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Table of Contents . . . 1
Title Page . . . 2
SALSB Executive Board . . . 3
Editorial Policy . . . 4
Our Reviewers . . . 5
Notes for Authors . . . 6
Call for Papers . . . 8

Mediation Metrics: Reclaiming the Power of Shrinking Joint Sessions
Charles Bultena, Charles Ramser, & Kristopher Tilker . . . 10

Campaigns & Claims: The Use of Music by Political Campaigns, Including a
Discussion of Possible Claims Raised by the Copyright Owners Who Hate It
Amy Smith . . . 33

Business Ethics Case Competitions: A Fresh Opportunity to Teach Business Ethics
Joanna P. Kimbell & Pedro Lameiras Dos Santos . . . 40

The Fintech Sandbox: An Overview of Regulatory Sandbox Regimes
Jonathan R. Everhart . . . 64

College Students and Textbooks: A Preliminary Investigation of Gender,
International Status, and Major
Marty Ludlum, Justin Teeman, Josue Carreno, Ashley Wiltz, & Bailey Ludlum . . . 75

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From the Editor-in-Chief. . . .

This is the 12th volume of the *Southern Journal of Business and Ethics*, an official publication of the Southern Academy of Legal Studies in Business. The Journal is being published in hardcopy and electronically on the Southern Academy's web page at <http://www.salsb.org>.

The SJBE has been included in Ebsco Host services, allowing for full text search on most university library systems! This provides a great benefit to our authors and readers!

All articles that appear in this volume of the *Southern Journal of Business and Ethics* have been recommended for publication by the Advisory Editors, using a double, blind peer review process. A personal thanks is extended to the Advisory Editors for all their hard work and dedication to the *Journal* and the Southern Academy; without their work, the publication of this Journal would be impossible.

This is my eleventh year as Editor-in-Chief, and I wish to express my sincere thanks and appreciation to all the Officers of the Southern Academy for their support, encouragement, assistance and advice throughout this year. I would like to further express appreciation to Will Mawer of Southeastern Oklahoma State University, for his efforts in coordinating the start of the Journal. The publishing of this journal is an intense educational experience which I continue to enjoy.

Many of the papers herein were presented at the Southern Academy of Legal Studies in Business meeting in San Antonio, Texas, March, 2020. Congratulations to all our authors. I extend a hearty invitation to the next meeting of the SALSAB in San Antonio, Texas, March, 2021.

The Southern Academy annual meeting has been voted the "BEST REGIONAL" among all the regions affiliated with the Academy of Legal Studies in Business (ALSB) featuring over 60 authors and 50 papers. I hope to see ya'll in San Antonio! Please check the web site (www.salsb.org) for further information. To further the objectives of the Southern Academy, all comments, critiques, or criticisms would be greatly appreciated.

Again, thanks to all the members of the Southern Academy for allowing me the opportunity to serve you as editor-in-chief of the Journal.

M.P. (Marty) Ludlum

Editor-in-Chief

Southern Journal of Business and Ethics

www.salsb.org

Our Reviewers

The **Southern Journal of Business and Ethics** is truly a group effort, requiring the tireless efforts of many volunteers to review our submissions.

I would like to extend a very public and eternal thanks to our reviewers. Many are listed below. Some have chosen to be anonymous for their efforts. I thank them also for their many hours of work in supporting the **SJBE**.

Reviewers for the 2020 issue in alphabetical order were:

Jennifer Barger Johnson, University of Central Oklahoma

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Notes for Authors:

The focus of the **Southern Journal of Business and Ethics (SJBE)** is to examine the current trends and controversies in business, law and ethics, both domestic and international. In addition, future issues will include a new section, *Short Notes*, which will consist of shorter articles focusing on pedagogical ideas for the new business law instructor.

All authors promise that any submission is original work, and has not been previously published.

Since the topics of **SJBE** cross into many different academic areas, the **SJBE** does not have a specific format. Authors are free to use Chicago style, Harvard style or the APA, as long as the application is consistent throughout the paper.

The title should be in ALL CAPS. The text should be in Times New Romans 12 point font for the text and 10 point font for the footnotes. Authors' names should be centered below the title. Paragraphs should be indented five spaces.

The maximum size for a paper is twenty-five pages, all inclusive, single spaced. Articles substantially longer may be accepted as space allows.

All submissions should include a complete copy (with author identification) and a blind copy (with author identification left blank).

All submissions are electronic, in MS-Word format. No paper copies will be reviewed or returned.

Artwork is discouraged. Tables and charts should be kept to a minimum and should be included in an appendix following the paper.

Submissions deadline is 45 days after the SALSBS spring meeting each year. Articles sent after the deadline will be reviewed for the next issue, or may be withdrawn by the author and submitted elsewhere.

Look for the call for papers at the Southern Academy's website (www.salsb.org). If you would like to serve **SJBE** as a reviewer, your efforts would be appreciated. Many hands make light work.

If you have any questions, please submit them to the Editor in Chief.

Please submit all papers to:
Marty Ludlum
Editor in Chief, SJBE
mludlum@uco.edu

Mark Your Calendars

March 4-6, 2021

Southern Academy of Legal Studies in Business

San Antonio, Texas

Find the details at:

www.SALSB.org

MEDIATION METRICS: RECLAIMING THE POWER OF SHRINKING JOINT SESSIONS

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This is the first in a new series that examines emerging issues and opportunities in mediation. Joint sessions have been in decline for decades, all but abandoned by many mediators. This paper examines that trend, then argues for its reversal and a return to the power of joint sessions. First, the shift from collaboration to compromise is examined in the Dispute Devolution Model, along with the major objections to joint sessions. Then, two models, the Joint Session Mediation Window and the Continuum of Party Involvement, are presented to demonstrate graphically the potential of joint sessions and options for their use. The paper closes with a Roadmap for Joint Session Success, along with an update on settlement rates.

I. INTRODUCTION

Mediation offers an alternative to the rigors of formal litigation in a courtroom. Once considered “Alternative” Dispute Resolution (ADR), mediation is now the dominant form of dispute resolution in civil cases (Hoole & Felt, 2018). It has exploded as a successful conflict resolution tool because, according to Gene Valentini, director of the Texas Dispute Resolution System, it provides an opportunity to resolve virtually any issue in “a cost effective and timely manner” (2010, p. 2). One can speak freely in mediation “about anything you feel will get you to a point of resolution because nobody’s recording or saying it’s out of order, whereas in the courtroom you may not be able to address those things” (p. 2). Business leaders must understand the dynamics of the process in order to prepare for successful mediation.

Applying models and recent research from the field of group dynamics, this paper examines the sharp decline in the use of joint sessions (meetings with both parties and their counsel) in mediation over the past two decades. This trend is exacerbated by pressures arising from the dramatic shift to compulsory caucused mediation or mass mediation. The meteoric rise of caucused mediation (mediation conducted primarily in private session) as the dominant form has profound implications for business leaders. With most lawsuits being referred to compulsory caucused mediation, business leaders must be familiar with the process and the unique challenges it presents. In particular, they must be aware of the potential of joint sessions to yield superior outcomes as compared to those resulting from private caucuses in mass mediation. This paper, in the Dispute Devolution Model, examines root causes for the decline in joint-sessions

and objections to their use. Then, two models, the Joint Session Mediation Window and the Continuum of Party Involvement, are presented to demonstrate graphically the potential of joint sessions and options for their use. The paper closes with a Roadmap for Joint Session Success, along with an update on settlement rates.

The extent to which business leaders recognize and respond to the challenges of compulsory mediation can determine whether it succeeds. Before considering how skills can be developed in this area, it is important to examine the meaning of mediation, its use, and its success in resolving conflict.

II. THE MEANING OF MEDIATION

Texas statutory law defines mediation this way:

- (a) Mediation is the forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.
- (b) A mediator may not impose his own judgment on the issues or that of the parties (Texas Civil Practice, 2008).

Unfortunately, this statutory definition offers little insight into what mediation actually can and should be. When successful, mediation can be characterized as proactive, forward-looking, and problem-solving in nature. As a process, it is enlightening, flexible, confidential, and, typically, evokes less stress than does formal litigation. It is not a drastic action and does not involve the surrender of freedom that arbitration dictates, as the latter requires an impartial third party who breaks a deadlock by issuing a final binding ruling (Lovenheim, 1998). Mediation basically involves negotiation through a disinterested third party, and it effectively can defuse emotional time bombs. One drawback mars this otherwise rosy picture: neither side is bound by anything in mediation. Arbitration binds; mediation intervenes benevolently. If the parties involved remain stubborn, intervention can sour, and mediation then becomes an exercise in futility.

Proactive use of mediation can help businesses avoid costly settlements and potential expensive litigation. Given the number of lawsuits filed and the heavy reliance on compulsory mediation by the courts, business leaders must understand the process and how to prepare for and conduct mediation.

III. THE USE OF MEDIATION

Over the past two decades, the use of mediation has exploded. Business leaders and the courts have discovered its value as a cost-effective alternative to litigation in the traditional adversarial system. The number of mediation cases in Texas, Oklahoma, and Nebraska (the states nearest the region to track statistics) is staggering. Cases received by Texas alternative dispute resolution centers in the most recent three-year period for which records were kept average almost 20,000 annually, with a total of more than 58,000 from 2003 to 2005 (Annual Report Texas, 2005). The same situation is true of Oklahoma. As shown in Table 1, on average,

almost 6,000 cases have been referred annually to the alternative dispute resolution system there, with 73,976 cases referred in just over a decade. Also, an impressive average settlement rate of 65 percent has been registered (Annual Report Oklahoma, 2018). Oklahoma recently shifted to a two-year reporting cycle. The 2019-2020 report is pending. Farther north, results in Nebraska (see Table 2) are even more impressive, reaching an all-time high. The number of cases referred annually to that state's ADR system has more than doubled over the past decade, with an average settlement rate of 80 percent (Annual Report Nebraska, 2019). These striking regional settlement rates are mirrored across the nation: Better Business Bureau, 78%; U.S. Equal Employment Opportunity Commission, 70%; Financial Industry Regulatory Authority, 80%; and State of Florida Division of Administrative Hearings, 78.5% (4 Disputes.com). They are also seen internationally as the Bangalore Mediation Centre tops 65% with 100 cases per day (MediatorsBeyondBorders.org, 4 Disputes.com) and the World Intellectual Property Organization exceeds 70% across its 179 member-nations (WIPO). Thus, the widespread use of mediation and its potential for cost-effective conflict resolution are well established.

Table 1: Oklahoma Alternative Dispute Resolution System Cases Referred and Settlement Rate

| <i>Date</i> | <i>Cases</i> | <i>Settlement Rate</i> |
|--------------|---------------|------------------------|
| 2005 | 6,328 | 68% |
| 2006 | 7,968 | 62% |
| 2007 | 5,139 | 64% |
| 2008 | 5,766 | 64% |
| 2009 | 6,275 | 71% |
| 2010 | 6,375 | 63% |
| 2011 | 6,535 | 64% |
| 2012 | 5,704 | 62% |
| 2013 | 5,261 | 61% |
| 2014 | 5,046 | 63% |
| 2015 | 4,852 | 63% |
| 2016 | <i>No</i> | <i>Report</i> |
| 2017 | 4,559 | 68% |
| 2018 | 4,168 | 70% |
| Total | 73,976 | 65% |

Source: *Annual Report Alternative Dispute Resolution System* from the Supreme Court of Oklahoma Administrative Office of the Courts

Table 2: Nebraska Alternative Dispute Resolution System Cases Referred and Settlement Rate

| <i>Date</i> | <i>Cases</i> | <i>Settlement Rate</i> |
|--------------|---------------|------------------------|
| 2008 | 1,171 | 84% |
| 2009 | 1,467 | 83% |
| 2010 | 1,604 | 85% |
| 2011 | 1,723 | 83% |
| 2012 | 1,876 | 81% |
| 2013 | 1,948 | 79% |
| 2014 | 2,133 | 79% |
| 2015 | 2,083 | 78% |
| 2016 | 2,271 | 80% |
| 2017 | 2,367 | 79% |
| 2018 | 2,303 | 77% |
| 2019 | 2,411 | 77% |
| Total | 23,357 | 80% |

Source: *Annual Mediation Center Case Data Report* from the Nebraska Office of Dispute Resolution

IV. PURPOSE

The advent of court-ordered mediation in the late 1990s was effective in clearing overcrowded court dockets. The process was far more flexible and efficient than the civil court system. Unfortunately, the rapid expansion of mediation to virtually all civil cases superheated demand, forcing mediation firms to take shortcuts to streamline the process, reduce costs, and expand capacity. The result was the rise of caucused mass mediation, which has all but replaced traditional mediation (direct interaction between parties in joint session) over the past two decades. As a result, joint sessions, which are the hallmark of traditional mediation, are in decline, particularly in the Southwest, where only 23.6% of mediators still regularly use them (Folberg, 2016) and in California, where they have been largely abandoned (Pollack, 2015). This has given rise to impersonal mediation that, in some cases, is concluded without the parties ever meeting one another.

This paper is intended to investigate this trend to determine how pervasive it is across the country, the reasons for eliminating joint sessions, and the subsequent impact on mediation quality and outcomes. Beyond these goals, the paper seeks to provide tools to aid mediators, parties, and counsel in rediscovering the power of joint sessions, in examining various joint session options, and in redeploying them effectively to some degree in modern mediation. In order to accomplish these goals, the paper proceeds as follows. First, the underlying shift in conflict resolution style is explored in the Dispute Devolution Model and the main objections to using joint sessions are examined. Then, the Joint Session Mediation Window and Continuum of

Party Involvement models are presented to highlight both the power and potential of joint sessions as well as the variety of flexible options for conducting them. Taken together, these models are intended to help mediators rediscover the power of joint sessions and ways to redeploy them in their various forms. Finally, the paper closes with a compilation of top recommendations drawn from a broad spectrum of mediation professionals. The Roadmap to Joint Session Success consists of ten checkpoints (10 Cs) to guide the effective use of joint sessions.

V. RECLAIMING THE POWER OF JOINT SESSIONS

A. *THE SHRINKING JOINT SESSION*

Mediation was “inserted into the litigation process in the early 1990s in part as a result of the inefficient and ineffective manner in which litigated cases were settled” often in a last-minute settlement conference on the steps of the courthouse or in a court conference room (Van Winkle, 2017, p. 7). The advent of compulsory mediation (otherwise known as court-ordered, court-assisted, or court-mandated mediation) has had a profound impact on the mediation process. From its humble beginnings in a few states, primarily in large cities, the practice has exploded across the United States and spread to other countries. The primary impetus for this expansion is its potential to clear hopelessly backlogged civil court dockets, some of which are four to five years behind (Abrams, 2017). Compulsory mediation is quick and cost efficient. Conservative estimates indicate settlement rates of nearly 80%, with most mediations lasting only a few hours and seldom exceeding a full day (Willis, 2017). Because of its advantages over traditional litigation, mediation has evolved from an “alternative” way to resolve disputes to standard practice in most civil cases (Hoole & Felt, 2018).

Mediation is a collaborative process whereby the parties interact directly to resolve conflict with the aid of a third-party neutral, or mediator. Traditionally, substantive joint sessions have been the foundation of mediation practice dating back to Biblical times (Berkoff, 2017; Morrow, 2016). Over the past two decades, however, there has been in general a distinct shift away from initial joint sessions and a diminishing use of joint sessions (Van Winkle, 2017; Berkoff, 2017; Bassis, 2014; Folberg, 2016; Morrow 2016). Lynne Bassis (2014) reported a significant decline in the use of joint sessions among a sample of attorneys and mediators. What was once “the foundation of the mediation process has fallen out of favor among many lawyers and mediators, particularly in commercial mediations” (p. 30). In an extensive study of 300 JAMS mediators, Jay Folberg (2016) found a dramatic drop in the use of joint sessions among mediators across their careers. JAMS (formerly, Judicial, Arbitration, and Mediation Services) is the largest provider of Alternative Dispute Resolution services worldwide. Eighty percent of mediators in the study reported using joint sessions frequently when they first started mediating (ranging from four to 20 years ago), with only 45% reporting they still do now. Joint-session use varied greatly by geographic region, with almost 70% of mediators in the East/Central region of the United States still using initial joint sessions regularly, compared to just 34% in the Northwest region

and only 23% in the Southwest region. The majority of mediators report greater resistance to the use of initial joint sessions. Opposition was strongest in the Northwest (80.8%), followed by the Southwest (66.7%) and East/Central (40.4%). Mediators who skip initial joint sessions sometimes bring everyone together for a joint session later in the process, but most often do not. In deciding whether to use a joint session, mediators indicated that their primary concern was the preference of the attorneys and parties, followed closely by their own general policy and the nature of the case (Folberg, 2016).

Bernard Morrow, chief executive officer of Morrow Mediation Services, recently conducted a 12-month study of 79 mediations conducted by the firm (Morrow, 2016). He noted that the use of joint sessions differs greatly depending on the type of case. Some form of joint session was used in all personal injury cases, but they were used in only 62.9% of employment cases. Further, he found that mediation duration was not affected by the use of joint sessions. The average duration for half-day mediations was less than five hours regardless of whether joint sessions were used or only caucus. Mediations that went longer than four hours and used some form of joint session enjoyed a much higher settlement rate (90.9%) than those mediated strictly through the use of caucus and shuttle diplomacy (57.4%). Despite their declining popularity, joint sessions overall yielded higher settlement rates when used (Morrow, 2016).

Eric Galton and Tracy Allen say that the avoidance of a joint or general session that includes all counsel and parties in decision-making is a “very disturbing trend” that is dismantling “the bedrock foundation of mediation,” thus posing “a critical danger to the process and the modern mediation movement” (Galton & Allen, 2014, p. 25). Although the use of joint sessions is declining, many disagree about the reasons and about what can or should be done to arrest or reverse the trend. Some are alarmed at what they see as a threat to the foundation of mediation, while others see it as a market-driven reality -- the new face of mass mediation. The next section examines possible reasons for the decline of joint-session use and the potential cost that may entail for mediation participants.

B. RATIONALE FOR SKIPPING JOINT SESSIONS

Joint sessions are all but extinct in California and are in a steep downward spiral in the Southwest and the Northwest parts of the United States (Pollack, 2015, Folberg, 2016). What accounts for this? Underlying the decline of joint sessions is a distinct shift in dispute resolution style over the past two decades. This shift is depicted in the Dispute Devolution Model (see Figure 1).

The essence of mediation is conflict resolution, and the best-known model of the various options for resolving conflict is Thomas’s Model of Conflict Resolution Styles (Thomas, 1992). The five distinct conflict styles (*avoiding*, *accommodating*, *competing*, *compromising*, and *collaborating*) are represented in four quadrants and the central area of Figure 1. Each style is defined in terms of assertiveness (concern for self) and cooperativeness (concern for other’s needs). Participants may choose ***Avoiding*** (neither assertive nor cooperative) to escape the conflict. This approach is represented by the diffident Turtle, who retreats into his shell and

crawls away at the first sign of trouble. At other times, participants may simply yield to others, using the ***Accommodating*** (not assertive, but highly cooperative) style, represented by the cuddly Teddy Bear, who loses willingly. Far more common in mediation are the assertive styles.

Competing (highly assertive and uncooperative) is the most inflexible, least-effective approach, one in which a participant insists on having his way; this is represented by the aggressive Shark, who forces a win-lose scenario. This is the adversarial style of courtroom litigation. A less assertive, more cooperative alternative is the middle-of-the-road ***Compromising*** approach, represented by the crafty Fox. While common, it is a lose-lose proposition, requiring both sides to give up something to reach agreement. The most effective implement in the mediator's toolkit for reaching a mutually beneficial win-win solution is ***Collaborating*** (highly assertive and highly cooperative), represented by the wise old Owl.

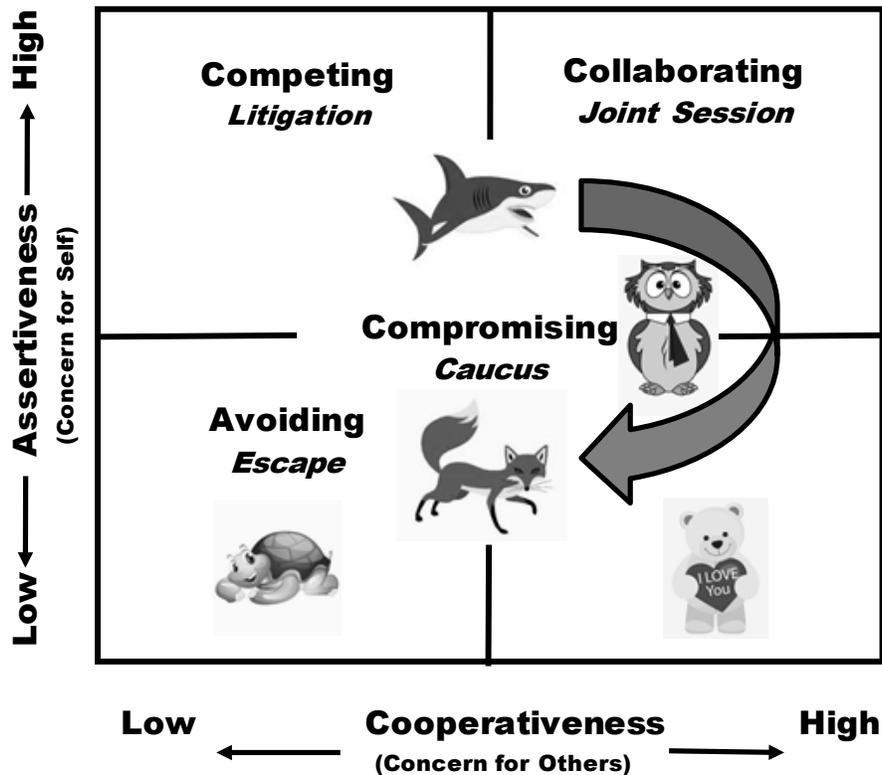
The hallmark of the modern mediation movement is collaboration between parties that leads to a win-win conflict resolution. Because of time constraints, however, compulsory mediation began bypassing party collaboration in joint sessions and shifted to compromise (serial bargaining) in private caucuses. The Dispute Devolution Model in Figure 1 traces the shift as the Sharks flush the Owl out of his nest, leaving mediation in the paws of the Foxes, sacrificing joint sessions along the way.

