

NATIONAL SOCIAL SCIENCE PROCEEDINGS

Volume 68

Lake Tahoe National Summer Seminar, 2018

Table of Contents

Continuous Assessment Through TaskStream

Patricia Abels, The University of Findlay
Maria Gamba, The University of Findlay 1

Ready Or Not, Ours To Teach: Underprepared College Students

Mona Bryant-Shanklin, Norfolk State University 24

Carpenter v. US: Are Cellphones an Investigator's New Best Friend?

Sue Burum, MSU, Mankato 34

Social Studies Projects for the K-12 Classroom

Penny Finley, Florida Gulf Coast University 47

No Dirt on Donald: Politics and the National Enquirer

William M. Kirtley, Central Texas College 57

Exigencies of Conflict and Terror: Monitoring Human Traffic

Raymonde Kleinberg, University of North Carolina Wilmington
Lindsey Julian George, University of North Carolina Wilmington 79

The Military Leadership of Alexander the Great

Professor Mark R. Polelle, University of Findlay 97

***A Teaching Case Study on Diesel Gate –
Restoring Trust after the Volkswagen Emission Scandal***

Joshua Zender, Humboldt State University 101

Continuous Assessment Through TaskStream

National Social Science Association

July 2018

The University of Findlay, Findlay, Ohio
Dr. Patricia Abels & Professor Maria Gamba

Brief Abstract

Accreditation is about quality assurance and quality improvement. A quality education is important for all stakeholders. Continuous assessment is required for adherence to quality standards.

Outline

- Background on History of Assessment
- Taskstream Introduction
- Major Course Assessment – Accounting Example
- General Education Course Assessment Samples

Department of Education - 1867

“ensure equal access to education and to promote educational excellence throughout the nation”

- Elementary and Secondary School Systems
 - President Andrew Johnson - 1867
- G.I. Bill
 - President Franklin Roosevelt – 1944
- Department of Education Organization Act
 - President Jimmy Carter – 1979

Higher Education Act - 1965

- “higher education [was] no longer a luxury, but a necessity”
 - President Lyndon Johnson
- “strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education”
 - Public Law 89-329

Higher Education Act - 1965

Department of Education has the third largest discretionary budget
(behind that of Department of Defense and Department of Health and Human Services)

- **Federal Funding**
 - University Improvements - Libraries and Equipment
 - Scholarships – Work Study and Fellowships
 - Low Interest Student Loans
 - Advisory Council on Quality Teacher Preparation
 - National Teacher Corps

National Accreditation

reassure stakeholders that a university has attained a high level of quality instruction as evidenced by the degrees being granted by those institutions

- The 10 National Accrediting Bodies:
 - Accrediting Commission of Career Schools and Colleges
 - Accrediting Council for Continuing Education and Training
 - Association for Biblical Higher Education
 - Association of Advanced Rabbinical and Talmudic Schools
 - Association of Institutions of Jewish Studies
 - Council on Occupational Education
 - Distance Education Accrediting Commission
 - New York State Board of Regents
 - Transnational Association of Christian Colleges and Schools
 - Accreditation Council for Independent Colleges and Schools (Inactive)

National Accreditation

- Federal Student Aid Program
- Lower Quality Standards
- Difficult to Transfer Academic Credit
- Perceived Lower Quality

Regional Accreditation - 1885

“a collegial process based on self and peer assessment for public accountability and improvement of academic quality”

Regional accreditation oversees “the quality of research universities; community colleges; liberal arts colleges; state colleges; religiously affiliated institutions; special purpose institutions in the arts, sciences, and professional fields; military academies; historically black and Hispanic-serving institutions; and tribal colleges”.

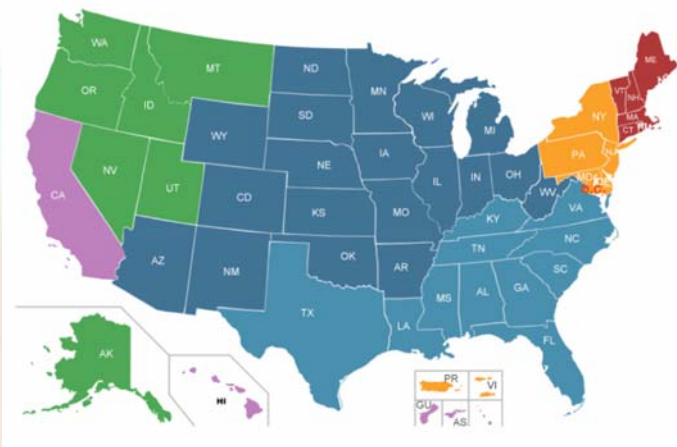
- Standardize admission policies
- Standardize educational standards
- Transferability of credits
- Equivalency of degrees

Regional Accreditation

- Transferability of credits
 - 84% consider accreditation for transfer work
 - 63% regional accredit coursework is accepted
 - 14% accept national accredit coursework
- Retake courses
- Added length to total degree
- Additional tuition burden

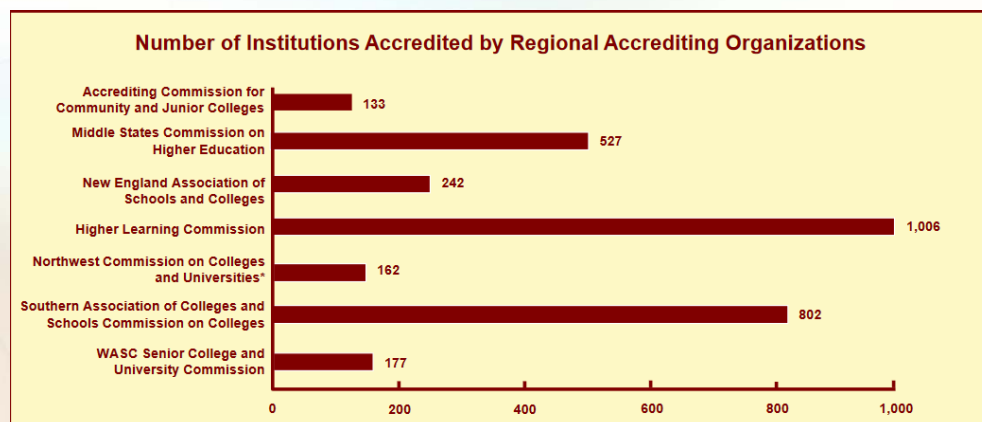
Regional Accreditation

“encourages and assists in the improvement, effectiveness and excellence of affiliated educational institutions”



- Accrediting Commission for Community and Junior Colleges
- Higher Learning Commission (formerly North Central Association of Colleges and Schools)
- Middle States Commission on Higher Education
- New England Association of Schools and Colleges
- Northwest Commission on Colleges and Universities
- Southern Association of Colleges and Schools
- Western Association of Schools and Colleges

Regional Accreditation

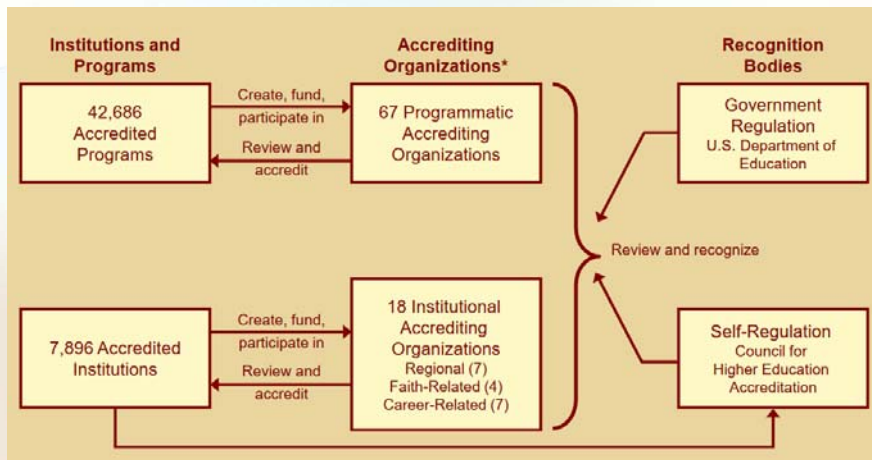


Regional Accreditation

Programmatic Accreditors by Degree or Non-Degree Status*

	Public	Private Nonprofit	Private For-Profit	Institutional Control Not Indicated	Total
Degree	9,587	5,904	4,522	18,715	38,728
Non-Degree	1,190	532	445	1,791	3,958
Programmatic Total	10,777	6,436	4,967	20,506	42,686

Relationship



Need for Accreditation

- Protect Public Health and Safety
- Serve the Public Interest
- Inform Employers, the Public, and Students
 - met the minimum standards for quality
- Access to Federal and State Funding
- Evaluating Employee Credentials
- Reimburse for Tuition
- Transferability of College Credits

Functions of Accreditation

“means to assure and improve higher education quality, assisting institutions and programs using a set of standards developed by peers”

- Assess the quality of academic programs at institutions of higher education.
- Create a culture of continuous improvement of academic quality at colleges and universities and stimulate a general raising of standards among educational institutions.
- Involve faculty and staff comprehensively in institutional evaluation and planning.
- Establish criteria for professional certification and licensure and for upgrading course offerings such preparation.

Higher Learning Commission - 1895

- Criteria 1 – **Mission** – the institution’s mission should be clear and articulated publicly; and the mission statement should guide the institution’s daily operations.
- Criteria 2 – **Integrity: Ethical and Responsible Conduct** – the institution is expected to act with integrity; and the institution’s conduct is ethical and responsible.
- Criteria 3 – **Teaching and Learning: Quality, Resources, and Support** – the institution should provide high quality education.
- Criteria 4 – **Teaching and Learning: Evaluation and Improvement** – the institution should demonstrate responsibility for the quality of its education programs, learning environments, and support services; and the institution should evaluate the effectiveness of student learning through a process of continuous improvement.
- Criteria 5 – **Resources, Planning, and Institutional Effectiveness** – the institution’s resources, structures, and processes are sufficient to fulfill the institution’s mission; and improve the quality of its educational offerings. The institution should be able to plan for the future and respond to challenges and opportunities.

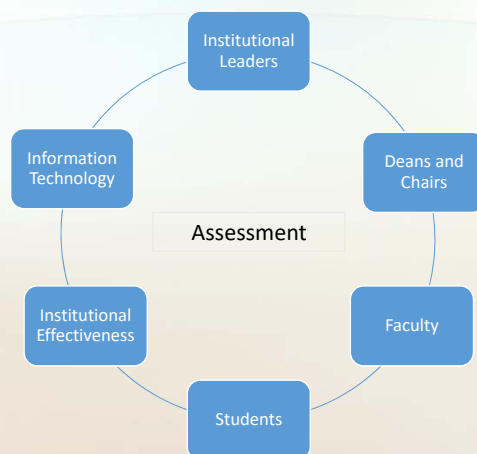
Accreditation Council for Business Schools and Programs - 1989

- Specialized Accreditation
 - Accredit business schools with an emphasis on teaching and learning.
- Higher level of accreditation

TaskStream

- Founded in 2000.
- TaskStream provides cloud-based software for universities, colleges, and K-12 schools throughout the United States and the world.
- Establish a central home for assessment, accreditation, program review, e-portfolios, and strategic planning processes. With transparency and clear guidance for all stakeholders, you can create a solid foundation for meaningful assessment across your institution.

TaskStream



TaskStream – Program Assessment

The screenshot shows the TaskStream interface for the University of Findlay. The top navigation bar includes links for HOME, SHARED RESOURCES, LOCATOR, MESSAGES, RESOURCE TOOLS, and ANALYTICS. The user is logged in as Patricia Abels. The main content area is titled "BS Accounting | PREVIEW" and shows the "Workspace: Curricular (Program) Assessment". A sidebar on the left lists assessment cycles from 2010-2011 to 2017-18. The main content area is titled "Edit Content:" and contains instructions on how to view, edit, discuss, and submit items for review.

University of Findlay

Patricia Abels My Account Logout Go to LAT Help taskstream | AMS

HOME SHARED RESOURCES LOCATOR MESSAGES RESOURCE TOOLS ANALYTICS

BS Accounting | PREVIEW

Workspace: Curricular (Program) Assessment

Edit Content Discussion Submission & Read Reviews Publish Options & Info

EXPAND ALL COLLAPSE ALL

General Information

- Standing Requirements
- 2017-18 Assessment Cycle
- 2016-17 Assessment Cycle
- 2015-16 Assessment Cycle
- 2012-14 / 2013-15 Assessment Cycle
- 2012-2013 Assessment Cycle
- 2011-2012 Assessment Cycle
- 2010-2011 Assessment Cycle

Edit Content:

A number of options are available in this workspace:

- To view, add or edit content, select the item from the panel on your left, and then click "Check Out"
- To initiate discussion topics or add comments about the content added to these requirements, click the Discussion tab
- Once work is completed, submit items to your designated reviewer via the Submission and Review tab (if this tab does not appear, then review is not required for this Workspace).
- You can also use the "Share" feature located at the top of each requirement content page to make items visible to others at any time

For more information on any of these options simply click the Help icon at the top of the AMS site.

ACCT 330 Example – General Information

Knowledge

Learning Outcome

Accounting Knowledge Q
Apply knowledge of relevant professional standards, theory, legal regulations, GAAP/IFRS, auditing, not-for-profit, cost management, taxation, and AIS to resolve financial accounting concerns of U.S. and multinational business entities.

The mission of the College of Business is to develop business leaders who translate knowledge into professional actions that provide valuable contributions to a global society.

ACCT 330 Example - Measure

Outcome : Accounting Knowledge

Apply knowledge of relevant professional standards, theory, legal regulations, GAAP/IFRS, auditing, not-for-profit, cost management, taxation, and AIS to resolve financial accounting concerns of U.S. and multinational business entities.

Measure : ACCT 330 (manual) and ACCT331 (computerized) Practice Set

Program level ; Direct - Student Artifact

Details/Description : Students completed the entire accounting cycle, which included recording transactions, posting transactions, making adjusting entries, preparing financial statements, and closing the books. Students utilized special journals and ledgers.

Acceptable Target (Short-Term) : 80% of the students will achieve acceptable or exceptional.

Ideal Target (Long-Term) : 90% of the students will achieve acceptable or exceptional.

Deployment (timeline) : Annually - Fall semester

Key/Responsible Personnel : Dr. Patricia Abels

Supporting Attachments :

[ACCT331 assignment](#) (Word Document (Open XML))

[SLO 5 Rubric](#) (Microsoft Word)

[Snow Shop Adjusting Entries](#) (Adobe Acrobat Document)

[Snow Shop Assignment](#) (Microsoft Word)

[Snow Shop Transactions](#) (Adobe Acrobat Document)

ACCT 330 Example - Findings

Findings for ACCT 330 (manual) and ACCT331 (computerized) Practice Set

Summary of Findings : 100% of students achieved "Excelling" in both the spring 2016 and spring 2017 semesters (See attached rubric).

100% (22) students completed the assignment spring 2017. However, a few of them didn't fully complete parts of the project (i.e. 10 column worksheet, etc.) by the original due date. I feel this might have been the project was more time consuming than what they had thought and they weren't as familiar with certain aspects of the project.

Results : Acceptable Target Achievement (Short-term): Exceeded; Ideal Target Achievement (Long-term): Exceeded

Recommendations : Students were not required to use excel for the assignment in ACCT330. Instead an already developing excel template was provided to students. Some students elected to use that template and excel, while other students printed out the templates and completed the assignment manually.

In the prior year (Fall 2015) students were not required to use excel for the assignment, although many did use it since an Excel template was provided to the students. For those students that didn't use Excel, they printed out the templates and completed the assignment manually. However, in the Fall of 2016, I wanted to make sure the students started using and became more efficient in the technology. I provided the templates for them to complete this project utilizing Excel and never mentioned it was optional. No students questioned it and 100% of the students used this electronic spreadsheet.

This is the first time the students were introduced and used special journals and subsidiary ledgers. Some class time was spent discussing the special journals and ledgers. However, for most of the assignment, students had to learn on their own without textbook reference. The assignment due date had to be extended by approximately a week. Overall, the special journals and other requirements ended up with impressive results. In addition to my helping guide some of the students through the project, I noticed some of the students grouped up in teams. I was okay with this as long as they each did the assignment themselves and contributed to the team. The biggest challenge for students seemed to be posting to the subsidiary ledgers. I also noticed that many came to me as they were unsure (and seemed to forget from earlier Accounting classes) on how to do the adjusting entries. As a result of this, I will spend more time and comprehensive class coverage in that area early in the semester. Then, when they get to this part of the practice set, I will provide "less" information on how to do the adjusting entry and make sure they think through what is being asked and to come up with it on their own based on our earlier review of adjusting entries.

ACCT 330 Example - Findings

Reflections/Notes :

100% (23) students completed the assignment. The assignment was more challenging than expected. This is the first time that students have seen special journals and subsidiary ledgers. Time was spent in class discussing the special journals and ledgers. However, most of the assignment students had to learn on their own without textbook reference. The assignment due date had to be extended. Students attend the accounting tutoring sessions for assistance. A special workshop for the assignment was conducted to assist students. Overall, the special journals and other requirements ended up with impressive results. The biggest challenge for students seemed to be posting to the general and subsidiary ledgers.

I plan to continue using this assignment in future classes. The accounting advisory board also felt this assignment would be of great value to students. Last year it was noted that I planned to spend more time in class discussing the various journals and ledgers and/or provide additional handouts addressing each. This year, I spent more time in class discussing the special journals along with handouts. As a result, the assignment results were quite impressive, considering this was the first time students were exposed to special journals and the material was not found within their textbook. Students are very dedicated to locating and correcting their mistakes, which improves their auditing skills.

I plan to continue using this assignment in future classes and have just assigned it to my ACCT 330 course this Fall (2017). This year, I plan to spend more time periodically throughout the semester discussing the special journals and how the material we are covering on that subject fits into the Practice Set. I am requiring they use the Excel templates instead of just printing out the templates. Filling it out by hand will not be an option.

ACCT 330 Example - Findings

Substantiating Evidence :

[ACCT330 Fall 2016](#) (Microsoft Word)

[ACCT330 rubric Fall2015](#) (Microsoft Word)

[ACCT331 Spring 2016](#) (Word Document (Open XML))

[ACCT331 Spring 2017](#) (Word Document (Open XML))

ACCT 330 - Actions

▼ Action : Increase coverage of special journals

► This Action is associated with the following Findings @

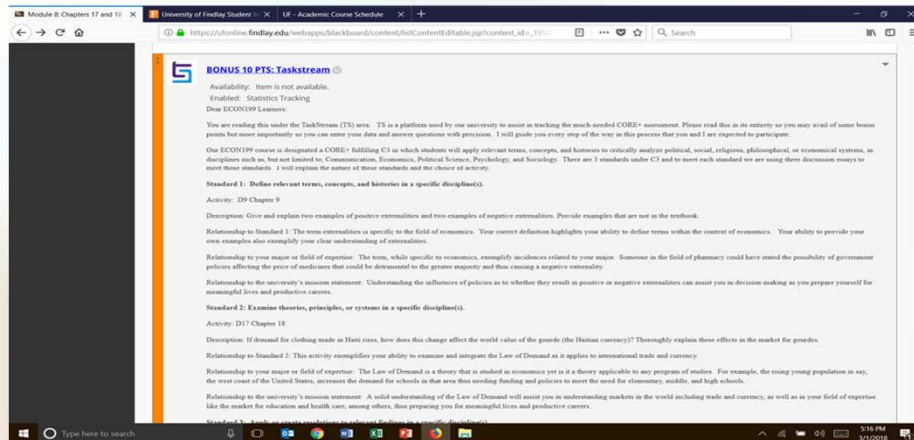
Action details :	Students will increase their awareness of the purpose of special journals. As previously noted we are completely subsuming our multiple business degrees into a single BSBA degree program. Consequently, this course and action item will continue to be used for course assessment but will not be utilized in our program assessment. Detailed assessment action plans for the coming assessment cycle can be viewed under the final Action Item immediate following this Knowledge Outcome.
Implementation Plan (timeline) :	Next time the course is taught for course assessment. N/A for program assessment
Key/Responsible Personnel :	Dr. Patricia Abels
Measures to Evaluate	Rubric
Action Item :	
Action item exceeds budget? (if yes, describe) :	No
Budget request amount :	\$0.00
Priority :	Low

ACCT 330 Example - Results

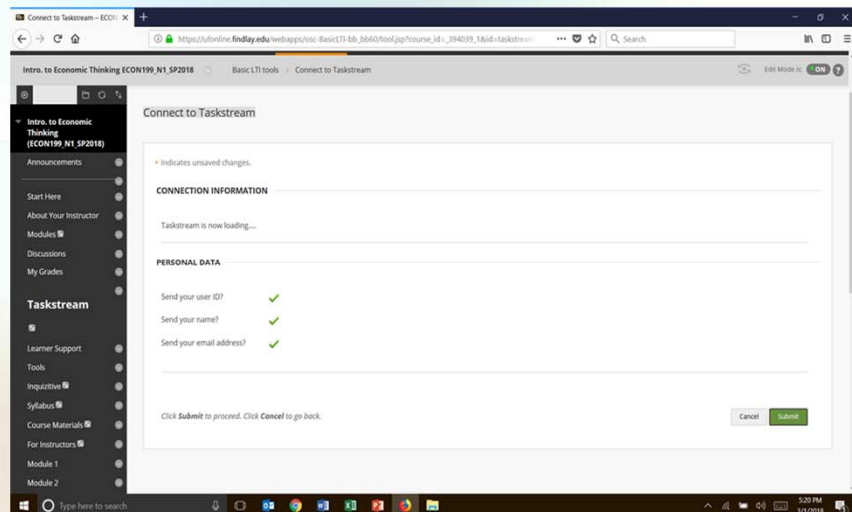
2016-17 Assessment Cycle					
Narrative 2017	Review Released	Submitted : 09/27/2017 09:42:57 PM	1.00/2	Score/Results Report	History/Comments
Mission Statement	Review Released	Submitted : 09/27/2017 09:43:26 PM	Meets	Score/Results Report	History/Comments
Due 09/29/2017					
Actions from 2013-15 cycle (Pull for Review)	Review Released	Submitted : 09/27/2017 09:43:58 PM	Meets Requirement	Score/Results Report	History/Comments
Due 09/29/2017					
Current Status of 2013-15 Actions (Reflect)	Review Released	Submitted : 09/27/2017 09:44:07 PM	2.00/2	Score/Results Report	History/Comments
Due 09/29/2017					
Measures 2016-17	Review Released	Submitted : 09/27/2017 09:44:15 PM	Complete	Score/Results Report	History/Comments
Due 09/29/2017					
Findings 2016-17	Review Released	Submitted : 09/27/2017 09:44:24 PM	2.00/2	Score/Results Report	History/Comments
Due 09/29/2017					
Actions 2016-17	Review Released	Submitted : 09/27/2017 09:44:35 PM	Meets	Score/Results Report	History/Comments
Due 09/29/2017					
Curriculum Map 2017	Review Released	Submitted : 09/27/2017 09:44:45 PM	2.00/2	Score/Results Report	History/Comments

ECON199 TaskStream Step-by-Step Process: There are 11 steps. Your patience is required.

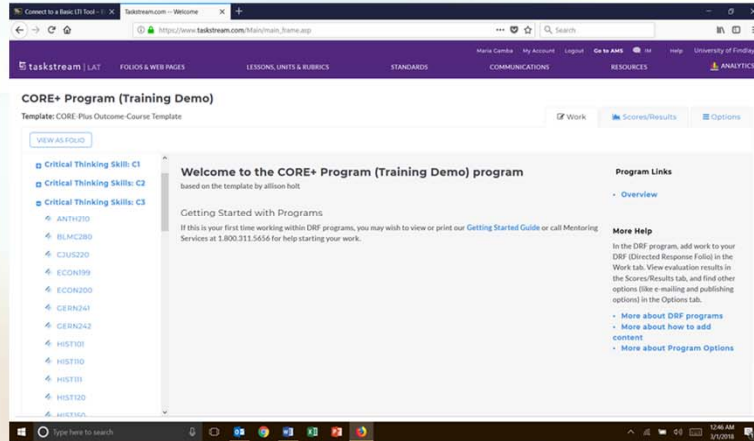
(1) You will see this in Module 8:



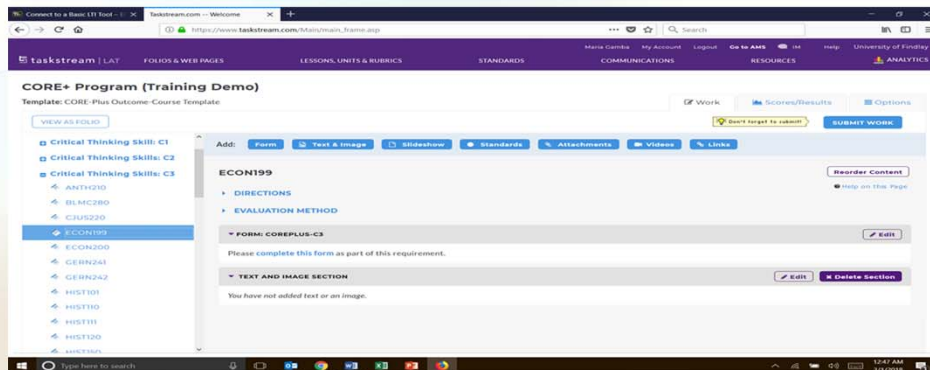
(2) After reading everything written in the TaskStream (TS) area, click "Bonus 10 Pts: TaskStream." Click "submit" when you see this:



(4) Your next frame will look like this but in case it does not, look for “Critical Thinking Skills: C3.” Once you find C3, you will see all the courses satisfying C3.



(5) Find our course on the C3 list, then click “ECON199,” and it will look like the frame as shown below. You will see several things to do, but the first one you need to work on is “Text and Image.” Click that “Text and Image” box.



