer, but imagine having these children in a class. These television programs illustrate examples of children that could be diagnosed with an emotional disorder. Estimates of the prevalence of emotional disorders in children and youths have varied because there has been no standard and reliable definition or screening instrument (Hallahan & Kauffman 2006). Additionally, Forness, Freeman, Paparella, Kauffman, & Walker (2012), write that underidentification of emotional disorders is prevalent in school-age populations where students are identified at the one percent of the population. However, it is estimated that at least 6 to 10 percent of school-age children exhibit serious and persistent emotional problems. As Brauner & Stephens (2006) cited from a 1999 Department of Human and Health Services report, approximately 10% of children are diagnosed with an emotional disorder in some period of their life. One area of concern has been if a connection exists between the behavior of school-age children with emotional problems and their consumption of entertainment media.

We investigated whether there is a relationship between the behavior of children with an emotional disorder and their consumption of entertainment media (i.e., television). This study attempted to emphasize that a connection between media consumption and the challenging inappropriate behavior of children with emotional disorders is an artifact of previous research. Mitronfan, Paul, & Spenser (2009) write that their systematic review found insufficient, contradictory and methodologically flawed evidence on the association between television viewing and aggression in young people with emotional disorders. The study used qualitative methods (e.g., interviews, observations) to critically examine and deconstruct the *prima fascia* stance of media effect theories as they apply to children/youths with emotional disorders consumption of traditional entertainment media.

The participants for this study are from an elementary campus of a school district in East Texas. The students and their teacher are interviewed in the natural setting of their classroom. Six student participants

were chosen based on the campus administrator's verification of identification of students as having qualified to receive special education services as a child with an emotional disorder. After receiving approval from the parents, the campus administrator submitted a list of at least six students – who met the criteria of the study and whose parents/legal guardians were willing to allow them to participate.

A History Violence

Violence and antisocial behavior has been a subject in literature, and the arts since the beginning of human civilization examples include but not limited to *The Odyssey* written by Homer in 800 B.C.E. (Homer & Wilson 2018), Cain killing Abel in the Bible (Genesis 4:1–16 Old Testament), and *The Divine Comedy* completed in 1320 A.D. (Alighieri, 2018). In part, this may merely reflect the unfortunate realities of civilization. But, it is also likely that people's fascination with violence satisfies some basic human needs. The adrenalin rush, the satisfaction of imagination, fantasy, and vicarious adventure, probably explains why millions of nonviolent people enjoy violent entertainment (Bettelheim, 1976; Jones, 2002). Enjoyment is typically examined during or after viewing. However, selective exposure and satisfaction are the different process and not strongly predictive of happiness in specific contexts (Weaver, 2011).

Gauntlett (2004) writes that despite many decades of research, the connection between traditional entertainment media (e.g., print, radio, and analog television) consumption by children and children's challenging behavior has remained persistently elusive. Somewhere between 200 and 300 laboratory experiments and correlational studies have been done on media effects and the results have been dubious and inconsistent (Sprafkin, Gadow, & Grayson 1987; Gadow & Sprafkin, 1989; Gauntlett, 1996). One experiment found aggressive and antisocial behavior, in children, after they viewed *Mr. Rogers' Neighborhood* (Jones, 2002).

According to Fischhoff (1999) and Goldstein (2001), for the minority of quantitative experiments that have yielded a correlation between antisocial behavior and media consumption by children, the explanation probably has more to do with the general arousal effect of violent entertainment than with viewers' exact imitation of violent acts.

Laboratory-based experiments do not measure real aggression (Gauntlett, 1996) instead these studies measure other behaviors that the researchers consider proxies for real aggression (Freedman, 2002). Fischhoff (1999) indicates that the evidence for the connection between media consumption and antisocial behavior is very controvertible. Fischhoff believes, as does other researchers (e.g., Sprafkin et al., 1987; Goldstein, 2001; Gauntlett, 2004; Jones, 2002), that the use of a quantitative research design when examining the effects of media on children, is flawed, and that it is more appropriate to use qualitative methodologies, especially when investigating something as nebulous as motivation and intent.

Consumption of entertainment media vs. The behavior of children

The current study investigated whether there is a relationship between the behavior of children with an emotional disorder and their consumption of entertainment media (i.e., television). The study used qualitative methods (e.g., interviews, observations) to critically examine and deconstruct the *prima facie* stance of media effect theories as they apply to children/youth's consumption of traditional entertainment media.

Paradigms and Procedures

The participants for this study are from an elementary campus of a school district in East Texas. The students and teacher interviewed in the natural setting of their classroom. Study participants are from the population of one elementary class. Six student participants were chosen based on the campus administrator's verification of identification of students. After receiving approval from the parents, the campus administrator submitted a list to the investigator of at least six students – who met the criteria of the study and whose parents/legal guardians were willing to allow them to participate. Numerous classroom observations, student and teacher participant interviews', and an extensive review of past and current literature re-examined children and media effects form a qualitative standpoint.

We spent one week at an elementary school in East Texas interviewing the six student-participants, their teacher, and observing the student-, and teacher-participants in their natural environment of the classroom. The students' favorite television programs were digitally recorded and followed by the

investigator. This procedure was done to compare the observable, classroom behaviors of the students to the observable behaviors of the television characters. Interviews with all participants were transcribed to allow for easier access to the acquired data. The information from this study was analyzed by applying techniques of data display and analysis.

Data Analysis

The qualitative data analysis was approached using respected, researcher-accepted practices, including (a) recording of the data in minute detail, (b) open-ended questions presented to this study's participants, (c) researcher observations of both the participants and the traditional entertainment media, and (d) data analysis using a deconstruction approach (Gauntlett, 1996; 2004; Merriam, 2016). Data examined for its influences on culture, social, education, or economic biases of the students' teachers. The final analysis was presented in visual (e.g., graphs, tables) and narrative form with transcriptions of the interviews.

Line by line analysis of the interview transcripts was conducted, extrapolating information related to television programs viewed, attitudes towards said programs, and influences said programs had on participants. The extrapolated information was then categorized, according to the genre of programs and participants responses related to watching programs. Tables 1-3 were then created using the above criteria. Data was used to determine answers to the research questions. Data were analyzed *via* traditional, hand-coding. The uniqueness of this study, the need to extrapolate seemingly unrelated data, and the data-set size were all considered as factors that suggested the use of traditional, non-qualitative software-based methods. The first letter of their name identified students.

Analysis of Results

After the investigative week at the elementary school in East Texas, certain commonalities discovered among the majority of participants related to their viewing of traditional entertainment media. These commonalities included: (a) that the participants viewed shows that were contradictory to their behaviors, (b) that the shows viewed were not antisocial in message or intent, (c) that the student participants all stated a need for "something" in their lives that was not chaotic. The following are data gathered through interviews and observations of participants and television programs:

See Table 1

See Table 2

See Table 3

According to Douglas and Olshaker (1999), there have been instances where criminals or others engaged in violent behavior have imitated specific aspects of violent television shows. As noted earlier some researchers (e.g., Bandura, 1977; Gerbner, Gross, Morgan, Signorielli, & Shanahan 2002) conclude that children process television shows by imitating what they view. The above researchers' hypothesis is not conclusive (Gauntlett, 1996; Jones 2002). The student-participants' interviews and observable, negative classroom behaviors (see Table 3) illustrate a dichotomy between actions and views.

All student-participants identified as having an emotional disorder according to the United States federal definition in the Individuals with Disabilities Education Act (IDEA, 2004):

“emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual sensory, or health factors; (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) Inappropriate types of behavior or feelings under normal circumstances; (D) A general pervasive mood of unhappiness or depression; (E) a tendency to develop physical symptoms or fears associated with personal or school problems.”

