

1 **Misrepresentations and criminal liability in project reporting: A case study of the failed Virgil**

2 **C. Summer project**

3  
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8  
9 **Abstract**

10 The misreporting of project information during the delivery of construction and engineering-  
11 aligned projects has received substantial attention in the literature. While such intentional  
12 misreporting appears in only a minority of instances, its occurrence can expose construction and  
13 engineering-aligned companies and their principal officers to legal jeopardy, criminal liability, and  
14 sanction. To explore this phenomenon, this study conducts a case review of the failed Virgil C.  
15 Summer nuclear expansion project and the ensuing civil and criminal complaints against  
16 personnel at both SCANA (the client/owner) and Westinghouse Electric (the primary contractor).  
17 The findings suggest that various individual, project, organizational and attributable factors drive  
18 project status information misreporting. The findings also suggest that criminal liability arises  
19 from its practice due to the economic harm that such practice causes. The originality of the paper  
20 is threefold. First, it espouses a perspective of intentional misreporting as fraudulent  
21 misrepresentation not previously examined in construction and engineering-aligned project  
22 scholarship. Second, it examines the different categories of factors driving such misreporting.  
23 Third, utilizing applicable common law legal tests, the study examines the impact of such  
24 practices within the framework of corporate illegality.

25 **Keywords:** Projects, Reports, Misreporting, Misrepresentation, Illegality, Criminal liability

26  
27 **Introduction**

28 A large number of studies have pointed to the prevalence of *corrupt* (Dorée 2004; Van den Heuvel  
29 2005; Shakantu 2006; de Jong et al. 2009; Bowen et al. 2012; Gunduz and Önder 2013; Chan and  
30 Owusu 2017; Saim et al. 2018; Owusu et al. 2019; Yu et al. 2019; Wang et al. 2020, 2021; Owusu

31 et al. 2021; Hoke 2021; Catalão et al. 2022; Lehtinen et al. 2022; Lopes and Andrade 2022),  
32 *unethical* (Doran 2004; Transparency International 2005; 2008; Bowen et al. 2007a; 2007b; Saim  
33 et al. 2018; Manu et al. 2019; Zulu and Muleya 2019; Wang et al. 2020a, 2020b; Sarhadi and  
34 Hasanzadeh 2022) and *illegal* (Schneider, 2004; Van De Bunt 2010; Seror et al. 2014; Lu 2019;  
35 Wang et al. 2020, 2021; Du et al. 2021; Locatelli et al. 2022a, 2022b) activities within the  
36 construction and engineering project-aligned industry sectors. It is important to highlight at this  
37 juncture that the fact that a practice is deemed *corrupt* and *unethical* does not necessarily imply  
38 that the practice is *illegal* or likely to expose organizations and their principal officers to legal  
39 jeopardy or to attract criminal liability and sanction (Kaufmann and Vicente 2011; Mulgan 2012;  
40 Podgor 2019). Here, corrupt practices may involve the abuse of public office for private gain  
41 (Bardhan 1997), the pursuit of personal interest in a manner that usurps the public interest  
42 (Lehtinen et al. 2022), or the failure to comply with the duties of an office (Mulgan 2012).  
43 Examples of corrupt practices that may not be illegal (in some jurisdictions) include exchanging  
44 votes in return for the ability to influence public policy, often for private interest (Shleifer and  
45 Vishny 1994).

46 Corrupt, unethical and illegal practices are wide-ranging and varied and have been  
47 reported in numerous countries such as South Africa (Competition Commission of South Africa  
48 2011, 2013a, 2013b, 2022; Public Protector South Africa 2012, 2014), the United Kingdom (Office  
49 of Fair Trading 2009; Henty and Eastwood 2021; Serious Fraud Office 2021) and the United States  
50 (United States Attorney's Office - Eastern District of New York 2015; United States Attorney's  
51 Office - District of South Carolina 2021; United States Attorney's Office - Southern District of New  
52 York 2022). They include, for example, the use of construction projects as conduits for various  
53 forms of organized crime such as money laundering and racketeering (Schneider 2004; RICS  
54 2021).

55 Other examples of corrupt, unethical and illegal practices within the construction and  
56 engineering-aligned industry sectors include fraud (Van den Heuvel 2005), illegal dumping (Seror  
57 et al. 2014; Lu, 2019; Du et al. 2021), and modern slavery (Jones and Comfort 2022; Liu et al.  
58 2022; Locatelli et al. 2022a). Construction and engineering firms have also been found to engage  
59 in misrepresentations in financial statements (Pramana et al. 2019; Cahyani et al. 2021) when

60 reporting project status information (Keil and Robey 2001; Smith et al. 2001, 2009; Tan et al.  
61 2003; Cuellar et al. 2006; Keil et al. 2007, 2014; 2019; Snow et al. 2007; Park et al. 2008a, 2008b;  
62 Iacovou et al. 2009; Park and Keil 2009; Smith et al. 2009; Korzaan and Brooks 2015; Lee et al.  
63 2017; Stingl and Geraldini 2017; Glowasz 2020; Godbold 2020). In sum, the construction and  
64 engineering-aligned industry is regarded as one of the most corrupt industry sectors in the global  
65 economy (Transparency International 2005; 2008; Hoke 2021; Owusu et al. 2021; Lehtinen et al.  
66 2022; Lopes and Andrade 2022). Lohne et al. (2015) suggest that industry-specific characteristics,  
67 such as the intangibility of its design and management, have presented a temptation for  
68 organizations to conduct ethical behavior in the industry.

69         Aligning with social psychology literature which opines that interpersonal communication  
70 frequently contains lies and falsifications (Sengupta et al. 2002), construction and engineering  
71 project-aligned literature suggests that the misreporting of project status information appears to  
72 be the norm rather than the exception (Snow et al. 2007; Keil et al. 2014; Lee et al. 2017). Reports  
73 of widespread misreporting of project status information are particularly concerning because the  
74 quality of project reports is essential for ensuring the success of project outcomes (Thompson et  
75 al. 2007; Iacovou et al. 2009). More specifically, accurately reporting progress status is one of the  
76 most important activities that project personnel are expected to undertake during the delivery  
77 of a project (Keil et al. 2007).

78         The misreporting of project status information can be *intentional* (Oz 1994; Snow et al.  
79 2007; Smith et al. 2009) or *unintentional* (Kirs et al. 2001; Buehler and Griffin 2003; Smith et al.  
80 2009). Drawing from the case law in *R v Moloney [1985]* and also *R v Hancock & Shankland [1985]*,  
81 '*intent*' is construed to imply '*...having either foresight or knowledge of the likely or desired*  
82 *consequence of such misreporting*'.

