Case Study #1: Mill & NSA Surveillance

Read the section on J.S. Mill in our text and the attached articles from the ACLU, *The Guardian*,Reuters, and *The Scientific American*, then answer the following questions. The completed assignment should be two pages long, using 12 pt. fonts and single spacing with one inch margins. Each answer should be proportionate to the number of points possible and supporting quotes should be no longer than one or two short sentences. Quotes must be cited and if pulled from our text all you need do is indicate the page – if not from our text, a full citation is required. Please separate and number each response as shown in the example attached. This study is worth a total of 60 points. Your completed assignment is due on the 17th of March.

*Keep scrolling down after the background for further instructions, general suggestions, grading rubrics, and a sample completed assignment!*

1. **Paraphrase** the argument made by the ACLU in the first attached article concluding that it is “time to rein in the surveillance state.” (5 points)

2. **Fact-finding & Background Research:** Prior to determining whether the extent of the NSA surveillance is morally justifiable, what facts do you need to know about his case? Note that these should include questions regarding government surveillance, national security, and issues of privacy but *not* questions about Mill. **Provide as a bulleted list and pose in question form.** For this assignment, you do not have to do the research but you need to raise the kind of questions that would drive such a project. These should be research questions and as such should be concrete and answerable. No bias or prejudice should be evident and the questions should be non-normative. Think about facts that, if known might help determine how one should or could respond to the case. (15 points)

3. **Pending the acquisition of this information, how do you think Mill would respond to this case; is surveillance under the Patriot Act and FISA Amendments Act morally justifiable?** Be sure to provide citations from Mill (*primary source = Mill’s writings and does not include secondary commentary from Rosenstand or from me*) to support your answer. In citing the quote, all you need do is indicate the page from the text (see example). Note that this question carries the highest weight in points. (20 points)

4. **Identify some key counter considerations or objections to the argument you've made in section 3.** This can include not only existing practical conditions that might prevent one from following up on those recommendations made in section 3 above, but also the cost or potential negative impact if one acted on those conclusions. **Provide as a bulleted list.** (10 points)

5. **Reply to the counter-considerations/objections identified in #4.** There should be no repetition of arguments previously made in section 3. **Provide as a bulleted list.** (10 points)
The National Security Agency's mass surveillance of American citizens has greatly expanded in the years since September 11, 2001. Recent disclosures have shown that the government is regularly tracking all of the calls of almost every ordinary American and spying on a vast but unknown number of Americans' international calls, text messages, and emails.

The government's new surveillance programs have infiltrated most of the communications technologies we have come to rely on. They are largely enabled by two problematic laws passed by Congress under a national security premise: the Patriot Act and the FISA Amendments Act (FAA). While the Foreign Intelligence Surveillance Court (FISC) is supposed to oversee the government's surveillance activities, it operates in near-total secrecy through one-sided procedures that heavily favor the government.

The ACLU has been at the forefront of the struggle to rein in the surveillance superstructure, which strikes at the core of our rights to privacy, free speech, and association. Here's some of what we're doing to roll back the surveillance state.

**Surveillance Under the Patriot Act**

The government claims sweeping authority under the Patriot Act to collect a record of every single phone call made by every single American "on an ongoing daily basis." This program not only exceeds the authority

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1 Please note that you are not limited to the background offered. It is expected that you will do a bit more in-depth reading to develop your thesis. You may feel free to use any credible/reliable source as evidence for your arguments. Additionally you may use additional material from Mill to defend your answers. Please provide full citation for all research.

2 https://www.aclu.org/time-rein-surveillance-state-0
given to the government by Congress, but it violates the right of privacy protected by the Fourth Amendment, and the rights of free speech and association protected by the First Amendment. For this reason, the ACLU challenged the government’s collection of our phone records under the Patriot Act just days after the program was revealed in June 2013 by The Guardian. Despite the revelations, Congress and the public have yet to receive the full story about how the Patriot Act is being used to collect information on Americans. To bring greater transparency to the NSA’s surveillance under the Patriot Act, the ACLU filed two motions with the secretive FISC asking it to release to the public its opinions authorizing the bulk collection of Americans’ data by the NSA, and we are continuing to litigate a Freedom of Information Act lawsuit that we filed in 2011 demanding the government release information about its use and interpretation of Section 215. Read about Section 215 — and other unconstitutional provisions of the Patriot Act — here.