A majority of students (5 out of 6) stated that they preferred watching television programs that coincidentally have an MPAA Rating of TVG to TVY. Student-participants indicated that they liked television shows that IMDB.com (2015) and Parker and Stone (2015) describe as family-friendly, positive shows. Conversely, they (i.e., the student-participants) were observed engaging in such harmful behaviors as pulling chairs out from under other students or flooding the restroom with water (see Table 3). The two students W and S; that pulled chairs out from under other students laughed when the students who fell

cried. This included student P, who stated (that) while his favorite program was *Fear Factor*, he also watched *VeggieTales* because “. . . They help me learn about God.” When asked how watching their favorite television programs made them feel, the student-participants responded that it made them feel good or happy. This seems to support their earlier statements that they wanted something that was positive (i.e., commonality C).

The students’ responses to the interview questions support the position that they were using television as a form of escapism. When asked why they liked a particular show, the students responded that they wanted, needed, or should have some normalcy in their lives. *Fear Factor* which was watched by Student P -- while it is intended for older audiences -- still has elements of characters supporting and helping each other and overcoming their fears. Therefore, we discovered these six children utilizing television as a pseudo-copping mechanism.

While the students come from different backgrounds, one constant is that all of their families are dealing with some chaos. No common observable behavior patterns could be found in student-participants that mirrored those maladaptive behaviors in the characters which they viewed. If a connection exists between these specific students’ behavior and their viewing of traditional entertainment media, it would seem to be at a more profound, unobservable level.

By observing the behaviors of the student participants in their classroom environment, it could not be determined if the students knew they were engaging in antisocial behavior. Anecdotal evidence was observed that the students appeared to get upset when they talked about their family life. One student stated that she did not want to talk about her mother. Another student got very agitated with the subject of her family. A few times it was observed in the classroom, students that were not participants in this study would say derogatory comments (e.g., “your mom is a crack-whore”) to student-participants. This would cause the students to either “yell” back or leave the classroom.

When the student-participants’ teacher was interviewed, she stated that she believed television negatively affected the behavior of her students. When questioned further, she was unable to give specific examples of this occurring. She said that media violence has been pervasive in the news and, because of that reason, it was likely the media would have an effect on her students. This belief may be a function of Gebner et al., (2002) cultivation theory. Wherein, people that view media may come to perceive their environment more regarding what is televised, rather than actual reality. The teacher also stated that television could have positive effects on children because it exposes them to “things” that they may not otherwise be aware. She gave the example of *Forensic Files*, which is a documentary about crime scene investigations.

It has been suggested by Kubey (1986) and Rubin (1984) that the most prominent approach of explaining the causes of television viewing involves escapism. According to Rubin, “In its core, escapism means that most people have, due to unsatisfying life circumstances, again and again, cause to leave the reality in which they live cognitively and emotionally” (p. 69). In addition to one’s social situation, there is also a psychological situation that is largely independent of social influences and can trigger an escapist manner of television viewing. For example, one study identified ten uses/gratifications for social media, including: (a) social interaction (88%), (b) information seeking (80%), (c) pass time (76%), (d) entertainment (64%), (e) relaxation (60%), (f) communicatory utility (52%), (g) information sharing (40%), and surveillance & watching of others (20%) (Whiting & Williams, 2013).

Kubey (1986) hypothesizes (that) it has been made clear traditional entertainment media is an activity likely to be chosen by people wishing to escape from negative feelings and the demands of reality. Kubey also writes the form of escapism is referred to as social-psychological escapism. This is when escapism concerns the close social (e.g., family) setting of the person. Although this conceptualization of escapism seems plausible, empirical (i.e., quantitative) studies have shown weak results (Gauntlett, 1996). According to Jones (2002) and Kubey (1986), social-psychological escapism has been identified in mass communication research since the early 1940s. By examining the data collected from this study, it seems probable that the student-participants may be using social-psychological escapism as a way of dealing with the day-to-day realities of their lives.

Conclusion

It was found that the students spent only a small part of their days watching television, anywhere from one to two hours per day. While the quality of the programming watched is more important than the time spent viewing, the student-participants were watching age-appropriate programming that teaches positive social messages. The Canadian Paediatric Society wrote in (2017) that quality content of media could enhance both social and language skills for all children aged 2 and older, particularly for children living in poverty. For this study, it would seem that while the appropriateness of the television shows that children are watching does not belay all of the criticisms (e.g., increased distractibility). Even Bryant (2001), who is concerned with the viewing habits of television watchers, has worked on and approves of positive, shows such as *Sesame Street* (Berger, 2004).

Even though the students have differing backgrounds, one constant is that student' families were dealing with some typed of chaos. While the investigator observed the behaviors of the characters and student-participants, no common observable behavior patterns could be found. Based on observations and interviews, a connection between the students' interpretation of behaviors of the characters and the students' challenging behavior could not be found, no correlation. To delve further into the behaviors of the participants and their denial that they used traditional entertainment media to create meaning goes beyond the scope of this study. The students were unable to see results between individual student behavior and viewing. If a connection exists between these specific students' behavior and their viewing to traditional entertainment media, it would seem to be at a more in-depth, unobservable level.

This study examined six, first-grade exceptional students and their viewing habits. Numerous classroom observations, student and teacher participant interviews', and an extensive review of past and current literature should provide starting points for re-examining children and media effects from a qualitative standpoint. By examining television from the emic voice of the children, without placing them (i.e., the children) in a Marxist ordinate/subordinate position to the researcher, we believe that a better understanding of media effects can be delineated.

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Table 1: Descriptors of Student- and Teacher-participants' Favorite Television Programs

Television Programs	Participants (Initials)	Genre of Programs	Channel Televise	Programs
<i>Fear Factor</i>	P	Reality	NBC	
<i>Forensic Files</i>	Teacher	Crime/Documentary	Court TV	
<i>Kim Possible</i>	D, S	Cartoon	Disney Channel	
<i>Lilo & Stitch</i>	W	Cartoon	Disney Channel	
<i>Lizzie McGuire</i>	W	Children's show	Disney Channel	
<i>The Proud Family</i>	D	Cartoon	Disney Channel	
<i>Sister, Sister</i>	S	Family situation comedy	ABC	
<i>Scooby-Doo, Where are You?</i>	A	Cartoon	Cartoon Network	
<i>SpongeBob SquarePants</i>	B, D	Cartoon	Nickelodeon	
<i>Tom and Jerry</i>	B	Cartoon	Cartoon Network	
<i>VeggieTales</i>	P	Religious Cartoon	Videos*	

Note. Even though *VeggieTales* is not a television program, it is included in this study because it is viewed on the television using a VHS or DVD player

Table 2: Motion Picture Association of America Rating of Television Programs

Television Programs	MPAA Ratings of Television Programs
<i>Fear Factor</i>	Unrated
<i>Forensic Files</i>	Unrated
<i>Kim Possible</i>	TVY7
<i>Lilo & Stitch</i>	TVY
<i>Lizzie McGuire</i>	TVY
<i>The Proud Family</i>	TVY
<i>Sister, Sister</i>	TVG
<i>Scooby-Doo, Where are You?</i>	Unrated
<i>SpongeBob SquarePants</i>	TVY
<i>Tom and Jerry</i>	Unrated
<i>VeggieTales</i>	Unrated

Table 3: Researcher Observed Negative Classroom Behaviors of Student-Participants

Students' Initials	Verbal abuse against other students	Hitting other students	Pulling Chairs of other students	Damaging property	Leaving classroom w/o permission
W	40 times	4 times	2 times	4 times	5 times
P	26 times	6 times	0	0	15 times
B	14 times	2 times	0	0	4 times
D	50 times	10 times	0	0	2 times
S	21 times	6 times	1 time	1 time	6 times
A	4 times	0	0	0	26 times

Is It Too Late to Save Social Security with Diversification?