83         Although the misreporting of project status information has been widely reported in  
84 construction and engineering-aligned academic literature research that explores the more  
85 nuanced realities of intentional misreporting (and, by implication, fraudulent misrepresentation),  
86 which is core to this practice, is lacking. Furthermore, within this corpus of literature, there  
87 appears to be limited or no studies focused on the various factors driving such intentional  
88 misreporting. While it appears that intentional misreporting of project status information

89 actually occurs in a minority of instances, the consequences for construction and engineering-  
90 aligned companies and their principal officers when it does occur can be severe. Legally framed  
91 as a form of *'fraudulent misrepresentation'*, as is seen in the civil (*United States Securities and*  
92 *Exchange Commission v. SCANA Corporation and Others [2020]*), class action (*Marshall Fox &*  
93 *Others v. SCANA Corporation and Others [2017]*; *KBC Asset Management and Others v. Kevin*  
94 *Marsh and Others [2019]*), and criminal complaints (*United States of America v. Carl Dean*  
95 *Churchman [2021]*; *United States of America v. Jeffrey Alan Benjamin [2022]*; *United States of*  
96 *America v. Stephen Andrew Byrne [2020]*; *United States of America v. Kevin Marsh [2020]*) that  
97 flowed from the failed Virgil C. Summer nuclear expansion, intentional misreporting of project  
98 status information can bring about severe consequences, exposing construction and engineering-  
99 aligned companies and their principal officers to legal jeopardy and/or criminal liability and  
100 sanction (Smith et al. 2001; Snow et al. 2007). It is for this reason that, couched within the notion  
101 of the *'dark side of projects'* (Locatelli et al. 2022a, 2022b; Sarhadi and Hasanzadeh 2022), this  
102 study seeks to achieve three main objectives. First, it explores how intentional misreporting  
103 represents a form of fraudulent misrepresentation. Second, it examines the different categories  
104 of factors (*individual, project, organizational and attributable*) that serve to drive such  
105 misreporting. Third, utilizing applicable common law legal tests, this study examines how  
106 intentional misreporting of project status information can expose construction and engineering-  
107 aligned companies and principal project personnel to criminal liability and sanction.

108 The study is framed within the *'dark side of projects'*; this is important for two reasons.  
109 First, as observed by Locatelli et al. (2022a, 2022b), exploring corrupt, unethical and illegal  
110 practices in construction and engineering projects involves engaging in research which touches  
111 on behavior deemed uncomfortable and sensitive. This is particularly the case where such studies  
112 will involve making direct references to organizations and individuals. Second, doing so also raises  
113 questions about the extent to which projects do indeed represent legitimate forms of organizing  
114 (Packendorff 1995; Bakker et al. 2016; Stjerne and Svejenova 2016; Van Marrewijk et al. 2016;  
115 Geraldi and Söderlund 2018).

116

117 **Misreporting in projects**

118 *The concept*

119 The intentional misreporting of project status information comes in different forms. These  
120 include deliberate omissions (Keil and Robey 2001; Snow and Keil 2002; Smith and Keil 2003) and  
121 alteration of project information. It can also take the form of purposeful errors (Merriam-  
122 Webster's Law Dictionary 2022a), distortions (Merriam-Webster's Law Dictionary 2022b), and  
123 suppression (Merriam-Webster's Law Dictionary 2022c) of information (Oz 1994; Smith et al.  
124 2001; City of New York 2014; Keil et al. 2014; Glowasz 2020; Godbold 2020). Intentional  
125 misreporting also includes the production of reports marred by half-truths (Merriam-Webster's  
126 Law Dictionary, 2022d), omissions (Merriam-Webster's Law Dictionary 2022e), and/or  
127 concealment (Merriam-Webster's Law Dictionary 2022f). Another form of intentional  
128 misreporting of project status information includes the selective reporting of project status  
129 (Iacovou et al. 2009).

130 Intentional misreporting of project status information can be presented in either an  
131 '*optimistic*' manner or a '*pessimistic*' manner (Snow et al. 2007). When presented in a manner  
132 construed as '*optimistic*', the misrepresentations contained therein will be made in a manner  
133 that intentionally suggests that the project is progressing and/or performing either as expected  
134 or better than expected. On the other hand, when presented in a '*pessimistic*' manner, the  
135 misrepresentations suggest that it is progressing and/or performing worse than expected.

136

137 *Consequences*

138 There are a number of consequences flowing from the intentional misreporting of project status  
139 information. At a very basic level, it can lead to stakeholders and in fact the project team losing  
140 track of the project. It can also lead to major time and cost delays (and escalations), cause quality-  
141 related problems, and result in a misuse of resources such as financial, human, and organizational  
142 skills. When intentional misreporting of project status occurs, it places the project stakeholders  
143 in a difficult position, as they will lack awareness of the impending failure of their projects (Lee  
144 et al. 2017). Furthermore, in the absence of information that accurately and fairly reflects the  
145 status of the project, stakeholders are likely to be inattentive to both internal and external risks  
146 and threats that may lead to project failure (Lee et al. 2017). This is particularly important as it

147 can take considerable time before the necessary corrective action can be put in place once  
148 project stakeholders become fully aware of the impending failure of their project. Scholars posit  
149 that there is a relationship between misreporting of project status information and a decrease in  
150 readiness against project failure (Keil and Robey 2001; Smith et al. 2001; Keil et al. 2007, 2014).

151 The intentional misreporting of project status information can also lead to a cycle of  
152 distrust developing (i) between project personnel and (ii) between project personnel and  
153 stakeholders (Keil et al. 2019). This will occur because projects rarely fail without prior warning  
154 signs of the oncoming failure (Cuellar et al. 2006; Keil et al. 2014). Intentional misreporting of  
155 project status information can also lead to physical harm (Szwajkowski 1985). For example, when  
156 the presence of unsafe working conditions (such as asbestos) is misreported, it can result in  
157 various disabilities and terminal illnesses (such as cancer). Instances of such cases and  
158 prosecutions by the Health and Safety Executive in the United Kingdom have been widely  
159 reported. Cases here include *Health and Safety Executive v Valentin Pauliuc and HSM Builders*  
160 *[2022]*, *Health and Safety Executive v Ensure Asbestos Management Ltd and Others [2022]*,  
161 *Health and Safety Executive v Barrie Lyons [2017]*, and *Health and Safety Executive v Stephen*  
162 *Harper and Garry Arnold [2017]*. Misreporting of project status information can also expose the  
163 wider society, construction and engineering-aligned companies, project stakeholders, principal  
164 project personnel, and the project itself to financial and environmental risks (Park et al. 2008b).  
165 It can also expose them to civil (including class action) and criminal liability.

166

### 167 *Factors leading to misreporting of project status information*

168 Various factors drive the misreporting of project status information. These may be specific to (i)  
169 individual project manager and/or other principal project personnel, (ii) project factors, (iii)  
170 organizational factors, and/or (iv) factors attributable to the project and/or stakeholders.

