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## Cannabis Entrepreneurship Online Survey Response Rates

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Our research goals include: (a) providing state and local licensing agencies with clear guidance on which cannabis businesses are likely to be successful, (b) producing a clear history of how newly licensed cannabis businesses and jobs are related to formerly unlicensed businesses, (c) providing local and state agencies a better understanding of how firms relocated after licensing, (d) providing prospective entrepreneurs the knowledge they need to make informed decisions regarding business knowledge and potential in the cannabis industry (e) and providing a scholarly outlet for those in the cannabis industry to express their insider knowledge of the industry safely.

Legal cannabis business owners must register with the Department of Cannabis Control (DCC), who maintains a list of licensees. The database contains the license number, term, designation, type, business name (both legal and DBA), address (including city/county), expiration date, business phone number, email, and names of majority owners. After obtaining a list of current business license owners and addresses from the DCC, we conducted an analysis of the profiles of licensees. As of June 2022, there were 12,681 unique licenses which represented the population of our online survey.

Within this population, most of these licenses, 73%, were provisional licenses or a type of license used while the applicant pursues an annual cannabis license with the state. These licenses are being phased out now and January 1<sup>st</sup>, 2026, will be the last day for any provisional license to be in effect. Therefore, most current licensees will need to convert to an annual type within the next two years if not sooner. The license designation for the majority licenses was “adult-use” at 54% with 18% being exclusively “medicinal” with the remainder of the population being “adult-use and medicinal.” In terms of geographical location, about 60% of licensees were located within incorporated cities with about 45% of all licenses concentrated within 30 major cities in California. Of note, is the fact that high concentrations of cannabis licenses are not always found in the largest cities. While Los Angeles ranked number one in cannabis licenses, San Diego, the 2<sup>nd</sup> largest city in California, ranked 25<sup>th</sup> among active cannabis licenses. Further, many rural counties have high concentrations of cannabis licenses, especially cultivation licenses. Humboldt, Mendocino, and Trinity, rural counties collectively referred to as the Emerald Triangle, are home to nearly one-quarter of all cannabis licenses.

The database appeared to contain over 8,700+ unique individuals holding cannabis licenses. Over 60% of business owners hold two or more cannabis licenses, with about 5% of business owners holding 11 or more licenses. A few owners held more than 100 licenses individually. Although the sheer volume of data made it difficult to distinguish if certain business owners having similar names, were the same person. It is important to note that in some cases, there may be restrictions on who can hold a cannabis license. This may occur in situations where

the business is owned and operated by a group of individuals, such as a partnership, limited liability company (LLC), or corporation. A partnership is a business structure where two or more individuals share ownership of the business. A limited liability company (LLC) is a business structure where the owners, known as members, have limited liability for the company's debts and obligations. A corporation is a separate legal entity from its owners, known as shareholders. In each of these situations, the business license may

list the names of all the owners. 45% of licenses were held by multiple owners or ownership groups. Thus, there are many more licenses than business owners.

Additionally, vertical stacking of cannabis licenses is common within the State of California. Nearly 60% of ownership groups held 2 or more licenses. This refers to the practice of a single company or individual holding multiple licenses for different stages of the cannabis production and distribution process. This means that a company may hold licenses for cultivation, processing, manufacturing, distribution, and retail sales, all within the same vertical chain of production. For example, a vertically stacked cannabis company may grow and cultivate their own cannabis plants, process the plant material into various products such as edibles or concentrates, distribute those products to retail locations, and then sell them directly to consumers.

We ultimately surveyed the population at two points in time. In the first stage (circa summer 2022), we generated a stratified randomized sample of 1,125 (approximately 9% of the population) of these business owners to include in the survey. This process entailed several steps to ensure the sample was representative of the population being studied. First, we divided the population into mutually exclusive and collectively exhaustive subgroups of 30 license types. The desired sample size was selected based on our desired level of precision of 95%, anticipated response rate of 35%, and other budgetary constraints. Second, we determined the appropriate number of samples to be drawn from each stratum ensuring the allocation was proportional to the size of the stratum in the population (see Figure 2—Stratified Random Sample Response Rates).

To develop a systematic random stratified sample the population was clustered based on the license type. For instance, cultivators were clustered together, whereas retailers were grouped with other retailers. The number of businesses selected within each stratum was determined based on the relative percentage of that license type across the entire population. As one example, small cultivators represented 5% of all active cannabis licenses so 56 small cultivators were used in the sample (5% of 1,125). The reason one wants to be able to divide the sampling frame into strata or units with something in common is that it reduces sampling error. In essence, a more accurate representation of the theoretical population. The aim of this sampling approach is to choose a sample that accurately reflects the population characteristics, in this case, license types which serve as a proxy for the types of cannabis businesses participating in the California market. All said, 30 unique stratified sampling pools were established.

Within each stratum, we used a random number generator function within Excel and sorted from high to low based on the random number the observation had been assigned. If the same business entity holding multiple license types had already been selected in another strata,

then the selection was skipped (or replaced) by the next observation assigned the next highest random number. Once the sample had been generated, we verified that the sample was representative of the population by checking the distribution of the relevant characteristics in the sample and comparing them to the population, such as license type and geographic location. The sample closely mirrored the population in terms of geographically, provisional versus permanent license types, and business ownership groups as reflected below.

The business owners holding the licenses randomly selected to be sampled were sent a letter by USPS. To encourage responses, a small monetary enticement was



included in each envelope to increase the response rate. Unconditional cash incentives, which are paid regardless of survey completion, increase response rates more when compared to lottery enticements or even conditional incentives (Halpern et al., 2011; Rosoff et al., 2005). Studies have reported that the average response rate to online surveys with monetary incentives is around 50% to 70%. However, response rates can vary depending on the amount of the incentive, the topic of the survey, and the characteristics of the target population. For instance, a study of 1,000 adults in the US found that the response rate for an online survey about consumer behavior was 56% with a \$5 incentive (Keller et al., 2012). Meanwhile, another study of 1,093 university students in the US found that the response rate for an online survey about health behaviors was 67.4% with a \$10 incentive (Albright et al., 2014).

Each business owner was sent an envelope containing monetary compensation in the form of a \$5 dollar bill, a cover letter explaining the research project and the intended use of results, and an online link to the survey containing an informed consent form. The letter specifically referenced the license type that had been selected for sampling and survey participants were reminded to respond to the survey concerning the license referenced in the letter. One exception was made if the business owner was no longer active. Under this circumstance, the business owner was encouraged to respond to the survey concerning their most important business activity.

We requested a return address service from the Post Office, which means that any undelivered letters were returned to us, and efforts were made to find the correct address. After waiting a short period from the initial mailing, owners that we had not received a response from contacted by phone, and if we could not reach them, a voice message was left. If we had still not received a response, we sent each three texts spaced about a week apart to encourage participation in the study. While the invitation letter was mailed, all participants completed the survey online. The principal advantage of an online survey is that the instrument can be completed anywhere, at any time, by the participant. As researchers, we were able to compile and analyze the data more quickly than with other survey methods. Our online survey was designed to include skip logic, branching, and other features that allowed us to collect more specific and detailed information related to a specific license type.

155 responded to the first phase of the survey (aka Sample 1A), representing a 14% response rate. Over 60% of the responses were received in August 2022 and 30% in September 2022, with a couple of individuals responding in October and November 2022 (reference 1A or blue bars in Figure 1 – Surveys Completed by Month). Despite making multiple attempts to contact survey participants to increase the response rate, we theorize that the cannabis industry

participants may be less inclined to participate than participants from other industry sectors for several potential reasons including:

1) given the fact cannabis is still illegal at the federal level, the perceived risk of disclosing information within this legal gray area, 2) concerns that participating could impact the company's reputation, 3) as an emerging industry, businesses may be reluctant to share information about their products, processes, or strategies for fear of giving away a competitive advantage to their rivals, 4) some cannabis industry stakeholders may be skeptical of academic research, particularly if they perceive that it could unfavorably bias tax or regulatory policy within the industry; and 5) meanwhile, smaller businesses in the cannabis industry may simply lack the time, staff, or

resources to participate in these research studies. For instance, some cultivators indicated they were unable to participate due to the harvest season.

Figure 1 – Surveys Completed by Month

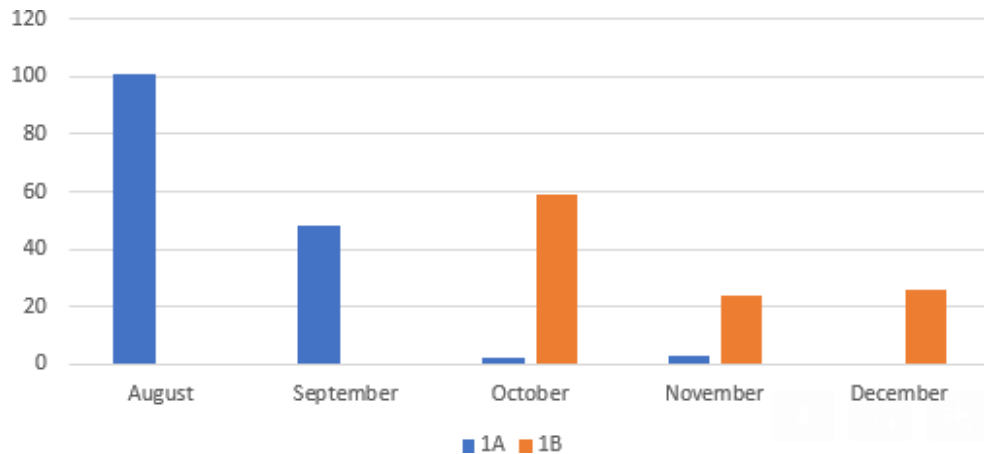


Figure 2 provides an overview of the response rate by general category of license. For example, 68% of the population represented cultivation licenses so our research team ensured 68% of the sample represented cultivators. Of this subset of the population, 107 of these individuals responded to our survey. Meanwhile, 116 of the survey respondents elected to be identified as cultivators. The modest variation between the type of license we, the researchers, asked the respondent to reference versus the type of license they elected to refer to can be explained by two factors: 1) closed business were not directed to select the license type prescribed in our invitation letter; 2) some active license holders of multiple canna licenses either disregarded the instructions or elected to be identified by a different license type. We do not feel these minor discrepancies materially affected the findings of our survey. As highlighted in Figure 2, as well as the more detailed table of response rates Figure 3, we were fortunate to have collected responses that were generally representative of the population with the slight exception of cultivators being slightly overrepresented in Sample 1A and retailers and distributors being slightly underrepresented. This outcome was reversed when issuing our second sample.

Figure 2 – Sample 1A Representative Sample – Response Rate by License Type

License Type	Population		Sample		Invite Code		Survey	
	#	%	#	%	#	%	#	%
Cultivator	8,592	68%	764	68%	107	70%	<b>116</b>	<b>76%</b>
Retailer	1,414	11%	129	11%	16	10%	<b>13</b>	<b>8%</b>
Manufacturer	862	7%	77	7%	11	7%	<b>14</b>	<b>9%</b>
Distributor	1,183	9%	100	9%	11	7%	<b>7</b>	<b>5%</b>
Transporter	180	1%	13	1%	3	2%	<b>0</b>	<b>0%</b>
Testing Lab	49	0%	5	0%	0	0%	<b>0</b>	<b>0%</b>
Microbusiness	345	3%	32	3%	3	2%	<b>4</b>	<b>3%</b>
Event Organizer	56	0%	5	0%	2	1%	<b>1</b>	<b>1%</b>
<b>TOTAL</b>	12,681		1,125		153		<b>155</b>	



Figure 3 – Sample 1A Representative Sample – Response Rate by License Category

License Type	Population		Sample		Invite Code		Survey	
	#	%	#	%	#	%	#	%
Commercial - Distributor	1,183	9%	100	9%	11	7%	7	5%
Commercial - Distributor - Transport Only	180	1%	13	1%	3	2%	0	5%
Commercial - Event Organizer	56	0%	5	0%	2	1%	1	1%
Commercial - Microbusiness	345	3%	32	3%	3	2%	4	3%
Commercial - Retailer	969	8%	87	8%	10	7%	9	6%
Commercial - Retailer - Non-Storefront	445	4%	42	4%	6	4%	4	3%
Commercial - Testing Laboratory	49	0%	5	0%	0	0%	0	0%
Cultivation - Medium Indoor	124	1%	12	1%	0	0%	12	8%
Cultivation - Medium Mixed-Light Tier 1	185	1%	16	1%	2	1%	17	11%
Cultivation - Medium Mixed-Light Tier 2	45	0%	4	0%	1	1%	8	5%
Cultivation - Medium Outdoor	288	2%	26	2%	5	3%	21	14%
Cultivation - Nursery	347	3%	31	3%	4	3%	4	3%
Cultivation - Processor	191	2%	12	1%	0	0%	0	0%
Cultivation - Small Indoor	334	3%	31	3%	5	3%	7	5%
Cultivation - Small Mixed-Light Tier 1	1,916	15%	175	16%	22	14%	13	8%
Cultivation - Small Mixed-Light Tier 2	398	3%	32	3%	3	2%	1	1%
Cultivation - Small Outdoor	3,608	28%	324	29%	44	29%	24	15%
Cultivation - Specialty Cottage Indoor	32	0%	3	0%	1	1%	1	1%
Cultivation - Specialty Cottage Mixed-Light Tier 1	137	1%	12	1%	2	1%	1	1%
Cultivation - Specialty Cottage Mixed-Light Tier 2	17	0%	2	0%	0	0%	0	0%
Cultivation - Specialty Cottage Outdoor	42	0%	3	0%	2	1%	3	2%
Cultivation - Specialty Indoor	303	2%	25	2%	3	2%	1	1%
Cultivation - Specialty Mixed-Light Tier 1	287	2%	25	2%	8	5%	0	0%
Cultivation - Specialty Mixed-Light Tier 2	44	0%	3	0%	1	1%	2	1%
Cultivation - Specialty Outdoor	294	2%	28	2%	4	3%	1	1%
Manufacturer - Type 6	439	3%	41	4%	6	4%	7	5%
Manufacturer - Type 7	201	2%	18	2%	5	3%	6	4%
Manufacturer- Type N - Infusion of Products	155	1%	13	1%	0	0%	1	1%
Manufacturer- Type P- Packaging and labeling	34	0%	2	0%	0	0%	0	0%
Manufacturer- Type S- Manufacturing Shared Us	33	0%	3	0%	0	0%	0	0%
<b>Total</b>	<b>12,681</b>	<b>100%</b>	<b>1,125</b>	<b>100%</b>	<b>153</b>	<b>100%</b>	<b>155</b>	<b>100%</b>

To increase the overall response rate and provide an opportunity for other business owners to participate in our survey, we elected to deploy a second round of online surveys to business owners whose licenses were not selected in the first randomly stratified sample in October 2022. If an individual was affiliated in anyway with a license selected from the first sample (1A), they were excluded from the second sample. For instance, if John Doe was listed as a 3<sup>rd</sup> owner of cultivation license selected in the first sample, any cannabis license with his name affiliated was removed from the population of potential licensees to be sampled in the second round. Moreover, if two businesses shared the same mailing address or email address, they were excluded from the second sample out of an abundance of caution the same individual could potentially answer our survey twice; therefore, biasing the results.

Once we eliminated any licenses with connections to the first sample, we removed any instances where business owners held more than one license. We started the process of elimination with the least common business licenses first to ensure some degree of representation across all license types. Since it was not feasible to ensure representation by

license type as a significant number of licenses had been removed from the population, our goal was to find as many business owners who had not been surveyed in the first sample as possible and ensure that these individuals only answered the survey once. This was accomplished by further narrowing the sample to ensure only one license per business owner was selected. After applying these filters,

we identified 2,048 unique licenses remaining (approximately 16% of the population- 33% distributors, 36% retailers, and 31% others). The sampling methodology used in the second round is best described as exhaustive sampling; whereby, we attempted to provide a single opportunity for every business owner within the population that held a cannabis license an equal opportunity to participate in the survey.

The second survey not only differed in terms of sampling technique used, but also our approach. As opposed to mailing the survey, the remaining business owners not included in the original outreach were sent an e-mail with a link to and requested to fill out the survey seen. Instead of offering a monetary incentive up front, these participants were incentivized by a link to receive a \$5 dollar Amazon gift card if they filled out the survey. Rather than requiring the respondent to respond to the survey with respect to the license type listed in the letter, the survey participant could choose to answer the survey questions with respect to their most important or primary cannabis license. These changes in methodology were made to ensure we stayed within the project budget and on schedule as repeating the process used in Sample 1A would have been labor and resource intensive. Due to these changes in methods, the second survey was not intended to be representative of the population.

Our response rate to the second survey was anticipated to be lower than the first survey since we were merely emailing the participant with no monetary incentive up front. Research suggests that the average response rate to online surveys without incentives being offered up front and solicited via email is typically around 10% to 30%, although it can vary depending on a variety of factors such as the topic, length, and complexity of the survey, as well as the characteristics of the target population and the mode of survey administration (Duke et al., 2013; Brausch et al., 2019). Of the 2,048 email invitations deployed, approximately 15% were rejected because the email address could not be found, an auto response was generated due to the individual no longer working at the company or on leave, or other technical reasons. In many of these cases, we have cause to believe the business was no longer a going concern because the entity as the license term had expired without renewal. After the initial email, two reminders to participate in the survey were sent approximately two weeks apart.

Of the approximately 1,700 emails that appeared to be successfully deployed, 111 responded to the second online survey (1B) and 21 individuals replied with an opt-out message; thus, yielding a response rate of approximately 8% (132 / 1,700) within the known universe. As reflected in Figure 1 – Survey Completed by Month, over 50% of the responses were received in the month of October 2022 and the remaining responses were logged in the months of November and December 2022. The survey officially closed at the end of calendar year 2022. The low response can be attributed to all the factor previously discussed in addition to the distinct



possibility the intended recipient never received the message. For example, when emailing one risks the possibility of the message going straight to a junk or spam inbox. If the email is not recognized, it may have been immediately deleted by the intended recipient. In many cases, emails were sent to group inbox and whether the invitation was properly routed is unknown.

Within the analysis section of this study, we highlight results in aggregate. Readers of this report should take note that when reading the results of the combined data, which consolidates both the representative sample and non-representative

sample, results in a slightly non-representative sample with respect to license designation. For instance, cultivators which represent 68% of our original population (as of June 2022) are only 54% of the combined sample; therefore, are slightly underrepresented. Meanwhile, manufacturers who represent 7% of the population are 17% of the sample; therefore, are slightly overrepresented. When comparing the results of sample 1A and 1B, the research team felt that combining the two datasets were generally reflective of characteristics of the population. Furthermore, presenting results in aggregate yielded more benefits to the users of this study because more voices are being considered, than by separating the results. Figure 4 presents combined response rates:

Figure 4 – Combined Response Rates by Self-Identified Category of License

License Type	Population		Sample 1A (Representative)		Sample 1B (non- Representative)		Combined	
	#	%	#	%	#	%	#	%
Cultivator	8,592	68%	116	76%	25	24%	141	54%
Retailer	1,414	11%	13	8%	29	28%	42	16%
Manufacturer	862	7%	14	9%	30	29%	44	17%
Distributor	1,183	9%	7	5%	7	7%	14	5%
Transporter	180	1%	0	0%	7	7%	7	3%
Testing Lab	49	0%	0	0%	1	1%	1	0%
Microbusiness	345	3%	4	3%	2	2%	6	2%
Event Organizer	56	0%	1	1%	3	3%	4	2%
<b>TOTAL</b>	<b>12,681</b>		<b>155</b>		<b>104</b>		<b>259</b>	

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Called to Improve Care: The Consequences of Systemic Inequities in  
the Health Medical Field

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## **Introduction to the Problem**

An opioid is a group of pain-relieving drugs that work by interacting with opioid receptors in your cells. They attach to opioid receptors in your brain cells and release signals that muffle one's perception of pain and boost feelings of pleasure. What makes these opioids so effective for treating pain is what also makes them so dangerous and addictive (Kreiger, 2018). Chronic pain accounts for 20% of all physician office visits and acute pain is the most common cause of emergency room visits (Hagemeier, 2018).

### **The Opioid Epidemic**

In the 1990s, the use of opioid medications began to rise for several different reasons. One was patient-centered and focused on relieving pain. Another was the adoption of policies designed to promote clinicians and healthcare organizations to focus on pain control. The Joint Commission's Pain Management Standards cultivated the idea of pain as a vital sign, leading to the inclusion of pain-related questions on the hospital consumer assessment of healthcare providers and systems survey which can affect hospital reimbursement (Sarkar & Kavehm, 2016).

In the past 20 years, more than 932,000 people have died from an overdose (Wonder, 2021), and 75% of overdose deaths in 2020 involved an opioid (Hedegaard et al., 2021). Four out of five heroin addicts began by misusing prescription pain medications (Hedegaard et al., 2021). The burden of prescription opioid overdose, abuse, and dependence was estimated to be

\$78.5 billion in 2013, before it was even considered a public health crisis (Hagemeier 2018).

The opioid epidemic is described in three different waves: the first being the increase in the number of prescribed opioids in the 1990s, and overdose deaths involving prescription opioids have increased since 1999. The second wave began in 2010 with rapid increases in overdose deaths involving heroin. The third began in 2013 with significant increases in overdose deaths involving synthetic opioids, particularly those involving illicitly manufactured fentanyl (O'Donnell, Gladden, Seth 2017).

The opioid epidemic is a significant issue in healthcare that affects nearly every aspect of the field, and its impact is especially prevalent in pharmacy. Examples include forged prescriptions of people with stolen doctor's pads trying to receive prescriptions of Oxycodone and a number of other desperate attempts to feed addictions. When looking at this issue, it is important to further examine the systemic inequities and stigma around health issues such as

this epidemic and the impact of bias and racism in healthcare that is interwoven through the crisis.

### **Bias and Racism in Healthcare**

There is a stigma that opioid users primarily get high-dose prescription drugs and abuse them. For the African American population, that isn't necessarily true. African Americans are often underdiagnosed and undertreated, with a greater lack of insurance, hospital accessibility, and same-race prescribers as other groups of people. According to the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Office of Behavioral Health Equity, African Americans rarely seek help from addiction due to mistrust of the health care, social services, and

the justice system. The addiction to drugs such as opioids is often seen as a weakness, and not a disease, leaving people unwilling to admit they need help.

The Substance Abuse and Mental Health Services Administration published that, statistically, white people are much more likely to receive a high-dose opioid prescription, as well as abuse opioids. An analysis conducted by the Association of American Colleges (AAMC) found that African American patients were 22% less likely than white patients to receive any pain medication following surgery. This is due to complex influences, including implicit biases and stereotypes held by healthcare providers. Examples of underlying racism held by providers include believing African Americans only want prescription medications to abuse them and undervaluing Black people's reports of pain. These biases are one of the reasons individuals turn to street drugs to reduce pain if they are refused prescriptions or help from the healthcare system.

A recent study assessing the opinions of white medical students and medical residents identified a continued belief that the Black body is biologically "different" from the whites and actually stronger (Office of Behavioral Health Equity 2020). These beliefs may come from the days of slavery in the United States where scientists and physicians used what they termed "scientific" studies on slaves to justify the need for slavery, often citing biological differences between white and non-white persons. Misinformed belief systems backed by years of oppression have led to negative effects on the quality of care, especially in pain management, by a provider because of a potential unconscious bias regarding "strength" or "frailty" in a patient of a particular race or an ethnic group (Sabin 2020).

### **Implications for Practice**

There are ongoing projects professionals are investing in to destigmatize opioid addiction. One initiative involved implementing education and prevention training in medical field preparation programs and with new health medical hires. It is recommended that schools require first-year students to take a course on social justice, race and racism, and health care. In addition, student trainees should spend time immersed in the communities they serve. Training modules and required programs for new employees must exist to educate healthcare providers of the possibility of having underlying racial bias and how to address biases.

Hospitals and clinics should require implicit bias training as well as alerting all employees to the purpose of this platform. As found in the article *The Opioid Crisis and the Black/African American Population: An Urgent Issue*, the idea of educating existing doctors on implicit biases regarding people of color should be fundamental and include statistics of white



prescribers undertreating Black patients. Closely tracking a community's prescription rate among different races will provide valuable data.

Another strategy to both collect data and enforce equity is the use of state prescription drug laws, such as prescription drug monitoring programs and the use of insurance formularies to limit the number of opioids prescribed and dispensed in a given amount of time. The use of a prescription drug monitoring program can be mandated in order to track controlled substance prescriptions on an electronic database which includes identify patients that may be at risk for an overdose. Next, state prescription drug laws can be enforced to legally limit the number of opioids that an individual can

get per month/year, leading to safer use of the drugs by users. Insurance formularies can manage opioid use by requiring a prior authorization on all narcotic prescriptions to ensure that drugs are the last feasible option for a patient's pain management.

Unfortunately, there is no way to feasibly guarantee the elimination of racism from everyone's minds and hearts, but these steps will at least help create a reporting system and educational program to provide strategies for overcoming implicit bias and hold health medical professionals accountable. Creating a system for all racial/ethnic groups to receive the same level of treatment regardless of their skin tone could greatly reduce distrust in the healthcare system and promote healthier lifestyles for everyone, in turn having a positive impact on fighting the opioid epidemic and subsequent healthcare crises.

### **Need for Further Research**

The health medical field will benefit from continued research aimed to identify an objective measure of pain. Research must evolve medical practice beyond an interpretation of a patient's pain report. Currently, research is being conducted using a blood test that can objectively diagnose pain and its intensity, which will eliminate hidden bias and influence the treatment of pain. Objective data will outweigh hidden bias and hopefully lead to a more equitable prescription rate for those who need help.

There is currently a digital platform program in an early stage/beta version that allows employees to anonymously report coworkers for exhibiting racism toward other employees or patients. These documentations can serve to make professionals cognizant of their actions and promote witness testaments and accountability. Staff submissions are visually displayed and accessible on an internal platform. These submissions are analyzed for theme and content and shared with department leadership and executive council to create and implement action plans to address issues reported. The program is currently being used in Penn Medicine but could be further developed for nationwide practice in a number of settings. This urges people to be held accountable for their actions, whether or not they were intentional, and create a safer environment for everyone. This could improve retention of minorities in the workforce in specific areas that are underrepresented. This will hopefully, in turn, create a more welcoming and safer environment for BIPOC patients and staff who might not usually feel comfortable in a certain healthcare setting that now has an anonymous option to report incidents. This program should be a standardized practice and introduced into law to be government-required in hopes to reduce racism in health care.

All of these action steps will also give necessary data to prove to prescribers and other healthcare providers that whether it is intentional or not, biases do occur, these inequities in healthcare must be addressed and changed.

### **Conclusions**

There is hope for the future of health medicine as laws and projects are being formed and regulated to combat systemic inequities in the healthcare system.

Practitioners must keep fighting for change and better health outcomes for all, including becoming more involved in law and policy and continuing the conversation. There will be a better time ahead for all those in healthcare experiencing systemic inequities and/or those affected by the Opioid Epidemic.

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*Fifteen Minutes worth of an Orange Prince Understanding  
the Supreme Court Ruling on Fair Use by*

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**Abstract** **T h e** May 2023 Supreme Court decision may have settled the longstanding dispute between Andy Warhol, Prince, and the photographer Lynn Goldsmith, but it left many issues unresolved with regard to the *Fair Use Doctrine*. In fact, the ‘Orange Prince’ case should have provided some guidance for future artists and, especially, the use of artificial intelligence (AI) generated art. Still, the Court, after decades of unlimited ‘fair use’ privileges appears to be set to reign in future artists. This paper summarizes the decision and offers analysis on how we move forward.

*When Doves (or Prince) Cried*<sup>1</sup>.

Andy Warhol, and many other visual artists, have long used copyrighted works as the source of their expressions for commercial purposes.<sup>2</sup> Does Warhol violate copyright in turning images of Campbells’ soup cans into an artistic commentary of post-modern consumerism? What about the use of a celebrity’s image? Some have argued that all art is built on previous art and extending copyright protections could have a “chilling effect” on art.<sup>3</sup> Some would take this argument to the extreme and postulate that art does not need to have copyright protections.<sup>4</sup> That Warhol and Prince (posthumously) would have their ‘fifteen minutes’ before the Supreme Court now seems inevitable.

The musical artist Prince was known to be fiercely protective of his songs and his creative products. One such example of him pressing for compensation from another artist occurred in 1992, when a little-known hip hop band called Arrested Development sampled one word from his song ‘Alphabet Street’. That one word was Prince saying “Tennessee”. The artist cried foul. According to one report, “Prince, who had a reputation for being very business savvy, waited until after the record had peaked before reaching out to the group for payment.”<sup>5</sup> P r i n c e filed a lawsuit and won

\$100,000, but did not demand a songwriting credit on the album. Instead of crippling the band, members site this as being part of their success.<sup>6</sup>

In many ways, Prince, whether changing his name to an unpronounceable symbol in protest of his contractual obligations to his record company, or to an on-again, off-again relationship with the Internet over posting his music videos, pushed for the protection of copyright privileges like few artists.<sup>7</sup> Perhaps, it would be fair to say that Prince reflects a larger view that Black artists have long been victims of an industry where their rights to their own intellectual property has not been protected.<sup>8</sup> But the Court case, and this article, are not about music. It is about the use of a photo by one artist of another artist transformed by another artist. The relevance of the outcome of the case for all artists (and educators using sourced materials in class or online) is vital.

*Overview of Intellectual Property.*



According to the US patent and Trademark Office (USPTO), intellectual property (IP) includes patents, trademarks, copyrights, and trade secrets.<sup>9</sup> Specifically, IP includes art as music, photography, and paintings. Historical context is critical. Thomas Jefferson served under President George Washington as Secretary of State. In this capacity, Jefferson is credited with being the founder of American Patent Law. This was noted in the Supreme Court decision in *Graham v. John Deere Company* (1966).<sup>10</sup> Here, quoting from a personal letter from Jefferson to an inventor, the Court stated that the 'embarrassment of an exclusive patent' was a special legal privilege justified only

because these ‘monopolies of invention’ served the ‘benefit of society’.<sup>11</sup> Despite patents falling under the Constitution under the Section 1, part 8 of the Commerce Clause,<sup>12</sup> it would take decades before the process was codified under *Title 35--- Patents* in 1952.<sup>13</sup> However, many would argue that the Court has relied upon too many Founding Father myths and that Jefferson was trying to fashion a privilege and not a right.<sup>14</sup> Some theorists have even had the audacity to ask: Who cares what Thomas Jefferson thought about patents? And have called for a reevaluating of the entire patent and IP protection process.<sup>15</sup>

There is clearly an argument regarding whether property rights in general and intellectual property rights specifically are tied to the hip of democracy, liberty and freedom. A great place to begin the discussion is with John Locke (*Second Treatise*). Some would argue that Locke’s understanding of property rights coupled with morality and benevolence are the intellectual foundations of republicanism as expressed in the Constitution.<sup>16</sup> There can be no doubt that phrases like “pursuit of happiness” and promises of “life and liberty” come from the pen of Locke.<sup>17</sup> However, this is not to suggest that philosophers, such as Calvin, Mill, or Bentham, did not help shape America.<sup>18</sup> But for the purposes of considering intellectual property, Locke’s “concept of labor means production, which has intellectual as well as physical characteristics, and his concept of value means that which is useful in the flourishing life of a rational being, which is a conception of the good that is more robust than merely physical status or economic wealth.”<sup>19</sup>

To say this notion is not without problems is naïve. One argument that combines egalitarianism, morality, and Marxism would be that such views justify government sanctioned monopolies. One argument is that monopolies (and the creation of patents to protect IP) violate God’s law as it fosters a system of privilege. This privilege is neither economically sound or democratically viable and devalues the centrality of labor which is central to a community.<sup>20</sup> In other words, defining, protecting, and understanding IP has been problematic since America was founded. It remains so today. Regardless, as with any right, there are limits.

#### *Limits to Patent Protection.*

According to legal theorists, “In the nineteenth century, the Supreme Court on a number of occasions set forth inconsistent views on the scope of congressional authority to set the terms and conditions of patents.”<sup>21</sup> Also, trade secrets and anti-trust laws often ran headlong into patent protection.<sup>22</sup> In *McClurg v. Kingsland* (1843), the Court stated, “the powers of Congress to legislate upon the subject of patents is plenary by the terms of the Constitution, and as there are no restraints on its exercise, there can be no limitation of their right to modify [the patent laws] at their pleasure, so [long as] they do not take away the rights of property in existing patents.”<sup>23</sup>

Still, major gaps have remained in patent law: “it is remarkable that the Supreme Court has never attempted to define what is meant by the terms ‘inventors’ and ‘discoveries as used in the [Commerce] Clause.”<sup>24</sup> In fact, as one scholar points out, “It is now commonplace to treat a patent as a contract between the inventor and the public as represented by the government, but this concept had yet to be developed at the time the Constitution was drafted in 1787.”<sup>25</sup> The Supreme Court “has often and consistently

summarized the objectives of copyright law. The copyright is not an inevitable, divine, and natural right that confers on authors the absolute ownership of their creations.”<sup>26</sup> There are exceptions to IP protection and one such exception has become the Fair Use Doctrine.

*Don't Go Crazy, It's the Fair Use Doctrine.*

Any professor that has written a book review, adapted a YouTube video or altered a historic picture for the purposes of education has engaged in the *Fair Use Doctrine*. As per legal scholars, “The fair use doctrine affords a privilege to make what would otherwise be an infringing use of copyrighted expression. The doctrine is judge-made.”<sup>27</sup> In *Folsom v. Marsh* (1841), the Court attempts to create a “test for a fair and bona fide abridgement” for understanding when a patent privilege may give way.<sup>28</sup> Instead of clarity, the Court’s decision has been considered so egregious that judges heretofore relying upon any precedent in *Folsom* have discovered a maze of inconsistencies and contradictions leading to the need for more cases.<sup>29</sup> For much of America’s history, copyright law was exclusively concerned with books. Confusing court decisions necessitated the *Copyright Law* of 1909. Here, the holder of IP for a book had the ‘exclusive right’ to “print, reprint, publish, copy, and vend the copyrighted work.”<sup>30</sup>

Yet, the issue was not resolved. For educators, specifically, who frequently copy pages from books, or use extended quotes in lesson plans, or cite long passages as part of a lecture, almost seven decades would go by before guidelines for non-profit education institutions would be produced.<sup>31</sup> Again, the issue of IP protection was hardly resolved. As any professor has been told, “You can copy or use 1000 words and be OK, but 1001 words will be copyright infringement.” As Patterson explains, “The question of whether copyright is a natural law property right or statutory monopoly is a question of how shall we treat copyright law. This is a policy question and there are arguments to support either choice.”<sup>32</sup>

According to 17 U.S. Code § 107, “Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”<sup>33</sup> Thus, there are four factors to consider when determining if an artist has violated the copyright or IP of another artist. These are as follows:

- the purpose and character of your use;
- the nature of the copyrighted work;
- the amount and substantiality of the portion taken; and
- the effect of the use upon the potential market.<sup>34</sup>

In 1992, just six years after the Copyright Law had added significant ‘clarifying provisions’, the case of *Rogers v. Koons* addressed the use of a photograph created by one artist was used by

another artist as the basis for a sculpture.<sup>35</sup> The court found “while the defendant’s copying may have been a satirical critique of materialistic society in general, it ‘was done in bad faith, primarily for profit-making motives’, and did not constitute a parody of the original work.”<sup>36</sup> So, here Fair Use was not supported.

Within a couple of years, the Court would appear to reverse itself. In the (in)famous ‘Pretty Woman’ or 2LiveCrew case (*Campbell v. Acuff-Rose Music*, 1994), the ‘transformative factor’ was clarified.<sup>37</sup> Two questions emerged: Has the material you have taken from the original work been transformed by adding new expression or meaning? Was value added to the original by creating new information, new aesthetics, new insights, and understandings?<sup>38</sup>

Does that mean that any parody or criticism is allowed under the Fair Use Doctrine? Perhaps the answer here is in the 1986 case of *Fisher v. Dees* where the judge opined, “The economic effect of a parody with which we are concerned is not its potential to destroy or diminish the market for the original—any bad review can have that effect— but whether it fulfills the demand for the original.”<sup>39</sup> It seems that the Fair Use Doctrine’s interpretations vary according to the court, the artistic medium, the reception of the parody, and, perhaps, the litigants. In short, the doctrine is hardly a clear, bright line of lucidity.

On the fourth factor, the 2LiveCrew case is illustrative. First, though, it is important to understand the *Sony Corp. of America v. Universal City Studios* case (1984) involving the sale of video recording tapes (Betamax), where the Court ruled “every commercial use of copyrighted material is presumptively . . . unfair.”<sup>40</sup> In other words, the economics of IP violations must be considered.<sup>41</sup> Here, it is clear that the Court went too far. In *Campbell*, the Court stated, the new version of ‘Pretty Woman’ “has cognizable substitution effects in protectable markets for derivative works, the law will look beyond the criticism to the work’s other elements. 2 Live Crew’s song comprises not only parody but also rap music. The absence of evidence or affidavits addressing the effect of 2 Live Crew’s song on the derivative market for a non-parody, rap version of ‘Oh, Pretty Woman’ disintitled 2 Live Crew, as the proponent of the affirmative defense of fair use.”<sup>42</sup> In short, unless one had pre-knowledge of the song popularized by Roy Orbison, the rap version would never been construed as anything other than a commentary or parody for a difference market. But this is far from illuminating.

In the case of Warhol and Prince, clarity is not forthcoming either.

#### *Fifteen Minutes with Andy.*

Andy Warhol was an underground, antiestablishment artistic icon for decades. His Campbell Soup cans or Brillo pads adorned canvasses as the Pop Art movement became mainstream. Even when his ‘philosophical’ book was published, Americans could confirm that Andy was different.<sup>43</sup> He was *Avant Garde* while employing shades of ordinary life and celebrity worship.<sup>44</sup> Andy Warhol changed the way people saw the world.<sup>45</sup>

As claimed in his edited (by Pat Hackett) diaries, Andy was original, a deep thinker, and a “student of human culture.”<sup>46</sup> Perhaps his most famous quote, interestingly enough for this paper was

plagiarized from an Elizabethan actor named William Kempe,<sup>47</sup> was “in the future everyone will be famous for fifteen minutes.”<sup>48</sup> He remained curious and was always looking for the ‘next thing.’

His forward-thinking lead him to befriend lots of New York artists. His relationship, mentorship, and friendship with a young, black street artist named Jean-Michel Basquiat reinvigorated Andy in the early 1980s.<sup>49</sup> As the New York Times reported, this relationship caused Warhol to paint for the first time since 1962.<sup>50</sup> When the so-called ‘Pope of Pop’ collaborated with this street artist Basquiat, the result went beyond silkscreens to fashion an industry that made the younger artist immensely rich, but destined to be consumed by his fame shortly after the untimely death of Andy Warhol (1987) before the end of the decade.<sup>51</sup>

Andy Warhol’s eye for young talent has been documented from his days with the Velvet Underground to Blondie, especially his friendship with lead singer Deborah Harry.<sup>52</sup> According to one journalist, Andy was “the foremost participant in the pop art movement and created silkscreen print painting and other revered and financially valuable works inspired by photos of celebrities including the actor Marilyn Monroe, the singer Elvis Presley, Britain’s Queen Elizabeth, the Chinese leader Mao Zedong and the boxer Muhammad Ali.” He also liked to connect people across artist mediums. For example, the music video (a new artform in the early 1980s) for Blondie’s hit song *Rapture* features Harry and Basquiat discussing Fab Five Freddie’s music standing over a turntable.<sup>53</sup> She would be the first person to buy a Basquiat painting for \$200...within months he was dating Madonna and selling his art for \$20,000 per picture.<sup>54</sup>

The point, it is not hard to imagine Andy Warhol being approached by a professional photographer named Lynn Goldsmith to create a series on an upcoming musical genius: Prince (Rogers Nelson). Prince and Basquiat were the same age.

#### *Before his Purple Reign.*

In hindsight, most things appear to be obvious. However, Prince’s childhood health, and hardly halcyon home-life pointed to a less than idyllic world in this ‘thing called life.’ His parents were poor, unhappy and eventually divorced leaving Prince to a lonely life where music was his best escape.<sup>55</sup> So, he played the piano, learned some chords on the guitar, and enrolled in a course “The Business of Music.” His goal: to be a Rock Star.<sup>56</sup>

From his first day, Prince was a musician’s musician. He cared little for what the masses thought. He wanted to be above popularity.<sup>57</sup> Even if all the critics in New York loved him, he was after something else. In 1979, Prince had his first live show with his band and soon enjoyed the pop-life that he had longed for. He was barely 21 years old and few could have predicted his ladder would reach beyond the stars.<sup>58</sup>

#### *Controversy.*

So, in 1981, *Vanity Fair* (parent company Condé Nast) contracted Lynn Goldsmith to take black and white photos of Prince. A New York law firm following the case noted, Condé Nast “published



a purple-toned image; it paid Goldsmith a \$400 fee in exchange for a one-time license and credited her for the 'source photograph'.<sup>59</sup> Warhol created silkscreens of the photos and later fashioned a series of silkscreens and pencil drawings. According to one account, "When, years later, Goldstein discovered Warhol's multiple works based on her photo, she sued because of one particular use of it – what

the Court referred to as the “Orange Prince” work.”<sup>60</sup> The original photo (Goldstein) and the ‘Orange Prince’ (Warhol) appear on the following page.