See video
Privacy statement. This embed will serve content from youtube.com.

SURVEILLANCE UNDER THE FISA AMENDMENTS ACT

When Congress enacted the FISA Amendments Act of 2008 (FAA), the ACLU and others warned that the government would rely upon the statute, which authorizes the government to conduct surveillance targeting foreigners, to eavesdrop on Americans’ communications. In June 2013, The Guardian confirmed that suspicion by publishing documents that made clear that the government’s international dragnet indeed sweeps up Americans’ communications.

The Foreign Intelligence Surveillance Act (FISA), enacted by Congress in 1978, generally requires the government to seek warrants before monitoring Americans’ conversations. In 2001, however, President Bush authorized the NSA to launch a warrantless wiretapping program, and in 2008 Congress ratified and expanded that program through the FAA, which was reauthorized in 2012.
The FAA gives the NSA almost unchecked power to monitor Americans' international phone calls, text messages, and emails. Recent disclosures show that an unknown number of purely domestic communications are also monitored, that the rules that supposedly protect Americans' privacy are weak and riddled with exceptions, and that virtually every email that goes into or out of the United States is scanned for suspicious keywords.

In 2008, less than an hour after President Bush signed the amendment, the ACLU filed a lawsuit challenging its constitutionality. The case, *Amnesty v. Clapper*, was filed on behalf of a broad coalition of attorneys and organizations whose work requires them to engage in sensitive and sometimes privileged telephone and email communications with individuals located abroad. But in a 5–4 ruling handed down in February 2013, the Supreme Court held that the ACLU plaintiffs did not have standing to sue because they could not prove their communications had actually been surveilled under the law.

**BRINGING TRANSPARENCY TO THE FISA COURT**

The ACLU has long fought to bring greater transparency and public access to the FISC — the secretive court that oversees the government’s surveillance programs. When the FISC was first established in 1978, it primarily assessed individual surveillance applications to determine whether there was probable cause to believe a specific surveillance target was an agent of a foreign power. In recent years, however, the FISC’s responsibilities have changed dramatically, and the FISC today oversees sweeping surveillance programs and assesses their constitutionality — all without any public participation or review.

The ACLU has been advocating and petitioning for access to the FISC for more than a decade, working with Congress and the executive branch, and appearing before the court itself to push for greater transparency. Days after the court’s Section 215 order was released in June 2013, we filed a motion seeking access to the secret judicial opinions underlying the NSA’s mass call tracking program. We also signed a brief filed in the FISC in support of the First Amendment rights of the recipients of FISC orders, such as telephone and internet companies, to release information about the type and volume of national security requests they receive from the NSA and the FBI. Secret law has no place in a democracy. Under the First Amendment, the public has a qualified right of access to FISC opinions concerning the scope, meaning, or constitutionality of the surveillance laws, and that right clearly applies to legal opinions interpreting Americans’ bedrock constitutional rights. We all have a right to know, at least in general terms, what kinds of information the government is collecting about innocent Americans, on what scale, and based on what legal theory.
'This overreach is unacceptable': the case against NSA bulk collection

A growing set of people and organizations have spoken out calling for an end to the spy program. Here's what they said

- **Tom McCarthy** in New York
- **theguardian.com**, Thursday 23 January 2014 13.50 EST

On Thursday, the executive branch’s privacy watchdog, the Privacy and Civil Liberties Oversight Board, became the latest independent group to have looked into the US government practice of collecting citizens’ phone data in bulk – and to call for it to stop.

The PCLOB found that bulk collection under section 215 of the Patriot Act constituted an invasion of privacy with insufficient oversight and negligible national security benefits.

The list of people and organizations to have reached the same conclusion includes hundreds of members of Congress, a federal judge, a presidential panel, the world’s biggest technology companies, civil liberties organizations and privacy advocates, and Barack Obama himself, before he was president.

Here’s some of what they’ve said about the bulk, suspicionless collection of Americans' data:

### Privacy and Civil Liberties Oversight Board

In a 238-page report issued on Thursday, the board recommended that the program end and the database be purged:

The Section 215 bulk telephone records program lacks a viable legal foundation under Section 215, implicates constitutional concerns under the First and Fourth Amendments, raises serious threats to privacy and civil liberties as a policy matter, and has shown only limited value. As a result, the board recommends that the government end the program.

