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ABOUT THE ALSB JOURNAL OF BUSINESS LAW & ETHICS PEDAGOGY

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CONTENT & OPINIONS

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FROM THE EDITOR

Engagement, Innovation, Impact, and Value in Business Law & Ethics Education

Business law and ethics faculty set high standards for themselves and strive to excel and to serve. Impact and value of our work are of utmost importance. After recent changes, the AACSB accreditation standards require and reward proven impact of business faculty work. No longer can faculty produce work only to “check some boxes”; one must document the value, use, and application of the work. By nature of the discipline, business law faculty’s scholarship, teaching, and service have always added value to the business and legal worlds. Academia is now catching up to the business law and ethics model and practices.

The AACSB 2013 Eligibility Procedures and Accreditation Standards for Business Accreditation (revised July 1, 2018) mentions the word “impact” 104 times. The concept is the subject of the preamble, two standards, and Appendix I. This Appendix, entitled “Examples of Impact Metrics in Support of Documentation,” lists 71 examples illustrating impact of academic activity in eight categories. Clearly, AACSB leadership believes in the sharing, application, and real-world use of faculty work.

The Journal of Business Law & Ethics Pedagogy provides an additional opportunity for faculty to publish their work and ideas, as well as to be involved in engagement, to share innovation, and to show impact. The Academy of Legal Studies in Business is filled with accomplished teachers who have developed and utilized innovative teaching methods and concepts that should be shared with all. Additionally, many members research and share through publication of pedagogical topics in business law and ethics. To further engagement, sharing of innovation, and impact of that work, this particular online publication outlet is available to any who have an internet connection.

Four excellent articles are featured in this issue. First, Director Cara Biasucci and Professor Robert Prentice offer a study of the use of behavioral ethics in ethics education. They graciously share information on a host of resources offered by the Ethics Unwrapped Educational Program at no charge, as well as application ideas for those resources. Next, Professor Nanci Carr shares her approach to applying the Five Gears for Activating Learning to decision-making regarding use of technology in course design. This approach is innovative and helpful for learner-focused educators to analyze new technologies, and to resist the temptations and pressures to implement new technologies if they do not enhance learning. Following this, Professor Marc Lampe presents his classroom exercise to prepare our business law students for the realities of the adversarial legal system in both their professional and personal lives. The focus is on both law and ethics, so the exercise can be used in a variety of classes and situations, and the content is extremely valuable information for future business professionals. Lastly, Professor George Siedel advocates for the inclusion of negotiation training in business law and ethics courses, sharing his time-tested exercise in great detail. Negotiation skills are very valuable for students as they move into the business profession.

This journal exists only because of exemplary submissions by our valued authors, as well as due to a very devoted editorial board and an enthusiastic and hard-working group of reviewers. We hope you enjoy the fruits of our labor and are benefited greatly by this issue’s offerings.

Teaching Behavioral Ethics (Using “Ethics Unwrapped” Videos and Educational Materials)

Cara Biasucci* and Robert Prentice**

ABSTRACT

The business world is rife with scandals, making it especially important to teach ethical decision-making in business schools. Unfortunately, the “shadow curriculum” that sometimes exists in business schools makes it especially challenging to teach ethics effectively. Behavioral ethics research, however, is fascinating to study and its application carries the potential to improve students’ ethical decisions and actions. This article describes the basics of behavioral ethics, including the fundamental notion that good people do bad things because of the influence of social and organizational pressures, cognitive heuristics and biases, and a variety of situational factors. The article also introduces readers to a free resource that has proven effective in improving business ethics pedagogy—the videos and supporting materials of the Ethics Unwrapped Educational Program produced at the McCombs School of Business. The Ethics Unwrapped site is available for all to use at EthicsUnwrapped.utexas.edu and is a resource for educators and students at more than a thousand colleges and universities around the world.