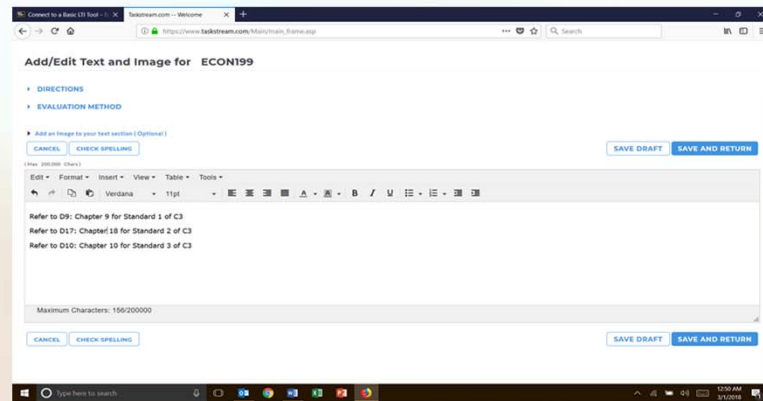
(7) The "Text and Image" frame contains a box for you to enter the activities we are using for the three standards of C3. On that box, type in the following: (or you can copy then paste)

Refer to D9: Chapter 9 for Standard 1 of C3

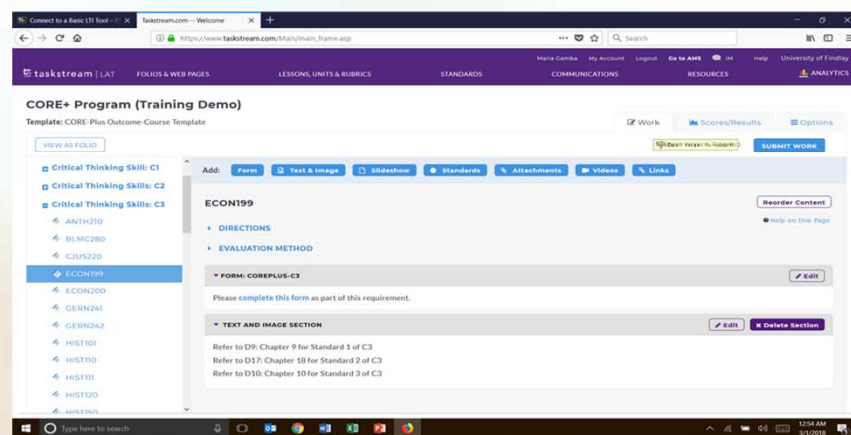
Refer to D17: Chapter 18 for Standard 2 of C3

Refer to D10: Chapter 10 for Standard 3 of C3

Click "Save and Return." You are not finished yet. Keep going.



(8) After Step 7, you will see the set of menu again as shown below. Almost feel like you are finished but unfortunately no. Click "Form."



(9) The “Form” is rather long but manageable. I have three frames here for your reference, and I also entered on this frame our course, section, semester, and credit hours for you to copy. Please do not make a mistake on those because otherwise I will not see your submission. Please refer to my narrative in Module 8 explaining how the three activities related to the standards of C3 as well as their relevance to your major and the university’s mission statement. The last section of this Form is asking for your comments. A reminder that this assessment is not the course evaluation which is disseminated separately by the office of the registrar. Click “Save and Return” when finished. But a couple more steps after this.

Respond to form COREPLUS-C3 for ECON199

DIRECTIONS

EVALUATION METHOD

CANCEL CHECK SPELLING PRINT SAVE DRAFT SAVE AND RETURN

Response is required

Course: ECON199 Save Draft

Section Number: N1 Save Draft

If you select "Other" above, please complete the following:

Semester: Fall Spring Summer Clear Save Draft

Year: 2017 2018 2019 2020 Clear Save Draft

Credit Hours: Clear Save Draft

(10) You will see this now familiar frame after you have successfully completed Step 9. Click “Submit Work,” but there’s one last step.....

CORE+ Program (Training Demo)

Template: CORE Plus Outcome Course Template

VIEW AS FOLIO

Work Scores/Results Options

Don't forget to submit! SUBMIT WORK

ADD Form Text & Image Evaluation Standards Attachments Videos Links

ECON199

DIRECTIONS

EVALUATION METHOD

FORM: COREPLUS-C3 Edit

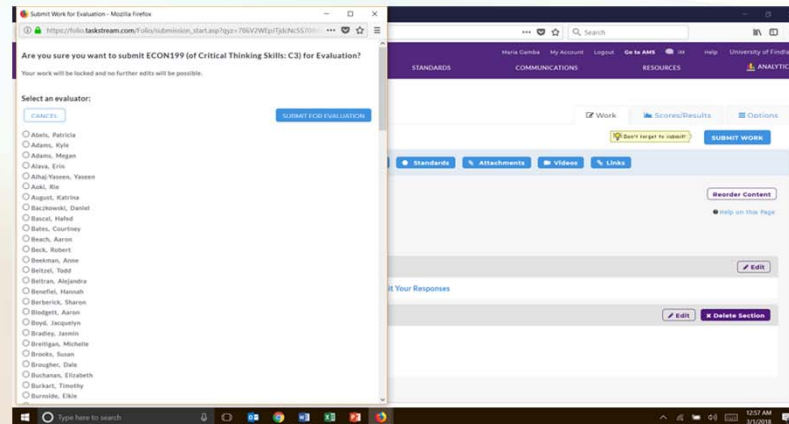
You have already started completing the form. View/Edit Your Responses

TEXT AND IMAGE SECTION Edit Delete Section

Refer to DP- Chapter 9 for Standard 1 of C3
Refer to D17- Chapter 18 for Standard 2 of C3
Refer to D10- Chapter 10 for Standard 3 of C3

(11) You will need to find my name “Gamba, Maria” as your evaluator. Please don’t make a mistake because otherwise I will not see your submission. Click “Submit for Evaluation.” You can send me comments if you want to, but please remember this is not the course evaluation.

Whew! Yes, now, you are finally done with this process. Thank you very much for your patience and your participation.



Introduction to Economic Thinking and Principles of Macroeconomics

C3: Students will apply relevant terms, concepts, and histories to critically analyze political, social, religious, philosophical, or economical systems, in disciplines such as, but not limited to, Communication, Economics, Political Science, Psychology, and Sociology.

Rubric for C3

Standards	Developing	Competent	Exemplary
	1	2-3	4-5
Define relevant terms, concepts, and histories in a specific discipline(s)	Terms, concepts, or histories are either stated without clarification/description or descriptions are not clearly defined or are ambiguous	Terms, concepts, or histories are either stated without clarification/description or descriptions are not clearly defined or are ambiguous	Terms, concepts, or histories are stated and described clearly, delivering all relevant information for full comprehension
Examine theories, principles, or systems in a specific discipline(s)	Viewpoints expressed in sources are either taken as fact without question or taken as mostly fact, with little questioning	Theories, principles, or systems are critically analyzed and summarized	Theories, principles, or systems are critically analyzed and summarized and alternate ways of interpretation are offered
Apply or create resolutions to relevant findings in a specific discipline(s)	Devises a solution that either does not address the problem or addresses the problem but ignores relevant contextual factors	Devises a solution in a manner that identifies multiple contextual factors of the problem in a surface manner	Devises a solution in a manner that analyzes in depth multiple contextual factors of the problem

Assessment Activity in Principles of Macroeconomics

There are six debates over macroeconomic policies and these are: Should monetary and fiscal policymakers try to stabilize the economy? Should the government fight recessions with spending hikes rather than tax cuts? Should monetary policy be made by rule rather than by discretion? Should the central bank aim for zero inflation? Should the government balance its budget? Should the tax laws be reformed to encourage savings? Choose one of these six issues and thoroughly discuss the pros and cons of the issue of your choice. Seek the approval of your instructor if you decide you want to work on another macroeconomic issue not listed among the six. In addition to discussing the pros and cons, you will also need to include your own thoughts on the issue. Saying "I agree," or "I disagree" is not enough because you will need to articulate your own standing. You may want to review some previous chapters to help you out. Try to choose one that you have a good understanding of or one that you may have developed a passion for. You will also need to research relevant data to work on. Those data need to be analyzed, and ideally a graph of those data must also be included. You will need to be patient and creative in finding relevant data. For example, if you are talking about inflation, you may want a set of historical data of inflation rates. Another possible way, and if relevant, is to incorporate data of countries other than that of United States for comparative analysis.

Explanation as to why the activity meets the standards of C3 required of courses like Principles of Macroeconomics

C3S1: Any macroeconomic issue chosen by the student will motivate the student to define some relevant terms because doing so will lead to a deeper comprehension and analysis of the policy.

C3S2: The student's well-composed essay will require an explanation of a relevant theory or principle related to the student's chosen macroeconomic issue. For example, if the student chooses to work on the second issue, the student will find it necessary to examine fiscal policies involving taxes and expenditures. Some other issues may require the student to give a full comprehension of monetary policies, budget deficits, and inflation, among others.

C3S3: This activity requires the student to articulate the pros and cons of a specific macroeconomic issue. In doing so, the student will arrive at a resolution as to which side you believe is proper based on your arguments and findings.

Assessment Activities in Introduction to Economics Thinking

C3 Standard 1: Define relevant terms, concepts, and histories in a specific discipline(s)

Proposed new assignment to meet C3S1: Give and explain two examples of positive externalities and two examples of negative externalities. Provide examples that are not in the textbook, and preferably relevant to your personal or professional life.

C3 Standard 2: Examine theories, principles, or systems in a specific discipline(s).

Proposed new assignment to meet C3S2: If demand for clothing made in Haiti rises, how does this change affect the world value of the gourde (the Haitian currency)? Thoroughly explain these effects in the market for gourdes.

C3 Standard 2: Apply or create resolutions to relevant findings in a specific discipline(s)

Proposed new assignment to meet C3S2: Which of the two is the lesser of two evils: higher inflation rate or higher unemployment rate? Explain your choice. You must choose one and defend your choice.

C3S1 Rationale: The term externalities is specific to the field of economics. The students' correct definition highlights their ability to define terms within the context of economics. Their ability to provide their own examples also exemplify their clear understanding of externalities. The term, while specific to economics, exemplify incidences related a student's major. Someone in the field of pharmacy could have stated the possibility of government policies affecting the price of medicines that could be detrimental to the greater majority and thus causing a negative externality. Understanding the influences of policies as to whether they result in positive or negative externalities can assist students in decision-making as they prepare themselves for meaningful lives and productive careers.

C3S2 Rationale: This activity exemplifies one's ability to examine and integrate the Law of Demand as it applies to international trade and currency. The Law of Demand is a theory that is studied in economics yet is it a theory applicable to any program of studies. For example, the rising young population in say, the west coast of the United States, increases the demand for schools in that area thus needing funding and policies to meet the need for elementary, middle, and high schools. A solid understanding of the Law of Demand will assist students in understanding markets in the world including trade and currency, as well as in their field of expertise like the market for education and health care, among others, thus preparing themselves for meaningful lives and productive careers.

C3S3 Rationale: This activity exposes students to two issues that are problematic in any country and are issues that are relevant to their lives whatever their major may be. Resolution of these issues may not be on their shoulder but a clear understanding can assist them in understanding how government and private section react to these economic issues. In more ways than one can imagine, the issues of higher inflation and higher unemployment rate affect them in their work field. For example, a continuously increasing unemployment rate would lead to personal and social issues thus needing more help in the social work field. The higher inflation rate, which is an overall rise in prices of most goods and services, may lead to higher cost of education. A thorough understanding of these two issues will assist them in their critical decision-making of policies and strategies that will prepare them for meaningful lives and productive careers.

References

- Association of Centers for the Study of Congress. (2018, January 23). *Higher Education Act*. Retrieved from The Great Society Congress: <http://acsc.lib.udel.edu/exhibits/show/legislation/higher-education-act>
- Commission on Institutions of Higher Education. (2018, January 24). *U. S. Regional Accreditation: An Overview*. Retrieved from About Accreditation : <https://cihe.neasc.org/about-accreditation/us-regional-accreditation-overview>
- Council for Higher Education Accreditation. (2018, 24 January). *Value of US Accreditation*. Retrieved from The Value of Accreditation: <https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/ValueofAccreditationCHEA.pdf>
- Council for Higher Education Accreditation. (2015). *The Condition of Accreditation: U.S. Accreditation in 2013*. Washington D.C.: Council for Higher Education Accreditation.
- U.S. Department of Education. (2018, February 7). *About ED*. Retrieved from U.S. Department of Education Principal Office Functional Statements: <https://www2.ed.gov/>
- U.S. Department of Veterans Affairs. (2018, February 14). *Education and Training*. Retrieved from History and Timeline: <https://www.benefits.va.gov/gibill/history.asp>
- U.S. Government Accountability Office. (2018, January 24). *Report to Congressional Requesters*. Retrieved from Transfer Students: <https://www.gao.gov/new.items/d0622.pdf>
- U.S. Public Law 110-315. (2008, August 14). *Higher Education Opportunity Act*. Washington D.C.: U.S. Government. Retrieved March 16, 2018, from <https://www.gpo.gov/fdsys/pkg/PLAW-110publ315/pdf/PLAW-110publ315.pdf>
- U.S. Public Law 89-329. (1966, January 23). *Higher Education Act of 1965*. Washington DC: U.S. Government Printing Office.
- U.S. Public Law 96-88. (1979). *Department of Education Organization Act*. Washington D.C.: U.S. Government.

"Ready Or Not, Ours To Teach:
Underprepared College Students

Mona Bryant-Shanklin, Ph.D.
Norfolk State University

"Ready Or Not, Ours To Teach: Underprepared College Students

Mona Bryant-Shanklin, Ph.D.

Norfolk State University

Norfolk, VA

Presentation at the 2018 National Social Science Association Summer Seminar

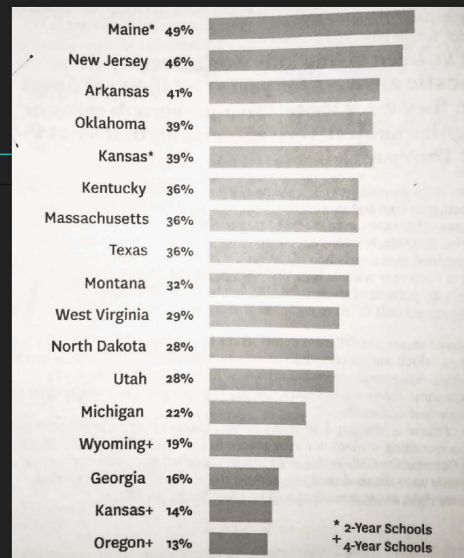
July 29-August 1, 2018

Lake Tahoe, Nevada

"With 42% of students entering college underprepared and an estimation that 80% of the future jobs will require the skills that a college education provides, we must find better methods to prepare these students and assist them in achieving their academic goals." (McCabe, 2003 in Student Support Services for the Underprepared Student, E. Wilmer, 2008)

- On more than 200 campuses nationwide, more than half of incoming students must take remedial courses.
- In one study discussed in 96% of 911 campuses reported having students who required remediation.

(Butrymowicz, 2017)



Who are “underprepared” students?

For over 3 decades, these students have remain a diverse group :

“the academically underprepared student pool is large and diverse in terms of **age, socioeconomic condition, previous academic performance, standardized test scores and emotional health** and is enrolled in colleges and **universities of all types nationwide** (Moore & Carpenter, 1985)

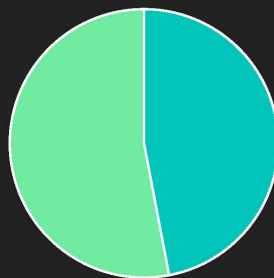
Contributing factors

- **Prior educational experiences** (academic failure; poor preparation; low expectations)
- **Individual differences** (neurological, cognitive, health or psychological factors; attitude)
- **Family risk factors** (family values/expectations)
- **Social risk factors** (family/peer stress; conflicting cultural factors)
- Being a "**Millennial**" ("life attitude")

(Keeling, 2003)

Among all college students

Entry Level College Students



■ Prepared ■ Underprepared

- 53% are UNDERPREPARED (AAC&U)

So what's to be done?



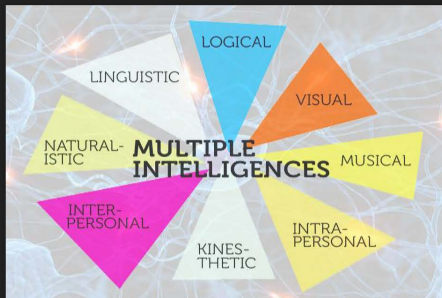
This is the good news!



- Fortunately, some of these students, particularly “first generation” students may have “resilience” when compared with some of their peers. (Tokarczyk & Fay, 1993)

- Resilience is perhaps the “best barometer “ of SUCCESS!
(McGillin, 2003)

At the instructional level.....



- Keep students' individual learning styles in mind when preparing lectures and assignments
- Encourage students to keep in touch with their academic advisor and take advantage of the advising relationship
- Build **relationships** with students

Some stuff, we as instructors have to take the lead on...

- Encouraging (or even "force feeding")
 - Teaching study skills
 - Organizing study groups
 - Use of RUBRICS for assignments
- Modeling discussion
- Incorporating "first generation" experiences in lectures/class sharing
- Encouraging student2student support
- And again....developing "personal relationships"

Additional tips for classroom support of underprepared students

Be Clear About Being Clear: Don't assume anything !

Use

- Graphic descriptors
- Simple, non-convoluted sentences
- Define, define, define anddefine
- Study guides and assignments linked directly and immediately to assessments
- Break It Down to the "Least Common Denominator.....YOU MAY HAVE TO SUPPLY THE BACKGROUND KNOWLEDGE
- **Provide even the "smallest" detail**
- Do More Chunks in Smaller Bites

Be FLEXIBLE

Assessments



Assignments



Time



Relax: GROUPS are okay!

Assessments



Assignments



Time



Here's looking at ME!



- Review your own tests and assessments
- Do constant self evaluation (incorporating feedback from students)
- Are you showing
 - Empathy
 - Caring
 - Enthusiasm in your teaching

Campuses support the “resilience” of students through



- Student Academic Success Center
 - Educational Support Program
 - Pre-Major Program Advising
 - Learning Skills Support
 - Tutoring Centers/Programs
- Writing Center
- Math and Stats Labs
- Counseling and Career Development Center
- Financial Aid Office
- Library
- Office of Housing and Residence Life
- Student Services Center (O.A.S.I.S)



Aronowitz, S. (2011, February 16). Survey shows college students overwhelmed, underprepared. *Campus Technology*. Retrieved March 1, 2011, from <http://campustechnology.com/Articles/2011/02/16/Survey-Shows-College-Students-Overwhelmed-Underprepared.aspx>; *International Journal for the Scholarship of Teaching and Learning*. <http://www.georgiasouthern.edu/ijstl> Vol. 5, No. 2 (July 2011).ISSN 1931-4744 @ Georgia Southern University.

Coleman, M. R. (2005). Academic strategies that work for gifted students with learning disabilities. *TEACHING Exceptional Children*, Vol. 38, No. 1, pp. 28-32.

Dobell, E.S. (2006). Ready yet? *The Journal of the New England Board of Higher Education*. Vol. XX(4).

Freeman, G. G., & Wash, P. D. (2013). You can lead students to the classroom, and you can make them think: Ten brain-based strategies for college teaching and learning success. *Journal on Excellence in College Teaching*, 24(3), 99-120

Frey, C. (2010). Crash course in preparedness; Start sharpening your analytical skills early, and don't shy from a challenging read. *U.S. News & World Report*. September 2010.

Gajjar, S., Sharma, R., Kumar, P., & Rana, M. (2014). Item and test analysis to identify quality multiple choice questions (mcqs) from an assessment of medical students of Ahmedabad, Gujarat. *Indian Journal of Community Medicine*, 39(1)17-20.

Harris, D (2012). Far too many students still aren't ready for college. *Indianapolis Business Journal*. *The Mind Trust*. September 29, 2012.

Henriques, J.B. & Kusse, L.I. (2011). Students who aren't prepared for college find less value in books and lecture than students who are prepared. *International Journal for the Scholarship of Teaching and Learning*, 5 (2) 15. Article 15. Available at: <https://doi.org/10.20429/ijstl.2011.050215>



Huntley, H. (2006). *Essential Academic Vocabulary: Mastering the Complete Academic Word List*. Cengage. 1st edition.

Manzo, K.K. (2006). Graduates can't master college text: Study finds students fall off track after 10th grade. *Education Week*, 25(25)1.

Maxwell, B. (2010). Schools, community colleges must team up. *St. Petersburg Times*, June 6, 2010. *Web edition*. *Access World News*. 1P.

McClenney, K. & Peterson, G. (2006). Effective educational practice: what we're learning from community college faculty. *Community College Journal*, (76) 76-80.

Navarro, D. (2012). Supporting the students of the future. *Change: The Magazine of Higher Learning*, 49 (5)43-51.

Pilotti, M., Chodorow, M., & Petrov, R. (2009). The usefulness of retrieval practice and review-only practice for answering conceptually related test questions. *The Journal of General Psychology*, 136(2), 179-203.

Sheree, S. E., Wilson, T.J., & Dole, J.A. (2014). Ready or not. *Journal of Adolescent and Adult Literacy*. 58 (4) 299-307.

Tincotti, M. (2010). Improving outcomes for college students with disabilities. *College Teaching*, 52 (4)128-134.

Wilson, R. (2010). The Ivory Sweatshop: Academe is no longer a convivial refuge. *Chronicle of Higher Education*, 00095982, Vol. 56 (41).

Carpenter v. US:
Are Cellphones an Investigator's New Best Friend?

Sue Burum
MSU, Mankato

In 1944, in *Northwest Airlines, Inc. v. Minnesota* (*Northwest v. Minnesota*, 1944), Justice Frankfurter wrote, “The court makes a persuasive case for the general applicability of the rule it announces. The court is nonetheless wise to leave open the possibility of exceptions, to ensure that we not ‘embarrass the future.’” In *Carpenter v. United States*, (*Carpenter v. United States*, 2018), the Supreme Court (Court) grappled with the wisdom of Justice Frankfurter while trying to apply the Fourth Amendment law and prior judicial interpretation to cellphone towers and location data. In the absence of Congress updating its laws in this area, the Court needed to update and apply older law and cases to new innovations, clarify the use of cell tower location data, and decide whether a warrant, based on probable cause, is needed to search this stored location data. The Court hopes to not embarrass individual justices or the institution of the Court in the future with a decision today that may create new problems because of being overly broad. Attempting to anticipate and cover potential future problems is full of peril. The Court and individual justices hope to not be in the embarrassing situation of having to reverse a case in the future because of situations the Court did not consider when making today’s case. This paper will analyze the decision of *Carpenter*. An understanding of the case will be important to anyone who teaches government, law enforcement, or civil liberties courses. This paper will also consider if the Court will succeed in this attempt to reinterpret and apply older precedent to new and rapidly changing technology.

Case Facts

Between December 2010 and March 2011, several people conspired to steal cellphones. They carried out nine robberies at RadioShack and T-Mobile stores in Michigan and Ohio. Four of the robbers were captured. One confessed and turned over his cellphone. He identified 15 accomplices and gave the FBI some of their cellphone numbers. The FBI reviewed the calls from that phone around the time of the robberies. A magistrate judge, using the Stored Communications Act, which with paper will refer to as ‘Act’ (Stored Communications Act, 1986), granted the FBI’s request to obtain “transactional records” from various carriers for 16 different phone numbers as well as location data on the phones.

The numbers on the phone would not be enough to establish probable cause to get a criminal warrant. Anyone who called the caught robber would be red flagged as a fellow robber, even if the person dialed the wrong number and did not even know any of the robbers. United States law enforcement is not built on catching every criminal as swiftly as possible. The law also requires the added duty to protect peoples’ civil liberties. Cellphone data can be acquired with probable cause. To establish probable cause, law enforcement must first have articulable, trustworthy evidence that establishes that a crime has been or is being committed, second, a specific person or item is connected to the criminal activity, and third, in this case, evidence that establishes the cellphone contains evidence of that criminal activity. There would have to be evidence beyond the mere belief that the phone numbers the defendant gave them belonged to co-conspirators (Kerr, 2017). The belief, even if based on an officer’s experience and training, is not enough. Nor is the belief that cellphones are necessary for social interactions and thus must contain evidence of a crime. Law enforcement would have to do some additional investigation to gather specific evidence tying the potential co-conspirators to the criminal activity. Then investigators could get a warrant

to get the cellphone location data that could provide incriminating evidence and establish whether a person was in the area and time of those robberies.

Under the Act, the officers had enough information to get a subpoena for the cellphone providers' records, but not enough evidence for a warrant based on probable cause. The officers had enough evidence to provide articulable facts showing a reasonable belief that the records sought would be relevant in an ongoing investigation. The first order sought 152 days of location records from MetroPCS, and the second order sought 7 days of location records from Sprint (*Carpenter v. United States*, 2018).

Timothy Carpenter was one of the people who was arrested, after the records were acquired, for several counts of aiding and abetting robberies. The government received 127 days of cellphone tower records from MetroPCS that traced the whereabouts of Carpenter's phone, and 7 days of records from Sprint. He was convicted and sentenced to 116 years in prison. Carpenter was charged with 6 counts of robbery and 6 counts of carrying a firearm while committing the burglaries. At his trial, prosecutors introduced Carpenter's cellphone records, which confirmed that his cellphone was connected to cellphone towers in the vicinity of the robberies. Prosecutors made extensive use of the cellphone records to gain a conviction (*Carpenter v. United States*, 2018). Carpenter's attorney argued that prosecutors should not be allowed to use the cellphone records against him without a warrant. The lower court disagreed. The US Court of Appeals for the Sixth Circuit heard the appeal and agreed with the trial court that no warrant was required (*Carpenter v. United States*, 2018).

The Arguments During Oral Argument

On Nov 29, 2017, the Supreme Court heard oral argument on the case. The issue in the case was whether prosecutors can use data from cellphone towers, without a warrant, to track a person's location.

On behalf of the government, Deputy Solicitor General Michael R. Dreeben argued that, while the technology in the case may be new, the legal principles that should govern the case are not new (Howe, 2017a). He made two arguments why acquiring the location data was legal. First, he used two older cases that establish the third-party doctrine, which says the Fourth Amendment does not protect records or information that is voluntarily shared with someone else. He argued that these decisions should apply to this case despite being old.