171 Factors that are specific to individual personnel are numerous. They may include the  
172 demographic characteristics (age, gender, level of education, and years of experience) of the  
173 individual project personnel (Korzaan and Brooks 2015) and their innate personality traits (Keil  
174 et al. 2007; Park et al. 2008b). Here, the level of demographic dissimilarity, the producers of  
175 project reports, and the consumers of information contained in these reports may be a factor

176 (Park and Keil 2009). As relates to traits, conscientiousness (in other words, their sense of  
177 obligation and purpose) and their affective states such as mood serve as drivers (Lee et al. 2017).

178 Other factors specific to individuals may include their overall commitment to ethical,  
179 professional and legal obligations as well as their willingness and/or predisposition to effectively  
180 communicate either with each other or with project stakeholders (Park et al. 2008b). Another  
181 individual factor found to be of relevance to individual project personnel is trust (Smith et al.  
182 2009). Trust impacts and formulates the nature of the relationship between individuals (Iacovou  
183 et al. 2009). Individual risk propensity (Smith et al. 2001) and national culture of individual  
184 personnel are also identified as drivers for the overall disposition of individuals to misreport  
185 project status information (Tan et al. 2003; Keil et al. 2007 2014). For example, as relates to risk  
186 propensity, individuals with a higher propensity for risk appear less likely to report negative  
187 project information than those with a lower propensity for risk (Smith et al. 2001). Furthermore,  
188 individuals with a higher propensity for risk appear more willing to engage in intentional  
189 misreporting where they assume that doing so can either be sustained over a period of time or  
190 that the causation of the negative report can be controlled (Tan et al. 2003; Park et al. 2008b).

191 Perceived urgency in terms of time taken to make specific decisions is also identified as a  
192 driver for intentional misreporting (Evans 2021). This will happen, for example, where it is  
193 perceived that the period for corrective action is limited (Park et al. 2008a). It can also occur  
194 where project personnel perceive that stakeholders may be reluctant to adjust their plans if  
195 furnished with accurate project information (Smith et al. 2001; Jorgensen and Sjoberg 2004). On  
196 the other hand, as relates to national culture, project personnel from more collectivist cultures  
197 do appear more willing to engage in misreporting than those from more individualistic cultures  
198 do (Tan et al. 2003). The literature further opines that individuals are also more likely to engage  
199 in misreporting of project status information if they perceive that providing accurate information  
200 may attract negative consequences. These consequences include limiting their careers (Smith et  
201 al. 2001; Tan et al. 2003; Keil et al. 2007) or causing personal reputational damage (Lee et al.  
202 2017). Another negative consequence is legal action (Lee et al. 2017).

203 Project factors driving misreporting of project status information may include the nature  
204 of the project environment (Iacovou et al. 2009). This may also include how project risks are

205 perceived, considerations of available resources, and the nature of reporting and governance  
206 structures that exist within the project (Park and Keil 2009; Lee et al. 2017).

207 In addition to individual and project factors driving the misreporting of project status  
208 information are wider organizational factors. These may include the nature of the ethical climate  
209 within the client/owner or contractor's organization. Generally, there appears to be a greater  
210 tendency to engage in misreporting within environments where self-interest plays a greater role  
211 in decision making. Thus, it is expected that misreporting is less likely to occur in organizational  
212 settings where correct procedures and policies are followed (Smith et al. 2009). Another key  
213 organizational factor driving the misreporting of project status information is the nature of the  
214 prevailing culture. For example, where there is a commitment to corporate oversight, it is  
215 expected that misreporting is less likely. Both ethical climate and prevailing culture are important  
216 in determining whether reporting unfavorable information will be discouraged (Iacovou et al.  
217 2009).

218 Mishina et al. (2010) offers an interesting explanation that may be used to further  
219 articulate how organizational factors drive the misreporting of project status information. More  
220 specifically, they suggest that high-performing organizations maintain relatively high  
221 performance reference points (meaning that their internal aspirations and expectations are likely  
222 to be higher than those of their competitors). In such circumstances, concerns over (i) the  
223 potential to maintain their performance vis-à-vis competitors, (ii) a possible deterioration of  
224 future performance, and (iii) associated costs to the organization and its principal officers in  
225 failing to maintain their performance and achieve their expectations are likely to increase the  
226 organization's susceptibility to engage in corporate illegality. Intertwined with these concerns are  
227 two factors. The first is that the criteria for determining corporate success are likely to increase  
228 as the organization continues to receive positive feedback on its performance (for example,  
229 financial performance). This creates a form of success trap (Petro et al. 2020; Ojiako et al. 2023).  
230 Since, in reality, most organizations (and their principal officers) are not able to sustain ever-  
231 increasing performance levels, there is a tendency to engage in further corporate illegality. The  
232 second factor is that, with the knowledge that decision choice is based on an assessment of  
233 potential and sure gains against potential and sure loss, such organizations are likely to adopt



234 risk-averse positions in their quest to protect sure gains. On the other hand, they are more likely  
235 to be risk seeking to avoid sure losses. Furthermore it is likely that, when weighing the potential  
236 for gain against the potential for loss, the potential for loss will appear to weigh more than that  
237 of the potential for gain. Thus, the consequences of a potential loss appear to play a larger role  
238 in the decision of high-performance organizations on whether to engage in illegal activities such  
239 as misreporting.

240 Externally attributed factors also drive the misreporting of project status information.  
241 Here, the focus is on casual explanations of misreporting due to the action of external entities  
242 (Kelley and Michela 1980; Keaveney 2008). Externally attributed factors advance the view that  
243 potentially negative project information may be unwelcomed by stakeholders (Morrison and  
244 Milliken 2000) and/or downplayed or ignored by project stakeholders (Keil and Robey 2001;  
245 Smith et al. 2001). This may occur if stakeholders are perceived not to have solicited such  
246 negative information (Morrison and Milliken 2000; Lim et al. 2020; Sherf et al. 2020). A key  
247 consideration here is the power relationship that exists between project personnel who are,  
248 arguably, *internal* to the project and stakeholders who are, arguably, *external* to the project (Keil  
249 et al. 2014; Locatelli et al. 2022b). Thus, while negative project status information is likely to be  
250 made available to internal project personnel, such information is likely to be misreported to  
251 external stakeholders (Park et al. 2008a). Interestingly, placing the responsibility for project  
252 delivery in the hands of senior executives may actually increase the misreporting of project status  
253 information. Keil et al. (2014), for example, observed that project personnel were more likely to  
254 misreport project status information where the power of senior executives or project sponsors  
255 was perceived to be strong.