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Abstract

The OASI Trust Fund has been projected by the 2016 Annual Report of the Board of Trustees to be exhausted in the year 2035. One alternative for salvaging the Trust Fund is to increase the investment return. This study reports that OASI investment diversification into corporate securities will extend the financial integrity of the Trust Fund beyond the projected exhaustion in 2035. Gains from diversification persist under various assumptions, including those reflecting the recent Great Recession.

I. INTRODUCTION

According to the 2016 Annual Report of the Board of Trustees for the Federal Old-Age and Survivors Insurance Trust Fund (OASI), the Trust Fund was providing about forty-nine million people with benefit payments at the end of 2015. Although safeguarding the OASI program, i.e. Social Security, is both generally and politically popular, the means to provide a viable system are froth with political turmoil and uncertainty. The approaches to achieve OASI survival may be grouped into three broad categories: entitlements, privatization, and diversification. For a review of proposals to reform the Social Security system refer to Koleva, 2012. Herein, we consider only the Old-Age and Survivors Insurance (OASI) program and we consider only diversification of the Trust Fund investments into securities other than US Treasuries. Manley and Mariola (2005) discusses whether diversification could achieve OASI sustainability. Their findings are based on diversification of the Trust Funds into a broad range of securities while maintaining a reserve in U.S. Treasury securities equal to 150% of each year's required benefits. Their reported findings indicated that diversification in 2002 would have safeguarded the Trust Fund from the then expected depletion in 2043; in fact, diversification would have enabled the Trust Fund to become sustainable at that time well past 50 years into the future. Their findings demonstrated that only a prolonged significant depression could threaten the survival of a diversified OASI Trust Fund.

One of the more popular criticisms of the diversification approach is the volatility present in the security markets. As such, concern is expressed about the impact a serious recession or market correction could have on the investment value of the Trust Fund, since corporate bond and equity markets are more volatile than the U.S. Treasury Market. The actual performance of the Trust Fund may not be better served with diversification if there is a serious correction (short term) or significant decline (longer term) in the economic performance of the markets. An estimation of the impact on the performance of a diversified Trust Fund using the actual market performance during the period of the 2007-2009 Great Recession provides insight into this criticism.

Manley and Mariola (2014) report an assessment of the impact the actual performance of the markets during the *Great Recession* (2007-2009) would have had on the survival of the Social Security program if diversification were pursued. The authors compared the actual performance of the Trust Fund to a year-by-year estimate of that performance using various combinations of diversification among U.S. Treasuries, Corporate Bonds and Equities. The authors report that diversification would have vastly improved the health of the OASI Trust Fund. Their primary findings are two-fold: had diversification been pursued in the first decade of the Twenty-first Century prior to the *Great Recession* of 2007-2009, then 1) the Trust Fund would have begun 2010 in a better position than it did without diversification, and,

2) the Trust Fund's survival would have been assured due to the large dollar surplus available for diversified investment in 2002.

This study proposes to revisit the gains derived from diversification of the Trust Fund in the current environment. In the aftermath of the Great Recession, and given the current available funds, the question remains whether diversification is still a viable alternative to safeguard the Trust Fund for future recipients. Given the greatly reduced dollar amount available to be invested in a diversified plan (see below), this study estimates the impact diversification can have on salvaging the Social Security system.

II. CRISIS IN THE OASI

The Trust Fund Ratio (TFR) is the ratio of the Trust Fund's assets at the beginning of the year (BOYA) divided by the estimated expenditures (benefits paid) for the year, times 100. A comparison of the projection by the Office of the Chief Actuary for the OASI performance from the 2002 report to the 2012 report indicates substantial changes to the survival of the Trust Fund. These changes reflect the on-going impact of the *Great Recession* on the performance of an undiversified Trust Fund. According to the projection in 2002, the Office of the Chief Actuary expects the Trust Fund to grow from \$1,072 billion in 2002 BOYA to a high of \$7,141 billion BOYA in 2028 with exhaustion in 2043. This is compared to the 2012 report which expects a high of only \$2,922 billion BOYA in 2021 (hitting the high seven years sooner) and a decline thereafter until exhausted in 2035 (eight years sooner). If we assume that the OASI annual costs would increase during a recession (a recession may encourage retirements) while income (and, therefore, contributions) would decrease, it is expected that the Great Recession will have had a significant impact on the forecasted performance of the Trust Fund. The Chief Actuary's Long-Range Forecasts, from 2002, 2008, 2013 and most recently in 2016, indicate a decline in the available funds and a sooner-rather-than-later anticipated exhaustion of the OASI Trust Fund with each subsequent report. Evidence of the deterioration in the forecasted performance of the Trust Fund can be clearly seen in Exhibit 1 which indicates that the year that the TFR hits a maximum has already passed, as has the year in which benefits paid exceed income from taxes. The 2014 Trustees Report reports the Trust Fund reaching only \$2,878 billion by 2020 versus the 2002 Report's expected \$4 trillion. This is a decrease of over a trillion dollars; this deterioration continues with the 2016 report in which the 2020 account value is expected to be reduced to \$2,830 billion.

In 1982, the OASI Trust Fund balance was \$20 billion; in 2002, it was \$1,072 billion; and by 2007, it was \$1,844 billion. This represents a 22% compounded growth over the first 20-year period, an 11.5% growth during the more recent 5-year period with only a minor recession, and a 20% (rounded) growth during the full 25-year period. This implied reduction in the compound growth rate is worrisome for the future survival of the system. The continued decline in the growth of the surplus argues for action to be taken sooner rather than later to secure the future of the OASI Trust Fund. When the Social Security law was passed in 1935, the law required that surpluses be invested only in government securities; the current discussion concerning diversification is whether to change the law to allow for investment in securities other than U.S. Treasuries.

III. Recent Performance Evaluation of the OASI

One explanation for the continued deterioration in the Trust Fund may be due to a reduction in the contribution from the employee payroll tax for tax years 2010, 2011 and 2012 associated with a *tax-holiday* for individual qualified contributors. But, this reduction has been accompanied by an agreement to transfer from the general fund of the U.S. Treasury enough funds to replicate the lost wage tax contributions that would have been received without the tax-holiday (see Exhibit 2). Since the tax holiday program on personal income for social security was financed with replacement funds using funds authorized through the stimulus package, the tax holiday program did not adversely effect on the level of funds contributed to the OASI since contributions were maintained.

A second explanation for the deterioration in the Trust Fund performance that has been suggested is the very low interest rate earned on Treasury investments. But, in addition to the current funds transfer arrangement with the U.S. Treasury to replicate lost wage contributions due to a tax holiday, there is an investment arrangement between the Social Security Administration and the Treasury wherein the interest rate earned by the Trust Fund on Treasury issue is predetermined and not subject to market variations. As

such, the Treasury securities have paid and continue to pay an average of 5% on the Trust Fund's investment in US Treasuries.

Therefore, in reviewing the OASI performance over the last decade (which includes the Great Recession), we believe it is not the interest earnings on securities that led to the underperformance of the Trust Fund, nor the payroll tax reduction with replacement in 2010 to 2012. Rather we believe it is due to a significant fall in income that is subject to the social security tax which led to lower contributions received through the payroll tax. The amount available to be invested in Treasuries was significantly impaired by the serious and prolonged level of unemployment and reduction in national income during and after the Great Recession.

Since the *Great Recession* would imply a reduction in national income, the statutory tax 12.4% on qualified national income would be less than otherwise forecasted. Actual receipt of net contributions from both wage tax receipts and Treasury replacement funds (Table 1) is below the anticipated receipts. During the 2005 to 2010 (Table 1), the net contributions were above expected receipts for the earlier three years (2005, 2006, 2007); the decline starts in 2008 and becomes acute in 2009 and 2010, with a cumulative three-year shortfall of \$123.8 billion dollars. Since the lower receipts in 2008 and 2009 offset nearly completely the higher than expected receipts in the earlier three years, the decrease in the 2010 actual performance over that which was forecasted led the actual net contributions to be \$90.5 billion less than the forecasted six-year cumulative amount.