The first case he used is *United States v. Miller* (*United States v. Miller*, 1976). Miller was charged with carrying alcohol distilling equipment and whiskey without paying a liquor tax. The Bureau of Alcohol, Tobacco, and Firearms issued subpoenas to two of Miller's banks requesting the records of Miller's accounts. The banks complied, and the evidence was used at trial to convict Miller. Miller's attorney argued on appeal that Miller's Fourth Amendment rights were violated. The US Court of Appeals for the Fifth Circuit ruled in his favor, and the case went to the Supreme Court. In a 6-3 decision, Justice Lewis F. Powell, writing for the majority, concluded that bank records were part of the bank's business records, not Miller's private papers. Miller's rights were not violated when the records were transmitted to the government. There was no legitimate expectation of privacy in checks and deposit slips. The information was voluntarily conveyed to the banks and exposed to the bank's employees in the ordinary course of business. The Fourth Amendment does not prohibit the obtaining of information

voluntarily revealed to a third party and conveyed by the third party to the government (*United States v. Miller*, 1976). A search warrant was not necessary for the government to acquire the information because of the third-party doctrine.

The second case Dreeben used was *Smith v. Maryland* (*Smith v. Maryland*, 1979). A pen register was installed at Smith's telephone company's central office. It recorded every number dialed from that phone. The Supreme Court, in an opinion written by Justice Blackman, held that the installation and use of a pen register was not a search within the meaning of the Fourth Amendment, and no warrant was required to use it. The installation and use of the pen register did not violate a legitimate expectation of privacy since the numbers would be available to and recorded by the phone company anyway. In choosing to use a phone, Smith voluntarily conveyed this information to the phone company so that they could connect his call. Subscribers realize that phone companies keep these records because they get a phone bill that shows the long distance calls they make. Maintaining these records is important to the phone company for checking billing operations, detecting fraud, and preventing violations of the law (*Smith v. Maryland*, 1976). In *Smith*, the Court did not distinguish between disclosing a number to a live operator versus automatic equipment (Sachs, 2017).

From these two cases, Dreeben argued that cellphone location data records are business records. They are created and held by the cellphone company. They are solely used by the cellphone company to seamlessly provide service to cellphones as people move in and out of the range of cellphone towers with their phone. If companies did not do this, service would be lost when a phone moves from one cellphone tower until another tower picks up the phone. The location data is also used for billing when a person moves outside of their service area (Howe, 2017b). Dreeben argued that, if people wanted business records to have privacy protection, Congress would have to enact a law giving business records privacy protection (Howe, 2017b). Cellphone providers create and maintain the location records for their own purposes. They give the records to the government under the requirements of the Act. Carpenter did not create or own the location records. The location data from Carpenter's phone is like a person's bank records and the recording of numbers dialed from a person's phone. The right to privacy does not protect location data.

The second argument Dreeban used for the ability to acquire location data and use it to convict Carpenter is the Stored Communications Act of 1986. The Act was passed by Congress and addresses voluntary and compelled disclosure of stored wire and electronic communications and transactional records. Dreeban argued that the Fourth Amendment protects the people's right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" (Howe, 2017a). It has been interpreted to protect people, not places. But when it is applied to information stored online, the protections are potentially weaker. Society has not reached a clear consensus on reasonable expectations of privacy in current, and developing, forms of recorded and/or transmitted information. A search warrant and probable cause is needed to search a home. Under the third-party doctrine, only a subpoena and prior notice are needed to get an Internet Service Provider (ISP) to disclose files stored on a server (Liptak, 2017a).

Section 2701 provides criminal penalties for anyone who “intentionally accesses without authorization a facility through which an electronic communication service is provided for...intentionally exceeds an authorization to access a facility: and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage...”

Section 2702 says that ISP’s are allowed to share “non-content” information with anyone other than a government entity. ISP’s can disclose the contents of a subscriber’s communications if authorized by that subscriber.

Section 2703 describes the conditions under which the government is able to compel an ISP to disclose customer or subscriber content and non-content information. For example, a communication that has been stored for 180 days or less, the government must obtain a search warrant. If a communication has been stored for more than 180 days, then the government must obtain a search warrant based on probable cause or a subpoena or a “specific and articulable facts” court order based on reasonable suspicion (Stored Communications Act, 1986).

The government relied on this Act to argue that no warrant is required in *Carpenter*. First, the government was not obtaining content, such as the content of cellphone conversations or the content of emails. The government was only acquiring location information. Even if this location data is somehow interpreted to contain content information, the government only asked for 152 days of location data, which is less than 180 days in Section 2703 (Stored Communications Act, 1986).

Nathan Freed Wessler, staff attorney with the ACLU Speech, Privacy, and Technology Project, argued on behalf of Carpenter. He relied on *Riley v. California* (*Riley v. California*, 2014). Pew Research Center, in 2013, conducted a survey and found that 90% of Americans owned a cellphone. Information like this caused the Supreme Court in *Riley* to unanimously hold that the warrantless search and seizure of cellphone contents during an arrest is unconstitutional (*Riley v. California*, 2014).

The leading case on search incident to a lawful arrest is *Chimel v. California* (*Chimel v. California*, 1969). In *Chimel*, the Supreme Court limited a prior precedent that said officers could search the entire house on a search incident to a lawful arrest when a person was arrested from a home. In *Chimel*, the Court limited the search to the area around the person and interpreted this to mean the room the person was in. The rationale for allowing the search is to prevent the arrested person from acquiring a weapon or destroying evidence should the person break free from the arresting officer. The rationale would not apply to the entire house because it is unlikely the person would get past the room they were in if they broke free from the arresting officer (*Chimel v. California*, 1969).

In *Riley*, officers could search the area around the arrested person, but they had to get a warrant to go through the contents of a cellphone. It did not matter if the cellphone was on or around the suspect. This is a change from *Chimel*. A cellphone did not pose a danger to the life of an officer because it is unlikely to become a weapon. Also, it is unlikely the content on the cellphone could be destroyed as the phone would take time to open if an escaping person tried to delete material on the phone (*Riley v. California*, 2014). Remote wiping of the data on the phone by an associate might be possible, but the phone’s security features usually prevent an associate or officer from getting into the phone once it locks. Searching a cellphone is comparable to searching

the private papers and drawers in someone's house. More of a person's life is contained on a phone from the books and magazines a person reads, to the music one listens to, to emails and text messages, to banking records, to contacts, etc. "The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought" (*Riley v. California*, 2014).

Justice Samuel Alito wrote in a concurring opinion in *Riley* stating that precedent from the pre-digital era should not be mechanically applied to cellphones. A phone can hold more personal data than a person ever could have carried with them in the past. However, now papers inside a wallet can be searched on a lawful arrest, but not the papers inside the cellphone (*Riley v. California*, 2014). He was concerned whether a rational line was drawn. He suggested that Congress and state legislatures should consider drawing better lines, as this should not be the job of courts.

The prosecutor's interpretation of the Stored Communications Act also should not apply. The routing data contains much more than the "information necessary to get communications from point A to point B" (*Carpenter v. United States*, 2018). Cellphones are intertwined into the lives of the users. Cellphones contain vast data that essentially contains the sum of a user's life. They are carried everywhere a person goes. Location data shows much about a person's life such as when the phone goes to another person's house and the time of these visits. It could show if the person has a lover, goes to a political rally, goes to a particular church, or visits a doctor. Locations can disclose more than an abstract location. It can divulge private and personal information about a person's life that is not relevant to the case (*Carpenter v. United States*, 2018).

The Justices' Responses During Oral Argument

Chief Justice John Roberts was not convinced that old rules, like the third-party doctrine, easily apply to this case. He pointed out to Dreeban that the cellphone provider did not generate the location records entirely on his own. He said it was more like a "joint venture" with the phone's owner. This could limit the application of the doctrine to the case (Howe, 2017a).

Justice Elena Kagan asked the prosecutor how this case was different from *United States v. Jones* (*United States v. Jones*, 2012). In *Jones*, the Court held that installing a GPS tracking device on a vehicle and using it to monitor the vehicle's movements was a search under the Fourth Amendment. In 2004, Jones was suspected of drug trafficking. Police got a warrant to attach a GPS device to his car. However, the tracking exceeded the warrant's scope in both geography and length of time. The device tracked the vehicle for four days and this tracking went on 24 hours a day. The Court unanimously considered the police's actions to be unconstitutional. However, they split 5-4 on the reasons for the conclusion. Justice Scalia wrote the opinion for the majority. He concluded the installation of the device was a trespass and a search. The majority did not decide if there was any reasonable exception that would allow the search because the government did not argue this in lower courts (*United States v. Jones*, 2012). The case did not address the privacy implications of a warrantless use of GPS data had there not been a physical intrusion, like factory-installed tracking or wireless service providers that track the vehicle.

The dissenters used the *Katz* approach as to whether a reasonable expectation of privacy was violated. They concluded tracking every movement for 28 days violated a

reasonable expectation of privacy and thus constituted a search (*United States v. Jones*, 2012). The location data in *Carpenter* is similar to the GPS tracking. It can continue for extensive periods of time with little to no effort on an officer's part. It should require a warrant under *Katz v. United States* analysis (*Katz v. United States*, 1967). The average person would think that their car's movements over such a long period of time were private. The minority in *Jones* relied on *United States v. Knotts*, (*United States v. Knotts*, 1983), where the Court allowed an officer to attach a beeper to a vehicle, without a warrant, for a short period of time. Beepers send out short distance signals. The officers had to follow the car to receive the signal. The vehicle was tracked for a single trip for less than a day. The Court in that case held that a person traveling on public roads has no expectation of privacy in its movements because anyone on the road can see them (*United States v. Knotts*, 1983). Kagan would not rely on *Knotts* to resolve *Carpenter*. Unlike the use of a beeper, no officer had to follow *Carpenter* or his phone all those days like what happens with the use of a beeper. The location data was automatically recorded by the phone company (Howe, 2017a).

Dreeben, in response to Roberts, believed old cases could govern new technology (Howe, 2017a). To Kagan, he responded by saying *Jones* involved direct surveillance by the government. *Carpenter's* case involved business records from a cellphone provider (Howe, 2017a). Kagan responded that the cases were similar because there was reliance on new technology that allowed for 24/7 surveillance (Howe, 2017a). Dreeben responded that, in *Carpenter*, the government was not watching anyone. People decided to use a cellphone and sign up for cellular service. The use of this service requires that a phone communicates with a tower and a business record is generated. If people want privacy in those records, they must go to Congress (Howe, 2017a).

Justice Roberts raised a concern that people do not voluntarily agree to have the phone company store location data. He suggested that this argument was inconsistent with the decision in *Riley* (Howe, 2017a). The *Riley* case suggested that people do not have a choice about whether to have a cellphone anymore. Justice Anthony Kennedy asked Wessler whether most people actually even realize cellphone providers have their data (Howe, 2017a). Wessler responded by saying that most people know their purchases are revealed to others, but not that their long-term movements could be revealed (Howe, 2017a). These two justices questioned the voluntariness of data disclosure. The third-party doctrine rests on the notion people agree to share information in third-party disclosure situations. People know using a land line phone results in the phone company keeping a log of the calls made from that phone and using a bank means the bank creates account records. People volunteer this information to phone companies and banks, or they do not use a landline phone or bank. Some cellphone users may not even know that data beyond phone numbers dialed, like location data, is stored. For those users who do know towers keep track of phones, the argument is that location data is different. People agree to the storing of location data so the use of the device is not compromised as they move in and out of different tower coverage areas. It is hard to consent when the only option is not to use a cellphone. A cellphone is needed in society beyond being used for making phone calls. It is not reasonable to assume that a person can function as well in society without a cellphone (Howe, 2017a).

Wessler, while trying to resolve the case, suggested that movements over 24 hours may be reasonable to track, but periods of 127 days were excessive (Howe, 2017a). Justice Ruth Bader Ginsburg did not see how this made sense. She commented that looking at cell-site data for one robbery would be reasonable, but not being able to look at data for the other seven would be unreasonable (Howe, 2017a). Justice Kennedy suggested that a longer period of time could actually demonstrate a person's innocence. The person might go to the location for a reason other than to commit a crime (Howe, 2017a). Justice Breyer simply asked how the Court could draw a line. Dreeben responded that he did not know how (Howe, 2017a)! Arbitrary line drawing is more suited to legislating than interpreting the Constitution (Howe, 2017a). Congress is the one that draws arbitrary lines. Congress is more equipped to do so since it can hold hearings and possibly see more of the ramifications for drawing lines at different points. For courts, line drawing can be like throwing darts at a moving dart board.

Justice Sonia Sotomayor commented that this case is not just about current technology. She stressed how fast technology was developing. She was concerned that a provider could someday actually turn on a cellphone and listen to conversations. She seemed to prefer that the Court carve out an exception to the third-party doctrine in resolving the *Carpenter* case. She reminded everyone that the Court created an exception for the release of medical records without a patient's consent. She thought the time period of 127 days was excessive and a person would have an expectation of privacy due to the length of time (Howe, 2017a). Basically, she felt the Court needs to update Fourth Amendment rules to maintain the balance of government investigative power with or without action by Congress.

The Decision

The opinion of the case was written by Chief Justice John Roberts. Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan joined in the opinion. Roberts wrote that the case involved two potentially competing lines of precedent (Howe, 2018). The first concerns whether *Carpenter* can expect to have his movements kept private. *Katz v. United States* is the key case that analyzed expectations of privacy and overturned *Olmstead v. United States (Olmstead v. United States, 1928)*. *Olmstead* was a bootlegging case where criminals were caught through the wiretapping of their phone calls. The wiretap, without a warrant, was upheld because there was no trespassing while conducting the wiretaps. The equipment used to tap the calls was attached to phone lines that were in the streets near houses. The Court concluded that a warrant was not needed because none of the defendants owned the land or phone lines where the equipment was placed. There was no trespassing, such as going into the house and attaching equipment to *Olmstead's* home telephone (*Olmstead v. United States, 1928*).

Olmstead was overturned in *Katz v. United States (Katz v. United States, 1967)*. In *Katz*, a wiretap was placed on the outside of a phone booth. The Court created a two-part test to decide if something is private and needs a warrant to be tapped. First, the Court analyzed whether the defendant would think his phone calls were private in a public phone booth. The Court concluded in the affirmative. There was a subjective expectation of privacy. Second, using *Katz*, the Court considered whether society was willing to recognize this expectation of privacy. The Court again concluded in the

affirmative by concluding that the expectation of privacy would be reasonable to the rest of society. Since both parts of the test were satisfied, officers had to get a warrant to tap a phone conversation from a phone booth (*Katz v. United States*, 1967). This case overturned *Olmstead* by saying a reasonable expectation of privacy determines whether a warrant is needed, not who owns the phone booth or phone lines. The property approach in *Olmstead* has not been completely abandoned, but it has been analyzed through the second part of *Katz*.

Cases working with the *Katz* two-part test considered whether a person's movements on a public road could be considered private. In *Knotts*, the Court decided society would not recognize the person's movements as private. Thus, a warrant was not necessary to track a person as they moved on public roads (*United States v. Knotts*, 1983). However, Roberts concluded that the times have changed in the digital age. Society would not expect police to be able to track a person's movement over a long period of time without a warrant. Roberts suggested people carry cellphones everywhere with them. They not only make phone calls, but they are used for keeping appointments, text messages, email, the use of banking apps and credit cards, purchasing goods, and many other activities of daily life (*Carpenter v. United States*, 2018). Cellphone location data is recorded anytime the phone is turned on. People do not consent to the storing of location data. However, the tracking of a cellphone's movements is necessary so service is not lost as people move around. Roberts compared this to a person wearing an ankle monitor as it provides near perfect surveillance of a person's movements (Walsh, 2018). The cell towers also preserve the movements of phones for five years (Walsh, 2018).

The second line of precedent is the third-party doctrine. Cellphone users voluntarily entrust the security of online information to internet service providers, a third-party. Prior cases have concluded that users relinquish expectations of privacy when information is voluntarily divulged to a third party. However, asking for cellphone location data is not the same as asking for someone's bank records. Location records do not just cover one person, but combine data from everyone using the tower (*Carpenter v. United States*, 2018). The tower records also cover long periods of time (*Carpenter v. United States*, 2018). *Carpenter* applies to historical cellphone records. Another consideration is that people do not voluntarily give up this location data. That would require an actual choice. There is no choice here. It is all or nothing. One either consents to cellphone location data being collected, or they must give up the use of the cellphone. It is not just the ability to make phone calls, being connected to towers is needed for many other functions of the phone such as text messages, emails, and apps. The phone constantly connects to towers even when the phone is on but not being used (*Carpenter v. United States*, 2018).

Roberts did emphasize that the ruling in the case is a narrow one that only applies to historical cell tower location data. The Court was not ruling on the gathering of real time location data (McCubbin, 2018). Law enforcement may still be able to get information without a warrant if the information were needed in an emergency situation like bomb threats, child abductions, or active shooting situations (*Carpenter v. United States*, 2018). The Court was not even making a ruling on gathering location data for periods of time less than seven days (*Carpenter v. United States*, 2018). The Court in this case is simply deciding that law enforcement officers do not have unlimited access

to providers' location data for extensive periods of time. He does not want far-reaching new means of invading privacy to erode Fourth Amendment protections.

Justice Anthony Kennedy dissented from the majority's opinion. He was joined in his opinion by justices Samuel Alito, and Clarence Thomas. Kennedy recognized that the digital age has great potential to change current laws and court precedents. However, he sees the third-party doctrine as applying to this case. It is still a choice to own and use a cellphone (*Carpenter v. United States*, 2018). It is common knowledge that information from phones is gathered. The cellphone tower location data is simply a business record. Carpenter has no expectation of privacy that society should recognize because he does not own or control the records (*Carpenter v. United States*, 2018). Land line telephone records always recorded the telephone numbers dialed from a phone. That was necessary for billing. Cellphone location records are the same thing. The company creates these to keep phones connected and provide service. He does not see workable distinctions between these two types of records and does not see why one should require a warrant while the other does not. He would not resolve this case by making new principles of law based on potential future developments. He sees the Court as having become unhinged from property concepts that have long grounded the Courts reasoning on cases.

Alito wrote dissent in which he was joined by Thomas. Alito concluded that the interpretation of the Fourth Amendment, as the writers of the amendment would have originally understood it, would not have applied to all methods of obtaining documents for law enforcement purposes. The Court overreached in its attempt to deal with new technology. He believes that this decision will eventually apply broadly to all documents that contain personal information or else the Court will carve out extensive qualifications, exceptions, and limitations. This will create an overcomplicated maze to navigate and apply the Communications Act. The Court should have deferred to Congress when it decided that warrants were not needed for information acquired under the Communications Act (*Carpenter v. United States*, 2018). While warrants require probable cause, reasonable suspicion is all that is required to get transactional records (Stern, 2018). But, both warrants and subpoenas are reviewed by the courts before they issue either (Liptak, 2017b; Stern, 2018). Alito was concerned that the majority made the work of police harder.

Thomas also wrote alone in a separate dissent. He suggested that the Court reconsider its use of 'reasonable expectation of privacy.' He is concerned that that concept may have no basis in the text or history of the Fourth Amendment. He concluded that the Court has been moving away from the doctrine because the Court is losing an originalist perspective and approach. He believes the case should be decided based on whose property was searched, more like what the Court did in *Olmstead*, not whether a search occurred. The data was clearly the company's property, so warrants should not come into play (*Carpenter v. United States*, 2018).

Finally, Neil Gorsuch wrote separately in dissent. He indicated that he would abandon both the reasonable expectation of privacy test and the third-party doctrine. Instead he would focus on the more traditional Fourth Amendment approach of whether a person has a property interest in the records (Liptak, 2017a). The Fourth Amendment may grant broader protections to everything one has a legal claim to, which may include

cell-site data. He did not go further with this idea as *Carpenter* did not brief this approach in the lower courts (Howe, 2018).

What about *Carpenter*? The case was reversed and remanded back to the lower court. However, this case may do little for him because of the good faith exception (Matbakis, 2018). In *United States v. Leon*, (*United States v. Leon*, 1984), the Court created the “good faith” exception to the exclusionary rule. If law enforcement obtains evidence believing that they are acting according to the law, evidence they gather is still admissible in court, even if the law changes (*United States v. Leon*, 1984). This case changed the law, but the officers in the case did nothing wrong. They followed the law as it was when they investigated. The application of this case is for use in future investigations.

Conclusion

The Court was wise to decide the case narrowly and leave open the possibility of exceptions. The Court is trying to ensure that the decision does not embarrass them in the future. The majority does not see this case as a full broadly reaching manifesto for digital privacy, but they do see that a new discussion is needed on what the right to privacy entails and how the right applies to digital data. The Court tried to define some constitutional terms and a framework for that discussion. Roberts said case does not call into question conventional surveillance tools such as security cameras. It is not questioning other business records that might incidentally reveal location data. It does not apply to foreign affairs or national security collection techniques (*Carpenter v. United States*, 2018). However, the Courts ruling, while narrow, may have implications for all sorts of information held by third parties, such as browsing data, text messages, emails, and may even require a revisiting of bank records (Stern, 2018). The Court did not attempt to draw time lines as feared during oral argument. Line drawing can be done by Congress or, if needed, in some future case when the consequences of different time periods may be better understood. This case will cause a new series of cases on privacy data held by cellphone service providers, social media companies, and app makers. It will result in many cases for the Court to decide, but the Court seems content to apply old principles and develop new principles slowly, where needed, on a case by case basis.

One of the strengths of this case is that the justices recognize its complexity (Sorkin, 2018). Who owns information about another person? What privacy should people expect when they take location based phones everywhere they go and share everything through social media? Current devices can reveal not only movements, but also family, political, professional, religious, and social associations. The facts in *Carpenter* took place eight years ago. Cellphones have increased in abilities and storage capacity since the burglaries in *Carpenter*. Who knows what future devices will be able to do and how much stored information the law enforcement of the future will actually need? It will take the Supreme Court many years and many cases to get more clarified instructions to law enforcement personnel in cellphone cases. The best approach is probably for Congress to revisit the Communications Act, but Congress did need the Supreme Court to interpret the Fourth Amendment principles for new technology. This case helps with that task. The courts cannot do everything. Congress is the one who can have hearings and develop broader conversations. If both branches of government will do their part, reasonable solutions will appear. This writer thinks this

conversation can now begin. Are cellphones an investigator's new friend? This question will be answered slowly through many Court deliberations and cases. Justice Frankfurter would be pleased.

References

- Carpenter v. United States, No. 16-402, 585 U.S. _____. (2018, June 22). Retrieved from https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf
- 819 F. 3d 880 (6th Cir. 2016). Retrieved from https://scholar.google.com/scholar_case?case=14626167511079628834
- Chimel v. California, 395 U.S. 752. (1969, June 23). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/395/752.html>
- Howe, A., (2017a, November 29). Argument analysis: Drawing a line on privacy for cellphone records, but where? *Scotus Blog*. Retrieved from <http://www.scotusblog.com/2017/11/argument-analysis-drawing-line-privacy-cellphone-records/>
- Howe, A., (2017b, November 22). Argument preview: The justices return to cellphones and the Fourth Amendment. *Scotus Blog*. Retrieved from <http://www.scotusblog.com/2017/11/argument-preview-justices-return-cellphones-fourth-amendment/>
- Howe, A., (2018, June 22). Opinion analysis: Court holds that police will generally need a warrant for sustained cellphone location information. *Scotus Blog*. Retrieved from <http://www.scotusblog.com/2018/06/opinion-analysis-court-holds-that-police-will-generally-need-a-warrant-for-cellphone-location-information/>
- Katz v. United States, 389 U.S. 347. (1967, December 18). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/389/347.html>
- Kerr, O., (2017, August 4). Symposium: Carpenter and the eyewitness rule. *Scotus Blog*. Retrieved from <http://www.scotusblog.com/2017/08/symposium-carpenter-eyewitness-rule/>
- Liptak, A., (2017a, November 29). Justices seem ready to boost protection of digital privacy. *The New York Times*. Retrieved from <https://www.nytimes.com/2017/11/29/us/politics/supreme-court-digital-privacy.html>
- Liptak, A., (2017b, November 28). How a Radio Shack robbery could spur a new era in digital privacy. *The New York Times*. Retrieved from <https://www.nytimes.com/2017/11/27/us/politics/supreme-court-fourth-amendment-privacy-cellphones.html>
- Matbakis, L., (2018, June 22). The Supreme Court just greatly strengthened digital privacy. *Wired*. Retrieved from <https://www.wired.com/story/carpenter-v-united-states-supreme-court-digital-privacy/>
- McCubbin, S., (2018). Summary: The Supreme Court rules in Carpenter v. United States. *Lawfare*. Retrieved from <http://www.scotusblog.com/2018/06/a-view-from-the-courtroom-some-good-and-hard-thinking-on-all-sides/>
- Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292. (1944, May 15). Retrieved from https://scholar.google.com/scholar_case?case=210773785443224163&q=Northwest+Airlines,+Inc.+v.+Minnesota&hl=en&as_sdt=6,24&as_vis=1
- Olmstead v. United States, 277 U.S. 438. (1928, June 4). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/277/438.html>

Riley v. California, 573 U.S. _____. (2014, June 25). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/13-132-nr2.html>

Sachs, S., (2017, November 26). The Supreme Court's privacy precedent is outdated. *The Washington Post*. Retrieved from https://www.washingtonpost.com/opinions/the-supreme-courts-privacy-precedent-is-outdated/2017/11/26/fe9d1dd0-cfb2-11e7-81bc-c55a220c8cbe_story.html?noredirect=on&utm_term=.b159e6170a23

Smith v. Maryland, 442 U.S. 735. (1979, June 20). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/442/735.html>

Sorkin, A., (2018, June 22). In Carpenter, the Supreme Court rules, narrowly, for privacy. *The New Yorker*. Retrieved from <https://www.newyorker.com/news/daily-comment/in-carpenter-the-supreme-court-rules-narrowly-for-privacy>

Stern, M., (2018, June 22). A historic victory for privacy. *Slate*. Retrieved from <https://slate.com/news-and-politics/2018/06/carpenter-v-united-states-supreme-court-rules-fourth-amendment-protects-cell->

Stored Communications Act, 18 U.S.C. Chapter 121 Sections 2701-2712. (1986, October 21). Retrieved from <http://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter121&edition=prelim>

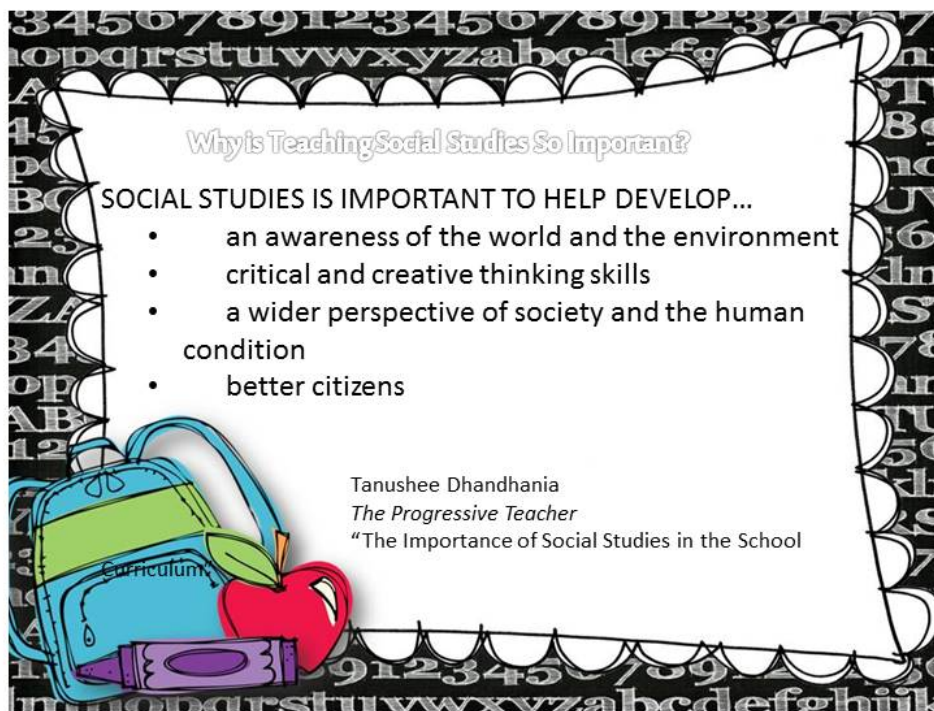
United States v. Jones, 565 U.S. 400. (2012, January 23). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/10-1259.html>

United States v. Knotts, 460 U.S. 276. (1983, March 2). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/460/276.html>

United States v. Leon, 468 U.S. 897. (1984, July 5). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/468/897.html>

United States v. Miller, 425 U.S. 436. (1976, April 21). Retrieved from <https://caselaw.findlaw.com/us-supreme-court/425/435.html>

Walsh, M., (2018, June 22). A “view” from the courtroom: “Some good and hard thinking on all sides”. *Scotus Blog*. Retrieved from <http://www.scotusblog.com/2018/06/a-view-from-the-courtroom-some-good-and-hard-thinking-on-all-sides/>



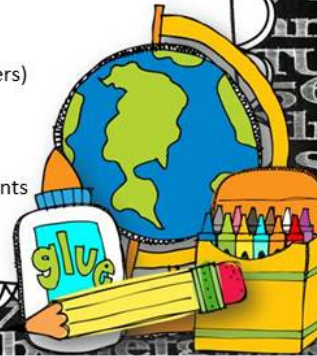
How Can Social Studies Become An Engaging Subject?