Perhaps this case would not have evolved into a controversy except for the untimely demise of Prince. As reported, “Following Prince’s death in 2016, Condé Nast...inquired with the Andy Warhol Foundation for the Visual Arts (AWF) about reusing the purple Vanity Fair image for a special edition magazine in honor of the deceased rock star. On learning about the Prince Series, Condé Nast opted for a license from AWF to publish ‘Orange Prince’ instead.”<sup>61</sup>

According to legal scholars, “Under copyright law, creators generally have the right to control and profit from secondary works that derive from their original work. An exception to this is the fair use defense, the four-factor test for which is laid out in 17

U.S.C. § 107.”<sup>62</sup> In this case, “At issue in this case is the first factor—the purpose and character of the use. Central to this factor is the notion of ‘transformativeness,’ and whether the secondary work possesses a new meaning or message that distinguishes it from the original. This interpretation has been affirmed by the Court multiple times and used effectively for many years.

This would move from a district court to an appeals court and then to the Supreme Court.

*It Snows in April (or May).*

The history of the legal controversy is best summarized in a European journal.<sup>63</sup><sup>64</sup>The Andy Warhol Foundation for Visual Arts (AWF) prevailed in District Court where it was found that “Warhol’s silkscreen based on Goldsmiths’ portrait photographs was highly transformative and did not serve as a market substitute for the original, and that only the second fair use factor (the nature of the work) would weigh in Goldsmiths’ favor.” But, the Court of Appeals reversed this ruling. Perhaps, this was due to the lack of clear precedent from previous rulings (compare *Sony* and *Campbell*). Here, the Court ruled, “that not every work that adds “a new aesthetic or new expression to its source material. [And] is necessarily transformative, but that regard must be had to the use of the derived work.” They added that the Warhol ‘Orange Prince’ “must be in the service of a fundamentally different and new artistic purpose and character.”<sup>65</sup> In other words, the Court of Appeals reasoned that Warhol’s work was commercial and was essentially too similar to the original Goldsmith photographs; thus, it violated Fair Use.

Contrast the original Goldsmith (Left) and the 'Orange Prince' (Right) of Warhol.



Deciding to forego the Court of Appeals decision based on the second, third, and fourth *Fair Use Doctrine* factors, the AWF chose to focus on the first factor when appealing to the Supreme Court. As found in 17 U.S. Code § 107, it queries “the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.”<sup>66</sup>The oral arguments in the case is expressive. The AWF tried to argue that Andy Warhol had transformed Goldsmith’s original photos of Prince and relied on Factor one of the Fair Use Doctrine along with the cases of Campbell and Google for precedent. Further, arguments were made regarding the long history of Warhol using popular images to convey alternative, ironic, or satirical meanings.<sup>67</sup>

Also, it was argued that Warhol engaged in a “follow on” or add-on work in which almost all modern art falls. When asked for an example of this, Roman Martinez (the AWF attorney) offered book-to-movie examples as Factors one and four instances.<sup>68</sup> Justice Sonia Sotomayor wondered whether this example was best as “derivative” works often are in different forms (i.e., painting to music). Even here, as Justice Elana Kagan would add, “Mr. Martinez, to your answer to Justice

Thomas's question? Because you said: Well, the classic example of non-transformative work would be a movie from a book.

And, indeed, we expect Hollywood, when it takes a book and makes a movie, to pay the author of the book.”<sup>69</sup>

This was just the beginning of a long day for the Warhol Team. The Supreme Court did not receive their arguments favorably.

The Goldsmith Team was led by attorney Lisa S. Blatt. She succinctly argued, “Fair use is an affirmative defense. It involves a multi-factor balancing test, and Factor 1 focuses on purpose: What is the reason or justification to take another's copyrighted work? The reason can't be to avoid paying the customary price or the drudgery of coming up with something fresh.”<sup>70</sup> Later, under questioning, Blatt added that Warhol had historically paid for copyrighted materials, be simply failed to do so here.

On May 18, 2023, the Supreme Court handed down its 7-2 decision (Roberts and Kagan sided with Warhol) in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*.<sup>71</sup>As summarized in Justia, the Supreme Court affirmed the appeals court decision “Agreeing that the first fair use factor, ‘the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes’, weighs against AWF’s commercial licensing to Condé Nast. Both the 1984 and the 2016 publications are portraits of Prince used in magazines to illustrate stories about Prince; the ‘environment[s]’ are not ‘distinct and different’. The 2016 use [of the original Goldsmith photo] also is of a commercial nature.”<sup>72</sup>

The Court added, “Orange Prince reasonably can be perceived to portray Prince as iconic, whereas Goldsmith’s portrayal is photorealistic but the purpose of that use is still to illustrate a magazine about Prince. The degree of difference is not enough for the first factor to favor AWF. To hold otherwise would potentially authorize a range of commercial copying of photographs, to be used for purposes that are substantially the same as those of the originals. AWF offers no independent justification for copying the photograph.”<sup>73</sup>

In summation of the Court’s ruling, “if an original work and secondary use share the same or highly similar purposes, and the secondary use is commercial, the first fair use factor is likely to weigh against fair use, absent some other justification for copying. As the commercial use was so similar to that which would be the typical use for the original photograph, a particularly ‘compelling’ justification for use was needed. Ultimately, the Supreme Court found that the first factor favored Goldsmith and as a result, AWF lost its copyright battle against the celebrity photographer.”<sup>74</sup>

In the opinion of the Court, “Lynn Goldsmith’s original works, like those of other photographers, are entitled to copyright protection, even against famous artists. Such protection includes the right to prepare derivative works that transform the original. The use of a copyrighted work may

nevertheless be fair if, among other things, the use has a purpose and character that is sufficiently distinct from the original.”<sup>75</sup>

This case, though, is about much more than an ‘Orange Prince’ and the failure to secure copyrights.

Or, is it?

*Analysis: No Diamonds, Few Pearls.*

The Warhol case presented the Supreme Court with an opportunity to tighten up the *Fair Use Doctrine* for the first time in decades. This could have been a historical case where precedent was set across IP sectors as diverse as sculptures fashioned by hands or art made by artificial intelligence (AI) programs. Yet, according to one researcher, the ‘strategic’ decision of the Court has not provided a clear path forward. He states, “Whether the loss extends beyond the Foundation and to future artists and authors claiming fair use, we will only know from litigation involving different parties and different facts. That is for two reasons: (I) the Court went out of its way to issue what it considered a narrow decision and (II) fair use is a common law doctrine whose scope and application evolve through case law.”<sup>76</sup>

An interesting note about the majority view is offered. Justice Neil Gorsuch opined, “If, for example, the Foundation had sought to display Mr. Warhol’s image of Prince in a nonprofit museum or a for-profit book commenting on 20th-century art, the purpose and character of that use might well point to fair use.”<sup>77</sup> Is that the best argument? If this had been a non-profit exhibition or used in an education setting, then Warhol could have won the case?

As is often the case, the best analysis can be found in the dissenting opinions. The emphasis is on the ‘transformative’ nature of what Warhol did to the Goldsmith photos. Justice Kagan asks, “Still more troubling are the consequences of today’s ruling for other artists. If Warhol does not get credit for transformative copying, who will? And when artists less famous than Warhol cannot benefit from fair use, it will matter even more. Goldsmith would probably have granted Warhol a license with few conditions, and for a price well within his budget. But as our precedents show, licensors sometimes place stringent limits on follow-on uses, especially to prevent kinds of expression they disapprove.”<sup>78</sup>

Could this decision stifle artistic creativity? Will it impede new art forms or literary expressions? Does knowledge suffer with such an interpretation of Fair Use? Kagan added, “Warhol is a towering figure in modern art not despite but because of his use of source materials. His work—whether Soup Cans and Brillo Boxes or Marilyn and Prince—turned something not his into something all his own. Except that it also became all of ours, because his work today occupies a significant place not only in our museums but in our wider artistic culture.”<sup>79</sup> Where would rap or hip hop be without the use of sampling? Or book reviews without one author criticizing another and having a transformative artistic expression? Does that violate IP? Or does it advance knowledge? Does all parody or satire fall short of Fair Use protections under this Court?

Time has a funny way of answering such questions.

Interestingly enough, the Court and the attorneys for both sides focused much of their attention on Factors One and Four. So, a quick summary of why Factors Two and Three were omitted.

Factor Two concerns the “nature of the copyrighted work” and does not seem to have any bearing here. Specifically, this factor applies to works considered ‘factual’ versus ‘expressive’. Sometimes this is referred to as the difference between ‘facts and ideas’.<sup>80</sup> There is considerable literature on this subject as it obviously raises



Free Speech or other forms of free expression protections (as does copyright law in general) and the use of resource materials in creating new art forms.<sup>81</sup> Is a T-shirt with Picasso fighting Nietzsche with competing college logos or ideas copyright infringement? The current Warhol case led to an interesting exchange between Justice Clarence Thomas and Justice Sonia Sotomayor.<sup>82</sup>

As for Factor Three, many educators have dealt directly with this copyright issue for years. The question is regards “amount and substantiality of the portion in relation to the copyrighted work as a whole.”<sup>83</sup>The Patton Case (2014) is the most instructive here although still lacking precisions.<sup>84</sup> Here, courts are not concerned about purpose and character (First Factor), or commercial usage (Fourth Factor), not the expressive nature of the copyright infringement (Second Factor). Rather, Factor Three is concerned about how much has been taken from the original copyrighted material. Many educators have been cautioned about using less than 1000 words of a book, or a hip-hop artist not to sample too much (unless it is a parody; like Campbell). The District Court had found a 10 percent or one chapter guideline as a threshold for Fair Use.<sup>85</sup> The Supreme Court did not find this acceptable, and rejected this ‘bright line’ approach relying on the Supreme Court’s pronouncement that Fair Use analysis must be ‘performed on a case-by-case/work-by-work bases.’<sup>86</sup> Again, a case-by-case approach provides little direction and much room for ambiguous and capricious interpretations of Factor Three.

This is certainly not the last we have heard on the matter of IP, patents, or copyrights. As one justice stated, “Like patent law, copyright law is generally considered a social bargain in which inventors and writers are rewarded for their ideas and expression, on the condition that their creations eventually will be freely available to everyone. But a few of copyright’s staunchest defenders have made it clear that they do not believe in one of the basic elements of that social bargain: that copyrights expire.”<sup>87</sup>

The line between copyright protection and infringement remains blurred. When adding to the conversation artificial intelligence (AI)<sup>88</sup> and the use of computer programs to generate ‘art’ there is still much to be painstakingly assessed.<sup>89</sup>Can computers hold a copyright? Given preference over human artists?<sup>90</sup>These questions were raised more than 40 years ago and we still do not have an answer.<sup>91</sup> Given the decision here in Warhol, it is not likely that this Court has the capacity to adequately address these complex IP issues.

## Endnotes.

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<sup>1</sup> This paper is for educational purposes and to offer critical analysis. All efforts to incorporate song titles or lyrics from Prince are covered under the Fair Use Doctrine. If there are any commercial aspects emanating from this paper, all such proceeds will be donated to the

Minnesota Sinfonia, a charity in Prince's hometown that serves the musical and educational needs of Minnesotans with a special emphasis on reaching families with young children, inner-city youth, seniors and those with limited financial means. A wonderful article on Prince's music and importance to copyright and artists' protections, may be found Guion Peoples, D. T. (2019). A Royal Revolution: An analysis of the influence of Prince on music marketing.

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<sup>2</sup>Landes, W. M. (2000). Copyright, borrowed images, and appropriation art: An economic approach. *George Mason Law Review*, 9, 1.

<sup>3</sup> Meyers, E. (2006). Art on Ice: The Chilling Effect of Copyright on Artistic Expression. *Columbia Journal of Law and Arts*, 30, 219.

<sup>4</sup> Adler, A. (2018). Why art does not need copyright. *George Washington Law Review*, 86, 313.

<sup>5</sup>Sorcinelli, Gino. 4 May 2017. As found in Still Crew. Located at How an Overlooked Prince Sample Took Arrested Development's 'Tennessee' To Another Place. Accessed 4 June 2023.

<sup>6</sup> Why Arrested Development wouldn't exist without Prince. As found in Atlanta. 21 April 2016. Located at <https://www.atlantamagazine.com/news-culture-articles/arrested-development-wouldn't-exist-without-prince/>. Accessed 12 June 2023.

<sup>7</sup> Here's Why You Can't Find Any Prince Music Online. Located at <https://thehustle.co/heres-cant-find-prince-music-online/#:~:text=This%20was%20only%20the%20beginning,to%20be%20uploaded%20to%20YouTube>. Accessed 15 June 2023.

<sup>8</sup> Gladney, M. J. (1995). The Black arts movement and hip-hop. *African American Review*, 29(2), 291-301.

<sup>9</sup> US Patent and Trade Mark Office. Located at <https://www.uspto.gov/patents/basics/essentials#questions>. Accessed 20 June 2023.

<sup>10</sup> 383 U.S. 1, 7-11 (1966).

<sup>11</sup> Letter from Thomas Jefferson to Isaac McPherson, 13 August 1813, as found in the National Archives. Located at <https://founders.archives.gov/documents/Jefferson/03-06-02-0322>. Accessed 20 June 2023.

<sup>12</sup> Gerber, E. (1962). Patents under the Commerce Clause. *Journal of Patent Office Society* 44, 126. Article 1, Section 8, Clause 8, says, that Congress shall have the power "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

<sup>13</sup> U.S. Code: Title 35.

<sup>14</sup> Walterscheid, E. C. (1995). Patents and the Jeffersonian mythology. *J. Marshall L. Rev.*, 29, 269.

<sup>15</sup> Mossoff, A. (2006). Who cares What Thomas Jefferson thought about patents-reevaluating the patent privilege in historical context. *Cornell Law Review*, 92, 953. <sup>16</sup> Pangle, T. L. (1990). *The spirit of modern republicanism: The moral vision of the American founders and the philosophy of Locke*. University of Chicago Press.

<sup>17</sup> Huyler, J. (1995). *Locke in America: the moral philosophy of the founding era*. University Press of Kansas.

<sup>18</sup> Kuklick, B. (2002). *A history of philosophy in America: 1720-2000*. Clarendon Press.

<sup>19</sup> Mossoff, A. (2012). Saving Locke from Marx: The labor theory of value in intellectual property theory. *Social Philosophy and Policy*, 29(2), 283-317.

<sup>20</sup> Drahos, P. (2016). *A philosophy of intellectual property*. Routledge.

<sup>21</sup> Walterscheid, E. C. (2001). Within the Limits of the Constitutional Grant: Constitutional Limitations on the Patent Power. *Journal of Intellectual Property Law*, 9, 291.

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<sup>22</sup> Doerfer, G. L. (1967). The Limits on Trade Secret Law Imposed by Federal Patent and Antitrust Supremacy. *Harvard Law Review*, 1432-1462.

<sup>23</sup> *McClurg v. Kingsland*, 42 U.S. 202 (1843).

<sup>24</sup> Walterscheid 2001.

<sup>25</sup> *Ibid.*

<sup>26</sup> Leval, P. N. (1990). Toward a fair use standard. *Harvard law review*, 103(5), 1105- 1136.

<sup>27</sup> Netanel, N. W. (2011). Making sense of fair use. *Lewis & Clark Law Review*, 15, 715.

<sup>28</sup> *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841).

<sup>29</sup> Patterson, L. (1997). *Folsom v. Marsh and its Legacy*. *Journal of Intellectual Property Law*, 5, 431.

<sup>30</sup> Copyright Law of 1909. Located at <https://www.copyright.gov/history/1909act.pdf>.

Accessed 10 May 2023.

<sup>31</sup> Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions, H. REP. No. 94-1476 at 68 (1976).

<sup>32</sup> Patterson.

<sup>33</sup> 17 U.S. Code § 107.

<sup>34</sup> Stim, R. (2010). Measuring fair use: the four factors. Copyright & Fair Use Stanford University Libraries.

<sup>35</sup> *Rogers v. Koons*, 960 F.2d 301 (2d Cir. 1992)

<sup>36</sup> *Ibid.*

<sup>37</sup> *Campbell v. Acuff-Rose Music* (92-1292), 510 U.S. 569 (1994). In an article about decades after this case, it would be argued that “*Campbell v Acuff-Rose* itself charted this path: while the court interpreted the first factor to focus on the transformative character of the use, a finding of transformativeness did not sweep all before it. The defendant’s adaptation there at issue certainly conveyed a different message through the mockery of the underlying musical composition, but the court did not rule the use fair. Rather, it acknowledged that the third factor, amount and substantiality of the use, required further inquiry on remand into whether the defendants took more than they needed for their parodic purpose.” Ginsburg, J. C. (2022). Does ‘transformative’ fair use eviscerate the author’s exclusive right to ‘transform’ her work?. *Journal of Intellectual Property Law and Practice*, 17(9), 687-689.

<sup>38</sup> Stim.

<sup>39</sup> *Fisher v. Dees*, 794 F.2d 432 (9th Cir. 1986).

<sup>40</sup> *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984).

<sup>41</sup> In *Google LLC v. Oracle America, Inc.*, 593 U.S (2021), The Court found, “To determine whether Google’s limited copying of the API here constitutes fair use, the Court examines the four guiding factors set forth in the Copyright Act’s fair use provision: the purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work. §107. The Court has recognized that some factors may prove more important in some contexts than in others.”

<sup>42</sup> Campbell.

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<sup>43</sup> Warhol, A. (1977). *The philosophy of Andy Warhol: from A to B and back again* (Vol. 75). Houghton Mifflin Harcourt.

<sup>44</sup> Danto, A. C. (2009). *Andy Warhol*. Yale University Press.

<sup>45</sup> Ibid.

<sup>46</sup> Warhol, A., & Hackett, P. (2009). *The Andy Warhol Diaries*. Grand Central Publishing.

<sup>47</sup> The Phrase Finder. *The Meaning and Origin of the Expression: Nine Days*. Located at <https://www.phrases.org.uk/meanings/nine-days-wonder.html>. Accessed 20 May 2023.

<sup>48</sup> This phrase was used as the concept to create one of the more original television shows of the 1980s. To watch it today is to see the future. Located at <https://www.youtube.com/watch?v=6vxPF1FhCOs>. Accessed 30 June 2023.

<sup>49</sup> Fretz, E. (2010). *Jean-Michel Basquiat: A Biography*. ABC-CLIO.

<sup>50</sup> Raynor, V. (1985). *Art: Basquiat, Warhol*. *New York Times*, 85.

<sup>51</sup> Emmerling, L. (2003). *Jean-Michel Basquiat: 1960-1988*. Taschen.

<sup>52</sup> Colacello, B. (2014). *Holy terror: Andy Warhol close up*. Vintage.

<sup>53</sup> Blondie. *Rapture* (Official Music Video). Located at <https://www.youtube.com/watch?v=pHCdS7O248g>. Accessed 1 July 2023. Notice the interaction at 1:56 of the song. Interestingly, Harry bought one of the first Basquiat paintings.

<sup>54</sup> Great Art Explained. *Jean-Michel Basquiat's 'Untitled (Skull)'*. Located at <https://www.youtube.com/watch?v=lHePKNTRmdl>. Accessed 1 July 2023.

<sup>55</sup> Ro, R. (2011). *Prince: inside the music and the masks*. St. Martin's Press.

<sup>56</sup> Ibid.

<sup>57</sup> Thorne, M. (2023). *Prince: The man and his music*. Agate Publishing.

<sup>58</sup> Hill, D. (1989). *Prince: A pop life*. (No Title). Located at <https://archive.org/details/princepoplife00hill/page/n3/mode/2up>. Accessed 1 July 2023.<sup>59</sup> O'Melveny & Myers LLP. *SCOTUS to Warhol: "Orange Prince" Not Fair Use*. 30 May 2023. Located at <https://www.omm.com/resources/alerts-and-publications/alerts/scotus-to-warhol-orange-prince-not-fair-use/>. Accessed 23 June 2023. They added, "Then, after Prince's death in 2016, Condé Nast sought to use a different image from Warhol's series, an orange silkscreen portrait based on the same photograph, referred to as "Orange Prince." It paid the Andy Warhol Foundation (AWF) a \$10,250 fee. But this time, Goldsmith received no payment or credit for the secondary use of her photograph."

<sup>60</sup> Nepple, M. (2023). Sing o' the Times? Supreme Court Decides Andy Warhol's Prince Silkscreen is Not a Fair Use. Located at [https://www.thompsoncoburn.com/insights/blogs/in-focus/post/2023-05-23/sign-o-the-times-supreme-court-decides-andy-warhol-s-prince-silkscreen-is-not-a-fair-use?utm\\_source=mondaq&utm\\_medium=syndication&utm\\_term=Intellectual-Property&utm\\_content=articleoriginal&utm\\_campaign=article](https://www.thompsoncoburn.com/insights/blogs/in-focus/post/2023-05-23/sign-o-the-times-supreme-court-decides-andy-warhol-s-prince-silkscreen-is-not-a-fair-use?utm_source=mondaq&utm_medium=syndication&utm_term=Intellectual-Property&utm_content=articleoriginal&utm_campaign=article). Accessed 30 June 2023. <sup>61</sup> Mason Hayes and Curran, LLP. Andy Warhol's 'Orange Prince' not Fair Use of Goldsmith's Copyright. 28 June 2023. Located at <https://www.lexology.com/library/detail.aspx?g=3dc4853c-6989-4865-b662-d309cb607b6b>. Accessed 1 July 2023.



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<sup>62</sup> Spencer, B. A. (2022). It Ain't Real Funky Unless It's Got That Pop: Artistic Fair Use after Goldsmith. *Duke Journal of Constitutional Law and Public Policy. Sidebar*, 18, 103. <sup>63</sup>Jütte, B. J., & Mezei, P. (2023). Does Andy Warhol Foundation v Goldsmith Mark the End of the European Fair Use Fetish? *European Intellectual Property Review*, 45(9).

<sup>64</sup> Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith et al., 382 F. Supp. 3d 312, 316 (SDNY 2019).

<sup>65</sup> Andy Warhol Found. for Visual Arts, Inc. v. Goldsmith et al., 11 F. 4th 26, 54 (2021).

<sup>66</sup> 17 U.S. Code § 107 - Limitations on exclusive rights: Fair use.

<sup>67</sup> Oyez. Oral Arguments of the Case, Located at <https://www.oyez.org/cases/2022/21-869>. Accessed 2 July 2023.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith, 598 U.S. (2023).

<sup>72</sup> Justia. Summary of the Case. Located at <https://supreme.justia.com/cases/federal/us/598/21-869/>. Accessed 2 July 2023.

<sup>73</sup> Ibid.

<sup>74</sup> Mason.

<sup>75</sup> The Andy Warhol Foundation (AWF) Case. See above for full citation. The Court adds, "In this case, however, Goldsmith's original photograph of Prince, and AWF's copying use of that photograph in an image licensed to a special edition magazine devoted to Prince, share substantially the same purpose, and the use is of a commercial nature. AWF has offered no other persuasive justification for its unauthorized use of the photograph. Therefore, the 'purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes', §107(1), weighs in Goldsmith's favor."

<sup>76</sup> Patry, W. (2023). Andy Warhol Foundation for the Visual Arts, Inc. v Goldsmith: did the US Supreme Court tighten up fair use? *Journal of Intellectual Property Law and Practice*, jpad060.

<sup>77</sup> The AWF Case. See full citation above.

<sup>78</sup> Ibid. The Judge asks an interesting question in his majority opinion, "Does Mr. Warhol's image seek to depict Prince as a 'larger-than-life' icon while Ms. Goldsmith's photograph attempts to cast him in a more 'vulnerable' light?"

<sup>79</sup> Ibid.

<sup>80</sup> BYU. Copyright Licensing Office. Located at <https://copyright.byu.edu/the-meaning-of-the-four-fair-use-factors>. Accessed 5 July 2023.

<sup>81</sup>Nimmer, M. B. (1969). Does copyright abridge the first amendment guarantees of free speech and press. *UCLA Law Review* 17, 1180. Volokh, E., & McDonnell, B. (1998).

Freedom of Speech and Independent Judgment Review in Copyright Cases. *The Yale Law Journal*, 107(8), 2431-2471. Denicola, R. C. (1980). Copyright in collections of facts: A theory for the protection of nonfiction literary works. *Art & Law*, 6, 96.

<sup>82</sup> The AWF Case.

<sup>83</sup> Fernandez, D. P., Cecil, W. H., & Figares, A. R. (2016). Copyright Infringement and the Fair Use Defense: Navigating the Legal Maze. *University of Florida Journal of Law and Public Policy*, 27, 135.

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<sup>84</sup> Cambridge University Press v. Patton, 769 F.3d 1232, 1261 (11th Cir. 2014).

<sup>85</sup> Fernandez.

<sup>86</sup> The Cambridge (or Patton) Case.

<sup>87</sup> Hughes, J. (2002). Fair use across time. *UCLA Law Review*, 50, 775.

<sup>88</sup> Hristov, K. (2016). Artificial intelligence and the copyright dilemma. *Idea*, 57, 431. <sup>89</sup>Alderucci, D., & Sicker, D. (2019). Applying artificial intelligence to the patent system. *Technology & Innovation*, 20(4), 415-425.

<sup>90</sup>Yanisky-Ravid, S. (2017). Generating Rembrandt: Artificial Intelligence, Copyright, and Accountability in the 3A Era: The Human-like Authors Are Already Here: A New Model.

*Michigan State Law Review*, 659.

<sup>91</sup> Butler, T. L. (1981). Can a computer be an author-copyright? *Aspects of artificial intelligence*. *Communications Entertainment Law Society*, 4, 707.

The Demise of Affirmative Action and the Rise of Diversity,  
Equity, and Inclusion?

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Affirmative action is not going to be the long-term solution to the problems of race in America, because, frankly, if you've got 50 percent of African American or Latino kids dropping out of high school, it doesn't really matter what you do in terms of affirmative action. Those kids aren't going to college. Senator Barack Obama (Obama, 2008).

The way to stop discrimination on the basis of race is to stop discriminating on the basis of race. Chief Justice John Roberts (*Parents Involved in Community Schools v. Seattle School District No. 1*, 2007).

The original purpose of affirmative action was to pressure institutions into compliance with the nondiscrimination mandate of the Civil Rights Act of 1964. In *Grutter v. Bollinger* (2003), the Supreme Court (Court) upheld the idea that an underlying goal of the Fourteenth Amendment – eliminating oppression – was a justification for affirmative action programs (*Grutter v. Bollinger*, 2003). Most Americans believe in the concept contained in the preamble to the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness” (Declaration of Independence, 1776). People believe in merit and equal opportunity. However, over time affirmative action began to be seen as a quota system, a timetable, and an example of reverse discrimination. Consequently, support for affirmative action began to lessen. Nine states abolished affirmative discrimination (Saul, 2022). This paper will explain the most recent cases of *Students for Fair Admissions v. President and Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina* and possible ramifications from the decisions.

Strong opinions on affirmative action are common, especially for people in education who have worked with the ideals of merit, equity, color blindness, equality, diversity, and inclusion for so long (The Chronicle of Higher Education, 2023). The values go to the very core of educators and how they define themselves. Indulge this writer and simply look at the discussion of these cases. Professors may love the cases, or they may hate them, but the cases will affect everyone for years to come. The cases will affect college faculty immediately this fall when the selection process for admissions begins again for the 2024 school year. Those in education must know the most recent cases to join in the discussion.

### **Overview of Affirmative Action**

Slavery is a systemic problem for humans. The practice has been around since at least the time of the Mesopotamian and Sumerian civilizations in 3500BC (Restavek Freedom, 2023). The earliest human written records show established slave systems. The Code of Hammurabi is a Babylonian legal text created around 1755-1750 BC. It is one of the oldest comprehensive legal codes found to date. The ancient text shows King Hammurabi receiving the laws from the ancient

Mesopotamian god Shamash. Ten laws in the code deal with slavery. Most of these laws concern the harboring and return of escaped slaves (King, 2008). The punishment for harboring escaped slaves is death. The code provides rewards for the return of escaped slaves. One provision says, "If anyone finds runaway male or female slaves in the open country and brings them to their masters, the master of the slaver shall pay him two shekels of silver" (King, 2008). The earliest slaves were people captured in war, debtors, or as punishment for a

crime. There is evidence that this type of slavery existed in most cultures including slavery among indigenous peoples of the Americas (The History Press, 2023). In some cases, slavery was an inherited status with little chance of freedom, extending for generations. In other cases, slaves were too resource-consuming to continue forever. Slaves were freed after a certain number of years. Although they were then replenished in later wars (The History Press, 2023). While all countries have now legally abolished slavery through the adoption of a United Nations resolution 317(IV) of December 2, 1949 (United Nations, 1949), there still is modern slavery, in the shadows, in the form of sex slaves, forced marriages, forced labor, and other practices often affecting the most vulnerable groups in societies (International Labour Organization, 2022). This practice has plagued civilization in untold ways and resulted in people being treated as less than human. The practice continues to affect us today and tears at the very fabric of society.

At the time of the Philadelphia Convention during the summer of 1787, slavery was an established institution in the southern states and some northern states (Mintz, 2023). To keep the delegates together in changing the Articles of Confederation through the approval of the new Constitution of the United States, Congress was prohibited from outlawing the Atlantic slave trade for 25 years (United States Constitution, 1787). As of January 1, 1808, federal law made it illegal to import captive people into the United States, although the enslaved population grew through reproduction (Library of Congress, 1810). Slavery did not formally end until after the Civil War with the ratification of the 13<sup>th</sup> Amendment, which abolished slavery in the United States on December 6, 1865 (National Archives, 2022). There was still resistance to ending slavery. After the Civil War, some southern states adopted “Black Codes” (Stephens & Scheb, 1993). These codes denied basic economic rights to newly freed slaves. They also limited what jobs African Americans could hold and their abilities to leave a job once hired. Some states even passed laws that forbade newly freed slaves from buying land or voting (Stephens & Scheb, 1993). Congress tried to end these practices by passing the Civil Rights Act of 1866. However, Congress has limited law-making powers. Many questioned if Congress had the power to pass civil rights acts. Fearing the law could be unconstitutional, Congress adopted the 14<sup>th</sup> Amendment (Ducat, 2009). The amendment included the Equal Protection Clause. The amendment says, “No state shall deny to any person within its jurisdiction the equal protection of the laws” (U.S. Const. amend. 14) In that amendment, Congress gave itself the ability to pass laws to carry out the amendment. It says, “The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article” (Ducat, 2009). Congress then passed a series of Civil Rights Acts. Subsequently, Congress passed the Civil Rights Act of 1875. Unlike prior acts, this one focused on equal rights and privileges by places of public accommodation. This act tried to stop private discrimination rather than public discrimination (Ducat, 2009). This resulted in The Civil Rights Cases of 1883 (Justia, 1883). The Supreme Court concluded that the 14<sup>th</sup> Amendment limited congressional action to state-sponsored discrimination, not discrimination practiced by privately owned places of

accommodation. The states did not own the railroads that moved people across the country or the restaurants that fed people and the hotels that supplied lodging to people who traveled (Stephens & Scheb, 1993). The Civil Rights Act of 1875 tried to regulate private discrimination and was an unconstitutional exercise of congressional power. The case sent the signal that the



private practices of discrimination could continue and allowed for Jim Crow Laws (Ducat, 2009).

Several states used the tenth amendment's Police Power of the State in the U.S. Constitution (U.S. Const. amend. 10) to require separate facilities and legally enforce discrimination (Epstein, 1989). Racial discrimination laws required separate facilities in transportation, education, housing, bathrooms, drinking fountains, and numerous other activities. Jim Crow laws even extended to the courtroom and Bibles. The Raleigh Evening Times, March 29, 1906, described an incident where a trial judge in his courtroom stopped a witness from being sworn in to testify until the sheriff got the Bible black hands were supposed to use (Wilkerson, 2010). Jim Crow laws were challenged in 1896 in *Plessy v. Ferguson*. Louisiana passed a law that required railroads to provide separate but equal accommodations for white and black passengers. Public opinion during this time was strongly in favor of separate accommodations. The Court upheld the law. Justice Henry Billings Brown wrote for the majority that the 14<sup>th</sup> Amendment could not have been intended to abolish distinctions based on color or to enforce social as distinguished from political equality or the commingling of the two races upon terms unsatisfactory to either. Justice John Marshall Harlan dissented and wrote that the Constitution is color-blind (Justia 2, 2022).

Between 1938-1950, the Supreme Court began to chip away at the separate but equal doctrine in higher education. One example from 1950 was *McLaurin v. Oklahoma State Regents for Higher Education* (Justia 3, 2023). The Supreme Court prohibited racial segregation in state-supported graduate or professional education. The University of Oklahoma admitted George McLaurin but, to comply with separate but equal facilities, he was provided with a separate table in the cafeteria, assigned a separate desk in the library, given a desk outside of the classroom by the doorway, and given separate hours to meet with professors. The Court concluded this was not an equal education. There are intangibles in education that are different or nonexistent under the different treatment and facilities (Justia 3, 2023). An example of an intangible is the amount and quality of education that takes place from discussing the material with other students compared to solely hearing a lecture or reading a book. Here McLaurin was so separated from other students he lost the ability to communicate with fellow students. This made his education inferior because he lost the exchange of ideas that his fellow students experienced. If there are intangibles in higher education, then they should also exist in elementary and high school education. Separate but equal in all public schools was overturned four years later in *Brown v. Board of Education* in 1954. Chief Justice Earl Warren wrote, "In the field of public education, the doctrine of separate but equal has no place. Separate facilities are inherently unequal" (Justia 4, 2023). This conclusion was in part reached by considering intangibles.

### **Different Philosophies**

Affirmative action is an effort to improve educational and employment opportunities for underrepresented groups including people of color and women. More recently it has expanded to other historically disadvantaged groups based on religion, national origin, people with disabilities, and veterans. Affirmative action developed from executive orders during the Kennedy, Johnson, and Nixon Administrations. It is compensatory preferential treatment for members of traditionally disfavored minority groups. Affirmative action started in the areas of government employment, government

contracts, and higher education (Ducat, 2009). The president oversees the executive branch of government and federal agencies are under the president's control. When Congress decides to build a building or assist schools, Congress appropriates money to accomplish the task. The executive branch carries out the laws of Congress. In spending money to get a building built, the president can require that, as a condition for getting a government contract, a builder must hire a certain number of minorities or subcontract to minority-owned businesses (Ducat, 2009). In the case of money to schools, the president can require that, as a condition to getting the money, the school must hire more faculty of color or admit more students of color.

The Supreme Court has struggled in at least three areas when trying to decide if affirmative action is constitutional. First, there are two competing models of affirmative action. The Court has struggled as to which approach should guide current court actions. The first is the group model (Stephens & Scheb, 1993). This theory looks at racial discrimination and remedies for that discrimination in terms of groups. If one belongs to a group that was discriminated against in the past, then that person should get preferential treatment now. For example, if one's ancestors long ago were barred from buying a home and a business in the past from Black Codes, then that person's family suffered because they could not build up wealth like other families. Families that could own land and pass it on to future generations, can slowly acquire more wealth with each generation. This allows future generations to own their own homes and businesses. It allows their future members to get increasing educational levels and this can result in better-paying jobs. The family that was held back from wealth accumulation will always be behind by the original effects of slavery and the Black Codes on the family.

The other model is the individual model. This model says affirmative action should only be available to those who are currently facing discrimination. Providing special treatment to someone whose family members were discriminated against in the past is reverse discrimination. Past discrimination in a family or ethnic group is not enough to justify claims of current discrimination. Justices on the Court have often split depending on which of these models they subscribe to (Stephens & Scheb, 1993).

A second concern for the Court is the fact that there are two different roots of discrimination. One type of discrimination is *de jure*. This is state-sponsored discrimination. An example would be if the state required blacks to live in one area (A) and whites to live in a different area (B). This would cause discrimination in education. The schools in area A would all be black. In such cases, the government passed a law that required discrimination and caused all the effects that followed (Ducat, 2009). The other type of discrimination is *de facto*. Here discrimination occurs because of many individual choices. A black person wants to live with other black people and chooses to live in area A. A white person feels similarly and chooses to live in area B. If enough people make the same decisions, area A will be predominately black and area

B will be predominately white. This has nothing to do with the government telling people where to live. The appearance of segregation is, in fact, voluntary separation. Remedies, like forced bussing, tend to stop when the vestiges of *de jure* segregation are over. The Court does not always continue to provide remedies to entire groups when *de facto* segregation is all that is left (Ducat, 2009). Individual remedies for anyone personally being discriminated against are usually considered more appropriate.

A third area that has concerned the Court is what level of scrutiny affirmative action cases should be subjected to. Affirmative action is to provide members of a group compensating special treatment. It is reverse discrimination. The Court uses strict scrutiny when a law causes a group to be denied fundamental rights based on race, national origin, religion, or alienage. The government might be able to discriminate, but the government would bear the burden of proof to convince the Court that there is a compelling need for this law. Compelling is the Courts highest level. The law would also have to be written in the narrowest fashion to achieve the government's objective (Ducat, 2009). Affirmative action measures that are subjected to strict scrutiny reviews have a higher chance of being found unconstitutional. First, when using strict scrutiny, the burden of proof is on the government to articulate a compelling need for its law. It is hard to find a compelling need for affirmative action if the Court concludes prior discrimination should not justify current discrimination. Second, other methods other than reverse discrimination may be possible to remedy current discrimination. Those who want affirmative action to have an easier chance of being upheld would want intermediate scrutiny or rational basis to analyze the government's use of affirmative action.

The other way the Court could review cases where a group is denied fundamental rights is intermediate scrutiny. Traditionally, this is where the government discriminates on the bases of gender, sexual orientation, or illegitimacy. Here the government has a better chance of having its law upheld. The government still bears the burden of proof but, under intermediate scrutiny, the government only needs to show an important or substantial interest in making the law. This is understood to be less than compelling and easier for the government to establish. Also, the law would not have to be written in the least restrictive fashion to achieve the government's objective. The law could be broader in its reach (Ducat, 2009). If this approach were used for affirmative action cases, affirmative action would have a better chance of being found constitutional despite being found to be reverse discrimination.

Rational basis analysis is used to judge laws where the discrimination is not toward any of the above listed groups and involves a legitimate government interest (Ducat, 2009). An example here is wealth, economic regulation. Governments can discriminate based on wealth, such as making higher earners pay a higher percentage of their earnings in taxes. In rational basis, the burden of proof is not on the government. The burden of proof is on the challenger to show that the government's law is not rational. The government cannot impose restrictions on liberty that are irrational or arbitrary, or draw distinctions between persons that serves no legitimate government purpose. Most laws are upheld with rational basis.

### **Key Affirmative Action Cases**

The first case challenging the constitutionality of racial preferences to reach the Court was *DeFunis v. Odegaard* in 1974 (Justia 5, 2023). Marco DeFunis, a white applicant, was not

admitted to law school. He argued this was because of the school's affirmative action policy favoring the admission of minority applicants over better-qualified white candidates. The school's set-aside admission policy, which saved several seats solely for minorities, discriminated against him based on race. Despite not being accepted, DeFunis was allowed to attend the University of Washington Law School while he brought his discrimination case. He was just weeks from graduation by

the time the Supreme Court would enter an opinion. Because of this, the Court called the case moot and dismissed it. In dissent, Justice William O. Douglas, a staunch advocate for racial equality during his time on the Court, indicated a need for racial neutrality (Justia 5, 2023). This left the country with the understanding that he would have considered the school's affirmative action plan to be unconstitutional.

The second case to reach the Court, *Regents of the University of California v. Bakke* in 1978, was not dismissed (Justia 5, 2023). The University of California at Davis' medical school set aside 16% of its available seats for minorities. Only minorities could compete for these seats. Allan Bakke was rejected twice for a place in the medical school while minorities with lower grades and test scores were admitted. The Court concluded that Bakke should be admitted, and the set-aside policy was invalid. The Court, however, did not conclude that race could not be used for admissions. Creating a racially diverse educational environment was found to be a compelling state interest. The Court concluded that race was only one factor among many factors that the school used for admissions (Justia6, 2023). This case established the precedent that, for 45 years, has allowed schools to engage in race-based affirmative action. Other factors being similar, race could be one factor to break ties.

A year later the Court, in *United Steelworkers v. Weber* in 1979 (Justia 7, 2023), considered affirmative action in a private employment case. In some industries, it was the practice to only hire as craftworkers people with prior craft experience. This made it impossible for black applicants to get hired as they were usually excluded from craft unions. The steelworkers' case grew out of an in-plant craft training program for blacks to compensate for this history of exclusion. The program reserved 50% of the seats for black workers. Brian Weber, a white worker, sued claiming that, but for the set-aside policy, his seniority would have guaranteed him a slot in the training program. Justice William J. Brennan wrote for the majority that Title VI does not prohibit private, voluntary, race-conscious affirmative action programs to overcome past discrimination. In dissent, Chief Justice William Rehnquist wrote that the law should prohibit all racial discrimination, even discrimination directed at whites in favor of blacks (Justia 7, 2023). This argument was the same as was used by Justice Harlan in *Plessy v. Ferguson* to argue that the Constitution was colorblind. The argument continues to be used by many to oppose racial preferences in employment as well as education.