The net interest earned followed the same pattern. Net interest received from investments in U.S. Treasuries for the same three-year period is \$31.5 billion below the anticipated receipts. This reduction in interest earned is not due to a reduction in the level of interest rates; but rather, it is the result of fewer funds being invested due to the considerable drop in earnings. It is not the variability in interest earned, but rather the variability in national income, that lead to lower-than-expected contributions leading to the under-performance of the OASI Trust Fund. This result may be offset if there were a higher earnings rate available, which is the expected benefit derived from appropriate diversification. In the next section, this study examines whether diversification of the Trust Fund would provide an effective offsetting influence.

IV. Benefit of Diversification to the OASI

Given the current dual projection of surpluses for several years and subsequent depletion of the OASI Trust Fund by 2035, the social debate swirls around if, and when, and how, to take action to salvage the system. Diversification is the means by which the Trust Fund may take advantage of the *Equity Premium*, the historical advantage enjoyed by equity returns over other asset returns which have ranged between 3% and 5% annually since 1926. (Ibbotson, 2017) The extra income derived from an additional equity premium on invested funds may very well be enough to enable the Social Security system to remain solvent and avoid increases in payroll taxes or decreases in retirement benefits, while maintaining the public and social benefit nature of the Trust Fund.

Yung-Ping Chen (2002) discusses investment in stocks and/or bonds as selected by the individual to restore the long-term viability of the Trust Fund. This paper continues to support this argument that the long-term viability of the Trust Fund lies in diversification, but through implementation by the existing OASI Trust Fund system. The results herein indicate that diversification of the Trust Fund will ensure its viability beyond the current expected exhaustion date, and will therefore increase the possibility that the Trust Fund may be used to address the social issues raised by Yung-Ping Chen in his discussion. Philips and Muralidhar (2008) propose that some of the assets are invested in an index fund that invests in all marketable assets including stocks and corporate bonds. They propose a 1.2% increase in Social Security tax rate to facilitate the transition.

A. Diversification of the OASI

Using the actual market performance during the period of the Great Recession (2007-2009) provides insight into one of the criticisms of the diversification approach. As seen in Exhibit 3, the official 2016 report projection has the Trust Fund depleted in 2035 with a large difference emerging between the 2002 report and the 2016 report. The latter indicates a greater than \$3 trillion dollar BOYA shortfall by year 2040, which is a difference in the BOYA forecasted level of more than \$5.8 trillion less than expected 14 years earlier.

This rapidly deteriorating forecast predicting the demise of the Social Security Trust Fund should be a red flag drawing attention to the need to take action as soon as possible. But, with about fifteen (15) years currently expected before the crisis is imminent, it is politically expedient to “kick the ball” so as to contend with more immediate concerns. It would be best, however, if the expected decline in the BOYA, the earlier-than-expected reversal in the TFR, and the expectation that outflows will soon outpace inflows could draw national political attention to avert the danger to the social security program. As Charles Blahous (2011) states “The later we act, the harsher someone’s sacrifices will be: the earlier we act, the less any one individual or group will feel the consequences”.

Had the 2002 Trust Fund been diversified, the results may have been significantly different. Manley and Mariola (2014) examine the performance of the Trust Fund if the available funds in 2002 had been invested in a diversified portfolio. Among the assumptions, a **Reserve** equal to 150% of the total benefits to be paid for that year was maintained in U.S. Treasuries; and the remainder, or **Surplus** (BOYA minus the Reserve), was assumed to be invested half in AAA Corporate Bonds and half in a broad-based Equity fund. Their results indicated that the resulting diversified TFR in 2011 would have been 591 as compared to the actual level of 402. They report that, although the investment earnings from diversification would have fluctuated with the variation in the market, the portfolio would have gained over \$1 trillion in BOYA had the Trust Fund been diversified prior to the *Great Recession*. In the next section, this study estimates the performance of the Trust Fund, given its current available funds, to ascertain if diversification could be an effective means to extend the life of the Trust Fund.

B. Forecasted Results with Diversification

As explained within each Trustees Report, three forecasts are provided: intermediate (most likely), low-cost and high-cost scenarios. Within this study, we refer only to the Intermediate forecast since this represents the Trustee’s best estimate of future performance. Henry Aaron and Robert Reischauer (1998) in their book *Countdown to Reform: The Great Social Security Debate* propose that Social Security be invested in a broad mix of corporate securities. They recommend that a contingency reserve fund (**Reserve**) be held in U.S. treasury securities. The annual *Reserve* could be equal to one and one-half (150%) of that year’s benefits to be paid to recipients (BFY); the remaining amount, the **Surplus**, should be diversified into other investment choices. They argue that the *Reserve* of 150 percent of a year’s benefits provides a suitable hedge against times when the stock market is performing poorly.

In addition, all members of the *1994–1996 Advisory Council on Social Security* recommended investment of the **Surplus** into equities. However, there were serious philosophical differences among the members of the Council on how to invest the funds. Six members of the thirteen-person council supported a proposal called the Maintain Benefits (MB) plan that recommends the investment of forty percent of the Trust Funds into equities. Two members proposed a plan to establish Individual Accounts (IA), which would increase the employee’s social security tax by 1.6 percent to be placed into individual accounts that are held by the government as defined contribution individual accounts. Five members supported a plan referred to as the Personal Savings Account (PSA) that would eventually privatize OASI. The PSA plan would provide different benefits for workers under age 25 (in 1998) who would work their full careers under the plan than benefits for workers aged 25 to 54 (in 1998) who would receive their accrued benefits under the current system plus a prorated share of the flat benefit. In every proposal, investment in securities other than US Treasuries was included.

The next section evaluates the benefits derived from diversification achieved by investing the **Surplus** in corporate securities using the 2015 surplus. It is assumed that the investment in the diversified portion, the **Surplus**, will earn the average yield for each investment type as reported by Ibbotson Associates SBBI (Stocks, Bonds, Bills and Inflation) provided by Morningstar, January 2017. The investment in government securities, the **Reserve**, is assumed to earn the same rate of return as reported by the Office of the Chief Actuary. As such, the *Annual Interest Earned* as reported by the Office of the Chief Actuary is adjusted to reflect only 150% of the available funds earning the U.S. Treasury yield during the period, with the **Surplus** assumed to be invested 50/50 or 20/80 in the U.S. AAA Bond Market and a diverse selection of U.S. Common Stock.

Scenario One: a future with diversification using average compounded annual returns since 1926 (inception)

The bond and equity performance estimate using the SBBI reported results since inception in 1926 to the available data for 2016. During this period, bonds and equities are reported to have earned 6.31% and 11.95% annually respectively. We report the forecasted results using either 100% or 150% of the annual anticipated benefits as the Reserve; then report both a split of 50/50 (half of the Surplus invested in corporate bonds and half in equities) and a 20/80 split (20% in corporate bonds and 80% in equities). As Table 2 indicates, under these assumptions concerning the interest rates earned, using both 100% and then 150% Reserve, with both a 50/50 split within the Surplus and an 20/80 split, the solvency of the Social Security Trust Fund is extended to 2043 and the deficit fifty years later (2066) is \$8.4 trillion less than the Actuary current forecast.

As Exhibit 4 indicates, diversification can extend the life of the OASI Trust Fund even with a conservative 50/50 split; a conservative Reserve position (150%) adds eight (8) years, whereas a more aggressive Reserve position (100%) provides an extension of eleven (11) years. Adopting a more aggressive 20/80 split between Bonds and Equities extends the Fund twelve (12) and twenty-three (23) years respectively.

