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Panel 1: Behavioral Ethics: The Science

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TRANSCRIPTION OF THE 2021 *VILLANOVA LAW REVIEW*
NORMAN J. SHACHOY SYMPOSIUM: *PRACTICAL ETHICS IN*
CORPORATE LAW: THE SCIENCE, INSTRUCTION AND
“REAL-WORLD” APPLICATION

PANEL 1: BEHAVIORAL ETHICS: THE SCIENCE*

MODERATOR: J.S. NELSON**

PANELISTS:

NIKI DEN NIEUWENBOER, PHD***

ANN TENBRUNSEL, PHD****

LINDA K. TREVIÑO, PHD*****

DEAN MARK ALEXANDER, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: Good morning everybody. I see we have over one hundred folks joining us. I'm Mark Alexander. I'm the Arthur J. Kania Dean here at the Villanova University Charles Widger School of Law. It is indeed my honor and pleasure to welcome you to the Norman J. Shachoy Symposium this year. First and foremost, I do want to say a word about Norman J. Shachoy. This is the Shachoy Symposium, and it is named in honor of Mr. Norman J. Shachoy, who was an undergraduate class of 1958, in our law school class of 1961, and who was Editor-in-Chief of the *Law Review* in Volume 6. This Symposium is named in his honor. I start with the sad news that Mr. Shachoy passed on February 9th, just recently. My most sincere condolences. I believe that Mrs. Shachoy may be online with us. We have spoken already, but it's on behalf of the entire community—my sincere condolences to you and to your son, Jamie, who is also in the audience. Jamie was the class of '86. And to your other son and your granddaughters—the entire family—we are proud to have the opportunity to honor every year the legacy of dedicated individuals like Norman

* The 2021 Norman J. Shachoy Symposium took place virtually on February 19, 2021 at Villanova University Charles Widger School of Law. This transcript has been edited and excerpted.

** On leave at Harvard Business School, 2021-22. Formerly Associate Professor of Law, Villanova University Charles Widger School of Law; Department of Management & Operations (by courtesy), Villanova School of Business; Senior Fellow, Wharton School, University of Pennsylvania.

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Shachoy. I wanted to mark this moment and express condolences and thanks to the entire Shachoy family.

As for the Symposium itself, it's co-sponsored by the David F. and Constance B. Gerard-diCarlo Center for Ethics, Integrity and Compliance. This Center, the Gerard-diCarlo Center, has been a driving force behind our position at the intersection of law and business, and law and ethics. Professor Steve Chanenson has done a great job as faculty director, providing guidance to the Center's Managing Board. We are very grateful. Professors Doris Brogan and J.S. Nelson have been terrific contributing to the important conversation we're having today; they also are going to be moderators, so I thank them for all they're doing. I want to thank my colleague, faculty member Professor Cathy Lanctot, who provides great vision and mentorship and leadership as a faculty advisor to the *Law Review*. I'm very glad that she has taken such great leadership.

Also, there are a number of individuals who have been making tireless contributions. Without their contributions, we would not be here today. So a quick shout-out to our Director of Events, Nicole Garafano; our Faculty Support and CLE Coordinator, Carla Edwards; our Director of Communications and Marketing, Julie Delaney; our Manager of Multimedia Technologies, Brian Sirack; our Communication Specialist, Samantha Lare; and our Faculty Support Administrative Assistant, Victoria Durand. All of them and more make this possible, and so I want to thank them. Then, also, we have these wonderful folks who are coming to participate in this event, some of the distinguished scholars, teachers, practitioners within the fields of ethics and corporate law. It will lay a great foundation for us to consider important questions with which we are grappling with every day and leading us on. Dr. Mary Gentile, the Founder of Giving Voice to Values. She has been, you know, individually, and through her work, such an important part of what we do. She'll give great insights to all of us, and that's going to be fantastic to talk about moral muscle memories. I am looking forward to that. Then the practitioners will be coming to talk about their practice, life, and issues from the perspectives of other investigations with compliance questions. So overall, that's just a very quick overview. We've got a terrific group of people who put all this together.