According to Strong, Silver, and Robinson, these are the 4 goals that motivate students:

- *Success* (the need for mastery),
- *Curiosity* (the need for understanding),
- *Originality* (the need for self-expression),
- *Relationships* (the need for involvement with others)

Richard Strong, Harvey Silver, Amy Robinson
Educational Leadership

"Strengthening Student Engagement: What Do Students Want (and what really motivates them)?"

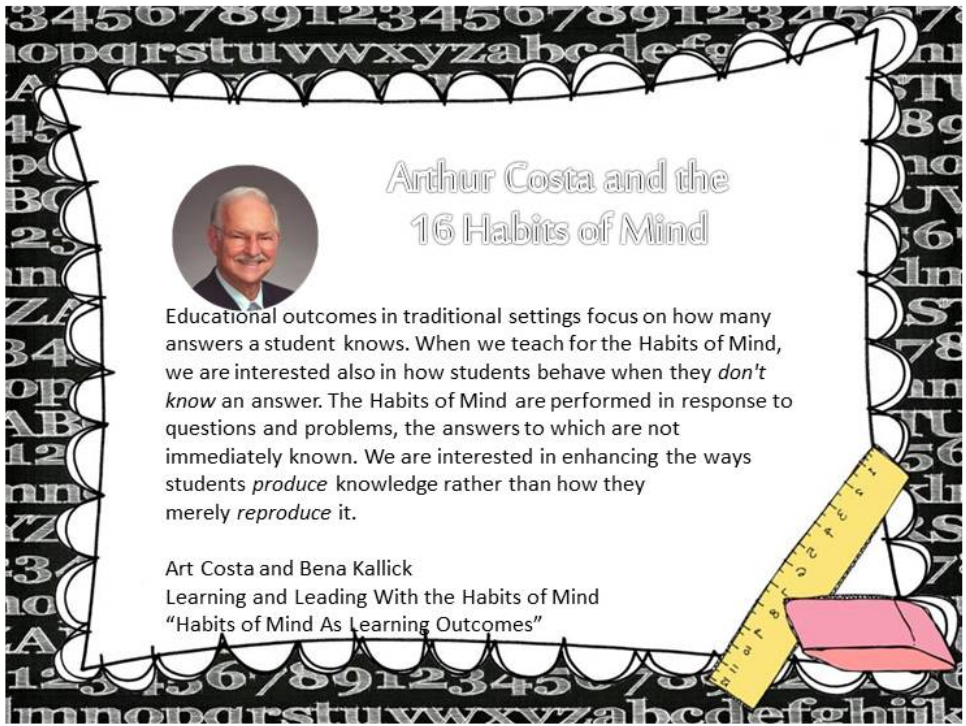



How Does the Teacher Foster Creativity?

- Create a safe environment for creativity
- Set generous guidelines
- Encourage humor, playfulness, fun
- Instill confidence and assurance that everyone is creative

Chris Martin
Inside the Classroom
"Having a Creative Mindset in the Classroom"
























Arthur Costa and the 16 Habits of Mind

Educational outcomes in traditional settings focus on how many answers a student knows. When we teach for the Habits of Mind, we are interested also in how students behave when they *don't know* an answer. The Habits of Mind are performed in response to questions and problems, the answers to which are not immediately known. We are interested in enhancing the ways students *produce* knowledge rather than how they merely *reproduce* it.

Art Costa and Bena Kallick
Learning and Leading With the Habits of Mind
"Habits of Mind As Learning Outcomes"



How Can An Approach to Teaching the 16 Habits of Mind be included in Social Studies Instruction?

Habits of Mind			
<p>Persisting </p> <p>Stick to it! Persevering at task through to completion, remaining focused. Looking for ways to reach your goal when stuck. Not giving up!</p>	<p>Striving for Accuracy </p> <p>Check it again! Always doing your best. Setting high standards. Checking and finding ways to improve constantly.</p>	<p>Questioning and Posing Problems </p> <p>How do you know? Having a questioning attitude, knowing what data are needed and developing questioning strategies to produce those data. Finding problems to solve.</p>	<p>Thinking and Communicating with Clarity and Precision </p> <p>Be clear! Striving for accurate communication in both written and oral forms; avoiding over-generalisations, distortions, deletions and exaggerations.</p>
<p>Managing Impulsivity </p> <p>Take your time! Thinking before acting; remaining calm, thoughtful and deliberative.</p>	<p>Listening with understanding and Empathy </p> <p>Understand others! Devoting mental energy to another person's thoughts and ideas; make an effort to perceive another's point of view and emotions.</p>	<p>Applying Past Knowledge to New Situations </p> <p>Use what you learn! Accessing prior knowledge; transferring knowledge beyond the situation in which it was learned.</p>	<p>Gathering Data through all the senses </p> <p>Use your natural pathways! Pay attention to the world around you. Gather data through all the senses: taste, touch, smell, hearing and sight.</p>
<p>Thinking about your Thinking: Metacognition </p> <p>Know your knowing! Being aware of your own thoughts, strategies, feelings and actions and their effect on others.</p>	<p>Thinking Flexibly </p> <p>Look at it another way! Being able to change perspectives, generate alternatives, consider options.</p>	<p>Responding with Wonderment and Awe </p> <p>Have fun figuring it out! Finding the world awesome, mysterious and being intrigued with phenomena and beauty. Being passionate.</p>	<p>Creating, Imagining and Innovating. </p> <p>Try a different way! Generating new and novel ideas, fluency, originality.</p>
<p>Remaining Open to Continuous Learning </p> <p>Learn from experiences! Having humility and pride when admitting we don't know; resisting complacency.</p>	<p>Thinking Interdependently </p> <p>Work together! Being able to work in and learn from others in reciprocal situations. Team work.</p>	<p>Taking Responsible Risks </p> <p>Venture out! Being adventuresome: living on the edge of one's competence. Try new things constantly.</p>	<p>Finding Humour </p> <p>Laugh a little! Finding the whimsical, incongruous and unexpected. Being able to laugh at oneself.</p>

What Does Teaching the 10 Themes of Social Studies Look Like With Creative Projects?

Look for ways to integrate gathering data, creativity, humor, persistence, flexible thinking, risk taking, problem solving and independent thinking into meaningful projects that students

REMEMBER and DEMONSTRATE LEARNING.



What Does Teaching the 10 Themes of Social Studies Look Like With Creative Projects?

In 1994, the National Council for the Social Studies (NCSS) developed new standards for teaching the social studies. Through ten themes, social studies are taught in an integrated approach. To integrate the social sciences fully, it is important that the teacher understand each of the six social sciences.

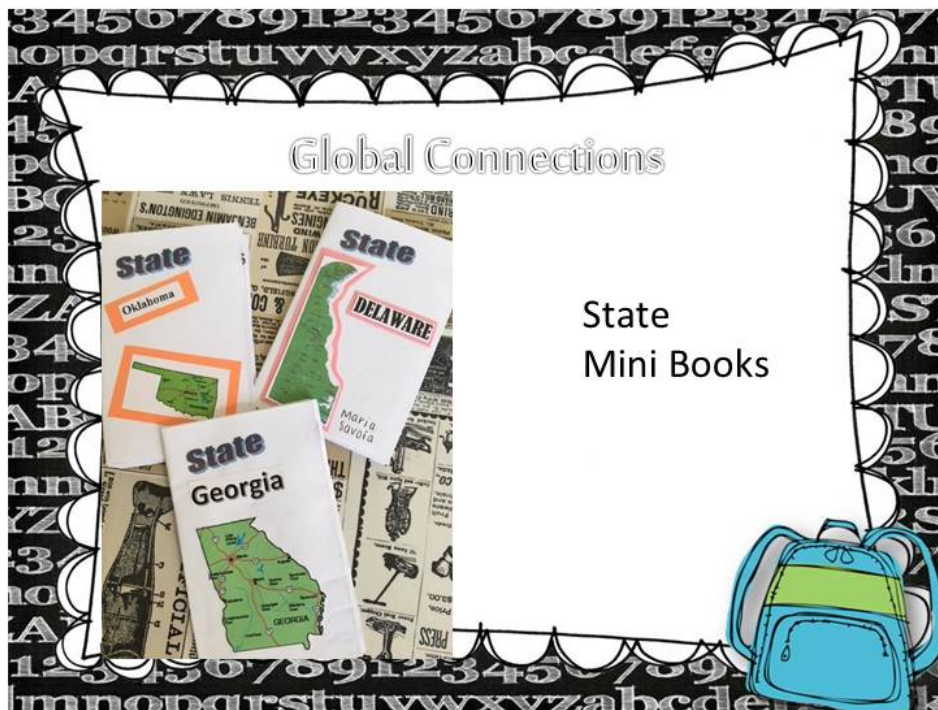
Ten Themes

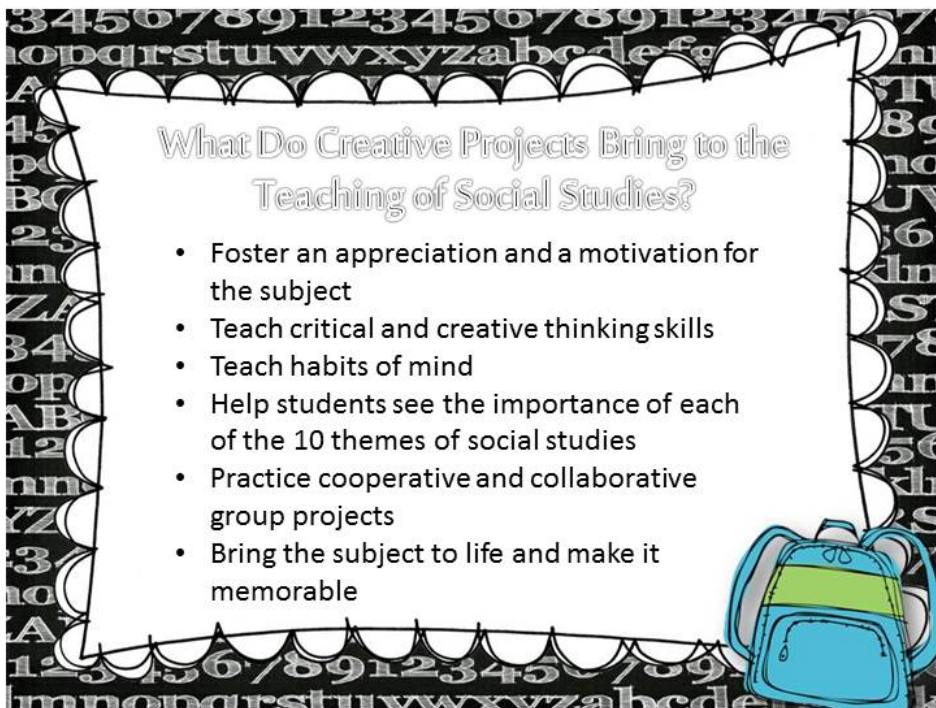
1. Culture
2. Time, Continuity, and Change
3. People, Places, and Environment
4. Individual Development and Identity
5. Individuals, Groups, and Institutions
6. Power, Authority, and Governance
7. Production, Distribution, and Consumption
8. Science, Technology, and Society
9. Global Connections
10. Civic Ideals and Practices

Six Social Sciences

1. Anthropology
2. Economics
3. Geography
4. History
5. Political Science/Civics
6. Sociology







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

William M. Kirtley
Central Texas College

Abstract

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

Introduction

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

Those who confront the *Enquirer* should be aware their writers retaliate. “Enquirerman” counter-attacked in an article “Rachel Maddow’s Brain-Dead Enquirer Attack” (20 January 2017). He chided the political journalist for getting the price of the supermarket tabloid wrong. It costs \$4.99 not \$1.99. He insisted the story clearly stated it was Hillary’s “fixers” who setup the sting on federal agents, not Hillary herself. “Enquirerman” suggested the host of an Emmy award winning news show, dig deeper than the headlines and sent her a free subscription. Rob Shutter in his “Number One in America Gossip Column,” subtitled “Naughty but Nice” reported a make-up artist working on the MSNBC news host for a cover of a *Rolling Stone* magazine described the popular political commentator as a vain diva who did not like her face touched (29 July 2017). In their latest jab, the scandal magazine falsely reported it was “Claws out!” in a fight between Maddow and Megyn Kelly (*Enquirer*, 16 May 2018).

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

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

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

and father (Ellul p. 172). These characteristics apply equally to Trump's base, as well as to readers of the *Enquirer*.

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

Blood and Gore

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

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

Pope instituted practices still in use at the *Enquirer*. He authorized reporters to pay up to \$2,500 for tips without prior authorization. He paid \$18,000 for a picture of Elvis in a white suit lying in a copper coffin snapped by a distant teenage cousin (*Newsweek*, 2008). He negotiated with celebrities to bury harmful stories in exchange for an interview, gossip about another famous person, or other favors. He paid his writers well and rewarded them with lavish bonuses for sensational scoops. Pope pressured reporters to produce. He established a grading system to assure the quality and quantity of their work. If writers did not measure up, he fired them.

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

Supermarkets proved a tough market to enter until Pope hired blond movie star, Jane Mansfield, to promote the paper at a convention of supermarket executives. He also offered them 25% off cover price of every *Enquirer* sold and promised to buy back

unsold copies (Calder, 2004, p. 56). It was a retailer's dream. They had only two points of contact, when a clerk rang up the sale of the tabloid at the cover price and when they remitted the agreed upon fee for the *Enquirers* they sold.

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

The Accountant Giveth and Taketh Away

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

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

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

The answer was simple for an accountant specializing in turning around troubled media companies: restructure through bankruptcy, slash staff, and force each member of the remaining staff do the work of three or four people. Amy Wicks, a reporter for *WWD (Women's Wear Daily)*, quoted Pecker as saying, "We encourage accountability and aggressive reporting, and if you make a mistake, that's OK." Colleagues added, "If you succeed you get credit, if you fail, it can get ugly" (Wicks, 2011). Wicks reported that Pecker had the first and last word at meetings. The staff always remembered

Pecker's pronouncement, "I'm the chairman of the tabloids. You giveth and taketh. Believe me, I understand that" (Wicks, 2011).

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

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

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

Give Them What They Want

Enquirer executives pride themselves on knowing their audience. One editor argued, "The big news organizations tell people what they think they should be interested in, whereas we try to give them stories that they *are* interested in" (*Newsweek*, 2008). Pecker described the weekly's target audience as, "People that live their life failing, so they want to read negative things about people who have gone up and then come down" (Borchers Why, 2016). The writers for the tabloid stoke the

anxieties and feelings of inadequacy of their readers with gossip, guilt, and victimization. Paula E. Morton (2009) in *Tabloid Valley*, stated the *Enquirer*, “Frequently, in the process of exposing personal hypocrisy or impropriety, it inflames a public outrage that the mainstream media pursue in depth” (p. 156).

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

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

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

Embrace Your Inner Gossip

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

After Carol Burnett won her suit for \$10 million in the early 1980s, AMI policy called for two lawyers to review every story. “And these lawyers don’t advise. They decide” (Kludt, 2018). *Carol Burnett v. the National Enquirer* made legal history on its journey to the Supreme Court. A California judge decided it was not a newspaper

entailed to full first amendment rights. The Supreme Court ruled Burnett could sue for defamation in California, even though the AMI printed the tabloid in Florida

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

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

In the September 2017 issue, the *Enquirer* issued an apology to Judge Judy Sheindlin for a story stating she suffered from “brain disease,” was fighting both Alzheimer’s and depression, and was “hiding a heartbreaking medical crisis” (Taylor Apology, 2017). The tabloid also stated Sheindlin cheated on her husband. Their apology stated, “None of these statements are true, and we unequivocally retract them” (Taylor Apology, 2017). Most celebrities ignore stories in the *Enquirer*, suing only when the mainstream press picks them up. Their record of success is mixed. Most times they are content to accept an apology.

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

Shocking Love Affair

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

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

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

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

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

Trump loved a weekly publication with national reach. The *Enquirer* printed stories like, "Natural-born leader Donald Trump is a highly focused, driven and charismatic genius who thinks outside the box and is almost too smart for his own good" (Taylor Magzter, 2017). The editors of the *Enquirer* felt free to name-call and exploit resentments if it furthered Trump's agenda. The Prez wondered, "Why didn't the *National Enquirer* get the Pulitzer Prize for Edwards?" (Borcher Trump, 2018). He claimed that the publication was "very respected" and suggested Pecker would make a 'brilliant Choice' for Time Magazine CEO (Eglish, 2017).

The Perfect Friendship

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

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

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

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

The Weather Vane Effect

No Republican challenger to Trump was safe during the primary. The *Enquirer* published a story in March 2016 about “boozin” Ted Cruz’s five mistresses and his father’s involvement in John F. Kennedy’s assassination (Suebsaeng, 2016). When asked about it Trump said he did not know if it was true, but he did read it in the *Enquirer* which had a good reputation. They paper also ran a story about “bungling” Ben Carson claiming he left a sponge in a patient’s brain. The scandal sheet also ran a story on 31 December 2015 alleging “nerdy” Mario Rubio, Senator from Florida, had a relative

who had connections with cocaine smugglers. The celebrity newspaper reported Jeb Bush was a dope smoker and had an affair with a Playboy bunny (Suebsaeng, 2016).

Stories about the health of the first woman in history to run for President as the candidate of a major political party amplified those appearing in far-right publications and talk shows. In “Hillary’s Full Medical File,” published (8 September 2016) the tabloid ran a cover with a seemingly photoshopped picture of Clinton that made her appear on the verge of death. The publication erroneously alleged she was suffering from or had suffered from muscular dystrophy, multiple sclerosis, Alzheimer’s, liver damage, brain damage, seizures and strokes.

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

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

Catch and Kill

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

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

Jonathon Chait of the *National Interest* observed, “So, we know Trump habitually pays for sex, and we also know he is willing to pay to keep embarrassing

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

The Prez, The Playmate, and the Tabloid

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

McDougal met Trump at a pool party at the Playboy Mansion. He asked for her telephone number and they soon began chatting on the phone. Their first date was dinner in a private bungalow at the Beverly Hills Hotel. McDougal wrote Trump impressed her. “I was so nervous! I was into his intelligence + charm. Such a polite man,” she wrote. “We talked for a couple hours – then, it was “ON”! We got naked + had sex” (Farrow, 2018). As the model and actress was getting dressed to leave, Trump surprised her. “He offered me money,” she wrote. “I looked at him (+ felt sad) + said, ‘No thanks - I’m not ‘that girl.’ I slept with you because I like you - NOT for money’ - He told me ‘you are special’” (Farrow, 2018).

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

Collusion and Manipulation

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

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

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

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

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

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

McDougal revealed telling details about her alleged affair on the Anderson Cooper show aired three days after she filed her suit. She expressed affection for

Donald Trump, who, she said, was always a gentleman, and paid her compliments. She recalled Pecker invited her to lunch after she signed the NDA and thanked her for her loyalty. She realized too late Pecker did not want to help her and had lied to her. She said Davidson, promised her “many millions of dollars,” but she signed the NDA, not for the money, but a chance to transition from modeling to writing (Cooper, 2018). She expressed regret for the illicit relationship and offered an apology to Melania.

Playboy Model Freed from Contract

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

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

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

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

Conclusion

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

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

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

Resources

- Apuzzo, M. (21 July 2018, p. A1). *New York Times*. Lawyer's secret tape reveals Trump's talk of payments to model.
- Associated Press. (20 December 2017). *USA Today*. Charlie Sheen sues the 'National Enquirer' over Corey Haim assault allegations. Retrieved at <<https://www.usatoday.com/story/life/people/2017/12/10/charlie-sheen-sues-national-enquirer-over-corey-haim-assault-allegations/938624001/>>
- Borchers, C. (26 June 2016). Why the National *Enquirer* loves Trump — and why that matters. *The Washington Post*. Retrieved at <<https://www.washingtonpost.com>>
- Borchers, C. (18 September 2017). Keep an eye on the *National Enquirer*. *The Washington Post*. Retrieved from https://www.washingtonpost.com/news/the-fix/wp/2017/09/18/keep-an-eye-on-the-national-enquirer/?utm_term=.324cd3aa4d7d

- Borchers, C. (20 January 2018). Trump's love of tabloid gossip complicates his denial of affair allegations with Stormy Daniels. *Washington Post*, Retrieved at <https://www.washingtonpost.com/news/the-fix/wp/2018/01/20/trumps-love-of-tabloid-gossip-complicates-his-denial-of-affair-allegations-with-stormy-daniels/?utm_term=.b8cf01bbee60>
- Briquelet, K. (2 April 2018). *National Enquirer* Publisher: It's our first amendment right to silence Karen McDougal over Trump. *Daily Beast*. Retrieved at <<https://www.thedailybeast.com/national-enquirer-publisher-its-our-first-amendment-right-to-silence-karen-mcdougal-over-trump>>
- Briquelet, K. (23 April 2018). The sex-tape lawyer who worked with Michael Cohen to silence Trump's women. *The Daily Beast*. Retrieved at <<https://www.thedailybeast.com/the-sex-tape-lawyer-who-worked-with-michael-cohen-to-silence-trumps-women>>
- Britzky, H. (20 March 2018). Playboy model sues to speak about alleged affair with Trump. *Axios*. Retrieved at: <https://www.axios.com/playboy-model-affair-karen-mcdougal-lawsuit-trump-afefee9b-265a-47a1-b2d8-37d67d3a2d99.html>
- Calder, I. (2004). *The Untold Story*. New York: Hyperion Press.
- Chait, J. (16 February 2018) There's a pretty good chance President Trump is being blackmailed. *Intelligencer* Retrieved at <<http://nymag.com/daily/intelligencer/2018/02>>
- CNN Wires*. (20 January 2018). Porn actress who claims affair with Trump grants tabloid interview on President. Retrieved at <<http://fox2now.com>>
- Connolly, J. (2017). Secret history of the *National Enquirer*. *DuJour*. Retrieved at <<http://dujour.com/news/national-enquirer-history-scandal/>>
- Conley, A. (20 March 2018). Karen McDougal files lawsuit to discuss alleged affair. *CBS News*. Retrieved at <<https://www.cbsnews.com/news/karen-mcdougal-files-lawsuit-to-discuss-alleged-trump-affair/>>
- Cooper, A. (21 May 2018) AC 360 Interview Karen Douglas. *CNN Exclusive*. Retrieved at <<https://video.search.yahoo.com/search/video?fr=yfp-t&p=anderson+cooper+karen+douglas+video#id=1&vid=2af7a4d9c8722691d4756fd0015c3f57&action=click>>
- Dedaj, P. (22 March 2018). Karen McDougal, former Playboy model, describes alleged Trump affair. *Fox News*. Retrieved at <<http://www.foxnews.com/politics/2018/03/22/karen-mcdougal-former-playboy-model-describes-alleged-trump-affair.html>>
- Eglash, J. (22 January 2017). Donald Trump, adult film star Stormy Daniels affair rumors reveal President's 'love' for tabloid gossip. *Inquisitr*. Retrieved from <<https://www.inquisitr.com/4747705/donald-trump-adult-film-star-stormy-daniels-affair-rumors-reveal-presidents-love-for-tabloid-gossip/>>
- Emery, D. (7 January 2017). *National Enquirer's* pro-Trump, anti-Hillary 'News' draws Rachel Maddow's ire. *The Wrap* - <https://www.thewrap.com/national-enquirers-pro-trump-anti-hillary-news-draws-rachel-maddows-ire/>
- Enquirerman. (7 January 2017). Rachel Maddow's brain-dead *Enquirer* attack. *The Enquirer*. Retrieved at <<https://www.nationalenquirer.com/politics/rachel-maddow-hillary>>