Without the current Section 215 program, the government would still be able to seek telephone calling records directly from communications providers through other existing legal authorities. The board does not recommend that the government impose data retention requirements on providers in order to facilitate any system of seeking records directly from private databases.

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Once the Section 215 bulk collection program has ended, the government should purge the database of telephone records that have been collected and stored during the program’s operation, subject to limits on purging data that may arise under federal law or as a result of any pending litigation.

**Review group on intelligence and communications technology**

In a 308-page report delivered to the president in December, the group appointed by Obama recommended that a database of US phone records should be maintained, but not by the government:

We recommend that Congress should end such storage and transition to a system in which such metadata is held privately for the government to query when necessary for national security purposes.

In our view, the current storage by the government of bulk metadata creates potential risks to public trust, personal privacy, and civil liberty. We recognize that the government might need access to such metadata, which should be held instead either by private providers or by a private third party …

Consistent with this recommendation, we endorse a broad principle for the future: as a general rule and without senior policy review, the government should not be permitted to collect and store mass, undigested, non-public personal information about US persons for the purpose of enabling future queries and data-mining for foreign intelligence purposes.

**US district court judge Richard Leon**

In a ruling filed on 16 December 2013, Leon called bulk telephone data collection an “arbitrary invasion” of privacy and said it likely violated the constitution.

The almost-Orwellian technology that enables the government to store and analyze the phone metadata of every telephone user in the United States is unlike anything that could have been conceived in 1979 […]

I cannot imagine a more "indiscriminate" and "arbitrary invasion" than this systematic and high-tech collection and retention of personal data on virtually every single citizen for purposes of querying and analyzing it without prior judicial approval. Surely, such a program infringes on "that degree of privacy" that the Founders enshrined in the fourth amendment. Indeed, I have little doubt that the author of our constitution, James Madison, who cautioned us to beware "the abridgement of freedom of the people by gradual and silent encroachments by those in power," would be aghast.

Thus, plaintiffs have a substantial likelihood of showing that their privacy interests outweigh the government’s interest in collecting and analysing bulk telephony metadata and therefore the NSA’s bulk collection program is indeed an unreasonable search under the fourth amendment.

**Senator Patrick Leahy**

In a statement on 29 October, the judiciary committee chairman recommended that the program end:

Last week, the assistant to the president for homeland security and counter-terrorism, Lisa Monaco, stated that the government should only collect data “because we need it and not just because we can”. I completely agree – and that is why the government’s dragnet collection of phone records should end. The government has not made a compelling case that this program is an effective counter-terrorism tool, especially when balanced against the intrusion on Americans’ privacy. In fact, both the director and the deputy director of the NSA have testified before the judiciary committee that there is no evidence that the Section 215 phone records collection program helped to thwart dozens or even several terrorist plots.
Congressman Jim Sensenbrenner

In a June statement, the Patriot Act co-author recommended that the program end:
The scope of the NSA’s metadata program – peering into the lives of hundreds of millions of innocent Americans – is incredibly troubling. There is no legitimate explanation for tracking the numbers, locations, times and duration of the calls of every American. The collection and retention of all telephone records coming in and out of the United States is excessive and does not fall within the guidelines of Section 215. [...] This executive overreach is unacceptable and further denigrates Americans’ trust in Washington.

A large, intrusive government – however benevolent it claims to be – is not immune from the simple truth that centralized power threatens liberty. Our government’s legitimacy rests on its accountability to the people. And Americans are increasingly weary that Washington is invading the privacy rights guaranteed to us by the Fourth Amendment.

Supporters of the USA Freedom Act

The legislation, co-authored by Leahy and Sensenbrenner, would end bulk metadata collection and set new conditions for intelligence agencies to conduct searches of US citizens. The bill has at least 120 co-sponsors in the House and 16 in the Senate.

In addition, a long and diverse list of organizations and companies support the bill, including the American Civil Liberties Union, the National Rifle Association, the Project on Government Oversight, Microsoft, Apple, Yahoo, Facebook, AOL, Google, LinkedIn and Mozilla.

205 members of Congress

On 24 July 2013, 205 members of the House of Representatives voted in favor of the Amash-Conyers amendment to end the indiscriminate collection of telephone records. It was “one of the closest votes in a long time for civil liberties”, observed national security journalist Marcy Wheeler. The roll-call for the vote is here.