Justice Sandra Day O'Connor joined the Supreme Court in 1981. In another affirmative action case in employment, *City of Richmond v. J.A. Croson Company*, 1989, O'Connor wrote the majority opinion. She concluded:

While there is no doubt that the sorry history of both private and public discrimination in this country has contributed to a lack of opportunities for black entrepreneurs, this observation, standing alone, cannot justify a rigid racial quota in the awarding of public

contracts in Richmond, Virginia. Like the claim that discrimination in primary and secondary schooling justifies a rigid racial preference in medical school admissions, an amorphous claim that there has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota (Justia8, 2023).

Some scholars interpret this quote as O'Connor pushing the Court to adopt an individual model for affirmative action rather than the traditional group model (Stephens & Scheb, 1993). She basically said past discrimination is not enough compelling interest on the



part of the state to justify current reverse discrimination. The state should be limited to remedying current discrimination and applying the remedies to the individuals who are currently being harmed rather than an entire group of people.

The Supreme Court decided two affirmative action cases in 2003: *Gratz v. Bollinger* and *Grutter v. Bollinger*. Rehnquist wrote the majority opinion in *Gratz v. Bollinger* (Justia 9, 2023). Jennifer Gratz, a white applicant, was not accepted to the undergraduate program at the University of Michigan while minorities with lower grade point averages and fewer extracurricular activities were accepted. In response to the lawsuit, the university eliminated its two-tiered admission policy that operated like a quota system. But in its place, the university started a new policy that gave minority applicants 20 extra points. Rehnquist wrote that the extra point system was only based on race. The award of the extra points was mechanical and ignored individual characteristics. The admissions system was struck down as it violated equal protection. Justice O'Connor was in the majority with Rehnquist in this case (Justia 9, 2023).

Justice O'Connor wrote the majority opinion in *Grutter v. Bollinger*, while Rehnquist dissented (Justia 10, 2023). This case challenged the University of Michigan Law School's admissions process. Barbara Grutter, the plaintiff, argued that the school's admission policies were race-conscious and granted minority applicants a much greater chance of admission. This time the Court upheld the admission's system. The law school's approach looked more holistically at competing applicants and was more *Bakke* compliant. The policy did not violate equal protection because it did not simply give points for minority status like *Gratz*. O'Connor authored the majority opinion and stated, "race-conscious admissions policies must be limited in time" to ensure "all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary measure" (Justia 10, 2023). She cautioned that colleges and universities should continually reassess their admissions policies to see whether changed circumstances allowed schools to maintain diversity without affirmative action. She expressed the expectation "that 25 years from now, the use of racial preferences will no longer be necessary" to achieve diversity (Justia 10, 2023). Rehnquist would have struck down the policy as unconstitutional racial balancing.

A final key case involved the University of Texas at Austin's race-neutral policy. In Texas, anyone who graduated in the top 10% of their high school class was automatically admitted. The school had a complicated policy to review applicants who did not make the automatic cut-off. In these cases, race was considered as a part of a holistic review of the applicants. Abigail Fisher, a white applicant, did not make the 10% cut-off. She argued that the school was not allowed to supplement its race-neutral policy with one that took race into account. The Fifth Circuit held that the admissions policy was within what was allowed by *Grutter*. The Supreme Court, in *Fisher v. University of Texas at Austin* in 2013 (Justia 11, 2023), held on review that the Fifth Circuit did

not use strict scrutiny as required by *Bakke* and *Grutter*. A reviewing court must (1) place the burden of proof on the government, (2) show a compelling need for its law, and (3) require the law be written in the least restrictive fashion to achieve that compelling need. The Court could not conclude that the appellate court used strict scrutiny in its review. The Court expected the appellate court to conclude that no workable race-neutral alternatives would produce the educational benefits of diversity after reviewing possible alternatives. Without this type of review, too much deference could be given to the state.

The appellate court's review appeared to be more like intermediate scrutiny. The Court returned the case for further review (Justia 11, 2023). In 2014, the Fifth Circuit again upheld the university's admission policy. The Supreme Court agreed to hear the case again in 2015. There was much speculation that the Court might strike down affirmative action this time. However, before the Court could decide the case, Justice Antonin Scalia died, and Justice Elena Kagan recused herself because she was involved with the case while serving in the Solicitor General's office during the Obama Administration. The Court, in 2016, decided 4-3 that the university met the burden of strict scrutiny (Justia 12, 2023).

These cases demonstrate how divided the Court and country were over affirmative action. Many of these cases were decided by a single vote at the Supreme Court and whether an admissions policy was constitutional or not was hard to predict. Sometimes the outcome of cases seemed more dependent on the particular justices on the court at the time of a decision than constitutional principles. Out of the courtroom, citizens who favored affirmative action argued that the policy was necessary to provide opportunities to groups who may not otherwise have those opportunities. Citizens who oppose affirmative action argue that it does not work. Affirmative action is reverse discrimination, and policies should be colorblind. Preferential treatment breeds resentment and those who benefit under affirmative are sometimes thought of as having lesser qualifications. Proponents believe admissions or employment should solely be based on merit. The states would sometimes become involved in admission policies. It was said that *Gratz* played a role in Michigan (2006) passing Proposal 2, which ended race-based preferences in admissions at their state's schools. Other states like Arizona (2010), California (1996), Florida (1999), Idaho (2020), Nebraska (2008), New Hampshire (2012), Oklahoma (2012), and Washington (1998, rescinded 2022) have banned affirmative action (Saul, 2022). By 2023, most commentators predicted that the Court would overturn affirmative action (Lemann, 2022). Abigail Fisher remained at the forefront of the fight. She went on to become one of the leaders of Students for Fair Admissions, the plaintiff in both most recent cases.

### **Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina (2023)**

Both Harvard and the University of North Carolina have highly selective admissions policies. They consider grades, letters of recommendation, extracurricular activities, and race when accepting students. Harvard is a private school, and the University of North Carolina is a public school. In both cases, the question facing the Supreme Court was whether the affirmative action admission policies violated the law. The Court decided both cases jointly. By a 6-3 vote, the Court concluded both schools' policies could not use race-conscious admissions policies (*Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina*, 2023). The Equal Protection Clause of the Fourteenth

Amendment bars the use of racial preferences by public colleges and universities. Title VI of the Civil Rights Act of 1964 (Civil Rights Division, 2023) restricts race-conscious admissions at any school that receives federal funds. Harvard, while a private school, accepts federal funds.

Chief Justice Roberts wrote the majority opinion. He was joined by Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh, and Amy Coney

Barret. Roberts reviewed the facts in the cases, established that the Court had jurisdiction, reviewed the Constitution and amendments, and the Court reviewed prior cases. The Court mentioned O'Connor's opinion in *Grutter* where she said she anticipated that affirmative action would end in 25 years. The Court noted that twenty years have passed with no end in sight to the demise of affirmative action. He focused on the Equal Protection Clause and concluded that the clause's core purpose was to do away with all government discrimination based on racial, *de jure* discrimination.

The Court moved onto the merits of the cases with a consideration of strict scrutiny analysis. The Court reaffirmed that strict scrutiny must be used when people are treated differently based on race. The school's interest in the need for race-based diversity must be able to be measured for purposes of strict scrutiny review. In arguing a compelling need for racial diversity, the schools used arguments such as the need for different perspectives and robust discussions in class. Roberts questioned how the court knows selecting by race automatically provides different viewpoints and how the Court should measure the robustness of arguments. The compelling need the schools identified were too vague for courts to measure. He questioned how a court could determine whether the universities had accomplished their goals and when racial preferences could end. The Court was not satisfied to simply "trust" that the compelling need for diversity that the schools identified was being achieved with the selected minority students (*Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina*, 2023).

The majority also concluded that college admissions programs can consider race on a case-by-case basis, but only to allow applicants to explain how one's race influenced other admissions criteria, such as one's character. For example, a student could have faced discrimination. By facing discrimination, the student could have developed courage and determination. These character traits could then have led the student to develop into leadership positions. The student could explain how their being in leadership positions could benefit the university. The student would be considered for admission based on their individual experiences and not on their race. How race forms different aspects of a person's behavior is fine, but the use of race, without an explanation of how race forms the person's character, would not be acceptable. Also, race can never be used in a negative manner. The freshman class has a fixed number of students. Providing a benefit to some applicants, but not others, means the advantaged group gets a benefit at the expense of other groups. The admission programs also rely on prohibited racial stereotyping. The schools assume minority students always have the same views or perspectives on issues. There are no guarantees that the schools will achieve diversity of ideas from a focus on race.

The Court's opinion effectively overturns a *Bakke* and *Grutter* review, although the Court did not directly say it was overturning those cases. In those prior cases, if other admissions criteria were equal, race could be a plus factor. Now race alone cannot be used as a factor. It can only come into admission consideration if race is what developed some admission's criteria such as personal characteristics (*Students for Fair Admissions v. President and Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina*).

The majority opinion did not review the use of race in admissions at the country's service academies. The Biden administration filed a friend of the court brief

emphasizing that senior military leaders across the different military services believed it was important to have a diverse officer corp. Consideration of race, it was argued, is necessary to achieve this racial diversity. As arguments and briefs in the cases in front of the Court did not consider the uniqueness of the service academies, the Court would not consider these schools.

Thomas filed a concurring opinion. He argued against the idea, raised by Sotomayor, that the 14<sup>th</sup> Amendment “does not impose a blanket ban of race-conscious policies” (*Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina*). He also made a personal and practical argument against race-conscious admissions. He was admitted to Yale Law School in the 1970s under a race-conscious admissions program. He wrote he felt the “stigmatizing effects of racial preference” (*Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina*). He also took issue with the dissent’s statement that race-conscious admissions programs have increased the overall numbers of blacks and Hispanics able to access a college education. His position is that the admission policies did not create more college-bound students. The admission policies simply redistribute minorities to selective schools when they would have fanned out and gone to many other universities and colleges.

Gorsuch wrote a concurring opinion that Thomas joined. He argued that affirmative action violated Title VI of the Civil Rights Act of 1964. The developed argument on Title VI provided support for Roberts’ reliance on the Equal Protection Clause to move away from race-conscious admission policies. Both colleges received public funds and violated Title VI with their policies. He suggested the schools could achieve diversity by focusing on socioeconomically disadvantaged students instead of race (*Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina*).

Kavanaugh also filed a concurring opinion. He wanted to further explain why the Court’s decision was consistent with the Court’s precedents on affirmative action in higher education. He wrote that “racial discrimination still occurs, and the effects of past racial discrimination still persist” but other paths like federal and state civil rights laws can “deter and provide remedies for current acts of racial discrimination” (*Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina*). Universities can use race-neutral methods to remedy past discrimination. He seemed to be writing about *de facto* discrimination rather than *de jure* discrimination, and he may have been focusing on the individual rather than the group model to show how these changes would lead to the same conclusion the Court reached in abandoning the use of race as an admissions factor. This is a very strange opinion as the Court basically overturned past analysis on affirmative action. How the case could have been resolved under older analysis is irrelevant. It could just confuse the casual reader. No one signed on to this opinion.

Justice Sonia Sotomayor wrote a dissenting opinion. She was joined by Justice Elena Kagan. Justice Ketanji Brown Jackson joined the dissent as it applied to the University of North Carolina. She was on Harvard's board of overseers before joining the Court and abstained in the decision of Harvard's case. Sotomayor noted that the majority opinion rolled back decades of precedent and progress in increasing diversity



in schools. These justices did not agree with a colorblind constitutional rule and thought it would be superficial. They believe the limited use of race “has helped equalize the educational opportunities for all students of every race and background and has improved racial diversity on college campuses” (*Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina*).

Jackson also wrote a dissenting opinion in the University of North Carolina case. She was joined by Sotomayor and Kagan. She argued that America was never colorblind. Jackson wrote, “to say that anyone is now victimized if a college considered whether that legacy of discrimination has unequally advantaged its applicants fail to acknowledge the well documented ‘intergenerational transmission of inequality’ that still plagues our citizenry” (*Students for Fair Admissions v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina*). Here she seems to be calling for the use of the group model and the idea prior discrimination justifies current discrimination with race-conscious admission standards. She may be arguing that there still is *de jure* discrimination or at least the effects of state-sponsored discrimination are still being felt. She does not believe that the majority’s opinion will bring a quick end to racism.

### **Implications and Conclusions**

On its face, the two most recent cases seem very narrow. However, their effects may be great. Justice Roberts is known for guiding the court towards making slow and incremental changes (Biskupic, 2016). These cases could have a great impact not only in education, but beyond. First, the cases will affect admissions in education. They will affect any selective schools from elementary schools to universities. In time, the decision will also probably affect the military service academies. All schools will have to use race-neutral selection criteria. Criteria given greater emphasis will probably be things like a parents’ education level, household status (one or two-parent homes), socioeconomic status of the family, socioeconomic status of the neighborhood, composition of neighborhood housing (single-family homes or multifamily units), and geography. Other factors might be discovered to identify the potential for diversity. The use of an essay for admissions will become more important for a better understanding of the whole person. Applications should now remove a common checkoff that an applicant used to identify one’s race. Special points and scholarships for legacy candidates may result in court cases, but a legacy candidate may be of any race and thus not of concern. Special scholarships for minorities may be more problematic. These scholarships are not colorblind. Special programs offered by schools for students of one specific race may also be problematic. These may have to be changed to programs for all students with the same problem/concern that created the special program. For example, maybe special programs should be for all students with study problems such as time management, writing, math, etc., and not just those of one race. As then-Senator Obama

indicated in the first quotation in this essay, if students cannot get help to learn high school material, they will not be competitive in college applications. Good high schools provide study aid. It should not just be available to those who have parents that learned in high school or those who have parents who can pay for tutoring. In fact, students who do not have help in high school and do not do well will feel so defeated that they will not even try to go! Colleges will probably have to do

more in-person recruiting and go to predominately minority schools to recruit. They will probably want to offer sessions in-person or online to help students fill out the school's application. Help does not stop with high schools.

Second, these cases could easily broaden in scope. Affirmative action started in the areas of government employment and government contracts, as well as education. The government—local, state, and federal—may not be able to continue using government funds to favor the hiring of minorities or force the hiring of minority-owned subcontractors on a government job. Employment in general may have to move to being more race-neutral in selection processes.

Schools are now focusing on diversity, equity, and inclusion. Could this case affect this focus? What is diversity? “The practice of including or involving people from a range of different social and ethnic backgrounds and different genders and sexual orientations” includes all ways people differ and can include age, mental and physical abilities, income, religion, political perspective, etc. (Oxford University Press, 2015). It can be argued that, if there is no discrimination, a school should see this type of diversity in its application pool. However, if the school tries to increase its acceptance numbers of a few of these groups over applicants, the school can very well expect to be in the exact position the schools were in these cases when they tried to select of race. What is equality? This Court would consider equality as treating everyone the same, especially in terms of status, rights, and all opportunities (Takeuchi et al., 2018). Contrast equality with equity meaning “providing the same to all” (Merriam-Webster, n.d., a). If equity in any way means equal outcome, it will not be adopted by this court. Merit is more likely to be the preferred focus of the Court. Merit implies worthiness or excellence (Merriam-Webster, n.d., b). Students are selected for admission based on tests all applicants take for admission or grades they earned in class while competing with others. There certainly can be other factors such as special achievement such as in art, music, or sports. All prospective students have an equal opportunity to apply and be considered, but selection by merit will not result in an automatic equal representation of all different groups under the diversity definition. Inclusion means the state of being included within the group. It is the idea that all students accepted to the school should be embraced. Excluding students from competitive sports teams or majors based on ability would be acceptable. There are only so many places available for students, for example, in a nursing program. Grades must be earned, and knowledge learned to graduate in nursing. However, the race or gender of a student should not matter.

How about legacy candidates? Some schools have plus factor policies for legacy candidates or maybe even automatic admission for this group. Some commentators argue that these schools are discriminating, and it may result in wealthier white applicants being admitted at the expense of other poorer groups. However, the policy may not be racial discrimination. As students from different races graduate from the school, their children will be legacy candidates

just as much as white students whose parents graduated from the school. Why do schools have legacy policies? Schools have these policies because these graduates can feel a family attachment to the school. They might donate to the school because of closer connections, but they may also feel part of the school's network and provide internships and jobs to graduates from the school. Could this be wealth discrimination? Wealth is not a protected class by the Court, nor is the amount or percentage one pays in taxes. Wealth is not included

among race, national origin, religion, and alienage. But this seems to be discrimination based on wealth. This country does not have a flat tax rate that all pay regardless of income. The Court only gives challenges to tax codes rational basis scrutiny. The burden is on the challenger to prove the government's tax code is not rationally related to their legitimate interest in taxing. These cases could go nowhere. However, these cases may never come to the Court. Many schools are voluntarily removing preferences for legacy candidates.

Could a school use affirmative action for gender and sex preferences? These cases would not be given strict scrutiny but instead intermediate scrutiny. The school would have a better chance of this type of affirmative action being upheld because the test is easier. The school would only have to show an important or substantial need for its admission policy. However, Roberts criticized Harvard and the University of North Carolina for not clearly articulating a compelling need to discriminate to achieve their reason for the admission policy and showing in some measurable fashion that their policy would achieve that purpose. Discrimination based on sex and gender may result in the same types of problems that resulted in affirmative action based on race, even if slightly lower scrutiny is given.

What is the ultimate goal? If the constitution is colorblind, how should things operate? Maybe the goal is to provide equality and select people based on merit. If all elementary and high schools offered the type of education where all students could compete on admittance tests for college, race would not be needed for the selection of students. This seems to be what Justice Thomas is saying in his concurring opinion. Why did the country have separate but equal facilities after the Civil War? Separate but equal rests on two foundations. First, the separate facilities were, in fact, equal. And second, separating the races made no statement as to the worth of the people being separated. In *Brown v. Board of Education*, the Court struck down the concept of separate but equal. The railroad cars in *Plessy v. Ferguson* were not of equal quality. The separate schools, drinking fountains, and all other things were not equal in quality or function. Also, there are no reasons to separate people if all people are equal. The only reason to separate is if one group is considered of lesser value. All schools need to provide students with a good education. When students cannot compete equally for admissions to elite schools and admission is just handed to some, it breeds resentment in those who feel they lost out for no reason under their control. Those who get slots because of race forever feel like it was not earned. They feel inferior. This is what Justice Thomas was trying to say. There needs to be equality and people need to be selected based on merit, but what is at the heart of Justice Jackson's argument is that things are not equal. This can only be cured by schools not just being equal, but all being excellent.

Finally, all vestiges of *de jure* segregation need to be routed out. There has been great progress over the years in ending *de jure* segregation, but *de facto* segregation is still a problem. Why do some people decide other people are not the same or equal? It does not help that there

is modern slavery. To finally root out *de facto* segregation, people need to believe they are all equal. It is not enough to be taught these truths. As long as examples of modern slavery exist, as long as it appears to be tolerated, those truths will never be realized. What Justice Roberts is suggesting in the second quotation in this article is that the only way to stop discrimination is to end affirmative action,

because affirmative action is discrimination. Unsaid but implied is the idea that to end affirmative action, the problems that lead to its development must also be ended.

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Maximizing Intrinsic Motivation in Elementary Gym Class Using Self-  
Determination Theory Modelled Instruction.

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## Introduction

Research assessing student motivation is still in its infancy. The bulk of this research has been done over the last 20 to 30 years, and has been tentative, not definitive. Research on impacting student motivation in physical education, in particular, is difficult to pin down due to the diverse nature of the discipline's testing approaches and the plethora of opinions concerning how best to assess physical literacy. Complicating this the matter further that physical education curriculum is often viewed by educational leaders as a low priority (Hill, 1991). Many new gym teachers are surprised to see a lot children actively avoiding participation in gym class activities. Unfortunately, there are many reasons that a child may avoid class participation, including: the perceived need to focus on academic subjects; poor student attitudes toward physical activity; parental attitudes that taint the student's views of gym activity; or bad past experiences that lead to negative feelings and opinions of physical education.

Adding to the difficulty of managing students' negative views of physical education, and a significant concern for educators, is that gym class often excites and nurtures a small percentage of athletic-minded students. The question then becomes: What about the physical literacy of the others that don't enjoy sports or traditional games? The term "physical literacy" is thought of as having components of confidence, competence motivation, knowledge, and understanding at a level that leads an individual into life-long physical activities (Brian et al., 2019). With this clarification in mind, physical education teachers know that unengaged young students may never have positive experiences and many never develop a sense of physical literacy.

Undergirding the present research is this proposition: giving students options and allowing them choice in their academic pursuits allows autonomy and intrinsic motivation, so gym class should not force a student to engage in physical activity that the student finds demotivating. Therefore, in this project we sought to investigate how allowing student choice and creativity in gym participation influences students' intrinsic motivation related to physical education.

## **Rationale**

The value of physical education has been clearly established through research (Restak, 1979). So, when the first author (J.F.) began teaching physical education in an elementary school in British Columbia, Canada, he started with warm up games, then moved into skill instruction and acquisition, and then into game play. This has been the ubiquitous approach of gym teachers for many years. This traditional approach was met with some excitement from students familiar with their own physical literacy; however, in every class there was always a small group of students that outright rejected the activities presented. They would come up with excuses such as, "I don't feel well," or, "I'm hurt." Some would simply refuse to participate. These students were encouraged to participate anyway; the unengaged students exhibited animosity toward J.F., and it often led to conflict between the unengaged student and classmates. J.F. held the belief that forcing physical activity, even in a non-competitive environment, could actually foster lifelong resentment towards physical activity, sports and gym class because coercion develops a strong aversion to the activity. With that strongly held belief, J.F. decided to explore the idea by testing a strategy he called "Free-Play Fridays" where he set up multiple stations that included things like competitive traditional sports, individual

balance activities, and dance and rhythmic activities. His observation of this test indicated that more students were engaged, and the feedback from students was encouraging. With this simple pilot, he decided to explore the concept further with the second author.

## **Questions**

The following questions guide this research.

1. When using the Self-Determination Theory to design instruction, to what extent does giving choice of activity increase intrinsic motivation in elementary school gym students?
2. Will giving choice of activity lead to increased positive attitudes towards physical activity?

## **Setting and Participants**

The research took place in a 287 student K-5 elementary school in British Columbia. It is an inner-city school with multiple programs designed to help students with socio-economic challenges. There is a drop-in center for pre-school children and parents, a breakfast program, and other before- and after-school care systems. The school is demographically diverse, serving students and families emigrating from many countries, including Syria, Korea, and South America, as well as other Eastern Canadian provinces. The school also has many students with IEPs addressing anxiety, autism, and learning differences.

The research included 35 students from grade 3, 4 and 5 with an age range of 8 to 10 years old. The heterogeneous group represented a wide spectrum of academic



abilities, emotional intelligences, and IEPs; the socio-economic status of families was diverse.

### **Review of Literature.**

A review of the literature included research on student motivation related to physical literacy, physical education, and health education. The literature notes that attitudes are acquired through positive experiences, negative experiences, and modeling (Woolfolk, 1987). Additionally, physical education classes are proven to improve child health by facilitating engagement in movement based activities (Harvey et al., 2018). The evidence that children benefit from physical activity encouraged five of Canada's thirteen provinces to require participation in daily physical activity through PE classes and/or during instructional time for other subjects (Olstad et al., 2015). Despite those initiatives, nearly half of Canadian schools fail to achieve the minimum goal of 20 minutes of vigorous activity per day (Harvey et al.). So, where is gym class failing to realize the expected research results? According to research by Valdez (1997), it is not one specific thing but a combination of elements:

Attitudes toward physical education are shaped by many factors including, cultural (gender, idolizing elite sports figures, and body and mind distinctions), societal (family, media, sport and physical education experiences, skill level and perception of fitness, and peers), and school (teachers). Carlson (1994) reported that these factors impacted the link between attitudes and behavior. (p. 17)

Gil-Arias et al. (2017) examined this lack of motivation and enjoyment in gym class. They used a direct instruction student-centered model that taught traditional sports, but

in smaller sized games. The results showed significant improvements in autonomy, competence, and enjoyment. To the researchers:

The results demonstrated that it is possible to design varied learning situations in which affiliation leadership and trust are fostered, while tasks are adapted to the characteristics of the students. All this can cause greater autonomous motivation and consequently, perceived competence in the student, a positive image of the sport to practice and therefore greater enjoyment to be physically active. (p. 1)

### **Understanding Student Motivation.**

In "The Value of Fostering Physical Literacy," Whitehead, Durden-Myers and Pot (2018) explored why physical literacy (PL) is valuable. The discussion considers philosophy, neuroscience, psychology, and human development. They examine developing PL in actual practice, and the benefits of adopting physical activity as a life habit. This research describes human nature as autopoiesis, that is, a life involving multiple dimensions in constant collaborations. This concept helps highlight why physical education research is so hard to pin down with specific concrete answers related to intrinsic motivation. For instance, can student intrinsic motivation to embrace PL through play and activity be fostered through instructional practice? Whitehead, et al. suggested that in order to answer this question additional research is needed by proponents of PL and psychologists to determine the connection between self-esteem and Self-Determination Theory.

Self-Determination Theory (SDT) is a motivational theory that explains the extent to which and why individuals are willing to pursue goals and challenges. One tenet of SDT is that individuals desire to satisfy three innate psychological needs: competence,

autonomy, and relatedness. The three basic needs are defined as the essential elements that must be satisfied within the social context to promote motivations and healthy psychological functioning (Chen & Hypnar, 2015). Deci (2005) notes that, "Intrinsic motivation is an example of autonomous motivation. When people engage in an activity because they find it interesting, they are doing the activity wholly volitionally (e.g., I work because it is fun)" (p.334). Physical education teachers often hear things like, "I don't like sports. I'm not good at PE." Sports and competitive games are often directly associated with PE class and not overall physical literacy and health. As a result, many students leave school thinking they are not good at sports and have poor physical literacy because they failed in PE class. Students with the personality traits associated with sport and competition, and extraversion often succeed in PE courses, whereas students with traits of introversion might have less favorable outcomes in gym class. To better differentiate instruction in PE, there may be some merit in increasing physical educator awareness of personality traits and how they might compromise some adaptive outcomes in PE (Lodewyk, 2019). The results of a study by Girard, St-Amand, and Chouinard (2019) supports the idea that student intrinsic motivation is directly correlated with perceived competence in PE and the interaction between their perceived competence and their adoption of mastery goals.

The literature provides evidence that the psychology behind student motivation cannot be ignored. Physical literacy and success in physical education is driven by students' perceptions of their own mastery of skill, and physical efficacy.

## Designs to Motivate Not all Fun & Games?

Shen et al. (2006, in Sun & Chen, 2010), examine the connection between a “fun” activity and developing knowledge and skills:

In [gym] instruction, fun is considered a critical task-design priority. When it is overemphasized beyond and steered away from the goal of learning achievement, the fun factor may function as seductive details that suppress the intention to achieve in learning....The content, however, might provide “fun” and enjoyable experiences with little emphasis on learning knowledge and skills. (p. 273)

As Sun and Chen note, playing a fun game is fun but must be created with an educationally sound foundation with clear learning outcomes. Students must be consciously competent of their physical literacy if it is to extend through their educational careers and even through life. Conversely, this study did not show a correlation between the direct instruction and an increase in knowledge and skills. The authors note that, “In summary, the findings of this study revealed a common phenomenon in physical education: the absence of connection between students’ motivation and learning” (p. 275). While this may seem contradictory to some evidence in the literature base, it shows that additional research that is more holistic in nature and not specific to a particular skill set is needed. Skill testing in such a manner is extrinsic in nature and only allows for performance of singular skills and is not focused on the promotion of physical literacy. Intrinsically motivated behavior however, which is propelled by people’s interest in the activity itself, is prototypically autonomous.

However, an important aspect of SDT is that extrinsic motivation can vary in the degree to which it is autonomous versus controlled (Deci, 2005). A test of skill, for the sake of testing, does not motivate in the same way that play for fun does. In essence, there is a connection between learning and enjoyable play.

However, according to Papaioannou, Milosis, and Gotzaridis (2019), there is also a connection between knowledge-based instruction and motivation. This quasi-experimental study evaluated the impact of a program integrating physics concepts in physical education on students' autonomous motivation and satisfaction. They wondered if student motivation would improve if students understood the connection between how their bodies work, and how that relates to the physics of movement in sports. Their research indicated that when students make this connection there is an increase in the students' autonomous motivation and satisfaction in physical education, and a decrease in the students' amotivation.

### **A Question of Practice?**

Parsak and Sarac (2019) did a survey of PE teachers concerning their teaching styles. The purpose of the study was to see if teachers' perceptions of how they teach, matched researchers' observational data of those teachers' actual practice. Most teachers in the survey claimed to be using multiple styles of instruction.

In the study, the teachers were observed and the data was coded in relationship to that actual teaching styles the teachers used. The study found a discrepancy between what teachers thought they were doing and what they did in actual practice. While teachers believed they used a wide range of teaching strategies, observational data showed that they generally employed teacher-centered strategies. This suggests that

wanting to create an autonomous, student-driven class, does not always mean it is actually being practiced.

Testing one skill or working on one aspect of sport does not create a lifelong physically literate person. Student motivations are diverse; therefore, educators must increase motivation and engagement. Bryan(2007) summarily suggests that it is imperative that teachers use practices proven to increase motivation.

### **Summary of the Literature**

There is a connection between success in physical education and students' psychology; Self-Determination Theory helps explain that connection. Self- Determination Theory suggests that student-centered learning that promotes competency, autonomy and relatedness can have a positive impact on physical education classes. However, further research is needed to investigate the way in which various types of motivation promotes positive outcomes in physical education. Vallerand (1997) concluded that it is essential to understand how children's motivations and perceived competence will affect their levels of participation in gym class and physical activity. Additional research in this area may lead to a better understanding of how using SDT as a framework for designing instruction in can lead to more success for children in physical education settings (Bryan, 2007).

In a well worded summary of the relative literature, Whitehead et al. (2018) conclude their research with this poignant statement:

There is no shortage of support for physical literacy and proponents must now draw on the wealth of value identified to argue that the goal of fostering physical

literacy [is to empower individuals to choose physical activity for life, and this] is unique to the subject area and, without doubt, enhances quality of life. (p.123)

### **Methodology**

This research began with a survey of students who had permission to participate through the informed consent process. Borrowing ideas from Chen and Hypnar's (2010) survey research on student attitudes towards physical education, this present research gathered data on students' attitudes, preferences, or biases. This data was analyzed before students participated in activities designed around a multiple station approach to physical educational activities (Appendix A). Using Deci and Ryan's (2002) elements of Self-Determination (competency, autonomy, and relatedness) five stations of activity were developed, and these were based on varying levels of team competition, group play, individual play, individual competition and traditional and non-traditional games and sports. The students also got to choose their partners for the activities. This gym design and approach structured student choice in all three areas of intrinsic motivation

1. *Competency*: students can practice skills and games and work on improving physical literacy and fitness at levels they feel success with.
2. *Autonomy*: The students have choice in what they do, who they play with, and to what physical levels of exertion.
3. *Relatedness*: They get to choose the peers they play with, or if they wish, to play as an individual or a combination. They feel connected and supported by their peers.

In organizing the gym for student participation, the Deci and Ryan concepts were incorporated into the lesson designs and these stations were set up for student activity:

Gym station activities included:

1. Individual play (gymnastics, skipping, Hula hoops)
2. Non-traditional game play (4 square, gaga ball, tag, hopscotch)
3. Fitness challenge station (push-ups, jumping jacks, squats): goal-oriented challenges.
4. Traditional competitive sport (soccer, hockey, basketball, volleyball)
5. Rhythm and dance movements (music playing where students can dance and creatively make physical routines and patterns)

After an explanation and demonstration of each station, the students engaged in any activity they chose. They moved from station to station at will. They were allowed to work with groups or as individuals. Observational data was collected and coded to indicate what types of activities students engaged in, and with whom, and the level of physical exertion was documented.

This approach was used daily for 4 weeks. As students participated, the teacher interacted with students in one-on-one activities, or in small groups, to help with skills, game play strategies and other physical literacies. After the 4-week observation period the teacher administered the same survey used at the beginning of the research to analyze any change in student attitudes and motivations towards gym class and physical activity.

## **Findings**



## **Survey #1**

The first survey documented students' views of daily physical activity. Most students entered gym class with a positive outlook on physical activity.

- 97% perceived it as healthy
- 87% indicated that it is very fun
- 65% of participants felt that they have full autonomy to pursue physical literacy and activities of their choice.
- 63% indicated that they have full confidence in their level of expertise in gym, sports and games.
- 35% felt high confidence levels in their social interactions and value in the gym.

#### **4-Week Observational Data**

As students participated in station activities, the teacher recorded what type of activities they chose and exertion levels. The most common activities were the non-traditional playground games such as 4 Square, Gaga Ball and Dodgeball. Students had the autonomy to alter rules and change the game play as they wished. Observation data showed this style of play created the highest levels of exertion for the longest duration of time. While most students were attracted to the fitness challenges of the week, which required higher levels of physical effort, in general they only spent a small fraction of gym time there. However, the observational data suggested a positive correlation between perceived success with the fitness challenges and the time spent practicing them. The more successful a student felt, the more they were inclined to try again to improve their score. This aligns with Self-Determination Theory's assertion that as levels of competence rise so does intrinsic motivation.

The second most popular station of play was the individual play areas. Observation documented that as students climbed, balanced, or skipped, they were socializing with peers at the same time. While the station was designed for individual

physical play, students were often observed in parallel play, creating social interactions at the same time. This allowed for more physically dominate, or athletic students, to continue social interactions in a non-competitive state of play.

The least used area was the dance and rhythmic movement areas. Though there was a variety of music types, rarely was dance s student's sole activity. However, students constantly made song requests. Furthermore, any time the music stopped, students asked why. One day when the start of music was delayed, students waited for it before they began station games. This observation may indicate a positive correlation between physical activity and music, though that was not a major focus of the research.

During the 4 weeks of data collection and observation of the impact of student choice of activities based around competency, autonomy and relatedness, data shows that not one student chose to sit out or refused to participate in some way. While the exertion levels and types of chosen activities varied, all the students participated to some degree.

## **Survey #2**

Data from the concluding survey indicated that students viewed physical activity in this way:

- 91% indicated that it is healthy.
- 85% indicated that it is very fun.
- 53% of participants felt that they have full autonomy to pursue physical literacy and activities of their choice.

- 62% indicated that they have confidence in their level of expertise in gym, sports and games.

- 38% felt higher confidence levels in their social interactions and personal value in the gym.

## **Discussion**

The thing that stands out from the data was that not a single student chose to sit out or make excuses to avoid participation during the 4-week research period. When given choices they moved throughout the gym with varying degrees of exertion, socializing with their peers. They found their comfort levels of physical literacy and were able to challenge themselves when opportunities arose. For example, one student was observed losing in a game in the Playground Games area and his body language showed him to be upset. He chose to move on to the Individual Activity area and climbed on the gymnastic equipment for about 4 minutes. When he calmed down, he returned to the original playground game with his peers where he started. From this observation, and similar events, it appears that the multi-faceted station approach which promotes autonomy, relatedness and competency-based decision making, provides students with the comfort levels needed to fully engage in physical activity, while coping with social and emotional challenges of learning in a physical education environment. For example, students with high levels of intrinsic motivation for physical activity, game play and competition, would easily transition from the Competitive Sport area to Playground games. Students who were less sports-minded or less interested in competitive games were also able to choose activities that suited their nature. It appears that the student choice approach provided an environment that was welcoming but also challenging for all personality and physical literacy types.

## **Revisiting the Research Questions**

The first research question was:

- When using the Self-Determination Theory to design instruction, to what extent does giving choice of activity increase intrinsic motivation in elementary school gym students?

Survey data and observations suggest that instruction guided by Self-Determination Theory motivates not only athletically inclined students, but students outside that paradigm. Traditional methods of gym class instruction engage the athletically inclined while it simultaneously divides the less physically literate into what could be viewed as less capable or valued individuals, or division of students into “having potential,” or “without potential ”groups. This categorizing – either mentally by the students themselves, or the teacher--may lead to less intrinsic motivation for students categorized as less capable. However, in this present research students of all levels were observed taking risks and challenging themselves physically and socially. The challenges were not set to result in a grade, or just to win a game; the activities and challenges were designed to let students experience the activities for the intrinsic joy that they can bring to individuals developing physical literacy.

The second research question was:

- Will giving choice of activity lead to increased positive attitudes towards physical activity?

There was no significant change between the first and second survey. However observational data did indicate that motivation increased throughout to 4-week study. The students that enjoy

sport and competitive games did score higher with levels of self-competency and therefore higher engagement, while those that do not perceive



themselves as “good at gym” scored lower with levels of self-competency in gym class. These results were observed in the 1<sup>st</sup> and 2<sup>nd</sup> surveys. However, observation showed students fully engaged with parallel play and individual play with average to high levels of exertion. While the observations do not closely match the 2<sup>nd</sup> survey results, it does show trends toward increasing motivations and positive attitudes towards physical activity when given a choice.

### **Conclusions and Recommendations for Future Research.**

Observational data during the research indicated higher levels of engagement in physical activity. The survey results do not indicate a significant change in attitudes towards gym class and physical activity over this 4-week period. There may be several reasons for this. First, the 4-week study period may not be a long enough time to positively impact the children's self-perceptions of competency and improve overall enjoyment of physical activity. 8–10-year-old children may not be able to effectively reflect on the activity over this short of a period. This could be investigated in future research.

Second, we wonder if the self-determination theoretical approach to gym class instruction may require months or years to produce higher levels of perceived self- efficacy related to physical literacy, compared to more traditional styles of gym class instruction. More research considering an appropriate treatment period should be considered.

A third question that arises is related to the current pandemic. The research was conducted during COVID restrictions placed on school activities. Following the British Columbia Provincial Health Orders, the instructor was restricted in how activities and

student interaction was structured. This is in contrast to the self-determination model of full autonomy. This could have adversely affected how the children viewed the activities and resulted in less positive survey perceptions.

Finally, the lack of change between the two surveys might be a result of the survey questions being too abstract for the age of the students, the diverse intellectual and emotional differences of the children, or second language challenges. In the study group of students there were some for whom English was a second language, some students' literacy levels were low, and there were some students with intellectual and emotional differences. These variables could have potentially skewed the results of the surveys. Future research using this survey should consider these aspects.

As noted earlier, observational data did not show significant choice of dance and rhythmic activities. However, the absence of any music was noticed by students; they were quick to voice their preference for music to be playing while they were involved in any of the choice activities. While this may indicate an impact on student participation or enjoyment, more research is needed in this area since it was not the focus of the present study.

In conclusion, our research indicates a connection between a self-determination approach to gym class instruction and students' intrinsic motivation to engage in activity. This present research adds to the existing literature that shows a correlation between students' intrinsic motivation in gym class and structuring class activities in ways that allow student choice that facilitates autonomy, relatedness and competency-based decision making. Furthermore, it supports the research by Chen and Hypnar (2015) suggesting that "being physically competent, personally autonomous, and socially

connected significantly contribute[s] to elementary school students' enjoyments, values, and obligations for participation in PE activities" (p.206).

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Appendix A

Pre and Post Survey

Alphanumeric Code: \_\_\_\_\_

**Children’s Attitudes and Motivation Toward PE/Physical Activity**

Grade \_\_\_\_\_ Gender \_\_\_\_\_ Age \_\_\_\_\_

**A. Circle the number that best represents you.**



In this Gym class...

True

Untrue




1. My Teacher makes me feel like I have skills	5	4	3	2	1
2. I feel that the teacher gives us choices	5	4	3	2	1
3. I think I am pretty good at gym.	5	4	3	2	1
4. I feel I am encouraged by other students in class	5	4	3	2	1
5. The teacher encourages me to do well in gym	5	4	3	2	1
6. I feel free to pick activities I like	5	4	3	2	1
7. I feel I am pretty good in sport skills.	5	4	3	2	1
8. I feel comfortable with my classmates in gym class	5	4	3	2	1
9. The teacher encourages us to create our own games	5	4	3	2	1



and dances					
10.I get to choose what skills I want to practice	5	4	3	2	1
11.I am skilled at games in gym class	5	4	3	2	1
12.I feel I am valued by classmates in gym class.	5	4	3	2	1

**B. Circle the face that best shows how you feel.**

For me, doing 30 minutes of physical activity every day is ...

1. HEALTHY  UNHEALTHY
2. VERY FUN  VERY BORING
3. VERY USEFUL  NOT USEFUL
4. VERY GOOD  VERY BAD

## Perceptions of Needs Satisfaction

Circle the number that best represents you.