KEY WORDS: ETHICS, BUSINESS ETHICS, BEHAVIORAL ETHICS, INCREMENTALISM, DECISION-MAKING

I. Introduction: The Need for Better Ethics Education

The headlines make it clear that unethical actions in business are ubiquitous. There are scandals involving Volkswagen pollution testing,¹ Wells Fargo fake accounts,² United Airline’s passenger removal,³ Uber’s “Greyball”⁴ and sexual harassment incidents,⁵ Fox News’ sexual harassment,⁶ Mylan’s EpiPen price gouging,⁷

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¹ See JACK EWING, *FASTER, HIGHER, FARTHER: THE VOLKSWAGEN SCANDAL* (2017).

² See Bethany McLean, *How Wells Fargo’s Cutthroat Corporate Culture Allegedly Drove Bankers to Fraud*, VANITY FAIR, May 31, 2017, <http://www.vanityfair.com/news/2017/05/wells-fargo-corporate-culture-fraud>.

³ See Daniel Victor & Matt Stevens, *United Airlines Passenger is Dragged From an Overbooked Flight*, N. Y. TIMES, Apr. 10, 2017, <https://www.nytimes.com/2017/04/10/business/united-flight-passenger-dragged.html>.

⁴ See Mike Isaac, *How Uber Deceives the Authorities Worldwide*, N. Y. TIMES, March 3, 2017, <https://www.nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html>.

⁵ See Maya Kosoff, *Uber’s Sexual-Harassment Crisis Just Got Even Darker*, VANITY FAIR, June 15, 2017, <http://www.vanityfair.com/news/2017/06/uber-india-rape-survivor-sues-medical-files>.

⁶ See Harriet Sinclair, *Fox News Sexual Harassment Scandal Grows to Include Political Hopefuls*, NEWSWEEK, May 14, 2017, <http://www.newsweek.com/fox-news-sexual-harassment-sexual-harassment-lawsuits-bill-oreilly-roger-aites-608922>.

⁷ See Daniel Kozarich, *Mylan’s EpiPen Pricing Crossed Ethical Boundaries*, FORTUNE, Sept. 27, 2016, <http://fortune.com/2016/09/27/mylan-epipen-heather-bresch/>.

the Panama Papers situation,⁸ the LIBOR manipulation,⁹ Martin Shkreli's antics,¹⁰ and on and on. These headline-grabbing scandals are unfortunately concurrent with daily cases of routine employee misconduct (embezzlement, theft of office supplies, padding expense accounts, etc.) that cost U.S. companies up to \$60 billion annually.¹¹

Poor ethical performance in business necessitates improved ethics education in business schools, yet *New York Observer* contributing editor Duff McDonald recently reminded us that the Harvard Business School (HBS) has done an inadequate job of teaching ethics¹² and McCombs Professor Eli Cox has shown that the problem extends far beyond just HBS.¹³ Of course, Harvard Professor Rakesh Khurana¹⁴ and the Carnegie Foundation¹⁵ made this point a decade ago.

No one should underestimate the difficulty of teaching ethics in a business school, or anywhere else for that matter. Business schools present a particularly difficult instructional environment due to what Cox and McDonald describe as an underlying "shadow curriculum," where economics and finance professors unintentionally lead students to think that what *does* happen on Wall Street and in boardrooms across the country is what *should* happen.¹⁶ This shadow curriculum often describes for students an efficient financial model that neither embodies reality nor produces the promised results, as some faculty members are belatedly starting to realize.¹⁷ Nobel Laureate economist Robert Shiller recently noted:

Errors by educators in recent decades seem to have played an important role in the severe financial crisis that began in 2007. In particular, the efficient markets theory was oversold to students, and this helped contribute to the formation of speculative bubbles. Many teachers seemed to inculcate the extreme view that markets are perfectly efficient. From this view many of their students drew the conclusion that it hardly matters ethically what one does in business, since nothing one could do would ever disturb this magnificent equilibrium.¹⁸

⁸ See Brooke Harrington, *Panama Papers: The Real Scandal Is What's Legal*, THE ATLANTIC, Apr. 6, 2016, <https://www.theatlantic.com/business/archive/2016/04/panama-papers-crimes/477156/>.