The ACLU

The advocacy group has sued the government to stop the bulk collection of phone data and campaigned in favor of legislation to end it. “This program not only exceeds the authority given to the government by Congress, but it violates the right of privacy protected by the fourth amendment, and the rights of free speech and association protected by the first amendment,” the group has said in a statement.

Despite the revelations, Congress and the public have yet to receive the full story about how the Patriot Act is being used to collect information on Americans. To bring greater transparency to the NSA’s surveillance under the Patriot Act, the ACLU filed two motions with the secretive FISC asking it to release to the public its opinions authorizing the bulk collection of Americans’ data by the NSA, and we are continuing to litigate a Freedom of Information Act lawsuit that we filed in 2011 demanding the government release information about its use and interpretation of Section 215. Read about Section 215 – and other unconstitutional provisions of the Patriot Act – here.

Barack Obama

On the Senate floor in 2005, opposing Patriot Act reauthorization:
This is legislation that puts our own Justice Department above the law … If someone wants to know why their own government has decided to go on a fishing expedition through every personal record or private document, through the library books that you read, through the phone calls that you made, the emails that you sent, this legislation gives people no rights to appeal the need for such a search in a court of law. No judge will hear your plea. No jury will hear your case. This is just plain wrong … Giving law enforcement the tools that they need to investigate suspicious activities is one thing, And it’s the right thing. But doing it without any real oversight seriously jeopardizes the rights of all Americans, and the ideals America stands for.

Microsoft lawyer suggests non-U.S. data storage for overseas users: FT

SEATTLE Wed Jan 22, 2014 9:16pm EST

People visit the Microsoft booth at the 2013 Computex exhibition at the TWTC Nangang exhibition hall in Taipei June 4, 2013.

CREDIT: REUTERS/PICHI CHUANG

(Reuters) - Microsoft Corp's head lawyer has suggested that overseas customers will be allowed to have their personal data stored in non-U.S. data centers, the Financial Times reported on Wednesday.

It would be the most radical move yet by a U.S. technology company to combat concerns that U.S. intelligence agencies routinely monitor foreigners.

A Microsoft spokesperson declined further comment on the remarks that Brad Smith, Microsoft’s general counsel, made to the comments to the Financial Times, which published them on Wednesday.

"People should have the ability to know whether their data are being subjected to the laws and access of governments in some other country and should have the ability to make an informed choice of where their data resides," Smith told the FT.

He went on to say that customers could choose where to have their data stored in Microsoft’s wide network of data centers, for example Europeans could specify a facility in Ireland.

The airing of the idea, which Smith did not back up with concrete plans, was the clearest sign so far that Microsoft is worried about the public backlash, especially overseas, to revelations by former National Security Agency (NSA) contractor Edward Snowden that the NSA claimed to directly tap into tech companies’ servers to spy on foreign individuals.

Microsoft denies that, and has said that it only hands over customer data when properly requested by intelligence agencies, but an air of mistrust has remained, especially in Europe and China.

If Microsoft follows through on Smith’s suggestion, it would mark a departure from U.S. technology companies’ largely unified response to the NSA scandal, which has so far steered away from the idea of offering non-U.S. data storage for overseas users.

Microsoft, along with Apple Inc, Facebook Inc, Google Inc, Twitter Inc and others jointly called in December for reforms in the way governments use internet surveillance, lobbying for more transparency and a ban on bulk data collection.

But the companies also backed free access to data and demanded that "governments should not require service providers to locate infrastructure within a country’s borders or operate locally."

Offering customers the choice of data centers would be easier for Microsoft than some smaller companies, as it already has a number of storage facilities across the globe.

Smith has in the past written about Microsoft’s desire to protect customer data from cross-border snooping by governments, in earlier attempts to soothe overseas concerns.

"We’ll assert available jurisdictional objections to legal demands when governments seek this type of customer content that is stored in another country," Smith wrote in a blog on Microsoft’s site in December.