Scenario Two: a future with diversification using average compounded annual returns reflecting the Great Recession only – a most pessimistic perspective

Table 3 displays both the Actuary's expected performance of the Trust Fund and our results using a *Reserve* (either 100% or 150% of the total cost), while investing the *Surplus* in corporate securities in a split of either 20/80 and 50/50 for bonds/equities. The annual average rate of return of 8.08% for Bonds and 8.65% for Equity, as reported by SBBI during the ten year period around the Great Recession (2002 until 2014), are the returns used in this forecast. As Panel A or Panel B of Table 3 indicates, the insolvency of the OASI Trust Fund may be postponed once again with diversification.

As Exhibit 5 indicates, even this lower interest rate forecast for diversification can extend the life of the OASI Trust Fund; a conservative Reserve position of 150% with a conservative 50/50 split adds seven (7) years, whereas a more aggressive Reserve position (100%) provides an extension of nine (9) years.

Scenario Three: a future with diversification using more favorable expected average annual returns

If the equity and bond return performance from the second half of the Twentieth Century (1949-1999) were to repeat following the Great Recession, then the average returns would be 6.36% on bonds and 14.92% on equities. As seen in Table 4, the Trust Fund would flourish under various assumptions concerning the percentage dedicated for the Surplus and/or the mix (proportions) of the diversified portfolio investments. A strong market performance similar to the second half of the Twentieth Century would result in a reversal of fortunes for the Trust Fund; there would be no crisis if the Fund were diversified. The forecast in Panel A uses a Reserve of 100% to continue to be invested in U.S. Treasuries; the remainder is considered the *Surplus*, which is invested in a combination of bonds and equities. The results reported in Panel A of Table 4 shift as we assume more investment in bonds and less in equities, from a 20/80 split to a 50/50 division of the *Surplus* assets. As we reduce the portion invested in equities, we give up more and more of the equity premium, resulting in insolvency moving forward. But with a 20/80 split, the Trust Fund would not be in danger of insolvency; instead, the forecast would predict a **positive balance of \$231 trillion** in the year 2066 as compared to the Actuary's expected **deficit of \$63.8 trillion** in that year, with the TFR never peaking, and a positive \$295 trillion difference due to diversification.

Panel B of Table 4 continues to use the assumption of strong returns, but increases the portion placed in the Reserve (150%) while varying the mix (portion) in bonds and equity from 20/80 to 50/50 in bonds and equities. Any increase in the portion dedicated to the Reserve reduces the *Surplus*, thus shrinking any earnings from bonds and/or equities. As displayed in Panel B, a reduction of the portion

available for the *Surplus* moves the year of insolvency forward. The Actuary's current forecast for the year of insolvency is 2036, if nothing is done to salvage the Trust Fund. This is in stark contrast to the forecasted diversified Fund results: conservatively 2047 (150%, 50/50), less conservatively 2090 (150%, 20/80), and, more aggressively (100%, 20/80) the Trust Fund is not exhausted for the forecasted future.

As Exhibit 6 indicates, an optimistic interest rate forecast from diversification can extend the life of the OASI Trust Fund; with a conservative 50/50 split, a conservative Reserve position of 150% adds twelve (12) years, whereas a more aggressive Reserve position (100%) provides an extension of twenty-three (23) years. But, if we manage the OASI Trust Fund aggressively with 100% Reserve position, even with a conservative 50/50 split, we extend the life of the Trust Fund for fifty-five (55) years; whereas an aggressive 20/80 split extends the life of the fund **indefinitely**.

V. Conclusion

Sean Williams, writing for *Motley Fool* (October 2016), observes that "Social Security is the most important social program...for seniors....more than three in five seniors rely on Social Security to generate at least half of their monthly income." As stipulated in the Summary of the 2016 Annual Reports by the Social Security and Medicare Boards of Trustees, "(the) Trust Funds face long-term financing shortfalls....lawmakers (should) take action sooner rather than later..." to safeguard the Trust Fund. The Social Security Trust Fund had an opportunity in the early part of the 21st Century to use a large dollar surplus (\$1,072 billion in 2002) to diversify the investments associated with the trust fund, and therefore ensure the survival of the trust fund throughout the 21st Century. (Manley & Mariola, 2005) Had the Trust been diversified, prior to the Great Recession, using a conservative 150% reserve and 50/50 split, then its surplus of \$1,663 billion would have earned \$200 billion more through the Great Recession by the end of 2010 than it did. (Manley & Mariola, 2014) The Social Security Trust Fund will still benefit from diversification, using its current \$2,780 billion Surplus for a diversified portfolio. This will require choices as to the amount to dedicate to the Reserve and the mix used for the Surplus. With a conservative 50/50 split and 150% for the Reserve position, under various interest rate assumptions, the year of exhaustion for the Trust Fund is always extended a number of years. But, if the OASI Trust Fund were more aggressively managed with a 100% Reserve position, even with a conservative 50/50 split, and similar interest rates earned as in a previous reasonable term, we extend the life of the Trust Fund for fifty-five (55) years; whereas an aggressive 20/80 split extends the life of the fund **indefinitely**.

The Summary of the Trustee's Report also states: "Lawmakers have a broad continuum of policy options that would close or reduce the long-term financing shortfall....Earlier action will also help elected officials minimize adverse impacts on vulnerable populations...people already dependent on program benefits." Robert Ball (1995) argues that almost all public and private pension plans invest in stocks and bonds, and social security beneficiaries should share the same advantage as these others. He states "Improving investment return for Social Security would not only help eliminate its projected deficit but would also improve the benefit/contribution ratio for younger workers and future generations." This study provides evidence that the gains from diversifying some portion of the OASI funds persists, regardless of the impact of another *Great Recession*. The benefits of diversification could possibly improve future benefits for recipients as well as postpone the exhaustion of funds even under the most unfavorable conditions. Furthermore, diversification of the OASI trust funds could guarantee its financial integrity and eliminate the projected exhaustion of its trust fund in 2036.

Exhibit 1

Key Dates for the OASI Trust Funds Summary

of the 2016 Annual Report of Social Security and Medicare Board of Trustees

First year cost exceeds income excluding interest	2010	
First year TFR hits a maximum		2016*
First year cost exceeds total income	2022	
Year Trust Funds are depleted		2035

* Current Forecast starts in 2016 with the TFR at a maximum already

<https://www.ssa.gov/oact/trsum/>

Exhibit 2

2012 Reduced vs. Statutory Tax Contribution

2012	OASI	DI	Reduced OASDI	Statutory OASDI
Employee Contribution	3.59%	0.61%	4.2%	6.2%
Employer Contribution	5.30%	0.90%	6.2%	6.2%
Self-Employed Contribution	8.89%	1.51%	10.4%	12.4%

http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2012/fast_facts12.html, accessed 3/3/2014.

Note: Public Laws 112-78 and 112-96 reduced the OASDI payroll tax rate for 2012 by 2 percentage points for employees and for self-employed workers, but required that the General Fund of the Treasury reimburse the OASI and DI Trust Funds for these temporary reductions in 2012 payroll tax revenue.

TABLE 1

Comparison of 2002 Estimated Performance of the OASI Trust Fund with the Actual Performance reflecting the impact of the Great Recession
(Dollars in billions)

Year	Net contributions \$\$			Net interest \$\$			Amount EOYA* \$\$		
	Estimate	Actual	Diff	Estimate	Actual	Diff	Estimate	Actual	Diff
2005	493.4	506.9	13.5	81.6	84	2.4	1,607.30	1,663.00	55.7
2006	522.8	534.8	12.0	86.4	91.8	5.4	1,779.00	1,844.30	65.3
2007	548.9	560.9	12.0	95	97	2.0	1,967.80	2,023.60	55.8
2008	575.5	574.6	- 0.9	105.5	105.3	-0.2	2,172.70	2,202.90	30.2
2009	602.8	570.4	-32.4	117.5	107.9	-9.6	2,389.70	2,336.80	-52.9
2010	635.3	544.8	-90.5	129.9	108.2	-21.7	2,620.70	2,429.00	-191.7

* The BOYA of one year is the EOYA (End of Year Assets) of the previous year.