**Autonomy**



- |   |   |   |   |   |   |
|---|---|---|---|---|---|
| 1. I have time to create my own games/dances            | 5 | 4 | 3 | 2 | 1 |
| 2. I have time to choose who I play with                | 5 | 4 | 3 | 2 | 1 |
| 3. I have time to choose activities I want to practice. | 5 | 4 | 3 | 2 | 1 |

**Perceived Competency**

- |   |   |   |   |   |   |
|---|---|---|---|---|---|
| 1. I think I am good at gym.                  | 5 | 4 | 3 | 2 | 1 |
| 2. I feel I am good at sports                 | 5 | 4 | 3 | 2 | 1 |
| 3. I feel I am able to play most games in gym | 5 | 4 | 3 | 2 | 1 |

**Relatedness**

- |  |   |   |   |   |
|--|---|---|---|---|
| 1. I feel I am encouraged by other students in gym | 5 | 4 | 3 | 2 |
| 1  |   |   |   |   |
| 2. I feel comfortable with my friends in gym class | 5 | 4 | 3 | 2 |
| 1  |   |   |   |   |
| 3. I feel I am important to my classmates in gym   | 5 | 4 | 3 | 2 |
| 1  |   |   |   |   |



# **Using The Civil Rights Era as A Baseline to Teach About the Social Movements of Today**

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## **Introduction**

It is well documented in the fields of K-12 education, higher education, American history, and sociology that the Civil Rights Movement is undertaught in most school systems around the United States (Southern Poverty Law Center, 2011; Schulten, 2012; Frost, 2012; Alhumam, 2015; Russell, et al., 1998; Gersten, et al., 2006) . This has been a social problem for many reasons. First, it brings numerous consequences to students who are trying to understand how and why social movements occur. Second, it is an important era of U.S. history for young people to understand how African Americans have struggled to acquire their Civil Rights in society. Third, students have no frame of reference because a lot of American history, including the Civil Rights Movement of the 1950s and 1960s, is not being taught in classrooms across the country. This is impacting students negatively because when they are studying the social movements of today, they have no “rubric”, no “model”, no “example” to teach them about how and why social movements work. Numerous articles in the popular press explain this fact (Dunn, 2005; Dallmer, 2007; Southern Poverty Law Center 2011 and 2014; Frost, 2012; Schulten, 2012; Brown, 2015).

## **Problem**

The problem is the Civil Rights Movement is not being adequately taught in elementary schools, middle schools, high schools, and at colleges and universities (Buchanan, 2015; Anderson, 2018; Combs and Skipper, 2014; Dillon, 2011; Hale, 2018; Pass and Campbell, 2006). This relevant educational topic has been examined numerous times. There are countless studies reviewing this topic. A majority of the articles were written between 1998 and 2015. As a result of the Civil Rights Movement not being taught, students have no frame of reference for understanding how today’s social movements operate, their purpose, and their strategies.

## **Strategy**

The purpose of this paper is three-fold. Firstly, it is necessary to frame the problem of The Civil Rights Movement being undertaught. This will be achieved by discussing some of the content from articles in the popular press and summarizing the various reasons as to why this era in American history seems to be forgotten. Secondly, present the only instrument in the literature that attempts to resolve this gap in history. The instrument comes from the Southern Poverty Law Center in Montgomery, Alabama.

When examining the literature for this paper, there were few solutions and no assessment instruments offered to solve the problem of the lack of teaching the Civil Rights Movement in schools across the country. This paper outlines the content of this six part instrument to help resolve the issue. Each of the six sections will be discussed and reviewed in great detail. Thirdly, the author of this paper would like to offer a couple of solutions (assignments) that have been created for classrooms to better teach the Civil Rights Movement. The assignments are based on the six criteria set forth by The Southern Poverty Law Center’s rubric (2011). This gets to the crux of the paper, which is using the time era of the Civil Rights Movement to teach our students about the mistreatment of African Americans, and to teach about how social movements work in our society.

## **Review of Literature**

As stated previously, the bulk of the literature found for this research was written between 1998 to 2015. Scholars in numerous fields, including higher education, history education, sociology, and law have carefully studied the problem of the Civil Rights Movement being undertaught in U.S. classrooms (Cook, 2005; Schulten, 2012; Hamlin, 2016; Dunn, 2005; Stewart et al., 2015). In the following section, a brief overview of the top four reasons why this time era is so undertaught is explained. A review of literature follows.

### **States are not making it mandatory in curriculum**

Simply stated, teaching the Civil Rights Movement has not been mandated in all 50 states (Dunn, 2005; Dillon, 2011; Southern Poverty Law Center, 2011, pp. 9-10; Frost, 2012; Schulten, 2012).

### **Teachers are not qualified**

It was stated in the literature, that many teachers who were not qualified to teach history in K-12, were forced to teach it because of teachers quitting, the teaching shortage, budget cuts, and other circumstantial reasons. Numerous teachers who do not even have a minor or major in history, have been tasked with teaching history in their schools. Many of them felt unqualified to do so, and believed they did not know enough to adequately cover the Civil Rights Movement (Dillon, 2011; Russell, et al., 2011; Southern Poverty Law Center, 2011, pp. 9-10; Hamlin, 2016).

### **No Child Left Behind=Not enough instructional time**

This paper's purpose is not about examining the pros and cons of the No Child Left Behind Act of 2002. However, it is safe to say that some scholars studying the Civil Rights Movement and teachers in grades K-12, believe its focus on standardized testing and teaching basic skill sets certainly does not encourage teaching about the events of this time era. Further, many academic disciplines in schools have been reduced since the No Child Left Behind was implemented, especially social studies and history (Dillon, 2011; Southern Poverty Law Center, 2011; and Anderson, 2018).

### **No Agreed Upon Curriculum**

Presently, no official national standard exists, making it mandatory to teach the Civil Rights Movement, its purpose, and strategies in schools across the country. The only instrument remotely close to achieving these things is the Southern Poverty Law Center's six category rubric. (Southern Poverty Law Center, 2011; Anderson, 2018; Pass and Campbell, 2006; Foster et al., 2015). An explanation of the rubric follows.

### **Southern Poverty Law Center Rubric**

Both in 2011 and 2014, the Southern Poverty Law Center developed a rubric; the only rubric discovered in the literature offering guidance on how to adequately teach the Civil Rights Movement. This section focuses on the most recent rubric devised in 2014 and its six categories.



Each category explains the minimal expectations for teaching the Civil Rights Movement for that section. The Southern Poverty Law Center reminds readers that these six categories and the suggested teaching content within them, is merely a reasonable starting point. A review of the six categories follows.

### ***Events***

The Southern Poverty Law Center criteria states that students should be able to identify key events in the civil rights movement and place them in correct chronology. These events include: *Brown v. Board of Education*; Little Rock 9; Freedom Rides; Montgomery Bus Boycott; 24<sup>th</sup> Amendment; Birmingham bombings and protest; March on Washington; 1964 Civil Rights Act; Freedom Summer; Selma-to Montgomery-March; 1965 Voting Rights Act; uprisings such as Watts, Cicero, IL and riots in Detroit, MI; 1968 Civil Rights Act; and the assassination of Martin Luther King Jr. Students should also be able to identify the causes and consequences of these events, linking key figures and organizations to each event (Southern Poverty Law Center, 2014).

### ***Leaders***

The Southern Poverty Law Center criteria states that the civil rights movement was a movement composed of many individuals and was not the initiative of any single person or small group of people. All students learn about Martin Luther King Jr. and Rosa Parks, but students should learn about at least six additional people from the civil rights movement (Southern Poverty Law Center, 2014).

### ***Groups***

The Southern Poverty Law Center criteria states students should be able to identify major groups include: CORE, SCLC and SNCC. Students should be able to explain the mission and accomplishments of each group as well as trace the relationships among groups (Southern Poverty Law Center, 2014).

### ***Causes of the movement***

The Southern Poverty Law center criteria states students should be able to trace the roots of the civil rights movement to slavery and disenfranchisement through the Civil War and Reconstruction. They should learn about Jim Crow laws, poll taxes and literacy tests. They should understand the complex causes of President Harry S. Truman's decision to desegregate the U.S. military, including A. Philip Randolph's role (Southern Poverty Law Center, 2014)

### ***Opposition to its successes***

Students should identify opposition to the civil rights movement's success. They should learn the difference between *de jure* and *de facto* segregation and examine the extra-judicial enforcement of segregation through diverse tactics such as the formation of White Citizens' Councils and the Ku Klux Klan. Students should be able to identify key figures and groups opposing the extension of civil rights, including Bull Connor and one of the major opposing Southern governors: Orval Faubus, George Wallace, J. Lindsay Almond, and Ross Barnett (Southern Poverty Law Center, 2014).

### ***Tactics***

Students should be able to explain the advantages and disadvantages of nonviolent resistance. They should be able to discuss the role of civil disobedience in a democratic society. They should identify and compare tactics and ideas such as boycotts, sit-ins, marches, voter registration and Black Power, used at different times during the struggle for civil rights (Southern Poverty Law Center, 2014).

### **Discussion of SPLC Rubric**

As mentioned previously, a plethora of academic research has discussed the Civil Rights Movement time era in terms of covering topics such as racism, abuse by law enforcement officers on Black Americans, teaching leadership, teaching young children, and teaching high school children. The approach in this research is different.

The primary aim of the literature search in this study was to locate a model or rubric that could both improve the teaching of the Civil Rights Movement to students, and help students retain a better understanding of that time era. The only model or rubric discovered came from the Southern Poverty Law Center. There was a rubric introduced in 2011. It was then upgraded. The second, more comprehensive rubric was unveiled in 2014. This paper focuses on the contents within the 2014 rubric.

The rubric addresses six key categories to better understand a social movement, specifically the civil rights movement. The categories in the 2014 rubric include: leaders, groups, key events, causes of social movements, opposition to the movement's successes, and tactics employed. In fact, this rubric is an instrument that can be used to teach about social movements for virtually any group.

Attached at the end of this paper, are assignments crafted by the author of this paper, primarily from the original "Eyes on the Prize" series which is a 14 part series created by PBS between 1979-1985. Each of the 14 films cover specific events caught by news media between 1954 and 1968 related to the Civil Rights Movement. These assignments can be found in Appendix A.

A couple of assignments related to key African American leaders, both men and women from the 1950s and 1960s are included in Appendix B. Both assignments were created from the "Eyes on the Prize" series. Both sets of assignments also cover the six categories the Southern Poverty Law Center's rubric standards recommend. Further, we plan on using the Southern Poverty Law Center's rubric to upgrade our current social movements assignments as they pertain to the following marginalized groups in our society: Hispanic Americans, Native Americans, Asian Americans, and the LGBTQIA+ community. The six categories recommended by the Southern Poverty Law Center can be applied to teach any social movement.

## **Conclusion**

The purpose of this paper is to examine numerous journal articles on the topic of the Civil Rights Movement of the 1950s and 1960s, and how to better teach about this era in our classrooms. Another objective was to find a "model" or "rubric" that could improve teaching key content from the Civil Rights Movement to our students in a meaningful way. The rubric from the Southern Poverty Law Center in Montgomery, Alabama offers a solid way to not only teach our students about the Civil Rights Movement in a sincere manner, but can also be used as a way to approach teaching other social movements.

When the Southern Poverty Law Center conducted its last study in 2014, it ranked states on an A-F scale based on the criteria set forth in the 2014 rubric. The Southern Poverty Law Center has not conducted a similar study since 2014. In the last study, the following results were determined. Only three states earned a grade of "A" in teaching the Civil Rights Movement; eight

states earned a grade of “B”; five states, including the District of Columbia earned a grade of “C”; fourteen states earned a grade of “D”; and twenty states earned a grade of “F” (Southern Poverty Law Center, 2014). More detail on which states scored at a grade of “A”, “B”, or “C” can be viewed below.

The three states earning an “A” grade included: South Carolina, Louisiana, and Georgia. The eight states receiving a grade of “B” included: Maryland, North Carolina, Alabama, Virginia, Oklahoma, California, New York, and Florida. The five states earning a grade of “C” included: Tennessee, Kansas, Mississippi, Arkansas, West Virginia, and the District of Columbia (Southern Poverty Law Center, 2014). To put this

into perspective, only 16 states out of 50 scored an “A”, “B”, or “C” according to the standards set forth by The Southern Poverty Law Center (Southern Poverty Law Center, 2014). To summarize, this means exactly 32 percent of states in the country were teaching the civil rights movement at a sufficient level.

The standards set forth in the Southern Poverty Law Center’s rubric are lofty but attainable. Perhaps what makes the six categories of learning from the Southern Poverty Law Center’s rubric so special, is that they are so well-constructed that they can be applied to teaching any social movement. Student retention in learning about the Civil Rights Movement or any social movement for that matter, could be enhanced by following this rubric.

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## Appendix: A

### **A. The first two assignments in this paper are related to film**

\*Before viewing specific segments of each “Eyes on the Prize” video, I provide my students with 5 to 8 discussion points, i.e., (leaders, events, groups, tactics and maybe things students have never heard about before such as “White Citizen’s Councils”). I have created the discussion point assignments on my own, following the Southern Poverty Law Center’s 2014 rubric and for all 14 videos of the “Eyes on the Prize” series.

\*\*After discussing what to look for with the 5 to 8 discussion points prior to viewing video segments, I hand out a fill-in-the-blank assignment (of my own creation) for the students to complete for credit. I have created all of the “Eyes on the Prize” assignments myself based on the suggested criteria from the Southern Poverty Law Center’s 2014 rubric.

We then go over the fill-in-the blank assignment and have dialogue on the 5 to 8 discussion points for each

**Discussion Points for: "Eyes on The Prize: Awakenings 1954-1956"**

- 1.** Brown vs. Board of Education of Topeka, Kansas 1954
- 2.** Emmett Till
- 3.** Rosa Parks
- 4.** Dr. and Rev. Martin Luther King, Jr.
- 5.** How did White leaders retaliate against Black leaders who said it was unconstitutional to have bus segregation?
- 6.** What role did White women in Montgomery, AL play during the bus boycott?

## Eyes On the Prize

### Awakenings

1954-1956

**Directions:** This is an assignment you are to complete independently during the documentary. You should fill in the answers to the best of your ability. Most of the answers are only one to four words. Each question is worth .5 (or ½) of a point. *For example*, 16 questions would equal 8 points.

1. What was the “prize” that Blacks were fighting for? \_\_\_\_\_ **freedom** \_\_\_\_\_
2. \_\_\_ **Segregation** \_\_\_\_\_ was the context for blacks’ lives throughout the country, but especially in the South.
3. \_\_\_\_\_ **World War II** \_\_\_\_\_ brought great hope for social change in the United States. They fought and died in a segregated military.
4. On May 17<sup>th</sup>, 1954, the Supreme Court ruled in what court case that segregated schools were unconstitutional? \_\_\_ **Brown vs. Board of Education of Topeka, KS** \_\_\_\_\_
5. \_\_\_ **Emmett Till** \_\_\_\_\_ came down to Mississippi from Chicago to visit relatives and was murdered because he talked “fresh” to a white woman in a store. He said “Bye Baby” to the white woman. (It was later discovered that Emmett Till did not say this).
6. What was the name of the Black Congressman who came to Sumner, Mississippi to trial of the men who killed the young black child? \_\_\_\_\_ **Charles Diggs** \_\_\_\_\_

7. Over the years there have been over \_\_\_\_\_ **500** \_\_\_\_\_ documented lynchings in Mississippi alone.
  
8. \_\_\_\_\_ **Montgomery** \_\_\_\_\_, Alabama prides itself on being called “The Cradle of the Confederacy.”

9. In December of 1955, \_\_\_\_\_ **Rosa Parks** \_\_\_\_\_ refused to give her seat to a white man while riding on a bus in Montgomery, Alabama.
10. Which Black leader from Atlanta, Georgia did black leaders from Montgomery, Alabama want to continue the leadership of the bus boycott in Montgomery?  
\_\_\_\_\_ **Dr. and Rev. Martin Luther King, Jr.** \_\_\_\_\_
11. Martin Luther King, Jr. said the best thing to do with your enemy is to make them your \_\_\_\_\_ **friend** \_\_\_\_\_
12. How did white leaders retaliate against Black leaders who said it was unconstitutional to have bus segregation? \_\_\_\_\_ **By indicting almost 90 Black leaders under an old anti-boycott law.** \_\_\_\_\_
13. Which group of people would pick up black people and give them rides to work or to their homes because blacks were boycotting the busing system in Montgomery, Alabama? \_\_\_\_\_ **white women** \_\_\_\_\_
14. On November 13<sup>th</sup>, \_\_\_\_\_ **1956** \_\_\_\_\_, the U.S. Supreme Court broke the deadlock ruling unanimously that Montgomery's bus segregation was unconstitutional.
15. How many months did the Montgomery bus boycott last? \_\_\_\_\_ **11** \_\_\_\_\_
16. After the boycott ended, where did Blacks want to sit on the bus? \_\_\_\_\_ **in the front** \_\_\_\_\_

**\*\*\*Upon completion of the documentary and fill-in-the-blank assignment, we go over the answers to this assignment and then have robust discussion about the 5 to 8 discussion points I asked them to pay attention to prior to viewing the documentary.**

## Eyes On the Prize

### Bridge to Freedom

1965

**Directions:** This is an assignment you are to complete independently during the documentary. You should fill in the answers to the best of your ability. Most of the answers are one to three words long. Do not share answers or collaborate with your fellow students. If cheating is suspected by the instructor, a grade of "0" may be given to the entire class. Each assignment is worth .5 (or ½) of a point. *For example*, 14 questions would equal 7 points.

1. **Dr. Martin Luther King** \_\_\_\_\_, Jr. was the African American leader who symbolized the success of nonviolent strategy. He received the Nobel Peace Prize in 1964.
2. What does the acronym "SNCC" pronounced "Snick" stand for? **Student Nonviolent Coordinating Committee** \_\_\_\_\_
3. What does the acronym "SCLC" stand for? **Southern Christian Leadership Conference** \_\_\_\_\_
4. What was the name of the volatile sheriff of Dallas County, AL who abused many Black citizens there? **Jim Clark** \_\_\_\_\_
5. What was the name of Selma, Alabama's mayor who made the derogatory comment in regard to Martin Luther King, Jr.'s name? **Joseph Smitherman** \_\_\_\_\_

6. What was the name of the newly elected President of the United States in 1964 who really pushed for the Civil Rights Act and Voting Rights Act for

Blacks? Lyndon B. Johnson



7. **Jimmy Lee Jackson**\_\_\_\_\_ was the young man who was shot pointblank by an Alabama state trooper during a riot in Marion, Alabama.
  
8. What were at least two weapons the police of Selma, AL used to prevent the African Americans from marching from Selma, AL to Montgomery, AL? **tear gas, club beatings, pushing, wet ropes, bull whips**\_\_\_\_\_
  
9. Governor **George Wallace**\_\_\_\_\_ of Alabama met with President Lyndon B. Johnson in Washington, D.C. to discuss the lack of rights for Blacks in the state of Alabama.
  
10. **James Forman**\_\_\_\_\_ was the leader of SNCC pronounced "Snick" who gave a power speech when he said: "If we can't sit at the table, lets knock the legs off."
  
11. Since the Governor of Alabama didn't provide protection for the march from Montgomery, AL, President Lyndon Johnson **federalized**\_\_\_\_\_ the Alabama National Guard to provide the marchers their protection.
  
12. **Coretta Scott King**\_\_\_\_\_ was the name of Martin Luther King, Jr.'s wife.

13. On August 6th, 1965, President Lyndon B. Johnson signed the Voting Rights Bill into law. By the following summer, 9,000 Blacks registered to vote in Dallas, Co., Alabama.

14. The riots in Watts, an L.A. suburb of primarily Black people caused 1,000 to be injured and 34 deaths.

**\*\*\*Upon completion of the documentary and fill-in-the-blank assignment, we go over the answers to this assignment and then have robust discussion about the 5 to 8 discussion points I asked them to pay attention to prior to viewing the documentary.**

Appendix B:

**B. The two assignments in this section are related to both male and female, African American-only Civil Rights Leaders from the 1950s and 1960s. A student chooses to summarize the contributions of one male and one female African American Civil Rights Leader from the 1950s and 1960s. Then, the student gives a 4 to 6 minute presentation to the class.**

## African American Civil Rights Leader Summary Paper

**Directions:** Below, you will find 15 famous African American female Civil Rights Leaders from the 1950s-1960s. You will choose to address one of them, and type a 2 to 3 page summary of their contributions to the Civil Rights Movement. In other words, state what their accomplishments and achievements were during the Civil Rights Movement.

### **Guidelines to the paper**

1. You must choose to address one of the fifteen male Civil Rights leaders from the list below.
2. You must focus on: their achievements; accomplishments; key Civil Rights moments and events they were a part of; groups they lead; and impact they had on the Civil Rights Movement.
3. The paper must be in 12 point font, Times New Roman, and double spaced.
4. You must have a Title Page (This should be a separate page and does not include the 2 to 3 pages of content that you will type). The title page should include: Civil Rights Leader's Name at the top, your name beneath, SOCI: 2150 Issues of Unity and Diversity, semester, and the date....that is all). Then, begin on a new page as you type up your summary.
5. You must cite your source or sources at the very end of the paper (this should also be a separate page and does not include the 2 to 3 pages of content that you will type).
6. There is a three source minimum. The source(s) you use should be cited in APA format and on a separate page at the end of your paper.
7. Have multiple paragraphs! When you start a new topic (contribution), indent, and begin a new paragraph.

### **15 female, Civil Rights Leaders** (in alphabetical order)

- |                               |                       |
|-------------------------------|-----------------------|
| 1. Ella Barker                | 10. Fannie Lou Hamer  |
| 2. Daisy Bates                | 11. Aileen Hernandez  |
| 3. Ruby Bridges               | 12. Diane Nash        |
| 4. Leah Chase                 | 13. Rosa Parks        |
| 5. Dr. June Jackson Christmas | 14. Gloria Richardson |

6. Kathleen Cleaver
7. Claudette Colvin
8. Marian Wright Edelman
9. Myrlie Evers

15. Judy Richardson

## African American Civil Rights Leader Summary Paper

**Directions:** Below, you will find 18 famous African American male Civil Rights Leaders from the 1950s-1960s. You will choose to address one of them, and type a 2 to 3 page summary of their contributions to the Civil Rights Movement. In other words, state what their accomplishments and achievements during the Civil Rights Movement?

### Guidelines to the paper

1. You must choose to address one of the eighteen male Civil Rights leaders from the list below.
2. You must focus on: their achievements; accomplishments; key Civil Rights moments and events they were a part of; groups they lead; and impact they had on the Civil Rights Movement.
3. The paper must be in 12 point font, Times New Roman, and double spaced.
4. You must have a Title Page (This should be a separate page and does not include the 2 to 3 pages of content that you will type). The title page should include: Civil Rights Leader's Name at the top, your name beneath, SOCI: 2150 Issues of Unity and Diversity, semester, and the date....that is all). Then, begin on a new page as you type up your summary.
5. You must cite your source or sources at the very end of the paper (this should also be a separate page and does not include the 2 to 3 pages of content that you will type).
6. There is a three source minimum. The source(s) you use should be cited in APA format and on a separate page at the end of your paper.
7. Have multiple paragraphs! When you start a new topic (contribution), indent, and begin a new paragraph.

### 18 male, Civil Rights Leaders (in alphabetical order)

- |                             |                         |
|-----------------------------|-------------------------|
| 1. Rev. Ralph Abernathy     | 11. Huey Newton         |
| 2. Rev. William G. Anderson | 12. A. Phillip Randolph |
| 3. Stokely Carmichael       | 13. Cordell Reagon      |
| 4. Charles Diggs            | 14. Bobby Seale         |
| 5. Medgar Evers             | 15. Charles Sherrod     |

6. J. Charles Jones
7. Dr./Rev. Martin Luther King, Jr.
8. James Morris Lawson, Jr.
9. John Lewis
10. Thurgood Marshall

16. Rev. Fred Shuttlesworth
17. Roy Wilkins
18. Malcolm X

Student Anxiety: Empathy or Apathy

Proceedings

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## Student Anxiety: Empathy or Apathy

The majority of students in your classes probably has anxieties. Our study revealed different student subjects and insecurity anxieties. Periods of anxiety or sometimes called stress, are said to be experienced by about 95% of the population at one time or another. Students are definitely not immune from this. Research has shown that even young children experience anxiety.

- **Anxiety is a term that is being used as a catch-all term when educators and others want to describe the behavior of a child or adult in a sympathetic manner. The behavior may keep the person from learning and may be annoying to the point that it keeps those around the person from learning**

This research came about as the result of professors networking in efforts to meet the needs of students. Another factor influencing the task was that one of the professors shared that while he loved the science and math classes, he would hate to practice spelling in English classes. He even shared that while he had a high IQ, when given a spelling test, he would have memory lapses to the point that simple words like 'the' would be difficult. He could remember that these issues happened as early as fourth grade. He even remembers classmates who had similar levels of anxiety depending on the subject they were experiencing in class.

This networking led the professors who were striving to help their students to develop a survey addressing the anxiety felt with the various disciplines. The goal was to identify methods to help the professors address the anxiety issues to be able to further help the students. On the survey, spelling did not yield a high anxiety level however, the technology devices students have today have made great changes since that professor had spelling in an English class. Today all students use word processing and have access to spell check, which would account for this vast difference in anxiety.

It was projected that if discipline could be identified where the anxiety is occurring, there is a possibility that efforts could be implemented to relieve some of the factors. Secondly, it may be possible to address ways to overcome or at least minimize some of the factors.

### Findings

Math was the subject anxiety leader. Fifty-three students responded from a pool of 81 students (65 % response rate) during the spring of 2023 in a university sophomore science class. Unfortunately, math anxiety seems to be the greatest anxiety of the students we surveyed. Some 75.3 % (41 out of 53 students) of the students reported that they had "some, "quite a bit," or "a great amount" of anxiety with math (Table 1).

The majority of students had "quite a bit" (32.1 %) and "a great amount" (34 %) of math anxiety. Science came in second for subject anxiety (Table 2).Forty-five percent had "some anxiety,"

11.3 % “quite a bit, “and 13.2 % “a great amount” subject anxiety. The other disciplines were also affected, however, not near the math anxiety. Even if a

discipline appeared only to create a very small amount of anxiety, those students affected need to be provided with methods and information to decrease or alleviate that anxiety. Professors must remember many disciplines are linked together in indirect ways. Reading and vocabulary skills are needed to be successful in almost every other discipline. Therefore, it is of the utmost importance that a student has skills in those two and also have knowledge of coping skills when not familiar with the terms presented.

Table 1 Math Anxiety

**Math Anxiety**

	N	%
No or Low	8	15.1%
Only a Little	4	7.5%
<b>Some</b>	<b>6</b>	<b>11.3%</b>
<b>Quite a Bit</b>	<b>17</b>	<b>32.1%</b>
<b>Great Amount</b>	<b>18</b>	<b>34.0%</b>

Table 2 Science Anxiety

**Science Anxiety**

	N	%
No or Low	5	9.4%
Only a Little	11	20.8%
<b>Some</b>	<b>24</b>	<b>45.3%</b>
<b>Quite a Bit</b>	<b>6</b>	<b>11.3%</b>
<b>Great Amount</b>	<b>7</b>	<b>13.2%</b>

Some of the ways in which the professor can help the student become more comfortable with the subject content are as follows for math anxiety:

- When students are given the opportunity to learn how math, relate it to their real life, so math makes more sense to them. Basic math is everywhere, from simple counting of how many chicken nuggets for himself and two friends to purchase to the task of balancing a bank account or keeping a credit card in a prosperous manner.

- Not everyone needs to know calculus, and if professors let students know that everyone has different skills, and no one must be an expert in all fields, the students will be much less anxious.
- Let students know they can get help for anxiety and direct them to the correct personnel. If you do not know-find out.

Of course, there are other methods to help students with the other disciplines and it is important that the professor of that discipline provide the students with those.

Conclusions:

Professors often come across as a 'big bad wolf,' which students believe they are just out to get the students. There may be some professors who are of that nature, however, most professors are not. One problem many professors face is getting to the level of the student's ability. Students must remember that the professor is very familiar with the topic and can forget that it is not true for all. This situation needs to have an understanding on both the students' and professors' part.

Professors who are so familiar with the discipline can give students a false impractical time frame to master the content or skill, leading students to believe that speed is the top priority. Students need to be given opportunities to learn that correctness is far more important than speed. Some achievement tests still have a specific time allotment, but many are moving away from that practice. Texas has had a state achievement test for at least nearly 40 years. For the first twenty or so years, the students had only an allotted time period to complete each section, Now, sections are untimed in an effort to let students know that correctness is valued much higher than speed.

If the professor is able to build a feeling of trust in the student, many of the factors created by the anxiety will be to a lesser degree. This is not to say the professor and student should be in a buddy-buddy relationship, but they need to both maintain a professional one that is respectful on the part of all. If professors even adapt their methods, when students request it, there will be a major step toward the student being successful in the class.

Some people will claim it is dyscalculia when a student is failing math however, this is a rare case as dyscalculia has a major different set of conditions than anxiety disorder. Students with an anxiety disorder may not perform well when pressured, such as solving a problem on the whiteboard, or on a timed test, although they demonstrate many problems solved on a test and can do their homework. Students with dyscalculia will not be able to do math in or out of class. Anxiety can be rectified to some degree with a professor with empathy, patience, knowing the college or universities counseling help information, and training. Dyscalculia is like an incurable disease and little can be done

to help the student, but a professional diagnostician might be able to aid the student in some small way.

The main takeaway from our research is that nearly all your students probably have some subject anxiety. The anxiety may not even be in all aspects of the discipline such as most of the math is fine but when geometry is the topic, anxiety is very high. In science, it might be the chemistry which creates the anxiety while other topics are even fun.

Have a heart and help them. Selected

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**Minimizing Risks for Adverse Health Outcomes in Comorbid ADHD  
and Bipolar Disorder**

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# **MINIMIZING ADVERSE HEALTH OUTCOMES IN COMORBID ADHD AND BIPOLAR DISORDER**

## **Abstract**

Individuals with comorbid ADHD and Bipolar Disorder face complications in receiving an accurate diagnosis due to the similarity in symptoms and behavioral manifestations. Those without accurate diagnoses are more likely to suffer adverse health outcomes, including increased risk for bipolar episode relapses, substance use disorders, and attempted or completed suicide. Insufficient research and outdated screening and diagnostic tools prevent the implementation of comprehensive care for those with the comorbidity. This especially contributes to discomfort among clinical professionals in providing the dual diagnosis, leading to misdiagnoses and increased health risks. This literature review aimed to identify effective methods of mitigating the risk for adverse health outcomes, including evaluating screening tools and making recommendations to health professionals to better comprehend and apply the diagnostic criterion for bipolar disorder and ADHD. Using search engines such as PubMed, Psychiatry Online, and EBSCO, studies that focused on understanding the complications of comorbid ADHD and Bipolar Disorder regarding risk factors, diagnostic criteria, and screening tools were analyzed.

# MINIMIZING ADVERSE HEALTH OUTCOMES IN COMORBID ADHD AND BIPOLAR DISORDER

## Background

ADHD and Bipolar Disorder have a high degree of psychiatric comorbidity, especially with each other. In fact, 1 in 13 patients with ADHD has comorbid bipolar disorder and almost 1 in 6 patients with bipolar disorder has comorbid ADHD (Schiweck et al., 2021). It affects between 5% and 47% of the population, or nearly 4 million people in the European Union and the U.S. together (Schiweck et al., 2021). ADHD is the most common neurodevelopment disorder globally, with a worldwide prevalence of between 5% and 8% among children alone (Schiweck et al., 2021). ADHD affects the regulation of dopamine within the brain, causing difficulties with maintaining concentration and attention, staying on task, meeting deadlines, and properly regulating emotions (Schiweck et al., 2021). Up to 65% of those with ADHD continue having symptoms as an adult, also known as adult ADHD (ADHD), although symptoms often shift from hyperactive to inattentive, and develop more prominent emotional dysregulation (Schiweck et al., 2021). Bipolar disorder is a chronic mood disorder with a spectrum of types afflicting 1% to 3% of the population (Schiweck et al., 2021). It is often misdiagnosed as depression, the treatment for which causes significant adverse reactions for those with bipolar disorder (Meier et al., 2018). Bipolar I Disorder includes manic episodes and depressive episodes. Bipolar II Disorder includes hypomanic episodes and depressive episodes, the latter of which typically have a greater degree of intensity and longer duration than Bipolar I depressive episodes. Manic and hypomanic episodes are characterized by unusual increases in energy, psychomotor activity, euphoria and/or irritability, restlessness or hyperactivity, and increased impulsivity, with mania lasting at least seven days and/or including psychotic features and/or requiring hospitalization, and hypomania lasting a few days to a week with no psychotic features or significant impairment of daily functioning (Schiweck et al., 2021). Periods of euthymia occur between episodes in all bipolar types.

## *Health outcomes*

Patients with comorbid ADHD and Bipolar Disorder diagnoses, across all literature, have a significantly increased risk of attempted suicide, even compared to those with only one of the diagnoses (Moran et al., 2019). The lifetime comorbidity of ADHD and Bipolar Disorder is 8.39% among those with bipolar disorder and 18% in those with ADHD (Schiweck et al., 2021). It is associated with more frequent bipolar episodes and higher levels of psychiatric comorbidity, especially alcohol and substance use and usually with an extensive history of problematic substance use (Wang et al., 2017). Patients with comorbid ADHD can have an early onset of bipolar symptoms by almost four years compared to those without ADHD and can experience decreased periods of euthymia between episodes (Schiweck et al., 2021). As the severity of the comorbid condition increases, so does the likelihood of a history of suicidal ideation, attempted

suicide, self-harm or self-mutilation, and severe depression, alcohol abuse, or bipolar episodes (Wang et al., 2017). Around 40% of patients with comorbid psychiatric disorders tend to have a higher prevalence of insomnia, which can enhance the burden of cognitive dysfunction and fatigue (Deepmala et al., 2015). Up to 70% of patients with bipolar disorder and 6%

- 80% of those with ADHD experience insomnia, which exacerbates the emotional symptoms of both disorders and increases the risk of accidents and mortality (Deepmala et al., 2015). Furthermore, children with ADHD more often experience childhood trauma,

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abuse, and maltreatment which, along with having bipolar disorder, further increases the risks of parental abuse or being the victim of an abusive relationship (Wang et al., 2017).

### *Risk Factors*

Risk factors for comorbid bipolar disorder and ADHD include psychiatric comorbidities, birth and maternal complications, adverse childhood experiences, and family history and genetics. The major risk factors for having comorbid bipolar disorder and ADHD are non-preventable and cannot be controlled for, largely due to the highly inheritable nature of both disorders. Family studies show a relative risk of about 2% for first-degree relatives with the comorbidity, suggesting shared genetic effects to be partially responsible for the cross-transition of Bipolar and ADHD within families (Schiweck et al., 2021). ADHD is more common within families where parents have bipolar disorder and the same is true with bipolar disorder among families with ADHD (Berkol et al., 2014). The risk is more notable among families with Bipolar I Disorder, who have a 27% to 30% prevalence risk for ADHD (Faraone et al., 2012). Further evidence suggests genetic overlap between ADHD and Bipolar Disorder potentially can impact the maturation of the brain and signaling between neurons, along with a delay in cortisol and subcortical development (Schiweck et al., 2021). Childhood ADHD is a significant risk factor for the development of comorbid bipolar disorder. A recent study found that children with a prior ADHD diagnosis were ten times more likely to have adolescent and adult-onset bipolar disorder compared to children without the diagnosis (Moran et al., 2019). Another study found the same increase in likelihood but among those with a prior anxiety disorder diagnosis, while those with a prior comorbid ADHD and anxiety diagnosis were 30 times more likely to have comorbid bipolar disorder (Meier et al., 2018). The comorbidity may be an example of developmental sequencing, as ADHD typically manifests throughout early childhood development while bipolar disorder often manifests in the early twenties (Schiweck et al., 2021). Additionally, children with ADHD are more likely to experience trauma and adverse childhood experiences (ACEs), both of which are risk factors for bipolar disorder (Schiweck et al., 2021).

Preventable risk factors that can be controlled for include the development of further psychiatric comorbidities, birth and maternal complications, and some sociodemographic variables. Maternal and birth risks include premature birth, low birth weight, maternal substance use, and maternal stress during pregnancy (Schiweck et al., 2021). While maternal stress is a risk factor for ADHD in offspring, mothers with ADHD tend to experience more maternal stress, providing some difficulties with proper risk assessment (Schiweck et al., 2021). Sociodemographic variables with strong associations include a poor family environment, such as lower socioeconomic status and less supportive familial situations (Wang et al., 2017). Additionally, predictors for the comorbidity include a history of parental abuse, parents with depression, and parents with

problematic alcohol use (Wang et al., 2017), as well as childhood abuse and maltreatment (Schiweck et al., 2021). These risk factors, alongside substance use disorders, are mitigatable risks in the outcomes of negative health effects.

### *Diagnostics and Screenings*

While ADHD is very common among patients with bipolar disorder, the comorbidity is often overlooked in clinical practices due to the similarity in symptom appearance (Berkol

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et al., 2014). Symptoms of distractibility, talkativeness and increased motor function are included in both conditions' diagnostic criteria (Moran et al., 2019). Talkativeness in Bipolar Disorder is classified as pressured speech and occurs for different reasons than talkativeness in ADHD (Faraone et al., 2012). Mania in children and adolescents presents as severe and pervasive irritability, which can be observed similarly with emotional dysregulation in ADHD (Faraone et al., 2012). Further complications lie in contrasting the trait-like nature of ADHD in adults, state-like features of hypomania, cognitive deficits during bipolar episodes, features of mixed bipolar episodes, and rapid cycling bipolar episodes (Schiweck et al., 2021). The range of emotional symptoms that can co-occur with ADHD sometimes leads to mistaking an adult diagnosis of bipolar disorder, or Disruptive Mood Dysregulation Disorder (DMDD) in children, as severe ADHD (Schiweck et al., 2021).

Screening tools often used to assess psychiatric patients include the FIGS, GAF, DIGS, HAD, STAI-T, DSM, and ICD-10. Other common screening tools used to assess the risk of ADHD and Bipolar Disorder include the MDQ, TEMPS-A, BDI-II, and RDC-MXS for mood-related symptoms, the WURS-25, ADHD-RS, AAQoL, BIS-II, and ASRS for ADHD symptoms. Mental health professionals and studies most commonly utilize the ICD-10 and the DSM-V, recently revised as the DSM-5-TR. The DSM-IV has a broader interpretation of ADHD criteria than the ICD-10, and as such ADHD incidence is much higher when using the DSM-IV and later than the ICD-10 (Schiweck et al., 2021). Psychologists also often use attention and intelligence-based testing to determine the presence of ADHD. Approaches to genetic testing are available for medication prescriptions to determine the efficacy of medications and related dosing and side effects, including cross-disorder analysis, GWAS/PRS, and candidate-gene association (Balogh, Pulay, & Réthelyi, 2022). However, there is no definitive genetic testing for both ADHD and Bipolar Disorder to inform the diagnosis that is currently validated or recommended (McIntyre et al., 2020).

### **Methods**

A structured meta-analysis was conducted using a literature search within established parameters. Search engines used to collect the studies included PubMed and Science Direct. The search strategy included a combination of keywords and Mesh-terms such as “comorbid bipolar and ADHD AND (screening OR diagnostic OR criteria)”. To meet the study objectives, established inclusion and exclusion criteria as illustrated in the PICOS table (Table 1) were utilized to refine the search process. All articles found using the Mesh-terms were published between the years of 2017 to 2023, in English, and were review or research articles. Upon obtaining the initial list of studies from each search engine, the abstracts were screened utilizing a Notion table-view database, on which the final set of articles was filtered and organized.

## **Results**

The initial search for articles using the Mesh-terms outlined above yielded 35 articles from PubMed and 1,512 articles from Science Direct. After the sixth page of article results on ScienceDirect, results were further filtered by inputting the Mesh-terms “comorbid bipolar ADHD” in the ‘title, abstract, or author-specified keywords’ section of the advanced search, and inputting “screening diagnostic criteria” in the general search



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box, yielding 14 results. With the initial search results narrowed down, the abstracts were screened for relevancy to comorbid bipolar disorder and ADHD, as well as inclusion or evaluation of diagnostic criteria and screening tools. Studies without a relevant focus were excluded, such as opioid addiction, clinical prescription drug trials, autism spectrum disorder (ASD), Disruptive Mood Dysregulation Disorder, and borderline personality disorder (BPD). After assessing the relevancy of the discussion of the utilized standard measurements, diagnostic tools, and risk factor associations, and deleting duplicate entries, a final selection of 34 articles was included for the initial screening process. Upon completing the initial screening, the researcher chose 5 articles for the final review and discussion.

### *Summary of Key Findings*

All five studies included a course or method of diagnostic measurement and screening to establish patient diagnostic status and history of childhood ADHD (ADHD), adult ADHD (aADHD), bipolar disorder (BD) also referenced as Bipolar Spectrum Disorder (BSD), Major Depressive Disorder (MDD), and/or a Major Depressive Episode (MDE). Associations within the studies established connections between cADHD and comorbid aADHD and BSD, as well as comorbidities and risk factors including Cyclothymic Temperament (CT), anxiety, unipolar or bipolar depression, depression severity, personal and familial history of ADHD and/or BD, and a history of self-inflicted harm or problematic substance use. All five studies highlighted the difficulties with establishing a dual diagnosis of ADHD and BD and demonstrated a need for intentional and thorough assessment practices with affective symptoms, symptom intensity and profiles, differential diagnoses, and effective treatment courses. One study emphasized the need for clinician awareness of that 8% of their patients with ADHD could be at risk for BD (Schiweck et al., 2021). A summary of each study's key findings can be found in Table 2, including the target population, utilized diagnostic measures and instruments, and study outcome highlights.