Beyond this general trend in dispute resolution, mediation participants level a number of specific objections to joint sessions. The top five found in a review of mediation literature are explored in the following sections.

A Waste of Time

A common reason given by attorneys and mediators for not holding joint sessions is that they are seen as a waste time. According to Jay Folberg (2016), attorneys today are better trained in ADR, their clients are better informed, and artifacts -- such as premediation briefs, mediation ground rules, and agreements -- are far more accessible digitally now than in the past. Much of the information traditionally conveyed by the mediator in a joint opening session will have been shared already before mediation, and the parties will want to begin negotiating without delay (Taylor, 2015). However, as a counter to this argument, joint opening sessions can be more than just a meet-and-greet time at which ground rules are set. A carefully scripted, well-managed joint opening session can provide direct, collaborative exchanges between parties, which is the hallmark of effective mediation (Jerome, 2017). For opposing sides, such a session may be the closest thing to having a "day in court," a chance to be heard. Like letting the air out of a balloon, it gives the aggrieved party an opportunity to vent anger or frustration (Ben-Zvi & Vincent, 2015). It is in these times that productive outcomes can flower, such as the giving of apologies and the finding of common ground and novel solutions to resolve conflict (Edwards, 2017, p. 3). John DiBlasi, named as the top mediator in 2017 in the National Law Journal's Corporate Counsel Best of Survey, urges participants to "take the time to mediate" by listening and not rushing or eliminating joint sessions (DiBlasi, 2014, p. 2).

Figure 1: Dispute Devolution Model



Source: Adapted from Thomas (1992). Animal images, directional arrow, and devolution process in mediation by the authors.

Hot Emotions – Fear of “Joint-Session Blowup”

Joint session hostility is on the rise and neither mediators nor attorneys are willing to risk escalation (Bassis, 2014) or “Joint Session Blow Up.” They fear emotional issues will sabotage the session, turning it into an episode of *The Jerry Springer Show* (Bassis, 2014). Lawyers may want to avoid conflict that may further alienate the parties and their counsel by favoring private caucuses (Folberg, 2016). They may feel they can extract the same information without risk in private sessions and decide whether an issue-specific joint session is necessary later (Folberg, 2016). At times, “intractable personal conflict” and the “exchange of vitriol or threatening messages between individuals” may lead to a breakdown in communications that precludes resolution of conflict (Berkoff, 2017, pp. 31-32). Some mediators are likewise unskilled in facilitating highly contentious joint sessions (Bassis, 2014). Mediators must establish ground rules; prescreen content of the conversation; coach participants on what triggers to avoid and what would be most helpful; and carefully consider who should attend joint sessions (Galton & Allen, 2014; Berkoff, 2017). They must prepare clients and give them the opportunity to speak. Mediators must be trained in how to manage conflict, allow constructive venting, and control the

process so that hostile reactions among parties and counsel are contained. Leslie Berkoff (2017) offers advice for mediation participants in her Four C's of Effective Mediation: Civility - being cordial, courteous, and respectful; Cooperation - working together to resolve issues; Creativity - seeking novel solutions to the conflict; and Collaboration - crafting a win-win solution (p. 32).

Incivility, Grandstanding, and Posturing by Attorneys

Many lawyers misuse joint sessions, viewing them as a “quasi-litigation forum” for advocacy—posturing, puffing, bluffing and pounding home the virtues of their client’s case while the clients “remain silent and entrenched in their positions” (Berkoff, 2017, p. 30). If this happens, clients lose their opportunity to speak, interact, and contribute to a creative, collaborative resolution to the conflict (Berkoff, 2017). According to Galton and Allen (2014), most attorneys, who have never gone to mediation advocacy school, are drawing on a “fountain of misinformation,” believing that a joint session is an “emotional diatribe by the opponent, a chance to take shots at their client and their case” (p. 26). They may fear they will lose control over the process as the mediator takes the lead in navigating joint sessions (Bassis, 2014). Mediators must craft and manage a collaborative joint session in which “courtesy and civility to the other side are paramount” (Berkoff, 2017, p. 31). Some mediators, fearing attorneys would “use the joint session as a courtroom podium, have decided to dispose with the use of the joint session universally because it does more harm than good” (Berkoff, 2017, p. 30).

Loose Cannons – Unmanageable Parties

Occasionally, attorneys and mediators face unmanageable parties, or “loose cannons,” as they navigate the mediation minefield. Such parties may be abusive, exhibiting “extreme animus” toward others that may derail the entire process, or they simply may be difficult for attorneys to manage, saying or sharing things that undermine their case in open session (Jerome, 2017; Berkoff, 2017). Attorneys may be forced to forego “all hands” joint sessions (sessions involving all participants) in such cases (Ben-Zvi & Vincent, 2013, p. 2.). This does not preclude joint sessions with only counsel and the mediator present. Loose cannons are better suited to a more controlled, confidential environment – private caucuses. Attorneys argue that party self-determination is not violated in such cases because clients still have voice when they voluntarily defer to counsel.

Nature of the Case

Some cases may not warrant joint sessions. Examples would be cases that involve solely commercial at-arms-length transactions; insurance settlements; purely economic outcomes; and straightforward facts, in which there is no present or future relationship between parties. Serial bargaining in private caucuses may be the most efficient path to a monetary settlement in such situations. Moreover, there are some circumstances when it is inappropriate for the litigants to meet in person, including “some employment discrimination claims, claims for retaliatory termination, and claims of abuse where bringing the alleged victim and alleged perpetrator together would be detrimental to the process” (Taylor, 2015, p. 1). This does not preclude skilled mediators from crafting effective joint sessions in even the most challenging cases. The next section examines the underlying power of joint sessions to transform mediation.

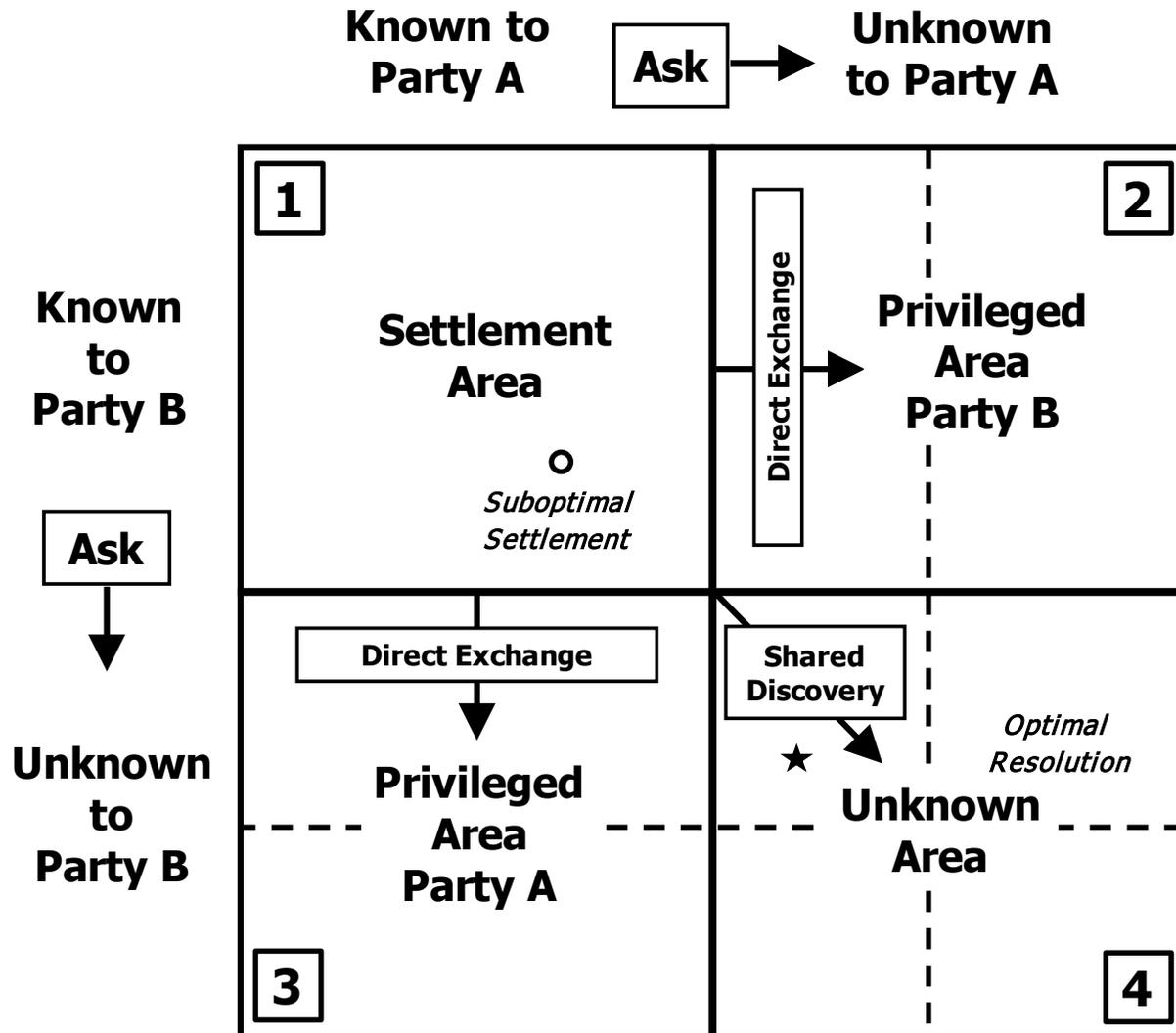
C. POWER OF JOINT SESSIONS - OPENING THE MEDIATION WINDOW

Joint sessions offer many potential benefits. Morrow (2016) found much higher settlement rates (90.9%) for longer mediations (those over four hours) with substantive joint sessions than those mediated strictly through use of caucus and shuttle negotiation (57.4%). Joint sessions also may narrow the issues and set the stage for successful mediation; diffuse tension and break impasses as a result of close proximity among parties; and allow parties to vent to and empathize with the opposing party (Bassis, 2014). Perhaps the greatest benefit, however, lies in potential synergy between the parties that leads to novel, win-win solutions—the “*hidden vein of gold* that will enable parties to reconcile, resolve their disputes, and move on and up” (Love & Parker, 2017, p. xii). The classic Johari Window (Luft & Ingham, 1955) is adapted to mediation in order to illustrate the potential power of joint sessions.

In 1955, Joseph Luft and Harry Ingham proposed the Johari Window as a graphic model of interpersonal awareness (Luft & Ingham, 1955). Since then, scholars, executives, and consultants have used the model as a tool for developing high levels of communication, trust, and openness in a variety of situations. The model describes mechanisms for developing effective working relationships through self-disclosure, feedback, and shared discovery. The model is depicted as a window with four panes. The panes in the original model represented information known only to Self (Hidden), only to Other (Blind), to Both Parties (Open), and to Neither Party (Unknown). The model was adapted for use in mediation by the authors in the Joint Session Mediation Window in Figure 2. This required a change in perspective from Self/Other in the original model to Party A/Party B in the adapted model. The original Blind and Hidden areas were relabeled as *Privileged Areas* for each party. Information in these areas is known only to the respective party. The Open Area in the original model, renamed *Settlement Area* in the adapted model, is the area in which successful mediation occurs. It consists of perceptions, understanding, and knowledge of relevant information held in common by both mediation parties from which a settlement may be reached or the conflict resolved.

At the outset of mediation, the Settlement Area may be relatively small, consisting only of factual information known to both parties in the case (personal information, discovery, pre-mediation briefs, etc.). In caucused mediation, attorneys usually are reluctant to share privileged information with the other party, and mediators are required to keep such information confidential. The mediator engages in serial bargaining, shuttling incremental offers between the parties until a settlement is reached. Some have argued that the mediator violates neutrality by serving as an agent of the opposing party when presenting (and encouraging acceptance of) an offer on their behalf (Rajkowski, 2016). The mediator also dances around confidentiality in shuttle diplomacy – not directly divulging privileged information, but revealing just enough through suggestion and innuendo in a process called “noisy translation” to secure a settlement (Hoffman, 2011, p. 273). Thus, the Settlement Area is not enlarged significantly in caucused mediation. Privileged information is protected, and there is no collaborative, synergistic face-to-face interaction between the parties.

Figure 2: Joint Session Mediation Window



Source: Adapted from the Johari Window, Joseph Luft and Harry Ingram (1955). Adaptation from Self/Other to Mediation Party A/Party B, Privileged and Settlement Areas, Direct Exchange, and Settlement Points by the authors.

Shared discovery is unlikely in caucused mediation, exposing little of the Unknown Area – no more than is absolutely necessary to reach a settlement. Parties are denied the opportunity for direct, collaborative, face-to-face exchange that has the potential to enlarge significantly the Settlement Area and the potential for synergistic win-win solutions. Caucused mediation settles for compromise (lose-lose) as the dominant conflict resolution tactic over a more dynamic collaborative (win-win) approach. As a result, solutions usually are narrow and unimaginative,

often purely economic, and with no real chance of resolving the underlying conflict and restoring the relationship between the parties. Parties are content to accept the first option that is good enough, which is represented in the model by the circle in the Settlement Area, rather than find the best option available, represented by the star in the expanded Settlement Area.

Joint sessions have immense power to open the Mediation Window. When parties work together to resolve conflict, vital information formerly held in the Privileged Areas is exchanged and possibilities not previously considered by either party in the Unknown Area are discovered. As the Settlement Area expands, parties are more likely to find the “hidden vein of gold” in conflict resolution – a novel solution that resolves the conflict, restores trust, and rescues the relationship between adversaries. The star in Figure 2 represents an optimal solution found only in the expanded Settlement Area. Mediators have a vital role in this process of joint discovery. They are the peacemakers who are charged with the task of guiding initially reluctant adversaries down the path of reconciliation. Without joint sessions, the secrecy, confidentiality, and noisy translation of serial bargaining obscure optimal resolution. Parties settle for a partial solution, usually a monetary lose-lose proposition that is good enough. Bruce Edwards, a mediator whose career spans 30 years and hundreds of litigated cases and mediations, describes the power of substantive joint sessions this way:

As we guided participants through these sometimes difficult moments of confrontation and disagreement, *magical* things began to happen. Disputes resolved. Relationships healed. We even witnessed an occasional apology. Despite the fact that these joint sessions were sometimes loud, messy, or even borderline out of control, the parties seemed to benefit in ways that we lawyers had never before appreciated. We found a quality of resolution that was never available to our clients in the good old days of litigation. (Edwards, 2017, p. 2.)

D. A TALE OF TWO MEDIATIONS

Narratives are an effective way to illustrate both the power and pitfalls of mediation. Two mediation stories are presented in this section. The first is a fictional tale that illustrates the unfortunate consequences of caucused mediation. The second captures the magic of joint sessions in a true story of tragic loss.

Story 1 – Two Boys and an Orange

This story is based upon the classic “Orange Paradox” recounted by Fisher, Ury, and Patton (1991). The authors take editorial license to embellish the story, casting it in the Great Depression – a time when fresh fruit was scarce and highly prized. Two boys happened upon a big, juicy orange at school one day. Both claimed the orange, and a lively dispute broke out. The headmistress, noticing the disturbance, ushered the boys to her office, hoping to resolve the issue and restore order to the school. Because of the hostility between the boys, she felt it unwise for them to meet together. So, she listened separately to each’s version of the issue and learned that both boys felt they had equal claim to the orange. Acting as a peacemaker

(mediator), she suggested to the boys separately that cutting the fruit in half and giving one part to each was a reasonable solution. Both agreed. The orange was halved. Then, as they walked down the hallway together, each with half an orange in hand, tempers began to cool, and they started talking. The first boy said, "I just wanted the juice and pulp to make a nice glass of orange juice." The other replied, "Well, I just wanted the rind to take home to my mom for a pie." Only then did they realize that each could have had the "whole" of what they wanted had they shared their interests. Instead, both settled for half an orange. The lesson from this story is that the Settlement Area often remains small in caucused mediation, leading to narrow, unimaginative, suboptimal solutions that satisfy neither party.

Story 2 – A Meeting of Strangers (Galton, 2012)

Sometimes the best efforts by attorneys to protect their clients backfire, leading to even greater anguish. Such was the case for Virginia Stephens (Ginny), who lived in the Country Club Addition in Odessa, Texas. Wife of a prominent doctor, Ginny was matriarch of her large family. At age 65, she was still responsible for the annual Christmas gathering and took great pride in it. Strangely enough, a fellow Odessan, Sam Kitchens, was also in charge of holiday cooking and arrangements for the gathering of his four daughters and their families. He was a little older than Ginny but spry and active. He still missed his wife, who had passed away seven years earlier, but his children, grandchildren, and friends kept him going.

The paths of Ginny and Sam crossed while both were on the way to HEB one December day to gather ingredients for Christmas dinner. Ginny, distracted and looking down at her list, ran a red light and struck Sam. He was killed instantly. The legal proceedings began. Ginny felt terrible for what she had done and wanted to reach out to Sam's family, but she was stopped by her attorney, who worried criminal charges might be filed. She was haunted by guilt for two years. Finally, the families met for the first time in the opening session of a mediation regarding an insurance claim. Ginny desperately wanted to apologize to the family for what she had done, but, once again, was warned off by her attorney. Then, as he opened the session by talking about how the accident had impacted Ginny, she could be silent no longer. She cried out to the family, expressing her deepest regret and sorrow for what had happened. Jackie, Sam's youngest daughter and the family spokeswoman, witnessed Ginny's genuine grief and asked the mediator if she and Ginny could talk. They met alone for two hours in an adjacent room and, when they returned, Jackie told the mediator, "We're going home!" She and Ginny left together, and the families have celebrated joint Christmases ever since. The insurance claim was approved by the insurance company for almost the full amount, but the families found something far greater than money in the process; they brought to light forgiveness, peace of mind, and new friendships.

Galton, the mediator in this case, recounted the significance of the event to him. After ten years of success in mediation, he said, he had "finally learned to listen to the parties and respect what was important to them" (p. 15). Certainly, Galton would have been justified in trying to avoid face-to-face contact in this emotionally charged case, but he began with a substantive joint session in which all the participants had an opportunity to speak. By opening with a substantive joint session, listening to the parties, and giving them the freedom to confront and comfort one

another, tragedy was transformed to compassion. When properly managed by a skilled mediator, the richness of communication in a face-to-face joint session has the potential to open the Settlement Area and lead to a special outcome.

These stories illustrate the power of joint sessions in mediation and the need to tailor them to fit the unique nature of each case. Joint sessions come in many shapes and sizes. Mediators must craft joint sessions appropriately for each case. The Continuum of Party Participation presented in the next section highlights joint-session options and their application to various types of mediation cases.

E. CONTINUUM OF PARTY PARTICIPATION – JOINT-SESSION OPTIONS

According to Sheldon Stark, a seasoned mediator/arbitrator, joint sessions, when properly managed, “provide value and enhance the likelihood of satisfactory resolution” (Stark, 2020, p. 5). According to Stark, they add value in many ways, including:

- Involving parties directly in the process and so increasing the likelihood of finding more common ground and of achieving a satisfactory resolution;
- Serving as a training platform to improve negotiation and persuasion skills;
- Repairing relationships among parties interested in continuing interactions;
- Offering direct communication between parties whereby they can vent emotions, brainstorm, apologize, or just feel they have been heard;
- Transferring information between parties more efficiently, streamlining shuttle diplomacy;
- Bypassing unwanted lawyer filtering, allowing parties to bargain directly;
- Allowing parties to collaborate better, leading to more win-win outcomes; and,
- Giving participants a platform for listening to one another and finding breakthroughs, which leads to more lasting satisfaction with resolution of the dispute. (Stark, 2020, pp. 5-7.)

