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Panel 2: Lessons Learned From Research

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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 2: LESSONS LEARNED FROM RESEARCH*

MODERATOR: J.S. NELSON**

PANELISTS: NIKI DEN NIEUWENBOER, PHD**

ANN TENBRUNSEL, PHD****

LINDA K. TREVIÑO, PHD*****

PROFESSOR J.S. NELSON, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: We are so grateful to have the best of the best here. These are the people shaping the field, discovering all these really important things about human nature, and how we act and what we actually do—not what we *think* we want to do sometimes, but what we actually do.

So this next session is about how lawyers should think about getting the ethical behavior that they want from organizations and others. Obviously, we have a business-school crowd here too. And we’re thinking about shaping culture.

What are the things that we can do to shape culture? How do we create the culture we want, and implement all these findings? We can’t possibly implement all the findings, but how do we change what we’re doing based on the findings that you have been discovering, and that have really changed our understanding of behavior and ethics?

Let me turn here, at the beginning, to Ann to talk a little bit about framing. She has done an enormous amount of work on how framing matters. As we start this conversation, it seems natural to ask her how we should frame our thinking on this subject.

* 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.

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DR. ANN TENBRUNSEL, MENDOZA COLLEGE OF BUSINESS, UNIVERSITY OF NOTRE DAME: Sure, so as I mentioned, framing is one of the reasons why we see ethical fading occur, and our work has really uncovered two dominant frames: the business frame and the ethical frame. Of course, we wish these frames were integrated. We might desire them to be, but it turns out not to be the case.

If I prime Linda to think in a business frame, and I prime Niki to think in an ethical frame, and I give them the same decision with an opportunity to deceive, Linda (in the business frame) is going to be more likely to lie, and Linda is also going to be like more likely to think only of herself and not of the impact of her decision on others. She is more likely to engage in a cost-benefit analysis, which is interesting given that federal-government proposals often require cost-benefit analysis. But it is more indicative of unethical behavior, and it helps explain why Linda would behave more unethically.

Further, Linda is also at a lower level of construal. So she's looking at the bark on the tree, whereas Niki is looking at the forest. Linda is focused on "What makes sense for me in this moment?" We can change the default behavior within a frame—unethical behavior in a business frame, and ethical behavior in an ethical frame—by altering whether one is thinking of oneself or others, whether the person is engaging in a cost-benefit analysis, and the person's level of construal. So, if I ask, "Linda, why don't you think about the impact of your decision on others?," she behaves more ethically. Conversely, if I ask Niki, to shift her from an ethical to a business frame, "Why don't you think about the pros and cons of your decision?," she suddenly behaves as unethically as Linda did.

What we have to ask ourselves is, in organizations—and it could be in sub-units of organizations, or it could be at the top management team—is what frame is being promoted? Relevant to this crowd, and what I think Linda is going to discuss, is that, in addition to a business and ethical frame, it is likely that a legal frame is an important influence on behavior.

In some of the work we've done on sexual harassment, you can very much see that sexual harassment is often viewed through a legal frame. This means that it is considered very much from a liability perspective. That choice has some quite unfortunate consequences for preventing sexual harassment, in part because it aligns the interests of the organization or the university with the perpetrator, and not the harasser. In fact, both the organization and the perpetrator usually want to avoid legal issues, and thus, really want this to go away. It should be seen as an ethical issue instead. The action that causes harm is unethical, and thus this is an ethical subject. It's not just a complaint that we need to get rid of. So, to me, understanding the frames that are operative—and I think that Linda will talk about this from an informal culture perspective—is really important.

PROFESSOR NELSON: Definitely, definitely. Could we also ask you a bit about how we should be approaching thinking in framing terms? How we should be approaching questions to get the best ethical behavior within organizations? Should we, for example, come from an aspirational values place? But then, you know, lawyers are always thinking about, “Okay, how do we implement this?” What rule do you want us to write? What should the handbook say? What would you tell us from your experience in your research about how we should come out on these questions?