- Farrow, R. (16 February 2018). A Playboy model and a system for concealing identity. *New Yorker Magazine*.
- Gillette, F. (29 September 2016). Tabloid's shocking love affair with Trump revealed. *Bloomberg*. Retrieved at <<https://www.bloomberg.com>>
- Global Direct Response (2018). Advertising information. *National Enquirer*. Retrieved at <<https://www.russelljohns.com/pdfs/demographics/natenq-demographics.pdf>>
- Glover, S. & Sidner, S. (6 April 2018). CNN. Lawyer who cut deals for Daniels and McDougal says the whole truth has not been told. *Anderson Cooper Video* <<https://www.cnn.com>>
- Gunter, J. (30 June 2017). Is the *National Enquirer* Trump's mouthpiece? *BBC News*, Retrieved at <<http://www.bbc.com/news/world-us-canada>>
- Habermas, J. (1991). *The Structural transformation of the public sphere: An inquiry into a category of bourgeois Society*. Trans. Thomas Burger with Frederick Lawrence. Cambridge, MA: MIT Press.
- Hackett, L. (20 June 2018) 'Catch and kill': Why the sale of 13 gossip mags to a Trump ally is a big concern. *The New Daily*. Retrieved at <<https://thenewdaily.com.au/news/world/2018/06/20/trump-ally-celeb-mags/>>
- Hensley, N. (21 June 2018). *National Enquirer* sent Michael Cohen stories on Donald Trump in advance before and after the election: report. *The San Diego Union-Tribune*. Retrieved at <<http://www.sandiegouniontribune.com/ny-news-national-enquirer-cohen-trump-stories-20180621-story.html>>
- IMDb Biography* (2018). Karen McDougal. Retrieved at <<https://www.imdb.com/name/nm0568210/bio>>
- Jefferson, T. (1789). Letter to Richard Price, ME 7:253. Retrieved at <<http://www.foundingfatherquotes.com/quote/711>>
- Jefferson, T. (1801). 1st Inaugural Address. Retrieved at <<http://www.foundingfatherquotes.com/quote/711>>
- Kludt, T. (2 March 2018). CNN Poll: Most Americans think *National Enquirer* is covering for Trump. *CNN*. Retrieved at <<http://money.cnn.com/2018/03/02/media/poll-national-enquirer-donald-trump/index.html>>
- Levine, D. (29 June 2017). Donald Trump & the *National Enquirer*: 5 fast facts you need to know. *Heavy*. <<https://heavy.com/news/2017/06/donald-trump-national-enquirer-cruz-brzezinski-david-pecker/>>
- Maddaus, G. (30 August 2017). Judge says Richard Simmons can't sue over *Enquirer's* transgender claim. *Variety*, Retrieved at <<https://www.yahoo.com/entertainment/judge-says-richard-simmons>>
- Maddow, R. (4 January 2017). Trump tests media, burying controversy in tight schedule. *MSNBC*. Retrieved at <<https://video.search.yahoo.com>>
- Maddow, R. (19 April 2018). President Trump hush money continues. *YouTube*. Retrieved at <<https://www.youtube.com/>>
- Maddow, R. (10 August 2018) *Youtube*. Retrieved at <<https://www.youtube.com/>>
- McDougal, K. (September 2018). Four moves for stronger abs. *Men's Journal*. p.104.
- McGraw v. American Media (2016) *Scribd Legal Documents*. Retrieved at <<https://www.scribd.com>>
- McLaughlin, K. (11 July 2016). Exclusive. enough is enough: Dr. Phil lashes out. *Daily Mail*. Retrieved from <<http://www.dailymail.co.uk/news/article-3684982/Enough-s->>

- time-Dr-Phil-McGraw-lashes-National-Enquirer-lies-wife-Robin-couple-sues-publisher-250-million.html>
- Morton, P. (2009). *Tabloid Valley*. Gainesville (FL): University of Florida Press.
- National Enquirer* (Staff Writers).
- Dr. Phil raging monster, (Cover) & Trump Must Be President (14 March 2016).
- Editorial mission statement (2017).
- Ellen storms out, Cover, (18 June 2018).
- Facts about the Presidents (4 June 2018).
- FBI plot to impeach Trump, Cover (8 January 2018)
- Hillary blackmailed FBI to kill corruption probe, Cover (26 October 2016).
- Hillary's full medical file, Cover (8 September 2016).
- Malia Obama – out of control, Story, (14 December 2016).
- Megyn Vs. Maddow in 'Today' war over Tom Brokaw (16 May 2018).
- Obama's Secret Plot to Impeach Donald Trump (8 February 2017).
- Only one Magazine (9 November 2016).
- Rachel Maddow's brain-dead *Enquirer* attack, Story (20 January 2017).
- Rachel Maddow's *Rolling Stone* vanity, Story (20 July 2017).
- Senator Marco Rubio's cocaine connection, Story, (31 December 2015)
- Sorry pollsters! Story, (9 November 2016).
- Ted Cruz's 5 mistresses, Cover (25 March 2016).
- Ted Cruz's father linked to JFK assassination, Cover, (5 May 2016).
- Trump fixer's secrets & lies, Cover and p. 16 (7 May 2018).
- Trump must be President (14 March 2016).
- Newsweek* Staff. (19 September 2008). *The National Enquirer*: Ur-Text of the tabloid age. Retrieved at <///Users/apple/Desktop/Newsweek.webarchive>
- Pearson, J. & Horwitz, Jeff. (12 April 2018). \$30,000 Rumor? *Associated Press*. Retrieved from <https://www.bloomberg.com>>
- Peck, E. (26 March 2018). The Most scandalous part of the Stormy Daniels story Isn't the sex. *Huffingtonpost*. Retrieved at <https://www.huffingtonpost.com/entry/stormy-daniels-trump-nda_us_5ab5410ee4b0decad049c37d>
- Pecker, D. (11 October 2010). *Gawker*. Retrieved at <Gawker.com>
- Pennington, J. (19 July 2014). What actors/actresses/celebrities have sued the National Enquirer? *Quora*. Retrieved at <https://www.quora.com/What-actors-actresses-celebrities-have-sued-the-National-Enquirer>>
- Reyner, S. (20 June 2018). Feds subpoena National Enquirer CEO in Cohen probe. *Wall Street Journal*. Retrieved at <<https://www.newsmax.com/newsfront/david-pecker-national-enquirer-subpoena-michael-cohen/2018/06/20/id/867370/>>
- Rutenberg, J., Steel, E. and McIntire, M. (11 April 2018). Investigators Focus on Another Trump Ally: *The National Enquirer*. Retrieved by <<https://www.nytimes.com/2018/04/11/us/politics/trump-national-enquirer-american-media.html>>

- Rutenberg, J., Twohey, M., Riiz, R., McIntire, M. and Haberman, M. (February 2018). Tools of Trump's fixer: payouts, Intimidation and the tabloids. *New York Times*. Retrieved at <<https://www.nytimes.com>>
- Salam, M. & Haag, M. (29 March 2018). Donald and Melania fight back. *New York Times*. Retrieved at <<file:///Users/apple/Desktop/5%20Times%20David%20Pecker%20and%20The%20Enquirer%20Defended%20or%20Championed%20Trump%20-%20The%20New%20York%20Times.webarchive>>
- Shafer, J. (Jan/Feb 2017). Pravda on the checkout line. First Donald Trump got an endorsement from the tabloids. Now he's getting a mouthpiece. *Politico Magazine*. Retrieved at <<https://www.politico.com>>
- Sheridan, P. (23 May 2018) Why Donald Trump is the tabloid President. *boingboing*. Retrieved at <<https://boingboing.net/2018/05/23/why-donald-trumpis-the-tabloi.html>>
- Siegel, J. (10 August 2017). *National Enquirer* attacks Paul Manafort after news breaks about FBI's raid of his home. *Washington Examiner*. Retrieved from <<http://www.washingtonexaminer.com/national-enquirer-attacks-paul-manafort-after-news-breaks-about-fbis-raid-of-his-home/article/2631122>>
- Shutter, R. (29 July 2017). MSNBC star's icy hands-off policy on photo shoots! *National Enquirer*. Retrieved from <<https://www.nationalenquirer.com/celebrity/rachel-maddow-vain-fussy-msnbc/>>
- Sorentroue, J. (3 January 2017). Trump supporters take sim at Publix's decision to cover tabloid. *Palm Beach Post*. Retrieved at <<http://www.mypalmbeachpost.com>>
- Soules, Marshall (2007). Jurgen Habermas and the public sphere. *Media Studies*. Retrieved from <<file:///Users/apple/Desktop/Jürgen%20Haberma>>
- Spitulnik, D. & Tufte, T. (24 February 2014) Introduction: Civic mediations. *Ethnography*. Retrieved at <<file:///Users/apple/Desktop/Introduction:%20Civic%20mediations>>
- Suebsaeng, A. (3 August 2016). *National Enquirer* endorses Trump, calls Rubio 'nerdy.' *The Daily Beast*. Retrieved at <<https://www.thedailybeast.com>>
- Taylor, J. (1 March 2017). *Magzter* reprint from *National Enquirer*, Trumps shocking psych File. *Magzter*. Retrieved from <<https://www.magzter.com/article>>
- Taylor, J. (20 September 2017). *National Enquirer*. Apology regarding Judge Judy and Nicole Sheindlin. Retrieved at <<https://www.nationalenquirer.com/>>
- Toobin, J. (3 July 2017). Feeding the beast. *The New Yorker*. pp. 36-67.
- Trump, D. (19 August 2015). Donald Trump writes exclusively for the *National Enquirer*. Retrieved at <<https://www.nationalenquirer.com>>
- Weis, D. ((20 March 2018) Lawyer's failure to explain fine print nixes deal to stay silent on Trump, ex-playboy model says. *ABA Journal*, Retrieved at <http://www.abajournal.com/news/article/lawyers_failure_to_explain_fine_print_nixes_deal_to_stay_silent_on_trump_ex/>
- Wicks, A. (19 January 2011). David Pecker: chairman of the tabloids. *WWD*. Retrieved from <<http://wwd.com/business-news/media/david-pecker-chairman-of-the-tabloids-3432220/>>
- Willis, O. (8 June 2018). Trump's tabloid pals at *National Enquirer* attacking Michael Cohen. *The National Memo*. Retrieved at <<http://www.nationalmemo.com>>

Appendix A

Facts and Statistics for Enquirer

Shocking news – America Media Inc. owns celebrity and health & Fitness magazines, Purchased (1999) by David J. pecker, chairman & CEO, Friend of Prez
Income up from 2014-2016, # of employees down (statista.com).

House of Horrors - Enquirer weekly tabloid founded in 1926. based in NYC.

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

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

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

World EXCLUSIVE! – Trump covers 39% (N=71) from 6 March 2017 to 12 July 2018,
sky box 20%, center 52%, footer 27% (N=44).
Trump story not on cover 27% (N=25).
Statistics from 2017-2018.

Secrets and Lies – Catch and kill
Karen McDougal lawsuit settled April 2018
(Farrow, “A Playboy Model”, *New Yorker*, 16 February 2018)

Appendix B

Content Analysis for Enquirer (N=5)

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

Celebrity gossip –Adele, Amarosa, Kristen Bell, Drew Barrymore, David Beckham, Halle Berry, Justin Bieber, Drew Carey, John Cena, George Clooney, Anderson Cooper, Bill Cosby, Matt Damon, Glada De Laurentis, Neil Diamond, Carmen Diaz, Shannen Doherty, Tammy Dombeck, Megan Fox, Michael Fox, Gal Gadow (Wonder Woman), Lady Gaga, Sarah Gilbert, Selena Gomez, Tonya Harding (2x), David Hasselhoff, Hugh Jackman, Janet Jackson, Kate Jackson, Paris Jackson, Elton John, Angelina Jolie, Kloe Kardashian, Mariah Kerry, Nicole Kidman, Jimmy Kimmel, Hoda Kotb, Heidi Klum (5x), Jenifer Lawrence, Matt Lauer, Heather Locklear, Lindsay Lohan, Eva Longoria, Madonna, Lisa Marie, Paul McCartney, George Michael, Abby Lee Miller, Lisa Minelli, Jason Momoa (Aquaman), Malia Obama, Roy Orbison, Maria Osmond, Sarah Jessica Parker, Danica Patrick (2x), Kate Perry, Nancy Pelosi, Brad Pitt, Erin Rogers, Royal Family (5x), Jean Simmons, Will Smith, Jada Smith, Scary Spice, Meryl Streep, Suzanne Summers, Taylor Swift, John Toones, John Travolta, Denzel Washington, Barbara Walters, Natalie Wood, Tiger Woods, Scott World.
News – Weird sex swap, Trump cleared Russia probe, Plot to blackmail Royals, Murder of Lee Harvey Oswald, O.J. Simpson's Nephew is a pedophile, Kid catches carjacker, Gory stories (2x), FBI coup, North Korea, Sex molester Olympic gymnasts, Meghan Kelly vs. Ann Curry vs. Hoda Kotb.

Games, Crosswords, and Puzzles

Stars and Stumbles – Best dressed vs. worst dressed women

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

Market Place – Penis enlargement, psychics, fake ID

Oddities – Upside down Christmas tree, gravy cocktails

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

Pet Vet – Tips for caring for your dog or cat

Exigencies of Conflict and Terror: Monitoring Human Traffic

Dr. Raymonde Kleinberg, PhD., LL.M.
Lindsey Julian George, MA Candidate
University of North Carolina Wilmington

Former Secretary of State John Kerry stated, in a letter destined for the Trafficking in Persons Report (2016): “wherever we find poverty and lack of opportunity—wherever the rule of law is weak, where corruption is most ingrained, where minorities are abused, and where populations can’t count on the protection of government—we find not just vulnerability to trafficking, but zones of impunity where traffickers can prey on their victims.” As the global community experiences conflict, terror and an unprecedented stream of migrants and refugees in its wake, the exploitation and victimization of men, women and children for sex, labor and organs has steadily increased. The UN High Commissioner for Refugees (UNHCR) estimates that, as of 2018, forcibly displaced people account for 68.5 million of the globe’s population. 40 million are internally displaced, 25.4 million refugees and 3.1 million classified as asylum-seekers, while an additional 44,400 people per day are forced to flee conflict and persecution (2018). Of those officially classified under refugee status, 57% hail from only three countries: South Sudan, Afghanistan and Syria (2018).

The sheer number of migrants whether classified or unclassified have made it that much more difficult to track their victimization by criminal elements. Even more problematic has been enforcing domestic or international law. While international law continues to be perceived as the dominant conduit for combating human trafficking, it is perhaps the most difficult to implement and enforce. Setting the course for how to define, prevent, and prosecute human trafficking, the United Nations Office on Drugs and Crime (UNODC) created the United Nations Convention against Transnational Organized Crime and its two related protocols: the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, which entered into force in 2003-2004. In order to ensure the enforcement of these international instruments, UNODC established the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) in 2007.

What is unique about the Trafficking Protocol is that it was created as a law enforcement instrument as opposed to an aspirational agreement. Indeed, there are provisions within the Protocol that compel parties to take action to penalize trafficking, protect victims of trafficking, and grant victims temporary or permanent residence in the countries of destination. It is clear then that parties to the Protocol are obligated to enact domestic legislation supporting the provisions (King). In fact, the number of countries doing this has increased from 33 in 2003 to 158 in 2016.

However, compliance with international law has not been forthcoming. Though always an issue of debate with as much political content as legal, utilizing preventative or prosecutorial instruments to monitor human trafficking has been especially problematic where there are large masses of migrant movement in different regions. Here the issue of migrant flows, refugees, smuggling, and human trafficking become blurred when dealing with domestic laws surrounding the issue of illegal immigration, terrorist infiltration and securitization of borders.

Argument

The very laws enacted to protect citizens, both within a country’s borders and globally, have instead increased refugees and other displaced peoples’ vulnerability. This is particularly true with recent laws intended to respond to mass human migration from conflict-ridden areas in the Middle East, North and East Africa. Lacking legal and

safe alternatives, migrants are essentially forced into the hands of criminal syndicates as a means of successfully fleeing the dangerous conditions under which they live in their country of origin and as a means of financially supporting their families. Further, policies implemented throughout the European Union with regard to immigration and refugees have played significant roles in shifting international migration routes. Therefore, this paper will argue that changes in national security protocols in traditionally destination countries have effectively narrowed the ways in which migrants can legally and safely find refuge. As a result, refugees, migrants, and otherwise displaced peoples are essentially funneled into the hands of criminals who ultimately exploit the inherent vulnerability of stateless individuals in the form of sexual exploitation, forced labor and illegal organ trafficking. Moreover, the lack of domestic law implementation whether an issue of political will or lack of necessary resources, ultimately undermines the effectiveness of international instruments to gauge and control human trafficking.

Defining Terms

Human trafficking, much like that of terms such as terrorism, lacks a single, all-encompassing global definition. Arguably, this lack of mutually agreed upon definition plays a significant role in the overarching difficulty in the managing (and, to an extent, the failure thereof) of the phenomenon. Further, many of the terms within the context of human trafficking are related yet differ greatly in a legal sense (International Labour Organization, 2014). Therefore, due to the inherent complexities of human trafficking and the categories analyzed throughout this paper, the following definitions are used to set terminological parameters for the purposes of this research.

UNODC and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2003) offers the most widely accepted definition and Article 3(a) defines the *trafficking in persons* as the following:

...The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs... (p. 265).

In addition, the Protocol specifically highlights the inherent vulnerability of individuals under the age of eighteen. Article 3(b) of the Protocol indicates, "recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth [in the original definition]" (p. 265). Further, and perhaps most importantly for the purposes of this paper, this understanding of the human trafficking also explicitly includes the irrelevancy of consent when the element of exploitation exists (2003).

While this definition is a viable starting point, it is fairly broad and ultimately fails to fully define the elements that constitute human trafficking. Therefore, sexual exploitation, forced labor and organ trafficking are defined in the following ways. *Sexual*

exploitation, and subsequently, *sexual abuse* as defined by then-UN Secretary-General Kofi Annan (2003):

...Any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term “sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions (p. 1).

Further, child, early or otherwise forced marriages will be included in this category. The Office of the High Commissioner for Human Rights (OHCHR, 2014) provides the following:

Child marriage, or early marriage, is any marriage where at least one of the parties is under 18 years of age. Forced marriages are marriages in which one and/or both parties have not personally expressed their full and free consent to the union. A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent.

The International Labour Organization (ILO) provides the following definition for forced labor: “...situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities” (The Meanings of Forced Labor, 2014). This characterization is particularly useful given its specificity on individuals working illegally within the borders of a host country and the inherent vulnerability associated with illegally existing within such borders. Further, this definition highlights a glaring problem within the realm of human trafficking – when victims are viewed and treated as criminals. The illegal status of an individual – and the fear of legal repercussions thereof – ultimately limits the ways in which trafficking crimes are reported and subsequently prosecuted or otherwise managed.

Finally, while it will not be included in the discussion for the purposes of this paper, the recruitment and use of child soldiers in armed conflict remains an element of human trafficking. The UN’s Office of the Special Representative of the Secretary-General for Children and Armed Conflict, adopted by the Paris Principles defines a child soldier as, “...any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes” (Child Recruitment Use (N.D.); Paris Principles, 2007, p. 7).

Shifting Mass Migration Routes

Prolonged conflict in various regions and the significant increase in displaced peoples, coupled with new laws essentially closing traditional borders and points of entry have ultimately shifted the routes in which migration has historically occurred. Many of the countries now embroiled in on-going conflict were once destination countries for low-skilled migrant workers from Africa and South and Southeast Asia (ICMPD, 2015). Up until approximately 2010, Iraq, Syria, Jordan, Lebanon and Turkey, for instance, accommodated migrant workers in low-wage jobs in domestic work, construction, agriculture, sex and, entertainment industries (2015).

Historically, human migration has followed a northern pattern and has typically been limited to land routes that require passage through border crossings. For instance, an increasingly congested main migration route is the Eastern Mediterranean Route

(Conant, Chwastyk & Williams, 2015). This route runs from the Horn of Africa, through North Africa to Europe or through the Middle East by way of Turkey (2015). However, in recent years migrants have taken to the Mediterranean Sea aboard rafts. In fact, prior to 2015, only ten percent of irregular migration occurred by way of sea routes into the European Union with recorded numbers hovering around approximately 219,000 in 2014; however, in 2015 the number of migrants arriving in Europe via the Mediterranean Sea rose to more than 1.1 million (Fleming, 2015; Alexandridis, 2017). Numbers decreased dramatically to 358,403 arriving by sea by 2016, but do not include the exorbitant number of deaths occurring in the same year (Reuters Staff, 2016).

In addition, official border crossings in countries experiencing high levels of armed conflict, such as, but not limited to Iraq and Syria have closed, introducing unofficial and irregular routes out of the country (Brief Paper #04, 2017). The use of unofficial routes typically involves individuals covertly moving along remote paths under the control of criminals promising safe passage at a price (ICMPD, 2015). In Syria, for example, the internal routes required to eventually exit the country wind through active war zones (2015). Bedouin groups are enlisted as a means of circumventing these hazardous routes, which reportedly capitalize on the vulnerability and the desperation of those left with few alternative options to safely flee the country (2015). Further, until 2015, the official border crossings between Syria and Lebanon were open, but under the direct control of Hezbollah and the Syrian Regime (2015). Moreover, the closing of these borders inherently shifts migration patterns, as the once destination countries no longer absorb the flow of workers from Africa and Asia.

Finally, the implementation of new laws has contributed to the need for and use of irregular migration routes and border crossings. In 2015, for instance, Lebanon placed visa requirements for Syrian citizens in an attempt to curb Syrian immigration (Haid, 2015). In a move that was intended to aid the Lebanese government in regulating immigration and monitor Syrians within the country, ultimately had an opposite effect. Illegal immigration – by way of irregular border crossing – thus less control increased significantly, while legal immigration declined by more than fifty percent per day and, as a result, “...the exploitation of displaced Syrians [became] easier” (2015; ICMPD, 2015). In addition, as of May 2016, the Turkish border remains closed to Syrians lacking appropriate visas and Jordan has placed limitations on admission (Danish Refugee Council, 2016).

In an effort to manage the sheer increase in refugees and migrants entering the European Union, “...European countries instituted restrictive migration policies often characterized by building of razor-wire border fences and border closures” (Aresnijević et al., 2017, p. 2; Danish Refugee Council, 2016). On a broader level, within recent years individual State policies – on a global scale – are seemingly specifically designed to thwart the arrival of individuals who might intend to claim refugee or asylum status (HRC, 2016). These policies effectively create the need for and drive irregular migration.

Ultimately, the rise in conflict-ridden areas combined with new legislation has resulted in unprecedented numbers of vulnerable – and, desperate – people. Many of whom fall victim to those who prey on the precarious situation.

Current Trends in Human Trafficking

In addition to shifting migration patterns, there is a significant shift in those persons falling victim to trafficking within the highlighted region. In the early 2000s,

victims of human trafficking within the Middle East were generally individuals from South and Southeast Asia (2015). This was largely due to the fact that while many Middle Eastern countries, such as Syria and Lebanon, had legalized employment for low-skilled, low-wage migrant workers, they lacked comprehensive policies guiding labor migration (2015). As a result, governments in countries such as the Philippines, Indonesia and Sri Lanka banned migrants from traveling to those destination countries, opening the opportunistic doors for illegal smuggling and subsequently trafficking operations (2015). However, as regional instability mounted, particularly after the fall of Saddam Hussein, Iraqis became particularly vulnerable. In fact, between 2003 and 2008, the Organization of Women's Freedom in Iraq (OWFI, 2010) indicates the abduction of nearly 3,500 girls and women in Iraq, reportedly trafficked to sex markets in neighboring Arab countries.

In Africa, the International Organization for Migration (IOM) indicates increasing incidents of exploitation and abuse along North African migration routes (IOM, 2017). After the Arab Spring, an influx of migrants with sights set on Israel attempted to cross the Sinai desert (Haile, 2017). As the death count increased, "...traffickers began to prey on those making the journey, kidnapping and holding the asylum seekers for ransom, or harvesting their organs and discarding the bodies" (2017). To curb illegal immigration, Israel erected the security fence along its southern border, forcing migrants to find alternative routes, ultimately shifting focus to Libya (2017).

Libya, now a strategic and major exit point for refugees and migrants, harbors a virtually open-air slave-trade market specifically targeting refugees attempting to reach Europe (Giorgis, 2017). "IOM has found that 76 percent of almost 1,400 migrants and refugees interviewed in Italy from 24th of June to 3rd August 2016 – and who travelled along the Central Mediterranean Route connecting North Africa to Europe – have responded positively to at least one indicator of the presence of human trafficking and other exploitative practices on the route" (IOM, 2016). Most of the reported abuses were experienced in Libya (2016).

The element of desperation plays a significant role in the trafficking of persons. Traffickers prey on and exacerbate pre-existing hardships and vulnerabilities created by crisis conditions and ultimately profit from desperation (McAlpine, Hossain & Zimmerman, 2016). As numbers of refugees, migrants and internally displaced peoples (IDPs) continue to rise, so too do the number of individuals exposed to the realities of exploitation. IDPs are particularly vulnerable due to lack of status and, thus documentation, which limit their access to education, employment and resources increasing the likelihood of relying upon traffickers offering seemingly life-saving opportunities (HRC, 2016).

Perhaps most important, the role of desperation has lent its hand to the blurring of once legally distinguishable criminal acts: human trafficking and human smuggling. While the two generally overlap, as understood by agencies such as the United Nations, Human Rights Watch and U.S. Department of State, the fundamental difference lies in the ways in which the smuggled individual is viewed under the law: victim or active participant. Human smuggling, according to the agencies listed above is essentially defined as the illegal entry into a State by a person or persons facilitated by an individual or group paid to render such services (Protocol, 2000; HRW, 2015; Fact Sheet, 2017).

The lines between smuggling and trafficking become blurred when migrants or refugees seek the assistance of smugglers for safe passage, but the relationship turns exploitative. In essence, migrants voluntarily pay smugglers the agreed upon amount, yet during the course of the transport the smugglers prey on the migrants' vulnerability, which can "...take the form of carrying out sexual abuse, forcing clients to work to repay debts, or extorting additional payment for onward movement..." (Brief Paper #04, 2017, p. 3). Oftentimes, migrants are woefully unaware of the coercion until it is too late.