(Reporting by Bill Rigby; Editing by David Gregorio)
How Are the NSA and Others Collecting and Using our Data?5
A metadata expert reveals the sobering implications of personal data collection by governments and companies

Jun 20, 2013 | By Bryan Bumgardner

Earlier this month, former NSA employee Edward Snowden revealed the agency is collecting data on millions on Americans, from phone call durations to Facebook posts, all through a program codenamed PRISM. The resulting media backlash has revived the debates about internet privacy and government surveillance techniques, but questions remain: how is the National Security Agency taking in the data, and how much of a threat to our civil liberties does such data-collection efforts pose?

To find out, Scientific American spoke with metadata expert Mark Herschberg, CTO at Madison Logic and instructor at the Massachusetts Institute of Technology. Herschberg has worked with the programs used to gather big data and was able to elucidate how our internet data has become an important—if not invasive—commodity.

An edited transcript of the interview follows.

What kind of software can be used to collect big data?

It can be collected a number of different ways. It sounds like the NSA is going into the servers of Facebook and others and accessing their log files through some kind of "backdoor." In that case, you can write pretty simple programs that can copy those files and transfer them to local servers. You could also get this data by installing spying software on an individual’s computer. The third option is actually listening through the pipe, the digital version of wiretapping.

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5 http://www.scientificamerican.com/article/how-are-the-nsa/
When an individual downloads something or visits a webpage, all the data go through the Internet service provider. By effectively wiretapping their line, you can see every single byte they're sending back and forth.

**Why would the NSA want access to things like Facebook posts?**

What you can get are signals. For example, if you look at teens committing suicide, they often spend a lot of time thinking about it and planning. There are signs that professionals have been trained to look for, such as saying goodbye to people before they take their own life.

Similarly, you might see signals among the bad guys before they're going to do something. They might change their habits. These are things that professionals in counterterrorism can interpret.

You can also use personal data to find out where people have been and what they're doing. Photos taken with cellphones contain geotagging information: I can look at a photo that someone has posted and know exactly where that photo was taken.

We can also see who is talking to whom and observe important changes. I'll give you an analogy: suppose there's a house, and there's people going in and out. I can't actually see the people going in and out, but I can see the number of cars that pull up to the house. Say I normally see two to three cars a day and I suddenly see 20 cars pull up today. That tells me something is going on. Even if you can't get the detailed information, just looking at changes in communication patterns can alert you that something is happening.

**There’s a lot of information to collect and store. How can the NSA possibly catalogue all of this data?**

I suspect the NSA doesn't have large files on each and every one of us. I'm sure on particularly well-known targets they have information, but I presume you and I aren’t on watch lists.

Brewster Kahle produced a model that said if someone took all the domestic phone calls made in one year and put them into cloud storage, it would cost roughly $27 million a year to store. That's chump change for agencies like the NSA, the Department of Defense and others. Storage is getting so cheap these days that we can store mountains of data at relatively low cost.
When you think about the number of phone calls one can make in a year, there’s an upper bound to that. Technology doesn’t let me speak any faster—we’re not making a much higher magnitude of calls than we were a few years ago, but the storage capacity has gone up many times. Our storage is outpacing our ability to produce information. We are sending more emails than we were years ago, but at a certain point, I can only bang out emails so fast. But the ability to store those emails? That continues to increase exponentially.

**Do you see a future where entities store all the information we produce?**

It’s not the future. It’s the present, and it’s called Google, it’s called Yahoo, it’s called Facebook. Facebook already has every IM you’ve ever sent [through Facebook]. Google has saved all those emails you’ve been sending [through Gmail]. They have it, they’ve indexed it, and they’ve generated models on you. This isn't the future; this is the last few years.

**Is that data collection for advertising purposes?**

Definitely. In advertising, retailers build certain models. If every week I'm buying beer and chips, and then suddenly they see me buying a pregnancy test, and then they see me buying diapers. They can say "Oh, okay. Single life is over. We know what's going on, we're going to send this guy info about baby products." Everyone is doing predictive modeling.

**On that note, do you see a privacy issue here?**

There's a huge privacy issue. There's this great video from the ACLU about ordering a pizza in the future that sums it up. There aren't really any data privacy laws in place. In terms of what a website or retailer can track about you, I'm not aware of any laws on that subject.

We as individuals generally value that information at zero. In studies researchers have asked people: "For this particular website or service, we’ll give you two choices: you can either pay for it, or you get it free, but it comes with ads." Everyone took it for free with ads. What they don't realize, or what they know and don't care about, is that those ads come with tracking cookies. They're collecting these massive data sets on us, and we as Americans just don't mind. Both culturally and legally, we don't seem to care. I think that's very unfortunate.
Is there anything unquestionably positive we can do with data collection beyond counterterrorism and advertising?