256

## 257 **Misrepresentation**

### 258 *Types*

259 Misrepresentation is a form of corporate illegality (Szwajkowski 1985). Generally, a  
260 misrepresentation will occur when a vendor (representor) such as a contractor unambiguously  
261 communicates a false assertion to a client (representee) with the intention to induce the  
262 representee to act in a certain manner or to undertake a specific action (Feder 1986). In cases

263 such as *Gordon v Selico* [1986], *Contex Drouzhba Ltd v Wiseman* [2007], *Lindsay v O'Loughnane*  
264 [2012] and *Spice Girls Ltd v Aprilia World* [2002], the courts have found that misrepresentation  
265 can be construed either from a statement made by the representor or from their conduct. The  
266 subject matter of a misrepresentation can relate to the law as noted in both *West London*  
267 *Commercial Bank v Kitson* [1884] and *Pankhania v Hackney LBC* [2002]. This is despite earlier  
268 assertions made in *Solle v Butcher* [1950] that it should not; based on the notion that everyone  
269 is presumed to know the law. In *Kleinwort Benson v. Malaysian Mining Corp* [1989] the courts  
270 have stated that the subject matter of a misrepresentation can relate to matters of fact.

271 In common law jurisdictions such as Australia, the United States, South Africa, the United  
272 Kingdom, and New Zealand, misrepresentation can be construed in different categories. Broadly  
273 speaking, these can be in the form of, for example, *statutory misrepresentation*. Here statutory  
274 misrepresentation refers to misrepresentation as set out specifically within legislation. Examples  
275 of such legislation include The Criminal Law Consolidation Act 1935 (Australia), The Fraud Act  
276 2006 (United Kingdom), The Crimes Act 1961 (New Zealand), and The Prevention and Combating  
277 of Corrupt Activities Act, 2004 (Act 12 of 2004) (South Africa).

278 The essence of statutory misrepresentation is that the courts will find an action where (i)  
279 a representee brings proof that on the basis of ascertainable facts (ii) a misrepresentation was  
280 affirmatively made by a representor, (iii) that there was reliance by the representee on such  
281 misrepresentation, and that (iv) the representor did not have any reasonable grounds to believe  
282 that their representations were true. Cases which restate this position include *Howard Marine*  
283 *and Dredging v Ogden* [1978] and also *Foster & Anor v Action Aviation* [2013]. In the case of  
284 *negligent misrepresentation*, this will be found to have occurred where (i) a representor, despite  
285 a special relationship that exists with the representee (ii) carelessly makes a representation that  
286 breaches the duty of care the representor owes to the representee. Another type of  
287 misrepresentation is *innocent misrepresentation*. Action here is likely to be found where a false  
288 statement was made by a representor who genuinely believed that such statement was true.  
289 However, for such misrepresentation to be deemed 'innocent', on examining the facts, the courts  
290 will have to be satisfied that the representor was not negligent or reckless in the duty owed to  
291 the representee. As stated in *Briess v Woolley* [1954], *fraudulent misrepresentation* primarily

292 arises where the misrepresentation is made by the representor with the intention of deceiving  
293 the representee.

294

295 *Legal tests for fraudulent misrepresentation*

296 A key element of *fraudulent misrepresentation* is the existence of *fraud* itself. There are  
297 numerous definitions of fraud advanced in the literature. For example, it has been defined as the  
298 act of “...obtaining something of value or avoiding an obligation by means of deception” (Duffield  
299 and Grabosky 2001) and the act of “...wrongful or criminal deception aimed to result in financial  
300 or personal gain” (Sahin et al. 2013). Thus, by implication, a key element of fraud is the existence  
301 of the undertaking of acts which are prohibited and, therefore, unlawful. Fraudulent  
302 misrepresentation involves the intention of deceiving or deception (Oleck 1962; Perell 1996). In  
303 most common law jurisdictions, broadly similar tests exist which allow the courts to establish the  
304 presence of fraudulent misrepresentation.

305 In the United States, there are six tests for fraudulent misrepresentation as set out in the  
306 case law. These cases include *Socony-Vacuum Oil Co. v. Allied Oil Corp [1949]* and *Bouxsein v.*  
307 *First National Bank [1920]*. First, it must be demonstrated by the representee that the  
308 representor made a representation as relates to a material fact. Second, the representee must  
309 demonstrate that the representation by the representor was false. Third, the representee must  
310 demonstrate that the truthfulness of the representation was either not believed by the  
311 representor, or that the representor did not have a reasonable ground to believe the  
312 representation to be true. Fourth, the representee must further show that it was the intention  
313 of the representor for the representee to act upon the representation. Fifth, the representee  
314 must also show that (v) the representee did act upon such representation to their loss or damage.  
315 Here, the focus is on reliance by the representee. In effect, by demonstrating reliance, the  
316 representee must show the court that there was a relationship between the representor  
317 statement or conduct and the loss or injury the representee suffered. The main question for the  
318 courts under such circumstances is the extent to which the representee could have been  
319 influenced *not* to undertake the specific action if such misrepresentation was not in existence.

320 Sixth, it must be shown that the representee reasonably believed that the representation was  
321 true (Oleck 1962).

322 Similar tests exist in South Africa where five broad tests are applied to determine the  
323 existence of fraudulent misrepresentation. These tests are summarized as follows. First, on the  
324 basis of *Bayett and Others v Bennetts and Another [2012]*, the representor had knowledge that  
325 the representation is false. Second, on the basis of *Berkemeyer v Woolf [1929]*, it must be shown  
326 that the misrepresentation which is construed as fraudulent was made with the intention  
327 (whether actual or constructive) to benefit the representor and cause injury to the representee.  
328 Third, referencing both *Pathescope v Mallinick [1927]* and *Kahn v Naidoo [1989]*, the representee  
329 was induced by the misrepresentation to undertake a specific action. Fourth, based on opinion  
330 expressed in *Service v Pondart-Dianns [1964]*, it must be shown that the misrepresentation was  
331 an important consideration driving the action taken by the representee. Fifth, drawing again from  
332 *Bayett and Others v Bennetts and Another [2012]*, the representee must show that they suffered  
333 loss as a result of the misrepresentation.

334 In the United Kingdom, to sustain a claim for fraudulent misrepresentation, the  
335 representee must meet six tests. First, the representee must demonstrate to the courts that the  
336 representor actively (*Peek v Gurney [1873]*) advanced a statement of fact (*Smith v Land & House*  
337 *Property Corp. [1884]*; *West London Commercial Bank v Kitson [1884]*) or conducted themselves  
338 in a specific manner that conveyed such a representation (*Contex Drouzha Ltd v Wiseman*  
339 *[2008]*; *Lindsay v O'Loughnane [2012]*). Second, there is the need to demonstrate that the  
340 statement was tainted by its false nature. The third test focuses on the state of mind of the  
341 representor. Generally, the representee will need to demonstrate that the representor was, at  
342 the time of the representation, aware of their dishonesty (*Derry v Peek [1889]*). Fourth, the  
343 representee is also required to show that the representor intended in all sense and purpose that  
344 the representee may or would rely upon the representation (*Mead v Babington [2007]*).