### *Barriers and Challenges*

Researchers expressed key aspects of the barriers to making accurate and statistically significant findings were related to the self-report assessments and difficulties with the diagnostic process. Shared features between ADHD and Bipolar Disorder proved difficult to differentiate, especially between emotional dysregulation and mixed episodes, hypomania and hyperactivity (Purper-Ouakil et al., 2017), and Bipolar II hypomanic states and aADHD traits (Schiweck et al., 2021). The Cyclothymic Temperament (CT) scale evaluated by Syrstad et al presented potential limitations regarding the singular use of the sub-scale, including overlapping features associated with various affective temperaments (2020). The generalizability of Torrente et al. results for individuals with

less severe ADHD symptoms was limited by the small ADHD sample size as well as their methods of organizing sample sizes by affective temperament (2017). The primary focus of Vannucchi et al., study of addressing mixed features in ADHD limited their assessment's sensitivity to ADHD diagnoses, potentially introducing bias diagnostically due to diverse clinician participation (2019). As common with meta-analyses, Schiweck et al were unable to access the original data and participants of the reviewed studies, utilizing patient registers and clinical samples instead, leaving leaves room for potential

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interference from insurance or administration procedures in accurately estimating ADHD sample prevalence (2021). The researchers also discussed the potential for overestimating comorbidity rates in the BD sample from random effects meta-analyses and having insufficient data to reliably estimate the effects of varying diagnostic systems and versions (Schiweck et al., 2021). Potential limitations with retroactively collected ADHD symptoms for ADHD diagnoses and focusing on childhood and familial precursors of depression were also expressed (Purper-Ouakil et al., 2017).

### **Discussion**

The findings in this paper illuminate the challenges with comorbid ADHD and Bipolar Disorder, including clinician bias and unfamiliarity with providing this dual diagnosis, difficulties with differentiating between some symptoms and features of ADHD and Bipolar Disorder, and the use of non-standardized diagnostic screening methods or tools. Part of the shared discomfort among clinicians is an unawareness of non-stereotypical behaviors and symptom profile presentations of ADHD and BD, both comorbid and singular. Commonly recognized symptoms of similarity between ADHD and BD include talkativeness, increased energy, being easily distracted, as well as emotional dysregulation, impulsivity and irritability, and sleep disturbances (Schiweck et al., 2021). Commonly overlooked similarities between ADHD and BD include the inability to complete necessary tasks for life-functioning and self-care, engaging in once-favored hobbies or activities, and emotional dysregulation. For example, executive dysfunction in ADHD impedes the development of habitual self-care activities such as making meals, eating, paying bills, or making important phone calls, maintaining a sleep routine, with additional difficulties with work-home balance and stability, losing interest in hyper-fixations and enjoyable activities, and proper regulation of emotional responses (Schiweck et al., 2021). In ADHD, this might be attributed to poor character traits. In Bipolar Disorder, these behaviors would indicate clear signs of a depressive episode. The main difference between these symptoms is the cause, consistency, and frequency. Symptoms of ADHD will appear consistent and pervasive, while bipolar symptoms are noticeable changes both episodic and cyclic.

Clinician discomfort with providing the dual diagnosis can be dissipated by removing overlapping symptoms, which have shown a negligible role in accurate disorder associations (Moran et al., 2019). Clinicians should be well-versed in the various presentations of masking, especially in individuals with ADHD utilizing numerous, often harmful, coping mechanisms to overcompensate, counteract, or otherwise manage ADHD symptoms. Screening for ADHD and BSD should be considered a periodic measure throughout developmental stages and life changes, especially in individuals with a family history of ADHD and/or BD. Early intervention methods

should focus on assessing potential risk factors to minimize negative health outcomes as possible. Genetic makeup and family history, perhaps the most impactful risk factors for developing comorbid ADHD and Bipolar Disorder, are non-preventable and cannot be controlled for. However, other risk factors can be mitigated to reduce the negative health risks and outcomes. Recommendations for clinicians include the employment of two diagnostic quality determinants, such as structured or semi-structured interviews, and utilizing a

## **MINIMIZING ADVERSE HEALTH OUTCOMES IN COMORBID ADHD AND BIPOLAR DISORDER**

combination of at least three questionnaires and measures including the Mood Disorder Questionnaire (MDQ), Adult ADHD Self-Report Scale (ASRS), Adult ADHD Quality of Life Scale (AAQoL), DSM-V-TR and ICD-10, the TEMPS-A Cyclothymic Temperament Subscale (CT-TEMPS-A), the Diagnostic Interview for Genetic Studies (DIGS), and the Beck Depression Inventory-II (BDI-II). Screening for either condition singularly often results in underdiagnoses, delayed treatment, and increases in lifetime morbidity and adverse health conditions.

The current approach and available literature leave much to be desired with standard diagnostic procedures and substantial clinical recommendations. Each of the studies selected for this article focused on slightly different areas, making assessing the continuity between them difficult. Most of the studies in this literature review were conducted in the

U.S. and Europe, so trend reports among demographics may not be completely accurate. However, results were consistent within their respective literature. As such, this paper cannot fully explore every risk factor and appropriate intervention, including medication and treatment outcomes or health insurance and access to care. This will need to be evaluated in future research. The screening tools mentioned in this paper were not fully investigated as to the consistency and efficacy of accurate diagnoses, including cultural sensitivity and literacy. Earlier versions of the DSM are known for their lack of non-western cultural considerations; findings and discussions of the influence of cultural values on ADHD and BD comorbidity rates are likely inconsistent (Schiweck et al., 2021).

### **Conclusion**

Individuals with comorbid ADHD and Bipolar Disorder face significant challenges in receiving accurate diagnoses and effective treatments. With the treatment for each disorder being entirely distinct, differential and comorbid diagnoses are paramount to preventing progressively adverse health outcomes, such as comorbid substance use, more frequent and intense bipolar episodes, and increased frequency of suicidal ideation and suicide attempts. Investigation into risk factors associated with the development of the comorbidity and adverse health outcomes clearly illustrates the need for proper risk identification, assessment, and interventions to mitigate the outcomes. ADHD and Bipolar Disorder have remarkably similar genetic influences, symptom profiles and presentation, and morbidity-related outcomes (Moran et al., 2019). Clinicians may find discomfort in providing the dual diagnosis due to the similar behavioral manifestation of symptoms, indicating the need for sufficient education and awareness of the disorders' antagonistic and exacerbating effects, common disorder stereotypes, and symptom masking.

Standardized diagnostic and screening assessments are necessary for early intervention, especially because ADHD and Bipolar Disorder cannot be prevented. However, with early diagnosis and intervention, appropriate treatment, and risk assessment and management, the risk for adverse health outcomes and severe morbidity can be reduced.

# MINIMIZING ADVERSE HEALTH OUTCOMES IN COMORBID ADHD AND BIPOLAR DISORDER

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## MINIMIZING ADVERSE HEALTH OUTCOMES IN COMORBID ADHD AND BIPOLAR DISORDER

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Depressive symptoms and the role of affective temperament in adults with attention-deficit/hyperactivity disorder (ADHD): A comparison with bipolar disorder. *Journal of Affective Disorders*, 221, 304-

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# MINIMIZING ADVERSE HEALTH OUTCOMES IN COMORBID ADHD AND BIPOLAR DISORDER

**Table 1: PICOS Table**

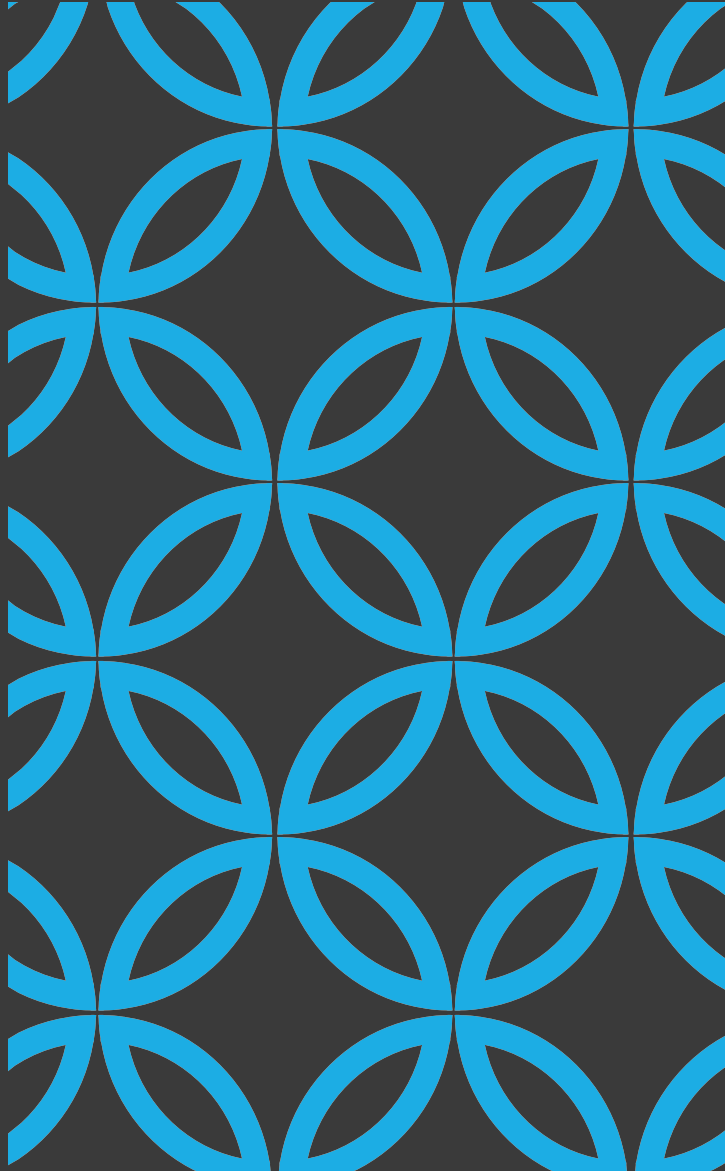
<b>PICOS</b>	<b>Eligible</b>	<b>Ineligible</b>
Population	Participants with ADHD, BSD, or Comorbid ADHD and BD	Participants without ADHD or BSD
Intervention / Assessment	Use of standard clinical tools/measurements	Non-standard questionnaires, sole use of researcher-conducted assessments
Comparison	ADHD vs BD, CT vs BD, cADHD vs aADHD, ADHD and BD vs MDE	N/A
Outcomes	Significant findings related to comorbid ADHD and BD	Findings not significant or related to comorbid ADHD and BD
Study Design	Cross-sectional Case-control Case-study Meta-analysis Reviews and Systemic Reviews Cohort	Clinical trials

## MINIMIZING ADVERSE HEALTH OUTCOMES IN COMORBID ADHD AND BIPOLAR DISORDER

**Table 2: Summary of key findings from selected studies**

Study	Target Population	Intervention	Outcome
Cyclothymic temperament: Associations with ADHD, other psychopathology, and medical morbidity in the general population (Syrstad et al., 2020)	Adults with Cyclothymic Temperament (CT) and related BD and ADHD	CT-TEMPS-A MDQ WURS-25 ASRS	<ul style="list-style-type: none"> <li>• CT associated with increased morbidity, poor health outcomes, MDQ scores, BD, cADHD and aADHD</li> <li>• ADHD associated with increased comorbid BD, with CT</li> </ul>
What do childhood attention deficit/hyperactivity symptoms in depressed adults tell us about the bipolar spectrum? (Purper- Ouakil et al., 2017)	Adults with MDE and history of cADHD	DSM-IV-TR GAF DIGS FIGS HAD WURS-25	<ul style="list-style-type: none"> <li>• Adults with cADHD and MD more likely to have a parent with BSD; at high risk for early BD onset, severe bipolar/depressive episodes, psychotic symptoms, anxiety disorders and increased likelihood of lifetime BD symptoms</li> </ul>
Depressive symptoms and the role of affective temperament in adults with attention-deficit/hyperactivity disorder (ADHD): A comparison with bipolar disorder (Torrente et al., 2017)	Adults with depression and comorbid ADHD or BD	BDI-II TEMPS-A ADHD-RS AAQoL STAI-T BIS-11 FrSBe	<ul style="list-style-type: none"> <li>• Depression levels in ADHD and BD differ only by neurovegetative symptoms (sleep, appetite, sexual desire)</li> <li>• Affective temperament and increased depression and impulsivity in 38% of ADHD sample</li> </ul>
Comorbidity of ADHD and adult bipolar disorder: A systematic review and meta-analysis (Schiweck et al., 2021)	Adults with ADHD and BD	ICD-10 DSM	<ul style="list-style-type: none"> <li>• Lower ADHD and BD comorbidity rates with ICD than DSM</li> <li>• BD onset nearly 4 years earlier with comorbid ADHD</li> </ul>

<p>The relationship between attention deficit hyperactivity disorder, bipolarity, and mixed features in major depressive patients: Evidence from the BRIDGE- II-Mix Study (Vannucchi et al., 2019)</p>	<p>Adults with ADHD and comorbid unipolar or bipolar depression</p>	<p>DSM-IV-TR for MDE GAF DSM-5-MXS RDC-MXS</p>	<ul style="list-style-type: none"><li>• Comorbid aADHD more likely to have unipolar/bipolar depression, multiple, more severe psychiatric comorbidities, MDE with mixed features, and family history of BD, BPD, and eating disorders</li></ul>
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PROCTORED EXAMS VERSUS NON- PROCTORED EXAMS:  
COMPARING STUDENTS' PERFORMANCE IN

# SPANISH CLASSES

By: Maria Teresa de Gordon, Ed.D. and Colleen McDonough, Ph.D.  
Neumann University



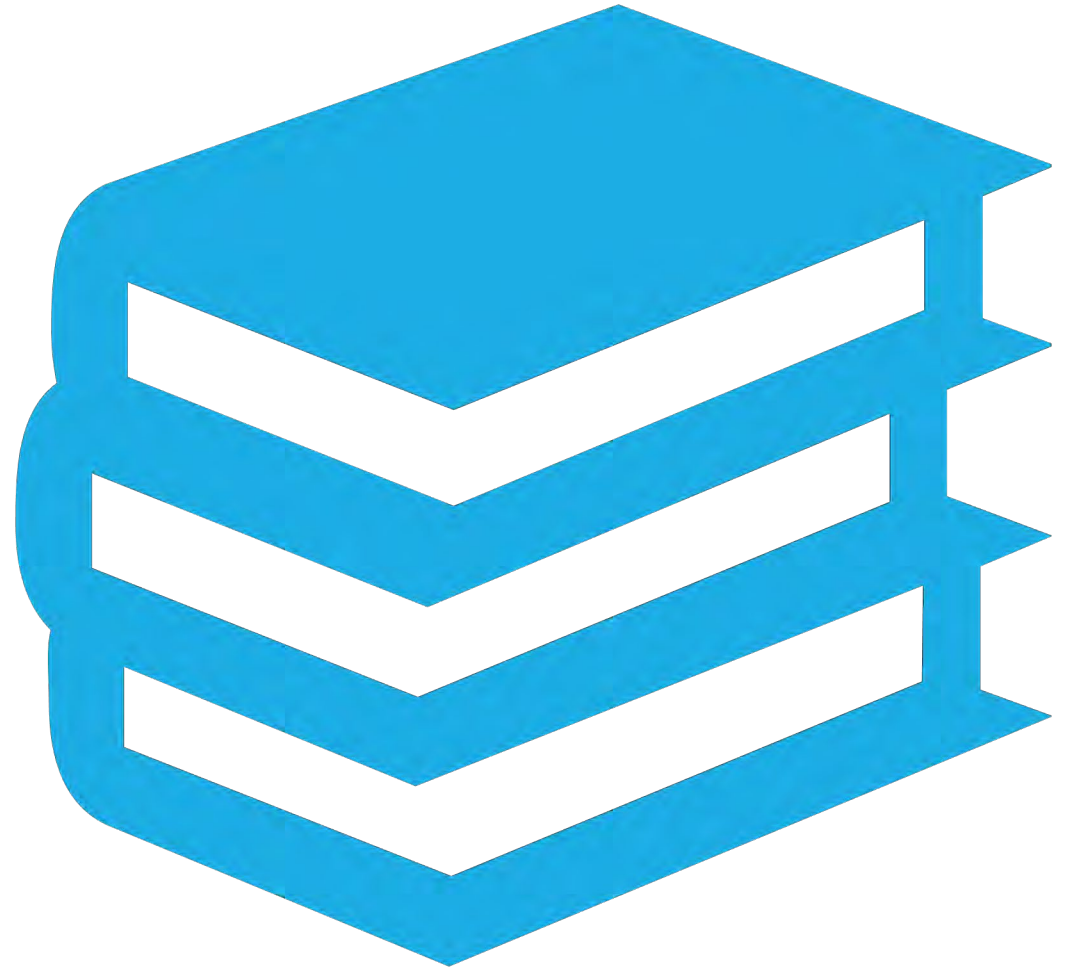


## OVERVIEW

1. Increased interest with distance learning courses
2. Impact of Covid-19
3. Effectiveness of learning online

# PURPOSE

to examine students' performance in different level Spanish classes using proctored exams as compared to their performance on non-proctored exams.







## BACKGROUND

1. Adzima (2020). Online learning has seen a steady growth at the post-secondary level since 2012.
2. Daffin & Jones (2018). Academic rigor in online classes may not be up to the same standards as in-person classes.
3. Oncul (2021). Covid-19 pandemic affected students who had digital access problems; unethical behavior in online exams.

## BACKGROUND (CONTINUED)

4. Pleasants & Pleasants (2022). Students in online environments are more likely to consult online resources when taking an exam.

5. McDonough & Roberts (2014). Maturity level plays a role in academic integrity and performance.



## METHOD

64 participants / Fall 2022

SP 101	SP 102	SP 201
23	34	7

### Procedure

- 10 chapter assessments and a cumulative final
- Half of assessments and the final were proctored in-person but taken online and timed
- Half were online timed but available to students to access within a 24-hour window
- In-person online assessments and online assessments were identical with the same level of difficulty for the appropriate level

## PREDICTIONS

1. Non-proctored exam scores will be higher than proctored exam scores.
2. Performance on the proctored final exam should be similar to performance on the proctored chapter exams.
3. ...And dissimilar on the proctored final exam and non-proctored chapter exams.
4. Overall performance will improve as a function of class level.

# ANALYSIS

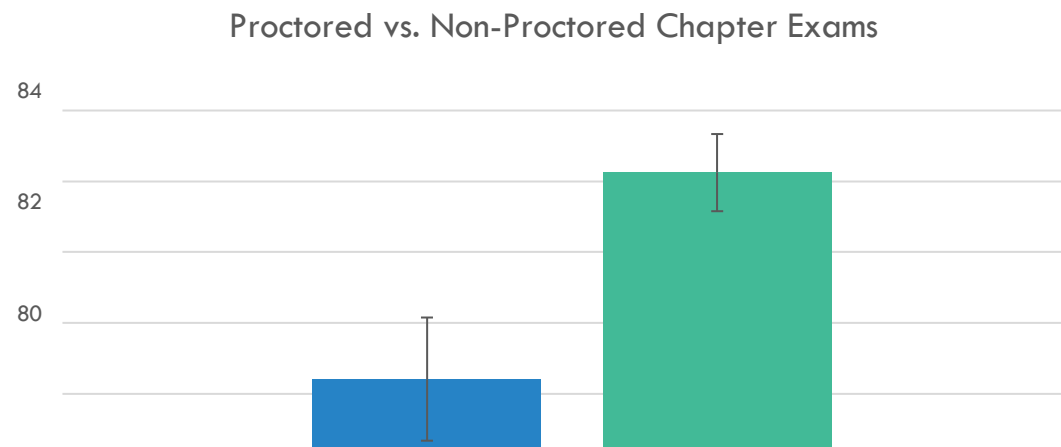
## 2X3 mixed factorial ANOVA

- **Proctoring** (2 levels: proctored and non-proctored) as the repeated measure
- **Class** (3 levels: 101, 102, and 201) as the between subjects' factor

- **Exam average** as the dependent measure.

*Excluding the cumulative final*

- Significant effect of proctoring
- $F(1,61)=12.42, p<.001$





# RESULTS

Non-proctored

78

76

74

72

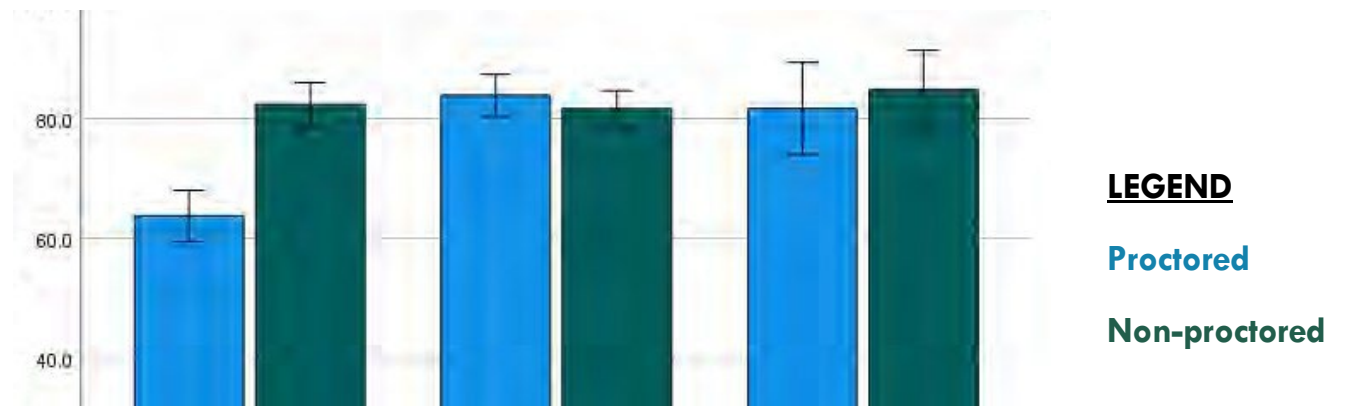
70

1

# RESULTS

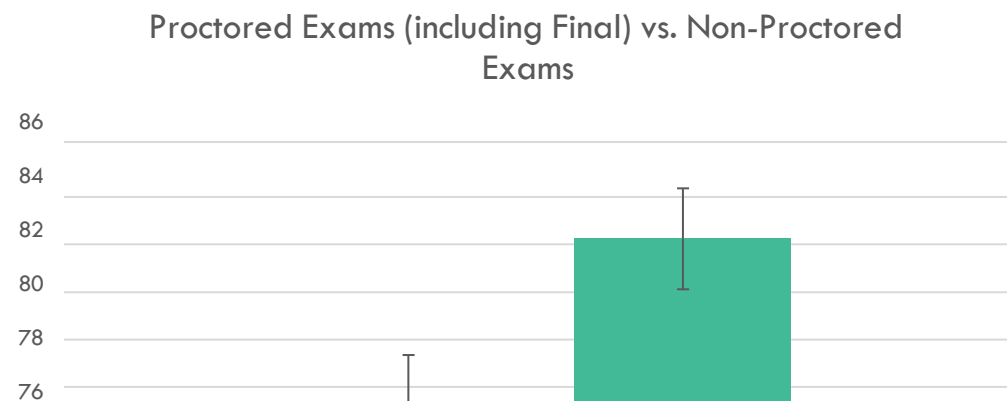
- Significant proctoring by class interaction
- $F(2,61)=21.37, p<.001$ .

Interaction driven by Spanish 101 ( $ps<.01$ ).



*Including the cumulative final*

- Significant effect of proctoring
- $F(1,61)=13.63, p<.001$



# RESULTS

120

1

## LEGEND

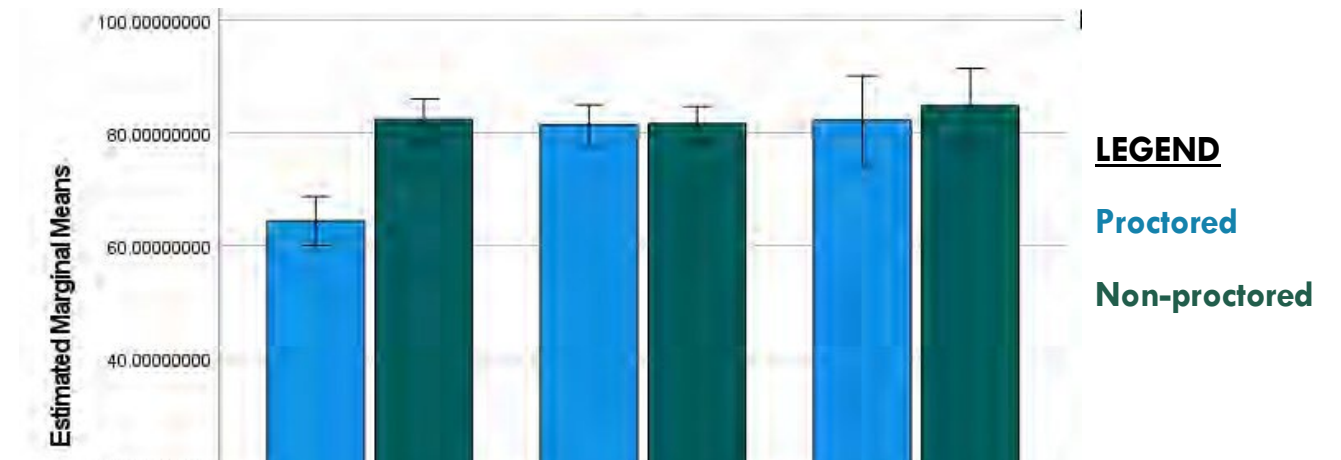
Proctored

Non-proctored

# RESULTS

- Significant proctoring by class interaction
- $F(2,61)=15.11, p<.001$ .

Interaction driven by Spanish 101 ( $ps<.01$ ).



# RESULTS

- Assumption: students approach proctored and non-proctored exams differently (studying, reliance on notes)
- Follow up analysis compared the proctored final to proctored/non-proctored chapter exams as surrogate for variation in exam preparation

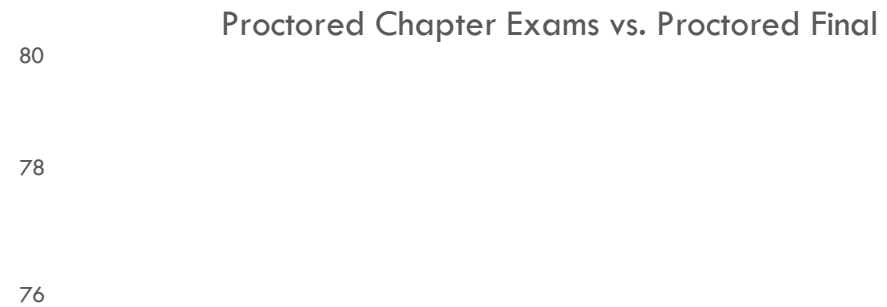
2X3 mixed factorial ANOVA

- **Test type** (2 levels: chapter exams vs. final) as the repeated measure

- **Class** (3 levels: 101, 102, and 201) as the between subjects' factor
- **Exam average** as the dependent measure.

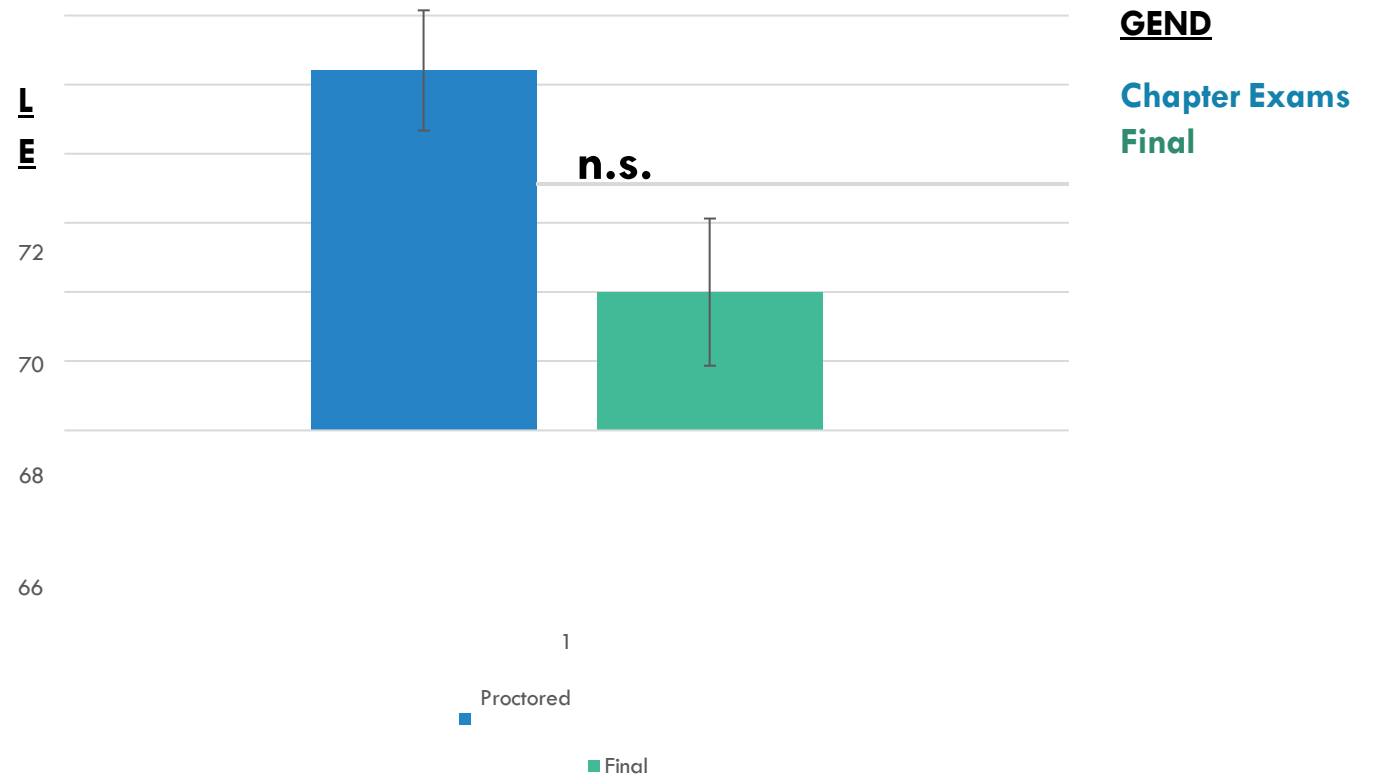
*Proctored chapter exams vs. proctored final exam*

- No effect of test type
- $F(1,61)=1.86, p=.18$





# RESULTS

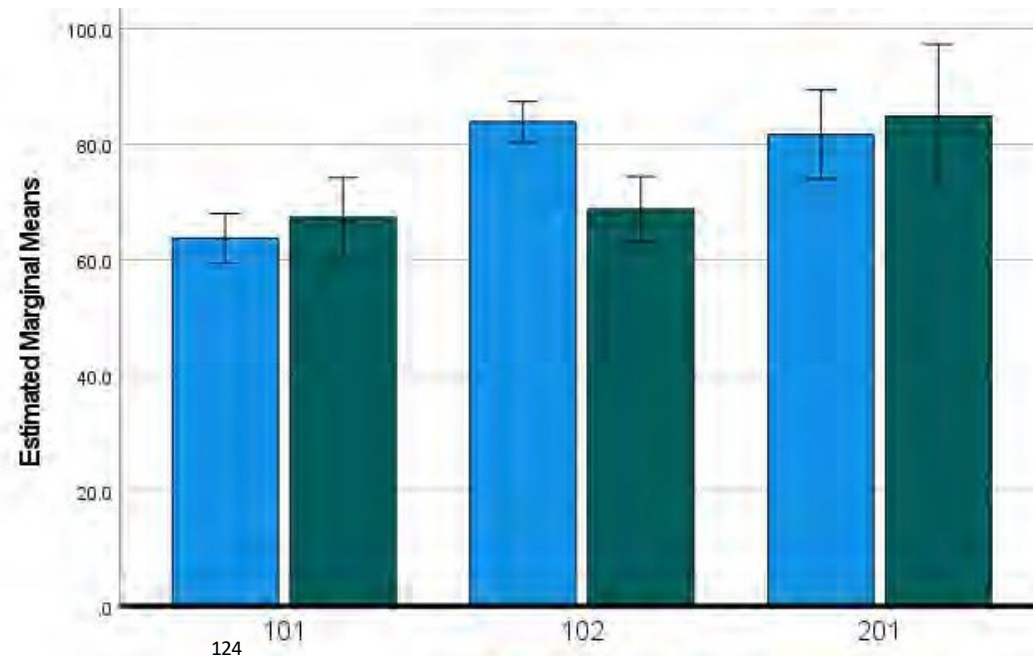


# RESULTS

- Significant test type by class interaction
- $F(2,61)=15.93, p<.001$ .

Interaction driven by Spanish 101 ( $ps<.001$ ).

Clinically non-significant

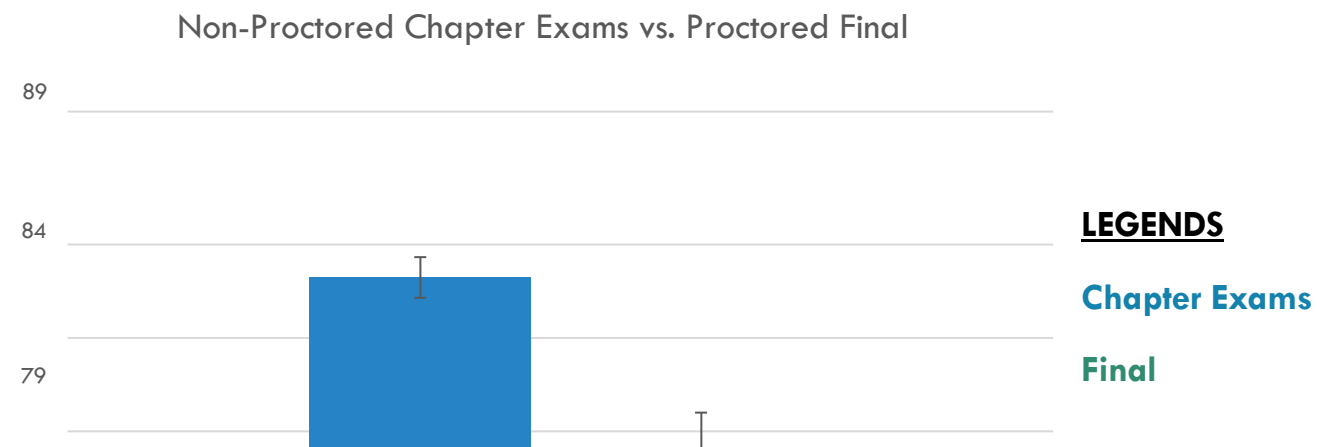


## LEGEND

Chapter Exams  
Final

*Non-Proctored chapter exams vs. proctored final exam*

- Significant effect of test type
- $F(1,61) = 11.03, p = .002$



# RESULTS

74

69

64

1

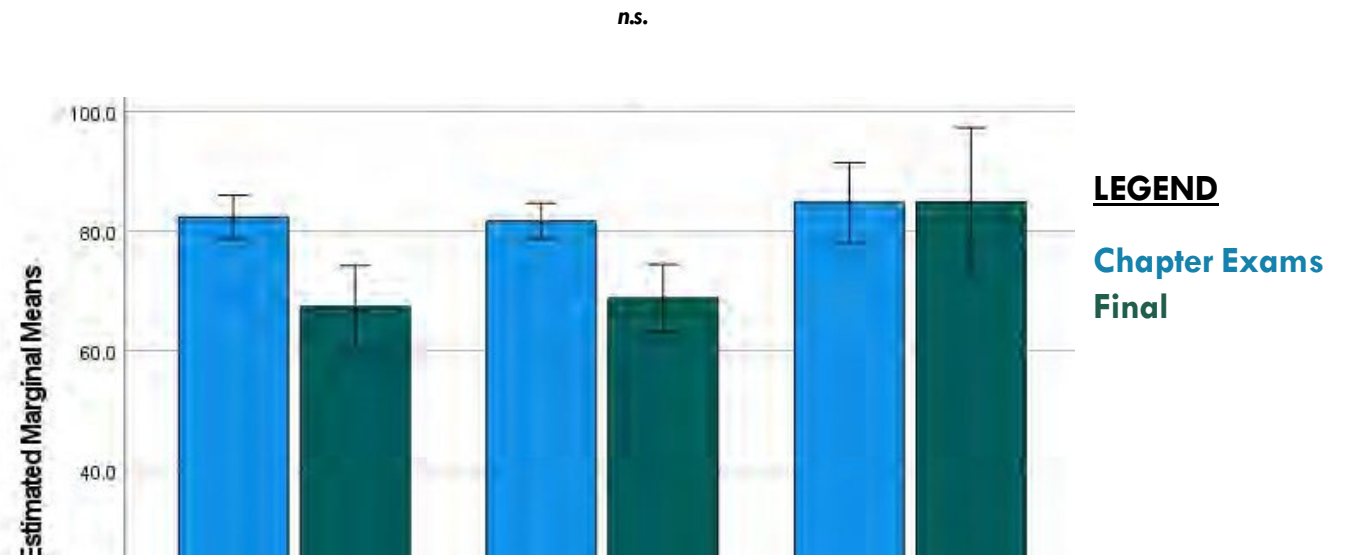
■ Non-Proctored

■ Final

125

# RESULTS

- No test type by class interaction
- $F(2,61)=1.91, p=.16$ .



## DISCUSSION

Our 4 predictions revisited:

1. Non-proctored exam scores will be higher than proctored exam scores. **Partially supported**
2. Performance on the proctored final exam should be similar to performance on the proctored chapter exams. **Supported**
3. ...And dissimilar on the proctored final exam and non-proctored chapter exams. **Partially supported**
4. Overall performance will improve as a function of class level. **Supported**

## DISCUSSION

1. Non-proctored exam scores will be higher than proctored exam scores. **Partially supported**

Students in Spanish 101, only, scored significantly higher on non-proctored exams

...possibly attributable to anxiety, preparation, cheating.

## DISCUSSION

2. Performance on the proctored final exam should be similar to performance on the proctored chapter exams. **Supported**
3. ...And dissimilar on the proctored final exam and non-proctored chapter exams. **Partially supported**

We found no difference on the proctored final vs. proctored chapter exams. But students performed significantly better on non-proctored chapter exams

...suggesting differences in exam preparation for proctored assessments.



## DISCUSSION

4. Overall performance will improve as a function of class level. **Supported**

Spanish 101 students performed significantly worse when exams were proctored. By Spanish 201, student performance on all exams (proctored and non-proctored; chapter and final) was equivalent



## DISCUSSION

### Interpretation/factors underpinning our results

**Exam preparation** – students may be more likely to study, and retain information, when the exam will be proctored.

**Cheating** – students in general may be more likely to use notes and online resources when the exam is not proctored.

**Test Anxiety** – students, particularly in lower-level courses, may have increased test anxiety during proctored exams.

**Maturity** – students may approach upper-level courses with more maturity.

**Confidence** – students may have more confidence in upper-level courses.

## CONCLUSION

1. Our results show that upper-level students perform the same with both in-person assessments and online assessments.
2. Introductory level students perform better in online environments which could be attributed to test anxiety or cheating online.



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Bengtsson, L. (2019). Take-home exams in higher education: a systematic review. *Education Sciences*, 9, 267. DOI:10.3390/educsci9040267

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THANK YOU

GRACIAS





# LITERACY

Writing and Reading from Cuneiform to Today

- PRESENTED
- TO
- NATIONAL SOCIAL SCIENCE ASSOCIATION
  - VIRTUAL CONFERENCE
    - JULY 25, 2023
    - DR. ANDREW J. WASKEY
- PROFESSOR EMERITUS, DALTON STATE COLLEGE
  - DALTON, GEORGIA

LITERACY HAS CHANGED OVER THE CENTURIES  
FROM  
JUST WRITING AND READING  
TO INCLUDE  
ECONOMIC LITERACY  
COMPUTER LITERACY  
MORAL LITERACY  
DIGITAL LITERACY  
MEDIA LITERACY  
RECREATIONAL LITERACY  
AND OTHERS

## LITERACY

- LITERACY IS VARIOUSLY DEFINED
  - BECAUSE
  
- LITERACY IS DIFFICULT TO DEFINE
  - BECAUSE
  
- IT IS MULTI-FACETED LIKE A DIAMOND

*Literacy – Very Multi-faceted*



LITERACY

- **DIAMONDS ARISE FROM  
CARBON**

- **LITERACY ARISES FROM  
LANGUAGE**

## **Diamonds are all carbon**

- Diamonds are carbon atoms arranged into crystals

## **Languages are patterns of sounds**

- Languages are composed of sounds arranged into intelligible patterns due to the acoustics of the sounds
  
- Noise has no intelligible pattern



## DIAMONDS

- Diamonds are pure carbon.
- They develop into a structure that follows “rules.”