It is to me such an important day. You know, the *Law Review* is an example of who we are as an academic enterprise. It brings the most talented students to their best, and it brings important conversations to the forefront. Speaking of the talented students at their best, I will now introduce Michael Schwab, who is the Editor-in-Chief of the *Villanova Law Review*. I will tell you, one of the great joys of being Dean is that I get out and about—obviously during these times, it's more virtually getting out and about—but I hear things, and I had the good fortune of talking to another Dean who worked closely with Michael on an article that she was writing. I was just speaking to her in a conference call, and, before we got

started, she said, “I just want to tell you this. This guy is terrific. You guys should be really proud of the students you have.” So it’s those things that always warm my heart to hear great things about what our students are doing. They are why we exist. So, with that, I think it’s been a great day, and I will turn it over to the Editor-in-Chief of *Villanova Law Review*, Michael Schwab.

MICHAEL SCHWAB, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: Thank you very much for your remarks, Dean Alexander, and for your continuous support of our journal. Hello everybody, my name is Michael Schwab, and I am the Editor-in-Chief, as Dean Alexander mentioned, of *Villanova Law Review’s* Volume 66. Welcome to our annual Norman J. Shachoy Symposium, *Practical Ethics and Corporate Law: The Science Instruction and “Real-World” Application*. First, on behalf of our journal, I would like to express my deepest condolences to the family of Mr. Shachoy. We are privileged as a journal to have this opportunity to honor his legacy through this event. As Dean Alexander highlighted, Mr. Shachoy has played an integral part in our journal and our entire school’s great success. And today we are fortunate to have, as Dean Alexander mentioned, the David F. and Constance B. Gerard-diCarlo Center for Ethics, Integrity, and Compliance serve as our event co-sponsor. The Center is a trailblazing organization carrying out our school’s mission—preparing students to be better leaders. We thank Professor Steve Chanenson and the Gerard-diCarlo’s Center Faculty Chair for his contributions in organization. We also thank Professor J.S. Nelson, and Harold Reuschlein Leadership Chair, Professor Doris Brogan, who served as affiliated faculty for the Gerard-diCarlo Center and are instrumental in planning this Symposium. I’d also like to thank our *Law Review’s* Managing Board, Editorial Board, and Staff Writers. And last but not least, our Faculty Advisor, Professor Cathy Lanctot, as Dean Alexander said, for her consistent guidance for our journal.

Now, without further ado, I am excited to introduce our first panel discussion for the day: *The Science of Behavioral Ethics*. We are delighted to welcome three distinguished business-ethics scholars to the conversation. First, I would like to introduce Dr. Niki den Nieuwenboer, Associate Professor at the University of Kansas School of Business. Dr. den Nieuwenboer’s research focuses on deviance in the workplace. Among other research areas, she studies how middle managers can force subordinates to deceive upper management about their performance, the influence of social status, desires in misconduct, and the challenges that ethics and compliance officers face in enacting their roles.

We are also joined today by Dr. Ann Tenbrunsel, David E. Gallo Professor of Business Ethics at the Mendoza College of Business for the University of Notre Dame. Dr. Ann Tenbrunsel’s research focuses on the psychology of ethical decision-making, examining why employees, leaders, and students behave unethically despite their best intentions to behave to

the contrary. Dr. Tenbrunsel is the author, co-author, or co-editor of six books on this topic; adaptations, exemptions and references to her work have appeared in a variety of publications, including the New York Times, U.S. News, and NBC.

Finally, I'd like to welcome Dr. Linda Klebe Treviño, Distinguished Professor of Organizational Behavior and Ethics, and Director of the Shoemaker Program in Business Ethics for Penn State University's Smeal College of Business. Dr. Treviño's research focuses on understanding ethical and unethical conduct in work organizations. Her current research includes work on ethical culture, ethical leadership, and the impacts and outcomes of speaking up in organizations. Dr. Treviño has published over ninety research articles in top journals around the country. Today Jillian Brennan and Madeline Smith, members of our *Law Review*, will be monitoring the chat for questions at the end of each panel, and they will convey these questions to our panelists at the end of the sessions. Moderating today's first two sessions will be J.S. Nelson, Associate Professor of Law at Villanova University, who also has a courtesy appointment in Villanova Business School's Department of Management and Operations and serves as a Senior Fellow for the Zicklin Center for Business Ethics Research at the University of Pennsylvania's Wharton School. Her scholarship has been published in numerous legal and business journals.