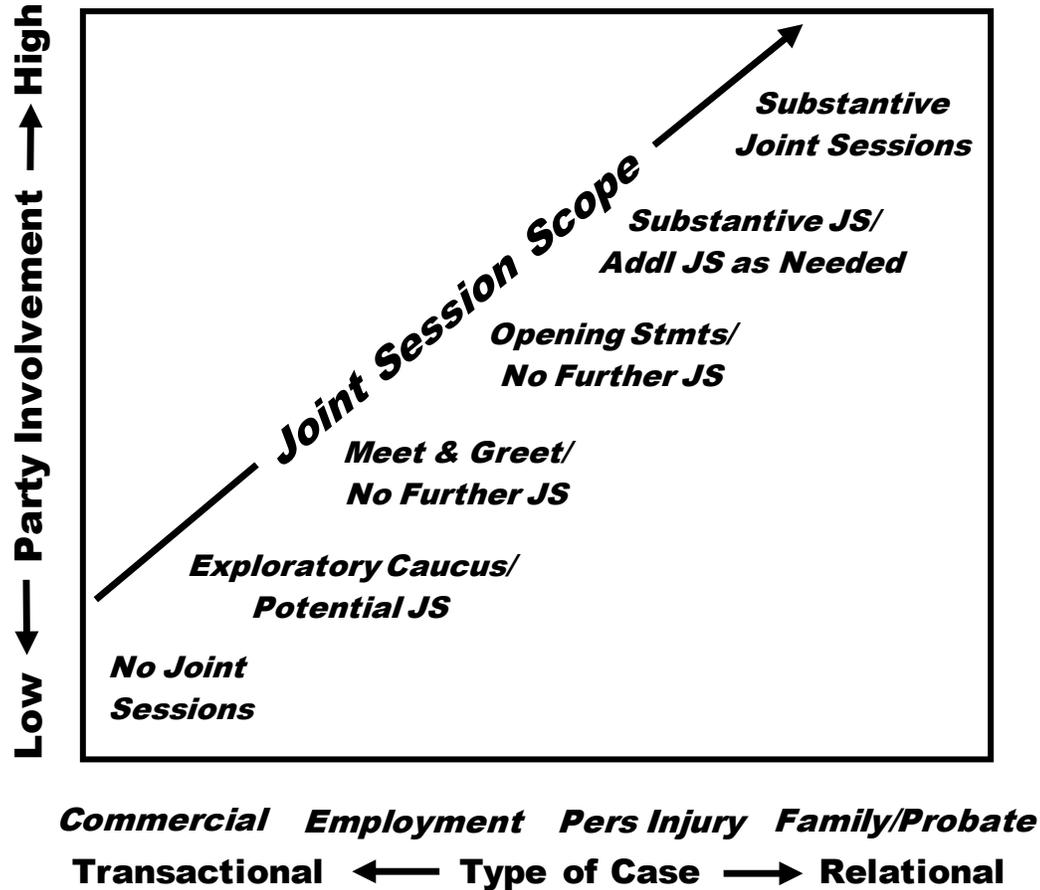
Every mediation case is unique. Should there be a joint session? If so, how should it be designed? Guiding the answers to those questions will be these factors: the type of case (whether it is a simple transactional tort action among strangers or a relational family or probate proceeding); the unique nature of the case (joint sessions may not be appropriate when discrimination or abuse is involved); and the preferences of the mediator, parties, and counsel. It is important to note that even when participants agree to forego joint sessions, the mediator may call for one in order to clarify issues, verify facts, or break an impasse in shuttle diplomacy (Stark, 2020). Joshua Fruchter, co-founder of Merge Mediation Group, advocates meeting in caucus first to “lay the groundwork for a more productive joint session” (Fruchter, 2019, p. 2). Starting out with private caucuses allows mediators to observe both sides and to pick up on any nuances that may impact joint sessions. These issues must be addressed if the mediator is to craft an effective joint session (Jerome, 2017). Once the decision is made to conduct such a

session, it would be helpful for mediators to take time for meaningful exchange between parties (DiBlasi, 2014). Parties often are uncomfortable expressing their views with the other side, are in a hurry to shortcut the process, and move quickly to less stressful private caucuses with the mediator.

A key determinant in the decision to have joint sessions and in their design is the extent of any preexisting relationship between parties. Mediation cases range from auto accident, slip-and-fall, and similar tort cases among strangers to business, family, and probate cases that are colored by strong relationships between parties (Fruchter, 2019). Donald Swanson (2019), a 30-year mediator, claims mediation first was used in the former type of situation, where caucused mediation made sense because there was nothing to gain from direct exchange between the parties, who were strangers. (Galton's story in the previous section is a notable exception). The landscape changed dramatically when mediation expanded into most business disputes, personal injury, family, and probate cases. The importance of the relationship between parties in such cases cannot be understated. Only the parties themselves, in face-to-face discussions with the help of the mediator, are able to unravel disputes interwoven in meaningful relationships (Swanson, 2019). As the relationship between parties expands, the need for involvement in joint sessions grows.

The Continuum of Party Participation in Figure 3 highlights various joint-session options that depend on the nature of the relationship between the parties in cases ranging from simple transactional commercial proceedings to increasingly relational employment, personal injury, family, and probate cases. Joint-session options in the model are adapted from those outlined by Morrow (2016) in his study of joint sessions in 79 mediations and practices of other mediation groups (e.g., Merge Mediation Group and Stark Mediation). The model specifies increasing party involvement in joint sessions as the presumed strength of the relationship between parties in the various types of cases grows. The model highlights increasing party involvement in joint sessions, ranging from *No Joint Sessions* (caucus only) in transactional commercial cases to full *Substantive Joint Sessions* featuring mediator "meet and greet," ground rules, opening statements, questions, and dialogue between parties and/or counsel in highly relational family and probate cases. Between these extremes are four unique joint-session designs of increasing scope. *Exploratory Caucus/Potential Joint Session* refers to starting off with a preliminary caucus to assess risks and to lay the groundwork for a potential joint opening session. Joshua Fruchter of Merge Mediation Group seldom proceeds without this step (Fruchter, 2019). *Meet and Greet/No Further Joint Sessions* entails the most limited joint-session option, one in which the mediator states ground rules and introduces the participants before breaking into private caucuses. The mediator may close the mediation with a brief benediction, but no other joint sessions are held. *Opening Statements/No Further Joint Sessions* is similar, but it allows opening statements from the participants (mediator, parties, and counsel) in the initial joint session, with no additional such sessions. *Substantive Joint Session/Additional Joint Sessions as Needed* features a full joint-opening session, with statements by all participants and dialogue between participants, with additional joint sessions as needed.

Figure 3: Continuum of Party Participation



Source: C.D. Bultena, K.R. Tilker, C.D. Ramser

The Continuum of Party Involvement provides general direction for joint-session design based upon the strength of relationships between parties in the various classes of cases. The six joint-session options presented in the model, while based on actual practice, are not exhaustive. Other options likely exist, and mediators must remain flexible, because every mediation is unique. The practice of holding preliminary caucuses to gauge the feasibility of joint sessions and to inform their design is vitally important in more divisive cases. A Roadmap for Joint Session Success is provided in the next section.

F. ROADMAP TO JOINT-SESSION SUCCESS – HOW AND WHEN TO USE THEM

The challenge of conducting a successful mediation is like running a 10k race with a few well-placed landmines on the trail. With great patience, skill, and discipline, the mediator and participants cross the finish line 80% of the time. Caucused mediation relies on the efficiency of

serial bargaining to produce settlements in record time, and it certainly has its place in modern, court-ordered mass mediation. However, mediation purists argue, a greater range of high-quality, synergistic solutions is possible through direct party collaboration in joint sessions. The Joint Session Mediation Window in Figure 2 illustrates the power of joint sessions to expand the settlement window into uncharted territory (the Privileged and Unknown areas), where the “*hidden vein of gold*” (optimal resolution of the dispute) may be found (Love & Parker, 2017, p. xii). Stories in the subsequent section demonstrated the potential of collaborative joint sessions to produce positive outcomes. Joint sessions, though, are not without pitfalls. The main objections offered by many to these sessions were outlined previously. The Continuum of Party Participation in Figure 3 provides options for addressing some of these objections through the flexible application of a variety of joint-session designs. What is lacking, however, is a roadmap for implementing them.

The Roadmap for Joint Session Success in Table 3 is a compilation of recommendations from top mediators on how to conduct joint sessions. If mediation is, in fact, like a 10k race, it is only fitting that this paper close with ten recommendations, one per kilometer. Thus, the roadmap includes Ten Checkpoints (Cs) for Joint Session Success. It represents best practices from professionals and scholars across a wide spectrum of mediation practice, including some of Leslie Berkoff’s (2017) Four Cs of Effective Mediation and Randy Akin’s (2014) Five Cs of Mediation.

Essentially, mediators should conduct preliminary caucuses with each side to understand the facts of the situation in dispute and to ascertain the nature of parties and counsel. This enables mediators to customize joint sessions to fit the circumstances. Once the decision to hold joint sessions is made, mediators must make every effort to ensure success by coaching parties and counsel on how best to conduct themselves and by making sure all case files and documents are available in a safe, comfortable mediation environment. Once the session is underway, mediators must control the process in order to allow parties to express themselves while avoiding triggers and inflammatory language, stressing the need to proceed with courtesy, respect, and civility. When parties work together to clear the air and find common ground and creative win-win solutions, joint sessions are a worthwhile endeavor. They allow mediators and participants to dig deeply into seemingly intractable conflicts to find a “*hidden vein of gold*” that will enable parties to reconcile and resolve their disputes, to move on and up” (Love & Parker, 2017, p. xii). It is hoped that realization of the value of this will help reverse the declining popularity and use of joint sessions.

VI. SUMMARY

The rapid decline of joint sessions in the United States over the past two decades, particularly in the Southwest is striking (Folberg, 2016). This trend is fueled by the meteoric rise of court-ordered mass mediation and the insertion of attorneys into the process. Cases are settled at lightning speed, primarily in caucus, with little or no interaction between the parties. Lost in this

trend is the richness of collaborative, face-to-face exchange between parties and the potential for synergistic win-win solutions in joint sessions. Leading participants through this sometimes “loud and messy” process can lead to “magical” results (Edwards, 2017, p. 2).

After examining the shift in conflict resolution style in the Dispute Devolution Model and the reasons often given for avoiding joint sessions, the authors focused on steps that could be taken to reverse the trend and recapture the power of joint sessions. The Joint Session Mediation Window in Figure 2 illustrates the process by which such sessions expand the Settlement Area to reveal an optimal resolution to the conflict. The consequences of skipping joint sessions and the benefits of conducting them were illustrated in two unique mediation stories. The paper then examined joint-session options in the Continuum of Party Involvement and offered a Roadmap to Joint Session Success, with ten key checkpoints to improve them. In summary, this paper provided a comprehensive review of the value of joint sessions, models to examine the process, and a list of guidelines to reverse the trend of their declining use and to recapture their power.

VII. CONCLUSION

The success of mediation and its application across a spectrum of conflict situations has been noted, the problems posed by the decline of joint sessions has been exposed, and several tools to help mediators and participants reverse the trend to ensure success in mediation have been supported. Business leaders can use these tools to bolster success in mediation and to better prepare for the inevitability of mediation when a dispute or lawsuit arises. The quality of mediation outcomes need not be in decline. Mediation is enhanced when parties interact directly in well-crafted joint sessions.

The volume, variety, and settlement rates of mediation cases suggest a bright future for this form of conflict resolution if its usefulness is recognized. With the utilization of mediation on the rise, it is more important than ever for business leaders to master skills necessary to take full advantage of the opportunities this process offers. Mediation is an effective tool when business leaders prepare for and navigate the process with a clear understanding of how to remove interpersonal barriers, thus ensuring more understanding, mutual respect, and open communication.

Table 3: Roadmap to Joint Session Success
Ten Checkpoints for Mediation Success

| Ten Checkpoints (C's) for Mediation Success | |
|--|---|
| 1. | <u>Conduct</u> preliminary caucuses to gauge feasibility and support for joint sessions among parties and counsel and to inform potential joint session design. |
| 2. | <u>Customize</u> – “tailor the suit” to fit the conflict, content, timing, participant roles, attorney and party temperament. Be flexible, one size <u>does not</u> fit all in mediation. |
| 3. | <u>Coach</u> parties and counsel on appropriate behavior (positive tone, thanking, talking in turn, apologizing) and refraining from grandstanding, interrupting, and arguing. |
| 4. | <u>Content</u> – ensure parties are prepared, all case files and key documents in place. Accept no new information or speculate on missing documentation after beginning. |
| 5. | <u>Comfort</u> – provide a comfortable, safe environment for participants: comfortable surroundings, courteous staff, refreshments, and a comfortable mediation facility. |
| 6. | <u>Control</u> – protect the parties and the process. Allow controlled venting to break down emotional barriers. Give everyone “their day in court.” Expect courtesy, respect, and civility. Don’t rush the session, take the time to mediate. |
| 7. | <u>Communication</u> – actively listen and observe non-verbal behavior (90%). Avoid triggers and inflammatory comments. Allow apologies and let the parties speak. |
| 8. | <u>Collaboration</u> – bargain directly with parties without lawyer filtering. Focus on finding win-win solutions. Don’t compromise (split the difference). Expand the pie. |
| 9. | <u>Creativity</u> – focus on interests, not positions. Find ways to narrow the issues. Brainstorm to find novel solutions that may be the key to resolving the dispute. |
| 10. | <u>Common ground</u> – air grievances, clear the air, empathize with the other side. Focus on interests. Find common ground to clear a path to a mutually beneficial deal. |

Source: Compilation of recommendations: Akin (2014), Ben Zvi & Vincent (2013), Berkoff (2017), Brookhart (2012), DiBlasi (2020), Folberg (2016), Fruchter (2019), Galton & Allen (2014), Jerome (2017), Stark (2020), Stern (2017).

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**CAMPAIGNS & CLAIMS:
THE USE OF MUSIC BY POLITICAL CAMPAIGNS,
INCLUDING A DISCUSSION OF POSSIBLE CLAIMS RAISED BY THE COPYRIGHT
OWNERS WHO HATE IT**

AMY SMITH*

ABSTRACT

This paper discusses copyright and other claims that musicians can make against campaigns when those campaigns clash against their personal character. As the 2020 election is fast approaching, it is a timely topic to explore with students.

INTRODUCTION

Music moves, motivates, and sometimes it may even manipulate us. Because music is impactful, politicians from President George Washington¹ to President Trump have utilized music in their campaigns. The use of music in campaigns, however, does not come without risk! Below are some important points and topics for review.

WHAT LICENSE IS REQUIRED TO PLAY MUSIC AT A CAMPAIGN EVENT?

A license for the use of a musical composition/musical work (words and music) is required when music is played in public, such as at a campaign event. It is not necessary to obtain a license from the owner of the sound recording (usually the record label).² A performing rights organization (“PRO”) issues musical composition/musical work public performance licenses.³ Typically, venues (such as hotels, arenas, or convention centers) obtain these licenses in order to cover performances of all the songs in that certain PRO’s catalog.⁴ However, the general venue license may exclude rights to perform music when it is organized by a third party.⁵ Because that third party (in this case, the political campaign) is the main beneficiary of the performance, it has the ability to control all performances rather than the venue.⁶ Therefore, the venue’s license may exclude certain events, such as “music use during conventions, expositions and campaign events.”⁷

As such, it is suggested by ASCAP, a PRO, that individual campaigns should seek their own public performance licenses from the PROs, as having “such licenses in place would guarantee

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¹ David C. Johnston, *The Singer Did Not Approve This Message: Analyzing the Unauthorized Use of Copyrighted Music in Political Advertisements in Jackson Browne v. John McCain*, 27 CARDOZO ARTS & ENT. L.J. 687, 688 (2010).

² *For Political Campaigns*, RECORDING INDUSTRY ASSOCIATION OF AMERICA, <https://www.riaa.com/resources-learning/for-political-campaigns> (last visited Dec. 13, 2019).

³ *Id.*

⁴ *Id.*

⁵ *Using Music in Political Campaigns: What you should know*, ASCAP, [https://www.ascap.com/~media/files/pdf/advocacy-legislation/political_campaign.pdf](https://www.ascap.com/~/media/files/pdf/advocacy-legislation/political_campaign.pdf) (last visited Dec. 13, 2019).

⁶ *Id.*

⁷ *Id.*

that, no matter where you have a campaign stop, the performances of music at the events would be in compliance with copyright laws.”⁸ The political campaign can seek a license for a particular event at a specific venue or it can seek a “traveling license” which will cover the campaign at whatever location it might find itself.⁹ It should be noted that the campaign’s license would only extend until the candidate takes office.¹⁰

DOES THE LICENSE ISSUED BY A PRO FOR CAMPAIGN EVENTS COVER EVERY SONG IN THAT PRO’S REPERTORY?

In most instances, the PRO’s license agreement covers every musical composition/musical work in its repertory.¹¹ However, it is reported by ASCAP that its members may ask that specific songs be excluded from a particular campaign’s license.¹² If this occurs, the political campaign will be notified by ASCAP¹³ and presumably, the other PROs.

WHAT IF THE POLITICAL CAMPAIGN WANTS TO USE A SONG IN A COMMERCIAL (TV, RADIO, SOCIAL MEDIA, ETC.)?

Whether posted on the internet, played on television, or heard on the radio, various licenses are required (although not exclusively) such as: public performance licenses, synch licenses, and master licenses.¹⁴

Synch License – Obtaining permission from the owner of the musical composition, usually the music publisher,¹⁵ in return for a flat fee or a royalty.

Master License – Obtaining permission from the owner of the sound recording (usually the record label) if the campaign wants to use a specific recording of the song¹⁶ in return for a fee or royalty.

Public Performance License – Obtaining permission for the public performance of the musical composition from the PRO (generally) in return for a royalty.¹⁷

AS CAMPAIGNS IN RECENT YEARS HAVE TURNED TO THE MAGIC OF MUSIC TO INCREASE THE EMOTION FOR THEIR SUPPORTERS, COPYRIGHT INFRINGEMENT CLAIMS (RAISED BY SONGWRITERS WHO DO NOT WANT THEIR SONG TO BE ASSOCIATED WITH A PARTICULAR CANDIDATE) HAVE RISEN.¹⁸ THE FOLLOWING SETS FORTH SOME EXAMPLES OF CLAIMS RAISED.

⁸ *Id.*

⁹ RIAA, *supra* note 2.

¹⁰ ASCAP, *supra* note 5.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ RIAA, *supra* note 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Johnston, *supra* note 1.

- During his 2016 campaign, President Trump used several songs by the Rolling Stones, such as *Start Me Up*, *You Can't Always Get What You Want*, and *Sympathy for the Devil* at various events.¹⁹ He was asked by the Rolling Stones to stop playing their songs at his events.²⁰ The band, in a statement, stated: "The Rolling Stones have never given permission to the Trump campaign to use their songs and have requested that they cease all use immediately."²¹

- President Trump used the Neil Young song *Rockin' in the Free World* when he launched his 2016 campaign. In a statement, Young said: "Donald Trump was not authorized to use *Rockin' in the Free World* in his presidential candidacy announcement."²²

- President Trump used the song *Dream On* by Steven Tyler during his 2016 campaign. Tyler's attorney stated: "Trump for President does not have our client's permission to use *Dream On* ... because it gives the false impression that he is connected with or endorses Mr. Trump's presidential bid."²³

During the 2016 campaign, according to Trump's spokesperson, the Trump campaign paid the appropriate license fees to use musical compositions/musical work, nonetheless, in some instances, it chose to discontinue its use.²⁴

- U.S. Representative Michele Bachman received a cease and desist letter from Tom Petty for her use of *American Girl*.²⁵

- President Barack Obama received a request by Sam Moore to stop using *Hold On! I'm Coming*.²⁶

- U.S. Senator John McCain, the Republican National Committee, and the Ohio Republican Party were sued for copyright infringement, among other things, by singer-songwriter Jackson Browne for alleged infringement concerning one of his songs in an advertisement produced by the Ohio Republican Party.²⁷ This suit was settled out of court wherein the defendants issued a

¹⁹ Barney Henderson, *Rolling Stones ban Donald Trump from using their songs after he plays Start Me Up*, THE TELEGRAPH (May 4, 2016, 8:37 PM), <http://www.telegraph.co.uk/news/2016/05/04/rolling-stones-ban-donald-trump-from-using-their-songs-after-he/> (last visited Dec. 13, 2019).

²⁰ Martin Chilton, *Adele, Rolling Stones and other musicians angry at politicians using their songs*, THE TELEGRAPH (May 5, 2016, 7:05 AM), <http://www.telegraph.co.uk/music/artists/adele-and-other-musicians-angry-at-politicians-using-their-songs/> (last visited Dec. 13, 2019).

²¹ Henderson, *supra* note 19.

²² Chilton, *supra* note 20.

²³ Daniel Kreps, *Aerosmith Warns Donald Trump Over 'Dream On' Use*, ROLLING STONE (October 11, 2015), <https://www.rollingstone.com/politics/politics-news/aerosmith-warns-donald-trump-over-dream-on-use-45878/> (last visited Dec. 13, 2019).

²⁴ Chilton, *supra* note 20.