## LANGUAGES

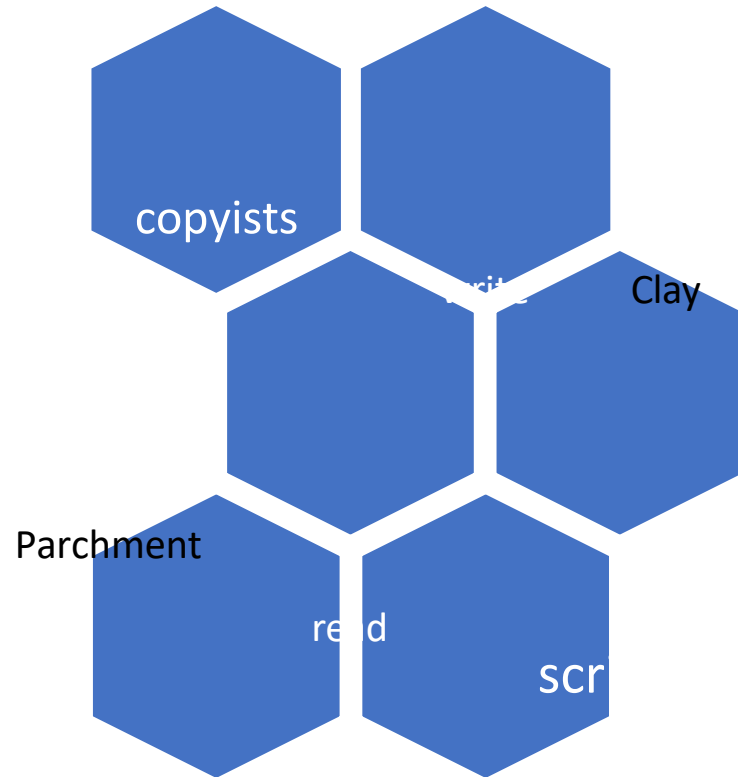
- Languages are pure sounds.
- Human Languages are developed from a subset of all the possible sounds human voices can make.
- They follow rules –
  - Grammar
  - Syntax –etc.

- ARTIFICIAL DIAMONDS FOLLOW THE SAME RULES

- ARTIFICIAL LANGUAGES ALSO FOLLOW THE SAME RULES

- KLINGON
- ELFIN
- COMPUTER LANGUAGES
- SIGN LANGUAGES
- BRAILS

## Literacy facets



## Literacy includes much more

- It is more than using petroglyphs or pictographs
- It is more than using signs
- It is more than using logographs

Papyrus

- LOGOGRAPHS
  - LOGOGRAMS
  - LEXOGRAPHS
  
- EXPRESS WORD OR IDEA
  - AMPERSAND
  - DOLLAR SIGN
  - EURO SIGN
  - RESTROOM GENDER SIGNS



- PICTOGRAPHS
  - SCRATCHED ONTO ROCKS LIKE ROCK ART
  
- PICTOGRAMS
  - PAINTED ONTO ROCK LIKE A PAINTED IMAGE
  
- WADI RUM PETROGLYPHS



# LITERACY—IDEOGRAMS

- IDEOGRAMS
- REPRESENT AN IDEA
- OR
- SOME ACTION



- PICTOGRAMS
- GRAPHIC REPRESENTATION





# READING, 'RITING AND 'RITHMATIC

## CHICKEN

- READING, 'RITING AND 'RITMATIC
- IS IT A CHICKEN AND EGG THING?

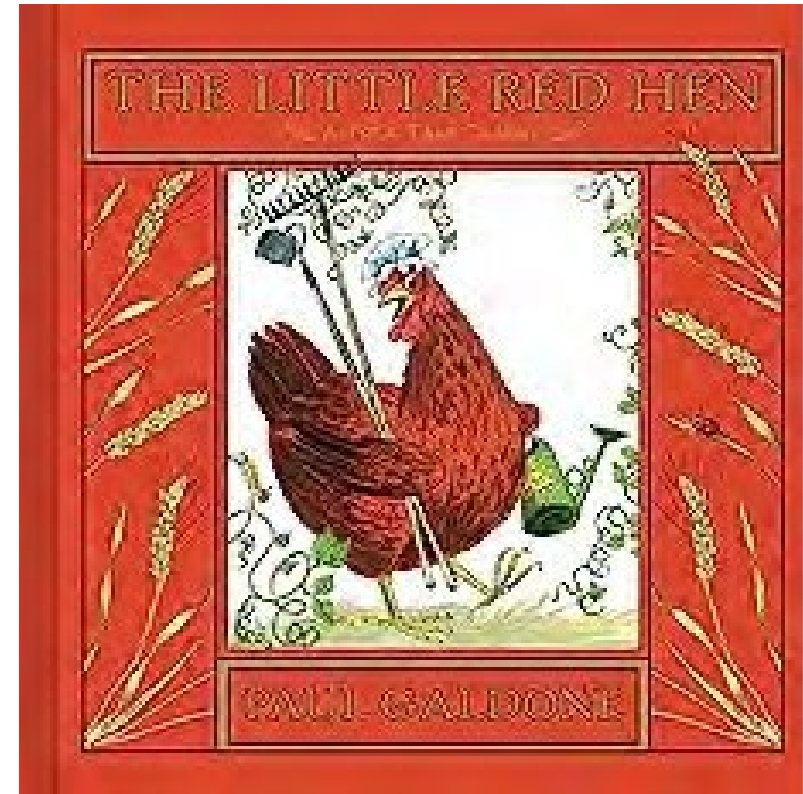
## EGG



# READING, 'RITING AND 'RITHMATIC

## WRITING

- CHICKEN BEFORE EGG
- SAYS I "THE LITTLE RED HEN"
  
- WRITING THE BOOK HAS TO COME BEFORE IT CAN BE READ



DRE

**READING**

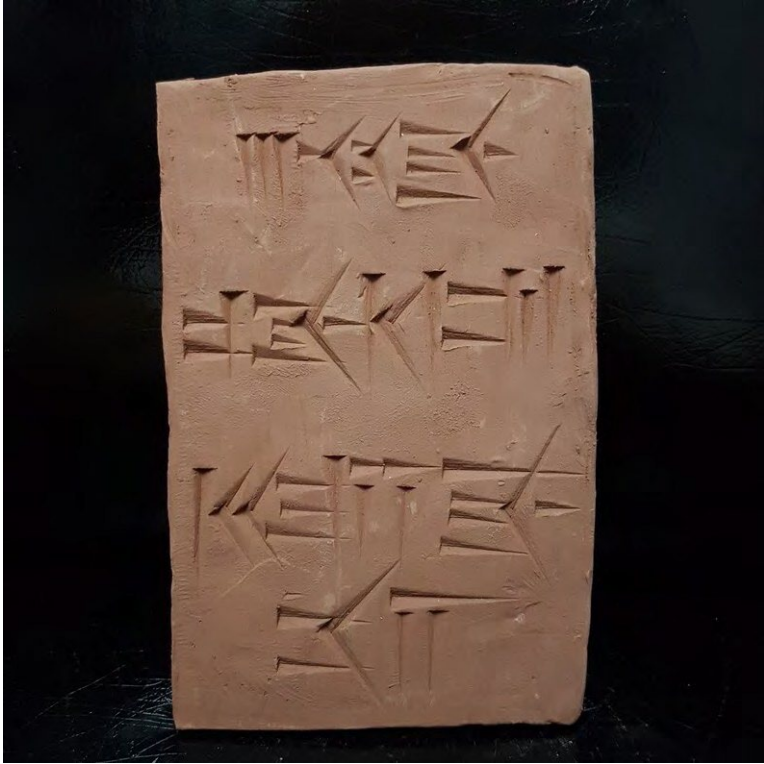
## LITERACY--BEGAN

- THE INVENTION OF WRITING WAS THE BEGINNING OF LITERACY
- IN MESOPOTAMIA THE INVENTION OF CUNEIFORM SEEMS TO HAVE BEGUN WITH MARKS FOR COUNTING INVENTORIES
- SIMILAR TO THE INCA QUIPA STRINGS.

- HERE IN NORTH GEORGIA IT WAS WITH THE USE OF NORTH GEORGIA CALCULATORS—FINGERS STUCK THROUGH HOLES IN A WOODEN BLOCK

# LITERACY BEGINS

## CUNEIFORM TABLET



## INCA QUIPU



### **CUNEIFORM TABLES**

- FOR AT LEAST THE FIRST 100 OR MORE YEARS (3200 B. C.)
- CUNEIFORM IS USED FOR BUSINESS RECORDS.

### **CUNEIFORM TABLETS**

- LITERATURE WRITTEN ON CUNEIFORM TABLETS
- DEVELOPED AT LEAST 100 YEARS LATER.

- NO MATTER THE WRITING SYSTEM
- HOW QUICKLY DID IT SPREAD?
- HOW MANY PEOPLE WERE FLUENT WITH THE ABILITY TO READ AND WRITE?



- HOW MANY WERE LITERATE OR FLUENT?

## WRITING SYSTEMS

- CUNEIFORM TABLETS
- PAPYRUS SCROLLS
- CHINESE BAMBOO SCROLLS
- INDUS RIVER SCRIPTS
- INDIAN PALM LEAF BOOKS
- MAYA SCROLLS
- PARCHMENT

## CUNEIFORM TABLETS

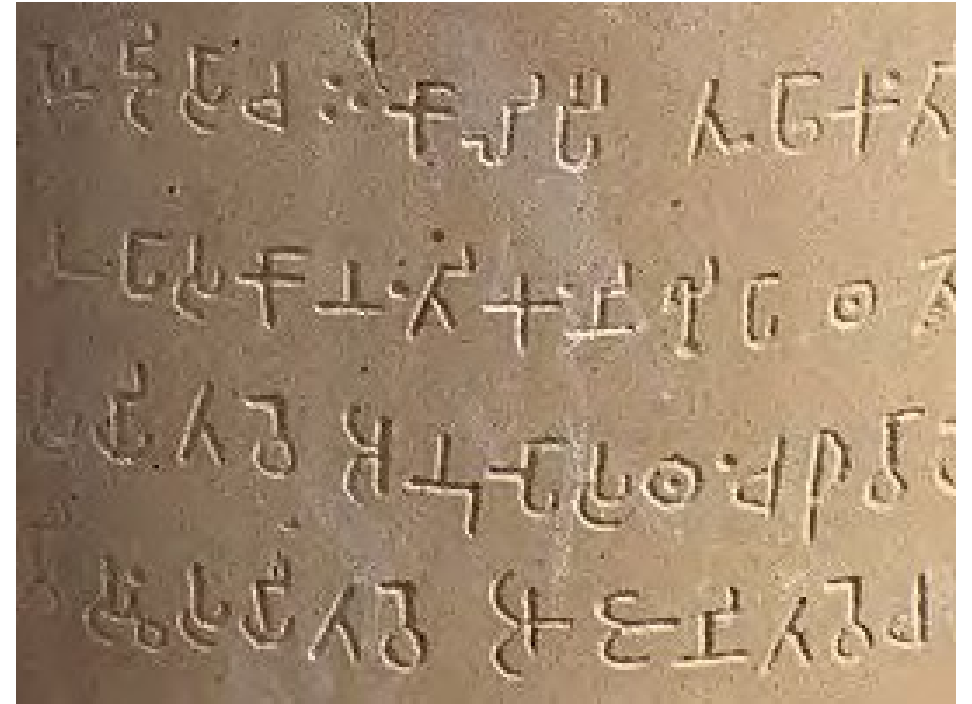


## LITERACY BEGAN

- AMONG THE ANCIENT SCRIPTS
- IS THE INDUS RIVER HARAPPAN CIVILIZATION?
- THE INDUS RIVER “SCRIPTS” HAVE YET TO BE DECIPHERED.
- THEY MAY BE PICTOGRAPHS RATHER THAN TRUE SCRIPTS



- Brahmi
- Sanskrit
- Devanagari
- Nagari
- Gupta

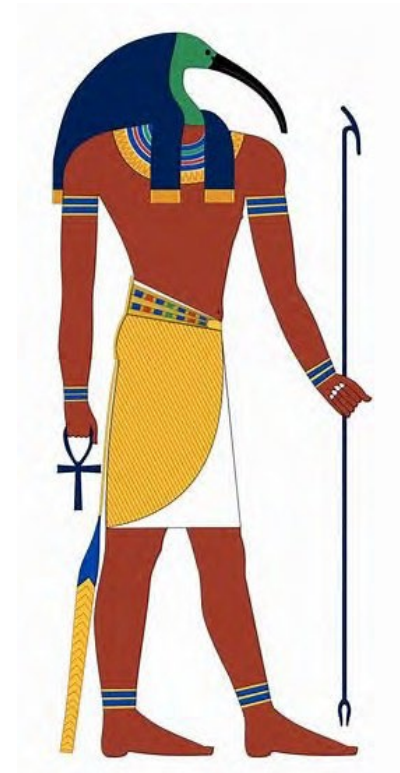


LITERACY—gods OF WRITING

## WRITING FROM DIVINE

- ASSYRIAN -- NABU
- BABYLONIAN -- NABU
- EGYPTIAN--TOTH

## TOTH EGYPTIAN god OF WRITING



LITERACY—gods OF WRITING

- INDIA —gods of WRITING
- BRAMIN—god
- SARASWATI —goddess
- GANESHA —SCRIBE-WROTE  
DOWN THE **MAHABHARATA**



## LITERACY -- INSCRIPTIONS

- INSCRIPTIONS ARE WRITING ON ROCKS
- CARVED ON ROCKS—SOME OF ASOKAS' MONUMENTS
- CARVED ON STELLE
- CARVED ON TOMBS
- CARVED ON MONUMENTAL ARCHITECTURE



- ROSETTA STONE

1799 NAPOLEON'S MEN FIND IT

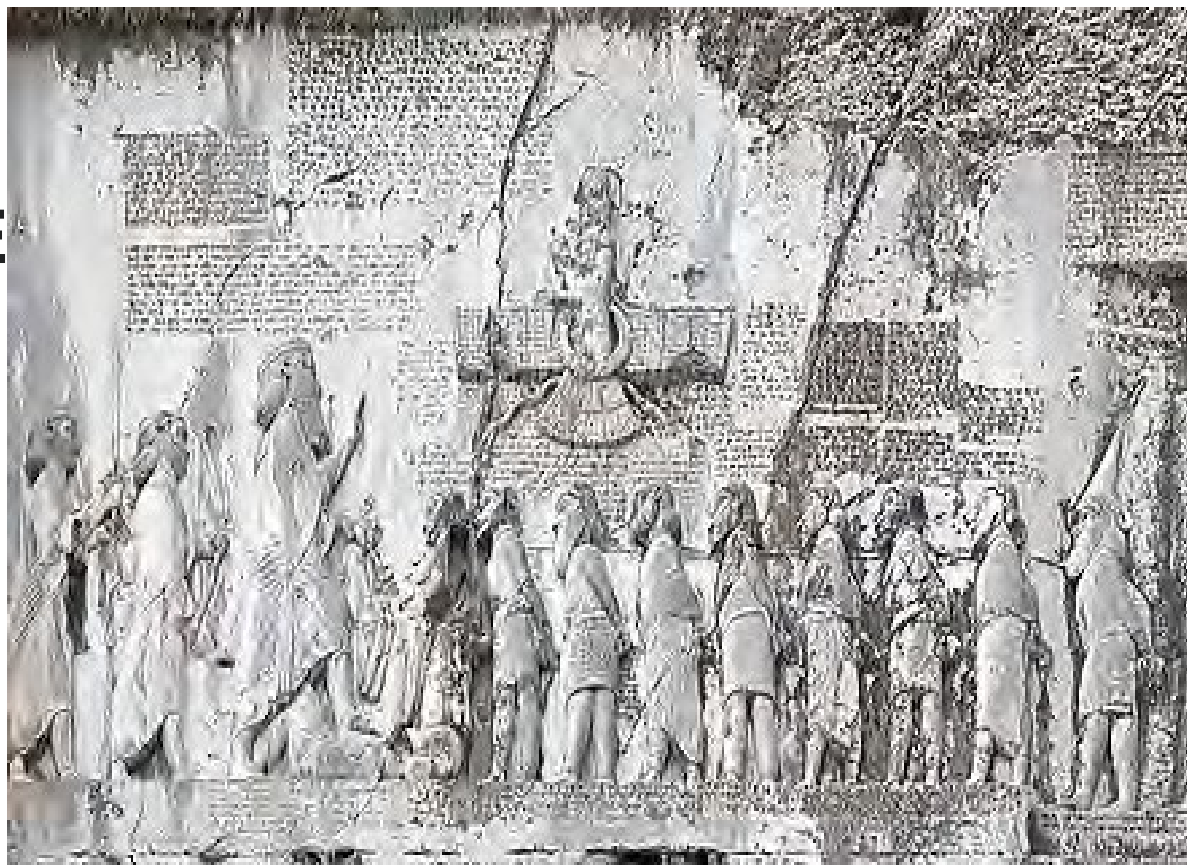
BRITISH TAKE IT TO LONDON

- OPENED THE DOOR TO READING  
EGYPTIAN HIEROGRAPHS





- **Behistun Inscription**
- **IN THREE LANGUAGES  
LIKE THE ROSETTA STONE**
- **OLD PERSIAN**
- **ELIMITE**
- **AKKADIAN**
- **OPENED THE DOOR TO  
READING CUNEIFORM**



## LITERACY -- EPITATHS

- A SHORT STATEMENT HONORING THE DEAD
- USUALLY FOUND ON MONUMENTS AT GRAVE SITES
- MAY BE ON MEMORIAL WALLS LIKE THE VIETNAM MEMORIAL



- EPIGRAMS—SHORT, PITHY STATEMENTS
- INTERESTING
- MEMORABLE
- SOMETIMES SARCASTIC
- DEVELOPED BY GREEK
- ADOPTED BY ROMANS

- ON A TOMBSTONE
  - ON THE
  - APPIAN WAY
- DO NOT LAUGH
- FOR WHAT I AM
  - YOU
  - SHALL BE

ANCIENT CHINESE WRITING

- CHINESE WRITING WENT FROM PICTOGRAPHS TO A SYSTEM OF SYMBOLS FOR MEANINGS
- LOGOGRAPHIC



妙法蓮華經常不輕菩薩品第十  
七  
余時佛告得大勢甚深摩訶薩法今當知若  
比丘比丘居優婆塞優婆塞持法華經者若  
有惡口罵詈誶謗雜大罪報如前所說其所  
得功德如向所說眼耳鼻舌身意清淨得大  
勢乃往古昔過無量無邊不可思議阿僧祇  
劫有佛名威音王如來應供正遍知明行足  
善逝世間稱無上士調御丈夫天人師佛世  
尊劫名離棄國名大成其威音王佛於彼世  
中為天人阿彌羅說法為末聲聞者說應四  
諸法度生若病死究竟涅槃為末辟支佛者  
說應十二因緣法為諸菩薩目阿耨多羅三  
藐三菩提說應六波羅蜜法究竟佛慧得大  
勢是威音王佛壽四千萬億那由他恆河沙  
劫正法住世劫數如一闍浮提微塵像法住  
世劫數如四天下微塵其佛號蓋衆生已然  
後滅度正法像法滅盡之後於此國土復有

## ANCIENT CHINESE WRITING

- OFTEN WRITTEN ON SCROLLS OF SILK
  - OR
- WOODEN SLATS
- BAMBOO
  - EVENTUALLY ON
- PAPER
- To see Chinese scrolls is to instantly understand up/down

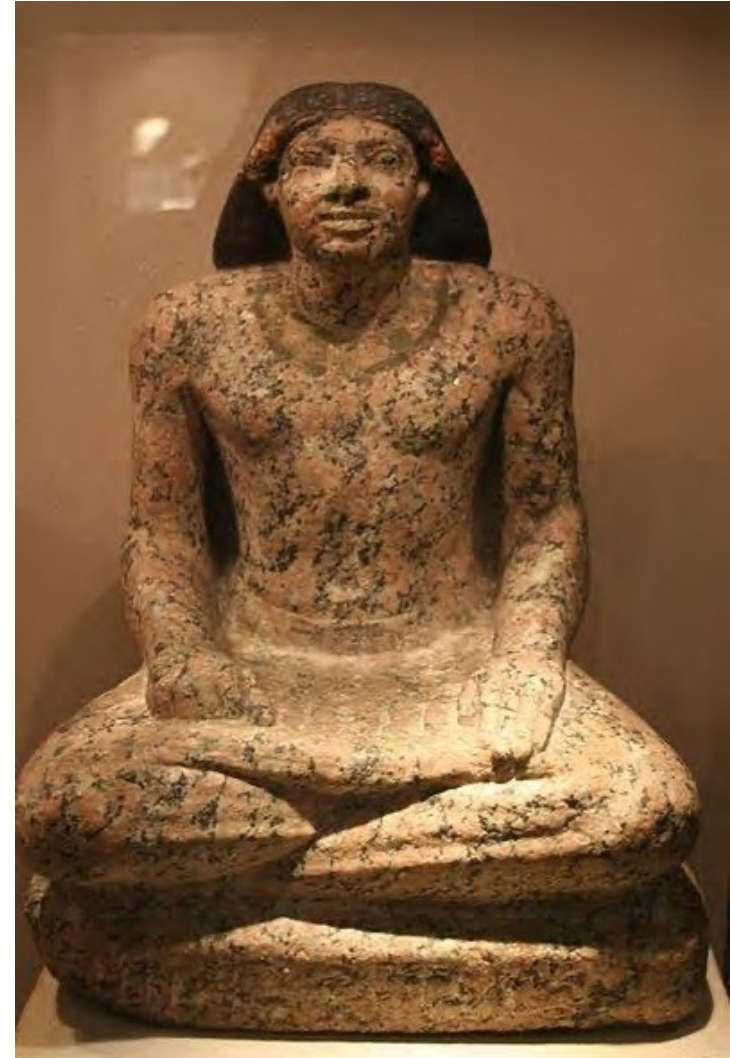


- THE ANCIENT EGYPTIANS WROTE IN HIEROGLYPHS



## LITERACY – SCRIBES AND COPISTS

- WRITING REQUIRES WRITERS
- AT FIRST THE WRITERS WERE SCRIBES
- WROTE ORIGINAL WORKS



- ASOKA, EMPEROR OF THE MAURYAN EMPIRE, BECAME A BUDDHIST AFTER THE KALINGA WAR.
- HAVING GAINED CONTROL OF MOST OF INDIA HE ERECTED PILLARS WITH LIONS ON TOP.
- THESE WERE INSCRIBED WITH DHARMA OR BUDDHIST INSTRUCTIONS
- LIONS ARE STILL A SYMBOL OF POWER





INDIAN LITERACY

2



1. ॐ नमो भगवते वासुदेवाय  
 2. ॐ नमो भगवते वासुदेवाय  
 3. ॐ नमो भगवते वासुदेवाय  
 4. ॐ नमो भगवते वासुदेवाय  
 5. ॐ नमो भगवते वासुदेवाय  
 6. ॐ नमो भगवते वासुदेवाय  
 7. ॐ नमो भगवते वासुदेवाय  
 8. ॐ नमो भगवते वासुदेवाय  
 9. ॐ नमो भगवते वासुदेवाय  
 10. ॐ नमो भगवते वासुदेवाय

4

6

8

10

4

6

8

10

- THE ASHOKA PILLARS AND ROCKS WERE INSCRIBED IN PAKRIT LANGUAGE IN BRAHMI SCRIPT
- AFTER ASHOKA DIED THESE WERE ALL FORGOTTEN UNTIL FOUND AND REVIVED BY THE BRITISH IN THE LATE 1700S.
- THE WHEEL ON TOP MAY SYMBOLIZE A BUDDHIST WHEEL OR A UNIVERSALIST POWER CLAIM



## INDIAN LITERACY

- INDIA'S SOIL IS ACIDIC.
- UNLIKE EGYPT BONES AND PALM BOOK WRITING DO NOT LAST VERY LONG.
- RESULT IS THAT INDIA SEEMS MORE ILLITERATE THAN IT IS.
- OR IT HAS DEPENDED UPON ORAL



## LITERACY -- ANCIENT EGYPTIAN

- THE EGYPTIAN SCRIBES EVENTUALLY DEVELOPED A SHORT HAND CALLED “DEMOTIC”.
- THIS SCRIPT WAS USED BY PHONECIAN MERCHANTS TO DEVELOP THE ALPHABET
  - GREEK
  - ROMAN
  - HEBREW



- WHO PRODUCED THE LITERATURE?

- WHAT INTENDED AUDIENCE

- WHEN

- WHAT PURPOSE

- EVENTUALLY BECAME

- VERY LITERATE PEOPLE

## LITERACY – SCRIBES AND COPISTS

- SCRIBES WRITE
- WHILE COPISTS PRESERVE
- BOOK OF ISAIAH ORIGINATED IN THE 700s B.C.
- GREAT ISAIAH SCROLL FROM THE DEAD SEA SCROLLS DATES TO AT MOST 200s B.C.
- THE SCRIPT IS NOT FROM THE 700s SO PRESERVED FOR 500 YEARS BY COPISTS





## **HEBREW SCRIPTS**

- PALEOHEBREW SCRIPTS
- OTHER HEBREW SCRIPTS
- TODAY HEBREW IS WRITTEN IN A BLOCK SCRIPT WITH LETTERS THAT LOOK LIKE THE LETTER ON BLOCKS USED BY CHILDREN

## **DEAD SEA SCROLLS**

- THE GREAT ISAIAH SCROLL WAS WRITTEN IN PALEOHEBREW
- OTHER HEBREW SCRIPTS FOLLOWED

- BIBLICAL LITERACY AS FAR AS IS KNOWN BEGAN WITH ORALITY.
- STORIES, SONGS, PSALMS AND MORE WERE PASSED DOWN AS TRADITIONS.
- ALEF BET WRITING REDUCES SOUNDS TO SYMBOLS FOR THOSE SOUNDS
- WHEN ORGANIZED INTO AN “ALPHABET” (abcdefghijkl...) they are easier to remember
- the organizing pattern like the Periodic Table.

## **PHONETIC SYSTEMS**

- PHONETIC WRITING SYSTEMS ORGANIZE THE SOUNDS OF WORDS INTO A VOCABULARY
- WHICH BECOMES A GRAMMAR AND SYNTACTICAL SYSTEM?
  
- WHICH BECOMES A COMPLEX

## **COMMUNICATIONS SYSTEM**

## **PERIODIC TABLE**

- THE PERIODIC TABLE ORGANIZES THE ATOMS OF THE COSMOS FROM SIMPLE TO COMPLEX
  
- IT FORMS A GRAMMA OF A VERY COMPLEX SYSTEM OF ELEMENTS

- BIBLICAL LITERACY IS SUBJECTIVE WITH COMPETING CLAIMS
- THE BIBLE IS ITSELF A WITNESS TO HEBREW AND HELLENISTIC LITERACY
- TWO SOURCES
  - BIBLICAL EVIDENCE
  - EPIGRAPHIC EVIDENCE

- BIBLICAL EVIDENCES INCLUDE

- MOSES  
WRITING TEN  
COMMANDMENTS

- BOOK OF REMEMBRANCE  
AGAINST AMALEKITES

- MAN MUST WRITE A BILL OF  
DIVORCE AGAINST WIFE

- EPIGRAPHIC EVIDENCE
- BY THE TIME OF THE HEBREW ALPHABET WRITING WAS 2,000 YEARS OLD
- HEBREW INSCRIPTIONS ON OSTRACON, CLAY BULLAE (SEALS) EXIST FROM AROUND 1,000 B.C.



- HEBREW WRITING
- FLOURISHES FROM 700S B.C.
- AT THE TIME OF THE ASSYRIAN DESTRUCTION OF THE KINGDOM OF ISRAEL
- WRITTEN IN THIS AGE WERE
- THE DECALOGUE
- SOME OF THE PROPHETIC WORKS
- LIKE ISAIAH AND THEN JEREMIAH



## **CLANS OF SCRIBES**

- TIRATHITES
- SHIMEATHITES
- SUCATHITES

- LIKELY OTHERS EXISTED TOO

## LIVED AT VILLAGES

- JABEZ

- HAMMATH

- I CHRONICLES 2:55

## **CHILDHOOD EDUCATION**

- MOST EDUCATION WAS IN THE FAMILY
- FATHER WAS RESPONSIBLE FOR TEACHING CHILDREN THE FAITH
- AND THE SON A TRADE

## **EDUCATIONAL GOALS**

- TRADITION THE FAITH
- MORAL FORMATION
  - THE WISDOM LITERATURE
  - PROVERBS MAY HAVE BEEN THE CURRICULUM FOR STUDENTS WHO WOULD OCCUPY PLACES IN KING SOLOMON'S COURT

## ROYAL SCRIBES

- JEREMIAH 8:1
- The LORD said to me, “Take a large scroll and write on it with an ordinary pen: Maher-Shalal-Hash-Baz.”

- JEREMIAH 8:8 “LYING PEN OF THE SCRIBES

## **PALACE SCRIBAL ROOM**

JEREMIAH REFERS TO A ROOM  
FOR SCRIBES IN THE PALACE

SCRIBES READY TO WRITE AND  
SEND MESSAGES FOR THE  
KING AND COURT

- THE SPREAD OF LITERACY IN ANCIENT ISRAEL WAS FOSTERED BY THE AVAILABILITY AND USE OF AN ALPHABET
- ABECEDARY LISTS EXISTED



- PRE-EXILIC
  - PROPHETIC SCHOOLS
- POST EXILIC
  - SCHOOLS ARE NOT MENTIONED UNTIL SIRIAC
  - STUDENTS WOULD FOLLOW A RABBI
- THE LAW AND THE PROPHETS ARE CANONICAL BY 200 B.C.
- DEAD SEA SCROLLS INCLUDE A LARGE NUMBER OF NON-CANONICAL WORKS
- HEBREW WISDOM LITERATURE WAS SIMILAR TO OTHER WISDOM LITERATURES
- ALL PART OF THE INTELLECTUAL ADVENTURE OF ANCIENT MAN

## LITERACY--BIBLICAL

- AFTER THE DIASPORA OF 70 A.D.
- RABINNIC JUDAISM DEVELOPED
- VERY LITERATE AND EDUCATIONS ORIENTED





- SCRIPTURES ARE READ FROM SCROLLS RATHER THAN PRINTED TEXTS

## CHRISTIAN EXTREME LITERACY

- CHRISTIANITY IS LIKELY THE MOST LITERATE OF RELIGIONS
- BEGAN WITH THE “SCRIPTURES” IN
  - HEBREW,
  - ARAMAIC AND
  - GREEK SEPTUAGINT

## CODEX SINAITICUS



## PERIOD OF ORALITY

- KERYGMA (PREACHING)
- DIDICHAE (TEACHING)
- LETTERS OF PAUL AND TO THE SEVEN CHURCHES READ ALOUD TO THE CHURCH

- CONGREGATIONS TODAY HEAR THE SCRIPTURE READ ALOUD



**SYNTAX OF 12 APOSTLES**

## CHRISTIAN LITERATURE BEGINS

- 13 LETTERS OF PAUL
- 4 GOSPELS
- ACTS (ACTUALLY A LETTER)
- 7 GENERAL LETTERS
- LETTER TO THE HEBREWS
- 7 LETTERS TO SEVEN CHURCHES  
IN REVELATION

## JOHN THE ELDER ON ISLE OF PATMOS



## CHRISTIAN LITERATURE GREW

- COPIES OF NEW TESTAMENT BOOKS
- HYMNS
- LETTERS
- APOLOGETIC WORKS
- AND MANY MORE

## JUSTIN MARTYR, APOLOGIST, MARTYR



- CHRISTIANITY IS A VERY LITERATE RELIGION
- BECAUSE IT SEEKS
- ORTHODOXY ABOUT
- WHO JESUS IS (BEING)
- WHAT JESUS HAS DONE (WORK)
- PLUS, THE TRINITY, MUSIC, CHURCH, MORALS, AND MORE



## LITERACY -- CHRISTIAN

- CHRISTIANITY FROM THE BEGINNING
  - PRODUCED An EVER GROWING
  - MOUNTAIN RANGE
  - OF CHRISTIAN LITERATURE
  - CONTINUES TO THIS DAY
- CHRISTIAN LITERACY WAS LIMITED
  - BECAUSE
  - CONVERTS WERE FROM THE MARGINALIZED
  - AS THE CHURCH GREW THE LITERACY RATE GREW



- CHRISTIAN LIBRARIES
- IN CHURCHES
- IN HOMES
- IN LIBRARIES SOON DEVELOPED
- CAESAREA MARITIMA
- ROME

DURING PERSECUTION

PERSECUTORS WOULD DEMAND  
THE BOOKS OF THE CHRISTIANS  
FOR BURNING

CHRISTIANS OFTEN GAVE THEM  
THE SECONDARY LITERATURE AND  
NOT THE SCRIPTURES

## CAESAREA MARITIMA

- EVENTUALLY HELD 30,000 BOOKS
- FAMOUS CHURCH FATHERS LABORED THERE
  - ORIGIN
  - CLEMENT OF ALEXANDRIA
  - EUSEBIUS

## ROMAN AQUADUCT



## CHRISTIAN AUTHORS

- USED LIBRARIES AT
- ALEXANDRIA
- PERGAMUM
- HELIOPOLIS
- VATICAN LIBRARY

## VATICAN LIBRARY



- GREEK ALPHABET

- PRESERVED IN NEW TESTAMENT
- MOST MINISTERS CAN READ A LITTLE GREEK AND/OR HEBREW

- CYRILLIC—INVENTED TO WRITE SALVONIC
- ARMENIAN—INVENTED IN 450

- LATIN ALPHABET

USED BY MOST EUROPEAN LANGUAGES

USED IN A MODERATED FORM IN ASIAN LANGUAGES

- CHRISTIANITY
- OFTEN CREATED LITERACY BY DEVELOPING ALPHABETS FOR
- TRANSLATING THE BIBLE INTO LANGUAGES WITHOUT WRITING
- PROCESS HAS BEEN ONGOING
- WYCLIFE AND TYNDALE TRANSLATORS
- ORALITY VIA BLOGS AND TRANS WORLD RADIO ETC.

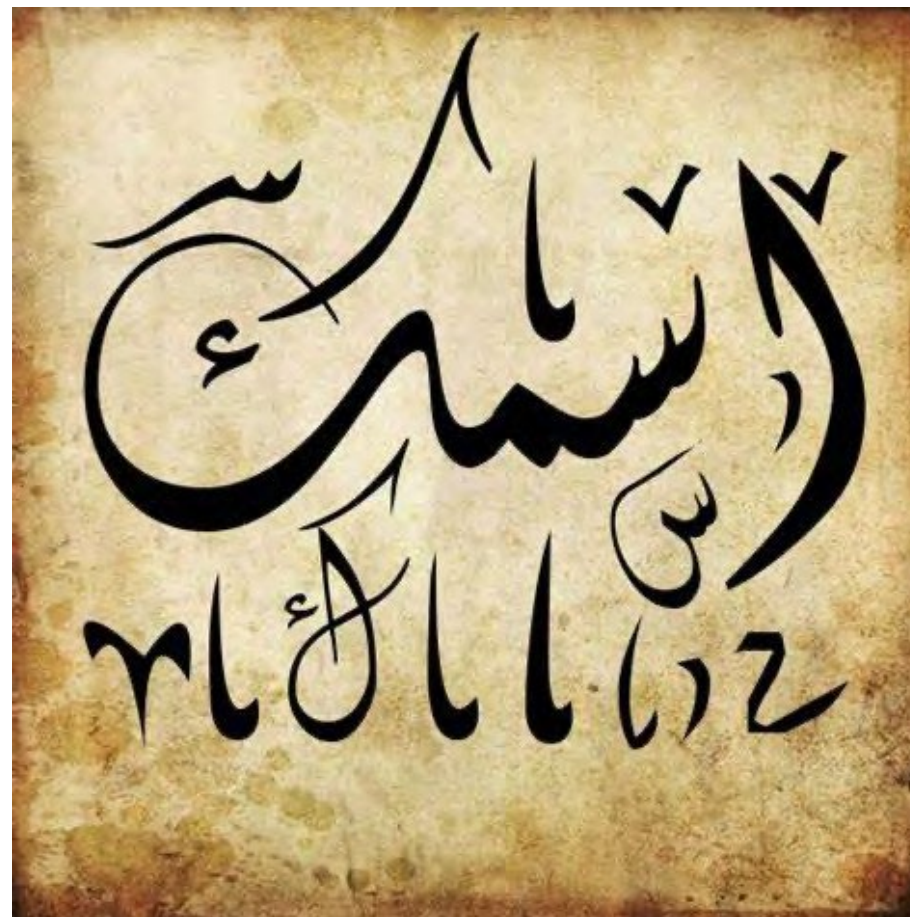
- CHRISTIAN EDUCATION HAS VAST HISTORY
  - CURRICULUM USUALLY INCLUDED
    - SCRIPTURES
    - GRECO-ROMAN LITERATURE
    - GRECO-ROMAN RHETORIC
- THE NON-CHRISTIAN LITERATURE HAS BEEN CONTESTED SINCE THE BEGINNING
- IN GENERAL, NON-CHRISTIAN LITERATURE INCLUSION HAS WON

- ARABIC ALPHABET
- AROSE FROM THE SAME SOURCE AS HEBREW
- PRE-ISLAMIC VERSIONS WERE USED
- NABATEAN SCRIPTS
- OTHER SEMITIC LANGUAGE SCRIPTS

ح	ج	ث	ت	ب	ا
ha	jim	tha	ta	ba	alif
س	ز	ر	ذ	د	خ
sin	za	ra	zal	dal	kha
ع	ظ	ط	ض	ص	ش
'ain	za	ta	dhad	sad	shin
م	ل	ك	ق	ف	غ
mim	lam	kaf	qaf	fa	ghain
	ي	ء	ه	و	ن
	ya	hamzah	ha	waw	nun

## LITERACY – ARAB CALIGRAPHY

- ISLAM FORBIDS IMAGES
- ISLAMIC ART USED
  - CALLIGRAPHY
  - GEOMETRIC DESIGNS
  - PLANTS





## LITERACY—MEDIEVAL DECLINE

- BARBARIAN INVASIONS ENDING THE ROMAN EMPIRE
- WAVE AFTER TRIBAL WAVE CONTINUED FOR CENTURIES

- LITERACY DECLINED

PAGANS ARE CONVERTED



## LITERACY - MEDIEVAL EARLY

- **DARK AGES** IS REALLY A MISNOMER FOR EARLY MEDIEVAL
- BARBARIANS WERE CONVERTED TO CHRISTIANITY
- MONASTERIES BUILT AND MANNED BY MONKS PRESERVING OLD MANUSCRIPTS
- BY COPYING
- AND WRITING NEW BOOKS

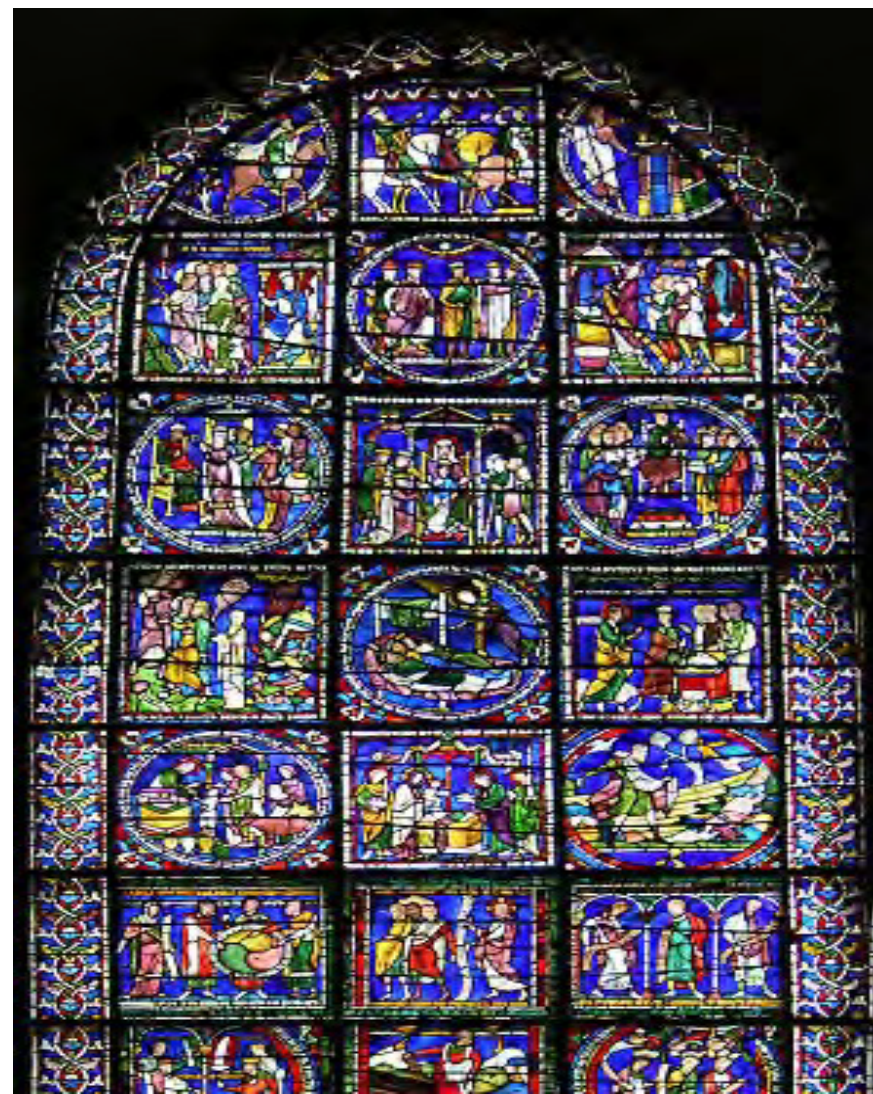


## LITERACY—MEDIEVAL HIGH

- THE CATHEDRALS WERE BUILT WITH BIBLE STORIES CARVED IN STONE
- POOR MAN'S BIBLE IN STONE ART WORKS
- CHANCEL PLAYS ARISE SETTING THE STAGE FOR MODERN DRAMA