I'm sharing my screen here. Hopefully everybody can see that, but Professor Nelson's forthcoming book, co-authored with the late Professor Lynn Stout, will be published by the Oxford University Press. The title of the book is *Business Ethics: What Everyone Needs to Know*. The book is designed for lay business people and lawyers with ethical questions, as well as students who would like to know more about these topics.

Now please join me in welcoming our first panel.

PROFESSOR J.S. NELSON, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: Hello, welcome. Thank you so much, I am delighted to be here, and we'll get Dr. Treviño, Dr. Tenbrunsel, and Dr. den Nieuwenboer on the screen.

DR. NIKI DEN NIEUWENBOER, UNIVERSITY OF KANSAS SCHOOL OF BUSINESS: We're here.

PROFESSOR NELSON: Alright, there we go. The way that we wanted to run this first panel discussion with the panelists is to do some quick ice-breaker questions first, and then we'll talk about this really interesting field. We are talking to some of the very best social scientists out there. This is a huge honor and joy for the school that you have come to talk to us. These are the people doing the actual social scientific work, coming up with the findings that are shaping the field. They are revolutionizing our understanding of what business ethics is, and how we behave. This is how we behave, not only at the individual level, but we'll take it from the

individual level, through the individual and the organization, and then we'll finish at the organizational level. Then our next session—we have a ten-minute break in between sessions—is going to talk about what we can do at the organizational level to get the best out of people.

When we talk about compliance, we talk about a legal floor of behavior, but compliance should also be aspirational. We should be thinking about the ethical behavior that we want out of people in our organizations, and how we get that from them. What we'll hear from our social scientists today are really interesting findings about who we are as people, how we behave individually, how that works when we aggregate that behavior, and what it means for our organizations. Let me throw out there a quick icebreaker for these very distinguished social scientists. Please tell us what behavioral ethics is. This is a very dynamic, important field, which has been emerging, and these are the social scientists on the very edge of that field. Let me throw the question of identifying the field to each one of them very quickly.

DR. LINDA K. TREVIÑO, PENNSYLVANIA STATE UNIVERSITY SMEAL COLLEGE OF BUSINESS: To start off, I want to say that I really liked our use of the word “science” because that’s what it is. That’s what we’re about, social science, and this is a very big field today. When I started in this business about thirty-five years ago, I was a very lonely person actually trying to do work in this area. But so, it’s big, and we’ll do our best to try to paint a landscape for you in brief.

Basically, what we’re interested in is the study of ethical and unethical thought and action. And importantly, I think many of us are interested in that in an organizational context. So we’re not out there on a deserted island. We’re talking about people working in an organizational context. I think there’s a mythology out there that somehow adults are fully formed ethical beings, and they learned everything they need to know in kindergarten. There was somebody who wrote a book about that We definitely do not subscribe to that belief and our research I think supports that.

So, what we are interested in, and what we study, is about people; about individuals who think and act as they do in these organizational settings. What are their feelings, thoughts and actions? And how do other people and other contextual factors such as leaders, incentive structures, norms—all those kinds of things—influence them? Climates, cultures? How do all those external factors influence them to behave as they do?

We use all the methods of social science to do that. It depends on the research question, but we have a very big scientific toolbox. We use surveys. We do laboratory experiments. We do interview-based and embedded research, where people are actually embedded in organizations to do that work. I think that the rest of the panel—as I understand it—is

going to delve more deeply into some of those areas, but either one of my fellow panelists should feel free to jump in if I left something huge out.

PROFESSOR NELSON: No, that's fantastic. Thank you.

DR. DEN NIEUWENBOER: I could just add one little thing—so the point is that it can be managed, right? I think that was a thing that Linda sort of skipped over. If you design an organization better, then you should have less unethical behavior. And that's ultimately our goal—not so much just to understand why it happens, but also, as Linda suggested, like hey, what can we change to make sure that people do not behave unethically?