DR. LINDA K. TREVIÑO, PENNSYLVANIA STATE UNIVERSITY SMEAL COLLEGE OF BUSINESS: Do you mind if I take this one?

PROFESSOR NELSON: Please do, thank you.

DR. TREVIÑO: Yes, so I did a study a number of years ago that got very much at this. As I mentioned earlier, we have this formal component of the organization—things like the code and the training, and things that the sentencing guidelines tell us to do. Then we have a more informal side, which is what people are actually doing on a day-to-day basis.

And what we found—what I found actually in multiple studies—is that things like having a code doesn’t influence behavior much at all. I’m sorry to say to everybody. Now, it does have an impact if you . . .

PROFESSOR NELSON: Repeat that one more time for all the lawyers, please! Repeat that one more time. We really need to hear that.

DR. TREVIÑO: I refer to codes of conduct now as wallpaper. Some of them are more effective than others, mainly because they’re enforced more consistently. So we do know that, if a code is taken seriously and enforced, it can have an impact on behavior. But you can’t make a rule for everything. I know that that’s hard for lawyers to hear, but it’s true.

Here’s what we’ve learned when we tried to understand what actually works and doesn’t in ethics and compliance: we found that, if employees perceive that the program and the organization are more about values, aspirations, and caring about them as people and treating them fairly, you get much better outcomes. You get much better, more ethical decision making, more reporting of unethical conduct—all the things that we care about—including higher ethical awareness. All of that.

Then if employees perceive that it’s all about covering the organization’s rear end—that this is all about just complying, and somebody’s got their finger on me, and they don’t really care about being good, they just want to comply—that leads to a kind of cynicism and attitude that it’s really okay to break the rules, to be unethical.

One of the important points that I wanted to make here is that the people in the organization who know what’s going on—you know, what’s happening, know whether people are misbehaving, whether unethical be-

havior is happening, whether illegal behavior is happening—what we need for them to do is to be willing to step up and speak up. Ann spoke to the fact that this is really difficult, and people think they will, and then they don't. This is something that I've been studying quite a lot to try to understand what goes into whether people will speak up, and then if they do, can they be successful? What happens to them in organizations?

A lot of that has to do with the culture, or something we call psychological safety—whether they feel safe doing so. Most people don't actually feel safe speaking up, and I think it's a huge problem for this group to think about: how do we create an organization where people are going to be willing to speak up?

I'll say one more thing—other people may want to jump in because I think we're running out of time—but I think somebody asked a question about leadership management. What should management do? What should leaders do?

I spent a lot of time studying something we refer to as ethical leadership, and it is extraordinarily important. Again, all of the outcomes are better if people perceive their leaders to be ethical. That means that they care about the people underneath them; they care about developing them; they're fair; they're principled; they make principled decisions; they hold everybody accountable, including themselves, for ethical behavior; and they also have to behave ethically themselves.

So being a role model essentially is what it boils down to. That turns out to be extraordinarily important. It's more part of the informal side of the organization because it's the day-to-day. And it's more the supervisory level. I mean, it's important at all levels.

So the CEO is important, and you know the people at the top are important, but what your supervisor is telling you is really important. If you come back from ethics training, and your supervisor says, "Well, you know, that was a waste of time," that's a hugely powerful message. Or, if they say, "I don't care how you make the numbers, just make them," that's a hugely powerful message. On the other hand, if you sit around and have these conversations like Ann was talking about with an ethical frame in which they ask you to think about the decision that you're making, and whether there might be harm to stakeholders who are important in this situation, that's a totally different message. That's saying that this leader cares about people, cares about the community, cares about customers, cares about us, and that just puts everybody in the ethical frame that Ann was talking about.

Those are a few things, and then the other thing that we could talk about is the performance management system, which is hugely important. Niki referred to it earlier when she talked very briefly about the study that she was involved in. We have goal setting. We have incentives. We have disciplinary actions. People pay a lot of attention. Those are very motivating. All of it. We just don't pay nearly enough attention in law, in ethics

and compliance, to the makeup of the performance management system and how that's affecting people's behavior. Usually Human Resources is in charge of that, not us, and I think that is a big mistake. We need to be involved in that because we understand how that affects these really important outcome behaviors.