²⁵ *Tom Petty Against Michele Bachmann, Springsteen Against Ronald Reagan: Musicians vs. Politicians*, THE DAILY BEAST (Apr. 24, 2017), <https://www.thedailybeast.com/tom-petty-against-michele-bachmann-springsteen-against-ronald-reagan-musicians-vs-politicians> (last visited Dec. 13, 2019).

²⁶ *Id.*

²⁷ *Browne v. McCain*, 611 F. Supp. 2d 1062, 1065 (C.D. Cal. 2009).

public apology and pledge to get artists' permissions before using music in the future.²⁸ Despite the settlement of this case, it would be interesting for student to study the *Browne v. McCain* complaint and associated motions, as the issues raised will likely be seen in the future.

- The Mike Huckabee presidential campaign was sued for copyright infringement by Rude Music (owned by Survivor founding member Frank Sullivan, who co-authored the song) for 1.2 million dollars over the use of *Eye of the Tiger*.²⁹ Huckabee's attorneys argued that it was fair use, as the event was a religious assembly rather than a campaign event.³⁰ In the end, the campaign paid a \$25,000 settlement for unlicensed use of the song.³¹

- President Ronald Reagan referenced Bruce Springsteen in a speech: "America's future rests in a thousand dreams inside our hearts. It rests in the message of hope in the songs of a man so many young Americans admire—New Jersey's own Bruce Springsteen. And helping you make those dreams come true is what this job of mine is all about." Mr. Springsteen did not appreciate the shout-out and his complaint may have been one of the "first battle[s] over a campaign song that has been replayed many times since."³²

Whether or not proper licenses have been obtained, politicians are at risk of complaints and lawsuits for copyright infringement, among other causes of action.

The fair use doctrine, allowed under the Copyright Act, provides a balance between the public interest in using a work with the copyright owner's right to exclusivity in his or her original creative works.³³ Fair use is a potentially available defense for the defendants. The balancing test established in the law, as set out in the United States Supreme Court case of *Campbell v. Acuff-Rose*³⁴, would include a review of each of the following elements:

(1) The purpose of the use, which includes "whether such use is of a commercial nature or is for non-profit education purposes."³⁵

(2) The nature of the copyrighted work, which includes a determination by the court on whether greater access to the work "would serve the public interest in the free dissemination of information."³⁶

(3) The amount and substantiality of the portion used in relation to work as a whole, in which case courts consider "how much of the copyrighted work was taken and whether that portion was an essential element of the plaintiff's work."³⁷

²⁸ Johnston, *supra* note 1 at 690-91.

²⁹ Ted Johnson, *Mike Huckabee's Campaign Pays \$25,000 for Unauthorized Use of 'Eye of the Tiger,'* VARIETY, June 27, 2016, available at <https://variety.com/2016/music/news/mike-huckabee-eye-of-the-tiger-survivor-lawsuit-1201804503/amp/> (last visited Dec. 13, 2019).

³⁰ *Id.*

³¹ *Id.*

³² THE DAILY BEAST, *supra* note 25.

³³ See Copyright Act, 17 U.S.C. § 107 (2018).

³⁴ See *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 577 (1994) (quoting *Stewart v. Abend*, 495 U.S. 207, 236 (1990)).

³⁵ *Martin Luther King, Jr., Ctr. for Soc. Change v. Am. Heritage Prods.*, 508 F. Supp. 854, 860 (N.D.Ga. 1981).

³⁶ See *Rosemont Enters. v. Random House*, 366 F.2d 303, 307 (2d Cir. 1966).

³⁷ See *Hustler Magazine v. Moral Majority*, 606 F. Supp. 1526 (C.D. Cal. 1985).

(4) The effect of the use upon the potential market for or value of the work, which includes a consideration of future harm in addition to the market harm the alleged infringer has already caused.³⁸

IF THE PROPER LICENSES HAVE BEEN OBTAINED BY THE CAMPAIGN, OTHER THAN COPYRIGHT CLAIMS, WHAT RISKS EXIST WHEN A SONGWRITER OR ARTIST DO NOT WANT THEIR SONG TO BE ASSOCIATED WITH A PARTICULAR CANDIDATE?

Even if all copyright laws have been followed, there is a potential risk especially if it is asserted that a musical composition/musical work or sound recording has become the theme for the candidate's campaign. Available legal claims for a plaintiff include but are not limited to the following:

1. Lanham Act – False Endorsement

False endorsement is a claim allowed under the Lanham Act.³⁹ False endorsement occurs when a person's identity is connected with a product or service in such a way that the consumers are likely to be misled about that person's sponsorship or approval of the product of service.⁴⁰ This claim is based upon the alleged misuse of a trademark, in this case, the plaintiff's identity.⁴¹ Plaintiffs would seek to prove that the politician's use of a protected mark (his/her identity) would possibly confuse or mislead the public into believing that the artist/musician endorses the politician.⁴²

2. Lanham Act –

Other provisions of the Lanham Act cover confusion and dilution of a trademark through unauthorized use.⁴³

3. Right of Publicity -

Right of publicity is a state cause of action that everyone holds to control the commercial use of their identity.⁴⁴ Plaintiffs would generally argue that by using the songs, the politician "implicates commercial interests the musician is trying to protect."⁴⁵ It stems from the desire to protect an image created by the plaintiff.⁴⁶ If proper copyright law has been followed by the politician, the state cause of action may be preempted by federal copyright law.⁴⁷

³⁸ See *Campbell*, 510 U.S. at 587-88.

³⁹ Lanham Act, 15 U.S.C. § 1125(a)(1) (2018).

⁴⁰ See *ETW Corp. v. Jireh Pub.*, 332 F.3d 915, 925-26 (6th Cir. 2003).

⁴¹ Elizabeth Long, *Trumped by False Endorsement: Musicians Still Might Have Intellectual Property Rights to Prohibit Politicians from Using Their Songs Despite Copyright Licenses*, 44 N. KY. L. REV. 171, 176 (2017).

⁴² *Id.* at 203.

⁴³ ASCAP, *supra* note 5.

⁴⁴ Long, *supra* note 41 at 192.

⁴⁵ *Id.* at 195.

⁴⁶ *Id.*

⁴⁷ *Id.* at 196.

4. Other Actions –

Other actions available by musicians may include such claims as defamation, false light and false advertising, as well as federal and/or state ethics and campaign rules violations.⁴⁸

BEST PRACTICES FOR THE CANDIDATE TO AVOID THE NEGATIVE PUBLICITY.

In addition to what has been described above, it would be prudent, especially if the candidate wants to use a specific song in a specific manner, such as a theme song, for the campaign to reach out to the songwriter/publisher and artist/record label to discuss specific uses, as negotiated licenses may be the best and most agreeable option.⁴⁹

As the 2020 campaign gets into full swing, it is important for students to understand the legal requirements of copyright law, as well recognize other available claims that musicians and artists may assert when the campaign clashes with their character.

⁴⁸ RIAA, *supra* note 2.

⁴⁹ ASCAP, *supra* note 5.

BUSINESS ETHICS CASE COMPETITIONS: A FRESH OPPORTUNITY TO TEACH BUSINESS ETHICS

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ABSTRACT

Business ethics case competitions and ethics case competitions offer students opportunities to hone communications skills. They could also be opportunities to teach business ethics. Because case competitions use scenarios, they offer good platforms for applying the case method to teaching business ethics. With some adaptation to current structure, current case competitions could become effective venues for teaching ethics and contemporary business issues. This article focuses on three competitions and some contemporary business issues from the 2000s and 2010s to show how case competitions can be restructured to effectively teach business ethics.

INTRODUCTION

The goal of teaching ethics is to equip students to handle ethical situations they will face in the business world. “By exposing students to ethical concepts and applications we prepare them so that they are not surprised by the challenges they may face” (McWilliams and Nahavandi 2006, p. 422). To add value, ethics pedagogy must be focused on practical application:

Arthur (1984) defines business ethics as applied ethics. This approach recognizes the need for a focus based on reality when studying the business world. Organizations operate in real time in the real world; therefore, the ethics of business can best be viewed in that context (Schaupp and Lane 1992, p. 225).

In the last two decades, business schools have accepted the responsibility for teaching business ethics (McWilliams and Nahavandi 2006; Bosco et al. 2010). The AACSB even formed a task force in ethics education. The task force called for ethics to be emphasized in business school education without specifying requirements as to method of delivery, content, or assessment (Waples et al. 2009; Carlson and Burke 1998). Therefore, the question is no longer should business schools teach ethics but rather how effective is the current ethics curriculum (McWilliams and Nahavandi 2006).

Some schools have taken ethics beyond the classroom, making it the apparent substantive focus of competitions. In reality, as they are currently structured, business ethics competitions and ethics case competitions are best described as opportunities for students to learn and hone communication skills, not opportunities to learn ethics. Because case

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competitions use scenarios or cases, they do offer an opportunity to apply the case method for ethics instruction.

This article discusses how to use the case method to teach business ethics. It then provides an overview of some contemporary business ethics issues in research from the 2000s and 2010s, and some contemporary business ethics issues in organizations. A discussion then follows about how to structure case competitions to effectively teach business ethics; this discussion includes an overview of three case competitions.

USING CASES TO TEACH BUSINESS ETHICS

The case method brings to ethics instruction a practical application of theoretical concepts by asking students to take, support, and defend positions. Discussion of ethical concepts and theories is most effective if it is combined with active learning or experiential techniques like case studies. “Claiming that ethics is part of a course by listing it on the syllabus is not sufficient to ensure learning; actively engaging students to discuss ethics might be the only means by which to intensify their understanding of ethical issues and develop their moral judgment competence” (Bosco et al. 2010, p. 267). Case studies may revive student engagement and interest while improving ethical analytical skills, addressing a problem with ethics lectures identified by Schaupp and Lane: “Many [students] are bored with textbook and classroom lectures and welcome discussions with practitioners. Some are already cynical about business practices and ethics; and many tend to see problems and solutions simplistically” (Schaupp and Lane 1992, p. 226).

Different styles of the case method exist. One way to build a taxonomy of case methodology is to describe the source of case content. Doing so enables us to break case styles into initial, broad categories like case studies and live cases. Case studies present “a rich and complex environment that encourages application of ethical concepts, makes students aware of ethical dilemmas, and requires them to analyze those situations” (McWilliams and Nahavandi 2006, p. 425). Other advantages of case studies are that they are relatively easy to use and do not require considerable expertise from faculty. However, because case studies are abstract students are not always emotionally invested in the experience, resulting in students feeling no accountability for their decisions or engagement in the process (McWilliams and Nahavandi 2006). Live cases use “a current event that students have heard and read about rather than a case developed for the purpose of class discussion” (McWilliams and Nahavandi 2006, p. 425). This kind of case requires more preparation by faculty, as the instructor must find “a firm or an individual who is viewed by the press and public, if not by the courts, to have undertaken unethical or illegal activities” (McWilliams and Nahavandi 2006, p. 425). The advantage of live cases over case studies seems to be engagement and accountability; with regular cases engagement is possible but challenging and accountability less likely. (McWilliams and Nahavandi 2006).

Assuming that the success measure of the case method or indeed of any method is delivering value to the students by way of material that holds use for future application, the viability of the method is contingent on the quality of the cases themselves (Thiel et al. 2013). Features required for a quality case are emotional connection and features that lead to sense-making, specifically moral judgment and moral intent.

Emotional connection

One factor that makes cases particularly effective for teaching ethics is that students are more likely to make an emotional connection with the cases than with lecture material: “Study findings suggest that emotional case content stimulates retention of cases and facilitates transfer of ethical decision-making principles demonstrated in cases” (Thiel et al. 2013, p. 265). This is especially important to include in ethics instruction if one of the goals is to prepare students for real ethical dilemmas, because the conflict-ridden ethical problems of the real world typically evoke emotional reactions. There is evidence that individuals remember ethical cases better when descriptions of the case characters' emotional experiences are highlighted, either because the emotional content increased processing, encoding and retrieval of case details or because it facilitated drawing meaningful connections between evidence and other features of the case content (Thiel et al. 2013). On the other hand, “...omitting the emotional component from cases might be expected to weaken acquisition and transfer of the remaining content” (Thiel et al. 2013, p.267). Content focused on enabling students to build an emotional connection to the case is therefore critical for a case to add value.

Among the ethics research themes and contemporary business ethics issues discussed previously, the one most closely related to emotional connection is the need to discuss ethical leadership and ethical orientation. One way to build an emotional connection through the case method is to require students to take on the roles of various stakeholders in the case (McWilliams and Nahavandi 2006). While this would address the primary goal of emotional connection, retention of the information, it would also address the contemporary issue by giving students and opportunity to consider the idealism and relativism of each perception as described in (Davis et al. 2001).

Case Features that lead to sense-making

Sense-making is the process of gathering, integrating, and interpreting factors related to an ethical problem (Thiel et al. 2013). As with emotional connection, sense-making is driven by case content and features. Case features that would encourage individuals to engage in sense-making include those that cause some confusion, as with cases where multiple interpretations of contextual information are available and individuals do not know how to mediate among the interpretations, or when they don't know or are uncertain about how actions will affect future outcomes/events (Sonenshein 2007).

Sense-making by students studying business ethics follows a process. First, the students use the case features to organize the case in their knowledge base. They then extract important principles from the cases and form case prototypes. Such principles and prototypes can be abstracted and applied to future, similar situations (Thiel et al. 2013). Case content should emphasize the full complexity of the ethical problems to promote sense-making (Thiel et al. 2013).

Moral awareness was previously discussed as the first step in the ethical decision-making process and one of the business ethics research themes of the first two decades of this century. The remaining steps of the process are (2) moral judgement, which is deciding what is morally right in the specific situation; (3) moral intent, the individual decides to give priority to some values over others; finally, (4) engaging in a moral action, the step in which an individual follows through on the intention with a behavior (Butterfield et al. 2000). Sense-making gives students the tools they need to complete the moral judgement and moral intent steps.

Several of the ethics instruction needs identified earlier are specific to either moral judgment or moral intent and could be addressed by giving attention to the inclusion of case features that lead to sense-making. Ethical culture vs. ethical climate, processes that normalize ethical behaviors, awareness of biases are all contemporary issues that can be addressed with case features targeted to giving students an opportunity to develop frameworks for moral judgment. Including details in the case related to cross-cultural difference in fairness and justice will aid the students in practicing moral intent by asking them to prioritize some values over others.

The best practices for the case teaching method are summarized in Table 1.

CONTEMPORARY BUSINESS ETHICS ISSUES IN RESEARCH[‡]

To demonstrate a way to apply the case method for teaching ethics to ethics case competitions, it is helpful to have examples of the types of ethical issues that can be taught. Some of the major themes in ethics research in the 2000s and 2010s that can be used with the case method were awareness of biases, ethical leadership and ethical orientation, cross-cultural differences in fairness and justice, and the small impact of regulative reforms.

Awareness of biases

It has been demonstrated that characteristics of individuals can slowly affect the ethical environment of a company (Schminke et al. 2005). With economic growth comes increasing pressure on company performance goals and this can make individual employees at any level worry more about technical issues than ethical dilemmas (Shaub et al. 1993). Add to this ethically debilitating, unconscious biases, which cannot be addressed by penalizing people for their bad decisions or corrected through conventional ethics training precisely because they are unconscious and their sources unknown (Banaji et al. 2003). There is therefore a need for individuals to be conscious of and active in the ethical decision-making process in their companies, and for the company and employees to understand the process through which decisions are made.

Moral awareness is the first step in the ethical decision-making process. It is marked by identifying the ethical issue or, at a minimum, recognizing the moral nature of the situation. This step presents challenges for individuals since “Moral issues rarely come equipped with ‘red flags’ identifying them as moral, and as a result the ethical component of a decision may not be apparent to the decision maker” (Butterfield et al. 2000, p. 984). The next step in the ethical decision-making process is moral judgement, deciding what is morally right in a specific situation. Moral judgement is followed by moral intent, which is when the individual decides to give priority to some values over others; finally, there is moral action, the step in which an individual follows through on the intention with a behavior (Butterfield et al. 2000).

In the moral awareness step it is critical that individuals recognize the ethical aspects of a situation through different encoding/decoding mechanisms of communication with an understanding of the company’s and company’s stakeholders’ expectations – external stimulus

[‡] Portions of this section are adapted from Lameiras Dos Santos, Pedro (2017) *Ethical leadership in the modern business world: A comparative study of college business ethics case competitions with the market needs* (Unpublished undergraduate honor’s thesis). West Texas A&M University, USA.

such as emotional labor, economic goals and ethical consequences – and to create an action plan for the specific context. This process is affected by the individual's perception of the magnitude of the consequences for other people along with other minor factors such as concentration of effect, probability of effect and temporal immediacy (Kish-Gephart et al. 2010).

Magnitude of consequence is the most important of these factors due to its direct relation with moral judgements, and it is the most studied dimension (Butterfield et al. 2000). Its bearing on moral awareness can be understood by considering how individuals approach ethical decision making in what seem to be, initially, morally ambiguous situations:

(...) moral awareness within ambiguous moral contexts can be influenced by the framing of an issue as one that 'involves ethics' or 'does not involve ethics.' This framing becomes the lens through which people view and think about the issue (Butterfield et al. 2000, p. 988).

The specific bias that negatively affects organizational cultures in many companies is the illusion of objectivity, which is the belief that there are individuals free of biases. Its negative impact stems from a logical fallacy, which in turn comes from a lack of understanding of the nature of implicit prejudice, namely that it “arises from the ordinary and unconscious tendency to make associations...” (Banaji et al. 2003). Other common problems include companies claiming too much credit for economic and ethical performance in strategic alliances and conflicts of interest in which risks and trade-offs are not thoroughly considered (Shaub et al. 1993).

An important characteristic of leadership that can impact a company's ethical environment is the attitude of senior employees. Among senior employees there is a worse perception of the organizational culture and lack of control over the success of organizational initiatives than among entry-level employees. This occurs because by the time an employee becomes a senior employee, they have suffered disappointments in their professional life related to the effectiveness of the decision-making process and corporate social responsibility (Forte 2005). This difference in the perception of senior employees can influence their tone as leaders, impacting the example they set for entry-level employees and ultimately the company's ethical culture.

Ethical leadership and ethical orientation

Ethical leadership and the influence it has on both individual ethical decision-making and the ethical environment is an issue for not only top executives but indeed anyone in a leadership position. Normally the moral orientation and ethical performance of employees is directly associated with ethical role models they interact with on a daily basis, not the CEO or the department director. Therefore, “... every manager must be “chief ethics officer in his or her particular domain” (Weaver et al. 2005, p.324).

Type of work and industry membership also influence ethical decision-making processes (Weber and Wasieleski 2001), sub issues within the ethical issue of ethical orientation. For example, in the service industry managers usually assess more often and thoroughly the ethical dilemmas and stakeholders' when compared to manufacturing industries (Weber and Wasieleski 2001).

Department membership inside a company can also affect the ethical decision-making process and moral orientation:

Employees in a technical core department tend to use an individual locus of analysis and an egoistic criterion for decisions, emphasizing an instrumental ethical climate type. Buffer departments' employees exhibit a mix of ethical decision characteristics, but clearly manifest a caring ethical climate type. Employees in boundary spanning departments show a preference toward a cosmopolitan perspective and principle ethical reasoning, as well as a law and code ethical climate type (Weber 1995, p. 509).

From this it may be concluded that employees disconnected from the final customer are more prone to have an egoistic and subjective view of the business, placing a stronger focus on economic performance, while employees closer to the final customer and interacting with them more frequently tend to follow a more objective ethical decision-making process.

One possible explanation for the influence of ethical leadership and ethical orientation on ethical decision-making is the concept of "role-identities." Role-identities are related to self-concept, the view that the self is "not an isolated psychological unit, but rather is fundamentally social in nature" (Callero 1985, p. 203). The identity building process of the individual is driven not by similarities with others, but by a combination of individuality and interrelatedness with other roles (Stets and Burke 2000). This is reflected in the idea of the self as a structure of roles and identities, or role-identities, defined in part by the social structure and in part by the individual. The self as a structure of role-identities "is also said to operate as a social force, affecting the structure of society by affecting behavior in important ways;"(Rosenberg 1990 as cited in Callero 1985, p. 203), and will therefore affect the company.

Closely related to the idea of role-identities are the concepts of commitment and role-identity salience. One individual may have several role-identities varying in level of commitment. "Commitment" is the extent that relationships in groups depend on the specific identities and roles from each member, measured through the amount of risk related to losing important relationships with others (Stryker and Burke 2000). "When a role-identity is salient it is more representative of the self and consequently one's self-definition will more likely reflect salient role-identities" (Callero 1985, p. 204). Perception of social-relationships is influenced by their relevance to salient role-identities; in other words, how important the example of a department leader or relationships with immediate co-workers are to an individual employee depends in part on how much that employee identifies as being a member of that department. This concept is important since individuals tend to interact with very specialized and small social networks. The greater the level of one's embeddedness in the social structures, the greater the probability that an identity will be activated. Therefore, the greater commitment, the greater the salience of one's identity (Stets & Burke, 2000).