PROFESSOR NELSON: Right, that there's a science to this. These are not given principles that just arrived. These are things that change, and that can be managed. Okay, let me get Ann involved. Ann, please talk to us a little about some of your work studying behavioral ethics at the individual level. First of all, are people as ethical as we think we are?

DR. ANN TENBRUNSEL, MENDOZA COLLEGE OF BUSINESS, UNIVERSITY OF NOTRE DAME: Great question. Adding to what Niki and Linda said, in addition to the organization we also study individuals. Distinguishing behavioral ethics from normative ethics, we study how people actually behave, not how we think they should behave.

My focus has really been on why we don't know that we behave unethically. So in other words, what are the blind spots? And one of the first is what you just mentioned J.S., and that is that we all walk around thinking we are more ethical than we really are.

So, for years—I have not been in this as long as Linda, but I might have been a distant second, or fifth, or tenth—since the early nineties—I have been surveying undergraduates, executives, people, corporations, and my executive students. I always ask them to rate themselves on how good they are. So how honest you are, how good you are at driving, how good at your decision making, how many friends do you have? And they rate themselves on a scale from zero to one hundred: one hundred being “I'm the best in this classroom;” zero being “I am the worst;” fifty being average.

When you average those numbers, the average of those numbers should be fifty, because that's what you told them the average should be. Of course, what we know from psychology is that everybody rates themselves higher—it's a very well-known phenomenon known as positive illusions. But what I've consistently found in these last years is that honesty is rated significantly higher than everything else. We engage in almost hyperinflation about our ethicality, and to me, that's always the good news because it means it's important to us, and we want to be high on that dimension. The bad news is I'm walking around feeling like I'm really

pretty good. In fact, I'm close to excellent, and so there's no need for me to improve my behavior.

PROFESSOR NELSON: Yes, that's really important. Can you talk to us a little bit about some of the very important findings that you've been able to uncover regarding ethical fading and perhaps motivated blindness? These are very important concepts of which you've been at the forefront.

DR. TENBRUNSEL: So, a couple of pieces on the individual level. One is, we find that I predict that I'm going to behave ethically and, at the time of the decision, I often don't. There's a really great study on sexual harassment where women predict that they would stand up to an interviewer who asks very inappropriate questions, and then, when they actually put them in a situation—which I don't think we'd get Institutional Review Boards' (IRB) approval anymore—in actuality, no one stood up, so there's a disconnect.

What happens at that time of the decision, at least in part, is the role of ethical fading. That is, at a distance I say, "Of course, I would never do that, that's unethical, or I would stand up, as that is the ethical thing to do" at the time of the decision. I might also be saying, "This is a business decision," and not an ethical decision, and, when I do, the ethics have flown out the window. I'm asking myself, "So what's feasible for myself in this moment?" All of these aspects reduce the likelihood that I will behave ethically, like I predicted that I would.

Linda Treviño has done some great work on moral disengagement—how we actually disengage from morality, viewing the decision as less unethical than it really is. As a result, we actually don't really sanction ourselves because this wasn't really an ethical dilemma. Ethical fading means that I don't actually see the ethicality. Thus, no matter how many principles and values and Sunday services you go to, if your brain doesn't see this as an ethical decision, it's simply not going to call up your ethical principles as they are not seen as relevant.

To your next question, J.S., motivated blindness describes how we don't see the unethical behavior of those close to us or those important to us, because it's really not in our best interest to do so. It's not in your best interest to call out your client. It's not in your best interest to call out your boss. So it's not that we just only calculate and say, "I'm not going to report that, that's going to hurt me." I also believe—and we have evidence that suggests—I don't even see the behavior in the first place. It's like a horse with blinders: I just don't want to see it, so I don't.

PROFESSOR NELSON: Yes, and do we change when we are in power? What happens to us in that situation?

DR. TENBRUNSEL: When I am in power, I don't think of others as much. I'm not as empathetic. I engage in norms or I engage in behavior

that often goes against the norm. There's a great study where they looked at the hierarchy of a university. They videotaped a reception and coded whether people ate messy foods—such as the stuff that you don't want to eat because it's going to be over your face. They looked at their cookie-crumbs spray around there where they ate. And they found that those higher in power—which the people coding the behaviors didn't know—were more likely to pick the messy foods, and to have more crumbs where they ate. People in power don't need to care as much.