Big data is a tool, and like any tool, it can be used for good or bad. The Internet can be used to disseminate information on an unimaginable scale, and it can be used for child porn. So it’s really in the hands of the people who use it.

We can build models like we never have before. In crime, New York is famous for the Compstat system, where police look at what crimes occurred and when and where it happened. They allocate the police force based on that. A more efficient police force is wonderful for society.

Again, these models can be used for good or bad. Those police could be used to stop the criminals, or in the extreme police state, those officers could be used to crack down on dissenters.

In the end, companies are collecting an obscene amount of data on us, and I think that’s just as much a threat to individuals as government data collection might be.

Keep scrolling down for rubrics and a sample completed assignment!
I. **Focus & Relevance**
Be sure that you understand the assignment and have understood each question. Your responses should be focused on the questions I’ve asked & not the questions you wish I had asked! It is important to weed out all irrelevant considerations or concerns that an economist or historian or political scientist might have but are not strictly speaking, ethical concerns. Look at the completed sample case study for some ideas.

II. **Format**
You should copy & paste or re-type only the first part of the question (the portion in bold type). Please number each response corresponding to the assigned questions. Papers should be 2 pages, using 12pt. fonts and 1 inch margins all around. There should be an extra space separating your responses to each question. Again, please reference the completed sample case study and follow the format exemplified.

III. **Tone/Voice**
Ever since George Carlin pointed out that “using your own words” would result in a private and hence meaningless expressions, I’ve had to give up on the phrase, however a certain degree of originality is still important. Your task is to explain a concept as if you were the Teaching Assistant for this class. If you simply repeat the text or my lecture, you haven’t helped your imaginary student. You need to clarify the argument/concept in a way that demonstrates that you really understand it and can express the same ideas in a way that is different than has already been explained by the text or by me.

IV. **Adequate and Balanced Defense of Your Argument**
In question three, you are asked to make an argument using the philosopher we’re studying. You should be clear in your thesis early in the paragraph. It is important

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6 Please note that these guidelines are for my class assignments. Individual instructors may have other format preferences and you should consult with your teacher for the details before completing your assignment.
to ensure that your application is consistent with the philosopher’s theory and that you support that application with a well-thought-out defense. You should include counter-considerations that are relevant to that theory and could impact the philosopher’s conclusions.

V. Quotes
Quoting is a way of supporting your interpretation of an argument or theory. Relevance to your response and to the question asked is critical. Quotes can be edited but be careful not to take the quote out of context, thus altering the intent of the author. The length of the quote must be appropriate to the length of the assignment: short papers require shorter quotes. All quotes must come from the original author’s works, neither from the secondary commentary of the author of our text nor from my lectures or power points. Quotes need only be cited with the page in our text where it was found (see sample completed assignment).

VI. Length
Part of the criteria for success is efficient use of the space allowed. If you write a single sentence for a one/third page assignment, you have not satisfied this criterion. However, this is not an invitation to use the additional space for stream-of-consciousness or irrelevant information not pertinent to the assigned issue. If you are having difficulties with the length, it is usually because you have not recognized or developed sufficiently the various issues involved. Conversely, if your draft is too long, you need to whittle it down to just the relevant essentials, perhaps editing out the anecdotes or redundancies; more is not always better! I am very willing to help if you submit drafts sufficiently before the due date.

VII. Rough Drafts
I have invited all of you to bring rough drafts of your completed assignment in for a preview reading. I do not offer re-writes after I have graded your papers. Rough drafts are brought in during my office hours or by appointment and I only read them in person - with the student present. Please do not submit rough drafts electronically nor should you drop them off in my box.

I support pro-active measures that encourage preparation and thought and with rough draft readings, both the student and I should benefit with the end result being a better final draft. If your work satisfies my criteria (see rubrics following) for “A” level work, and if the draft is formatted and printed in final draft format, I will sign off on the draft, guaranteeing those students somewhere between 100% and 90% of the points possible for this assignment. Your cut-off for rough draft submissions is 24 hours prior to the due date; I will read no rough drafts the day of or the day prior to the due date.