345 As observed by Handley (2015; p. 284), "*the representor must have decided to make the*  
346 *misrepresentation because he or she judged that the truth or silence would not, or might not,*  
347 *serve their purposes or serve them so well.*" The fifth test applied in the English courts is the test  
348 on reliance. Here, the courts state, as set out in both *Briess v Woolley [1954]* and in *Pan Atlantic*

349 *Insurance v Pine Top Insurance [1995]* that, based on the facts, they will examine whether the  
350 representee did rely upon the representation of the representor.

351 In *Hayward v Zurich Insurance [2016]*, the United Kingdom Supreme Court stated that  
352 enquiries into whether the representee may or would rely upon the representation involved  
353 examining the facts of the case. Interestingly, as the courts observed in *Edgington v Fitzmaurice*  
354 *[1885]*, it is irrelevant as to whether the inducement was partial or otherwise. Generally, part  
355 reliance was irrelevant because, as opined in *Standard Chartered Bank Ltd v Pakistan National*  
356 *Shipping [2003]* [at 15-16]: “...if a fraudulent representation is relied upon...it does not matter  
357 that he [the representee]... also had some other negligent or irrational belief about another  
358 matter and, but for that belief, would not have parted with his money either. The law simply  
359 ignores the other reasons why he paid”. In *Gould v Vaggelas [1984]* the court stated that partial  
360 inducement is also not a defence to any action for fraudulent misrepresentation on the basis that  
361 the representor’s representation is only one of the reasons for the representee’s loss. It is also  
362 important, based on *Betjemann v Betjemann [1895]*, that the courts have taken the position that  
363 a representee does not need to take any specific action to guard against such misrepresentation.  
364 The final test for fraudulent misrepresentation was applied by *Pasley v. Freeman [1789]* and  
365 posits that the financial loss or damage suffered by the representee was caused by the  
366 misrepresentation of the alleged representor.

367

### 368 **Theory**

369 Despite the absence of an explicit theoretical base explaining the *illegality* dimension of  
370 misreporting of project status information, there exists an eclectic assortment of applicable  
371 theoretical streams that, knitted together, serve to construct an objective understanding of the  
372 phenomenon. In particular, the function of these theories is to provide the basis for addressing  
373 questions on ‘*Why*’, ‘*When*’ and ‘*How*’ (Walker et al. 2015). Furthermore, these theories are also  
374 important because they provide detailed insights that serve as the basis for extending how the  
375 misreporting of project status information may be understood within the boundaries of critical  
376 reasoning (Ziegler 1988; Cownie 2000).

377 Four such theories are relevant to this study. These are '*Fraud theory*' (Dorminey et al.  
378 2012; Maulidi and Ansell 2021), '*Message exchange theory*' (Stohl and Redding 1987; Walker and  
379 Stohl 2012; Miller and Barbour 2014), '*Whistle blowing theory*' (Near and Miceli 1996; Keil and  
380 Robey 2001; Miceli and Near 2002; Keil et al. 2004; Park and Keil 2009; Wang and Oh 2011), and  
381 '*Bad news reporting*' theory (Smith et al. 2001; Tan et al. 2003; Cuellar et al. 2006; Keil et al. 2007;  
382 Snow et al. 2007; Park et al. 2008a; Iacovou et al. 2009; Keil et al. 2014; Korzaan and Brooks 2015;  
383 Lee et al. 2017; Keil et al. 2019). It is important to highlight that a conceptual similarity has been  
384 found to exist between '*Whistle blowing*' and '*Bad news reporting*' (Cuellar et al. 2006; Korzaan  
385 and Brooks 2015).

386 Taken together and not be construed as mutually exclusive, these theories suggest that  
387 the decision on whether or not to engage in *misreporting of project status information* involves  
388 well set-out steps (Park et al. 2008a).

389 The essential idea within *Fraud theory* is that it is an action primarily motivated by self-  
390 interest and gain. The '*Message exchange theory*' (MET) on the other hand opines that those  
391 who send messages do so in pursuit of particular objectives which are aligned to their own  
392 interests and that these interests will be prioritized over any obligation not to misreport project  
393 information. '*Whistle blowing theory*' focuses on the willingness of individuals to engage in  
394 misrepresentation to the extent that their actions become illegal. Conversely, '*Bad news*  
395 *reporting*' focuses on the willingness of individuals not to misreport project information in order  
396 to facilitate timeous objective and constructive decision making.

397 As these theories all serve to enhance how decision-making failures that lead to the  
398 misreporting of project status information are understood, a brief articulation of the cognitive  
399 process leading to such misreporting is needed.

400 At the point that project personnel become aware of potentially negative project  
401 information, they will need to make a decision on whether to engage in misreporting. This  
402 decision may be motivated by whether misreporting will serve as a means of attaining specific  
403 (often self-serving) objectives. A further decision will require consideration of where and with  
404 whom the responsibility to make such a report resides ~~with~~. For example, the individual may  
405 arrive at the view that they have the professional, ethical and/or legal responsibility to provide

406 such a report or pass on such information to someone else with the relevant responsibility and  
407 authority to do so. This is then followed by a consideration of where such a report needs to be  
408 made; for example, whether the report needs to be made internally within the individual's own  
409 organization or to an external body. The literature suggests that individuals are more disposed  
410 to internal as against external reporting because the consequences flowing from internal reports  
411 tend to be less severe than those flowing from external reports (Smith et al. 2001).

412

## 413 **Methods**

### 414 *Case reviews and analytical framework*

415 This study undertakes a case review of the failed Virgil C. Summer nuclear expansion project. As  
416 a form of legal research, the use of case reviews is widely accepted (White 2013; Argyrou 2017).  
417 In particular, it facilitates both the "...use [of] facts we know to learn-about facts we do not know"  
418 (Epstein and King 2002) and also serves to "...help to understand how laws are understood, and  
419 how and why they are applied and misapplied, subverted, complied with or rejected" (Webley  
420 2016). Case reviews are also of particular value as they focus on single events (White 2013). They  
421 are therefore, above all, valuable to ensure an appreciation of the operation of the law.

422 In discussing the challenges associated with research that engages with the '*dark side of*  
423 *projects*', Locatelli et al. (2022b) highlight the advantages of research that draws upon public  
424 secondary data, in particular, judicial findings, judgments, and carefully crafted legal  
425 proofreading as a means of reducing the risk of defamation for author(s). This is important noting  
426 likely reference to specific organizations and specific individuals.