One effect is that power can lead to abusive supervision. On the other hand, sometimes people in power, if schooled correctly—this is where Mary Gentile's work is going to come in—are also often in a position, because they don't care what others think as much, where they can speak up. So it's a tightrope, and it depends on who's in there, how you design that the role, and what the norms are in that organization.

PROFESSOR NELSON: That's fantastic and so interesting. Let me now turn—and this is mostly Niki's work where she's starting to integrate a lot of the findings at the individual level, and starting to think about us within organizations—how do that all those findings about us as individuals change? Do you know what happens to us when we move into groups, and we are within an organizational structure?

DR. DEN NIEUWENBOER: Before I get into that, as Ann was talking, I was reminded of Dolly Chugh's work on ethical learning. She suggests that we should think of ourselves as “goodish” rather than perfectly good. Dolly argues that we should permit ourselves to think of ourselves as only moderately ethical, so to admit to ourselves that we're not perfectly ethical—as Ann was talking about—because that enables us to tap into our growth mindset, if you will. That will open us up to learning about why we behave unethically, and to learn what we can do to behave more ethically. And that is just something that I thought is interesting to add there. If we admit to ourselves that we are, in fact, not as honest and ethical as we like to think we are, that actually enables us to behave more ethically in the future.

But anyway, switching over to the organization. I mean, there are many things that we could talk about. The thing that that we sort of discussed early on—when we were preparing for this meeting—is some of the work that I've been doing. The person who collected the data for that study—his name is João Vieira da Cunha—he essentially went into an organization, grabbed a chair, sat down, and watched people work for about fifteen months. And he watched those people cheat on their performance in an organization for fifteen months. We have written a paper on that, and one of the things that I think is especially interesting in the context of a legal audience, is that we need to be mindful that, normally, we design an organization with rules and performance management structures, and all those kinds of things.

But what actually happens? Organizations can completely deviate from that. And so what we found is that what people do in practice, when faced with impossible goals, is that they figure out a way to work around the rules and processes that are imposed, to find a way to cheat without getting caught.

In this particular organization, there was high performance pressure, and people weren't able to meet the performance goals in an ethical way. Rather than give up on meeting their performance goals altogether, middle managers essentially started trying to find ways for their subordinates to reach their goals unethically. What they ended up doing is developing a whole set of sub-routines, if you will, that deviated from the formal prescriptions. Which means that these middle managers looked at the rules that were in place, and they essentially designed only those types of unethical behaviors that would evade those rules, or that would basically evade the kinds of monitoring practices that were there.

I think what's important to realize is that the unethical behavior that people end up doing is adapted to the monitoring practices that you have, and that means, in turn, that the rules that you have do not function so much to catch things, because people will, you know I like to say that people aren't stupid. They will do the things that they think you won't notice. The answer is not to make more rules, because people will just work around them. Instead you should talk to people and do more management by walking around. That is how you could find these things out better.

Also, building on this idea of ethical fading, which you do see in organizations, is that a lot of people still remained aware of the fact that they were behaving unethically. In the organization that we studied, we had about one hundred people who were engaging in unethical behavior, and who were being forced to do so by their middle managers. And about eighty percent of them thought that it was stupid, didn't want to do it, et cetera. So they remained ethically aware in a certain way, but at the same time, they didn't feel morally compromised enough to try to push back.

When you think about ethical fading in an organization, it manifests itself largely in a sort of acknowledgement that this is unethical, but that I'm doing it anyway and blaming the boss.

As we were talking and preparing for this session, we also ended up talking about an interesting thing that we might want to study. We know that, when you deplete cognitive resources, people will engage in more unethical behavior. I know from also teaching—about every fall I teach a group of military officers, and they end up having to lie a lot in their organization to meet performance expectations—that this is often exhausting and demoralizing.

So I wonder, if you create such a system in which people will feel forced to engage in unethical behavior because otherwise they might lose their jobs, they're likely to engage in some amount of ethical fading to do

so because their moral conscience is being compromised. And I wonder whether that depletes resources and whether that will actually end up causing more unethical behavior.