Exhibit 3

Long Range OASI Projections

Office of the Chief Actuary, Social Security Administration

2002 Report versus 2016 Report

Year	BOYA 2002 in billions	TFR		BOYA 2016 in billions	TFR	Difference in billions
2020	\$ 5,885	486		\$ 2,829	282	(\$ 3,056)
2025	\$ 6,928	407		\$ 2,701	194	(\$ 4,227)
2030	\$ 7,040	306		\$1,869	102	(\$ 5,171)
2035	\$ 5,751	193		\$ 67	3	(\$ 5,684)
2040	\$ 2,783	75		(\$ 3,044)	(106)	(\$ 5,827)

Social Security 75 year forecast, Office of the Chief Actuary, 2016 Report to the Trustees.

TFR is the Trust Fund Ratio and is the dollar amount of the Trust Fund Assets at the beginning of the year divided by the dollar amount of the total liabilities for the year.

TABLE 2

Comparison with Diversified Results using Average Returns
based on the Market Performance 1926-2016 [6.31%/11.95%]
(BOYA in billions)

PANEL A: USING 100% RESERVE & COMBINATIONS OF 50/50 & 20/80 BONDS AND EQUITY (MIX)											
Current Actuary Forecast			Significant Event		Mix - Returns 50/50 – 6.31%/11.95%				Mix - Returns 20/80 – 6.31%/11.95%		
Year	BOYA	TFR			Year	BOYA	TFR		Year	BOYA	TFR
2022	2,846	249		TI < TC	2031	4,863	252		2041	7,363	245
2028	2,292	139		No Surplus	2041	2,711	90		2053	4,052	82
2031	1,603	83		BOYA < TC	2041	2,711	90		2053	4,052	82
Past	na	na		TFR Peaks	2017	2,924	360		2017	2,958	364
2036	-437	-18		Insolvent	2046	-291	-8		2058	-805	-13
2066	-63,828	-724		Deficit/Surplus	2066	-37,992	-431		2066	-16,244	-184
PANEL B: USING 150% RESERVE & COMBINATIONS OF 50/50 & 20/80 BONDS AND EQUITY (MIX)											
Current Actuary Forecast			Significant Event		Mix - Returns 50/50 – 6.31%/11.95%				Mix - Returns 20/80 – 6.31%/11.95%		
Year	BOYA	TFR			Year	BOYA	TFR		Year	BOYA	TFR
2022	2,846	249		TI < TC	2029	4,315	248		2032	5,269	260
2028	2,292	139		No Surplus	2035	3,432	148		2040	3,787	131
2031	1,603	83		BOYA < TC	2038	2,336	88		2042	2,887	92
Past	na	na		TFR Peaks	2017	2,909	358		2017	2,936	361
2036	-437	-18		Insolvent	2043	-445	-14		2047	-178	-5
2066	-63,828	-724		Deficit/Surplus	2066	-44,738	-508		2066	-35,695	-405

** IEI is Income excluding Interest. TI is Total Income including revenue from taxes and interest earned from Treasuries. TC is Total Cost reflecting all benefits to be paid that year.

Exhibit 4

Key Dates for the OASI Trust Funds

2016 Annual Report and Forecast with Inception Interest Rates

	Actuary	50/50 Split		Inception		20/80 Split	
		150% Res.	100% Res.	150% Res.	100% Res.	150% Res.	100% Res.
First year IEI < TC	2010	2010	2010	2010	2010	2010	2010
Year TFR hits max	2016*	2017	2017	2017	2022	2017	2022
First year TI < TC	2022	2029	2031	2032	2041	2032	2041
Year of depletion	2035	2043	2046	2047	2058	2047	2058

* Current Forecast starts in 2016 with the TFR at a maximum already

<https://www.ssa.gov/oact/trsum/>

TABLE 3

Diversified Results with Average Market Returns based on the Period of the *Great Recession* [8.08%/8.65%] (BOYA in billions)

PANEL A: USING 100% RESERVE & COMBINATIONS OF 20/80 & 50/50 BONDS AND EQUITY (MIX)												
Current Actuary Forecast				Significant Event		Mix - Returns 50/50 - 8.08%/8.65%				Mix - Returns 20/80 - 8.08%/8.65%		
Year	BOYA	TFR				Year	BOYA	TFR		Year	BOYA	TFR
2022	2,846	249		TI < TC		2029	4,385	252		2029	4,476	257
2028	2,292	139		No Surplus		2039	2,323	84		2039	2,577	93
2031	1,603	83		BOYA < TC		2039	2,323	84		2039	2,577	93
Past	na	na		TFR Peaks		2017	2,909	358		2017	2,912	358
2036	-437	-18		Insolvent		2044	-573	-17		2044	-246	-7
2066	-63,828	-724		Deficit/Surplus		2066	-42,975	-488		2066	-41,979	-476
PANEL B: USING 150% RESERVE & COMBINATION OF 50/50 & 20/80 BONDS AND EQUITY (MIX)												
Current Actuary Forecast				Significant Event		Mix - Returns 50/50 - 8.08%/8.65%				Mix - Returns 20/80 - 8.08%/8.65%		
Year	BOYA	TFR				Year	BOYA	TFR		Year	BOYA	TFR
2022	2,846	249		TI < TC		2027	4,041	259		2028	4,100	248
2028	2,292	139		No Surplus		2034	3,176	143		2034	3,286	148
2031	1,603	83		BOYA < TC		2037	2,124	84		2037	2,252	89
Past	na	na		TFR Peaks		2016	2,780	357		2017	2,899	357
2036	-437	-18		Insolvent		2042	-596	-19		2042	-431	-14
2066	-63,828	-724		Deficit/Surplus		2066	-47,456	-538		2066	-46,899	-532

** IEI is Income excluding Interest. TI is Total Income including revenue from taxes and interest earned from Treasuries. TC is Total Cost reflecting all benefits to be paid that year.

Exhibit 5

Key Dates for the OASI Trust Funds

2016 Annual Report and Forecast with Great Recession Interest Rates

	Actuary		Great Recession			
			50/50 Split		20/80 Split	
			150% Res.	100% Res.	150% Res.	100% Res.
First year TC > IEI	2010	2010	2010	2010	2010	2010
Year TFR hits max	2016*	2017	2017	2017	2017	2017
First year TC > TI	2022	2027	2029	2028	2029	2029
Year of depletion	2035	2042	2044	2042	2044	2044

* Current Forecast starts in 2016 with the TFR at a maximum already

<https://www.ssa.gov/oact/trsum/>

TABLE 4

Diversified Results with Average Market Returns based on the Second Half of the 20th Century [6.36%/14.92%] (BOYA in billions)

PANEL A: USING 100% RESERVE & COMBINATIONS OF 50/50 & 20/80 BONDS AND EQUITY (MIX)											
Current Actuary Forecast			Significant Event		Mix - Returns 50/50–6.36%/14.92%				Mix - Returns 20/80 - 6.36%/14.92%		
Year	BOYA	TFR			Year	BOYA	TFR		Year	BOYA	TFR
2022	2,846	249		TI < TC	2039	6,843	247		NEVER		
2028	2,292	139		No Surplus	2050	4,190	97		NEVER		
2031	1,603	83		BOYA < TC	2050	4,190	97		NEVER		
Past	na	na		TFR Peaks	2017	2,954	363		NEVER		
2036	-437	-18		Insolvent	2058	-883	-14		NEVER		
2066	-63,828	-724		Deficit/Surplus	2066	-12,781	-145		2066	231,094	2622
PANEL B: USING 150% RESERVE & COMBINATION OF 50/50 & 20/80 BONDS AND EQUITY (MIX)											
Current Actuary Forecast			Significant Event		Mix - Returns 50/50-6.36%/14.92%				Mix - Returns 20/80 - 6.36%/14.92%		
Year	BOYA	TFR			Year	BOYA	TFR		Year	BOYA	TFR
2022	2,846	249		TI < TC	2031	5,128	266		2075	36,019	274
2028	2,292	139		No Surplus	2039	3,857	139		2083	26,809	146
2031	1,603	83		BOYA < TC	2042	2,516	81		2086	16,329	78
Past	na	na		TFR Peaks	2017	2,933	361		2028	6,257	379
2036	-437	-18		Insolvent	2047	-656	-17		2090	-4,155	-17
2066	-63,828	-724		Deficit/Surplus	2066	-36,948	-419		2066	30,425	345

** IEI is Income excluding Interest. TI is Total Income including revenue from taxes and interest earned from Treasuries. TC is Total Cost reflecting all benefits to be paid that year.