427 To this end, this study draws specifically on the civil complaints filed by the United States  
428 Securities and Exchange Commission (*United States Securities and Exchange Commission v.*  
429 *SCANA Corporation and Others [2020]*), the class actions brought about by both Marshall Fox  
430 (*Marshall Fox & Others v. SCANA Corporation and Others [2017]*) and KBC Asset Management  
431 (*KBC Asset Management and Others v. Kevin Marsh and Others [2019]*) and, most importantly,  
432 the criminal complaints filed by the United States government (*United States of America v. Carl*  
433 *Dean Churchman [2021]*; *United States of America v. Jeffrey Alan Benjamin [2022]*; *United States*  
434 *of America v. Stephen Andrew Byrne [2020]*; *United States of America v. Kevin Marsh [2020]*)

435 which allege historic fraudulent misrepresentations (among other charges) against the principal  
436 personnel in the failed project. These were SCANA (the client/owner), Westinghouse Electric (the  
437 primary contractor), and their senior executives who, throughout the period the  
438 misrepresentations occurred, maintained direct responsibility for the delivery of the project. At  
439 SCANA, these executives were Kevin Marsh, the Chief Executive Officer (CEO)/Chairman and  
440 Stephen Byrne, the head of its Generation and Transmissions Department. Others were Jeffrey  
441 Benjamin and Carl Churchman, the two executives at Westinghouse with direct responsibility for  
442 the delivery of the project. All the complaints were filed in the District Court of the United States  
443 for the District of South Carolina. Three of the executives Kevin Marsh, Stephen Byrne, and Carl  
444 Churchman entered guilty pleas resulting in criminal sanction that included a combination of (i)  
445 fines, (ii) property forfeiture, (iii) agreement to provide restitution, and (iv) custodial (prison)  
446 sentences. However as Jeffrey Benjamin entered a not guilty plea, his trial is pending, and  
447 expected to commence towards the end of 2022.

448 The 'I-R-A-C' (Issue, Rule, Analysis, and Conclusion) method of legal analysis was  
449 employed as the analytical framework (Bittner 1990; Burton 2017). This framework supports  
450 legal analysis through a focus on (i) determining the primary legal issue, (ii) enquiring into the  
451 nature of the specific law and legal rules engaged in the issue under evaluation, (iii) application  
452 of the specific law and legal rules to the facts of the case being analyzed, and (iv) drawing relevant  
453 conclusions.

454

#### 455 *Case summary*

456 SCANA was an electric and natural gas publicly trading utility based in Columbia, South Carolina.  
457 In 2008, facing rising energy demands from its approximately 700,000 customers, the company  
458 made a decision to increase its production capacity. This involved the need to commission two  
459 new 1,117-megawatt AP1000 nuclear power plants ('the project'). The plants were to be co-  
460 located at SCANA's main power station located in Jenkinsville, South Carolina ('the Virgil C.  
461 Summer Nuclear Station'). The new plants were expected to have a sixty-year life expectancy  
462 once operational.



463 The Engineering, Procurement and Construction ('the EPC contract') contract was  
464 awarded on 23 May 2008 to Westinghouse Electric Company ('Westinghouse'). As SCANA already  
465 operated one power plant at the Virgil C. Summer nuclear station ('Unit 1'), the expansion project  
466 provided for the two new power units ('Unit 2' and 'Unit 3'). At the time of commissioning the  
467 project, Unit 2 was scheduled to be completed by 1 April 2016 while Unit 3 was scheduled for  
468 completion by 1 January 2019. Construction commenced in March 2013. However, following  
469 significant project delays and cost overruns, in 2017, the project was abandoned at a total loss of  
470 \$US9 billion without completion of any ~~of the~~ unit.

471  
472 *IRAC - Issue*  
473 Due to the high estimated cost of the project (estimated at US\$9.8 billion), SCANA sought to fund  
474 the project from two sources; (i) through financial incentives provided by United States federal  
475 law (The Energy Policy Act of 2005), and (ii) through South Carolina State law (The Base Load  
476 Review Act).

477 The first funding mechanism, provided under The Energy Policy Act of 2005 was based on  
478 the entitlement of newly built nuclear units to tax credits if they were operational and producing  
479 power by 1 January 2021. This meant that SCANA's ability to fund the delivery of the project was  
480 heavily dependent on successful project completion by 31 December 2020. The second, which  
481 involved an advanced cost recovery scheme (Kirkland 2022), was provided under The Base Load  
482 Review Act. This funding mechanism allowed SCANA to raise further capital to fund the project  
483 prior to and during completion (as against project completion) by petitioning relevant state  
484 regulators for permission to raise its customers' energy rates (bills). In this instance, this petition  
485 was to be authorized by the South Carolina Public Service Commission (PSC), the regulator  
486 responsible for authorizing utility rates in South Carolina. By law, (i) SCANA needed permission  
487 from regulators to raise rates because it was a monopoly energy provider. The company would  
488 also have to satisfy other reporting requirements stipulated by other regulators such as (ii) the  
489 Office of Regulatory Staff (ORS) which represented South Carolina's public interest, (iii) the South  
490 Carolina Public Service Authority (PSA), and (iv) the Nuclear Advisory Council (NAC).

491

492 *IRAC - Rules*

493 The main legislation addressing fraudulent misrepresentation as cited in the various complaints  
494 was the Securities and Exchange Act of 1934. This legislation is one of the primary laws governing  
495 the financial markets in the United States. Of specific relevance to the complaints were (i) Section  
496 13(a) which deals with '*Reporting and Recordkeeping for Certain Security-Based Swaps*', (ii)  
497 Section 15(d) which deals with '*Securities Analysts and Research Reports*', and (iii) Section 20  
498 which deals with the '*Liability of Controlling Persons and Persons Who Aid and Abet Violations*'.  
499 As 'controlling persons' within the meaning of Section 20(a), the principal personnel were legally  
500 obliged, as set out in Sections 13 (a) and 15 (d) of the Act, to provide detailed reports on the  
501 progress of the project that were not marred by "...*false and fraudulent pretences,*  
502 *representations, and promises*" (*United States of America v. Stephen Andrew Byrne [2020]* at  
503 pages 8 and 9; *United States of America v. Kevin Marsh [2020]* at page 9; *United States of America*  
504 *v. Jeffrey Alan Benjamin [2022]* at page 13).