The strength of the ties in between roles also affects the commitment and ultimately role-salience (Stets and Burke 2000) but the main concept that manages the identity processes is shared meanings. Shared meanings strengthen or diminish the impact of one's identity in predicted behavior depending if the meaning of someone's self-view corresponds to the meaning of a certain behavior. The self-verification process will happen if the two meanings correspond and this will raise status, respect, and esteem in the group raising group performance. There is therefore a clear connection between the internalized meanings and expectations commonly known as identity, and

positions in a social structure governed by external expectations from the group (Stryker and Burke 2000).

Theories of role-identity and role identity salience may explain why, in some situations, individuals do not use deliberate and extensive moral reasoning to respond to ethical issues (Sonenshein 2007). Depersonalization allows individuals to perceive each other and themselves as the embodiment of a social category. This happens with the activation of an identity through the self-verification process (Stets and Burke 2000). To the point of ethical leadership and ethical orientation, role-identities and role-identity salience emphasize why understanding the context for making a decision is important in order to understand how and why a decision was made. Furthermore, it supports the point made later that teaching ethics through case methodology requires using a structure that requires students to take on the roles of various stakeholders.

Cross-cultural differences in fairness and justice

Another common problem related to the ethical environment in organizations is cross-cultural differences within multinational corporations, characterized by the following statement from Weaver: “By uncritically adopting widely promoted American practices for managing corporate ethics, multinational business risk failure in pursuing the ostensible goals of corporate ethics initiatives” (Weaver 2001, p. 3). Multinational companies should take into account factors that distinguish business customs in different cultures such as uncertainty avoidance, power distance, gender roles, high vs low context, and manager roles. Otherwise, the mistake of not adapting the corporate culture to the host country will create businesses risks through culture shock and lack of integration (Weaver 2001).

Cross-cultural problems in organizations are driven by different perceptions of justice and fairness. Perceptions vary based on cultural definitions of giving, taking, need, and merit. Of those influences, the most impactful is the concept of need. Cultures in which there is doubt about minimum needs like food, clothing, and shelter being met are likely to hold a norm of distributive justice. Cultures that meet minimum needs for the majority of their populations are more likely to have equality or equity justice norms (Berman et al. 1985). When a company starts operations in a new country, the company’s leadership should consider what needs from the community are and are not being met to gain insight into the concepts of fairness and justice within the local workforce.

Small impact of regulative reforms

Regulative reforms implemented by governments and professional associations impact the economic performance of companies but do not diminish the occurrence of unethical behaviors (Misangyi et al. 2008). What impact there is from regulative reforms likely results from the nature of the reform and the impact it has on “tone at the top,” – the portion of the company’s ethical climate established by its senior management and board of directors (Lail et al 2015). Viewed on a continuum, regulative reforms run the range between those with a compliance-based approach and those with an empowerment-based approach. The compliance-based approach uses a combination of incentives, rules, and intense monitoring while the empowerment-based approach grants more discretion to managers in reporting decisions and avoids heavy monitoring. According to an analysis in 2015 of the impact of three regulations, “the compliance approach only leads to substantial improvements if complying with the rules leads to the desired changes” and the empowerment approach may have limited effect if it relies

on there already being a strong tone from the top (Lail et al. 2015, p. 35), In other words, if a company has weak ethical tone from the top it is unlikely that empowerment-based regulations will drive positive ethical changes or even minimum legal compliance. Further research and comment in this area notes that the majority of legislative actions favor compliance over empowerment when determining the amount/degree of reporting discretion allowed (Finn 2015).

An example of an ineffective regulatory reform has been the need for companies to have a code of conduct; such codes have been proved to have little effect on organizations' ethical cultures (Gephart et al. 2010; Treviño et al. 1999), although an overview of seventeen studies in this area in 2000 suggests that such codes do have some influence on individual ethical decision-making "...and assist in raising the general level of awareness of ethical issues" (Loe et al. 2000, p. 194). It is possible that codes of conduct are adopted by companies only to comply with laws and regulations and not as supported means to change and shape ethics and ethical decision-making. Even if there is some faith put into codes of conduct as instruments of change other forces may prevail, as the company culture did in the case of Enron (Sims and Brinkmann 2003). A 2018 study on occupational fraud and abuse, the Association of Certified Fraud Examiners' Report to the Nations, noted that in 80% of reported fraud cases the companies had codes of conduct in place at the time the fraud occurred. While this could suggest that codes of conduct have no deterrent effect on fraudulent acts by employees against the company, there could be some evidence that there is some positive impact, as the same study noted that the median loss from the fraud was less in companies with codes of conduct than in those without (Association of Certified Fraud Examiners 2018).

CONTEMPORARY BUSINESS ETHICS ISSUES IN ORGANIZATIONS[§]

To construct and operate a business ethics case competition that teaches business ethics effectively it is necessary for competition organizers to be familiar with not just ethics themes of the last two decades but also contemporary business issues. Contemporary business ethics issues in organizations include processes that normalize unethical behaviors and ethical culture vs. ethical climate.

Processes that normalize unethical behaviors

Relationships in the business world can be built with short-term vision and a lack of consideration for stakeholder needs. Both can be attributed to the lack of proper ethics training and general employee lack of awareness of ethical issues in many companies. This lack of awareness is due to the three different processes through which behaviors and mental models are ingrained in an organization and become a part of its culture: (1) institutionalization, (2) rationalization and (3) socialization (Ashforth and Anand 2003). Institutionalization is the process by which a corrupt decision or act becomes embedded in the normal processes of an organization to the point that it becomes routine. Rationalization involves the use of ideologies to help individuals and organizations distance themselves from the moral stance implied by their actions. Finally, socialization is how newcomers are assimilated into the institution and, if it exists, into institutionalized corruption. Newcomers are encouraged to identify with organization "veterans," who model the corrupt behavior and its acceptance (Ashforth and Anand 2003). All

[§] Portions of this section are adapted from [Second author name] (2017) [Title] (Unpublished undergraduate honor's thesis). [University]. Material in this section of the article is an expansion of material in the previous unpublished work.

three processes feed a lack of accountability in part because they are subconscious processes and most employees are not aware of their consequences.

The reciprocity of impact between self and group was once defined as a function of symbolic interactionism and is now reflected in symbolic interaction theory. The theory of symbolic interaction examines “the meanings emerging from the reciprocal interaction of individuals in social environments with other individuals and focuses on the question of “which symbols and meanings emerge from the interaction between people”” (Aksan et al. 2009, p. 902). According to Blumer, the first to use the symbolic interaction term, symbolic interaction has three basic propositions: (1) humans develop their attitudes towards things according to the meanings the things propose to them; (2) these meanings are inferred from the “interaction of one of them from its addresses”; (3) these meanings change through an interpretive process (Aksan et al., 2009). Unless an employee is aware of the consequences of a choice they will not add that information to the meaning they give things, therefore an employee will not, on an individual basis, consider counteracting the negative effects of institutionalization, rationalization and socialization if the negative consequences of such are not clear.

Allied with institutionalization, rationalization, socialization, and symbolic interaction is a philosophy that many companies instill in their employees that what is good for the business is good for the world, the belief in the sanctity of the corporation:

...belief in the sanctity of the corporation is so strong that managers tend to believe that by serving the corporation’s interests they are also serving the public’s interests: what’s good for Microsoft is good for the country. Thus, ethical issues often are not perceived or are subordinated to or reframed as economic, legal, public relations, or other kinds of “business” issues, leaving managers free to engage in amoral reasoning (Ashforth and Anand 2003, pp. 5-6).

Add to that the problem of amoral familism, that is the tendency to display morality only with regard to one’s ‘family’ with the idea that one should perceive outsiders, even the organization’s own stakeholders, as enemies, and you quickly set the stage for collective corruption (Ashforth and Anand 2003). These forces impact not only the current ethics culture in an organization but also the ability of the organization to change because it impacts organizational memory and builds resistance to new influences. The diminished ability to change compounds the climate and culture problems because new influences include critical norms that could be used for group decisions. Studies have shown that critical norms, which are dissent promoting norms used in decision-making, improve the quality of group decisions, but consensus norms do not (Postmes et al. 2001).

Ethical culture vs. ethical climate

To appreciate the impact processes that normalize ethical behaviors may have on an organization’s ethical culture it is important to understand what ethical culture is and how it relates to ethical climate. Ethical culture is how an organization teaches its core values through formal ethical programs, i.e. the affirmative actions the organization takes (Ethics Resource Center 2006). For example, a culture based on discipline will proactively manage by blocking obstructive behaviors and supporting, reinforcing, and rewarding constructive ones (Reid and Hubbell 2005). In contrast, the ethical climate is the “collective personality” of the organization taught through

informal systems, characterized by the strong focus on the perceptions and attitudes of employees (Ethics Resource Center 2006).

The ethical climate may have a more lasting impact with employees than ethical culture because “(...) ethical climate perceptions may influence what ethical issues are considered at work and the types of criteria that are used to resolve these ethical issues” (Victor and Cullen 1988, p. 123). As discussed previously, sometimes ethical issues are overlooked in the decision-making process simply because employees do not have experience recognizing the issues. In addition, the ethical climate can override the ethical culture, as when employees at a company that touted positive ethics and values, feeling pressured under a new measurement system that did not clarify the line between unnecessary service and legitimate maintenance, reacted to contextual forces and resorted to exaggeration, carelessness, and misrepresentation to meet sales goals (Paine 1994). Typical aspects of an ethical culture like a company compliance program may have limited impact on the ethical climate because conduct that meets the compliance programs’ legalistic requirements and goals may in fact still be unethical (Paine 1994). This illustrates the impact of ethical culture and underscores the importance of understanding the limited impact of regulative reforms discussed previously.

It is also important to recognize that ethical culture is rigid but ethical climate, because it is driven by interactions between individuals and between individuals and identity groups, is fluid. This fluidity is related to role-identity and role salience, to wit, the connection between identities and roles allows for individual’s entities to be flexible and in constant change since everyone participates in a constant self-verification process. Individual employees constantly give and receive feedback from the interactions in each social network and within specific roles (Burke and Reitzes 1981). Thus, everyone is constantly affecting the structure of the ethical climate by attributing meanings in the form of expectations to each other and themselves.

Regardless of the exact manner or degree to which ethical climate holds sway over ethical culture, the outcome is clear:

Rarely do the character flaws of a lone actor fully explain corporate misconduct. More typically, unethical business practice involves the tacit, if not explicit, cooperation of others and reflects the values, attitude, beliefs, language, and behavioral patterns that define an organization’s operating culture (Paine 1994, p. 106).

STRUCTURING CASE COMPETITIONS TO EFFECTIVELY TEACH ETHICS

The competition structure and cases for three competitions were examined for 2017: The Intercollegiate Ethics Bowl, The Collegiate Ethics Case Competition, and the International Business Ethics Case Competition. With some adjustments, each competition could become an opportunity to effectively teach business ethics. Specific recommendations are made about how the judging criteria can be used to drive best practices of the case teaching method and to encourage student focus on ethics themes and contemporary business issues, using the previously identified themes and issues as examples.

The Intercollegiate Ethics Bowl (IEB)

The IEB competition provided different ethics cases to competing students, assignment of case to competition team being done at random. Teams competed against each other in

matched rounds; Team 1 responded to a question about a randomly assigned case and Team 2 commented on Team 1's response, Team 1 replied, and the judges asked Team 1 additional questions. Teams 1 and 2 then reversed roles for a second round, using a different case (Association for Practical and Professional Ethics 2017a). IEB is presented as an ethics competition and not specifically a business ethics case competition (Association for Practical and Professional Ethics 2017a).

For this analysis judging criteria and national cases were examined from the year 2017. Of the six ethics themes/contemporary issues identified for ethics instruction, none were present in the case material from IEB. Out of fifteen cases at the national competition level two introduced cross-cultural differences, "No Nudes is Good Nudes" which introduced a cultural difference between people from Italy, France, and Iran, and "Tsk Tsk, Tusk Tusk" which discussed how different African countries protect elephants and police the ivory trade (Illinois Institute of Technology 2017). These two cases were not sufficient to recognize the competition as including cross-cultural issues in fairness and justice because not all students were given those cases.

There was evidence of two of the three identified case method best practices in the judging and case materials, sense-making (moral judgment) and sense-making (moral intent) (See Association for Practical and Professional Ethics 2017c). Questions on the Judge's Score Sheet included:

- Did the team's presentations clearly identify and thoroughly discuss the central moral dimensions of the case [doing so in a way consistent with a collegial and thoughtful discussion]?
- Did the team's presentation indicate both awareness and thoughtful consideration of [as well as a respect for] different viewpoints, including especially those that would loom large in reasoning of individuals who disagree with the team's position? ** (Association for Practical and Professional Ethics 2017b, Association for Practical and Professional Ethics 2017c).

The Collegiate Ethics Case Competition (Eller)

The Collegiate Ethics Case Competition, sponsored by the Center for Leadership Ethics at the Eller College of Business, University of Arizona, distributed one case scenario to all student teams. Each team competed in two rounds within brackets determined by the competition organizers. Combined scores from rounds 1 and 2 were used to determine the top team from each bracket, the top team in each then advanced to the final round (Eller Center for Leadership Ethics 2017b).

Videos of past student submissions were posted to YouTube and linked to the competition webpage (Eller Center for Leadership Ethics 2017a). For this article, a total of fifteen entries were reviewed, the top three placing entries each year for 2013 - 2017. Review entailed watching videos of the competition presentations and question/answer sessions with competition judges, as detailed in Table 3. Of the six ethics themes/contemporary issues identified, two were addressed by some winning student entries, ethical leadership & ethical

** Language in brackets reflects difference in language between The Judges' Scoring Guidelines (Association for Practical and Professional Ethics, 2017c), which included more explicit instruction, and The Judges' Score Sheet (Association for Practical and Professional Ethics, 2017b).

orientation and ethical culture vs. ethical climate. Out of fifteen entries ethical leadership & ethical orientation were discussed six times and ethical culture vs. ethical climate was discussed three times (See Table 3). The fact that the student teams all received the same case but only some identified those themes/contemporary issues indicates that the problem was not with lack of issues in the case content. If student teams did not consistently identify the issues/themes it is possible they were not clearly incentivized to do so. As will be discussed later, clearly structuring the judging criteria to emphasize business ethics themes and contemporary issues could incentivize students in the competition to focus on ethics.

According to judging criteria on the competition website, judges evaluated teams on delivery, depth of analysis, persuasiveness, creativity, recommendations that were both ethical and practical in a business context, and responses to questions (Eller Center for Leadership Ethics, 2017b). Assuming that depth of analysis and recommendations that are ethical were criteria geared towards encouraging students to engage in the ethical decision-making process, two of the three identified case method best practices in the judging and case materials were used, sense-making (moral judgment) and sense-making (moral intent).

The International Business Ethics Case Competition (IBECC)

For this competition, student teams chose their own topics. Student teams were instructed to “view themselves as members of a corporation, consulting company or the like speaking to a business audience (senior management of a specific company, executives representing an industry, etc.).” It was left to the teams to specify the identity of their business and their audience (IBECC 2016b). Teams were expected to describe the legal, business/financial, and ethical dimensions of the problem and present a solution to the problem that was legal, made sense financially and was ethically sound (IBECC 2016b).

Videos of past student submissions were posted in YouTube with links to the competition webpage (IBECC 2013, 2014, 2015, 2016). For this article, the 15 top undergraduate team presentations from 2013 – 2016 were watched and analyzed, as detailed in Table 4.

The closest thing to small impact of regulative reforms in the judging criteria were questions about the legal dimension of the selected case. Examples of legal questions in the judging criteria were:

- Is the problem brought about by any laws or regulations having been broken?
- Do any laws or regulations determine or limit what the company/industry may or may not do in trying to resolve this problem?
- Is there any likelihood of lawsuits? (IBECC 2016a)

Such questions focus on the company’s relationship with laws and regulations while the contemporary issue is focused on the impact of regulative reforms on ethical actions.

Examples of questions for the financial/business dimension of the judging criteria:

- Did any business/financial factors contribute to the problem?
- Are the business/financial implications of any legal issues pointed out?
- Is the solution affordable? (IBECC 2016a)

None of the questions for the financial/business dimension relate to the six ethics themes/contemporary issues.

Examples of questions from the ethical dimension:

- From the standpoint of a secular, philosophical perspective, precisely why is the problem an ethical issue?
- What is the amount and type of tangible good and harm involved in the problem and solution?
- Is there a conflict or rights?
- Is this resolved? (IBECC 2016a).

According to the judging criteria, the ethics section counted for double points.

As currently structured, none of these questions encourage inclusion of the ethics themes/contemporary issues identified in this article or indeed any ethics themes or issues, however, these questions do encourage students to practice sense-making, both in terms of moral judgment and moral intent. Regarding the remaining case method best practice, emotional connection, it is assumed that students will have an emotional connection to the case because they selected the material. This is based on the relationship between student selected cases and emotional connectivity noted in previous research, notably Solberg et al. 1995 and McWilliams and Nahavandi 2006.

Using judging criteria to drive best practices and ethics themes/contemporary issues

Within a case competition there are two means for teaching ethics themes/contemporary issues and applying best practices, the case content and the judging criteria. The first is limited for two reasons. One, the organizers of a competition may prefer allowing students to choose their own cases, as with IBECC. Two, the success of case content is dependent at least in part on the judging criteria, as noted in the analysis of the Collegiate Ethics Case Competition. Focusing on judging criteria to drive best practices and ethics themes/contemporary issues allows us to construct a proposal that will benefit both student selected case content competitions like IBECC and organizer selected case content competitions like IEB and the Collegiate Ethics Case Competition. The case content to match the judging criteria can then be designed by the organizers or planned by the students, who should be incentivized to choose and design appropriate case content based on the judging criteria, assuming such is provided to them in advance of the competition. Proposed judging criteria are detailed in Table 2.

CONCLUSION

For ethics instruction to be effective and add value it must be practical in its content and follow best practices in its delivery. Contemporary issues in research should be addressed including awareness of bias, ethical leadership and ethical orientation, cross-cultural differences in fairness and justice, and the small impact of regulative reforms. Issues in organizations must also be discussed, at present the major areas of concern are processes that normalize unethical behaviors and ethical culture vs. ethical climate.

Three business ethics case competitions were analyzed to determine if they use best practices for employing cases to teach ethics and which if any of identified ethics

themes/contemporary issues they taught. Two competitions, IEB and Eller, provided case materials to competitors. One competition, IBECC, accepted student created case content. All three competitions showed some application of best practices for ethics case teaching, specifically for sense-making moral judgment and sense-making moral intent. In contrast, the competitions did not do a good job with issues, showing none of the contemporary business issues in research or in organizations. While on the surface this could appear to be the result of content design it may in fact be due to judging criteria, as some students competing in one competition did identify contemporary business ethics issues that other students analyzing the same content missed. We recommend that judging criteria for all ethics case competitions be designed to encourage proper issue identification to maximize the impact of such competitions as means for teaching business ethics.

TABLE 1
Case Teaching Method - Best Practices

| Case Teaching Method Best Practice | Benefits | Implementation |
|---|--|--|
| Emotional connection | Retention/processing of information Encoding case details for retrieval Transfer of ethical decision-making principles | Require students take on roles of various stakeholders |
| Sense-making (moral judgment) | Identify moral prototypes | Complex ethical dilemmas (multiple stakeholders, layered decisions) |
| Sense-making (moral intent) | Practice prioritizing values | Case content related to cross-cultural differences in fairness and justice |

TABLE 2

Judging Criteria Focused Best Practices and Ethics Themes/Contemporary Issues Application

| Case Content | Ethics Theme / Contemporary Issues Addressed | Case Methodology Best Practices | Related judging criteria /case questions |
|---|---|--|--|
| Stakeholders in different departments and different roles | Ethical leadership and ethical orientation | Emotional connection | Which stakeholders did the students find it easy to connect with? Hard to connect with? Why? Which stakeholders had the most power to prevent or solve the ethical dilemma? |
| Information about formal ethical culture such as company mission, core values, code of conduct, ethics training availability/requirements | Ethical culture vs. ethical climate Processes that normalize ethical behaviors | Sense-making (moral judgement) | Identify features of the formal ethical culture and explain how they compare with the ethical climate. |
| Presents a multi-dimensional, complex ethical dilemma | Processes that normalize ethical behaviors Awareness of biases | Sense-making (moral judgment) | Does the student presentation demonstrate an understanding of the complexity of the ethical problem? What ethical principles did the students learn from the case that they think would be applicable in the future? How might they apply those principles in the future? [did students give examples/hypotheticals] |
| Cross-cultural case features | Cross-cultural differences in fairness and justice | Sense-making (moral intent) | Does the student presentation demonstrate an awareness of the impact cross-cultural differences have on fairness and justice? |

Legal and/or regulatory
case features

Small impact of
regulative reforms

Sense-making (moral intent)

How could this issue have been fixed by self-regulation by the company or within the industry?

Do you think self-regulation would have been more effective than government regulation? Why or why not?

What impact do applicable laws have in this case on the ability of stakeholders to prevent or remedy this kind of ethical dilemma?