In part that might then put the blame for this unethical behavior even more on the organization

So those are some semi-coherent thoughts here early in the morning in Central Time.

PROFESSOR NELSON: Thank you so much for getting up so early, Niki. And Ann too. Oh my goodness, you guys are amazing.

I wanted to bring Linda in, and I do want to make sure that Linda is going to speak much more in the next session because that's a lot of her research. I also know that we're coming close to question time, and we will have one of our wonderful students, Jillian, come online and give us some questions in another two minutes or so, but perhaps Linda could talk to us a little bit as we are thinking about organizations.

One thing that's coming up is this idea of cognitive load. Some other issues are about how individuals are experiencing their fit within the organization. I wanted to ask you a little bit more about that, about values fit.

A really important thing that you guys have been finding is that people want to be ethical. They want to be ethical at work. They want to be ethical in so many parts of their lives. What happens when someone feels as though their own values are not a fit for the organization? What's going on there? How do we figure out what our values are individually? And by the way, do people have vastly different ethical values? And for organizations, how do we articulate our ethical values for the organization?

DR. TREVIÑO: Yes, so it's a complicated question. People have different ethical values. You'd be surprised. I have my students do a values exercise where they try to choose their top values and prioritize those—just about three to five. I tell them that you have to pick a small enough number so that you can actually remember what they are so that, the next time you face an ethical dilemma, you actually have them at hand. Then we talk about what values they chose in class, and they are sometimes surprised to find how different they are. I also encourage students to have somebody close to them do the exercise, maybe a roommate or significant other. But then—they get tired of me saying this, but I'm kind of a broken record on this with students who are going to be in an organization, either a new organization if they're an MBA student, or perhaps their first organization if there are an undergraduate student who is graduating—the idea of values fit is really important.

What we do know—and there isn't actually a ton of research on this—but what we do know is that, if there is good values fit, the individual's going to be much more satisfied. They're likely to stay in the organiza-

tion, and less likely to engage in unethical behavior because there's no reason to. They agree with what the organization stands for, and what it's promoting. But if there's misfit, then they're miserable.

I think people in the audience can probably identify with this because it doesn't just apply to business organizations. I think it applies to law firms, universities, and all kinds of organizations that we work in. If you feel like you are aligned in terms of what you're about and what you value with the organization that you work for, you are much more—you're happier to see the people at work. You're happier to go home and tell your family what you did today. You know, you're just—as I tell my students—a happier camper. So that's the idea with values fit.

That moves us in the direction of talking about ethical culture, which I think we're going to talk about more in the next session. It's enormously important to talk about the ethical culture of organizations, and I don't know if you want me to talk about this now a little bit, and then we can get into the nitty gritty in the next session.

PROFESSOR NELSON: Could you do it in a sentence or two? Because I do want to make sure that Jillian has some chance to get online and ask questions.

DR. TREVIÑO: Yes, I think I can. So organizations are complex in a number of ways. When I talk about ethical culture, I divide it up into formal and informal components. Some things that would be very familiar to the lawyers in the room are the formal components—things like ethical codes of conduct, training programs—those sorts of things. You could also add the performance management system that Niki mentioned—the structure of the organization, formal decision-making processes. But there are also the informal components that I think we'll talk a lot more about later. I always say that the formal side says: this is who we say we are; and the informal side says: this is what we actually do and how we actually behave. So what are the norms of daily behavior? What are the important people in the organization actually saying, doing, and encouraging? What's the language people use? Do they use the language of ethics or not? What are the stories that they tell about the organization? Who are the heroes? Who are they talking about? Are they holding up people of integrity or is it the person who makes the most sales, and it doesn't matter how you make them?

PROFESSOR NELSON: Very important points, and we're going to get far more into that in our next session . . .

[Question-and-answer portion omitted.]

PROFESSOR NELSON: Okay, great. So, let's give everybody a break, and we're going to have these amazing panelists back to talk more about the

implementation of their ideas within organizations. Specifically, what they mean for the corporate and business world. Thank you very much. As the audience can see, this is an amazing panel.