Keep scrolling down for rubrics and a sample completed assignment!
Standards (Rubrics) for Grading Case Studies

The excellent paper (100-90% of points) will exhibit the following qualities:

**Question 1:**
- Conclusion is clearly identified
- Major supporting premises are identified
- Relevant and critical minor supporting premises are identified.
- Argument has been presented with good logical flow.
- Paraphrase has eliminated all irrelevant or unnecessary information.
- Paraphrase is original and not merely a verbatim repetition of original argument
- Argument is clearly understood and consistent with the author’s intent.
- No critique, analysis or irrelevant commentary is provided.

**Question 2:**
- All items are listed as normatively neutral questions. No immediate bias is evidenced.
- All critical questions have been raised given the space allowed.
- Questions are relevant to the case and would be likely to be relevant to the philosopher/theory being applied to the case.
- Questions are likely to drive effective and informative research. The questions should be factual and answerable (at least in terms of probabilities or projections backed up with historical data).
- Questions are not phrased in terms of what will happen or should happen but what has happened; remember one cannot gather data from events that have yet to occur.
- Questions are grammatically correct and are presented in a bulleted list.

**Question 3:**
- A clear thesis statement is made at the beginning of the response.
- Argument is focused on the key issues.
- Argument is clear and well organized.
- Argument is consistent with the assigned philosopher’s theory.
- Argument is effectively supported with relevant reasons.
- Sufficient detail from the philosopher’s theory is provided.
- Argument is effectively supported with relevant quotes from the philosopher’s primary work & all quotes are cited properly.
- Responses reflect thoughtful and detailed consideration of background material provided.
- No immediate personal bias is evidenced.

**Question 4:**
- Core counter-considerations are identified.
- All critical barriers raised are reflective of real-world practical considerations.
• Objections are directly relevant to the case made in response to question three.
• Objections/counter-considerations are presented succinctly in a bulleted list.

**Question 5:**
• All objections or counter-considerations raised in the fourth section have responses.
• Solutions proposed should be reasonably and humanly applicable (e.g. not asking for divine intervention).
• Solutions proposed should be well supported given the space allowed.
• Responses should be consistent with the target philosopher's theory.
• Responses are presented succinctly in a bulleted list which parallels those objections/counter-considerations offered in section 4.

**Overall Impressions:**
• Study presents evidence of a thoughtful and deliberative approach.
• Language is clear and explanations/arguments are original
• Effective use has been made of space allowed
• Study reflects careful consideration of background material provided.
• There is good logic flow from one response to another – issues raised in earlier questions must link logically with responses to later questions.
• The study is scholarly, with effective use of the essays and relevant philosophical theory. All quotes and references are properly cited.
• Assignment format has been followed.

**Good (89-80% points)**
The good paper will demonstrate all the above qualities but perhaps to a lesser degree or, will demonstrate some of the above qualities excellently, but not all of the qualities will be presented at a consistently high level.

**Satisfactory (79-70% points)**
The satisfactory paper will present all of the above qualities but not as strongly as the good paper or, some qualities may be stronger with some not as strong. Insight is not usually present.

**Needs Work (69-60% points)**
This paper is weak on many of the desired qualities.

**Really Needs Work – Pretty Much Unacceptable (59-0% points)**
This paper presents few if any of the desired qualities.

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Keep scrolling down for a sample completed assignment!
Case Study #1: Mill, Arizona & House Bill 2281

1. **Paraphrase the argument presented in the film, “Precious Knowledge.”** This film presents a clear condemnation of AZ House Bill 2281 which the makers of the film charge as targeting the teaching of ethnic studies in AZ high schools. The film argues that the funding of ethnic studies in the high schools is a critical and significant contributor to student success and fulfills the needs of underrepresented students that are not otherwise met in the conventional curriculum. Further it is argued that those supporting AZ HB2281 are motivated by a poor understanding of the ethnic studies program and if not out and out racism, at the very least a callous indifference to the needs of those underrepresented students. Lastly, it is argued that AZ HB2281 is tantamount to censorship.