⁹ See DAVID ENRICH, *THE SPIDER NETWORK: THE WILD STORY OF A MATH GENIUS, A GANG OF BACKSTABBING BANKERS, AND ONE OF THE GREATEST SCAMS IN FINANCIAL HISTORY* (2017).

¹⁰ See Renae Merle, 'He Was Born This Way': Martin Shkreli's Attorney Offers Defense as Securities-Fraud Trial Opens, WASHINGTON POST, June 28, 2017, https://www.washingtonpost.com/news/business/wp/2017/06/28/he-was-born-this-way-martin-shkreli-attorney-offers-defense-as-securities-trial-opens/?hpid=hp_hp-more-top-stories_shkreli-625pm%3Ahomepage%2Fstory&utm_term=.9592d7dd3635.

¹¹ Nicole Leinbach-Reyhle, *New Report Identifies US Retailers Lose \$60 Billion a Year, Employee Theft Top Concern*, Forbes, Oct. 7, 2015, <https://www.forbes.com/sites/nicoleleinbachreyhle/2015/10/07/new-report-identifies-us-retailers-lose-60-billion-a-year-employee-theft-top-concern/#7ce948bd80eb>.

¹² DUFF McDONALD, *THE GOLDEN PASSPORT: HARVARD BUSINESS SCHOOL, THE LIMITS OF CAPITALISM, AND THE MORAL FAILURE OF THE MBA ELITE*, HARPERCOLLINS PUBLISHERS (2017).

¹³ ELI P. COX III, *SEEKING ADAM SMITH: FINDING THE SHADOW CURRICULUM OF BUSINESS* (2017).

¹⁴ RAKESH KHURANA, *FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION* 365 (2007) (faulting business education on a number of grounds, including its poor job of handling ethics).

¹⁵ ANNE COLBY ET AL., *RETHINKING UNDERGRADUATE BUSINESS EDUCATION: LIBERAL LEARNING FOR THE PROFESSION* (2011) (suggesting that business education tends to be too narrow and technical and should include more "liberal learning" drawing from the liberal arts and focusing on topics such as law and ethics).

¹⁶ See JOHN HENDRY, *ETHICS AND FINANCE: AN INTRODUCTION* 40 (2013).

¹⁷ See MAUREEN O'HARA, *SOMETHING FOR NOTHING: ARBITRAGE AND ETHICS ON WALL STREET* (2017).

¹⁸ ROBERT J. SHILLER, *FINANCE AND THE GOOD SOCIETY* 103 (2012).

Another part of the problem in business education is the psychological impact of money. Studies show that when people are primed to think about money, it tends to affect them in potentially anti-social ways.¹⁹ In one study, subjects were divided into two groups, one primed to think about money and the other not so primed. Then all subjects were asked how likely it was that they would do something unethical—like filch a ream of paper from work when they had run out at home. A significantly higher percentage of money-primed subjects indicated that they would do the unethical acts. Study results also showed that the money-primed participants:

- Lied more often to other subjects in a deception game where they could profit by lying.
- Lied more often to the experimenters to gain money rewards.
- Were more likely to say that they would hire a candidate who promised that if hired he would bring a competitor's confidential information to the job.

The authors concluded that priming subjects to think of money caused them to evaluate their decision in a business frame, which freed them to ignore the consequences of their decisions on others.²⁰

In another study, subjects primed to think about money were less helpful when asked for assistance, donated less to charity, maintained greater social distance when meeting someone new, and chose more often to work alone than with a peer.²¹ These and other studies²² indicate that almost inherently, even without an overlay of a shadow curriculum based on Milton Friedman-style economics, people in finance and accounting careers will face a real headwind in trying to act ethically. As a president of the American Finance Association recently wrote:

I fear that in the financial sector fraud has become a feature and not a bug. In the medical field, doctors might overuse expensive procedures, but they certainly do not boast that they are doing it with their colleagues. The Hippocratic Oath makes it socially unacceptable for a doctor to maximize income at the expense of patients.