According to the IOM, human trafficking trends between 2005 and 2016 have shifted dramatically. This is particularly true with regard to the purposes for which individuals are trafficked. IOM's Human Trafficking Global Database (2017) broadly highlighted that between these years, sexual exploitation decreased from 59% to just over 10% of the reported cases, while forced labor considerably increased from approximately 34% to 85%. Meanwhile, identified victims of both sexual exploitation and forced labor, as well as other means of trafficking (i.e. forced marriage and organ trafficking) have remained steady at roughly five percent (2017). It is important to note that these statistics reflect only known cases of human trafficking.

Sex Trafficking & Child Marriage

While research indicates a dramatic decline in sexual exploitation over the years, its existence continues to plague the globe. In 2016, the International Labour Organization (ILO)'s Global Estimates Report cited that women and girls account for 71% of victims of trafficking (ILO, 2017). Syrian refugee camps, for instance, report high incidents of prostitution, sexual abuse and rape (ICMPD, 2015). The prevalence of sexual exploitation and abuse is so high that 68% of Syrian women in Iraq indicate knowing someone who has been abused (2015). The United Nations describes incidents of rape and sexual assault by the Syrian government forces and allied militias as punitive actions to opposition communities (Nebehay, 2018). Further, the Islamic State of Iraq and Syria (ISIS) reportedly subjects women and children to forced physical examinations to determine virginity (2018).

Reports of sexual abuse and rape as a means of repayment along the North African migrant routes have been documented (O'Toole, 2018). This abuse includes but is not limited to sexual slavery (2018). Unfortunately, official statistics with regard to sex trafficking remain limited, at best. Some research indicates this is likely the result of significant underreporting due to the nature of honor, and subsequent honor killings within the cultural context (ICMEC, 2013). Further, "sexual violence is a difficult subject to discuss openly, and perhaps even more so within the context of the Middle East where sex and sexuality are considered to be intensely private matters" (Awad, 2013).

Early, forced or child marriage, however provides insight into a facet of sex trafficking with greater access to statistical information. This is a particularly interesting topic within the scope of this paper. As the focus remains in the Middle East, North and East Africa, the role of early marriage carries with it cultural and religious elements. However, the international community declares the phenomenon as a human rights violation and evidence suggests that conflict in the region has slowed previous strides made in ending the practice. The United Nations International Children's Emergency Fund (UNICEF) reports that while the last 25 years has brought about substantial progress in reducing the prevalence of child marriages in the Middle East and North

Africa, the rate of progress has slowed significantly in the past ten years (UNICEF, 2018).

Broadly, children are increasingly forced into marriage to relieve economic stress to the families (ICMEC, 2013). “Within the [Middle East and North Africa] region, child marriage takes many forms. Most commonly, these “marriages” resemble business transactions wherein very young girls are sold to much older men, often strangers, for a substantial dowry or forgiveness of a family debt” (2013, p. 2). Ultimately, the economic exchange of girls and the sexual services required by the new bride thrust this phenomenon into the spotlight as a significant component of human trafficking.

In 2015, the International Centre for Migration Policy Development (ICMPD) conducted a study to determine the impact of the Syrian War and refugee situation on trafficking in persons. It concluded that while child marriage existed within cultural and religious contexts in countries such as Jordan, Turkey, Lebanon, Syria and Iraq prior to the war, the conflict lent its hand to the decline in decrease in a child’s age to well under eighteen years of age (ICMPD, 2015). In 2014, Turkey’s Disaster and Emergency Management Authority (AFAD) released a report indicating that 14% of Syrian refugees in the country aged 15-18 years old were married (AFAD, 2014). Moreover, “ISIL has also abducted thousands of Yezidi women and girls from Iraq and forcibly brought them to Syria to sell in human trafficking rings or to provide to fighters where they experience forced marriage, domestic servitude, systematic rape, and sexual violence” (Department of State, 2015).

Further, UNICEF’s country data report highlights Middle Eastern and North African countries with excessive percentages of individuals married prior to the age of eighteen. As of 2010, 32% of women aged 20 to 24 in Yemen were child brides; however, by 2013 this number increases to nearly 52% (Roudi-Fahimi, 2010; ICMEC, 2013). Palestine, Egypt, Iraq, Morocco, Syria, Lebanon and Jordan were included with the percentage of women between this age range married before age eighteen ranging from 10-19% (2010). Egypt engages in the particularly disturbing practice of ‘temporary marriages.’ Using the term *marriage* as a disguise for human trafficking, the child bride market is booming as a result of children sold into so-called pleasure marriages lasting merely a few days, weeks or months ultimately circumventing restrictions Islamic law places on pre-marital sex (ICMEC, 2013). This sort of industry emerged as a result of social and political instability and sustained by desperate families with few alternatives (2013; Fadel, 2016).

Forced Labor

The influx of displaced peoples within the regions highlighted in this paper has significantly contributed to the dramatic increase of reported cases of forced labor. In general, 600,000 *known* individuals are victims of forced labor in the Middle East, while 3.7 million are victimized in Africa as of 2012 (ILO, 2012). With relation to the Syrian conflict, the following has been noted:

Labour exploitation in neighbouring countries has risen, as Syrian refugees are forced to accept lower wages and exploitative practices due to a lack of alternatives for decent work. In turn, refugees and IDPs have been brought into competition with migrant workers for the lowest-paid, highest risk jobs in the informal sector, and in turn into closer contact with established trafficking networks (Brief Paper #04, 2017).

Additionally, the Syrian conflict and subsequent increase in refugees in neighboring countries of Jordan, Iraq, Turkey and Lebanon has directly impacted the rise in victims of forced labor – many of whom are children. In 2016, the Bureau of International Labor Affairs reported 3.3 million children engaged in child labor activities in the Middle East and North Africa (ILAB, 2016). The ICMPD (2015) indicates the high prevalence of forced begging by refugees, largely the result of an inability to legally work within the country.

In an IOM report, it is said that migrants along with Central Mediterranean Route through North Africa are seven to ten times more likely to face exploitation and/or abuse than migrants entering Europe via Turkey (IOM, 2017). Refugees and migrants are oftentimes kidnapped and held in captivity until a specified ransom is paid to traffickers (Dearden, 2016). Those unable to pay are subjected to torture and forced labor (2016). Individuals are “...shuttled between middlemen and “brokers” for forced labour on construction sites or farms, and were locked up in warehouses at night, until they paid their way out of captivity” (2016). Italian authorities have indicated a 300% year-on-year increase in trafficking victims, mostly those from Nigeria utilizing the Central Mediterranean Route (Rankin, 2016).

Organ Trafficking

The illegal organ trade is also on the rise. According to Global Financial Integrity, organ trafficking is an \$840 million to \$1.7 billion industry (Transnational Crime and the Developing World Report, 2017). The current trend in this realm is founded in the exploitation of individuals living under illegal status or otherwise unable to legally work. In fact, it is reported that, “...the Middle East is becoming a “hot spot” in international organ trade, where the influx of refugees desperate to earn money is providing a new market for brokers, shifting focus from China and the Philippines...” (Mis, 2017).

Consider, as of 2017, Syrians accounted for nearly a quarter of the population of Lebanon (Mis, 2017). An estimated 70% of refugees in Lebanon live at or below the poverty line and those who reside in Lebanon illegally (those that lack official refugee status) cannot legally work in the country (2017). In an interview with Abu Jaafar, a trafficker operating out of a coffee shop in Beirut indicates he has arranged the sale of organs from thirty refugees over the span of three years. This includes the sale of a 17-year-old boy’s kidney motivated by the \$8,300 received to pay off debts and support mother and sisters (2017).

A study conducted by doctors, Katherine Marsh, Alice Ferng, Robert Harland and Zain Khalpey (2017) “the number of living [organ] donors in Turkey increased by 317% between 2005 ... [and] ... 2015.” Additionally, the years 2011 to 2013 saw a 68% increase in living donors in Lebanon (2017). Ultimately, the research indicated a significant correlation between substantial increase in living donors and the influx of Syrian refugees within the region (2017). Additionally, according to the ICMPD, Syrian refugees have been subjected to forced blood donations as well as the forcible removal of organs (Brief Paper #04, 2017). The illegal removal of organs are generally conducted by armed groups and utilized to either profit from sale on the black market or to replenish the group’s medical stocks (2017).

Egypt and Libya remain organ trafficking hubs on the African continent as each country possess strategic geographic advantages that draw refugees and migrants with hopes of passage to Europe (Giorgis, 2017). Reports of human smugglers – turned

traffickers – accepting organs as payment in Libya for smuggling operations into Europe have emerged (2017). Additionally, traffickers operating out of Egypt are reportedly mutilating the bodies of migrants, brutally removing organs and ultimately dumping the corpses in a mass graves in the deserts of North Africa (2017). The bodies found are typically migrants hailing from East African countries such as Sudan, Ethiopia and Eritrea, indicating migration travel along the East African route to the Mediterranean Sea (2017).

International Instruments to Monitor and Stem On-Going Challenges

In March 2016, the European Union (EU) and Turkey arrived at a deal designed to manage the human trafficking and smuggling operations resulting in a massive migrant crisis affecting the EU. The agreement aimed to remove traffickers and smugglers' incentive to exploit desperate migrants by seeking alternative and dangerous routes by ending irregular migration from Turkey to the EU (M2 Presswire, 2016). This policy simply stated that any irregular migrant arriving in Europe would be immediately sent back to Turkey and in exchange, for every individual relocated to Turkey from the Greek Islands, the EU would admit one Syrian refugee (2016). The EU-Turkey deal initially revealed a paradox for the European Union nations who have projected high asylum standards for several decades. That is, in order to achieve its goal of significantly reducing arrivals and increasing returns to Turkey, officials would have to radically cut legal corners, thus violating EU law on issues such as detention and the right to appeal, killing the deal from the outset (Coulette). However, migration from Turkey to Greece in fact dropped drastically from approximately 57,100 in February 2016 to less than 3,700 by April. This led to deeper cooperation between—European and North African nations to try and further reduce maritime migration to Europe and outsourcing its management by 2017 (Hooper).

Endorsed by the EU, Italy signed a memorandum of understanding (MOU) with Libya on border management, illegal immigration, human trafficking, and development promising to provide financial and technical support to Libya's UN-backed Government of National Accord (GNA), including assistance for sea patrols, southern border reinforcements, migrant detention centers run by the Libyan Ministry of the Interior, and development projects along key migration routes. (Hooper).

Likewise, Germany signed a deal with Tunisia to facilitate the return of failed asylum seekers and provide 250 million euros (US \$298 million) in development assistance for those who might otherwise migrate as well as a deal with Egypt in August 2017 to jointly tackle illegal immigration and migrant smuggling. Similarly, resources were earmarked for a center to provide “jobs, migration, and reintegration” in Egypt helping prospective and returning migrants find work. During the same period France held a mini-summit with the leaders of Germany, Italy, and Spain and their counterparts from Chad, Libya, and Niger to coordinate efforts to reduce migration through Libya and across the Mediterranean (Hooper).

Clearly, the political will is there to at best create better conditions in migrant's home state. Success at doing so is undermined however by on-going conflict and socio-economic conditions not easily remedied by development assistance.

Tackling the Problem Domestically and Internationally: The United States

The human trafficking problem gained attention in the United States and worldwide in the late 1990s when Clinton's announced his International Crime Control

Strategy, an interagency working group established to address international crime implications of trafficking. On March 11, 1998, President Clinton issued a directive establishing a U.S. government-wide anti-trafficking strategy of (1) prevention, (2) protection and support for victims, and (3) prosecution of traffickers. It led to enactment of the *Victims of Trafficking and Violence Protection Act of 2000* (P.L. 106-386) providing the first definition of human trafficking in the United States, creating new prosecution tools and providing victim services.

On February 13, 2002, President Bush signed an Executive Order establishing an Interagency Task Force to Monitor and Combat U.S. Trafficking in Persons and issued its first Congressionally mandated report on worldwide trafficking, *The Trafficking in Persons Report* in July 2001 which monitors human trafficking and global efforts to address each element of the problem on a yearly basis. According to the last Report over 10,000 investigations, arrests, prosecutions, and/or convictions of human trafficking cases have taken place in the 150 countries covered by the Reports. The Report rates countries according to whether they meet “minimum standards” with regard to their anti-trafficking commitment and policies. Governments meeting “minimum standards” are defined in the Trafficking and Violence Protection Act of 2000 (P.L.106-386) as those that: (1) prohibit and punish acts of trafficking; (2) prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault, for the knowing commission of trafficking in some of its most reprehensible forms (trafficking for sexual purposes, trafficking involving rape or kidnapping, or trafficking that causes a death); (3) prescribe punishment that is sufficiently stringent to deter, and that adequately reflects the offense’s heinous nature; and (4) make serious and sustained efforts to eliminate trafficking.

Since 2003 countries that didn’t cooperate in the fight against trafficking faced US sanctions, including termination of non-humanitarian, non-trade-related assistance and loss of U.S. support for loans from international financial institutions, specifically the International Monetary Fund and multilateral development banks such as the World Bank. Sanctions may be imposed if such countries have not improved their performance by the date by which the President is required to make a determination. In order to rank countries, a Tier system was created for countries in order to monitor progress in taking legal measures to comply with the TVPA protocols.

As of 2017, the following countries were categorized in Tier systems. Tier 1 is made up of countries deemed by the State Department to have a serious trafficking problem whose governments fully comply with the Trafficking Victims Protection Act’s (TVPA) minimum standards for the elimination of trafficking.

Tier One: Fully Compliant

Armenia, Australia, Austria, The Bahamas, Belgium, Canada, Chile, Colombia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Guyana, Ireland, Israel, Italy, South Korea, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, St. Maarten, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, United Kingdom, United States of America

Tier 2 countries (now over 80) are those countries whose governments the State Department views as not fully complying with those standards but making “significant efforts to bring themselves into compliance.”

Tier Two: Not Fully Compliant

Afghanistan, Albania, Angola, Argentina, Aruba, Azerbaijan, Bahrain, Barbados, Bhutan, Bosnia & Herzegovina, Botswana, Brazil, Brunei, Cambodia, Costa Rica, Cote d'Ivoire, Croatia, Curacao, Cyprus, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Fiji, Greece, Honduras, Iceland, India, Indonesia, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kosovo, Kyrgyz Republic, Latvia, Lebanon, Lesotho, Macedonia, Malawi, Malaysia, Maldives, Malta, Mauritius, Mexico, Micronesia, Mongolia, Morocco, Namibia, Nepal, Palau, Panama, Paraguay, Peru, Qatar, Romania, St. Lucia, St. Vincent & The Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Tajikistan, Tanzania, Timor-Leste, Togo, Tonga, Trinidad & Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, Uruguay, Vietnam

The Tier 2 Watch list are those countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards, AND: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or, c) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

Tier Two Watch List

Algeria, Antigua & Barbuda, Bangladesh, Benin, Bolivia, Bulgaria, Burkina Faso, Burma, Cabo Verde, Cameroon, Chad, Cuba, Djibouti, Gabon, The Gambia, Ghana, Guatemala, Haiti, Hong Kong, Hungary, Iraq, Kuwait, Laos, Liberia, Macau, Madagascar, Marshall Islands, Moldova, Montenegro, Mozambique, Nicaragua, Niger, Nigeria, Oman, Pakistan, Papua New Guinea, Rwanda, Saudi Arabia, Senegal, Serbia, Suriname, Swaziland, Thailand, Zambia, Zimbabwe

Tier 3 Countries are categorized as those governments who do not fully comply with the minimum standards and are not making significant efforts to do so.

Tier Three

Belarus, Belize, Burundi, Central African Republic, China (PRC), Comoros, Congo, Democratic Republic of Congo, Republic of Equatorial Guinea, Eritrea, Guinea, Guinea-Bissau, Iran, North Korea, Mali, Mauritania, Russia, South Sudan, Sudan, Syria, Turkmenistan, Uzbekistan, Venezuela

The United States and other countries have also initiated bilateral and multilateral programs and initiatives to combat trafficking. The United States is working with the European Union, the Group of Eight, the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and a number of individual countries to combat trafficking in women and children (in particular).

Other International legal instruments include The International Labor Organization (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor was ratified by United States in December 1999. The Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography was signed by the United States July 2000 and ratified in December 2002.

At the international level, a number of UN agencies and regional programs deal with many aspects of human trafficking. The U N Office on Drugs and Crime (UNODC) as noted above, acts as the guardian of the UN Protocol against trafficking in persons. The United Nations Children's Fund (UNICEF) promotes the protection of children from violence, abuse and exploitation – and also deals with Child Soldiers. The International Labor Organization (ILO) promotes protection against forced labor child labor and the International Organization for Migration-IOM, promotes the protection of migrant workers. The Office of the High Commission of Human Rights OHCHR is the custodian of the anti-slavery legal instruments. And the Organization for Security and Co-operation in Europe (OSCE) fights human trafficking in its region.

Furthermore, since 2006 a broad range of activities and partners have been coordinated through the Inter-Agency Cooperation Group against Trafficking in Persons (ICAT). The European Union (EU) and UNODC have launched the Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants (GLO.ACT). A four-year joint initiative between the EU and UNODC, GLO.ACT will be implemented in partnership with the International Organization for Migration (IOM) and the United Nations Children's Fund (UNICEF) through to 2019.

Enforcement of international instruments addressing human trafficking is only effective and efficient when incorporated into regional and domestic legislation. While both have been developed to address the issue of human trafficking such as the United States Victims of Trafficking and Violence Protection Act (2000), the Council of Europe Convention on Action against Trafficking in Human Beings (2008), and the European Convention for the Protection of Human Right and Fundamental Freedoms (1950), the blurring of perceptions' when dealing with mass movements lends itself to single, more generic solutions that 'manage' rather than solve the problem. Moreover, anti-trafficking laws are difficult to enforce because of the fear of repercussions instilled in victims of trafficking. As is clear here, trafficking is a crime that transcends borders, and thus jurisdictions, necessitating the means and wherewithal to convict and sentence traffickers. The costs are high and the process complex where several laws are violated alongside trafficking protocols. Moreover, it is difficult to build a case against traffickers and in countries where resources are limited it'd even more complicated (King).

According to the 2016 Global Report on the Trafficking of Persons from 2012-2014, more than 500 different trafficking flows were detected and countries in Western and Southern Europe detected victims of 137 different citizenships. In response to the increase in various forms of trafficking, the number of countries criminalizing most forms of trafficking (as set out in the UN Trafficking in Persons Protocol) grew from 33 in 2003 to 158 in 2016. However, the average number of convictions remains low. Migration patterns have made this an even more onerous task (UNDOC).

Conclusion

Ultimately, the existence of unprecedented rates of mass migration under crisis conditions has resulted in the introduction and implementation of laws that essentially require migrants to seek unofficial and irregular means of transport. The reality of forcing refugees and migrants seeking refuge underground is significantly increased vulnerability and opportunities for exploitation. Desperation, coupled with opportunistic criminals results in sexual exploitation, forced labor, illegal trafficking of organs and the recruitment of children into combatant roles. Addressing increasing layers of human

vulnerability and insecurity requires the combined actions, forces and legal and enforcement instruments of both domestic and international law.

References

- AFAD. (2014). Syrian Women in Turkey. *Disaster and Emergency Management Authority*. Retrieved from https://www.afad.gov.tr/upload/Node/17935/xfiles/afad-suriye-kdn_eng_1.pdf
- Awad, Z. (2013). Sexual violence against women during displacement. *The London School of Economics and Political Science*. Retrieved from <http://blogs.lse.ac.uk/mec/2017/12/22/sexual-violence-against-women-during-displacement/>
- Aresnijić, J., Schillberg, E., Pontheiu, A., Malvisi, L., Elrahman Ahmed, W. Argenziano, S., ... Zachariah, R. (2017). A crisis of protection and safe passage: Violence experienced by migrants/refugees travelling along the Western Balkan corridor to Northern Europe. *Conflict and Health*; 11: 1-9. DOI: 10.1186/s13031-017-0107-z
- Alexandridis, A. (2017). Routes change, migration persists: The effects of EU policy on migratory routes. *Alsharq Forum*. Retrieved from <http://www.sharqforum.org/2017/03/28/routes-change-migration-persists-the-effects-of-eu-policy-on-migratory-routes/>
- Annan, K. A. (2003). Secretary-General's Bulletin: Special measures for protection from sexual exploitation and sexual abuse. *United Nations Secretariat*. ST/SGB/2003/13. Retrieved from <https://undocs.org/ST/SGB/2003/13>
- BILA. (2016). 2016 Findings on the worst forms of child labor: Middle East & North Africa. *Bureau of International Labor Affairs*. Retrieved from <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/middle-east-north-africa>
- Brief Paper #04. (2017). Trafficking in mixed migration flows: Exploitation of refugees and other migrants in the Middle East and Europe. *Mixed Migration Platform*. Retrieved from http://regionalmms.org/mena/MMP_Briefingpaper%20Trafficking%20in%20Mixed%20Migration%20Flows.pdf
- Conant, E. (2015). The world's congested human migration routes in 5 maps: Europe is not the only part of the world facing a refugee crisis. *National Geographic*. Retrieved from <https://news.nationalgeographic.com/2015/09/150919-data-points-refugees-migrants-maps-human-migrations-syria-world/>
- Dearden, L. (2016). Refugees being forced into 'modern slavery' by people traffickers before attempting deadly journey into Europe. *Independent*. Retrieved from <https://www.independent.co.uk/news/world/africa/refugee-crisis-migrants-libya-europe-eu-italy-abuse-torture-slavery-forced-labour-iom-report-msf-a7366361.html>
- Department of State. (2015). Syria. *U.S. Department of State*. Retrieved from <https://www.state.gov/j/tip/rls/tiprpt/countries/2015/243543.htm>
- Fact Sheet. (2017). Human trafficking & migrant smuggling: Understanding the difference. *U.S. Department of State*. Retrieved from <https://www.state.gov/j/tip/rls/fs/2017/272005.htm>
- Fadel, L. (2016). Does Egypt's law protect 'short-term brides' or formalize trafficking? *NPR*. Retrieved from

- <https://www.npr.org/sections/parallels/2016/02/01/463708687/does-egypts-law-protect-short-term-brides-or-formalize-trafficking>
- Fleming, M. (2015). Crossings of Mediterranean Sea exceed 300,000 including 200,000 to Greece: The Mediterranean Sea continues to be the deadliest route for refugees and migrants. *UNHCR The UN Refugee Agency*. Retrieved from <http://www.unhcr.org/en-us/news/latest/2015/8/55e06a5b6/crossings-mediterranean-sea-exceed-300000-including-200000-greece.html>
- Giorgis, D. W. (2017). Organ trafficking and migrants from Africa. *Africa Institute for Strategic and Security Studies*. Retrieved from <http://www.africaiss.org/files/Organ%20Trafficking%20and%20%20Migrants%20from%20Africa.pdf>
- Haid, H. (2015). Visa requirements for Syrians: Lebanon continues to destabilize. *Heinrich Böll Stiftung: Middle East*. Retrieved from <https://lb.boell.org/en/2015/05/05/visa-requirements-syrians-lebanon-continues-destabilize>
- Haile, R. (2017). Libya's slave trade didn't appear out of thin air. *Pacific Standard*. Retrieved from <https://psmag.com/social-justice/understanding-libyas-slave-trade>
- HRC. (2016). Report of the special rapporteur on trafficking in persons, especially women and children. *Human Rights Council*. Retrieved from <https://reliefweb.int/sites/reliefweb.int/files/resources/G1609048.pdf>
- HRW. (2015). Smuggling and trafficking human beings: Questions and answers. *Human Rights Watch*. Retrieved from <https://www.hrw.org/news/2015/07/07/smuggling-and-trafficking-human-beings>
- ICMEC. (2013). Child marriage in the Middle East and North Africa: A white paper. *International Centre for Missing and Exploited Children*. Retrieve from https://www.icmec.org/wp-content/uploads/2015/10/Child_Marriage_in_the_MENA_Region.pdf
- ICMPD. (2015). Targeting vulnerabilities: The impact of the Syrian War and Refugee Situation on trafficking in persons: A study of Syria, Turkey, Lebanon and Iraq. *International Centre for Migration Policy Development*. Retrieved from https://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD_General/Publications/2016/Targeting_Vulnerabilities_EN_SOF_T.pdf
- ILO. (2012). Statistics on forced labour, modern slavery and human trafficking. *ILO*. Retrieved from <http://www.ilo.org/global/topics/forced-labour/policy-areas/statistics/lang--en/index.htm>
- ILO. (2017). Global estimates of modern slavery. *ILO*. Retrieved from http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf
- IOM. (2016). Mediterranean human trafficking and exploitation prevalence survey. *International Organization for Migration*. Retrieved from <https://www.iom.int/news/mediterranean-human-trafficking-and-exploitation-prevalence-survey-iom>
- IOM. (2017). IOM learns of 'slave market' conditions endangering migrants in North Africa. *International Organization for Migration*. Retrieved from

- <https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa>
- Marsh, K., Ferng, A., Harland, R. C., & Khalpey, Z. I. (2017). Dehumanizing wartime refugees: Global impact of organ trafficking. *Journal of the American College of Surgeons*, 225(4): S100-S101. <https://doi.org/10.1016/j.jamcollsurg.2017.07.220>
- McApline, A., Hossain, M., & Zimmerman, C. (2016). Sex trafficking and sexual exploitation in settings affected by armed conflicts in Africa, Asia and the Middle East: Systematic review. *BMC International Health and Human Rights*, 16: 1-16. DOI: 10.1186/s12914-016-0107-x
- Mis, M. (2017). Organ trafficking 'booming' in Lebanon as desperate Syrians sell kidneys, eyes: BBC. *Reuters*. Retrieved from <https://www.reuters.com/article/us-mideast-crisis-syria-trafficking/organ-trafficking-booming-in-lebanon-as-desperate-syrians-sell-kidneys-eyes-bbc-idUSKBN17S1V8>
- Nebehay, S. (2018). Thousands of women, men, children raped in Syria's war: U.N. report. *Reuters*. Retrieved from <https://www.reuters.com/article/us-mideast-crisis-syria-warcrimes-sexual/thousands-of-women-men-children-raped-in-syrias-war-u-n-report-idUSKCN1GR1PZ>
- O'Toole, M. (2018). Nigerians return from slavery in Libya to thriving sex-trafficking industry back home. *The Washington Post*. Retrieved from https://www.washingtonpost.com/world/africa/nigerians-return-from-slavery-in-libya-to-thriving-sex-trafficking-industry-back-home/2018/01/19/b4bcffa0-e4d4-11e7-927a-e72eac1e73b6_story.html?noredirect=on&utm_term=.ef8bc8c8dfce
- OHCHR. (2014). Child, early and forced marriage, including humanitarian settings. *United Nations Human Rights Office of the High Commissioner*. Retrieved from <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx>
- OWFI. (2010). Prostitution and trafficking of women and girls in Iraq. *Organization of Women's Freedom in Iraq*. Retrieved from http://www.peacewomen.org/assets/file/Resources/NGO/dispvaw_prostitutiontraffickingiraqwomen_owfi_march2010.pdf
- Paris Principles. (2007). The Paris principles: Principles and guidelines on children associated with armed forces or armed groups. *UNICEF*. Retrieved from <https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>
- Protocol. (2000). Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention Against Transnational Organized Crime. *United Nations Office on Drugs and Crime*, p. 1-14. Retrieved from https://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf
- Protocol. (2003). Part Two: Legislative guide for the implementation of the protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime. *United Nations Office on Drugs and Crime*, p. 243-317. Retrieved from https://www.unodc.org/pdf/crime/legislative_guides/03%20Legislative%20guide_Trafficking%20in%20Persons%20Protocol.pdf
- Rankin, J. (2016). Human traffickers 'using migration crisis' to force more people into slavery. *The Guardian*. Retrieved from

- <https://www.theguardian.com/world/2016/may/19/human-traffickers-using-migration-crisis-to-force-more-people-into-slavery>
- Reuters Staff. (2016). Mediterranean death toll is record 5,000 migrants this year: agencies. *Reuters*. Retrieved from <https://www.reuters.com/article/us-europe-migrants-toll/mediterranean-death-toll-is-record-5000-migrants-this-year-agencies-idUSKBN14C0YL>
- Roudi-Fahimi, F. (2010). Child marriage in the Middle East and North Africa. *PRB*. Retrieved from <https://www.prb.org/menachildmarriage/>
- The Meanings of Forced Labor. (2014). The meanings of forced labor. *International Labour Organization*. Retrieved from http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang--en/index.htm
- Trafficking in Persons Report. (2016). Letter from Secretary Kerry. *U.S. Department of State*. Retrieved from <https://www.state.gov/j/tip/rls/tiprpt/2016/258685.htm>
- Transnational Crime and the Developing World. (2017). Transnational crime and terrorist financing. *Global Financial Integrity*. Retrieved from <http://www.gfintegrity.org/issue/transnational-crime-terrorist-financing/>
- UNICEF. (2018). Child marriage: Latest trends and future prospects. *UNICEF*. Retrieved from <https://data.unicef.org/wp-content/uploads/2018/07/Child-Marriage-Data-Brief.pdf>

The Military Leadership of Alexander the Great

Professor Mark R. Polelle

University of Findlay

Alexander the Great (356--323 BC) is known for being one of the greatest military conquerors in history. He became king of Macedonia in northern Greece in 336 BC after the assassination of his father. He united his divided subjects by leading them into a major war against the Persian empire. His military exploits during this campaign are legendary. What made them lasting was Alexander's willingness to work with the defeated Persians to make sure his cultural Hellenization of Asia long outlasted the formal empire he won in his own brief lifetime.