505

506 *IRAC - Analysis*

507 The project commenced in March 2013. However, by September 2013, it was already  
508 experiencing major delays. These delays led to the first revision of the scheduled project  
509 completion dates (in 2014) from April 2016 to June 2019 for Unit 2 and from January 2019 to  
510 June 2020 for Unit 3. However, the complaints do show that the filed revised project completion  
511 dates were themselves marred by fraudulent misrepresentations. This is because, by the time  
512 the regulators were legally notified on the revised schedule (on 12 March 2015), the principal  
513 personnel at SCANA and Westinghouse were fully aware that the project was significantly behind  
514 the revised schedule. Most importantly, they were also aware that, based on a correct project  
515 forecast, only 30% of the project was likely to be completed by the end of 2020. As highlighted  
516 above, part of the funding mechanism which the project depended on, provided that the project  
517 had to be completed and operational by 1 January 2021. Thus, if the project was not completed  
518 by 31 December 2020, it would not be financially viable. The complaints observed that the  
519 principal personnel at SCANA and Westinghouse were aware of this information at the earliest  
520 in 2014 and at the latest in March 2015.

521 In 2015, with internal concerns rising, SCANA retained Bechtel as an external consultant,  
522 to conduct a detailed assessment of the progress of the project. This exercise was completed in  
523 October 2015. The outcome suggested that, based on existing progress, on an optimistic  
524 evaluation, completion of Unit 2 was likely to be between December 2020 and August 2021 while  
525 completion of Unit 3 was likely to be between June 2022 and June 2023. Despite being in  
526 possession of this information, SCANA chose not to disclose it in to the stakeholders (in particular,  
527 regulators) and continued with their misrepresentation. For example, in revised schedules, it  
528 sought only to adjust the purported completion dates of Unit 2 (of June 2019) and Unit 3 (of June  
529 2020), for Unit 3 by 60 days despite the fact that these dates were themselves fraudulent  
530 misrepresentations. Furthermore, as the complaints show, despite being fully aware that the  
531 project was in extreme jeopardy and there was no likelihood of meeting the newly revised  
532 timescales of June 2019 and June 2020, the principal personnel continued to publicly announce  
533 in 2016 that the project was making significant progress. In one instance, a media event was  
534 organized where pictures of the purported construction site were displayed. The project was  
535 eventually abandoned in 2017, following which Westinghouse sought bankruptcy protection.  
536 However, SCANA continued its fraudulent misrepresentation by claiming in testimony during a  
537 hearing before the South Carolina House Utility Ratepayer Protection Committee that the project  
538 could have been successfully completed, if not for Westinghouse's bankruptcy. Further  
539 fraudulent misrepresentations were also made in testimony before the South Carolina Senate's  
540 Nuclear Project Review Committee that prior filings made to regulators were based on material  
541 facts at the time in question.

542

543 *IRAC – Drawing relevant conclusions*

544 In sum, as the complaints point out, different instances of intentional misreporting of project  
545 status information occurred throughout the project leading up to its inevitable failure. Briefly,  
546 the following were cited as instances of intentional misreporting. (i) False statements were either  
547 made or presented to stakeholders. (ii) Information relevant to the project's purported progress  
548 was intentionally misreported to stakeholders. (iii) Material information was intentionally  
549 omitted within financial reports made on the company's first, second, and third quarter earnings.

550 In addition, (iv) the reason for hiring consultants was intentionally misreported. Despite being  
551 fully aware of its fraudulent misrepresentation, the outcome of the consultant’s assessment was  
552 intentionally contradicted in both (v) public reports and (vi) in oral testimony or in material  
553 submitted to the regulators. Furthermore, (vii) project information relayed to the public during  
554 its ‘media day’ was intentionally misreported. Additional intentional misreporting was present in  
555 project status information made available to regulators (the NAC and the PSC on two occasions;  
556 and the ORS). There was also intentional misreporting of project status information to  
557 government oversight entities such as (ix) the South Carolina House Utility Ratepayer Protection  
558 Committee and (x) the South Carolina Senate’s Nuclear Project Review Committee.

559

## 560 **Discussion**

561 As shown in the complaints, the misreporting of project information attracted criminal liability  
562 for SCANA and its principal officers on the basis of two conditions. First, “...*information expressly*  
563 *required to be stated in such reports...[is] ...misleading*” (*United States Securities and Exchange*  
564 *Commission v. SCANA Corporation and Others [2020]* at page 84). Second, despite legal and  
565 regulatory obligations, principal officers “...*wilfully and knowingly, and directly or indirectly,*  
566 *caused the failure...to keep books, records, and accounts which accurately and fairly reflected the*  
567 *transactions and dispositions of the assets... as they related to the project*” (*United States of*  
568 *America v. Jeffrey Alan Benjamin [2022]* at pages 13 and 15; *United States of America v. Stephen*  
569 *Andrew Byrne [2020]* at pages 8 and 9; *United States of America v. Kevin Marsh [2020]* at page  
570 9). It can be inferred therefore that criminal liability flowing from misreporting of project  
571 information may arise due to the economic harm it causes.

572 Drawing from Zhou (2008), the misreporting of project information is deemed  
573 undesirable because it will result in economic loss. There are three types of such economic loss.  
574 The first is ‘*misallocation costs*’. The focus of misallocation cost is that, having reasonably  
575 believed that the reported project information was accurate, the various Virgil C. Summer nuclear  
576 expansion project stakeholders then expended financial, material, or human or other types of **s**  
577 effort and time resources to fund the project to their loss or detriment. Misallocation costs in  
578 this instance will include the financial benefits derived from the financial incentives drawn from

579 The Energy Policy Act of 2005 (which is likely to have been funded, at least to an extent, by United  
580 States tax payers) and The Base Load Review Act (which was funded by higher rates/bills charged  
581 to SCANA's customers). The second economic loss is '*Precautionary cost*'. This is generally  
582 construed as the accumulated cost of the resources expended by the various Virgil C. Summer  
583 nuclear expansion project stakeholders in their quest to preclude misrepresentation flowing from  
584 the intentional misreporting of project information. It is in effect the cost of the resources and  
585 effort they spent taking precautionary measures to mitigate or minimize deception. An example  
586 will be the cost expended by regulators such as the (i) South Carolina Public Service Commission  
587 (PSC), (ii) the Office of Regulatory Staff (ORS), (iii) the South Carolina Public Service Authority  
588 (PSA), and (iv) the Nuclear Advisory Council (NAC). It arguably also includes the cost of the  
589 investigations conducted by the SEC and the United States Attorney's Office for the District of  
590 South Carolina.

591 Normative thinking suggests that the higher the precautionary cost the less likely that the  
592 misreporting of project information will occur. However, where the misrepresentation is  
593 sustained and elaborate as was alleged in the civil (including class action) and criminal  
594 complaints, it may be difficult to detect such fraudulent misrepresentation. It is noted that the  
595 misreporting of project information occurred between 2014 and 2017 and, during this time,  
596 principal project stakeholders (the public, regulators and investors) were repeatedly misled on  
597 the true status and progress of the project. These fraudulent misrepresentations occurred over  
598 numerous instances in different forums.