The same is not true in finance. We teach our students how to maximize the tax advantage of debt and how to exploit arbitrage opportunities. Customers are often not seen as people to respect, but as counterparties to take to the cleaners. It should not come as a surprise, then, that—according to a whistleblower—investment bankers were referring to their clients as Muppets.

....
[The evidence seems] to suggest that the moral standards in the financial industry are very low."²³

¹⁹ Kathleen Vohs et al., *Merely Activating the Concept of Money Changes Personal and Interpersonal Behavior*, 17 CURR. DIRECT. IN PSYCHOL. SCI. 208 (2008).

²⁰ Maryam Kouchaki et al., *Seeing Green: Mere Exposure to Money Triggers a Business Decision Frame and Unethical Outcomes*, 121 ORG. BEHAV. & HUM. DEC. PROC. 53 (2013).

²¹ Kathleen Vohs et al., *The Psychological Consequences of Money*, 314 SCI. 1154 (2006).

²² See, e.g., Varda Liberman et al., *The Name of the Game: Predictive Power of Reputations versus Situational Labels in Determining Prisoner's Dilemma Game Moves*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 1175 (2004); Elke Liu et al., *Reminders of Money Elicit Feelings of Threat and Reactance in Response to Social Influence*, 38 J. MKT. RES. 1030 (2012); Cassie Mogilner, *The Pursuit of Happiness: Time, Money, and Social Connection*, 21 PSYCHOL. SCI. 1348 (2010); Nattavudh Powdthavee & Andrew J. Oswald, *Does Money Make People Right-Wing and Inegalitarian? A Longitudinal Study of Lottery Winners*, (IZA Discussion Paper No. 7934, 2014), SSRN: <https://ssrn.com/abstract=2396429>.

²³ Luigi Zingales, *Presidential Address: Does Finance Benefit Society?*, 70 J. FIN. 1327, 1348-49, 1358 (2015).

II. Introduction to Behavioral Ethics

Although it has been suggested that people of easy virtue²⁴ often self-select into finance sector careers,²⁵ evidence shows that “[m]ost moral problems in finance, and in business generally, do not arise from intentionally immoral behavior; they arise when people get carried away by their search for performance, fail to think through the implications of what they are doing or fail to notice that something has gone wrong.”²⁶ In other words, the most significant problem is not psychopaths in the C-Suites (although there are some of those)²⁷ or people waking up one day and vowing: “Today is the day I start my life of crime!”²⁸ Instead, the most important question is: “Why do good people do bad things?”²⁹

This state of unintentional immorality is reinforced by Harvard Law School professor Eugene Soltes’ recent book *Why They Do It: Inside the Mind of the White-Collar Criminal*.³⁰ Soltes developed relationships with many of the highest profile white-collar criminals of the past couple of decades (Bernie Madoff, Dennis Kozlowski, Scott London, Rajat Gupta, Sam Waksal, Andy Fastow, Steven R. Garfinkel, Marc Drier, etc.)³¹ and concluded that they were not so different from the rest of us. Instead, Soltes believes, “in our own small ways, we are all susceptible to making the same mistakes as these former executives.”³²

Soltes’ conclusions are supported by what is arguably the most important development in ethics in more than 2,000 years—the rise of behavioral ethics. Over the course of a few decades, economists and finance professors developed the Efficient Market Theory (EMT)(also known as the Efficient Market Hypothesis), which posited that people are perfectly rational decision-makers who gather, process, and utilize full information in making their economic choices. In 1978, Michael Jensen infamously pronounced that “there is no other proposition in economics which has more solid empirical evidence supporting it.”³³ Unfortunately for Jensen and a couple of generations of academic economists, the seeds of the destruction of the EMT were already growing and soon the work of Nobel Prize winner Daniel Kahneman, his colleague Amos Tversky,³⁴ and a slew of other academics, including Richard Thaler,³⁵ laid waste to the assumptions of

²⁴ Loose morals.