Exhibit 6

Key Dates for the OASI Trust Funds

2016 Annual Report and Forecast with Second Half 20th Century Interest Rates

		Actuary		20 th Century			
				50/50 Split		20/80 Split	
				150% Res.	100% Res.	150% Res.	100% Res.
First year TC > IEI	2010	2010	2010	2010	2010	2010	2010
Year TFR hits max	2016*	2017	2017	2028	never	never	never
First year TC > TI	2022	2031	2039	2075	never	never	never
Year of depletion	2035	2047	2058	2090	never	never	never

* Current Forecast starts in 2016 with the TFR at a maximum already

<https://www.ssa.gov/oact/trsum/>

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Comparative Analysis of Teacher Cultural Core Beliefs Across Settings in Public Education (Pre-K-5th Grade)

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ABSTRACT

The number of English Language Learners in United States classrooms continues to rise. This necessitates a look into how teachers perceive these students and how their belief systems impact the learning of these students. Teachers have personal beliefs regarding English Language Learners in the classroom setting that they often do not even realize. This quantitative study serves as an introductory study into the Common Beliefs of teachers in elementary classrooms in North Carolina. Results of an online survey of 39 teachers indicate a correlation exists between what teachers perceive as learning style needs and what they believe to be the needs of English Language students.

(Key words: *ELL, Common Beliefs, ESOL, Diversity*)

INTRODUCTION

While it should not be a shock that the population of immigrant and refugee children who primarily speak another language at home is on the rise in our public schools, the emphasis on preparing our teachers for these students seems to be lagging (Lucas, Villegas, and Freedson-Gonzalez, 2008). Currently in history, it is vital that our teachers approach teaching these students with empathy and confidence. The following literature review presents findings from several studies on teacher core beliefs and a general need for more effective English Language Learner (ELL) teacher education via professional development and training of in-service and preservice teachers, respectively. There are certain common beliefs among teachers in the field that often interfere with how students are treated, or how their learning is approached. According to Teaching for Tolerance (2017) certain common beliefs can be measured to insure that teachers have an understanding of biases that might exist prior to working with ELL students. The purpose of this research was to investigate the beliefs and attitudes of current teachers in Title I and heavily populated ELL schools and to make recommendations about training and teacher development as a result of the findings.

LITERATURE REVIEW

Attitudes and Perceptions

It is no secret to current teachers that students who speak another language at home have a more difficult time adjusting to and learning from English instruction. A study performed in a mid-western suburban area found that over half (52%) of teachers believe that second language acquisition is more difficult because of the foreign first language, even though most teachers in the study demonstrated a belief that it is possible for children to be proficient in two languages (Karabenick and Noda, 2004). Supporting this, *A Framework for Understanding Poverty* asserts that students perform better in school “when their primary discourse is the same as their secondary discourse” (Payne, 2013). A study done surveying teachers in the state of Arizona found that bilingual teachers believe the skills learned in the native language were easily transferrable once they learn English proficiently, while traditional teachers held negative attitudes toward using the native language as a classroom resource (García-Nevarez, Stafford, and Arias, 2005). Additionally, a study performed by Flores and Smith (2009) revealed that teachers with the ability to speak with parents in Spanish approached language issues with a more positive attitude.

A later study, completed in southwest Florida, contradicts the positive bilingual perspective, citing that 73% of respondents on a beliefs survey agree that learning English should take priority over any non-English language in order for proper learning to occur, even at the expense of losing the primary language. In that same study, only 9% of teachers believe that they should plan their instruction according to students' linguistic and cultural needs and found 73% of teachers holding the belief that it is "unreasonable" to ask regular classroom teachers to teach students who do not speak English primarily (Vázquez-Montilla, Just, and Triscari, 2014). Many authors might argue that it is this attitude in particular that holds students back, including Gollnick and Chin (2017), who assert that "educators transmit biased messages to students" which contributes to the detriment of their education, albeit unintentionally in many cases.

Literature suggests that these beliefs stem from feelings of inadequacy in teachers regarding the teaching of ELL students. Coady, Harper, and Jong (2011) found that a majority of teachers in one study rate their efficacy as low when considering a knowledge base to use students' home languages as an instructional resource in the classroom. Even Hispanic teachers who lack diversity preparation showed no difference from their Caucasian colleagues in approaching cultural and linguistic diversity with a less positive attitude (Flores and Smith, 2009). In particular, one study conducted in the state of Idaho showed 20% of teachers in a study agreed that one of their greatest challenges was the "lack of colleague's knowledge and skills" in the area of educating ELL students (Batt, 2008).

Professional Development

The literature suggests that in at least some areas, it is necessary that all teachers of ESL students can improve attitudes toward teaching students of other languages. Taking steps to achieve this goal, Youngs and Youngs (2001) conducted a study regarding teacher attitudes toward ESL students, and predictors of those attitudes. The predictors included multicultural education courses, training and experiences working with diverse populations, and gender. Youngs and Youngs (2001) found that the amount of exposure to different populations in any interactive capacity directly impacts the attitudes of the teachers. The authors argue for increased exposure to cultural diversity for both in-service and preservice teachers.

Since current teachers cannot rewind time and re-attend college courses, a solution for current teachers is vital. Considering this need, Batt (2008) researched to find an optimal design for professional development based in the state of Idaho. Batt asserts that professional development would primarily serve to compensate for the education lacking in how to teach ELLs during teacher certification, and ultimately concludes that more specialists are necessary in the public school system. Supporting the significance of professional development, Vázquez-Montilla, Just, & Triscari (2014) performed a study in the southwestern region of Florida to find factors that influence teacher attitudes toward culturally and linguistically diverse (CLD) students. Using a survey given to 425 participants, the authors found that professional development and training is important for fostering positive attitudes in teachers of ELL students. The article further extends the research pointing to evidence that positive attitudes about teaching ELL students leads to giving them a better education. Karabenick and Noda (2004) delve into the topic of professional development and its effect and implication for a growing number of ELL students. The researchers gave a survey to 729 teachers in a mid-western suburban school district with a recent influx of immigrant and refugee children. The results focused on teacher responses and attitudinal differences and the findings showed that ELL teachers with a positive attitude believe in the contribution of ELLs and consider teaching them using a mastery approach. Once a positive attitude is fostered, the authors' study supports the evidence of an overwhelming desire for teaching to be more efficient.

Preservice Teacher Training

Preservice teachers are the future of ELL education and with that in mind should be trained on how to teach ELLs effectively. Flores and Smith (2009) assert that diversity preparation and some bilingualism contribute greatly to positive attitudes. The authors surveyed teachers on their beliefs about ELLs in an academic setting, comparing the results based on teacher ethnicity, linguistic proficiency, number of minority students in classes, and amount of diversity preparation. The authors found that attitudes are influenced by multiple factors, and all teachers need more exposure to diversity issues.