DR. NIKI DEN NIEUWENBOER, UNIVERSITY OF KANSAS SCHOOL OF BUSINESS: Can I just jump in?

PROFESSOR NELSON: Yes, I wanted to get you involved, but one thing I wanted to ask as Linda was bringing it up, could you talk to us a little bit more about what these informal systems look like? A lot of your research is on middle management and behavior, and these other things, and there's a mantra that you sometimes hear—you guys brought this up in a discussion before we even had this panel—that often you hear people in management positions saying, “No, I just hire great people and then I let them be.” Is that going to work?

DR. TREVIÑO: Oh, no.

PROFESSOR J.S. NELSON: Could you talk to us a little bit about that?

DR. NIEUWENBOER: But, no. You know, people respond to the pressures that you put on them, right? And I remember, in a former project that Linda and I worked on, how the ethics and compliance officers were complaining about how a CEO saying, “We don't hire thieves, and so we don't have to worry about ethics and compliance.” And we see this time and time again.

If you look at the study that I spoke about earlier with Wells Fargo—and the same thing with the military—and I'm not disclosing anything that's not out there, that people can't Google. There's a report. It's called “Lying to Ourselves: Dishonesty in the Army Profession.” I think the big takeaway is that, if you make people worried about their career, about being fired, then they will do whatever they need to do to get by. Not because they want to. It's like in our study.

Folks could gain bonuses by lying, but a majority of folks weren't motivated by those bonuses. The thing that drove them to fall in line with unethical behavior—because that was very much something that their middle managers were shaming them into doing—it took a lot of force to get all of these people to engage in unethical behavior, and the thing that ultimately drove them was: I don't want to lose my job, right? In the organization in our study, it was mostly because the pay that they also received was very good. If you look at them, probably they wouldn't be able to get similar pay in a different organization given the type of employee in the military, and, basically, they will be sort of phased out of their careers—which is hugely scary for military officers especially because they

don't know the civilian world, so they have no idea what their post-military life might look like, or what kinds of jobs might be available to them, et cetera.

If you look at Wells Fargo, some of the 5,300 employees that were fired in the course of the accounts scandal say that they were blacklisted after getting fired. So they were not able to find another job at a bank. And those kinds of things, nobody will resist that. People will just comply, and they will be miserable about it. But now keep in mind that, in Wells Fargo, the official rule was—so official rules don't really matter in guiding behavior—the official rule was that they were not supposed to be fired for performance problems. That was not supposed to happen. Except it did. And that's why you can write your policies and material like that, but what people will actually do in practice might totally deviate from those policies.

I also wanted to back up a little bit to talk about compliance and aspiration, to get back to the original question that you asked. Because you know—especially, with me hanging out with the military crowd—some organizations just have to have very strict compliance. By now, we have more people dying in training accidents in the military than we have dying in combat. So things like safety, but also sexual harassment training and other compliance initiatives, are very, very important.

But, if compliance initiatives are the only thing that you do, Linda's research suggests that they actually backfire and create more unethical behavior. So, if you have an organization industry where compliance is very important—which you know is many industries like the financial industry, the pharmaceutical industry—be sure that you also have that aspirational aspect, because just focusing on the compliance will not create the best outcomes for you. In fact, it will create worse outcomes for you, research suggests.

Linda also mentioned fairness, which is a more fluffy concept, and I just wanted to reemphasize its importance. Tom Tyler, who is actually a professor of law and psychology, does research that is very close to our field. He has found that, if you focus on fairness, and if you are perceived as a legitimate leader, you can actually get people voluntarily to comply with your rules and policies and all those kinds of things. If you get voluntary compliance, then you need less monitoring, and you create overall a much more pleasant culture within your organization.

So some things that you might want to think about in creating this a fairness culture, I guess we call it, are things like offering opportunities for folks to present their views if you accuse them of something; that your procedures are neutral, transparent; that people understand the rules that you have imposed. In the military, it's especially important that they understand why on Earth you have all these rules because that is not always clear to everyone. Also, things must be fact-based, and applied consistently across people and across time. When you do all those more informal

things, you have much better outcomes in terms of ethical and unethical behavior.