TABLE 3
Eller Competition Entries

| Competition Year | School | Place in Competition | Ethical Leadership & Ethical Orientation | Ethical culture vs. ethical climate |
|-------------------------|-------------------------------|-----------------------------|---|---|
| 2013 | Simon Fraser University | 1 | No | No |
| 2013 | Queens University | 2 | Yes (utilitarianism/ rights approach) | Yes (changing the mind and culture of organization) |
| 2013 | Boston College | 3 | No | No |
| 2014 | Concordia University | 1 | No | No |
| 2014 | Indiana University | 2 | No | No |
| 2014 | Stetson University | 3 | No | No |
| 2015 | University of Texas at Austin | 1 | No | No |
| 2015 | University of Calgary | 2 | Yes (Pursuing the interest of the state) | Yes (Buy in from the Leadership) |
| 2015 | Concordia University | 3 | Yes (Chief Cultural Officer and utilitarianism) | Yes (Chief Cultural office and Citizenship behaviors) |
| 2016 | US Naval Academy | 1 | Yes (Social contract theory) | No |
| 2016 | Simon Fraser University | 2 | No | No |
| 2016 | University of Calgary | 3 | No | No |
| 2017 | University of Calgary | 1 | No | No |
| 2017 | US Naval Academy | 2 | Yes (deontological view) | No |
| 2017 | Stetson University | 3 | Yes (utilitarianism) | No |

Ethics themes/contemporary issues not present in any entries of this competition: Small Impact of Regulative Reforms, Awareness of Biases, Cross-Cultural Differences, Processes that normalize unethical behaviors

Table 4
IBECC Competition Entries

| Competition Year | School | Place in Competition | Ethical Leadership & Ethical Orientation | Ethical culture vs. ethical climate |
|------------------|-----------------------------------|----------------------|--|---|
| 2013 | Loyola Marymount College State | 1 | No | No |
| 2013 | University of New York at Potsdam | 1 | No | No |
| 2013 | Santa Barbara City College | 1 | No | No |
| 2013 | Dartmouth College | 1 | No | No |
| 2014 | Montgomery College | 1 | No | No |
| 2014 | Universidad de Navarra | 1 | No | No |
| 2014 | University of British Columbia | 1 | No | Yes (code of conduct and ethical risk management) |
| 2015 | St. Petersburg College | 1 | Yes (Utilitarianism / Social Contract Theory) | No |
| 2015 | Marywood University | 1 | No | No |
| 2015 | University of Melbourne | 1 | Yes (Utilitarianism/ Kantian/ Aristotelian/ Natural Law) | No |
| 2015 | University of Florida | 1 | No | No |
| 2016 | University of Wyoming | 1 | No | No |
| 2016 | Montgomery College | 1 | No | No |
| 2016 | College of the Holy Cross | 1 | Yes (Means vs ends/Oath) | No |

| | | | | |
|------|-----------------------|---|----|----|
| 2016 | Fordham University | 1 | No | No |
|------|-----------------------|---|----|----|

Ethics themes/contemporary issues not present in any entries of this competition: Small Impact of Regulative Reforms, Awareness of Biases, Cross-Cultural Differences, Processes that normalize unethical behaviors

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THE FINTECH SANDBOX: AN OVERVIEW OF REGULATORY SANDBOX REGIMES

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ABSTRACT

Regulators globally are responding to the rapidly evolving financial technology (fintech) industry by implementing regulatory sandbox regimes. A regulatory sandbox allows fintech companies to test their products, services, or solutions in the market under a more relaxed regulatory environment, but within a well-defined space and duration agreed to with the regulators. This process assists companies in meeting regulatory requirements, while providing regulators with the opportunity to learn about emerging financial products, services, or delivery channels in crafting regulations in this area. This collaborative approach is a highly effective way to deploy a fintech solution safely into the market and in a manner that promotes consumer confidence and protection. However, sandboxes differ among regulators globally, with different markets prioritizing varying consumer-specific objectives and policy regimes. Fintech companies interested in global expansion must have a clear understanding of the sandbox regulatory regime in prospective markets. This article provides an overview of the regulatory sandbox regimes in Hong Kong, Singapore, Australia, and the United Kingdom.

I. INTRODUCTION

Regulators globally are responding to the rapidly evolving financial technology (fintech) industry by implementing regulatory sandbox regimes. A regulatory sandbox allows fintech companies to test their products, services, or solutions in the market under a more relaxed regulatory environment, but within a well-defined space and duration agreed to with the regulators. This process assists companies in meeting regulatory requirements, while providing regulators with the opportunity to learn about emerging financial products, services, or delivery channels in crafting regulations in this area.

This collaborative approach is a highly effective way to deploy a fintech solution safely into the market and in a manner that promotes consumer confidence and protection. However, sandboxes differ among regulators globally, with different markets prioritizing varying consumer-specific objectives and policy regimes. Fintech companies interested in global expansion must have a clear understanding of the sandbox regulatory regime in prospective markets. This article provides an overview of the regulatory sandbox regimes in Hong Kong, Singapore, Australia, and the United Kingdom.

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II. PURPOSE OF A REGULATORY SANDBOX

Since 2008, global investment in fintech has grown significantly. In 2018, global fintech funding reached \$111.8 billion.¹ Key investment highlights in 2018 include:²

- Fintech investment in the Americas rose from \$29 billion in 2017 to \$54.5 billion in 2018. Deal volume also increased from 1,039 deals to 1,245. The U.S. accounted for the bulk of this funding – with \$52.5 billion across 1,061 deals.
- European fintech investment for 2018 increased sharply to \$34.2 billion from \$12.2 billion in 2017. This was a result of massive mergers and acquisitions and buyout deals, including WorldPay (\$12.8B), Nets (\$5.5B), iZettle (\$2.2B), Fidessa Group (\$2.1B), and IRIS Software Group (\$1.75B).
- The total Asia Pacific fintech investment for 2018 of \$22.7 billion, up from \$12.5 billion in 2017, was dominated by Ant Financial's record-setting \$14 billion deal. Fintech investment in the region slowed significantly in the second half of the year.
- Investment flowed at a significant pace into key subsectors and technologies – RegTech investment surged to \$3.7 billion in 2018 from \$1.2 billion in 2017, while investment in blockchain remained strong at \$4.5 billion in 2018.
- Cross-border mergers and acquisitions rose significantly in 2018, with approximately \$53.5 billion invested across borders in 155 deals, up from \$18.9 billion in 153 cross-border deals in 2017. The U.S. drew \$28 billion in cross-border mergers and acquisitions, while Europe attracted \$21.6 billion.

The significant increase in the number of fintech companies and the corresponding venture capital and corporate investment in the sector compels regulators to understand how to best apply the law to fintech technologies and business models. In a regulatory sandbox, traditional and non-traditional financial institutions are able to test new fintech technologies and business models in a live and controlled environment. The sandbox mechanism gives regulators and fintech companies the opportunity to work side-by-side in learning about fintech solutions to adopt legislation appropriately. Diagram 1 below details common features, implications for innovators, and the role of regulators in the sandbox.

DIAGRAM 1. COMMON REGULATORY SANDBOX FEATURES, IMPLICATIONS, & ROLES

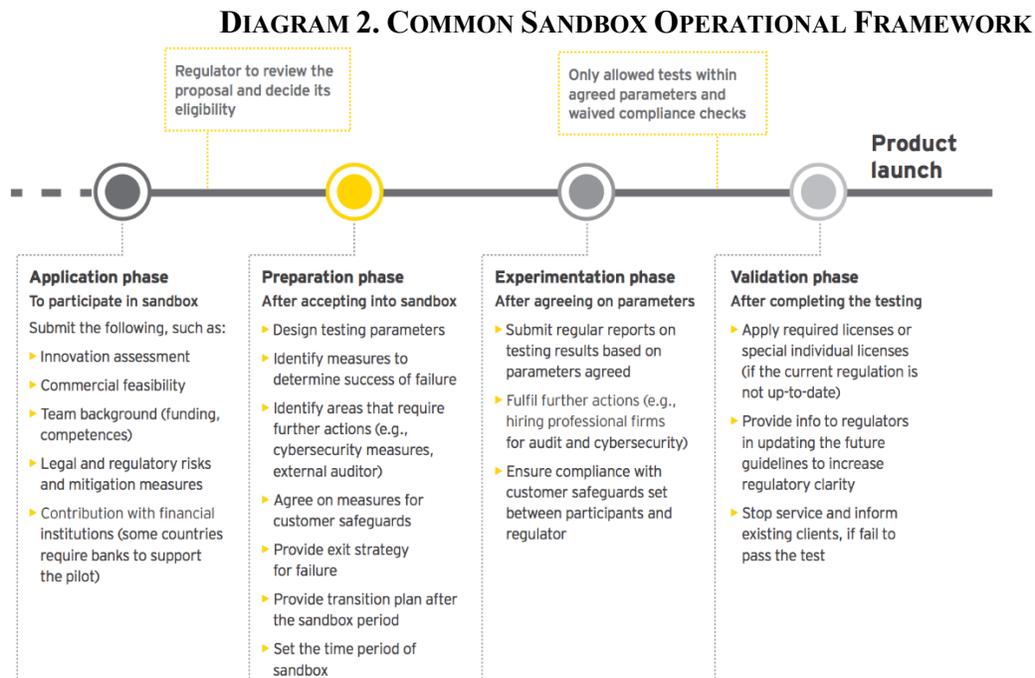
¹ Kent Miller, *Global fintech investment rockets to a record \$111.8B in 2018, driven by mega deals: KPMG Pulse of Fintech*. February 13, 2019. <https://home.kpmg/xx/en/home/media/press-releases/2019/02/global-fintech-investment-hits-record-in-2018.html>

² *Id.*

| | Common features | Implications for innovators | Role of regulators |
|---|--|---|--|
| 1 | Tests target new business models or technologies | <ul style="list-style-type: none"> Regulators will test business model elements that challenge existing or ambiguous regulations. Often, the technology focus for testing will differ from country to country. For example, South Korea's sandbox focuses on the design and monitoring of robo-advisors due to the fast-growing wealth management industry. | <ul style="list-style-type: none"> Identify FinTech models relevant to local development Understand the financial and operational impacts of new models |
| 2 | Tests have specific objectives and scope | <ul style="list-style-type: none"> Scope and objectives vary in different markets. Common tests include: applications enabled by blockchain, P2P lending risk management, robo-advisory design, security and stability of algo-trading, suitability test for a wealth management platform, biometric security. | <ul style="list-style-type: none"> Identify areas that would benefit from "real-life" experiments |
| 3 | Limited impacts to production environment | <ul style="list-style-type: none"> Common customer safeguards will be set, depending on regulatory risk appetite, these could include: a limit on the number of users or a ban on testing risky or complex products. | <ul style="list-style-type: none"> Specify objectives and customer safeguards for different FinTech models |
| 4 | Rigorous testing from regulators before production | <ul style="list-style-type: none"> Companies must submit regular status reports to assess risks on an ongoing basis and evaluate impacts brought by different business models. Regulators reserve the right to terminate the test for any violation. Regulators may issue special exemptions after the final test. | <ul style="list-style-type: none"> Design an operating model, including target customers and selection criteria Improve the current regulation based on sandbox experience |

Source: Ernst & Young (2017).

Regulatory clarity is critical for the mass adoption of fintech technologies and business models. As a result, regulators around the world are creating an environment that encourages providers to harness emerging technologies without weakening the financial system or eroding consumer protections.³ Most sandboxes have a common operational framework, as shown below in Diagram 2.



Source: Ernst & Young (2017).

³ *Id.*

III. HONG KONG SANDBOX

SANDBOX OPTIONS

Hong Kong provides three types of regulatory sandboxes. Each sandbox is administered by a separate government authority. The three sandboxes include:

- Hong Kong Monetary Authority (HKMA) Sandbox: The HKMA launched the Fintech Supervisory Sandbox (FSS). Banks authorized by the HKMA can apply;⁴
- Hong Kong Securities and Futures Commission (HKSF) Sandbox: Firms licensed by the HKSF and start-up firms that intend to be licensed by the HKSF can apply;⁵ and
- Hong Kong Insurance Authority (HKIA): Insurers authorized by the HKIA can apply.⁶ Additionally, the HKIA has a licensing fast-track program to expedite applications for new authorizations to operate an online-only insurance business in or from Hong Kong.⁷

A company conducting a pilot trial of a cross-sector fintech product may apply to the sandbox it considers the most appropriate. The relevant regulator will act as the primary point of contact and assist in liaising with the other regulators for the company to access the other sandboxes concurrently, if applicable.⁸

In the light of the experience obtained in operating the FSS, the HKMA upgraded the FSS to FSS 2.0. FSS 2.0 has the following new features:⁹

- A Fintech Supervisory Chatroom (Chatroom) to provide feedback to banks and tech firms at an early stage of their fintech projects;
- Tech firms can access the sandbox by seeking feedback from the Chatroom without going through a bank;
- The sandboxes of the HKMA, the HKSF, and HKIA are linked up so that there is a single point of entry for pilot trials of cross-sector fintech products; and
- To help develop the RegTech ecosystem, the FSS (including the Chatroom) is also open to RegTech projects or ideas raised by banks or tech firms.

SANDBOX EVALUATION CRITERIA

Banks applying to the HKMA's sandbox must demonstrate their ability to adhere to the following:¹⁰

- Boundary: There are clear definitions about the scope and phases of the pilot trial, timing, and termination arrangements.
- Customer Protection Measures: Adequate measures must be put in place to protect the interests of customers during the trial, including proper processes for selecting

⁴ Hong Kong Monetary Authority, Fintech Supervisory Sandbox (FSS). <https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/fintech-supervisory-sandbox.shtml>

⁵ Hong Kong Securities and Futures Commission, SFC Regulatory Sandbox. <https://www.sfc.hk/web/EN/sfc-fintech-contact-point/sfc-regulatory-sandbox.html>

⁶ Hong Kong Insurance Authority, Insurtech Sandbox. https://www.ia.org.hk/en/aboutus/insurtech_corner.html

⁷ *Id.*

⁸ Hong Kong Monetary Authority, *supra* note 4.

⁹ *Id.*

¹⁰ *Id.*

customers who understand the associated risks and voluntarily join the trial, enhanced complaint handling procedures, a mechanism for timely and fair compensation of customers' financial losses caused by any failures of the trial, and appropriate arrangements for customers to withdraw from the trial.

- Risk Management Controls: Compensating controls to mitigate the risks arising from less than full compliance with supervisory requirements and the risks posed to the bank's production systems and other customers.
- Readiness and Monitoring: Readiness of the systems and processes involved in the trial and close monitoring of the trial.

Under the HKSF's sandbox requirements, a firm must demonstrate that it: is fit and proper, utilizes innovative technologies, is able to demonstrate a genuine and serious commitment to carry on regulated activities, and has activities which should increase the range and quality of products and services for investors and benefit the Hong Kong financial services industry.¹¹

Companies applying to the HKIA's sandbox must demonstrate the following:¹²

- Well-defined Boundary and Conditions: There should be a clearly defined scope of the trial, including timing and duration, or expected official launch date of the initiative to the market; size and type of insurance business and target users; the technology involved; and the expected outcome and success criteria of the trial.
- Risk Management Controls: There should be adequate control procedures to achieve the objectives of the relevant supervisory requirements of the HKIA.
- Customer Protection: Adequate safeguards should be in place to protect the interests of customers during the trial.
- Resources and Readiness of the Insurer: The insurer should be ready for the test in the sandbox with adequate resources and should be able to demonstrate that the InsurTech initiative is ready for testing.
- Exit Strategy: The insurer should present to the HKIA an exit strategy for the pilot run if it has to be terminated without success.

SANDBOX BENEFITS

Banks that operate within the HKMA's sandbox are allowed to conduct a pilot trial of their initiatives involving actual banking services without the need to achieve full compliance with the HKMA's usual supervisory requirements during the trial period, subject to certain parameters.¹³ Through this process, banks are able to conduct live tests of their fintech solutions on actual customer information and data, before the bank fully deploys the solution. Banks are able to collect real-time data and customer feedback on their fintech solutions in a controlled environment. This allows the banks to make the appropriate adjustments to their proposed solutions. After the sandbox, banks may proceed to officially launch their fintech solutions on a broader scale, provided that they must comply with the HKMA's applicable supervisory requirements.¹⁴

¹¹ Hong Kong Securities and Futures Commission, *supra* note 5.

¹² Hong Kong Insurance Authority, *supra* note 6.

¹³ Hong Kong Monetary Authority, *supra* note 4.

¹⁴ *Id.*

The HKSFC sandbox similarly permits firms to test and refine their fintech solutions in a controlled environment with close dialogue and supervision with the HKSFC. To minimize risk exposure to investors, the HKSFC may impose licensing conditions, such as limiting the types of clients that sandbox firms serve or each client's maximum exposure.¹⁵ In addition, firms are expected to have established adequate investor protection measures.¹⁶ Firms which operate within the HKSFC's sandbox are able to identify and address any risks or concerns relevant to their regulated activities.¹⁷ Once a firm has demonstrated that its fintech technology is reliable and fit for commercial purposes, and its internal control procedures have adequately addressed the identified risks, the firm may apply to the HKSFC for removal or variation of some or all of the licensing conditions imposed.¹⁸ Once approved, firms are permitted to conduct regulated activities and be subject to supervision by the HKSFC under its standard regulations.¹⁹

The HKIA's sandbox benefits insurers and their fintech technologies. Insurers test their fintech solutions and consult with regulators within the HKIA's sandbox, similar to the activities of banks and firms in the HKMA and HKSFC sandboxes. The previously mentioned HKIA fast-track program provides a streamlined process for fintech firms to apply for a digital insurance license within a shorter time frame than that required for traditional insurance companies.²⁰ When their technologies are approved, insurers may proceed to formally launch their services and products on a broader scale, subject to the supervisory requirements imposed by the HKIA.²¹

IV. SINGAPORE SANDBOX

SANDBOX OPTIONS

The Monetary Authority of Singapore (MAS) regulates both financial institutions (FI) and unregulated fintech firms that are seeking to provide financial services that may be subject to the jurisdiction of the MAS.²² FIs or any interested firm can apply to enter the regulatory sandbox to experiment with innovative financial services in the production environment but within a well-defined space and duration.²³ The sandbox includes the appropriate safeguards to contain the consequences of failure and to maintain the overall safety and soundness of the financial system.

SANDBOX EVALUATION CRITERIA

Based on the proposed fintech solution, the applicant involved, and the application details provided, the MAS will determine the specific legal and regulatory requirements which it is prepared to relax for each case.²⁴ In approving a fintech solution to participate in the sandbox, the MAS considers a number of factors such as: if the solution involves the use of technology in an innovative way that brings benefits to consumers and the industry; whether the applicant will

¹⁵ Hong Kong Securities and Futures Commission, *supra* note 5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Hong Kong Insurance Authority, *supra* note 6.

²¹ *Id.*

²² Monetary Authority of Singapore, FinTech Regulatory Sandbox. <http://www.mas.gov.sg/Singapore-Financial-Centre/Smart-Financial-Centre/FinTech-Regulatory-Sandbox.aspx>

²³ *Id.*

²⁴ *Id.*

deploy the solution in Singapore on a broader scale; whether there are clearly defined test scenarios, expected outcomes, and boundary conditions; whether any significant risks are involved; and whether there is a clearly defined exit and transition strategy in fully deploying the solution commercially.²⁵

SANDBOX BENEFITS

The MAS may exempt FIs and fintech firms from specific regulations during their sandbox activities.²⁶ This assists FIs and fintech firms from the challenges in meeting all of the MAS's regulatory requirements. Fintech solutions are able to be tested and deployed under more relaxed regulatory guidelines, but within a well-defined space and duration agreed to with the MAS.²⁷ The legal and regulatory requirements relaxed by the MAS expire after the sandbox activities are completed and the intended sandbox test outcomes have been achieved.²⁸ FIs and fintech firms can further proceed to deploy their fintech solutions on a broader commercial scale within all of the legal and regulatory requirements of the MAS.²⁹

V. AUSTRALIA SANDBOX

SANDBOX OPTIONS

The Australian Securities and Investments Commission (ASIC) regulates fintech firms who are looking to provide fintech solutions via the ASIC's sandbox.³⁰ Australia's regulatory sandbox is based on three key exemptions, designed to allow businesses to test products and services without obtaining the standard Australian Financial Services License (AFSL) or the Australian Credit License (ACL).³¹ The three exemptions are the following:^{32 33}

- ASIC's Fintech Licensing Exemption (ASIC-FLE): To qualify under the ASIC-FLE, firms must have no more than 100 retail clients; have a total client exposure not exceeding AUD 5 million; comply with consumer protection requirements; have adequate compensation arrangements; and have both internal and external dispute resolution procedures in place.³⁴

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Australian Securities & Investments Commission, Regulatory Sandbox. <https://asic.gov.au/for-business/your-business/innovation-hub/regulatory-sandbox/>

³¹ *Id.*

³² *Id.*

³³ Businesses should also note that, in late 2017, the Australian government released draft legislation to enhance the fintech licensing exemption. The Treasury Laws Amendment (2018 Measures No. 2) Bill 2018 (2018 Amendment Bill) proposes to amend the Corporations Act 2001 (Cth) (Corporations Act) and the National Consumer Credit Protection Act 2009 (Cth) (NCCP) requirements such that fintechs can test financial and credit products and services via conditional exemptions made under the regulations. The 2018 Amendment Bill also proposes to amend venture capital and early-stage investor provisions under the Income Tax Assessment Act 1997 (Cth), as well as the definition of public trading trusts under the Income Tax Assessment Act 1936 (Cth). For example, under the 2018 Amendment Bill, managed investment trusts would be able to invest in Australian venture capital funds of funds, and there would be additional investment requirements for early-stage venture capital limited partnerships.