Alexander the Great was not born great. He---like any leader---had to make himself so using all the internal and external resources available to him. Alexander became great for three reasons. First, he came to believe in an empowering myth about himself, namely, that he was related to the Gods (in particular, Achilles and Zeus himself). Second, he mastered the art of war as no one has done before or since (he died undefeated, after all). Third, he adhered to a grand vision of uniting the *oikomene*, or known civilized world, under enlightened Greek rule. Fourth, he radiated a sense of powerful charisma that allowed him to push his army to the ends of the earth against all odds. These strengths, when combined in mature form, yield the Alexander the Great of history, a man who led from the front and shared hardship and triumph firsthand with his men.

His birth to Philip II of Macedonia and Olympias was not an unalloyed blessing to the status quo. The father was domineering and unclear about whether he would leave his kingdom to Alexander after his death. During Alexander's youth, a political issue for Greece was whether the fractious polis-loving Greeks would accept the overlordship of the less cultured but more militarily powerful Macedonians. As he worked to understand the nature of politics and formulate his own worldview, Alexander was lucky to have as his tutor Aristotle himself (known as "The Philosopher" in the Christian Middle Ages). Alexander, no doubt, learned from the author of the immortal *Politics* that a man's highest achievement was to engage successfully with the affairs of the polis or state and emerge triumphant as a statesman in his own right. Alexander's education was rounded off by his love for Homer's *Iliad*, which for him became a veritable bible. Alexander was inspired to emulate the heroism of Achilles, the great warrior who slew the Trojan warrior Hector and thus hastened the demise of the great city of Troy. All great leaders must find mentors or heroes to emulate at some time in their lives. Alexander was smart enough to learn from his father, Aristotle, and Homer without losing his own sense of individuality.

Alexander came of age as a man when he led the left wing of Philip's army against the Greeks at the battle of Chaeronea in 338 BC. The Macedonian army combined the virtues of the disciplined and heavy infantry of the Greeks with the powerful cavalry that was easily raised in pasture-rich Macedonia. The Macedonian phalanxes were also armed with the powerful twelve-foot plus pikes called sarissas. Having proved his mettle in battle by successfully leading the Macedonian cavalry at Chaeronea, Alexander's attention came to focus on domestic affairs in the full sense of the term. His father's remarriage raised new questions about how the succession of power would work after his father's death. When his father was assassinated in 336 BC, many naturally wondered if Alexander himself had any role in the killing. Historians are still divided over his precise role, if any, in the assassination. If Alexander had been

involved, surely he would have rationalized the killing a necessary step toward the fulfillment of his divine destiny. Besides, such royal patricides were sadly par for the course in such dynastic-monarchical systems.

Why would Persia be the target of Philip and Alexander after his father's death? Both were well aware of the Persian attacks on Greece in the fifth century BC. The Persians had gone so far as to burn Athens before being repelled by the temporarily united Greeks under the leadership of Athens and Sparta. While Philip probably had revenge and booty as a motivation for attacking the Persians to the East, Alexander had a grander vision: uniting the known *oikumene* under enlightened Greek rule. Unlike his father, Alexander would try to conquer history itself by waging a war to end all wars and stop the cycle of the perpetual rise and fall of empires. While it is too romantic to believe that Alexander wished to unite East and West in egalitarian fashion, it is too cynical to dismiss altogether Alexander's vision of achieving some form of enlightened Greek hegemony over the rest of the known world. Before this fantastic vision could be realized, Alexander had to deal with doubts about him among his own people and the Greeks to the South. Alexander used force to end such doubts when he ruthlessly repressed revolts in the wake of his accession to power. Therefore, when the Egyptian colony of Thebes left the Macedonian-controlled Greek union, he had little compunction about putting some six thousand of its inhabitants to death.

By crossing over the Hellespont into Anatolia (what is today modern Turkey), Alexander inaugurated a ten-year period of full-time warfare against a variety of enemies to the East. The story of Alexander's solution to the conundrum presented by the famous Gordian Knot is emblematic of his leadership style. It was said that whoever untied the knot would win Asia. Alexander, of course, "thought outside the box" by directly slicing through the knot with his sword. While Alexander's entry into Asia (a land of barbarians, so named because these easterners spoke gibberish sounding like "bar-bar" according to the dismissive Greeks) was auspicious enough, the odds did not necessarily favor Alexander for the duration of the campaign. If God favors those with the bigger divisions, Alexander entered Anatolia at a disadvantage given that his army consisted only of some forty thousand infantry and some five thousand cavalymen. As Victor Davis Hanson and other historians have shown, however, the Persians also had major weaknesses. Whereas Alexander's army consisted of men who were motivated to fight as free men, the Persian army relied heavily on mercenaries and troops that were not as self-motivated as the Greeks. Indeed, at the opening battle of Granicus (in which he first engaged his Persians), Alexander's main challenge was to defeat fellow Greeks who were the mercenary backbone of the Persian empire. Nonetheless, the Persians were not a force to be dismissed. They had nearly devoured Greece before. Up until Alexander, the Persians had kept war largely on Greek soil. Still, Granicus was won because of Alexander's boldness in going right after the enemy's strongpoint. Once this center of gravity fell, so too did the morale of the rest of the Persian army.

Alexander's conduct during the course of a battle was something to behold. Biographers from Arrian to John Keegan, all rightly highlight Alexander's ability to continually lead while in the thick of battle. He had an amazing ability to fuse himself with the goings-on of the battlefield to such an extent that he appeared to lose the capacity for fear. Time and again in battle, his horse would be killed, his personal armor all but destroyed, and his helmet made useless, but Alexander continued to fight. He

was, by all accounts, a natural warrior who lost all sense of self on the battlefield and reacted instinctively to war without fear or doubt slowing his response. As he made his way through what is today the Middle East, Afghanistan, and India, he revealed a darker side to his personality. He may very well have killed his boon companion Cleitus after a bout of heavy drinking in 329 BC, he engaged in a titanic struggle of will with his independent-minded troops (they were Greeks after all) as to whether to go home or continue advancing eastward.

The boldness of Alexander is illustrated in an anecdote concerning the General Parmenio's advice to Alexander that the conqueror accept a compromise peace with the Persian emperor after Alexander's initial victories. Parmenio allegedly said of such a peace, "I would take that offer, if I were Alexander." To which Alexander replied, "And so would I if I were Parmenio." Alexander's negative qualities were but the flip side of his excellent ones. As with so many great leaders of history, if one were to strip the great leader of his bad qualities, one would denude him of all that made him excellent at the same time. One wonders too whether Alexander's bouts of drunkenness and arbitrariness were themselves artifacts of the very same leadership style that Alexander had long cultivated in his attempt to emulate the unpredictability of the Greek gods themselves.

Alexander, time and again, was able to recover the loyalty of his followers no matter what the crisis. Arrian recounts a speech of Alexander's that gives us at least a faint idea of his ability to use persuasion as well as force to win over his followers. To spur his men on yet again in his decade-long campaign, Alexander at one point stated: "I could not have blamed you for being the first to lose heart if I, your commander, had not shared in our exhausting marches and your perilous campaigns; it would have been natural enough if you had done all the work merely for others to reap the reward. But it is not so. You and I, gentlemen, have shared the labor and shared the danger, and the rewards are for us all." Here, I think lies the key to Alexander's leadership: he was willing to undergo any of the risks that he asked his followers to take. When he died in Babylon in 323 BC, he was just thirty-two.

If he had been merely a military conqueror, our remembrance of him might be a bit more jaundiced. However, unlike commanders up to that point, he was not merely conquering for the sake of pride, booty, and pleasure. His marriage to Roxanne (a non-Greek), his ordering of Macedonians to marry Persian women, his founding of great cities in his newly conquered territories all bespeak of a man who was trying to make something long-lasting of his conquests. While Greek hegemony over the oikoumene may never have been as enlightened or benign as Alexander and his hagiographers imagined, it was the superior to alternatives available at the time. Alexander was thus not a mere self-aggrandizing butcher. He was a builder who planted the idea that all civilizations could be eventually united under a common cosmopolitan civilization while preserving their local diversity. Isn't that what we are still struggling to achieve today? Indeed, the worst thing that can be said about Alexander as a leader is that in struggling so mightily to master the world, he forgot to master himself and his superhuman desires along the way.

A Teaching Case Study on Diesel Gate –
Restoring Trust after the Volkswagen Emission Scandal

Joshua Zender
Humboldt State University

Introduction

This case examines the Volkswagen (VW) diesel emission scandal. Until the scheme gained widespread attention in 2015, Volkswagen had misleadingly branded their cars as clean diesel. This story of deliberate corporate malfeasance is full of many lessons for the accounting profession, highlighting the importance of effective corporate governance, organizational culture, and internal controls. The facts of the case are drawn primarily from national media coverage, court documents, and disclosures made by the company post-crisis. An underlying goal of this case study is to help students contemplate how management accounting principles could help VW restore their value proposition.

Overview

In the Fall of 2015, Volkswagen's brand image was significantly tarnished amid allegations the company had installed software to deceive stringent United States emission control standards. The German carmaker would later admit to installing this software on eleven million vehicles. While diesel engines inherently emit less carbon dioxide, they are predisposed to produce much more nitrogen oxides (NOx) than gas powered vehicles. As opposed to removing NOx out of the exhaust, VW vehicles emitted over 40,000 tonnes of this toxic gas, 40 times the amount permitted by law. NOx is a dangerous toxin contributing to global warming and smog in large cities. According to the U.S. EPA, studies connect chronic bronchitis, asthma, and cancer to high exposure to NOx. The Clean Air Act of 1990 aimed to curb these types of adverse effects and improve air quality.

About Volkswagen

Volkswagen was founded in the 1930's as Germans sought to design the people's car. In the 1960s, the VW Beetle and Bus became immortalized into popular culture. Today, the company sells passenger cars, such as the Beetle, Passat, Jetta and Golf, across all major markets of the world, including Western Europe, the U.S., China, and Brazil. Through various mergers and acquisitions, the VW Group also controls Audi, Bentley, Porsche, and other recognizable brands. Like other big automakers, considerable revenue is generated from the company's financial services and leasing unit. In 2014, the VW Group surpassed Toyota as the largest global automaker; only to fall from this distinguished ranking a few months after the scandal broke.

Background

Despite having a dominant presence in promoting diesel vehicles in Europe, most of the company's revenue comes outside of Western Europe (Annual Report, 2016, p. 23). In 2005, the German automaker made a major strategic effort to sell their diesel cars in America lauding their cars' low emission standards. Despite knowledge of the cheat devices, VW touted their diesel vehicles as more environmentally friendly than Toyota's hybrids. Many U.S. consumers were attracted to the company's product as result of these "green" claims. In reality, the company's representations were completely false. Unbeknownst to U.S. regulators, the engine basically went into economy mode under test conditions. Scientists at West Virginia University (WVU)

were the first to detect the discrepancy in the United States. WVU's Center for Alternative Fuel Engines and Emissions found the Jetta, as one example, produced as much NOx as a "modern long-haul diesel truck" (Ewing, 2017, p. 3). Based on their findings, the California Air Resources Board (CARB) conducted their own review into the company's practices notifying the U.S. EPA shortly thereafter. On September 18, 2015, the EPA announced VW had installed cheat-devices on seven American car models and ordered the company to recall over 600,000 vehicles.

Financial Impact

Public outcry and on-going news reports of irregularities in the diesel engine's software resulted in steep drops in the prices of VW's stock price (see Appendix A). Shares lost over 30% of their value, €26 billion, and the company was removed from the Dow Jones STOXX ESG Leaders 50 index, a listing of companies seen as exemplars of sustainability and governance. In the following months, the company would report its first quarterly losses in fifteen years. According to Kelly Blue Book, VW vehicles value declined on average up to \$10,000. Volkswagen dealers and its financial service unit would set-aside about "\$495 million as insurance against possible losses from leased cars" (Ewing, 2017, p. 220).

In addition to market value losses, the company faced significant legal fines and settlements. Over \$16 billion would be set-aside to pay for over 500,000 vehicle fixes or consumer buybacks related to the scandal. Of this amount, approximately \$10 billion dollars represents the settlement of class-action civil lawsuits among aggrieved motorists (VW Annual Report, 2016, p. 53). "Once all the fines, compensation claims, lawsuits and recall costs have been added up, this debacle could be to the German carmaking giant [a deliberate act] what Deepwater Horizon was to BP [an accident]" (Dirty Secrets, 2015).

Catalysts of the Crisis

Here is an overview of some of the key factors contributing to this global scandal:

Aggressive Leadership Style

Ewing's (2017) research finds the VW's board was dominated by the Porsche-Piech families. Former chief executive Ferdinand Piech served as Chairman of the VW supervisory board allowing him to continue to influence company decisions. Like Steve Jobs of Apple, Piech obsessed about the details of product design. This set the tone for leaders at Volkswagen to push the technical boundaries. They advocated precision, cleaner appearances, and finer craftsmanship. "Failure to achieve a technical assignment that Piech had decided was within the realm of possibility was not an option" (p. 90). Martin Winterkorn, handpicked by Piech as the chief executive, had "penchant for yelling when anything displeased him" (p. 88). There were few checks and balances on executive decisions (p. 191).

Generous Executive Compensation Packages

Leadership of the company drove staff to meet aggressive financial targets. The larger and more profitable the company became the higher executive compensation packages grew. By 2013, Winterkorn was “one of the best-paid managers in Europe, with annual compensation of \$19 million” (p. 156). As the crisis mounted and the company incurred billions of dollars in losses, the board initially refused to cut performance bonuses of twelve managers due about \$39 million in 2015. Winterkorn, on whose watch the fraud and cover-up had taken place, received salary and bonuses of \$8 million before resigning (Annual Report, 2016).

Corporate Culture of Intimidation

Defined as the unwritten rules that govern behavior within large organizations, corporate culture is set by top executives. Ewing (2017) describes how most VW managers were not allowed to question their leadership. Piech, in particular, had created a culture of intimidation and fear; thereby, emboldening management to “behave the same toward their underlings” (p. 92). One management trainee suggested VW’s authoritarian culture of just following orders was like “North Korea without the labor camps” (p. 93). People who failed to meet performance goals could expect unrelenting public criticism from top management (p. 191). With engineers dominating decision-making within the company, areas like auditing and compliance went neglected (p. 157).

Lack of Whistleblower Protections

Prior to the appointment of Martin Winkerhorn, CEO Pischetsrieder, had attempted to implement stronger internal controls within the company and set higher standards of ethical behavior circa 1999-2006. Pischetsrieder’s goal was to create higher levels of openness and transparency whereby workers would not feel intimidated to voice concerns. Among his proposed reforms included the establishment of an “ombudsmen to whom employees could report problems” (p. 111). However, Pischetsrieder was abruptly removed from his post in 2006 and was never able to implement the internal controls that he had envisioned for the company. At the time of the scandal, VW did not yet have a system in place “that would allow an internal whistleblower to report the violation without fear of consequences” (p. 125). Consequently, no VW employee came forward as a whistleblower until after the fraud was exposed.

The Platform Strategy

While weak internal controls can help explain how the fraud was perpetuated, the product design best explains how the scandal reached a global scale. Ewing (2017) notes in the 1990’s the company’s lead engineer, introduced the “platform strategy.” The idea was that certain parts “invisible” to the customer would be shared across product lines. For example, the electric engine used to adjust the side mirrors in the Golf would be the same as the Audi. Standardization of parts increased buying power over suppliers and made repairs easier; thereby, significantly reducing costs. However, one drawback was that “if there was a problem with a component, the problem could spread like a virus through the whole company” (p. 53). In the case of a standard

emission cheat device being installed in eleven million vehicles, the financial costs multiplied greatly.

Deceptive Marketing

According to Ewing (2017), positioning VW as a car for environmentally conscious drivers helped the company position itself as an alternative to Toyota's hybrid vehicles. Starting in 2008 the company began pushing clean EA 189 diesel motors. "Even as the Green Police commercial satirized environmentalist dogma, it offered the implicit promise that people who drove diesels belonged to an elite, morally superior group" (p. 145). The commercials highlight how the company tried to convince everyone they would be ecologically virtuous if they drove their vehicles.

Inadequate Disclosures

The company missed two big opportunities to disclose potential wrongdoing to key stakeholders. In mid-2006, the engine developers realized that they had a big problem, which the U.S. EPA would certainly not certify. Ewing (2017) notes tests in VW's own labs revealed "the lean NOx trap was not capable of keeping nitrogen oxide emissions under control" (p. 119). In 2006, an internal PowerPoint on how best to beat the emission tests had been circulated among staff and the head engineer "admonished his engineers to not get caught" (p. 122).

Eight years later, an internal memo delivered a clear warning to the very highest level of management that VW had been caught and no excuses could "easily rectify the excess emissions" (p. 177). Despite mounting evidence of wrongdoing, all the proposals to fix the issue were rejected as having been too expensive. Winterkorn continued to deny the existence of the memo and ordered staff to hide information. Later, over forty employees plead guilty to destroying thousands of documents (p. 199).

The New Strategy

Under new leadership, the company pivoted to a strategy of producing battery-powered cars. From a strategic view, the company focused on improving performance in five areas to heal from the emission scandal (Annual Report, 2016, p. 54):

1. develop technical solutions to comply with environmental law
2. investigate how the crime was perpetrated
3. reorganize business units
4. adjust management practices
5. evaluate performance across the cornerstones of the organization: satisfied customers, motivated employees, excellent quality products, sustainable profitability, and ecological responsibility.

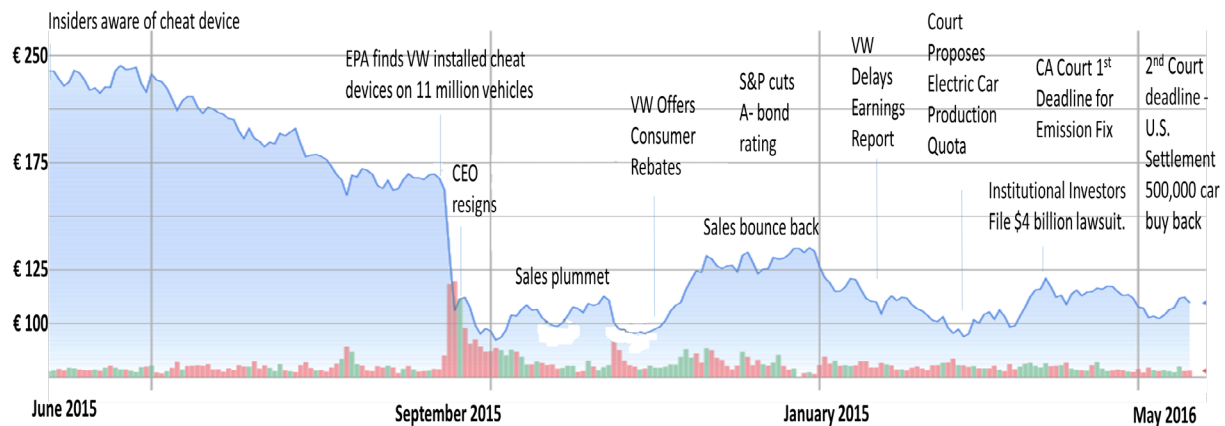
Questions

Assume you have landed a new job as a management accountant with Volkswagen and your supervisor requests your help in implementing the new corporate

strategy. Specifically, you are asked to offer an accounting perspective on a quality control team tasked with these questions:

1. What role, if any, could accountants play in verifying new technical solutions comply with environmental laws?
2. How could implementation of the COSO Internal Control Framework help prevent future fraud incidents?
3. What insights can management accountants offer in the reorganization of business units?
4. Describe how the adoption of the IMA Statement of Ethical Professional Practice would have discouraged the fraud from being perpetuated?
5. How could a balanced scorecard model be used to help evaluate performance across the strategic cornerstones of the organization?

Appendix A: Timeline of Events and Impact on Volkswagen's Stock Price



TEACHING NOTES

This case examines the financial consequences associated with inadequate environmental disclosures and deceit. While early evidence of the scandal can be traced as far back as 2006, the fraud reached an apex in 2015 with the cover-up being more fully disclosed to the public. The facts of the case are drawn primarily from media coverage, court documents, and Volkswagen's own investor-related disclosures post-crisis. Learning objectives of this case illustrate the importance of an effective system of internal controls, strong corporate governance, and tone at the top. Establishing such measures strengthens compliance with regulations and ethical behavior across the organization. Other managerial accounting topics examined with this case include: the balanced scorecard, sustainability assurances, and IMA ethical principles and standards. The case can be used in any accounting class where ethics, governance, or internal controls are discussed. This material is particularly useful in an accounting, management, public administration, sociology, ethics, or any course examining sustainability issues like environmental, life cycle, or corporate social responsibility matters.

Overview

The purpose of this case is to provide a relatable example of the consequences of inadequate internal controls in an industry that many students will already possess a basic understanding. Only a handful of management accounting cases focus on internal control issues based on real-life frauds. This case presents a convincing argument for the benefits of designing a strong internal control system within all organizations. Consider using this material as a short “in-class” case or as a longer, team-based “research” assignment. Students at the undergraduate level should be able to identify control deficiencies based exclusively on the facts outlined in the main body of the teaching case. Meanwhile, graduate students could be encouraged to perform more detailed research into the various accounts highlighted within the case.

Learning Objectives

Apply cost management theories to a corporate social responsibility event. The case challenges students to consider the broad nature of managerial accounting from a planning, control, and decision-making perspective. For instance, students will explore the causal linkage between automobile emission pollution and a company’s financial performance. Students are asked to consider how accountants could play a role in offering sustainability assurances.

Apply the COSO Framework to improve an organization’s internal controls. This case provides an opportunity to evaluate VW’s system of controls around the five key components outlined in the most recent version of the COSO’s Integrated Framework for Internal Control.

Identify how management accountants can offer value in business reorganizations. Given their mastery of financial and operational data, management accountants are often trusted advisors of organizational leadership. This case highlights opportunities for the management accountant to add value in the organization’s efforts to meet stakeholder information demands.

Describe how embracing the IMA Statement of Ethical Professional Practice might help alter organizational culture. Application of the IMA ethical principles and standards can be too abstract if not applied to actual events. This case was widely publicized within the media and many students will be familiar with the product and brand.

Appreciate how the balanced scorecard approach can be used to measure progress related to an organization’s strategic plan. Given that Volkswagen has clearly moved in a new strategic direction, students are exposed to how information systems can be designed to report both financial and non-financial information in a structured manner.

Implementation Guidelines and Suggestions for Classroom Use

The discussion questions can be introduced to students using multiple methods. When implementing this case into a course, consider assigning the case after a short lesson on the fraud triangle, corporate governance, or internal controls. Introducing these fundamental concepts as an initial step helps frame the student’s analysis and narrows the scope of their review. Instructors with a limited background in applying sustainability concepts to management accounting are encouraged to review the IMA’s Statement of Management Accounting (SMA) Standard entitled *The Evolution of*

Accountability- Sustainability Reporting for Accountants as the case relies to some extent on an appreciation of environmental reporting disclosures.