- POOR MAN'S BIBLE
- DRAMATIC ART OF
- BIBLICAL PERSONS
- BIBLICAL STORIES
- IN STAINED GLASS



LITERACY -- MODERN

- POOR MAN'S BIBLE CONTINUES TO THIS DAY
- ANTONIN GAUDI'S
- SAGRADA FAMILIA



- THE EXTERIOR IS COVERED IN  
STONE BIBLICAL ART

## LITERACY -- MEDIEVAL

- SCRIBES
- COPYISTS
- CODICES
- SCRIPTORIA
- CATHEDRAL SCHOOLS ARISE
- UNIVERSITIES
  - PARIS
  - PADUA
  - OXFORD
- BOOKS ARE EXPENSIVE
- LECTIO WHERE THE TEACHER BORROWS THE BOOK OF A RICH STUDENT
- READS A PASSAGE (LECTIO)
- THEN RETURNS BOOK AND LECTURES TO STUDENTS WHO ARE MOSTLY ILLERATE
- **POOR PROFESSOR'S LITERACY**

## TOLEDO BECOMES TRANSLATION CENTER

### ARABIC BOOKS ARRIVE IN SPAIN

- ARRIVAL OF ARAB TRANSLATIONS AND SOME HEBREW TRANSLATIONS OF ANCIENT GREEK SCIENCE AND OTHER WORKS
- ACCOMPANIED BY ARABIC COMMENTARIES
- DOMINICAN AND OTHER TEACHING ORDERS BEGIN





- ILLUMINATED MANUSCRIPTS
- BOOKS AND LEARNING INCREASE
- EXPENSIVE MANUSCRIPTS



- **The Library of Ashurbanipal**
  - **ROYAL ASSYRIAN LIBRARY**
  - **TEMPLE SITES**
  - **PRIVATE HOMES**
  - **ANCIENT EGYPTIANS HOUSED COLLECTIONS OF BOOKS**



## HELLENISTIC KINGS LIBRARIES

- HELLENISTIC KINGS BUILT LIBRARIES FOR PRESTIGE AND TO PROMOTE GREEK CULTURE
- ALEXANDRIA
- PERGAMUM
- BYBLOS
- ATHENS

## ROMAN ERA LIBRARY OF CELSUS



- READING LIBRARIES
  - (BRITISH LIBRARY) WHERE MARX AND OTHERS READ
  - RESEARCH LIBRARIES
  - DOCUMENT DEPOSITORIES
  - CONGRESSIONAL LIBRARY
- LENDING LIBRARIES
  - BENJAMIN FRANKLIN INSTITUTES FIRST AMERICAN LENDING LIBRARY IN PHILADELPHIA

## LITERACY—LIBRARIES - MODERN -- RESEARCH

- CHURCH LIBRARIES WERE PART OF THE EDUCATIONAL SYSTEM OF THE MEDIEVAL CHURCH
- SEMINARY LIBRARIES CONTINUE
- RISE OF MODERN LIBRARIES
- UNIVERSITY LIBRARIES
- MODERN RESEARCH LIBRARIES
- LIBRARY OF CONGRESS



## LITERACY – BOOK SELLERS

- MIDDLE AGES OR MEDIEVAL TIMES
- MONKS COPIED MANUSCRIPTS FROM A SINGLE MONK READING THE MANUSCRIPTS
- SOME TIMES AS PALIMPSET
- BOOK OF KELLS
- SCRIPTORIUM
- BOOK FAIRS

## LITERACY – BOOK SELLERS

- GERMANY WAS THE CENTER OF BOOK PRODUCTION TOWARD THE END OF THE MIDDLE AGES
- BOOK FAIRS WERE MARKETS FOR SELLING BOOKS
- FAIRS WERE HELD AT LIEPZIG AND OTHER CITIES
- THE FAIR AT FRANKFURTER IS STILL IN OPERATION
- BOOK FAIR AT MADRID ANNUALLY



## LITERACY – BOOK FAIRS

- BOOK FAIRS IN OTHER PLACES
- A MAJOR BOOK FAIR IS IN
- MADRID, SPAIN





## LITERACY – GREEK LITERATURE

- THE GREEKS WERE A VERY LITERATE LOT
  - MOST OF WHAT THEY WROTE HAS BEEN LOST
  - REMAINING ARE PHILOSOPHY
  - BIOGRAPHY
  - SCIENCE
  - MATH
  - OTHER
- WELL KNOWN TODAY ARE
  - PRESOCRATIC PHILOSOPHERS
  - SOPHISTS
  - SOCRATICS
    - PLATO
    - ARISTOTLE
  - HELLENISTIC WRITERS
  - EUCLID, HYPOCRATES, GALEN
  - MILITARY—THUCYDIDES, ET AL
  - HERODATUS --HISTORIANS

## LITERACY – RENAISSANCE

- RENAISSANCE
- SPARKED A SEARCH FOR MANUSCRIPTS
- GREEK SCHOOL OPENS IN VENCE
- 1457 OTTOMAN CONQUEST OF CONSTANTINOPE
- GREEK SCHOLARS FLEE WITH BOOKS
- DANTE BEGINS ITALIAN



LITERACY – RENAISSANCE

MANUSCRIPT SEARCHES  
PRINTING PRESS IS INVENTED  
BY 1500 OVER ONE MILLION  
ITEMS PUBLISHED  
EDUCATION CONTINUES TO  
EXPAND  
UNIVERSITIES EXPAND



## LITERACY – RENAISSANCE

- COLUMBUS SAILS LOOKING FOR SPICES
- DISCOVERS THE NEW WORLD
- ONLY FINDS:
  - ALL SPICE
  - VANILLA BEAN
  - CHILI PEPPERS
- STIMULATES EXPLORATIONS AND QUESTS FOR NEW KNOWLEDGE
- PRINTERS LOVE IT



## LITERACY – RENAISSANCE

- PROTUGUESES SAIL TO INDIA
  - SPICE TRADE DIVERTS TO SEA ROUTES
  - TRADE INCREASES
  - DUTCH EAST INDIA COMPANY
  - EAST INDIA COMPANY
- 
- INCREASES IN TRADE STIMULATE OTHER PRODUCTION



- LUTHER BEGINS REFORMATION
- BATTLE OF PROTESTANT VERSUS CATHOLIC BOOKS BEGINS
- CALVIN'S GENEVA A HOT BED OF REFORMATION SCHOLARSHIP AND PRINTING
- PROTESTANTISM PROMOTES EDUCATION TO FOSTER BIBLE READING FOR THE INDIVIDUAL



- ANCIENT SILK ROAD AND SPICE ROAD CARAVANS
- SHARED THE RISK
- NEW OCEAN TRADE OPENED DOOR FOR DIVIDED RISK VIA INSURANCE
- LLOYDS OF LONDON BEGINS IN LONDON COFFEE HOUSE
- INSURANCE NEEDS NEWS



## LITERACY – RISE OF NEWS

- NEWS PAPERS ARISE
  - CHEAP TABLOID
  - EVENTUALLY BECOME PENNY
  - EVENTUALLY BECOME STANDARD
  - NOW IN DECLINE
- WHAT IS NEWS?
- WHAT IS ALL THE NEWS FIT TO PRINT?





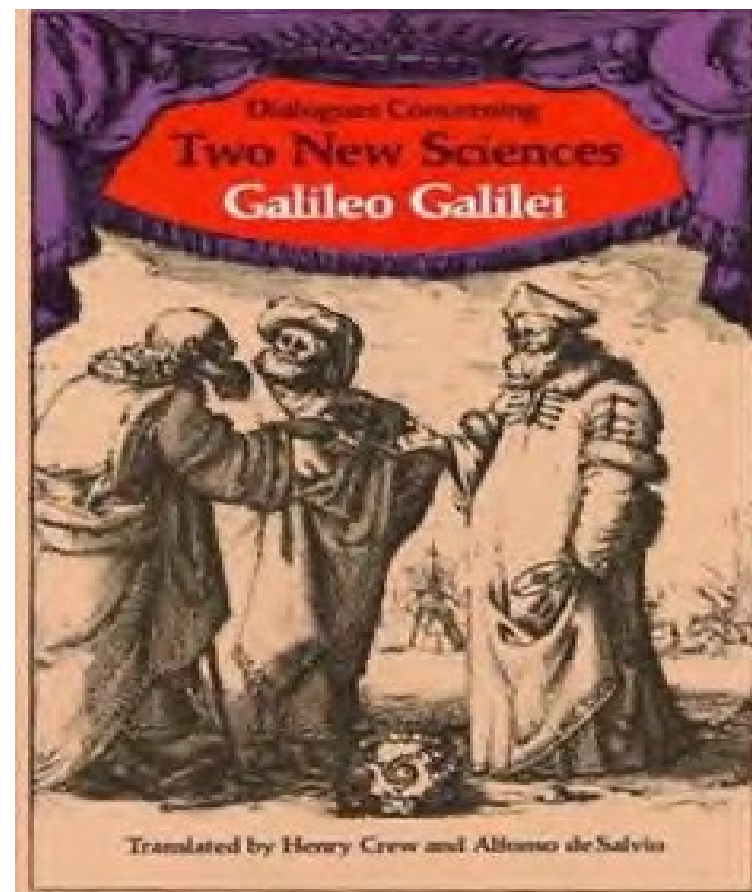
- EDITOR DECIDES

- EDITORIAL “SELECTIVITY”
- DECIDES WHAT IS PUBLISHED
- THE IDEOLOGY MAY REPORT SLANTED STORIES
- GOVERNMENT CONTROLLED PRESS LEADS TO 1984 RESTRICTIONS



## LITERACY - PRINTING PRESSES

- RISE OF PENNY PRESS
- RISE OF INCREASING LITERACY
- RISE OF GOVERNMENT ATTEMPTS TO CONTROL PRINTING
- RISE OF GOVERNMENT CENSORSHIP
- AREOPAGITICA –JOHN MILTON OPPOSES CENSORSHIP
- TWO NEW SCIENCES –GALELIO



## LITERACY – BOOK SELLERS

- GREEK AND HELLENISTIC LITERATURE WAS PRODUCED BY AUTHORS AND COPYISTS
- SOME WERE PRIVATE COPIES
- OTHERS WERE PIRATE EDITION
- TODAY BOOKS SELLERS USE
  - BRICK AND MORTOR STORES
  - ELECTRONIC MARKETING
    - EBAY
    - AMAZON



## LITERACY – SCIENTIFIC REVOLUTION

- FROM COPERNICUS TO NEWTON
- LATIN IS USED FOR SCHOLARLY WRITING
- SCIENTIFIC EXPERIMENTING
  - JOINS
- TECHNOLOGY APPARATUS



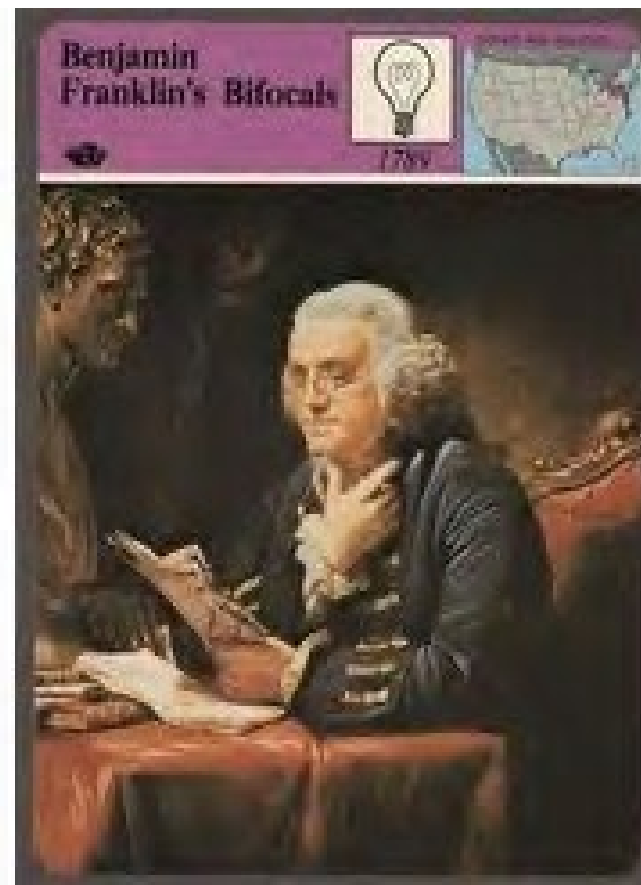
## LITERACY - INDUSTRIAL REVOLUTION

- THE RISE OF INDUSTRY
- STIMULATES THE NEED FOR ENGINEERS
- CLERICAL WORKERS
- FACTORS
- RISE OF STOCK MARKETS
- RISE OF BANKS AND FINANCING



## LITERACY – SPECTACLES

- READING MEANS EYE SIGHT
- MOSTLY OLDER EYES
- SPECTACLES
- BENJAMIN FRANKLIN'S BIFOCLES



FROM AT LEAST ROMAN TIMES  
READERS HAVE BEEN AIDED WITH  
READINGWARE

RISE OF OPTOMETRISTS &  
OPTICIANS

PRODUCES GRADUAL REVOLUTION

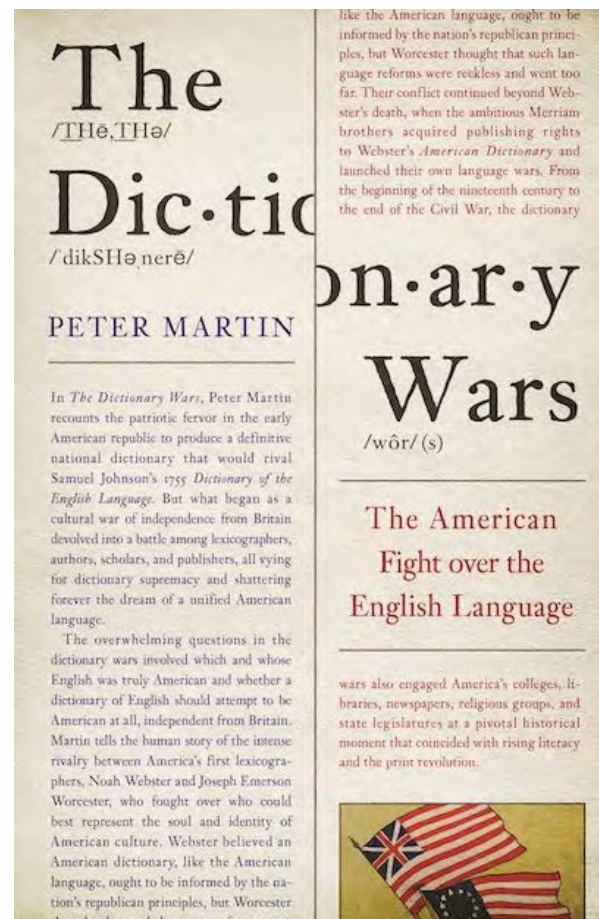
MODERN INDUSTRY BLOOMED  
AFTER 1900 WITH READING GLASSES

NIGHTLIGHTS, READING LIGHTS, ETC





- **DICTIONARY WARS**
- SAMUEL JOHNSON'S DICTIONARY
- AMERICAN VERSUS BRITISH
  - WEBSTER
  - MERRIMAN
  - ROGET'S THESAURUS
- SYNONYMNS & ANTINONYMS
- FOREIGN WORDS
- SAYINGS OR QUOTES



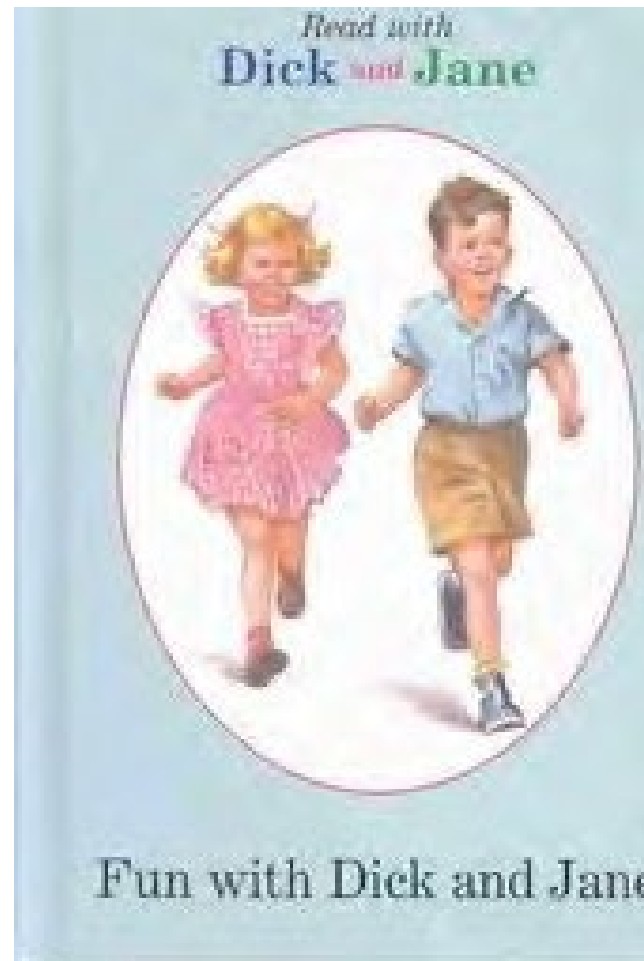
# LITERACY - READING WARS

- PHONETICS vs. WHOLE LANGUAGE
- GOAL OF PROPER PRONOUNCATION
- HOW TO READ NEW WORDS
- FOREIGN ORIGIN

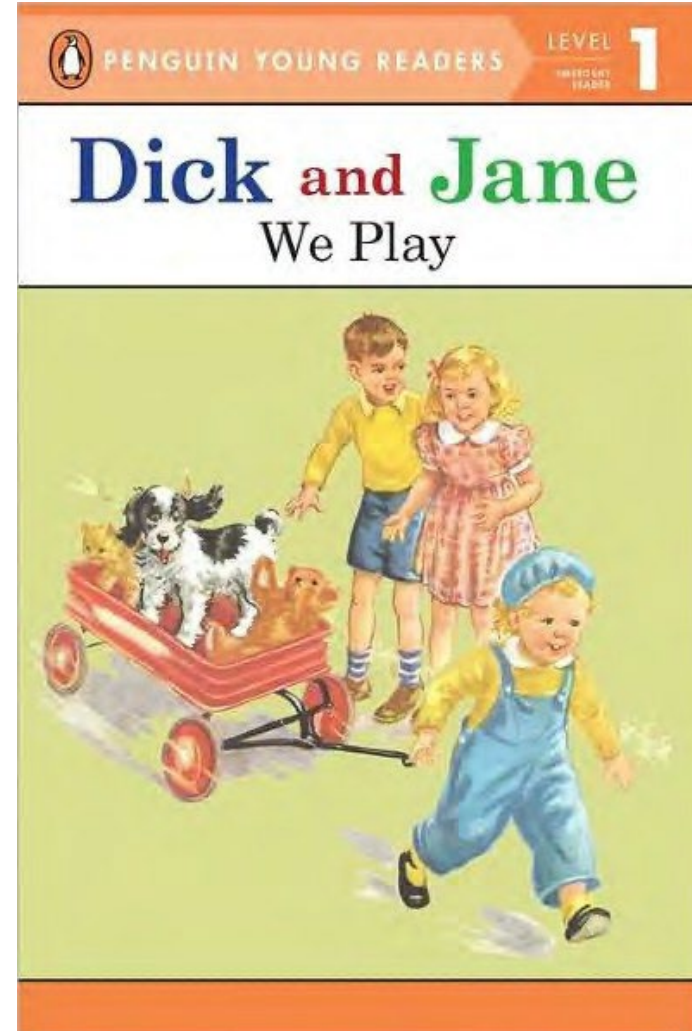


## LITERACY- SIGHT READING

- DICK AND JANE READERS
- USED “SIGHT READING METHODS”
- LEARN BY HEARING AND SEEING WORDS REPEATED
- WHOLE WORD OR “LOOK-SAY”
- VERY DULL AND OF LIMITED USE FOR LEARNING ANY FOREIGN LANGUAGE WHERE THE SOUND SYSTEM IS DIFFERENT



- BANAL IS TOO STRONG A WORD TO DESCRIBE THE STORIES.
- THERE IS VERY LIMITED CULTURAL LITERACY
- NO FOREIGN WORDS
- NO PHONETIC ATTACK METHODS
- LOOK JANE, SEE SPOT, SEE SPOT RETCH!!



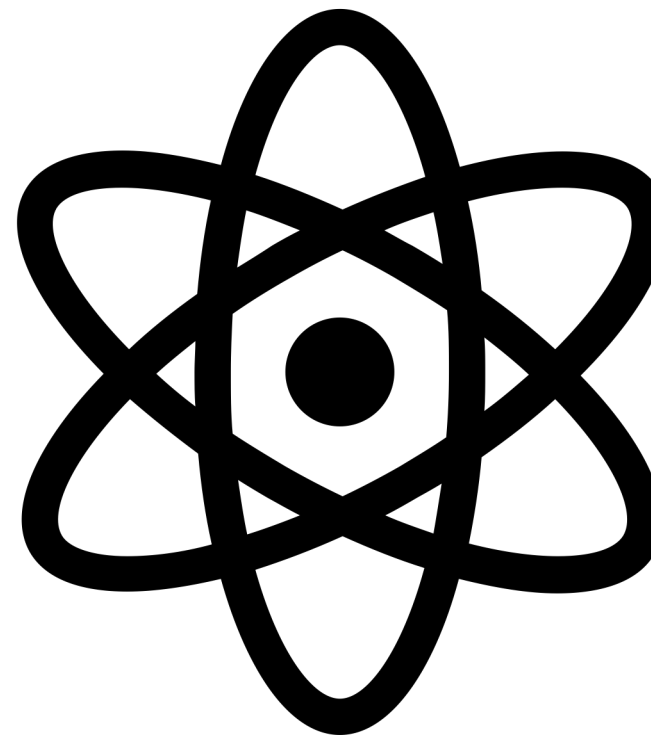
## LITERACY -- MODERN

- MODERN LITERACY IS NOW EXCLUDING LEARNING CURSIVE SCRIPTS
- MODERN LITERACY IS ELECTRONIC ORIENTED
- IPHONE ARE THE SIZE OF MOST CUNEIFORM TABLETS
- USERS “SCROLL” THEIR TABLETS



## LITERACY -- MODERN

- MODERN LITERACY HAS BEEN REDUCED IN FLUENCY
- BECAUSE OF THE IPHONE.
  
- TEXTING IN INCOMPLETE SENTENCES
- TEXTING IN ...HB2U = (Happy Birthday to You)



- RISE OF THE EMOJI
- SHORT HAND ICONS
- ELECTRONIC PICTOGRAPHS
- FUN AND CRYPTIC



## READING

- COMPLEX ACTIVITY
- REQUIRES EFFORT BECAUSE IT IS DIFFICULT TO BE SELF-TAUGHT
- REQUIRES ENCOUAGEMENT
- TODAY READING COMPREHENSION (FLUENCY) RANGES FROM NONE TO HIGH AS AN HISTORICAL PATTERN

## WRITING

COMPLEX ACTIVITY

FEW LEARN IT ON THEIR OWN

MOST ARE TAUGHT

MOST ACHIEVE ONLY A MODERATE LEVEL OF FLUENCY



## **ANTI-LITERACY**

- OPPOSITION TO READING AND WRITING CAN BE FOUND AMONG MANY STUDENTS
- SOME IS DUE TO DISLEXIA
- SOME IS DUE TO ANXIETY
- SOME IS IN RESPONSE TO FAMILY NEGATIVE CULTURE
- SOME IS DUE TO ANTI-SOCIAL BEHAVIORS

## **ANTI-LITERACY IN SONG**

- We don't need no education  
We don't need no thought control  
No dark sarcasm in the classroom  
Teacher, leave them kids alone
- Hey, teacher, leave them kids alone  
All in all, it's just another brick in the wall

All in all, you're just  
another brick in the wall

- MORSE CODE
- Boy Scouts would learn it
- MILITARY WOULD LEARN IT
- Telegraph operators would use it

### International Morse Code

1. The length of a dot is one unit.
2. A dash is three units.
3. The space between parts of the same letter is one unit.
4. The space between letters is three units.
5. The space between words is seven units.

A	• —	U	• • —
B	— • • •	V	• • • —
C	— • — •	W	• — —
D	— • •	X	— • • —
E	•	Y	— • — —
F	• • — •	Z	— — • •
G	— — •		
H	• • • •		
I	• •		
J	• — — —		
K	— • —		
L	• — • •		
M	— —		
N	— •		
O	— — —		
P	• — — •		
Q	— — • —		
R	• — •		
S	• • •		
T	—		
		1	• — — —
		2	• • — — —
		3	• • • — —
		4	• • • • —
		5	• • • • •
		6	— • • • •
		7	— — • • •
		8	— — — • •
		9	— — — — •
		0	— — — — —

- Semaphore flags
- Other signal devices such as
  - lights for Morse code
- Mirrors



## LITERACY -- SIGHTLESS

- LOUIS BRAILLE
- FRENCHMAN WHO WENT BLIND AS A YOUNG CHILD
- SENT TO BLIND SCHOOL
- TAUGHT A READING SYSTEM
- IMPROVED UPON IT
- TODAY EVEN USED BY THE CHINESE



## LITERACY - SOUNDLESS WRITING

- SIGN LANGUAGES
- USED BY NATIVE AMERICANS
- USED BY USA TROOPS
- MODERN SIGN LANGUAGE FOR THE DEAF



- CRYPTOLOGY
- CRYPTOGRAPHY
- CRYPTOANALYST
- SUBSTITUTION
- **VIGENÈRE CIPHER**
- **MOVE OVER ONE OR MORE LETTERS**



## LITERACY - READING CODES

- MARY, QUEEN OF SCOTS, LOST HER HEAD AFTER THE CODES SHE WAS USING WERE BROKEN
- A NUMBER OF HER SUPPORTERS WERE ALSO BEHEADED
- LITERACY MATTERS





## LITERACY—CODE BREAKING

- WWII BETCHLEY PARK
- ENIGMA (ULTRA) CODE IS BROKEN
  
- ALLEN TURIN DEVELOPS PROTO-COMPUTER
- NAZIS NEVER CAUGHT ON
  
- JAPANESE NAVAL CODE IS BROKEN  
    JAPANESE LOSE AT MIDWAY
- OPENED THE DOOR FOR MODERN CYBER WARFARE



## ANTI-LITERACY

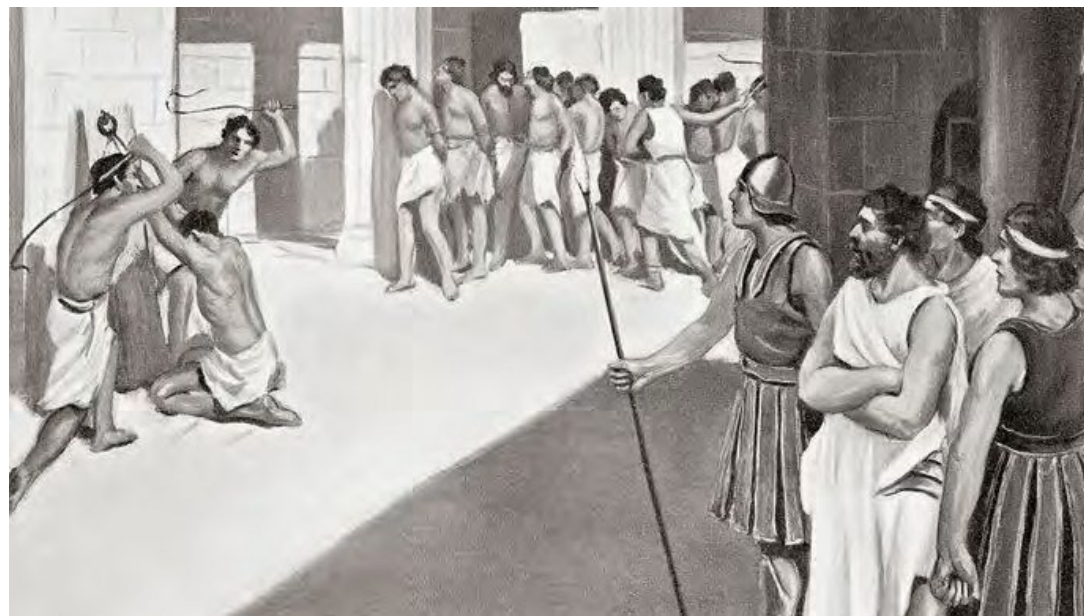
- OPPOSITION TO LITERACY ARISES WITH THOUGHT CONTROL
- THE FIRST CHINESE EMPEROR, THE TERRACOTTA EMPEROR ACCEPTED BOOK BURNING
- THE “LEGALISTS” WHO WERE CHINESE MACHIAVELLIANS WANTED ALL BOOKS DESTROYED EXCEPT FOR LAW BOOKS IN ORDER TO BETTER CONTROL THE PEOPLE
- MANY SCROLLS WERE HIDDEN AND SURVIVED THE ASSAULT



## ANTI-LITERACY - SLAVES

- OFTEN IT WAS FORBIDDEN TO TEACH SLAVES TO READ OR WRITE.
- WHAT TO TEACH SLAVES— BETTER MENIAL JOBS
- FREE BORN CHILDREN?
- 

***ARTES LIBERALES***



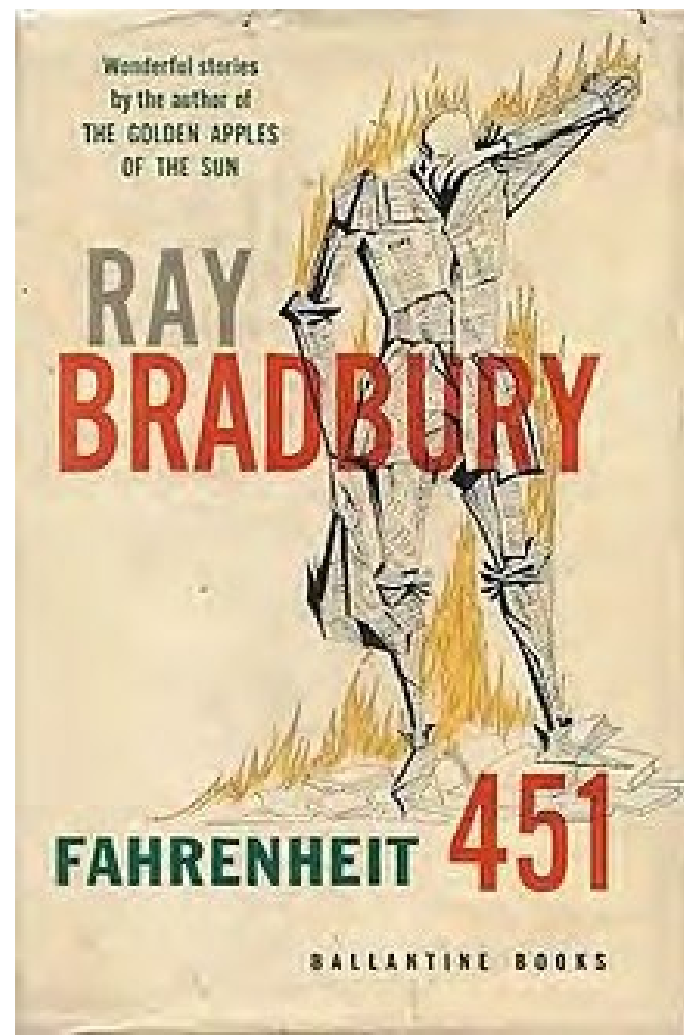
## ANTI-LITERACY

- LIBRARIES HAVE BEEN BURNED ON OCCASION IN ORDER TO SUPPRESS FREEDOM OF THOUGHT
- THE NAZIS BURNED BOOKS BY JEWISH AUTHORS
- THE SOVIETS AND THEIR EAST EUROPEAN COMMUNIST COLLABORATORS DID THE SAME
- DESTROYING RELIGIOUS BOOKS AND WESTERN LITERATURE



## ANTI-LITERACY

- DYSTOPIAS DESTROY BOOKS
- FAHRENHEIT 451
  
- OTHER UTOPIAS OR DYSTOPIAS SUCH AS
- “WE” BY AYN RAND
- 1984 ORSON WELLES
- DEPICT THOUGHT CONTROL

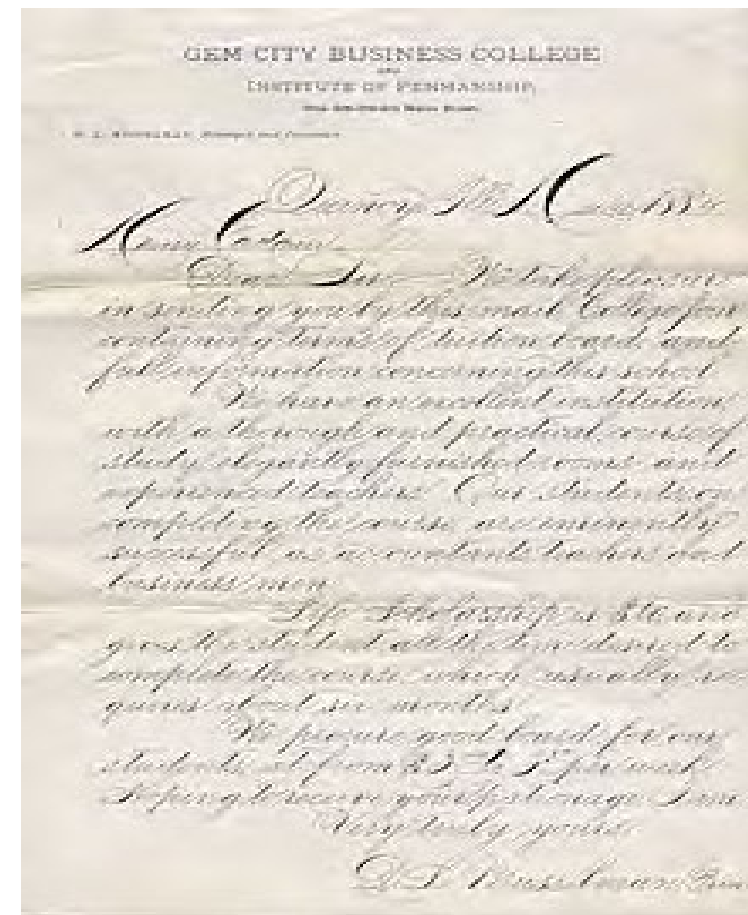


- THE CURSIVE STYLE OF PENMANSHIP
- JOINING THE LETTERS TOGETHER IN A FLOWING MANNER
- MAKES WRITING FASTER THAN WITH BLOCK LETTERS.
- WITHOUT CURSIVE GENERATIONS OF WRITING IS LOST TO MODERN READERS



LITERACY -- CURRENT

LITERACY SEEMS TO BE IN  
DECLINE  
BECAUSE OF  
THE CANCELING OF CURSIVE



## TRADITIONAL SCHOOLS

- OFTEN RELIGIOUS SCHOOLS
- STRESS WRITING WITH CURSIVE AS WELL AS BLOCK LETTERING

- STRESS READING THE BODY OF 'URE.





**PUBLIC  
SCHOOLS**

## LITERACY -- LETTERS

- LETTER WRITING IS AN ANCIENT FORM OF COMMUNICATION
- IN THE ANCIENT GRECO-ROMAN WORLD IT WAS A FINE ART
- THE NEW TESTAMENT LETTERS FOLLOW THE FORMS
- LETTERS CONTINUED UNTIL NOW



## LITERACY—MODERN ORALITY

- Perhaps an increase in orality.
- At first reading was always aloud.
- Silent reading an invention of the Renaissance
- A reader in a factory reading the Bible or the news
- Today orality is huge because most are listening to a talking head reading the news.



- ANCIENT WOMEN WRITERS

- SAPPHO
- CORINNA
- ERINNA
- MANY MORE

- MODERN WOMEN WRITERS

- VERY NUMEROUS
- Agatha Christie sold billions of books



## LITERACY—MODERN DECLINE

- Decline in diaries
- Travel diaries or log.
- Personal diaries
- War Diaries (Gautilcanal Diary)
  
- ANNE FRANK DIARY -- RIGHT



## LITERACY—DECLINE OF LETTER WRITING

- LETTER WRITING REQUIRES TIME
- IT REQUIRES THOUGHT
- NO MORE WAR LETTERS
- NO MORE LETTERS FROM COLLEGE ASKING FOR \$\$\$
- NEARLY DIED IN TODAY'S WORLD WHERE TEXT MESSAGES OR BRIEF NOTES ON GREETING CARDS PRESERVE IT.



LITERACY—DECLINE OF LETTER WRITING

- NO MORE LOVE LETTERS
- LIKE THOSE
- BETWEEN ABELARD AND HELOISE



## LITERACY—RISE OF EDUCATION

- RISE OF GLOBAL EDUCATION
- TEACHERS INCREASE
- SCHOOLS OF EDUCATION INCREASE
- EDUCATION MATERIAL INCREASE
- AT FIRST MOSTLY MALE
- NORMAL SCHOOLS
- WOMEN TEACHERS WHO BECOME SPINSTERS



- SUPREME COURT IN ITS FREEDOM OF SPEECH CASES
- HAS HELD TO THE NOTION OF A MARKETPLACE OF IDEAS
- TODAY'S INTERNET MARKET IS RIGGED



LITERACY – EARLY DAY TALKING HEAD

- MAX HEAD ROOM
- LITERACY IS ESSENTIAL TO REPRESENTATIVE DEMOCRACY
- AN INFORMED CITIZENRY
  
- FREE EXCHANGE OF IDEAS
- FREEDOM OF INFORMATION
- ROBOTS AND AI ARE “THREATS”



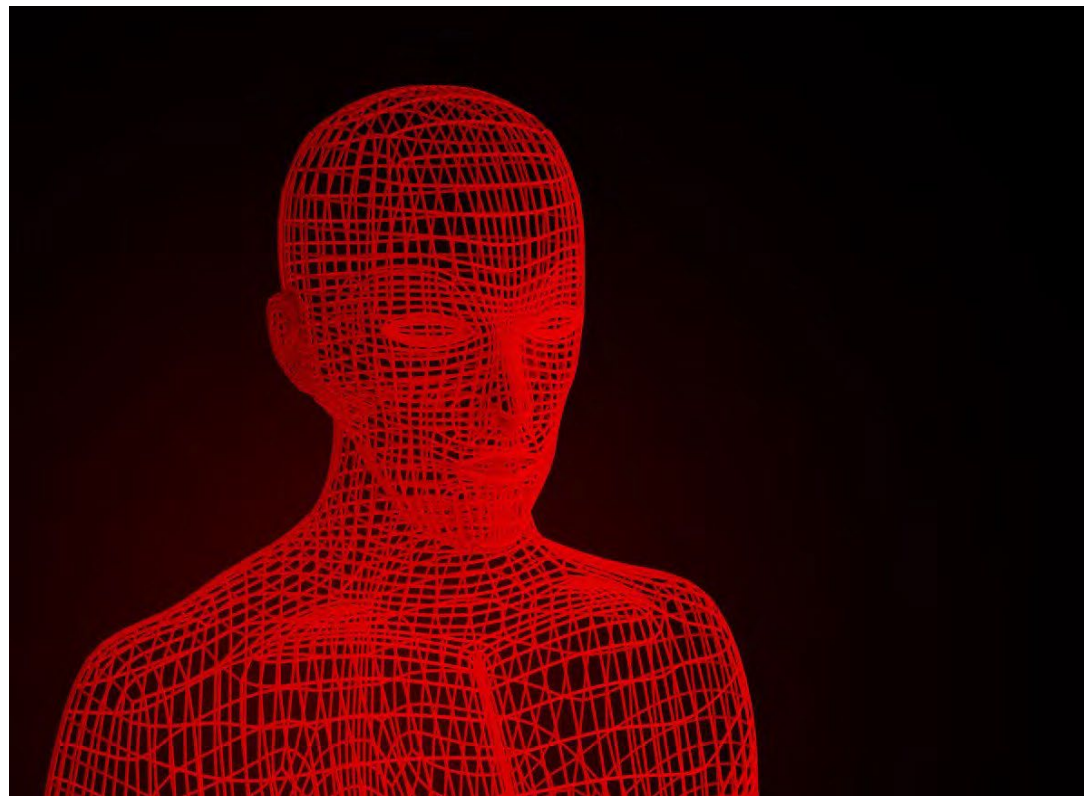
## LITERACY - LANGUAGE TRANSLATIONS

- THERE IS NO NEED FOR
- DUOLINGO
- I AM CP30
- I CAN TRANSLATE OVER 6 MILLION LANGUAGES



## LITERACY - ARTIFICIAL INTELLIGENCE

- WHAT EFFECT WILL “AI” HAVE ON LITERACY?
- RECENT NEWS THAT “AI” WILL GENERATE NEWS STORIES
- READ BY THE NEW AI “NEWS ANCHOR”
- READING ALL YOU NEED TO KNOW!!