PROFESSOR NELSON: Yes, and let's get back to Linda's speak-up culture because this is such an important point. Not only do we find out what's actually going on within our organizations by allowing people to speak up, but there's another thing that's hot in management school, which I want to ask you guys about because this is something that that we really need to question. That is: when an organization is running very "efficiently," and nobody is discussing things in meetings, is that a sign of a healthy ethical culture, or is that merely apathy or fear? What are we looking at and how? How do we make sure that we have our employees engaged such that they feel comfortable speaking in meetings, such that they feel comfortable bringing an issues to us, such that we find out about things within organizations before they become 5,300 employees fired for the same thing at Wells Fargo?

DR. TENBRUNSEL: I worked with a very large non-governmental organization for a number of years that has employees dispersed all over the world. One of the outcomes, perhaps based in part on our discussions of motivated blindness and ethical fading, is that they began to have leaders rate their own ethicality, and they had the leaders' subordinates rate leaders on the same dimension. When there was a disconnect such that those two ratings deviated, the organization began a discussion. Importantly, they didn't say that one rating was right and the other was wrong, but rather, because it is such a big organization, they used these discrepancies as a place to begin a conversation to see if there was any ethical fading and motivated blindness at work.

At the heart of your question—as to why we don't speak up—in part, this is because we're afraid, in part because it's not the culture, but also, in part because we don't feel that we have anything to say because we haven't seen it. My work focuses on that last piece.

You have to look at why people are not motivated to see their behavior. So, if all the money is brought in through one division, for example, that is likely to be the place where people will not see problems. There was a study on Enron, looking at all the emails in and out of divisions. Within a particular division that had a lot of problems, there were very few emails being sent out, so it became a separate division, an isolated area.

There's a question that I saw in the chat about working from home, and I know that Linda and I have been talking about that for a while. Yes, I mean that could be significant because people working from home are probably not absorbing the organization's informal norms, which could be good or bad. If you have bad informal norms, it might be a positive. If you have good informal norms—I worked with a top management team of an organization recently, really two years ago; COVID has disrupted my sense of time—but they did a really nice job after my talk of trying to talk

about dilemmas. Then they gave people choices to see what they would do. The choices weren't along the lines of "tell or not tell;" they were like "wait a day," or "go talk to your friend about it." More like real, normal responses you might have.

Then someone in the audience would stand up and say that was it was their dilemma, and here's what they did. Not necessarily right or wrong. One of those was about a person, and the CEO constantly referred to this person as a star performer. "Look at so and so, they're just awesome." Well, this person ended up being a bad person, a bad apple, but nobody would say anything because they knew that they were never going to be heard. And what that CEO said is—and took credit, took blame—is, "I will never again favor one employee over the other, because that alone creates a barrier for me to hear information about them." So those are just a few ways to think about it.

PROFESSOR NELSON: That is really, really important, and I want to make sure that

DR. TREVIÑO: I was just going to say.

PROFESSOR NELSON: Great, I was turning to you next, Linda.

DR. TREVIÑO: Well, let me just say something about Ann's point, and then maybe you have other questions. So I think that the CEO could also think about focusing—if you are going to hold someone up as a role model whom everybody should look up to, why not have it be the person who spoke up when it was hard, right? I don't know if they still have it, but Lockheed Martin used to have this program that was called the Chairman's Award. They would tell all the managers all around the world to look for people who had done something extraordinary in the ethical realm, and to nominate those people for this Chairman's Award. What that did was to raise awareness among all these leaders that this was important to the CEO. Then they were out looking in their organizations not for the, you know, best salesperson, but the extraordinary ethical person, and they would bring these nominees and these managers from all over the place together for a dinner. They would give the award to the person who won, and then they were able to tell that story. That story of ethical behavior became part of the stories that the organization said went out in the newsletter or whatever communication mechanisms it uses. So who you hold up is important.