599 The third economic loss is actual '*fraudulent misrepresentations cost*'. Being a form of  
600 opportunistic behavior by SCANA and its principal officers, the more resources the officers  
601 expended as part of the misreporting scheme, the more those resources are considered wasted.  
602 Thus, misreporting of project information is economically undesirable because it generates waste  
603 and losses. In the Virgil C. Summer nuclear expansion complaint, this loss could be equated to  
604 the total cost of the abandoned project (US\$9.8 billion). It may also include other costs to  
605 investors and regulatory, investigative, and legal costs. All these could have been, but for the  
606 intentional misreporting, channelled to other positive activities. It is also perhaps more

607 concerning that SCANA was a publicly held utility and thus, arguably, owned by South Carolina  
608 tax payers.

609

## 610 **Conclusions**

611 Corrupt, unethical and illegal practices within the construction and engineering aligned-industry  
612 are of global concern particularly noting the role of the industry in the provision of critical  
613 infrastructure required for economic and societal activities (AlRaeesi and Ojiako 2021; Ojiako et  
614 al. 2021). Due to its consequences, the misreporting of project information merits investigation.

615 Despite the realities of a prevalence of corrupt, unethical and illegal activities, industry  
616 practitioners do have well-established professional guidelines to conduct their affairs in a manner  
617 that does not expose the wider society, construction and engineering-aligned companies, project  
618 stakeholders, principal project personnel, and the project itself to any form of civil or criminal  
619 jeopardy. In some instances, these professional standards have also been codified in legislation.  
620 For example, in South Africa, legislation in the form of the Project and Construction Management  
621 Professions Act, 2000 (Act 48 of 2000) specifically sets out ethical and professional  
622 responsibilities of project and construction management professionals. These expectations have  
623 also been emphasized in various standards of professional practice by both statutory and  
624 professional bodies governing engineering and construction practice (Vee and Skitmore 2003;  
625 Mason 2009; McCarthy 2012). Examples of these standards have been published by professional  
626 institutions such as the Project Management Institute (2022), the Association for Project  
627 Management (n.d), and the Chartered Institute of Building (2015).

628 Construction and engineering-aligned companies and principal project personnel may  
629 engage in intentional misreporting of project status information for a number of reasons. One  
630 such reason, which was cited in the criminal complaints, may be due to aspirations and  
631 expectations of either the organization or specific officers/personnel. The primary motivation for  
632 the intentional misreporting in this case was SCANA's interest in being able to (i) sell its corporate  
633 share bonds at favorable rates and to (ii) qualify for favorable tax credits that would facilitate its  
634 efforts to raise capital to fund the project. Viability of the project was essentially time-dependent

635 as, potentially, SCANA was to lose its time-dependent tax credits and, by implication, run out of  
636 money if the project was not deemed to have been completed by 31 December 2020.

637 Drawing from corporate illegality literature, organizations (and by implication, specific  
638 project personnel) that have traditionally performed well above expectations may be susceptible  
639 to engaging in corporate illegality despite the likely serious negative consequences if discovered  
640 (Greve et al. 2010; Mishina et al. 2010; Shinkle 2012; Graffin et al. 2013; Schnatterly et al. 2018;  
641 Xu et al. 2019; Mount and Baer 2022).

642 The study is not without limitations. First, although drawn on the various complaints that  
643 flowed from the failed Virgil C. Summer nuclear expansion project, the study is based on the  
644 analysis of a single case. This is despite the fact that misrepresentation is an unsettled legal  
645 concept requiring further augmentation through multi-case analysis. Second, although  
646 understanding corporate illegality may be best explored using legal frameworks that espouse a  
647 dichotomy of legality and illegality, the literature (e.g., Cunha and Cabral-Cardoso 2006)  
648 acknowledges that such a black and white perspective of corporate illegality may be too  
649 simplistic. This is because legal and illegal practices are in reality entwined within the workings  
650 of most organizations (Murphy 2011; Hudson 2014). Furthermore, specific to fraudulent  
651 misrepresentation is the observation made in *Spalding v AW Gamage [1915]* that “[i]t would ...  
652 be impossible to enumerate or classify all the possible ways in which a man may make the false  
653 representation relied upon”. Perhaps unsurprisingly, studies have found that managers are  
654 unable to articulate the differences between practices that are legal and those that are illegal  
655 (Peterson 2002). Despite these limitations, on the basis of concerns raised by Locatelli et al.  
656 (2022a, 2022b), there is value in undertaking this study as it leads not only to the creation of  
657 awareness of corporate illegality but also to discussions on ways in which such practice can be,  
658 at best minimized, or mitigated.

659 Future studies may progress in three directions. First, the circumstances (particularly the  
660 role of misreporting) leading to the abandonment of the project, raise the importance of further  
661 studies focused on independent oversight and governance of high-risk infrastructure projects. A  
662 critical contributing factor to the failure/abandonment of the project as highlighted by Kirkland  
663 (2022), is the presence of ‘utility regulators who didn't raise questions’ (p. 1094). More

664 specifically, although regulators (specifically the PSC) were legally required to monitor the  
665 project, it appears that such monitoring was primarily undertaken through its inspection of  
666 SCANA's reports, which turned out to be laden with fraudulent misrepresentations. In effect,  
667 there appears to be no evidence of regulators seeking to independently verify whether  
668 information contained in the reports being provided was correct. On this basis, there are  
669 opportunities for future studies to explore how project misreporting can be mitigated/prevented  
670 in high-risk infrastructure projects through independent regulatory verification. Second, there is  
671 an opportunity for future studies to investigate the role of third parties in project misreporting  
672 and, more specifically, to assess how *privity* may be a contributing factor to ineffective oversight  
673 and governance in high-risk public sector infrastructure projects. Drawing from Kirkland (2022),  
674 this potential line of enquiry is informed by two questions. The first is whether Bechtel (the  
675 external consultant) was aware of the misrepresentations made by SCANA. The second is to what  
676 extent they were aware of such misrepresentations, particularly when considering the point  
677 made in *Sutradhar v Natural Environment Research Council [2006]* that a vendor with expert  
678 knowledge may not necessarily be bound by a duty to apply that knowledge to solve the  
679 problems of strangers (to a contract). Thus, it will be of interest to examine whether and if so, to  
680 what extent Bechtel had any obligation to directly warn regulators that the project was likely to  
681 miss its deadlines, and therefore fail. Finally, further studies could examine the nature of the  
682 interrelationship between the driving factors for misrepresentations in project reporting. Insight  
683 gleaned from such a study will provide organizations that are commissioning projects and the  
684 principal project personnel involved with a clear understanding of how best to balance the  
685 consequences of these factors.

686

#### 687 **Data Availability Statement**

688 No data, models, or codes were generated or used during the study.

689

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735 and Stephen Byrne (District Court of the United States for the District of South Carolina,  
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760

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764

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