³⁴ Australian Securities & Investments Commission, *supra* note 30.

- Existing Statutory Exemptions: Firms seeking to rely on the ASIC's existing exemptions are required to satisfy the criteria set out in the relevant ASIC class order or legislative instrument.³⁵ Foreign firms, those who are already regulated in jurisdictions outside of Australia, are generally able to satisfy the criteria under the ASIC's passporting exemption.³⁶
- Individual Relief from the ASIC: Currently, there are no specific requirements for firms seeking individual relief from the ASIC.³⁷ However, the ASIC has established that it is unlikely to provide individual relief where a firm has more than 100 retail clients or where granting relief would put consumers at risk.³⁸

SANDBOX EVALUATION CRITERIA

In evaluating fintech firms, ASIC is primarily concerned in balancing the protection and trust of the public against furthering innovation in Australia. Under the Fintech Licensing Exemption, ASIC considers the type of fintech product or service the firm is providing.³⁹ For financial services, the exemption applies to firms providing financial product advice or dealing in financial products.⁴⁰ It does not apply to businesses seeking to issue financial products.⁴¹ Eligible financial products include: payment products issued by authorized deposit-taking institutions with a maximum balance of AUD 10,000; deposit products with a maximum balance of AUD 10,000; listed Australian securities or simple schemes with a maximum exposure of AUD 10,000; and general insurance products for personal property and home contents with a maximum of AUD 50,000 insured.⁴² For credit activities, the exemption applies to firms acting as an intermediary or providing credit assistance for credit contracts which have a loan size no greater than AUD 25,000, a maximum annual rate of 24%, and are not consumer leases or subject to certain responsible lending obligations.⁴³ For existing statutory exemptions and individual relief, ASIC considers whether the commercial benefits of granting relief outweigh the regulatory detriments imposed on firms.⁴⁴

SANDBOX BENEFITS

The sandbox allows fintech products and services to be developed and improved before firms spend additional time and resources to obtain an ACL or AFSL. Through the sandbox, firms are able to rapidly deploy their fintech solutions within the Australian market. Note that the exemption can no longer be relied upon after the sandbox period ends.⁴⁵ Firms should apply for an ACL or AFSL during the exemption period, prior to the testing period expiring.⁴⁶

VI. UNITED KINGDOM SANDBOX

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

SANDBOX OPTIONS

The United Kingdom's Financial Conduct Authority's (FCA) Sandbox is open to authorized firms, unauthorized firms that require authorization, and technology businesses.⁴⁷ Similar to other sandbox regimes, the FCA Sandbox was established to test whether, in a controlled environment, consumer benefits can be delivered while effectively managing the associated risks of fintech solutions.⁴⁸

SANDBOX EVALUATION CRITERIA

Under the FCA, firms are required to meet default standards and eligibility criteria.⁴⁹ In terms of eligibility, firms must demonstrate that they will deliver innovation that is either a regulated business or supports a regulated business in the United Kingdom financial market.⁵⁰ Additional requirements include the need to show that:⁵¹

- the innovation is ground-breaking or a significantly different offering in the marketplace;
- the innovation offers a good prospect of identifiable benefit to consumers, either directly or via heightened competition; and
- there is a genuine need to test the innovation in the FCA Sandbox.

In regard to default standards, the FCA Sandbox is intended for small-scale testing.⁵² To adhere to this standard, the FCA sets strict limits on the size of the test.⁵³ However, customer sets are required to be large enough to enable statistically relevant data to be obtained while managing the risk to customers and the practicalities of obtaining the customers for the testing period.⁵⁴ The FCA also inspects, on a case-by-case basis, whether firms have appropriate customer safeguards in place during sandbox testing.⁵⁵ Testing plans are required to include a plan for testing out in the sandbox setting, the timeline and key milestone measures for testing, testing parameters (duration, customer/transaction limit, etc.), customer safeguards, risk assessment, and exit strategy.⁵⁶

SANDBOX BENEFITS

The FCA Sandbox provides firms with: the ability to test products and services in a controlled environment, reduced time and cost to deploy fintech solutions, and support from the FCA in identifying the appropriate consumer protection safeguards to build into their fintech solutions.⁵⁷ The FCA encourages financial firms to use the sandbox, as it offers participants restricted authorization, individual guidance, informal steers, waivers, and no enforcement action

⁴⁷ United Kingdom Financial Conduct Authority, Regulatory Sandbox. <https://www.fca.org.uk/firms/regulatory-sandbox>

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

letters.⁵⁸ Successful FCA sandbox tests from both small and large firms have introduced fintech solutions to the mass market.⁵⁹

VII. CONCLUSION

Regulators around the world will continue to establish fintech sandbox regimes as a way to address the rise in fintech solutions. Sandboxes allow fintech firms to launch their solutions more effectively, at a lower cost, and with better quality. Additionally, the fact that a fintech firm is operating in a sandbox can provide the firm with credibility as it seeks capital from investors and partnerships with established financial institutions. In exploring sandboxes, fintech firms should consider the differences in licensing requirements and the regulatory landscape in prospective jurisdictions, as these differences can impact their product launch and commercial viability. Considerations for firms should also include data governance and consumer protection laws. The regulatory sandbox regimes in Hong Kong, Singapore, Australia, and the United Kingdom are all unique and furthermore provide useful best practices for other regulators around the world to consider adopting in crafting their own regulatory sandbox.

⁵⁸ *Id.*

⁵⁹ *Id.*

COLLEGE STUDENTS AND TEXTBOOKS: A PRELIMINARY INVESTIGATION OF GENDER, INTERNATIONAL STATUS, AND MAJOR

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ABSTRACT

Are textbooks essential or a waste of education resources? What factors influence a student to read/not read the textbook? In this preliminary investigation we surveyed US college students in 2017 (n=403). We confirmed students avoid buying the textbooks and rarely read them, except for immediately prior to an exam. This should not surprise anyone in academia. We went further and examined students' long-term interest in books and who they asked for advice about purchasing a textbook. We also examined student views of various textbook options. We report the significant differences of gender, international status, and major. We conclude by discussing the implications for further research in this area.

Key Words: Textbooks, reading habits, costs, college students, survey, gender, major

INTRODUCTION

The professor is an obvious necessity to higher education. Is the textbook? American higher education has two opposing views. From the professors' point of view, textbooks are a staple of American college life, the integral component between lectures, assignments, and examinations (Berry, Cook, Hill, & Stevens, 2011). Conventional wisdom believes textbooks are a vital knowledge base (Tessier, 2014), credited with 90% of the instruction (Stein, Stuen, Carnine, & Long, 2001). McKeachie (2002) opined "The major predictor of what students learn is not the teaching method but the textbook." Professors consider textbooks the traditional way of learning and teaching (Lau, Lam, Kam, Nkhoma, Richardson, & Thomas, 2018), the professor in abstentia (Juban & Lopez, 2013). However, shockingly little research supports the benefits of the textbook (Landrum, Gurung, & Spann, 2012).

The opposite view, held by many students, is that textbooks are rarely used or needed and financially prohibitive (Elletson, 2019). Students do not read the text. If books are not read, they cannot be of much benefit. Juban & Lopez (2013) surveyed business students (n=168) and found 40% only read the textbook before exams. Gurung & Martin (2011) opined that if the

instructor never mentions the book in class, and the book is not needed for the test, instructors should not be surprised if few students read the book. High cost only adds to this disincentive.

Do our students read/need college textbooks? Are textbooks an essential pedagogical tool or a waste of education resources? We wanted to examine students' motivations to use textbooks for college. We surveyed current US college students in 2017 (n=403) on their reasons for textbook attitudes. First, we will review the relevant literature. Next, we will discuss the development of the survey. We will follow with a discussion of the findings and results. This project adds to the knowledge in the discipline by exploring the reasons behind students decreased interest in textbooks.

REVIEW OF THE LITERATURE

We will start the analysis with an examination of the financial issues. The economics of the textbook industry are unusual. Textbooks have become an oligopoly, a \$14 billion market dominated by a few large players; Pearson Education, McGraw-Hill, and Cengage Learning (Acker, 2011; Opidee, 2014). Eighty percent (80%) of the market is dominated by a handful of very large companies (Del Valle, 2019; Jarvis, 2019). Consolidation within the industry has intensified market incentives in the past several decades. McGraw-Hill is planning a merger with Cengage in the near future (Jarvis, 2019).

The product of the textbook market is also unique. Textbooks have a short shelf-life. A large portion (70%) of publisher's revenue is from first year of book sales (Acker, 2011). The used book market cannibalizes the revenue in following years (Acker, 2011). This leads publishers to frequent updating and new editions, even if the content has no significant changes. Most faculty (76%) indicated new editions were justified only half the time (Rube & Fairchild, 2005). Access codes linked to online resources with temporary availability also force students to be the newest edition, even if the content has not changed (Kristof, 2018).

In addition, textbooks are largely interchangeable. Texts from different publishers show similar content within each discipline, undermining the uniqueness of each text (Durwin & Sherman, 2008). Taken together, students face a market with little competition, similar content from several publishers, and multiple editions of each book (from the used book market), all with few differences. Bookstore managers must face very short-term market decisions on books where the ultimate purchasers (college students) have little interest.

The bottom line is that students are not purchasing textbooks. A consumer advocacy group found 70% of college students (n=1905) have not purchased a text because of cost (Redden, 2011). Expensive textbooks are the complaint of a super-majority of college students. Why should a student have to pay to submit homework when he/she has already paid tuition (Del Valle, 2019)? Research has found similar views from faculty, which 60% argue expensive textbooks are a serious concern (McMurtrie, 2019).

However, not purchasing a textbook is not the same as going without a textbook. Students are sharing or pirating textbooks because of costs (Okamoto, 2013). Increasingly students share textbooks with friends (Krey, Clow, Babin, 2010). Despite many not purchasing a book, students find a way to make it work. In a recent survey, only 3.9% of students (n=518) did not obtain access to a book (Krey, Clow, Babin, 2010). Sharing and pirating of texts (and e-texts) has become commonplace and only increases the pressure in this volatile market (Elletson, 2019). The push for open educational resources (free textbooks available online) has only magnified the volatility (Kristof, 2018) and increased the hostility towards traditional publishers (Jenkins, 2019).

Consistent research has found the current generation of students spend very little time, if any, reading the textbook to prepare for class. Students spend significantly less time studying than 20 years ago (Berry, Cook, Hill, & Stevens, 2011). Junco & Clem (2015) found students (n=233) averaged three hours a week reading the text over the semester, indicating self-reported study hours are likely inflated. Clinton, Tyner, Epstein, & Lambert (2016) surveyed business students (n=170) and found disappointing reading amounts per year with strong gender differences in reading, benefitting female students.

Berry, Cook, Hill, & Stevens (2011) surveyed finance students (n=267) and found 92% of students spent less than 3 hours per week reading the text; and found over half (53%) reported never or rarely read the book before class, because time constraints (work, family) restrict time available for reading. Ludlum, Ludlum, & Smith (2009) surveyed business students across five US campuses (n=725) and found students self-reported about nine hours of studying and reading combined per week.

This problem is not unique to business disciplines. Bartolomeo-Maida (2017) surveyed psychology students in community college (n=61) and found 13% never read the book, and 78% read between one and five hours per week. Marek & Christopher (2011) surveyed psychology students (n=311) and found they averaged less than four hours per week reading the textbook. Sikorski, Rich, Saville, Buskist, Drogan, & Davis (2002) surveyed psychology students and found they spend less than three hours a week reading their textbook.

The most widespread explanation for the low textbook reading rates is cost. Textbooks are shockingly expensive and increasingly so. Textbooks have increased in cost 15 times since 1970s (Del Valle, 2019; Pitt, 2015). Prices have increased exponentially over the last 20 years (Okamoto, 2013). This is not just simple inflation from the marketplace. Textbook costs have increased at four times the rate of inflation (Kristof, 2018; Allen, 2010). Recent reports showed a 1041% price increase from 1977 to 2015 (Jarvis, 2019).

The average student spent \$1,220 - \$1,400 a year on textbooks in 2017-2018 (Pennamon, 2018). This result has been confirmed in several other research projects. Berry, Cook, Hill, & Stevens (2011) found students spent \$1,000 per year on textbooks. In a detailed study of one campus, full time students spent over \$900 per year on textbooks across the range of majors (Hilton, Robinson, Wiley, Ackerman, 2014).

Price variance among textbooks for same course can be staggering. Prices can be double for different texts for the identical course (Hilton, Robinson, Wiley, Ackerman, 2014). In addition, timing and convenience can affect prices. A study of science students at University of Mississippi found shopping early (before the term starts) and online can significantly reduce (20-33%) the costs of textbooks (Cannon & Brickman, 2015). While libraries are filled, libraries are not getting involved in the textbook battles because of high prices (Hendrix, Lyons, & Aronoff, 2016).

High cost textbooks are the bane of student success (Prasad, Totaram, & Usagawa, 2016). Textbooks are a serious financial burden (Cannon & Brickman, 2015), especially burdensome for cash strapped students (Lyons & Hendrix, 2014). A strong majority (65%) of students reported not buying a book because of price (McMurtrie, 2018). In addition, 31% of students have chosen not to take a class because of textbook cost (Donaldson, Nelson, & Thomas, 2012). Textbook costs have priced the students out of this uncompetitive market.

In the current project, we posed the following four research questions. Each research question was broken into three testable (null) hypotheses for examination.

Research Question 1 – Do college students need the textbook?

- H1a – Gender does not affect college students’ need for the textbook.
- H1b - Major does not affect college students’ need for the textbook.
- H1c – International status does not affect college students’ need for the textbook.

Research Question 2 – Where do college students get advice about textbooks?

- H2a – Gender does not affect where college students get advice on textbooks.
- H2b - Major does not affect where college students get advice on textbooks.
- H2c – International status does not affect where college students get advice on textbooks.

Research Question 3 – Do students have a long term interest in textbooks?

- H3a – Gender does not affect college students’ long term interest in textbooks.
- H3b - Major does not affect college students’ long term interest in textbooks.
- H3c – International status does not affect college students’ long term interest in textbooks.

Research Question 4 – What kind of textbook is preferred?

- H4a – Gender does not affect the format of textbook preferred.
- H4b - Major does not affect the format of textbook preferred.
- H4c – International status does not affect the format of textbook preferred.

METHOD FOR THE SURVEY

Before attempting the survey, the authors instigated a pilot project to define the survey questions. A group of 22 students gathered for a student academic club with a delayed guest speaker. To occupy the time, the authors started an open discussion about textbook issues. The authors only posed two questions to start the discussion: Do students read the textbook? Why or why not? The discussion was left to the students to explore. The discussion surprisingly lasted 45 minutes, as students were quite passionate about these issues. The questions from this survey project were derived from that discussion.

Once the survey was finalized, IRB approval was applied for and gained. A convenience sample was taken from large business survey classes at a large regional public university in 2017. Students were asked to complete the questionnaire during class time. The survey instrument was voluntary and anonymous. Students were advised they did not have to participate. No inducements were offered to the students to participate.

We were best able to minimize the socially appropriate response bias by using a large group survey with confidential submissions and anonymous results. A total of 421 surveys resulted. Eighteen surveys were rejected because of incomplete answers (>50% blank), leaving 403 completed surveys (n=403). However, some questions had fewer than 403 responses. The text of the questions is in the appendix. Demographic details are reported in Table 1.

Table 1. Demographic Results (n=403).

| Characteristic | Number | Percentage |
|-------------------------|---------------|-------------------|
| Major = Business | 303 | 75% |
| Major = Non-Business | 99 | 25% |
| Year in School = 1 | 31 | 7.69% |
| Year in School = 2 | 27 | 6.7% |
| Year in School = 3 | 104 | 25.81% |
| Year in School = 4 | 227 | 56.33% |
| Gender = Male | 191 | 49% |
| Gender = Female | 202 | 51% |
| Married | 51 | 13% |
| Have Children | 31 | 10.9% |
| Work Full Time | 91 | 22.58% |
| Work Part Time | 223 | 55.33% |
| Unemployed | 77 | 19.11% |
| Parental Support = 0 | 148 | 37% |
| Parental Support <10% | 7 | 1.73% |
| Parental Support 10-49% | 48 | 12% |
| Parental Support 50-69% | 43 | 11% |
| Parental Support 70-89% | 44 | 11% |
| Parental Support 90%+ | 95 | 24% |
| Have student loans | 181 | 45% |

Most (75%, n=303) of the participants were business majors. The remainder were in other disciplines. Upperclassmen (82%, n=331) were overrepresented in our sample. Gender was evenly divided. Our group consisted of primarily traditional students (average age of 23.66 years). Only 13% (n=51) of the students were married, and 10% (n=31) had children. Most students worked while attending school (81%, n=314) with an average of 23 hours per week worked. Only 19% (n=77) of our students were full-time students and unemployed.

We asked what percentage of their living expenses were paid by their parents. We had a great variety with 37% (n=148) of students were self-supporting (said they got no support from their parents) and 24% (n=95) of students were parent-dependent (claiming 90% or more of their living expenses from their parents). We were also concerned about the amount of student loan debt our students had in our sample. A majority (55%, n=222) of our sample did not have any student loan debt. In our sample, the average total was \$23,580 for students with loans.

We asked students their reading habits. In our sample, students averaged reading/studying a little over six hours per week. For comparison, we asked students about their Internet habits (not study-related). In our sample, the average student spent 13.5 hours per week on the internet. This was more than double the amount of time students spent studying. These findings concur with past research which finds a disappointing rate of student reading.

Juban & Lopez (2013) surveyed business students (n=168) and found 40% only read the textbook before exams. In question 16, we stated: "I read my textbook before every class." The results were strongly agree 8%, agree 15%, neutral 25%, disagree 29%, and strongly disagree

24%. Less than a quarter of students (23%, n=93) read the book before each class. This is disheartening. Students are not using the text to prepare for class.

In our survey, we stated: "I only read the textbook immediately prior to taking an exam." The results were strongly agree 11%, agree 24%, neutral 23%, disagree 28%, and strongly disagree 14%. A third of students (35%, n=141) only read the book immediately prior to an exam. This should be a concern for professors who assume consistent reading throughout the semester.

All questions were phrased as a statement. For evaluation, we used a five-point Likert scale with one being strongly agree, two being agree, three being neutral, four being disagree, and five being strongly disagree. For the statistical analysis, we used SPSS version 24. For the comparison of groups (male versus female, international versus domestic, etc.), we used a chi squared analysis. We reported all results and identified the statistically significant results.

FINDINGS

Research Question 1: DO STUDENTS NEED THE BOOK?

We asked five questions about whether students use their textbook at all. In question seven, we stated: "Sometimes I buy a book for class and we never use it." The results were strongly agree 42%, agree 24%, neutral 11%, disagree 12%, and strongly disagree 11%. Two-thirds of students claim to never use the textbook. If students have a perception that the book is not needed for a course, the money would seem to be wasted. This would undermine any attempt to incorporate more textbook assignments in a course.

In question one, we stated "I strive for perfect attendance so I don't think I will need a book." The results were 19% strongly agree; 28% agree; 21% neutral; 21% disagree; and 12% strongly disagree. A significant portion, but far short of a majority, plan to attend every class and use his/her notes as a substitute for the textbook.

In question 2, we stated: "I only buy the books I afford, and I often have to do without a book I feel I need." The results were strongly agree 9%, agree 15%, neutral 19%, disagree 31%, and strongly disagree 25%. This question indicated that a quarter of students (24%, n=96) must go without a book they feel they need because of financial reasons.

In question 15, we stated: "I frequently have classes where textbook is not needed." The results were 19% strongly agree; 28% agree; 21% neutral; 21% disagree; and 12% strongly disagree. Nearly half of students (47%) indicated not needing the book was not a rare occurrence, but instead happened frequently.

Lastly, question 20 stated: "I often have textbooks that I do not use the entire semester." The results were strongly agree 30%, agree 25%, neutral 21%, disagree 15%, and strongly disagree 10%. This question had a 2-to-1 ratio of not using the book the entire semester. Taken together these questions indicated the majority of students felt they were encouraged to purchase textbooks which they never used.