There is another thing that I've seen in organizations that I thought was unique and really important—because, as Ann said, people don't speak up because they're fearful of what it's going to mean for their careers. This organization set up a pretty intense, complicated system for tracking careers of people who spoke up. They made sure that those people were not getting sidetracked, and the company intervened if there was

a problem. Knowing that the organization has your back—look, it’s amazing. I mean, it’s really, really helpful.

DR. TENBRUNSEL: I have another quick example along those lines because I think what Linda is pointing at is the way in which, in this case, the formal system can actually be positive.

DR. TREVIÑO: That’s true.

DR. TENBRUNSEL: In our book, we describe a company that, in their new employee training, introduces employees who have moved up the hierarchy, say, for example, a Vice President. At the end of the session, they reveal that all of these highly placed people blew the whistle early in their careers, and this is where they are, conveying that blowing the whistle doesn’t have to hurt a career. So, in addition to formal programs, I think understanding—as Linda knows best—the informal rewards—what’s perceived to be rewarded—is important. For example, who’s included in the meeting? Who’s invited to lunch? If the answers are always that it’s the person who is the high performer and who cuts corners, it really doesn’t matter what your formal system says. Perceptions of who, and what, is actually rewarded is going to have a much more significant influence on subsequent behavior.

We did a project on law-firm culture where we interviewed people at all levels from partners on down. There was a great story about this. It was very clear in training, and in all of their behavioral codes, that you cannot make up your hours. You have to be very diligent down to the second—I’m kidding—but pretty specific. A story was recounted about the behavior of a superstar junior performer who was clearly favored by management. He sat down at a restaurant with some other juniors—these were the other juniors telling us this—and quickly made up his timesheet for the past week, making it clear to them that the rule, “Don’t make up your timesheet and be very, very diligent,” really wasn’t enforced since he was getting all the plum cases and partners to work with.

DR. TREVIÑO: Yes, I have another example that I think is a great example for people who are listening. So this is in the good old days, but Boeing was the first organization that I knew of to do this on a big scale. So everybody has a hotline, right? They take these reports, and hopefully act on them quickly and effectively.

What Boeing did was kind of sanitize the stories of these reports to the hotline, explain what happened in the situation, and what action they took. Because the second reason why people don’t speak up is that it’s like, “Why am I sticking my neck out? Why bother? Nothing is going to come of this anyway.” So they put these stories on their internal website—the ethics and compliance office did—and what they found was that, in the first month, the website was up some 60,000 hits. People want to know

that the organization cares; that, if you call the hotline, something's going to happen; the company is going to take it seriously; the person is going to survive that experience, and his or her identity is going to be protected. They talk about all of the lengths that they go to protect identity. Some of these stories are amazing. So, to me, that just says boy, people really want to know this.

They really want to know this, and we've actually taken this to the business school. You know, where we have academic integrity violations. We actually send out a report each semester at the end of the semester to students about the violations, and what happened to those students—students pay very close attention. They look at those things. They care about them. They want to know that we have an honor code that will be enforced. They want to know that, if people aren't complying and they get reported, that action is taken. So I think that those are some practical things that I've seen that seem to work.

PROFESSOR NELSON: Very important. In the five minutes we have left, which is way too short—way, way too short—I want to pull Linda out more on formal systems that work and formal systems that don't work. And then, also, Niki, you've done a lot of work on this too in formal systems. We've mentioned a bunch of this, but I want to give you a chance specifically to talk about big concepts like the big two leadership and performance management systems.

In four minutes now, give us the entire body of work Not possible, but this is an invitation to the audience to follow up to learn more about this. We're giving the audience merely a taste of an incredible field that is showing us so much about how human beings actually behave, and what we can do in within organizations to make them the kinds of organizations that we want to be in, to work with, and to be running.