After recognizing that there is a need for preservice teacher training for ELL students, the issue becomes one of how to train them well. García-Nevarez, Stafford, & Arias (2005) performed a study based in Arizona focusing on attitudes of ELL teachers toward students and the use of non-English language during classroom instruction. The authors found that attitudes of bilingual-certified teachers were more supportive than traditional or ESL-certified teachers. As a result, the suggestion includes the training of bilingual teachers for the future. Even for teachers who may not become bilingual, Lucas, Villegas, & Freedson-Gonzalez (2008) expand upon the idea of diversity training. These researchers identify principles for teaching English Language Learners in mainstream classrooms, followed by teaching practice examples stemming from those principles. Based on the findings and the design of the principles, the authors conclude with suggestions of how to train preservice teachers. To prove the success of preservice training programs, Coady, Harper, & Jong (2011) conducted a study based on an elementary teacher graduate program that required ESOL (English Speakers of Other Languages) credential, and how it influences beliefs of teacher preparedness in mainstream settings with ELLs. The authors found a positive relationship between views of efficacy and preparation, and between bilingual teachers and preparation. The findings support their recommendation for ESOL infusion into the collegiate-level training of teachers.

METHODOLOGY

This quantitative study was conducted as an online Survey Monkey survey sent to Title I and low performing school principals in North Carolina. The survey was not required by teachers therefore, participation was low. The target audience was elementary schools in North Carolina who serve high concentrations of ELL students. Analysis using SPSS was done including a paired sample t-test as well as correlational data across all questions.

Participants

The participants of the study were 38 elementary educators in rural and high-level ELL schools in North Carolina who were given the opportunity to participate in the study totally anonymously.

Instrument

The instrument used to conduct this study was an online variation of the Common Beliefs Survey developed by Teaching for Tolerance. Statements were posed with three possible answers: Strongly Agree, Neither Agree nor Disagree, and Strongly Disagree. The questions evaluated teacher core beliefs about how students were taught, how lessons were developed, and how parents were involved in the education of the students. The list of questions in the survey are as follows:

1. I try to keep in mind the limits of my students' ability and give them assignments that I know they can do so that they do not become discouraged.
2. I believe building self-esteem is most important and that I should reward students who try hard even if they are not doing well in school.
3. Students of different races and ethnicities often have different learning styles and good teachers will match their instruction to these learning styles
4. Grouping students of different levels of achievement for instruction may benefit some students, but it can undermine the progress that could otherwise be made by higher achieving students.
5. Before students are asked to engage in complex learning tasks, they need to have a solid grasp of basic skills.
6. With all the pressures to raise student achievement, finding and using examples for the cultural, historic, and everyday lived experiences of my students takes away (or could take away) valuable time from teaching and learning what matters most.
7. Talking about race with my colleagues could open up a can of worms; little good is likely to come from it.
8. I do not think of my students in terms of race or ethnicity. I consider myself to be color blind when it comes to my teaching.
9. The gap in the achievement among my students of different races is about poverty, not race.

10. Teachers should adapt their teaching to the distinctive cultures of African American, Latino, Asian, and Native American students.
11. In some cultures, students are embarrassed to speak in front of others so I take this into account and don't call on these students in class.
12. When students come from homes where educational achievement is not a high priority, they often don't do their homework and their parents don't come to school events. This lack of parental support undermines my efforts to teach these students.
13. It is not fair to ask students who are struggling with English to take on challenging task.

FINDINGS

The findings in the survey included elementary teacher responses ($N= 38$). Table 1 below shows percentages of teacher perceptions for each question asked in the survey.

See Table 1

The results of the first three statements from the survey show that the majority of respondents are empathetic toward their students' learning and self-esteem in the classroom. This was an expected result since one would hope that teachers cared about how their students feel and learn within the classroom environment. Having said that, statement 6 results in a significant amount of teachers who believe teaching culturally relevant material wastes classroom time, but according to statement 10, even more teachers strongly agree that they should adapt their teaching to distinctive racial cultures. In this case, it is difficult to determine what their thinking was behind their answers, or if they changed their mind as the survey progressed.

Two-thirds of respondents strongly agree that the achievement gap is about poverty, not race. This is not a surprising result coming from a study that includes teachers in Title I area schools like Kirkman Park Elementary, where 97.5% of students qualify for free and reduced lunch. This brings on another component to the high-ELL areas, which begs the question for further research on what makes more of an impact on learning, poverty or linguistic ability?

Over half of respondents believe that parental support is key to their teaching efforts during the school day. But if those parents do not speak English, it becomes an issue of how well they can support their students. 71.05% of respondents believe that grasping basic skills is essential to further learning. If one of the aforementioned studies is correct, parental support is necessary no matter what language is spoken at home. Ideally, transferrable skills can be reinforced at home in spite of the language difference.

One interesting fact that emerged in the correlational analysis was the statistical significance between the results in statements 1 and 3 ($p<.05$). The two-tailed analysis using a Pearson Correlation revealed a significance of .008 and the Pearson Coefficient of .423. One reason this correlation exists is that teachers who completed the survey related student ability to language ability. This is a misconception that needs to be addressed in professional development.

CONCLUSIONS, RECOMMENDATIONS, AND FUTURE IMPLICATIONS

The amount of ELL students in our country will only continue to increase, especially with global conflict escalation and economic struggle in foreign countries. It is the responsibility of the teacher to open a child's eyes to the world around them, to value and esteem them as a learner like they would an English-speaking student. However, further research is needed to target the specific issues teachers face in adjusting their attitudes and beliefs toward ELL education. This sample, being extremely small should only serve as a starting place in the conversation of what needs to be done in education to help address the needs of English Language Learners in our classrooms. It was the desire of the researcher to begin this process and the researcher hopes to add to the research in the coming year. The research has implications for professional development topics, employment of teachers that speak other languages, and program development options at the university level to help teachers be prepared to address these common themes.

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Table 1: Core Belief Percentages

Core Beliefs	Strongly Agree	Neither Agree/Disagree	Strongly Disagree
I try to keep in mind the limits of my students' ability and give them assignments that I know they can do so that they do not become discouraged.	81.58	13.16	5.26
I believe building self-esteem is most important and that I should reward students who try hard even if they are not doing well in school.	84.21	10.53	5.26
Students of different races and ethnicities often have different learning styles and good teachers will match their instruction to these learning styles.	86.84	7.89	5.26

Grouping students of different levels of achievement for instruction may benefit some students, but it can undermine the progress that could otherwise be made by higher achieving students.	44.74	28.95	26.32
Before students are asked to engage in complex learning tasks, they need to have a solid grasp of basic skills.	71.05	21.05	7.89
With all the pressures to raise student achievement, finding and using examples for the cultural, historical, and everyday lived experiences of my students takes away (or could take away) valuable time from teaching and learning what matters most.	26.32	26.32	47.37
Talking about race with my colleagues could open up a can of worms; little good is likely to come from it.	10.53	28.95	60.53
I do not think of my students in terms of race or ethnicity. I consider myself to be color blind when it comes to my teaching.	42.11	36.84	21.05
The gaps in achievement among my students of different races are about poverty, not race.	66.67	28.21	5.13
Teachers should adapt their teaching to the distinctive cultures of African Americans, Latino, Asian, and Native American students.	38.46	41.03	20.51
In some cultures, students are embarrassed to speak in front of others, so, I take this into account and don't call on these students in class.	33.33	38.46	28.21
When students come from homes where educational achievement is not a high priority, they often don't do homework and their parents don't come to school events. This lack of parental support undermines my efforts to teach these students.	53.85	33.33	12.82
It is not fair to ask students who are struggling with English to take on challenging tasks	5.13	20.51	74.36