If the instructor wants to utilize a collaborative team-based approach to accommodate diverse student backgrounds and research interests, he or she could frame the problem as if students have been assigned to VW Product Safety Committee (APS), a quality circle group focused on finding solutions to the issues identified by the U.S. EPA and other regulatory bodies. The APS consists of “employees for the technical development, quality assurance, sales, production, logistics, procurement, and legal departments” (Annual Report, p. 51); thereby, may be more inclusive within an introductory accounting course where some students may be majoring in other functional areas of business.

An alternative approach to assigning the case in class would be to use the material as a research assignment. Under this method, instructors would introduce the case during class, discuss key requirements, and provide students sufficient time to conduct their own research and formulate their own solutions to key problems. Instructors should clearly identify their expectations around the quantity and quality of permitted sources (e.g., news articles, academic journals, business research databases) given the plethora of sources covering this topic.

Evidence of Classroom Efficacy

The case was successfully deployed at the undergraduate and graduate-level. At the undergraduate level, the case was used in both managerial accounting courses and an upper-division accounting ethics course. Based on the results of pre-and-post assessments, student awareness of internal control and sustainability concepts improved significantly after use of this case. At the graduate-level, the case was formally applied in classroom discussions and on the final exam. The case was a natural fit for a Corporate Social Responsibility accounting course, that holistically examines profit, people, and planet sustainability reporting guidance.

After completing the case, students were also asked to anonymously participate in a survey. Overall, 72 students participated with the majority pursuing an accounting option. Mean scores were calculated for all five questions across declared majors, with number 5 assigned to strongly agree and number 1 assigned to strongly disagree. Overall, survey scores ranged from 4.21 to 4.59, indicating overall strong agreement with relevance and validity of the case. Based on survey results, ninety-five percent of participants strongly agreed the exercise effectively highlighted internal control and corporate social responsibility failures (question 1). Eighty-three percent strongly agreed the case led to critical thought about identifying, integrating, and evaluating pertinent financial, social, and environmental factors when making business decisions (question 2). One-hundred percent strongly agreed the case relevant to their degree (question 3).

Case Questions and Suggested Solutions

1. What role, if any, could accountants play in verifying that technical solutions comply with environmental laws?

IMA’s publication on “The Evolution of Accountability” outlines how accounting and sustainability initiatives are interconnected through the effective reporting of data.

The purpose of managerial accounting is to organize financial and nonfinancial information into a meaningful form for stakeholders. The accountant assists with such tasks as: 1) *planning for future activities*; 2) *offering measurement and oversight*; 3) *crafting insightful reports that can be relied upon for making important decisions*. Outside of these traditional activities, the management accountant also plays a critical role in preserving the integrity of the entity's system of internal control by contributing to reliable recording practices, advocating for strong faithfulness to company's policies and procedures, and mitigating fraud and other violations to regulations. Given these and other responsibilities, management accountants within the VW group are uniquely positioned to add value in the company's efforts to restore trust.

In an environment of strong environmental regulatory oversight and consumer demand, the automobile industry has been aggressive at adopting corporate sustainability reporting (CSR) practices. All of the major automakers publish an annual CSR report containing profit, people, and planet metrics. However, there is a lack of consistency across the industry. For instance, Volkswagen, Hyundai, Nissan report the emission of nitrogen dioxide tonnes per year, but other major automakers do not disclose this information. Moreover, the quality of audit procedures relating to non-financial performance information is not clear. In some cases, the GRI reports are audited by a third-party, either an accounting or engineering firm. Meanwhile, other automakers, like Honda, have sought no external assurance over voluntary non-financial indicators (Epstein and Buhovac, 2014, p. 257). In case of VW, the GRI report had been subject to assurance standards but clearly contained errors and omissions relating to vehicle emissions.

Within the United States, there are no formal regulations akin to U.S. GAAP, requiring publicly-traded companies to issue a stand-alone report disclosing detailed data about environmental and social performance, nor any requirements for third-party assurance. In the void of regulatory oversight, several nonprofit organizations have stepped up to offer some form of reporting standards, such as the: International Standard on Assurance Engineering (ISAE) 3000-3402-3410, Accountability Standards (AA) 1000, AICPA Statement of Auditing Standards 122-125; Social Accountability International (SA) 8000, and International Standard Organization (ISO) 14000/26000. One of the most important contributions on this front has been the Global Reporting Initiative (GRI) and Sustainability Accounting Standards Board (SASB).

Accountants could help advance the company's environmental disclosures by adopting the sustainability standards and reviewing compliance. Using the sustainability assurance standards, accountants could be charged with developing recommendations for improving the "testing and certification processes for the engine control units" (Annual Report, 2016, p. 51) and enhancing the integrity of the firm's sustainability reports. Consequently, the VW Internal Audit Group (IAG), has been tasked to do just that by reviewing relevant processes, reporting, and control systems. In fact, the IAG is playing a key role in providing findings to the external experts and operational support to the auditing firm Deloitte (VW Annual Report, p. 50). This group has "proposed specific remedial measures to address identified weaknesses, which focus on creating more clearly structured and systematic processes on the technical side" (Annual Report, p. 51).

2. How could implementation of the COSO Internal Control Framework help prevent future fraud incidents?

The COSO methodology was developed in wake of the savings and loan crisis to help ensure organizational objectives related to operations, reporting, and compliance are achieved. The framework has been applied to many organizations in response internal frauds and incorporated into financial reform legislation, including the Sarbanes-Oxley Act and Dodd-Frank Act (COSO, 2016). As an international company, VW has not formerly adopted the 2013 COSO Internal Control-Integrated Framework; however, doing so would offer VW management a principled-based approach to improving their system of internal controls. When answering this question, students may elect to provide examples of initiative already underway within VW by reviewing the company's 2016 annual report or brainstorm their own unique recommendations around the five internal control elements:

Control Environment- The most obvious leadership lesson from the governance structure is that the lack of independent directors on the supervisory board stood in the way of proper scrutiny of VW management. The culture also prevented a viable option for those with knowledge of the defeat device software to be able to turn to with their information or concerns. VW has attributed the scandal to a “process deficiencies on the technical side” and “misconduct on the part of individuals” (Annual Report, p. 51). Ewing (2017) notes “written or unwritten rules of behavior that would have restrained the Volkswagen engineers were weak or nonexistent... there was a tolerance for breaking the rules and a lack of checks and balances” (p. 125).

In response the emission scandal, the organization has undertaken important progress in improving the overall culture of the organization, which is foundational to the other control elements. The Board has formed a special committee to coordinate “all activities relating to the emission issue” (Annual Report, p. 49). Moreover, VW plans to retain only those employees who have demonstrated a commitment to the organizational objectives. One of the first steps undertaken after the scandal was to replace the CEO who held the post while emission fraud was being perpetrated (Annual Report, p. 53). Replacing the CEO has the effect of changing the tone at the top. Meanwhile, employees from the affected departments found to have played a role have been dismissed (Annual Report, p. 51).

Additional measures VW could consider to strengthen their control environment would be to revise their code of conduct to more clearly emphasize the company's social and environmental commitments. Codes of conducts promote ethical behavior within corporate culture. Staff should also be fully aware of a formal whistleblower process. Engineers may require training to learn about emission-controls, computer-specific knowledge, and industry best practices. Nissan, as one example, has “trained 99% of its company staff in environmental issues to foster understanding and sustainability awareness” (Epstein and Buhovac, 2014, p. 55).

Risk Assessment- Ewing's (2017) research found that despite voices inside the company warning of the risks, the company did not incorporate these concerns into their risk management plan. For instance, U.S. officials had reminded VW of their duty to be open about any circumstances when emissions control equipment might be partly or wholly developed. In November 2006, Stuart Johnson, a VW executive highlighted

examples of truck companies in the 1990s had clearly violated the spirit of the emission regulations and the certification process. He noted “anything that caused the car to behave differently under normal conditions than it did in a testing facility would be illegal” (p. 125) in the U.S.

Risk assessment focuses on quickly identifying threats and exposures. After identifying a reportable event, management needs to properly scope and evaluate the impact of an adverse reaction. While VW has quantitatively and qualitatively evaluated all risks against eight criteria on a historical basis (Epstein and Buhovac, 2014, p. 157), there will need to be better coordination in the risk identification process across the Internal Audit division, external auditor, and legal compliance system for potential fraud in the future (Annual Report, p. 51). Under an effective risk assessment program, the organization would identify a reportable event, such as illegal software, and eliminate that threat. Epstein and Buhovac (2014) encourage organizations to establish baselines around key environmental factors, foster partnerships with regulators and other stakeholders, and build programs around these priorities to mitigate risk (p. 107-108).

Control Activities- VW appears to suffer from both an internal culture of secrecy where individuals responsible for compliance lacked the technical knowledge to understand what the engineers were doing. “The people who wrote engine software were the same ones who approved it for use; other auto companies, in contrast, separated software development and approval” (Ewing, 2017, p. 125). The company is now undertaking steps to improve the segregation of duties. “The processes and structures used for approving the software for engine control units are being reorganized with more clearly defined and binding powers and responsibilities” (Annual Report, p. 51). To reinforce these control activities the organization may benefit from similar certification requirements prescribed under the Sarbanes-Oxley Act, such as executive certification of internal controls and overall reliability of sustainability data. Other policies VW may consider adding or revising include: whistleblower protections, document destruction practices, quality assurance processes, and strengthening compliance with ISO 14000 certification activities.

Information and Communication- the generation and use of relevant quality information between the operational units is paramount for success in any organization. Information systems must provide a clear audit trail for supporting, at a minimum, the completeness and existence or occurrence assertions of staff for emission testing activities. “Testing and certification processes for the engine control units... were unsuited to preventing the use of the software in question” (Annual Report, p. 51). From a communication perspective, as the company has conceded, the management board hoarded decision-making power. Moreover, VW did not yet have a system in place “that would allow an internal whistle-blower concerned about the illegal software to report the violation without fear of consequences” (Ewing, 2017, p. 125). The special committee the board has established to coordinate all activities relating to the emission issue (Annual Report, p. 49) is an important step to create a communication gateway for whistleblowers.

Monitoring- When downgrading the company’s credit rating, Fitch (2016) noted “we believe that the emergence of a fraud of this magnitude, going either unnoticed or uncorrected by top management for so long is not consistent with a top credit rating.” The monitoring function was largely absent in Volkswagen. Historically, monitoring

activities are carried out by internal auditors, who serve a key role in evaluating the integrity of the internal control system. In fact, many companies, such as Honda, have created internal auditing procedures to review triple bottom line data systems (Epstein and Buhovac, 2014, p. 248). With engineers dominating decision-making within the company, areas like auditing and compliance went neglected (Ewing, 2017, p. 157). Going forward the internal audit group has been specifically tasked to propose “specific remedial measures to address the identified weaknesses, which focus on creating more clearly structured and systematic processes on the technical side” (Annual Report, p. 51). Consequently, one of the first recommendations from this group was that all future emission tests would be evaluated by “independent third parties based on real-world random tests of vehicles emissions behavior” (Annual Report, p. 51).

3. What insights can management accountants offer in the reorganization of business units?

Management accountants are equipped to address many facets of the organization. In addition to being among an elite group who can reliably interpret and apply financial statement analysis, accountants can also be used to: ensure regulatory laws and rules are followed, examine financial and legal records for errors or fraud, mitigate risk, find ways for organizations to reduce costs, and help support technological and system implementations. As a trusted and credible business advisor, accountants are increasingly devising ways for companies to become more green and sustainable. Another important role of the management accountant is in the design and deployment of measurement systems used to evaluate an organization’s activities and employees. In essence, verifying the systems used to identify, record, and communicate vital information are sound.

As VW restructures around its strategic goals, the company may benefit from establishing responsibility centers or subunits held accountable for specified financial and nonfinancial results. Given the lack of accountability within the organization during the scandal, the company may benefit from establishing responsibility managers who would be answerable to internal and external authorities. Traditionally, speaking there are four basic responsibility centers: cost, revenue, profit, and investment. Accountants can help organizations define how a particular subunit should be classified, assist with the terminology-translation process of technical and nontechnical staff, and establish appropriate performance targets with respect to measured outcomes. In essence, ensuring appropriate individuals are held accountable for all aspects of performance over which they have significant influence and control. Management accountants can ensure more consistent reporting standards across all aspects of the organization. Reflecting this change in mission IMA has extended their core body of knowledge to encompass training opportunities in environmental assessments, quality control, and effective labor practices.

4. Describe how the adoption of the IMA Statement of Ethical Professional Practice would have discouraged the fraud from being perpetuated?

IMA has developed a set of ethical guidelines, called the IMA Statement of Ethical Professional Practice. These guidelines are very important given that there are very few rules or regulations guiding the development of internal information. The

purpose of these guidelines is to reduce the potential for distortion of information among professionals. The decision to falsify information is unethical and, in the case of VW, was an illegal act. Although the IMA statement was designed for management accountants, the standards and principles can be applied to virtually any environment. For instance, the standards provide guidance on the proper disclosure of information, expectations for publishing unbiased and truthful data, and avoiding conflicts of interest. In VW's case, the application of the standards would have precluded an engineer who designed a component to also be the one held responsible for conducting a quality control test of that product. The temptation to overlook design flaws might be an uncontrollable inducement to manipulate test findings. Other IMA standards egregiously violated include:

- I. COMPETENCE : 2. Perform professional duties in accordance with relevant laws, regulations, and technical standards. By designing a cheat device to circumvent emission controls, employees clearly violated laws, regulations, and technical standards.
- II. CONFIDENTIALITY : 3. Refrain from using confidential information for unethical or illegal advantage. As opposed to covering up the scandal by using code words when in the presence of regulators, employees should have reported the crime to authorities.
- III. INTEGRITY: 4. Contribute to a positive ethical culture and place integrity of the profession above personal interests. Management culture of intimidation and silence was self-serving and led to a fraud that violated the public's interest.
- IV. CREDIBILITY : 2. Provide all relevant information that could reasonably be expected to influence an intended user's understanding of the reports, analyses, or recommendations. VW's practice of branding their vehicles as "clean" or "green" in public disclosures was completely misleading given the vehicles were emitting NOx 40 times permitted levels.

In summary, these are standards that define ethical business practice, no matter where or when these activities take place. Adoption of this code (or a similar code) would advance VW goals.

5. How could a balanced scorecard model be used to help evaluate performance across the strategic cornerstones of the organization?

Epstein and Buhovac (2014) note organizations often use performance measures to help business units assess their sustainability performance against strategic objectives (p. 125). One common tool utilized is the balanced scorecard (BSC). BSC monitors the performance of the entire organization against competitors or a business unit, towards achieving strategic and operational goals by translating performance measures in four primary areas: financial, customer, internal business processes, and learning and growth (Kaplan and Norton, 2001). The idea underlying these groupings of the BSC is that internal business processes improvement cannot occur without learning support systems; optimizing internal processes is critical to achieving customer satisfaction; and higher levels of customer satisfaction will achieve

stronger financial results. As such, each element of the scorecard is interrelated. If the BSC is designed appropriately, improvement in one measure should lead to improvement in subsequent measures. In essence, a cause-and-effect linkage.

Financial metrics used with BSC typically include sales, liquidity, profitability, market value, and operating net income as the primary financial indicator. Six of VW's core performance indicators cover the financial dimension: sales revenue, operating result, operating return on sales, capex, net cash flow from operations, and return on investments (Annual Report, p. 57). Within advanced accounting courses, instructors may use this opportunity to conduct a more detailed financial analysis of VW performance, such as a horizontal, vertical, and ratio analysis of the company's financial statements before and after the crisis.

Linked to the financial metrics are the customer indicators because sales activity is critical to generating revenue. The customer perspective focuses on appeasing both existing customers and cultivating new consumers. Customer satisfaction is improved by establishing trust, offering exceptional service quality, and delivering high quality products. According to VW, "high customer satisfaction, combined with and based on the outstanding quality of our vehicles, is one of the most important preconditions for the company's long-term success" (Annual Report, p. 57).

Internal business processes relate to the activities the organization engages in to manufacture or create the product. For example, in an automobile company, the act of assembling a vehicle is an internal business process. Three strategies often included in the internal business processes strategy include: innovation, operations, and quality control. VW has cited the long-term sales, capacity, and utilization plans as key elements to their internal management process (Annual Report, p. 56).

The final dimension of the balanced scorecard, learning and growth, focuses on generating value by promoting employee empowerment and motivation, as well as aligning their skill sets, such as information technology competencies, with organizational objectives. According to the CIMA, investing in resources to improve performance across this dimension is critical in changing the strategic trajectory of the organization. On this front, VW has increased its recent investments into research and development (Annual Report, p. 139). In case of VW, the goal is to improve brand image, build clean cars, and enhance profitability.

Figure 1 offers illustrative examples of how VW might build both a traditional balanced scorecard, as well as a sustainability-focused BSC in wake of the scandal. The accompanying narrative highlights the relationships of each key performance indicator (KPI). Instructors should be sensitive to the fact that student answers are likely to vary. When assessing student submissions, focus on the causal linkages or business logic of the model. Other criteria to consider is whether the KPI is SMART: specific, measurable, actionable, reliable, and transparent.

Appendix A- Supplementary Learning Resources

Overview of the Emission Scandal

- Diesel Scandal, explained: <https://www.youtube.com/watch?v=CQ4irwe3ZDk>
- Volkswagen Emission Scandal: https://www.youtube.com/watch?v=VJjqiQ_pvRE

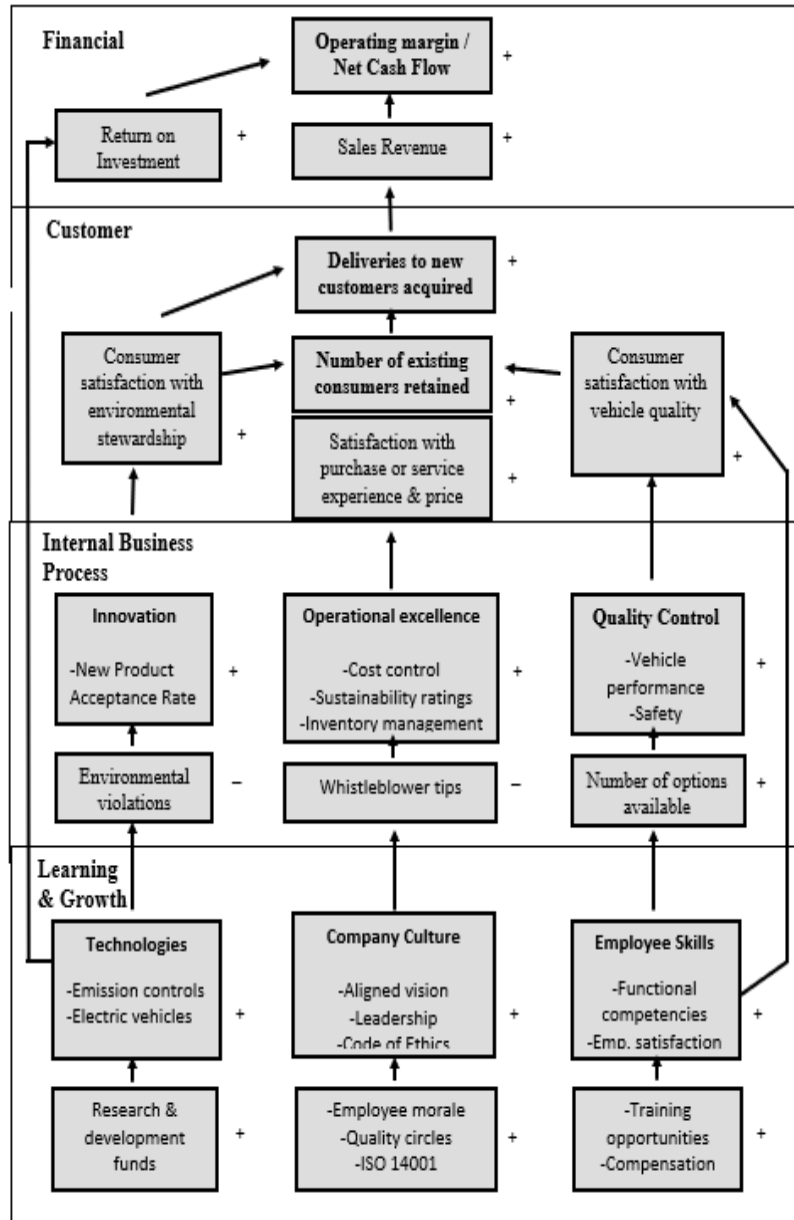
Volkswagen (VW) Misleading Environmentally-Friendly Commercials

- VW Green Police : <https://www.youtube.com/watch?v=PVPyHrPZbVM>
- VW Green Ad : <https://www.youtube.com/watch?v=V6mbT0NvaQc>
- VW Passat TDI Clean Diesel Mom :
<https://www.youtube.com/watch?v=0NYe2Hp0B9I>
- VW Golf TDI Old Wives Clean Diesel :
<https://www.youtube.com/watch?v=WNS2nvkjARk>
- VW Green production technology:
<https://www.youtube.com/watch?v=sDLNcxrklpQ>

Volkswagen (VW) Reports

- FY15 Annual Report :
http://www.volkswagenag.com/content/vwcorp/content/en/investor_relations.html
- FY16 Quarterly Report:
http://www.volkswagenag.com/content/vwcorp/content/en/investor_relations.html

Figure 1



The figure to the left represents a BSC example designed around VW strategic priorities. Causal relationships between indicators are indicated through the use of lines. Positive/negative symbols represent whether the measure should increase or decrease under optimal conditions (Niven, 2002). Starting at the bottom of the figure key assumptions are (insert Figure 7 here):

- If the amount of compensation paid increases and training/development opportunities increase, then the company will be able to attract and deploy higher skilled labor.
- If employee morale improves and quality circles are utilized, then employees will promote a more ethically healthy culture will be fostered through unified goal-setting and higher levels of ownership in business process on the front-lines of production activities.
- If the company dedicates more funds to research and development activities, then the probability of developing greener technologies with less dependency upon fossil fuels is more likely.
- If employee skills and capabilities increase, this will lead to more sophisticated vehicle features. These features should improve vehicle performance, safety, and air pollution controls.
- If the company culture values openness and transparency, this should lead to fewer "actionable" whistleblower tips. A willingness to acknowledge past design flaws will lead to more vehicle recalls. Meanwhile, quality circles will advance stronger cost control and management practices over new inventory.
- If real "green innovations" are integrated into the product, then the company should experience fewer environmental violations leading to greater product acceptance rates.
- If stronger quality controls are established, then customer satisfaction with product quality should increase.
- If operational excellence is achieved with respect timely vehicle repairs and new car production, then customer satisfaction with service experience and product price should elevate.
- If promotes more green technologies in their products, then the customer satisfaction or confidence in the company's environmental commitment should improve.
- If customer satisfaction across all dimensions improves, then the amount of new and retained customers will grow.
- More customers, leads to more sales.
- If production activities become more efficient and new technologies are introduced, the company's return on investment metrics should improve.
- If return on investment ratio and sales revenues increase, then the operating margin and operating net cash flow should increase.

<p>Financial</p> <ul style="list-style-type: none"> -% of sales revenues from electric cars -Reclamation (aka, recycling) revenues -Energy costs -Fines and penalties for pollution -Average ROI -% change in stock price 	<p>Stakeholder</p> <ul style="list-style-type: none"> -Sustainability awards -Funds donated for community support -Number of community complaints -Employee satisfaction scores -Improved brand image -Number of employee volunteer hours
<p>Internal business process</p> <ul style="list-style-type: none"> -% of suppliers certified -Volume of hazardous waste -Number of community complaints -Cost of minority business purchases -Number of product recalls -% decrease in environmental impact (emissions pollution volume) -% life cycle analysis on product lines -% of materials purchased from ISO 14000 certified suppliers 	<p>Learning and growth</p> <ul style="list-style-type: none"> -Diversity of workforce and management -Cost of employee benefits -% of employees trained in sustainability -Employee certifications -Median average salary -Employee training budget -Average years of education -Results of social audits -Code of conduct -Rate of workplace injuries

References

- Auto Manufacturers - Major Overview: Industry Center. *Yahoo Finance*. Accessed June 7, 2016.
<https://biz.yahoo.com/ic/330.html>.
- Brockett, Ann, and Zabihollah Rezaee. *Corporate sustainability: Integrating Performance and Reporting*. Hoboken, NJ: John Wiley & Sons, 2012.
- California Air Resource Board (CARB). *ARB VW Consent Decree Information*, last modified June 28, 2016, http://www.arb.ca.gov/msprog/vw_info/vw-diesel-info/vw-diesel-info.htm
- COSO Internal Control- Integrated Framework Principles, COSO, accessed June 18, 2016.
<http://www.coso.org/documents/COSO%20ICIF%2011x17%20cube%20graphic.pdf>.
- Epstein, Marc J., and Adriana R. Buhovac. *Making Sustainability Work: Best Practices in Managing and Measuring Corporate Social, Environmental and Economic Impacts*. 2nd ed. San Francisco, US: Berrett-Koehler Publishers, 2014.
- Ewing, J. (2017). *Faster, Higher, and Farther*. W.W. Norton & Company: New York, NY.
- Institute of Management Accountants. *Tools and Techniques of Environmental Accounting for Business Decisions*. 2016, accessed on May 23, 2016,
http://www.imanet.org/docs/defaultsource/thought_leadership/external_reporting_systems/tools_and_techniques_of_environmental_accounting_for_business_decisions.pdf?sfvrs
- Kaplan, Robert S., and David P. Norton. *The Strategy-focused Organization: How Balanced Scorecard Companies Thrive in the New Business Environment*. Boston, MA: Harvard Business School Press, 2001.
- Peters, Gary F., and Andrea M. Romi. "The Association between Sustainability Governance Characteristics and the Assurance of Corporate Sustainability Reports." *Auditing: A Journal Of Practice & Theory*, 34 no. 1 (2015), 163-198.
- Sustainability Reporting Guidelines- G4. *Global Reporting*. August 5, 2015.
<https://www.globalreporting.org/resource/library/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf>
- VW Annual Report- 2015, *Volkswagen*, accessed June 10th, 2016,
http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2016/04/Y_2015_e.bin.html/binarystorageitem/file/Y_2015_e.pdf.
- Dirty secrets; A scandal in the motor industry. *The Economist*, 416, (2015, Sep 26): 15.