DR. DEN NIEUWENBOER: Yes, I think we addressed this in various ways already. When you think about performance management systems, keep in mind how feasible are the things that you're asking employees to do—given their skill level, but also very important, given the time that they have. For instance, a lot of lying in the military happens because there's just not enough time to do everything that they need to do. Time is a resource, and employee skill is a resource. If you have problems with managing those resources, people will behave unethically—that's a thing to keep in mind. Additionally, having repeatedly to reach hard-to-reach goals depletes one's cognitive resources, which also leads to more unethical behavior. Does that mean that you cannot set stretch goals? No, because stretch goals can also be awesome.

The thing is, what is the repercussion of not reaching your goals? I think that's the biggest thing that makes people ultimately decide to lie. Do they have a feasible path to do it ethically? And what will happen if

they don't reach their goals? Will they get fired? I think those are sort of the highlights for performance management.

In terms of leadership, I think it's very important to speak about values, to take them seriously, and make sure that also you punish people who need to be punished. Linda has done some research on punishment, and she told me a long ago that it's phenomenally difficult to publish because we don't want to talk about these negative things. So I make it a point to talk a lot in my classroom about how you have to punish the people who do bad things, and that it is not so much for the people who did those bad things, but for the message that it sends to everybody else. Also, in the example that Ann gave, you have people be more forgiving of just one person because they seem awesome, but the problem is the message that those exceptions send to everybody else.

Because people pay attention to what happens in organization, they pay attention to who the managers favor, who the managers punish. It's a dirty thing, but you do need to punish the ones that do a bad job, who do not live up to standards, and who commit unethical behavior. Obviously, now at the same time, that might be tremendously difficult to figure out. A compliance officer whom we spoke to, she said some eighty percent of people you have to punish will remain in your organization, and then they have to work again with the people that know that they did something bad. So how can we recuperate after punishment? I'm not sure that we know a lot about that yet. It's definitely a difficult, challenging thing, but those would be the things that I think are most important.

DR. TREVIÑO: I'd like to add a couple of things to what Niki said.

On the positive side of performance management systems we forget—so we tend to focus on bottom-line outcomes, such as how many widgets did you sell or whatever? Or how quickly did you do your work? Or how many people did you see? Or whatever it is.

We don't ask about the means, right? How did you do it? What kind of relationships did you build? So, I talk about having ethical goals as well as those other goals, and I think it is very possible to design a performance management system that has that. It's not as straightforward. You have to think more, but there are companies that have done it actually quite successfully.

I actually did a study with a former doctoral student about this. It was her dissertation in which we looked at punishment and outcomes.

I've noticed that people respond better if we talk about discipline and punishment. But what we found was that—and I like to talk about this—a lot of people in the audience are probably parents or are going to be parents. You know, you really have to discipline people. You have to discipline your children, right? I mean it, you'd be a terrible parent if you didn't.

As a manager, you have to discipline people too because they go off track and they need help, right? This is a way of making them aware that they've done something wrong—especially if they knew, if they recognized that they were breaking a rule or whatever, and you talk to them. You treat them fairly. This was very much a fairness perspective on this.

What we found was that it was key that the person perceived the discipline to be fair. This means similar to what others would have received in the same situation. It wasn't arbitrary if, you know, the punishment fit the crime. It wasn't super harsh. If the punishment fit the crime, then their performance actually improved, and they went on to become better employees. So I think that is a really important part of it.

Another thing that I think is interesting is—on the formal side—formal decision-making processes that you can integrate into what the organization does. For example, we now assume that there are going to be environmental impacts. Environmental impact is going to be part of the considerations when we're doing certain kinds of things, such as when we're building something or developing something. That wasn't always the case. But now we have to look at the potential harms that we might be imposing on a community when we're doing those things so you can incorporate those issues in your formal processes, these sorts of ethical considerations.

But when we talk about the informal side, the language—it goes back to, you know, some of Ann's work and a little bit of work I've done on framing as well—the language. If it's comfortable in the organization actually to say the word ethics. There are business organizations. There's a term. There was an article written many, many years ago on moral muteness in organizations and in business, especially that people look at you funny if you're raising ethical issues that needs to change. If you want to have good outcomes with ethics, it needs to be okay to be the person in the group who says, you know, I think that's not consistent with the values that we say we stand for.