2. **What sort of further information would assist you in formulating a response to these issues?**
   - What was the drop-out rate for AZ Latino students before vs. during the program? How did the drop-out rate of students who participated in the program compare to the overall drop-out rates of the school district?
   - Are there statistical correlations between drop-out rates and unemployment, homelessness and crime?
   - How have the students in the ethnic studies program performed on standardized tests as compared to the general population of students in the district?
   - Was there an increase in school violence or public disturbances linked to racial tension during the period the program was taught?
   - Have any studies been performed to link diversity of curriculum to student success?
   - What was the racial background of the students in the program?
   - Is the public funding of AZ schools very limited or decreasing? How does AZ per student spending compare to other states in the US?
   - How much does the ethnic studies program cost per student compared to the general courses taught and how many students as a percent of the total school district population does it serve?
   - In other states/cities/districts what impact has the institution of ethnic studies programs had on the students who participate?

3. **Pending the acquisition of this information, how do you think Mill would respond to this case?**
   There are three main reasons why Mill would have rejected Arizona’s House Bill 2281. First, Mill was a utilitarian and thus would weigh the moral worth of this bill in terms of outcomes and the number of people affected. From such a cost-benefit analysis, it appears that though the ethnic studies programs may have been more expensive and served a smaller population of students, the outcomes were significant in terms of greater retention and graduation rates, better scores on standardized exams, higher transfers to colleges, and a significantly more motivated student body who felt empowered to work towards issues of social justice and equal opportunities for Latinos. Under the old system, one must consider the cost of educating students who fail or drop-out. The waste of finite public resources, combined with the social cost of high school drop-outs in terms of quality of life, higher incidences of crime, unrealized potential and lost productivity cannot be disregarded. Secondly, Mill held there is a connection between education, a just society and the greatest good or ‘happiness’ as he called it. For Mill, happiness involved free will,
empowered action, a sense of pride and most importantly, a kind of higher rational dignity. (p.266) He argued, “The present wretched education and wretched social arrangements are the only real hindrance to its being attainable by almost all.” (p.267) If it can be adequately shown that the ethnic studies do contribute to such qualities for a significant number of students – and anecdotal evidence supports this – then this is just the sort of program of which Mill would most approve. Many of the participants reported a significant change in their understanding of how their ancestors contributed to this country and that they had gained a real sense of empowerment and optimism about their own future. Finally, as a classic libertarian, Mill was opposed to excessive government intervention. (p.256) He wrote, “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.” (p255) There appears to be little evidence to support that there was an active harm incurred through the teaching of ethnic studies. Contrarily, there is good evidence that an ethnically diverse curriculum is pedagogically defensible. The Arizona state legislators’ move has effectively curbed a cherished practice of academic freedom which is clearly consistent with Mill’s position on governmental overreach. Encyclopedia Britannica defines academic freedom as, “…the freedom of teachers and students to teach, study, and pursue knowledge and research without unreasonable interference or restriction from law, institutional regulations, or public pressure.” In order to justify this Bill, the legislators needed to demonstrate positive harms such as proving a clear link between an increase in racially motivated violence and the program. Mill argued strenuously against censorship in On Liberty, “If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.” It seems clear that, in this case, there are greater harms in censorship and the erosion of freedom than there are gains made in the name of consistency and standardization. When one includes the books that were also banned, this looks like a bad Bill likely to result in worse consequences.

4. Identify counter considerations or objections to the argument you’ve made in section 3

- Some believe that tailoring district curriculum to reflect the ethnicity of local populations would impede the perceived need for consistency - ensuring that all students graduate with the same basic skill sets.
- Public school funds are always limited and special programs do tend to cost more per student and serve fewer students as a whole.
- The Latino population is traditionally underrepresented both in terms of voter turn-out and in campaign contributions; the representatives are consequently not as motivated to see Latinos as an important part of their constituency.

5. Reply to the counter-considerations identified in section 4.

- Further studies are needed to document how the institution of ethnic studies programs impact students’ performance on standardized tests or other outcomes based assessment tools.
- A set of standardized criteria need to be developed to evaluate the consequences of investment in public education and in ethnic studies in particular. These outcomes should include the impact of graduation rates on social costs such as employment rates, productivity, tax revenue, crime rates, etc. Overall, it appears that school funding also needs to be increased as AZ is one of the lowest states in per student spending.
- Latino voters & politicians need to become more active with voter registration and turnout among the interested constituency. They can also work for campaign finance reform to reduce bias.

8 http://www.britannica.com/EBchecked/topic/2591/academic-freedom