Table 2. Research Question 1 with Chi squared results.

| Question | Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Stat. Signif. |
|---|----------------|-------|---------|----------|-------------------|---------------|
| Sometimes I buy a book for class and we never use it. | 42% | 24% | 11% | 12% | 11% | |
| Male | 78 | 50 | 18 | 24 | 21 | |
| Female | 85 | 76 | 26 | 21 | 24 | |
| Business major | 125 | 76 | 32 | 36 | 34 | |
| Non-business major | 35 | 19 | 11 | 11 | 10 | |
| International student | 15 | 11 | 9 | 8 | 9 | + |
| Domestic student | 150 | 83 | 33 | 40 | 36 | + |
| I only buy the books I afford, and I often have to do without a book I feel I need. | 9% | 15% | 19% | 31% | 25% | |
| Male | 20 | 35 | 38 | 53 | 43 | |
| Female | 16 | 24 | 37 | 68 | 56 | |
| Business major | 25 | 51 | 59 | 96 | 70 | |
| Non-business major | 10 | 6 | 17 | 25 | 27 | |
| International student | 8 | 5 | 16 | 15 | 7 | |
| Domestic student | 29 | 55 | 59 | 108 | 89 | |
| I frequently have classes where textbook is not needed. | 19% | 28% | 21% | 21% | 12% | |
| Male | 38 | 53 | 42 | 43 | 15 | |
| Female | 34 | 57 | 39 | 41 | 31 | |
| Business major | 56 | 81 | 64 | 70 | 32 | |
| Non-business major | 17 | 27 | 17 | 14 | 11 | |
| International student | 9 | 8 | 14 | 17 | 4 | + |
| Domestic student | 66 | 102 | 65 | 67 | 42 | + |
| I often have textbooks that I do not use the entire semester. | 30% | 25% | 21% | 15% | 10% | |
| Male | 58 | 44 | 45 | 28 | 16 | |
| Female | 58 | 54 | 37 | 30 | 23 | |
| Business major | 87 | 69 | 74 | 43 | 30 | * |
| Non-business major | 29 | 29 | 8 | 13 | 7 | * |
| International student | 11 | 12 | 12 | 10 | 7 | |
| Domestic student | 108 | 84 | 70 | 49 | 31 | |
| I strive for perfect attendance so I do not think I will need a book. | 9% | 15% | 26% | 32% | 18% | |
| Male | 18 | 33 | 58 | 54 | 27 | + |
| Female | 17 | 24 | 46 | 71 | 44 | + |
| Business major | 24 | 46 | 87 | 89 | 56 | + |
| Non-business major | 12 | 11 | 17 | 34 | 12 | + |
| International student | 6 | 5 | 12 | 17 | 12 | |
| Domestic student | 30 | 54 | 90 | 107 | 60 | |

Note: + $p < .10$; * $p < .05$; ** $p < .01$; *** $p < .001$

RESEARCH QUESTION 2: DO STUDENTS ASK FOR TEXTBOOK ADVICE?

We asked two questions on whether students asked the professor about the need for the textbook. In question 11, we stated: "I asked my professor if the book is really needed. If the

professor says yes, I always buy the book.” The results were strongly agree 37%, agree 26%, neutral 17%, disagree 11%, and strongly disagree 8%.

We also posed the question in the negative. In question 12, we stated: “I asked my professor if I really need the book. If the professor says no, I do not buy the book.” The results were strongly agree 47%, agree 16%, neutral 16%, disagree 8%, and strongly disagree 13%. Taken together these questions indicated the professor was a vital source of information for the need for having the textbook. In both questions, nearly two-thirds (63%, n=254) relied on the professor about whether the book was needed or not and based their individual decision on the professor’s recommendation.

Of course, the professors are not the only source of information. In two questions, we asked whether students rely on information from others about the need for the textbook. In question 13, we stated: “I asked former students to see if the textbook is really needed.” The results were strongly agree 30%, agree 22%, neutral 19%, disagree 16%, and strongly disagree 14%. A majority (52%, n=209) would rely on other students for a textbook recommendation.

In question 14, we stated: “I check on anonymous websites such as RateMyProfessor.com to see if the textbook is needed.” The results were strongly agree 26%, agree 19%, neutral 20%, disagree 17%, and strongly disagree 18%. Based on these results, we believe students put more faith in a fellow student’s recommendation than an anonymous website. These two questions demonstrate while the students do rely on outside sources for information regarding the need for the textbook, they rely on those sources much less than the professor in class. Further research should examine how a student would react to a mixed message, for example if past students claimed the book was not needed while the professor claimed it was.

Table 3. Research Question 2 with Chi squared results.

| Question | Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Stat. Signif. |
|--|----------------|-------|---------|----------|-------------------|---------------|
| I asked my professor if the book is really needed. If the professor says yes, I always buy the book. | 37% | 26% | 17% | 11% | 8% | |
| Male | 64 | 50 | 34 | 22 | 18 | |
| Female | 80 | 52 | 33 | 21 | 15 | |
| Business major | 105 | 85 | 52 | 34 | 24 | |
| Non-business major | 32 | 16 | 15 | 8 | 9 | |
| International student | 18 | 12 | 7 | 8 | 6 | |
| Domestic student | 126 | 91 | 59 | 35 | 28 | |
| | | | | | | |
| I asked my professor if I really need the book. If the professor says no, I do not buy the book. | 47% | 16% | 16% | 8% | 13% | |
| Male | 85 | 27 | 34 | 19 | 24 | |
| Female | 97 | 32 | 30 | 12 | 26 | |
| Business major | 137 | 51 | 52 | 23 | 38 | |
| Non-business major | 43 | 13 | 11 | 8 | 11 | |
| International student | 22 | 8 | 13 | 6 | 3 | |
| Domestic student | 160 | 57 | 49 | 26 | 48 | |
| | | | | | | |
| I asked former students to see if the textbook is really needed. | 30% | 22% | 19% | 16% | 14% | |

| | | | | | | |
|---|-----|-----|-----|-----|-----|---|
| Male | 54 | 41 | 33 | 33 | 29 | |
| Female | 61 | 45 | 41 | 29 | 26 | |
| Business major | 86 | 67 | 57 | 49 | 43 | |
| Non-business major | 28 | 19 | 17 | 12 | 10 | |
| International student | 13 | 11 | 12 | 10 | 6 | |
| Domestic student | 103 | 75 | 61 | 52 | 50 | |
| | | | | | | |
| I check on anonymous websites such as RateMyProfessor.com to see if the textbook is needed. | 26% | 19% | 20% | 17% | 18% | |
| Male | 41 | 39 | 45 | 28 | 33 | |
| Female | 59 | 39 | 31 | 39 | 34 | |
| Business major | 75 | 59 | 61 | 53 | 54 | |
| Non-business major | 27 | 18 | 16 | 12 | 13 | |
| International student | 9 | 8 | 21 | 9 | 5 | * |
| Domestic student | 94 | 67 | 58 | 58 | 64 | * |

Note: + $p < .10$; * $p < .05$; ** $p < .01$; *** $p < .001$

RESEARCH QUESTION 3: DO STUDENTS HAVE A LONG-TERM INTEREST IN THE TEXTBOOKS?

In three questions we asked whether students saved their textbooks for later use. In question 21, we stated: “I save textbooks in my major to develop a personal library.” The results were 18% strongly agree, 18% agree, 16% neutral, 23% disagree, and 24% strongly disagree. This indicates most students do not save textbooks in their major. The traditional notion of a professional library may be quite popular among academics, but is not popular among undergraduates.

In question 22, we stated: “I occasionally save textbooks for my personal use.” The results were strongly agree 12%, agree 25%, neutral 20%, disagree 17%, and strongly disagree 25%. Only 37% (n=149) planned to save a textbook for their personal use. Of course, this might not be as encouraging as it appears. Personal use might include letting a friend/family member use the textbook for a later term instead of selling it back to the bookstore.

In question 23, we stated the question in the negative saying “I never save textbooks. Once the class is over, I try to sell them.” The results were strongly agree 26%, agree 18%, neutral 20%, disagree 21%, and strongly disagree 14%. Taken together these three questions indicate students have no long-term interest in textbooks. Undergraduate students viewed texts as a transitory need during the class after which they have no purpose.

Table 4. Research Question 3 with Chi squared results.

| Question | Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Stat. Signif. |
|---|----------------|-------|---------|----------|-------------------|---------------|
| I save textbooks in my major to develop a personal library. | 18% | 18% | 16% | 23% | 24% | |
| Male | 38 | 40 | 34 | 41 | 38 | |
| Female | 34 | 22 | 30 | 48 | 58 | |
| Business major | 58 | 50 | 47 | 74 | 74 | |
| Non-business major | 12 | 22 | 16 | 14 | 22 | |
| International student | 12 | 9 | 13 | 12 | 6 | |
| Domestic student | 59 | 63 | 52 | 77 | 91 | |

| | | | | | | |
|---|-----|-----|-----|-----|-----|---|
| I occasionally save textbooks for my personal use. | 12% | 25% | 20% | 17% | 25% | |
| Male | 25 | 54 | 37 | 33 | 41 | |
| Female | 23 | 46 | 41 | 34 | 58 | |
| Business major | 35 | 72 | 64 | 55 | 77 | |
| Non-business major | 12 | 26 | 13 | 12 | 22 | |
| International student | 12 | 10 | 13 | 6 | 9 | |
| Domestic student | 36 | 88 | 64 | 62 | 91 | |
| | | | | | | |
| I never save textbooks. Once the class is over, I try to sell them. | 26% | 18% | 20% | 21% | 14% | |
| Male | 39 | 35 | 43 | 40 | 33 | |
| Female | 62 | 35 | 35 | 45 | 25 | |
| Business major | 77 | 62 | 60 | 57 | 46 | |
| Non-business major | 22 | 11 | 18 | 26 | 9 | |
| International student | 11 | 7 | 8 | 11 | 15 | + |
| Domestic student | 91 | 66 | 69 | 73 | 42 | + |

Note: + $p < .10$; * $p < .05$; ** $p < .01$; *** $p < .001$

RESEARCH QUESTION 4: WHAT TYPE OF TEXTBOOK IS PREFERRED?

We asked six questions related to the cost, use, and format of textbook options. In question 4, we stated: “I prefer a loose-leaf book to a bound book.” The results were strongly agree 12%, agree 10%, neutral 22%, disagree 22%, and strongly disagree 33%. Most students (77%, $n=310$) were not eager to embrace the alternative of loose-leaf books, since the resale after the semester was zero. While the concept of loose-leaf books has been a popular marketing trend among publishers, students understand the initial lower cost is offset by the inability to resell the text at the end of the term.

In question 5, we stated: “I prefer to rent a textbook when possible.” The results were strongly agree 51%, agree 16%, neutral 11%, disagree 6%, and strongly disagree 15%. This confirms the idea dealing with saving the textbooks for later use that students only want the books temporarily. Two-thirds of students (67%, $n=270$) preferred rental to purchase since it offered lower initial costs and avoided worries about the book being unneeded (inability to sell) at the semester end.

In question six, we stated: “I choose the cheapest method to get the book.” The results were strongly agree 62%, agree 13%, neutral 6%, disagree 4%, and strongly disagree 14%. Students do not see a long-term value in the book. Most students (75%, $n=302$) would choose the cheapest alternative for an item that they have no intention of keeping. Bookstores should be concerned because some of the cheapest options (sharing and pirated copies) still represent a lack of current sales.

In question eight, we stated: “I try to buy books online for better prices.” The results were strongly agree 49%, agree 16%, neutral 12%, disagree 11%, and strongly disagree 12%. Most students (65%, $n=262$) look online for textbooks currently. Online sales are growing, and expected to grow further as this option appeals to students. The campus bookstore is facing not just local competition (the bookstore off campus) but a global marketplace. Campus bookstores who have historically acted as monopolies will have difficulty with these changes.

In question nine, we stated: “I must buy my books at the campus bookstore because of financial aid.” The results were strongly agree 15%, agree 8%, neutral 18%, disagree 17%, and strongly disagree 42%. These last two questions taken together indicate that students often

bypassed the campus bookstore and search for books online in order to gain the lowest possible price. Less than a quarter (23%, n=92) of students view the college bookstore as their only source. This should be concerning for bookstore managers as the campus bookstores are having to compete with all online sales and fewer students are a captive market of consumers. In addition, technology might soon allow financial aid students to purchase the books online, and thereby avoiding the monopolistic pricing of the campus bookstore.

The final question related to price was instigated by student suggestions during our pilot discussion. Question 26 stated: "If my professor is the author, the textbook is only required to make money for the professor." The results were strongly agree 11%, agree 21%, neutral 36%, disagree 20%, and strongly disagree 11%. This question indicates that a sizable portion of students, nearly a third (32%, n=129) are cynical of any textbook with the professor as the author. A third of students believe any faculty-authored textbook is simply a profit motive for the professor and has little use. Professors who author their own textbook should be prepared for this cynicism and explain the justification for the textbook to incoming students.

Table 5. Research Question 4 with Chi squared results.

| Question | Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Stat. Signif. |
|---|----------------|-------|---------|----------|-------------------|---------------|
| I prefer a loose-leaf book to a bound book. | 12% | 10% | 22% | 22% | 33% | |
| Male | 24 | 18 | 42 | 46 | 61 | |
| Female | 22 | 21 | 46 | 42 | 71 | |
| Business major | 39 | 29 | 62 | 73 | 100 | |
| Non-business major | 7 | 9 | 23 | 14 | 33 | |
| International student | 7 | 10 | 20 | 13 | 2 | *** |
| Domestic student | 42 | 29 | 68 | 73 | 130 | *** |
| | | | | | | |
| I prefer to rent a textbook when possible. | 51% | 16% | 11% | 6% | 15% | |
| Male | 83 | 34 | 21 | 17 | 35 | + |
| Female | 114 | 30 | 23 | 9 | 25 | + |
| Business major | 158 | 48 | 31 | 18 | 46 | |
| Non-business major | 38 | 14 | 12 | 8 | 14 | |
| International student | 23 | 8 | 8 | 4 | 8 | |
| Domestic student | 177 | 54 | 34 | 22 | 54 | |
| | | | | | | |
| I choose the cheapest method to get the book. | 62% | 13% | 6% | 4% | 14% | |
| Male | 102 | 28 | 10 | 15 | 30 | + |
| Female | 135 | 25 | 15 | 3 | 23 | + |
| Business major | 186 | 41 | 16 | 16 | 42 | |
| Non-business major | 54 | 12 | 8 | 1 | 11 | |
| International student | 26 | 8 | 4 | 5 | 8 | |
| Domestic student | 220 | 42 | 20 | 12 | 47 | |
| | | | | | | |
| I try to buy books online for better prices. | 49% | 16% | 12% | 11% | 12% | |
| Male | 92 | 24 | 24 | 21 | 29 | |
| Female | 99 | 40 | 23 | 22 | 17 | |
| Business major | 145 | 50 | 35 | 35 | 37 | |
| Non-business major | 44 | 13 | 10 | 9 | 9 | |
| International student | 22 | 12 | 5 | 6 | 6 | |
| Domestic student | 171 | 51 | 42 | 37 | 40 | |
| | | | | | | |

| | | | | | | |
|---|-----|-----|-----|-----|-----|----|
| I must buy my books at the campus bookstore because of financial aid. | 15% | 8% | 18% | 17% | 42% | |
| Male | 31 | 19 | 30 | 26 | 83 | |
| Female | 30 | 11 | 39 | 42 | 80 | |
| Business major | 45 | 29 | 43 | 50 | 134 | ** |
| Non-business major | 14 | 3 | 26 | 16 | 27 | ** |
| International student | 10 | 4 | 8 | 10 | 20 | |
| Domestic student | 51 | 28 | 61 | 57 | 143 | |
| | | | | | | |
| If my professor is the author, the textbook is only required to make money for the professor. | 11% | 21% | 36% | 20% | 11% | |
| Male | 26 | 45 | 67 | 32 | 19 | |
| Female | 16 | 38 | 73 | 48 | 26 | |
| Business major | 33 | 67 | 107 | 59 | 35 | |
| Non-business major | 9 | 15 | 32 | 21 | 8 | |
| International student | 6 | 10 | 18 | 14 | 4 | |
| Domestic student | 39 | 72 | 122 | 66 | 40 | |

Note: + $p < .10$; * $p < .05$; ** $p < .01$; *** $p < .001$

DISCUSSION

For Research Question 1, most students say the text is not used. If professors feel the textbook is vital, this message is not being received by students. The professors must emphasize how the textbook is vital for graded assignments as well as to understand the concepts.

When we broke the students into groups, we found that gender, major, and international status had at best modest impact on the students' need for a textbook. Being generous, we would offer the findings give extremely little support for Hypothesis 1a-1b-1c. We would argue those should be rejected.

In Research Question 2, we found students have heavy reliance on professor as a source for knowledge about the textbook, but also refer to anonymous websites. When we examined the groups by gender, major, and international status, we found no support for Hypothesis 2a-2b-2c, save a single question on anonymous websites. Thus, Hypothesis 2a-2b-2c is rejected.

In Research Question 3, we found students' interest in textbooks is temporary, if any interest exists. When we divided the students by gender, major, and international status, we found no support for Hypothesis 3a-3b-3c, and thus they are rejected.

Finally, in Research Question 4, we found students prefer rental books and will search online for bargains. We also found that students dislike loose-leaf books. When we divided students by gender, major, and international status, we found slight evidence of the demographic impacts, but overall, we would likely still reject Hypothesis 4a-4b-4c.

Overall, we found that neither gender, nor major, nor international status has a large impact on students' attitudes towards textbooks. All students seem to view textbooks as an expensive luxury, not justified by the cost.

These results could be simplified into two broad policy positions. First, for faculty, many students do not have textbooks. Assumptions that everyone will have a textbook (and bring it to class or read it) are optimistic if not misguided. Students struggle to get access to expensive books which they assume have little value. Second, for campus bookstores, the future looks rather bleak. Students have many other shopping alternatives, and financial issues are making searching elsewhere for a book mandatory.

LIMITATIONS AND IMPLICATIONS FOR FURTHER RESEARCH

One limitation of this pilot study is that we only examined one public higher education institution. Further replications could determine if these results were individualized to this one campus or to certain regions of the United States. In addition, further projects could compare private or for-profit colleges to see if the study body in those institutions would have similar results.

Much of our results have a financial tone to them. As a result, these results should be taken with an examination of the sample in which we used. In our sample, students were heavily reliant on their own income or student loans. Further projects should examine students by income level, financial aid, access to credit, and scholarship opportunities, as these factors heavily influence all monetary decisions by the student.

Another limitation of this study is the sample size. A larger sample size could result in more detailed analysis of the sub-groups. For example, a larger sample size could define business majors into discipline areas (accounting, economics, marketing, management, etc.) to see if any disciplines had different views. In addition, non-traditional students (older, married, with children) were insufficient to do any meaningful comparisons. Future research also may wish to investigate possible influence of class type and timelines on textbook usage. For example, does it make a difference if the class is online, fast-track, or intersession? Lastly, the failure to buy/read textbooks is a multifaceted problem and will require multiple solutions, perhaps discipline specific.

The textbook industry is going through a time of rapid change. Textbook rentals, e-texts, and open source materials have emerged to complicate the troubled market. Future projects should examine recent trends in the textbook industry, such as e-texts and open source materials. The textbook was once the foundation of learning. Now, for many students, textbooks have priced students out of the market. Students struggle to find lower cost alternatives but still are skeptical that the investment in textbooks will benefit them. The future of the textbook market is very unsettled.

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Appendix 1

For the following questions, use this scale:

1 = Strongly Agree; 2 = Agree; 3 = Neutral; 4 = Disagree; 5 = Strongly Disagree

- 1 I strive for perfect attendance so I don't think I will need a book
- 2 I only buy the books I afford, and I often have to do without a book I feel I need.
- 4 I prefer a loose leaf book to a bound book
- 5 I prefer to rent a textbook when possible
- 6 I choose the cheapest method to get the book
- 7 Sometimes I buy a book for class and we never use it.
- 8 I try to buy books online for better prices.
- 9 I must buy my books at the campus bookstore because of financial aid.
- 11 I ask my professor if the book is really needed. If the professor says "yes" I always buy the book.
- 12 I ask my professor if I really need the book. If the professor says "no" I do not buy the book.
- 13 I ask former students to see if the textbook is really needed.
- 14 I check on anonymous websites (ratemyprof, etc.) to see if the textbook is needed.
- 15 I frequently have classes where a textbook is not needed.
- 16 I read my textbook before every class.
- 17 I only read the textbook immediately prior to taking an exam.
- 20 I often have textbooks that I do not use the entire semester.
- 21 I save textbooks in my major to develop a personal library.
- 22 I occasionally save textbooks for my personal use.
- 23 I never save textbooks. Once the class is over, I try to sell them.
- 26 If my professor is the author, the textbook is only required to make money for the professor.
- 28 How much do you expect to borrow in student loans by the time you complete your degree?
- 30 How many hours per week do you read your textbooks in all classes combined?
- 31 How many hours per week do you work (employed)?
- 32 How many hours per week do you spend on the internet (not study related)?
- 33 My parents provide _____% of my living expenses.
- 34 What year in school are you presently?
- 35 What is your college?
- 36 What is your major?
- 37 Are you male or female?
- 38 Are you currently employed (this semester)?
- 39 Are you married?
- 40 What is your age?
- 41 How many children do you have?

Some questions were omitted in the analysis because they were not part of the current project.