PROFESSOR NELSON: Such important points. Such important points. I want to give Madeline, our student, a chance to ask some questions, but I just also wanted to throw this back to Ann a little bit too. She made a great point in our conversation before the panel started that discipline can sometimes be just letting people know where the boundaries are.

She said that she had to send an email in which she said, "This is not what we do." You know, it could be that simple: I'm just establishing what the norms are within the organization.

So, as lawyers, we tend to think about discipline in terms of going to trial and sentencing—that's not necessarily what we're talking about here. We're talking about little cues within the organization—like with your children, you're not taking them to trial and sentencing them. You're telling

them things like, “Eat with a knife and fork.” Why? Because that’s what we do. And that’s the context in some of this.

DR. TENBRUNSEL: I would say that what Niki is describing is really an informal sanction. It’s not “I’m going to report you for doing that,” but simply saying that these are the norms, let me remind you of them. But I think Linda’s point is really well taken, and that is organizations and law firms go astray because they rely on the bad apple theory. You’re bad so we’re going to severely punish you and kick you out. And if the research that everyone on this panel and many more people believe is true—which I we believe that it is—then it’s a whole lot more to do with the interaction between that person and the situation and all the factors we’ve been talking about.

Getting rid of the “bad apples” might make you feel happy, and feel like, “Hey, I’ve solved the problem.” But you’re just going to be right back in the same situation when a different person is in that exact same situation, and thus may behave the same way. A better approach is to adopt a learning approach: what went wrong? What do we need to fix? This focus might change the punitive focus of the organization.

DR. DEN NIEUWENBOER: Yes, can I just add really quickly before we end. So in Wells Fargo

PROFESSOR NELSON: Maddie, we’re going to get to you! We are!

DR. DEN NIEUWENBOER: In Wells Fargo, they fired five-thousand three hundred people for unethical behavior, and to Ann’s point, it actually made them feel like their systems were working, so it didn’t just make them feel good. They actually thought: we’ve got our organization covered. We’re okay. We don’t need to worry about anything. So this bad apples approach—and not just in unethical behavior, but in many cases—I think it’s actually sort of backfiring because it makes you feel good. And yes, you think that processes work, and you can totally ignore the actual problem that underlies all of the things that are happening.

Okay, so that was it, now questions?

PROFESSOR NELSON: Questions, so thank you guys. Thank you guys.

DR. TREVIÑO: I want to make two really quick

PROFESSOR NELSON: Maddie, get ready.

DR. TREVIÑO: So, building on what Niki said, so when there’s a problem like they had at Wells Fargo, you need to get to the root cause, right? Not just identify the bad apples. And—they eventually did when they

called in a law firm, and they did a big investigation. But management should have been thinking in those terms.

There is another point that I think is really important to make to people who are helping, you know, develop the ethics and compliance programs and advising companies.

I use a garden metaphor to talk about ethical culture. You don't just put it in place, kind of like a program, and say okay, we're done now. It has to be tended. Because, if it's not tended constantly—forever—then the pests and the weeds invade. It's just a constant tending that has to happen, and I think it's so important to keep that in mind.

PROFESSOR NELSON: That was really important too. Definitely worth it.

[Question-and-answer portion omitted.]

PROFESSOR NELSON: Alright, guys. I want to make sure that we end up in good time to give people a break before the next session, which will be Dr. Gentile speaking to us about Giving Voice to Values and other very important things. But I want to say thank you, thank you, thank you. You guys have been amazing and you got up early. You came to talk to us, and you have been talking about such important things. We as lawyers, we as business people, need to think about these things, need to know that these things are more complicated than they seem on the surface. We need to know that they take work. We need to know that we need to be aware of them in crafting all kinds of rules and policies. But also in how those policies, and those rules, and those other pieces of the culture are really implemented. You've given us so much to think about. So much to talk about. And we are so grateful. Thank you again.

DR. DEN NIEUWENBOER: You're welcome, thank you.

DR. TREVIÑO: Thanks for inviting us.

DR. TENBRUNSEL: Thanks so much.