# LITERACY - ARTIFICIAL INTELLIGENCE

- I ROBOT
- NOW END THIS PRESENTATION



# NINE BLACK ROBES: Inside the Supreme Court's Drive to the Right and its Historic Consequences

National Social Science Association Virtual Conference

July 25-26, 2023

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Dr. Samuel B. Hoff



George Washington Distinguished Professor Emeritus  
Department of History, Political Science, and Philosophy  
Delaware State University

"The story of the Trump transformation of the Court—and perhaps America—  
by one of our great Supreme Court reporters." —BOB WOODWARD

N I N E  
B L A C K  
R O B E S

INSIDE THE SUPREME COURT'S DRIVE TO  
THE RIGHT AND ITS HISTORIC CONSEQUENCES

JOAN BISKUPIC  
SENIOR SUPREME COURT ANALYST FOR CNN





## JOAN BISKUPIC CREDENTIALS



- **Education:** BA from Marquette University in Journalism; JD from Georgetown U. Law Center
- **Previous Positions:** Legal affairs editor at *Reuters*; Supreme Court correspondent for *Washington Post* and *USA Today*
- **Current Post:** CNN Legal Analyst
- **Publications:** Books on Chief Justice John Roberts, along with Justices Sandra Day O'Connor, Antonin Scalia, and Sonia Sotomayor
- **Awards:** Honorary Doctor of Laws Degree from Marquette University and Georgetown University; Hillman Prize for Investigative Journalism in the Common Good

# BOOK INFORMATION



PUBLISHER: WILLIAM  
MORROW



DATE OF PUBLICATION:  
2023



LENGTH: 401 pp.



ISBN: 978-0-06-305278-9

# CHAPTERS

Prologue

C1: "Inside the Castle"

C2: "Nobody on That Court is Like Anybody Else on That Court"

C3: "Joining Us for Tonight's Ceremony is Every Sitting Supreme Court Justice"

C4: The Triumvirate

C5: A Moment of Truth

C6: "Justice is Not Inevitable"

C7: Culture Wars in a Time of COVID

C8: The Chief at the Height of His Power

C9: A Deathbed Wish

C10: Bush v. Gore and Trump v. Biden

C11: The Supermajority



# MAJOR OBSERVATIONS BY BISKUPIC

1. Donald Trump's presidency significantly impacted U.S. Federal courts at all levels, but particularly the Supreme Court, with replacement of three justices by ardent conservatives.
2. There is increased drama and partisanship associated with confirmation hearings for Supreme Court nominees.
3. Certain persons—such as Trump White House counsel Don McGahn, Federalist Society leader Leonard Leo, and Senate Republican leader Mitch McConnell—have had an inordinate impact on recent selection of Supreme Court nominees.
4. Successful Supreme Court nominees bring their background, personality, and ideology to the position.
5. Relations between Supreme Court justices have become more personal and acrimonious, as witnessed from dissents issued by justices.

6. The Court's lack of openness and transparency was compounded by the COVID pandemic. Combined with other factors, such as overturning of major precedents, this has led to a major decline in the popularity of the institution.
7. No corner of American life has been untouched by the rightward remaking of the Supreme Court.



# REVIEWS OF NINE BLACK ROBES

## Magazine Reviews

- **Green:** Trump changed the Court for a generation.
- **Tanenhaus:** Trump’s conservative supermajority on the Supreme Court is his most enduring legacy as president.

## Monograph Reviews

- **Andrews**, p. 34: “The left’s calls to ‘pack the court’ with more justices appear to have fizzled out, and the Biden-appointed committee that look at Supreme Court reform has come and gone without having much of an influence on anything.”
- **Collins**, p. 9-10: “If Biskupic’s projections are on target, and that is the way to wager, the next twenty years should bring us more of the same:

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erties that Americans have properly come to depend on.”

- **Edward**, from Overview: “Biskupic offers expert analysis, insightful interviews, and extensive research to provide a thorough understanding of the Supreme Court’s impact on American society.”

- **Jacobs**, p. 38: “Biskupic’s entertaining and instructive writing style, along with her considerable research and analysis, make the book a must-read for anybody trying to understand the history, present situation, and prospective future of the Supreme Court.”
- **James**, p. 4: “In any case, her book likewise contains too much chamber chatter.”
- **JM Summary**, p. 42: “Biskupic’s book serves as a wake-up call to the importance of the Supreme Court and the need to remain vigilant and engaged in the fight for our rights and values.”
- **Johnson**, p. 10: “Nothing here is really revealing, either.”
- **Moran**, p. 15: “Biskupic opens a window onto the murky separate universe of the judges to show and organization sinking step by step into an emergency.”
- **Page**, p. 27: “In her book, Biskupic presents a sophisticated and thorough study of the Court’s recent rightward trend and its effects on American culture.”
- p. 33: “Anybody who cares about social justice, civil rights, or the survival of American democracy should read this book.”
- **Snapp**, p. 23: “The book underscores the importance of the Supreme Court in shaping American law and policy and emphasizes the need for ongoing analysis of the Court’s decisions for generations to come.”



1. Question as to whether the partisanship which Biskupic attributes to the Supreme Court has influenced other parts of American society or is mirroring behavior elsewhere.
2. The Epilogue is excessively brief, without any discussion of specific reform proposals.
3. The text is up-to-date as it pertains to Supreme Court appointments, including the confirmation of Kejani Brown-Jackson.
4. Throughout the text, Biskupic refers to information which she derived from interviews, from confidential sources, and from her own experience.
5. The book discusses the most important Supreme Court rulings on various issues across the last decade.
6. Overall, the findings are more based on opinion than objective analysis, but the first-rate journalism compensates for purely academic shortcomings.



# REFERENCES

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JM Summary. 2023. *Summary of Nine Black Robes*. Middletown, DE: Amazon.

Johnson, Eric. 2023. *Summary of Nine Black Robes*. Middletown, DE: Amazon.

Moran, Frank B. 2023. *Summary of Nine Black Robes*. Middletown, DE: Amazon.

Snapp, Todd. 2023. *Summary of Nine Black Robes*. Middletown, DE: Amazon.

Tanenhaus, Sam. 2023. "The New News at the New Court." *The New York Times Book Review*, May 28, p. 10.

\*Derived from recent podcasts featuring Joan Biskupic, including *We the People*; *Politics and Prose*; and one at the Commonwealth Club.

1. Time frame of analysis can start from any one of recent junctures: Bork rejection in 1987; Scalia death in 2016; RBG death in 2020; current
2. CJ Roberts helmsmanship is dependent on issue: Leader; horse trader; follower.
3. Biskupic started the current book in 2019, before pandemic and RBG death.
4. Biskupic tells us that she “watches her pronouns” in referring to sources.
5. Examples of leaving Supreme Court: forced, voluntary, death
6. Members of the Supreme Court will tend to close ranks together when criticized by press, others.
7. There is a special *Wall Street Journal* connection to the Court.
8. In the wake of the Abe Fortas scandal and resignation, Supreme Court Chief Justice Earl Warren attempted to get a code of ethics approved for the Court in 1969, but was unsuccessful.
9. Biskupic promises to find the leaker of the Dobbs opinion on abortion.

10. According to Biskupic, “this version of the Supreme Court will be with us for another fifty years.”





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**WITH THE EVOLVING CHALLENGES IN  
EDUCATIONAL LEADERSHIP: STRATEGIES FOR  
PREPARING FUTURE LEADERS**

DR. SHELLY ALLEN

DR. DARYL ANN BOREL

DR. GLEN HARRISON

*ITEMS FOR DISCUSSION*

- Introduction and Background
- Purpose of Study
- Review of Literature
- Participants
- Methodology
- Findings/Results
- Conclusions/Recommendations
- Questions and Responses





- A Principal's role is complex, challenging, vital for a campus's success.
- Creating a mission and vision, communication, and collaboration are a few of the tasks required of a principal.
- A principal's effectiveness is greatly influenced by the quality of their preparation program.

Jacobson, S., McCarthy, M., Pounder, D. (2015). *What makes a leadership preparation program exemplary?* *Journal of Research on Leadership Education*, 10(1), 63-76.







*PURPOSE OF STUDY*

The purpose of this study was to gain insight into principal candidates' knowledge and skills needed to be an effective future educational leader and examine their perceptions of ways universities and districts should support a candidate gaining instructional leadership knowledge and skills.





*RESEARCH QUESTIONS*

1. With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?
2. In what ways should universities support the development of this instructional leadership knowledge and skills?
3. In what ways should districts support the development of this instructional leadership knowledge and skills?





*REVIEW OF THE LITERATURE*

## Leadership

- “Leadership is second only to classroom instruction among all school-related factors that contribute to what students learn at school” (Leithwood et al., 2004, p. 5)
- Education policy landscape has changed:
  - Increased focus on leaders’ engagement with instruction,
  - Widespread adoption of high-stakes accountability systems that focus on student achievement,
  - Evaluation systems based on multiple measures of educator performance,
  - Adoption of common standards for student learning in most states,
  - Attention to racial and ethnic disproportionality,
  - Focus diverse learners (Grissom, Egalite, & Lindsay, 2021).

## Instructional Leadership

- Effective principals orient their practice toward instructionally focused interactions with teachers (Grissom, Egalite & Lindsay, 2021).
- Instructional leadership is a model of school leadership in which the school principal works alongside teachers to provide support and guidance in establishing best practices to achieve success in the teaching-learning process (Brolund, 2016).
- Instruction leadership has a positive effect on teachers’ instructional quality (Bellibas, Gümüş & Liu, 2020) .

## REVIEW OF THE LITERATURE

### *Equity-oriented Leadership*

- Aspiring leaders need to focus on equity-oriented leadership, gaining the skills to remove barriers to student success (Darling-Hammond et al., 2022).
- Attention to equity is an important leadership topic and the kinds of learning opportunities that build principals' knowledge and skills to meet the needs of diverse learners (Lindsey, 2021).
- Equity-oriented leadership in schools seeks to ensure that students of all backgrounds and experiences receive equitable and fair access to resources, support systems and services the need to reach their full academic and social potential (Braun, Billups, & Gable, 2013).

## Instructional Coaching

- Growing importance of the principal working with teachers, serving as an instructional coach (Grissom, Egalite, & Lindsay, 2021)
- Coaching can serve as a school-wide school improvement strategy (Institute on Instructional Coaching, 2011).
- Instructional coaching practices have a positive influence on teachers' knowledge and skills and can impact teaching and learning (Steiner & Kowal, 2007).



*REVIEW OF THE LITERATURE*

## Recruiting & Retaining Teachers

- The ability of school leaders to attract and recruit talent are important ways to promote high-caliber teaching and encourage excellence in teachers (Li & Yao, 2022).
- Financial incentives (See et al., 2020)
- Mentoring systems (Anthony, 2009; Cardiehon et al, 2020, Fuller, 2013)
- Intrinsic motivation and commitment (Li et al., 2019).
- Support and trust from principals (Edinger & Edinger, 2017, Li & Yao, 2022; Li et al., 2019; Shaalvik & Shaalvik, 2017).

## Marketable Skills

- Marketable skills are defined as, “those skills valued by employers that can be applied in a variety of work settings, including interpersonal, cognitive, and applied skill areas” (Texas Higher Education Coordinating Board’s 60x30 Strategic Plan, 2015, p. 22).
- American University (2022) identified five key marketable skills for school principals. These skills include communication, critical thinking, problem-solving, decision-making, and leadership.



*PARTICIPANTS*

- Graduate students enrolled in the Master of Education Administration and Principal Certification programs at Lamar University.
- Students enrolled in the 5-week online EDLD 5345 Human Resources course ( 687 students) during Spring 1 2023.
- Randomly selected sample of 100 participants
  - P sections n=50
  - A sections n=50





*SAMPLING STRATEGY*

## Purposeful Random Sampling

- The process of identifying a population of interest and developing a systematic way of selecting cases that is not based on advanced knowledge of how the outcomes would appear.
- From P and A sections ( Spring '23), 50 students from each program were randomly selected and their answers were collected pre and post course.





*METHODOLOGY*

- Data used for the study was collected as part of a required assignment in Week 1 and Week 5.
- A descriptive quantitative research design.





## *DATA COLLECTION AND DATA ANALYSIS*

- Participants completed a 10-question Likert scale Talent Management Knowledge and Skills survey during week 1 and again in week 5 to assess their knowledge and skills necessary for a future leader to be effective.
- Descriptive statistics of participant responses were generated to analyze the collected data.
- In addition to the survey questions, students responded to three open-ended questions.
- To develop a broader understanding of the candidates' perceptions of ways universities and districts should support instructional leadership knowledge and skills, the textual responses of the three open-ended questions were examined for overall trends and themes.
- Coding was based on the principles of comparative analysis which includes the comparison of any coded element in terms of emergent categories and subcategories.





## FINDINGS

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

Overall average on questions 2-9:

(1 - Strongly Agree, 2 - Agree, 3 - Neither Agree nor Disagree,  
4- Disagree, 5 - Strongly Disagree, 6 - Not Applicable)

	Overall Average
Week 1	2.42
Week 5	1.54

Overall average on question 10:

(1 - 10 with 1 being the lowest and 10 being the highest)

	Overall Average
Week 1	5.52
Week 5	8.06

Overall average on question 11:

(1 - 10 with 1 being the lowest and 10 being the highest)

	Overall Average
Week 1	5.83
Week 5	8.23



*FINDINGS*

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

### Summary Results

Survey Question 2. I have knowledge and skills that I need as campus principal to hire based on staffing needs.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Not Applicable
Pre	15%	28%	31%	25%	0%	1%
Post	35%	61%	4%	0%	0%	0%





*FINDINGS*

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

### Summary Results

Survey Question 3. I have knowledge and skills regarding data analysis for identifying staffing needs for hiring.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Not Applicable
Pre	15%	33%	31%	20%	1%	0%
Post	45%	52%	3%	0%	0%	0%





*FINDINGS*

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

### Summary Results

Survey Question 6. I have knowledge and skills to identify best practices in quality teaching.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Not Applicable
Pre	28%	47%	17%	8%	0%	0%
Post	61%	37%	1%	1%	0%	0%







*FINDINGS*

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

### Summary Results

Survey Question 7. I have the skill level necessary for evaluating effective teaching and learning in the classroom.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Not Applicable
Pre	23%	42%	23%	11%	1%	0%
Post	58%	39%	1%	2%	0%	0%





*FINDINGS*

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

### Summary Results

Survey Question 8. I have the skill level to coach a teacher towards instructional improvement based on classroom evidence/documentation.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Not Applicable
Pre	25%	41%	22%	12%	0%	0%
Post	51%	46%	2%	1%	0%	0%





*FINDINGS*

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

### Summary Results

Survey Question 9. I can determine the most effective area for improvement in a teacher's instructional practice based on evaluation evidence.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Not Applicable
Pre	17%	43%	22%	18%	0%	0%
Post	48%	48%	3%	1%	0%	0%





*FINDINGS*

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

### Summary Results

Survey Question 10. Rate your skill level on developing an instructional coaching plan (1-10).

	1	2	3	4	5	6	7	8	9	10
Pre	5%	4%	8%	10%	21%	15%	19%	16%	1%	1%
Post	0%	0%	0%	1%	5%	1%	17%	43%	22%	11%





*FINDINGS*

Research Question 1: With the changing landscape of educational leadership, what knowledge and skills are necessary for a future leader to possess to be effective?

### Summary Results

Survey Question 11. Rate your skill level on implementing an instructional coaching plan (1-10).

	1	2	3	4	5	6	7	8	9	10
Pre	5%	3%	7%	9%	19%	9%	22%	21%	5%	0%
Post	0%	0%	0%	1%	0%	5%	15%	35%	31%	13%





*FINDINGS*

Research Question 2: In what ways should universities support the development of instructional leadership knowledge and skills?

## Themes from Open-ended Survey Questions

### Pre

- Knowledge of the process and policies to hire and evaluate staff
- Communication Skills
- How to hire and retain quality candidates

### Post

- How to create a needs assessment
- Knowledge and practice with soft skills and collaboration skills
- Data driven decision making skills and practice
- Instructional Leadership best practices





Research Question 2: In what ways should universities support the development of instructional leadership knowledge and skills?

### Selected Student Comments

- "This was one of the toughest classes I have taken! It was thought provoking and created many reflections on what to do in certain situations. It helped me develop my instructional leadership knowledge and skills."
- "How to select good reflection and interview questions."



- "How to be able to address campus needs and mentor teachers."

## Research Question 2: In what ways should universities support the development of instructional leadership knowledge and skills?

### Selected Student Comments

- "Be able to address campus needs."
- "I gained knowledge of the most effective teaching practices that will be useful when I become a principal."
- "How to use observation data, learning walk data, and one on one communication and support."
- "Provide simulated problem-solving activities that provide collaborative relationships where prospective school principals are placed in leadership roles that assume the responsibility of addressing real-world campus issues."







*FINDINGS*

Research Question 3: In what ways should districts support the development of instructional leadership knowledge and skills?

Themes from Open-ended Survey Questions

*Pre*

- Knowledge of District policies and procedures
- Practice with soft skills

*Post*

- Ability to watch it in action
- Practice what I have learned in real world situations
- Collaboration and networking with other leaders





FINDINGS

Research Question 3: In what ways should districts support the development of instructional leadership knowledge and skills?

Selected Student Comments

- “I need to be able to identify the long-term need of my campus and community to frame the needs assessment of my campus.”
- “Create a culture of trust and collaboration where teams are continuously planning, reflecting on data, and adjusting plans to help students learn through a shared vision and belief of high achievement for all students.”
- “Build a good climate and culture. By collaborating with your staff and guiding them to create together a plan of action they will be more open to change and redirection.”
- “Set expectations consistent with professional development, frequent monitoring of classroom instruction, and feedback provided for open dialogue.”





FINDINGS

## Research Question 3: In what ways should districts support the development of instructional leadership knowledge and skills?

### Selected Student Comments

- “After this course, I was able to immerse myself in the realms of what principals do on a weekly basis. I now have a deeper understanding of how to develop instructional coaching plans in the near future to help coach others around me.”
- “I feel that I need to practice implementing the skills that I have learned in this course.”
- “I need more practice and experience in real world settings.”





## Research Question 1

- Study results found the participants' perceived knowledge and skills related to hiring practices, instructional coaching, and evaluating effective instructional practices increased following completion of the course.
- Participants indicated that the course had deepened their understanding of the knowledge and skills necessary to be an effective future instructional leader.





*CONCLUSIONS*

## Research Question 2

Study results found that universities should support the development of instructional leadership knowledge and skills in the following ways:

- Include how to locate and stay update with instructional best practices
- Provide practice and feedback on questioning and listening skills
- Provide a discussion on soft skills
- Increase the inclusion of data evidence within the assignments



- Provide activities on the develop and the use of campus needs assessments

## Research Question 3:

How should districts support the development of instructional leadership knowledge and skills?

- During the practicum, campus mentors should ensure that candidates receive real world experiences as well as activities related to needs assessment, instructional evaluation and coaching, instructional leadership best practices, use of soft skills, and data-driven decisions.



*CONCLUDING REMARKS*

Study results found that participants increased their knowledge and skills in the areas of instructional best practices, communication and questioning skills, the ability to develop an instructional coaching and refinement plan which included monitoring, and they gained confidence in their ability to manage human talent.





*RECOMMENDATIONS FOR FUTURE STUDY*

- Survey students after they complete their practicum activities.
- Study opportunities to incorporate activities in the practicum to develop candidates' knowledge and skills need to be an effective leader based on the finding of this study.
- Survey these students two years after they have served in a campus leadership role to determine if they are using the knowledge they gained.
- Identify campus mentors' perceptions on barriers that impact candidates' opportunities to develop their knowledge and skills needed to be an effective leader.

*CONCLUDING REMARKS*

Questions, Responses, and  
**Audience Interaction**







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Please feel free to email the presenters if you have any questions about this study.

Thank you!





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*Understanding How 2 Major Laws  
and the 1828 Presidential Election  
Impacted the Presidential Legacy  
of John Quincy Adams*

- Introduction
- 1828 Treaty of Limits
- Tariff of 1828
- 1828 Presidential Election
- Conclusion

- John Adams (6<sup>th</sup> U.S. President on 3/4/1825)

## – 3 Key Events Impacted His Presidential Legacy

- Treaty of Limits of 1828
  - Analysis by focusing on its purpose, its major features, and its impact on the legacy of President John Q. Adams.
- Tariff of 1828
  - Analysis by focusing on its purpose, its major features, and its impact on the legacy of President John Q. Adams.
- Presidential Election of 1828
  - Analysis by focusing on its purpose, its major features, and its impact on the legacy of President John Q. Adams.

## *Treaty of Limits of 1828*

- Purpose of the 1828 Treaty of Limits
  - To confirm the borders between the nations of Mexico and the United States of America.
    - Signed on January 12, 1828 in Mexico City
      - Joel Roberts Poinsett of the United States.
      - Sebastian Camacho and Jose Ignacio Esteva of Mexico.
    - Confirmed the borders between Spain and the United States of America set by the 1819 Adams–Onis Treaty.

Oregon

Country

United States

Michigan Te

42° N

Spain



# 1819 Adams-Onís Treaty

317

- Major Features of the 1828 Treaty of Limits

## – Border Line Between Mexico and United States

- Starts at the Sabine River on the Gulf of Mexico.
  - Continues north on Sabine River to the 32°N latitude and 94.05°W longitude.
  - Continues north on the 94.05°W longitude to the Red River.
  - Continues west on Red River to the 100°W longitude.
  - Continues north on the 100°W longitude to the Arkansas River.
  - Continues west on the Arkansas River to 39.25°N latitude and 106.34°W longitude in the Rocky Mountains.
  - Continues north on the 106.34°W longitude (runs north and south) to the 42°N latitude (runs east and west).
  - The border line between Mexico and the U.S. continues west on the 42°N latitude until it ends on the Pacific Ocean.

Oregon  
Country

United States

Mexico

Missouri  
Territory

Michigan Ter

Arkansas River

100° W

Red River

Sabine River

32° N

1828 Treaty of Limits

42° N





## *Treaty of Limits of 1828*

- Impact on the Presidential Legacy of Adams
  - John Q. Adams gets credit for the following because he negotiated the 1828 Treaty of Limits.
    - For negotiating the first ratified treaty of any kind between Mexico and the United States.
    - For negotiating the first ratified treaty of limits that set the border between Mexico and the United States.

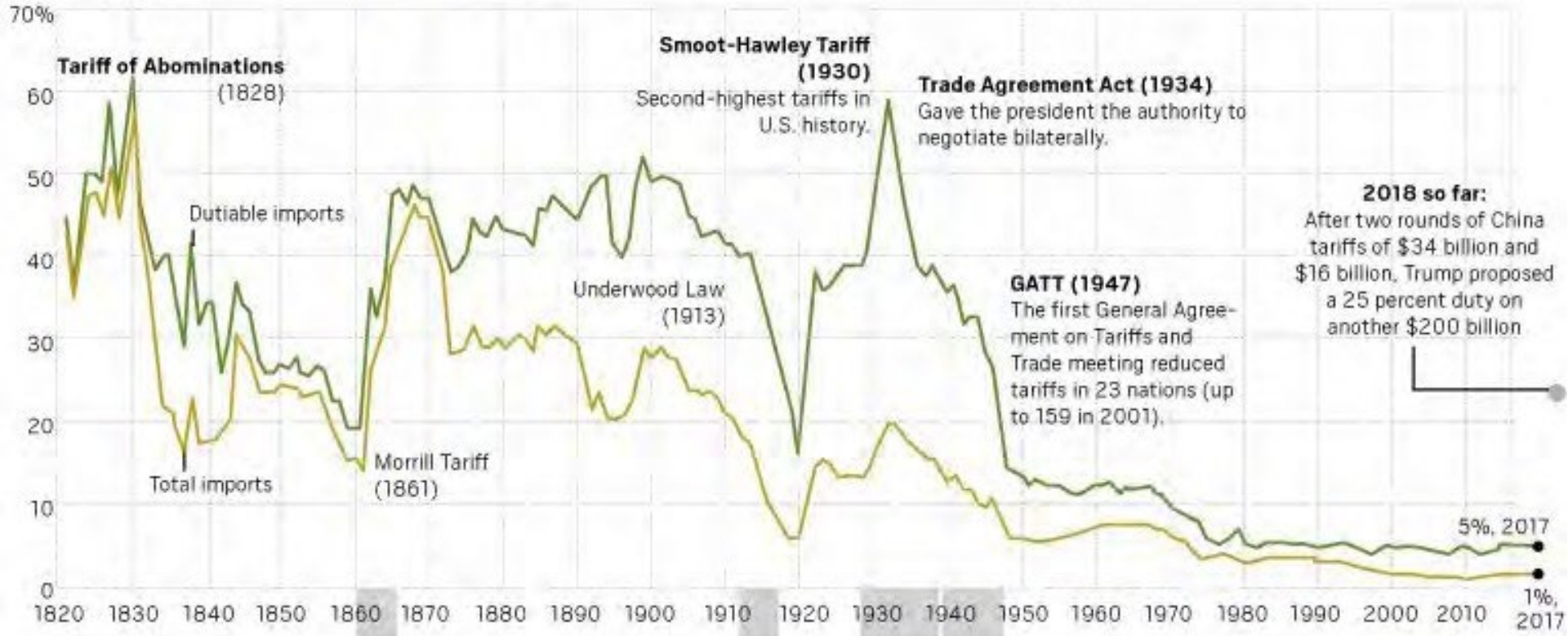
## *Tariff of 1828*

- Purpose of the Tariff of 1828
  - Protect the economy of the United States from the competition of the low priced imports.
    - Congress passed the Tariff of 1828 on May 18, 1828.
      - President Adams signed the bill into law on May 19, 1828.
  - Increase the average tariff rate to 60% on imports.
    - Amount of tariff per ton on 3 key dutiable imports.
      - Iron Tariff = \$37 per ton.
      - Hemp Tariff = \$45 per ton.
      - Flax Tariff = \$35 per ton.
    - Amount of tariff per gallon on 2 key dutiable imports.
      - Molasses Tariff = 10 cents per gallon.



**Average tariff rate percentage**

— Total imports      — Dutiable imports



Source: U.S. Department of Commerce, Bureau of the Census, U.S. International Trade Commission, Office of the United States Trade Representative

Civil War, 1861-1865

World War I, 1914-1918

Great Depression, 1929-1939

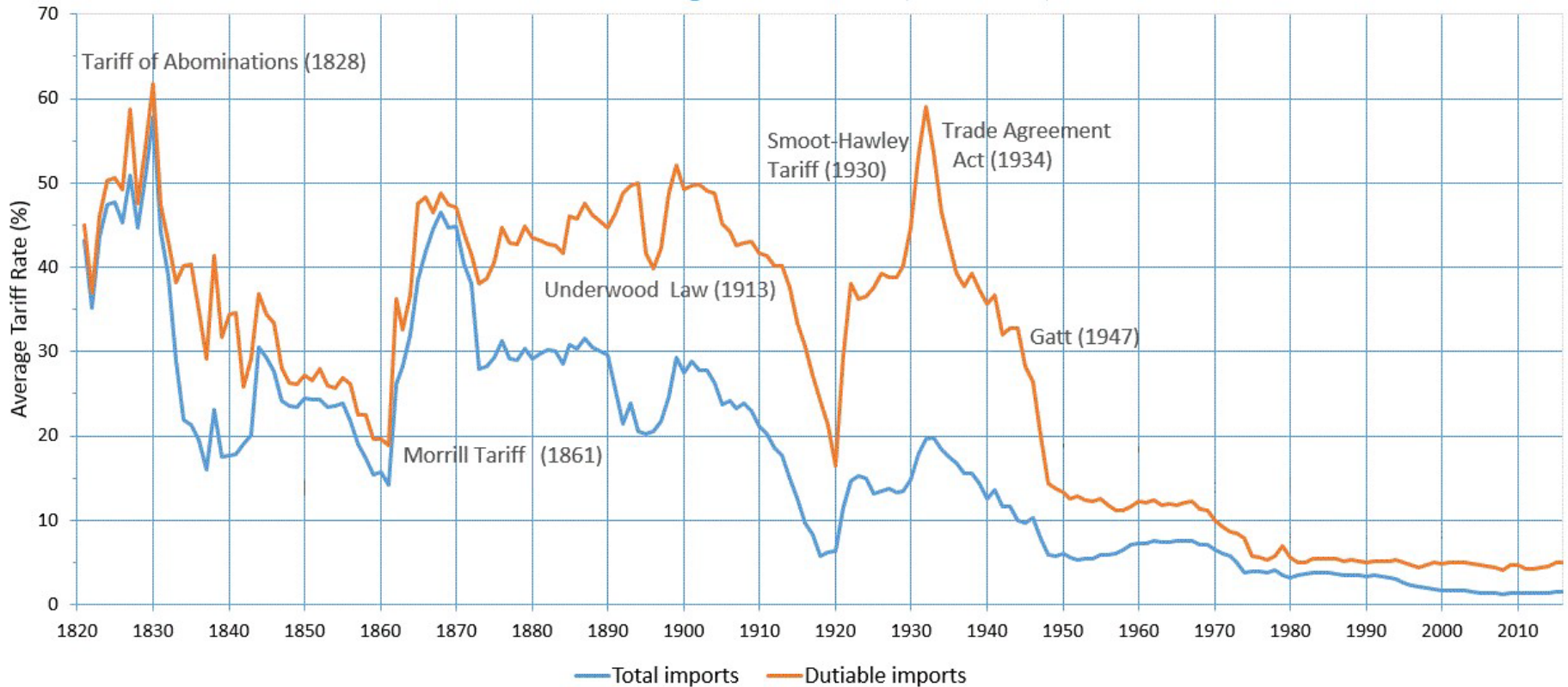
World War II, 1939-1945

- Major Features of the Tariff of 1828

- The Wool Tariff and The Roofing Slate Tariff

- Value of the wool determines the tariff amount.
  - Valued 50¢ per square yard or less = 20 cents per square yard.
  - Valued +50¢ cents to \$1 per square yard = 40¢ per square yard.
  - Wool valued over \$1 per square yard = \$1 per square yard.
- Length of the roofing slate determines the tariff amount.
  - Not over 12 inches in length by 6 inches in width = \$4 per ton.
  - Over 12 and not over 14 inches in length = \$5 per ton.
  - Over 14 and not over 16 inches in length = \$6 per ton.
  - Over 16 inches and not over 18 inches in length = \$7 per ton.
  - Over 18 and not over 20 inches in length = \$8 per ton.
  - Over 20 inches and not over 24 inches in length = \$9 per ton.
  - Roofing slates over 24 inches in length = \$10 per ton.

## U.S. Average Tariff Rates (1821-2016)



Source: US Department of Commerce, Bureau of the Census, Historical Statistics of the United States 1789-1945, U.S. International Trade Commission, [dataweb.usitc.gov](http://dataweb.usitc.gov)

## *Tariff of 1828*

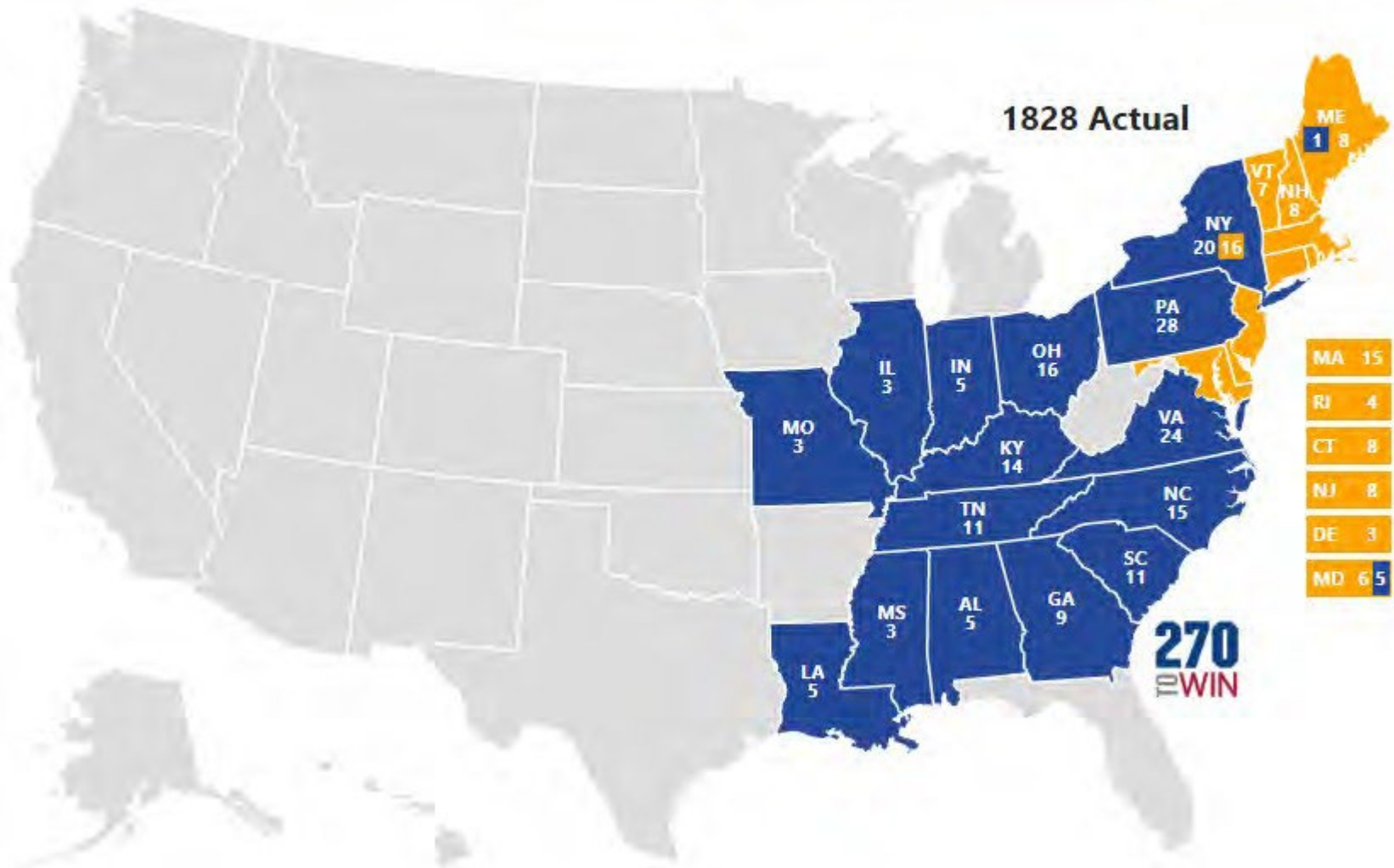
- Impact on the Presidential Legacy of Adams
  - John Q. Adams gets credit for the following because he signed the Tariff of 1828 into law.
    - For approving the highest average tariff rate (60% average tariff rate) in the history of the United States.
    - For protecting the economy of the United States from the imported goods.



- Electoral College Majority = 131 of the 261 Votes.
- Jackson (D – TN) won 178 electoral votes and 15 states.
  - 5 Free States = Pennsylvania, Indiana, Illinois, New York, and Ohio.
  - 10 Slave States = North Carolina, South Carolina, Tennessee, Louisiana, Alabama, Mississippi, Virginia, Georgia, Kentucky, and Missouri.
- Adams (NR – MA) won 83 electoral votes and 9 states.
  - 7 Free States = Massachusetts, Connecticut, New Hampshire, Maine, Vermont, Rhode Island, and New Jersey.
  - 2 Slave States = Maryland and Delaware.

Jackson (D) 178

83 Adams (N)



## *Presidential Election of 1828*

- Major Features of 1828 Presidential Election

### – 2<sup>nd</sup> Realigning Election

- Major Issue = The Tariff Act of 1828.
- 6 Automatic Flipped States (69 electoral votes)
  - Crawford (36) = Virginia (24), Georgia (9), and Delaware (3).
  - Henry Clay (33) = Ohio (16), Kentucky (14), and Missouri (3).
- 9 Total Flipped States (105 electoral votes)
  - Jackson flipped 6 States (88 electoral votes) = New York (20) from Adams, Ohio (16), Kentucky (14), and Missouri (5) from Henry Clay, and Virginia (24) and Georgia (9) from Crawford.
  - Adams flipped 3 States (17 electoral votes) = Delaware (3) from William Crawford, New Jersey (8) from Andrew Jackson, and Maryland (6) from Andrew Jackson.

## ***1828 ELECTORAL COLLEGE RESULTS***

***9 States That Flipped   Won 1824 Electoral College   Won 1828 Electoral College***

New York (36)	John Q. Adams (26)	Andrew Jackson (20)
Ohio (16)	Henry Clay (16)	Andrew Jackson (16)
Kentucky (14)	Henry Clay (14)	Andrew Jackson (14)
Missouri (3)	Henry Clay (3)	Andrew Jackson (3)
Virginia (24)	William Crawford (24)	Andrew Jackson (24)
Georgia (9)	William Crawford (9)	Andrew Jackson (9)
Delaware (3)	William Crawford (2)	John Q. Adams (3)
Maryland (11)	Andrew Jackson (7)	John Q. Adams (6)
New Jersey (8)	Andrew Jackson (8)	John Q. Adams (8)

## *Presidential Election of 1828*

- Impact on the Presidential Legacy of Adams
  - John Q. Adams gets credit for the following due to the results of the 1828 Presidential Election.
    - He gets credit for losing the 2<sup>nd</sup> Realigning Election.
    - He gets credit for being the 2<sup>nd</sup> of 11 incumbent presidents to try and fail to win re-election.
      - John Adams (1800), John Q. Adams (1828), Martin Van Buren (1840), Grover Cleveland (1888), Benjamin Harrison (1892), William Taft (1912), Herbert Hoover (1932), Gerald Ford (1976), Jimmy Carter (1980), George Bush (1992), and Donald Trump (2020).
    - He gets credit for losing the 6 swing/flipped states of New York, Ohio, Kentucky, Missouri, Virginia, and

## *Conclusion*

- Presidential Legacy of John Q. Adams

### – He Gets Credit for the Following

- Due to the Treaty of Limits of 1828.
  - Negotiating the 1<sup>st</sup> ratified treaty between U.S. and Mexico.
  - For negotiating the first ratified treaty of limits that set the border between Mexico and the United States.
- Due to the Tariff of 1828.
  - For approving the highest average tariff rate (60% average tariff rate) in the history of the United States.
  - For protecting the economy of the U.S. from imported goods.
- Due to the 1828 Presidential Election Results.
  - Being the 2<sup>nd</sup> incumbent president to try and not get re-elected.
  - For losing the 6 swing/flipped states of NY, VA, OH, KY, GA, and Missouri because he signed the Tariff of 1828 into law.

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## OVERVIEW

1. Increased interest with distance learning courses
2. Impact of Covid-19
3. Effectiveness of learning online

## PURPOSE

to examine students' performance in different level Spanish classes using proctored exams as compared to their performance on non - proctored exams.





## BACKGROUND

1. Adzima (2020). Online learning has seen a steady growth at the post secondary level since 2012.
2. Daffin & Jones (2018). Academic rigor in online classes may not be up to the same standards as in-person classes.
3. Oncul (2021). Covid-19 pandemic affected students who had digital access problems; unethical behavior in online exams.

## BACKGROUND (CONTINUED)

4. Pleasants & Pleasants (2022). Students in online environments are more likely to consult online resources when taking an exam.

5. McDonough & Roberts (2014). Maturity level plays a role in academic integrity and performance.

# METHOD

64 participants / Fall 2022

SP 101	SP 102	SP 201
23	34	7

## Procedure

- 10 chapter assessments and a cumulative final
- Half of assessments and the final were proctored in -person but taken online and timed
- Half were online timed but available to students to access within a 24-hour window
- In-person online assessments and online assessments were identical with the same level of difficulty for the appropriate level



# RESULTS

1. Non-proctored exam scores were higher than proctored exam scores.
2. Performance on the proctored final exam was similar to performance on the proctored chapter exams.
3. ...And dissimilar on the proctored final exam and non-proctored chapter exams.
4. Overall performance improved as a function of class level.



# DISCUSSION

## Interpretation/factors underpinning our results

**Exam preparation** – students may be more likely to study, and retain information, when the exam will be proctored.

**Cheating** – students in general may be more likely to use notes and online resources when the exam is not proctored.

**Test Anxiety** – students, particularly in lower-level courses, may have increased test anxiety during proctored exams.

**Maturity** – students may approach upper-level courses with more maturity.

**Confidence** – students may have more confidence in upper-level courses.

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THANK YOU

GRACIAS