²⁵ William J. Bernstein, *Corporate Finance and Original Sin*, 62 FIN. ANALYSTS J. 20 (May-June 2006) (“[f]inance provides extraordinary temptation. This circumstance not only turns people into scoundrels but also attracts to the profession those who are already scoundrels. Although most people derive noneconomic satisfaction from ethical behavior, in finance, the warm glow simply costs too much.”). Such self-server also self-select into politics. Sebastian Fehrl et al., *Who Runs? Honesty and Self-Selection into Politics*, (IZA Discussion Paper No. 10258, October 10, 2016), SSRN: <https://ssrn.com/abstract=2849743>.

²⁶ HENDRY, *supra* note 16, at 44.

²⁷ See PAUL BABIAK & ROBERT D. HARE, *SNAKES IN SUITS: WHEN PSYCHOPATHS GO TO WORK* (2006); Manfred R.R. Kets de Vries, *The Psycho-path to Disaster: Coping with SOB Executives*, 43 ORG. DYNAMICS 17 (2014).

²⁸ WorldCom whistleblower Cynthia Cooper wrote: “People don’t wake up and say, ‘I think I’ll become a criminal today.’ Instead, it’s often a slippery slope and we lose our footing one step at a time.” CYNTHIA COOPER, *EXTRAORDINARY CIRCUMSTANCES: THE JOURNEY OF A CORPORATE WHISTLEBLOWER 1* (2008).

²⁹ For articles addressing this question, see, e.g., Ovul Sezer et al., *Ethical Blind Spots: Explaining Unintentional Unethical Behavior*, 3 CURRENT OPINION IN BEHAV. SCI. 77 (Dec. 2015); Francisca Gino, *Understanding Ordinary Unethical Behavior: Why People Who Value Morality Act Immorally*, 3 CURRENT OPINION IN BEHAV. SCI. 107 (June 2015).

³⁰ EUGENE SOLTES, *WHY THEY DO IT INSIDE THE MIND OF THE WHITE-COLLAR CRIMINAL* (2016) [hereinafter “SOLTES, WHY THEY DO IT”].

³¹ Of all the white-collar criminals he interviewed, Soltes thought that not one was a psychopath or sociopath, with the possible exception of Madoff. All the others were disturbingly normal. *Id.* at 306.

³² *Id.* at 9.

³³ Michael C. Jensen, *Some Anomalous Evidence Regarding Market Efficiency*, 6 J. FIN. ECON. 95 (1978).

³⁴ For the fascinating story of the Kahneman and Tversky partnership, see MICHAEL LEWIS, *THE UNDOING PROJECT: A FRIENDSHIP THAT CHANGED OUR MINDS* (2017). Many of their most important articles and related articles by their intellectual progeny are collected in: *HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT* (T. Gilovich, D. Griffin & D. Kahneman eds., 2002); *CHOICES, VALUES, AND FRAMES* (D. Kahneman & A. Tversky eds., 2000); *JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES* (D. Kahneman, P. Slovic & A. Tversky eds., 1982).

the EMT and, using the research from behavioral psychology, gave rise to the new academic fields of behavioral economics³⁶ and behavioral finance.³⁷ “[T]oday it is hard to find any financial economist under 40”³⁸ who agrees with Jensen’s statement.

It is now clear beyond peradventure that most people are not rational economic decision makers. Around 20 years ago, academics began applying the same knowledge generated by behavioral psychology and applied it to ethical decision-making. Thus, behavioral ethics has joined behavioral economics and behavioral finance as important new fields of academic endeavor. This psychological research, supplemented by additional evidence generated in cognitive science, evolutionary biology, social neuroscience and related fields, has demonstrated that social and organizational pressures,³⁹ cognitive heuristics and biases,⁴⁰ and various situational factors⁴¹ consistently and predictably affect human ethical judgments and action choices. All this makes it increasingly difficult for people operating in the real world to consistently live up to their own ethical standards.

The longtime bedrock of ethical training—philosophy—still has a role to play, of course. There are situations where it is difficult to determine which of multiple courses of action is the most ethical. That said, when you look at the actions of Bernie Madoff, Jeff Skilling, Ken Lay, Raj Rajaratnam, Jack Abramoff, Richard Scrushy, Bernie Ebbers, Nick Leeson, or pretty much anyone else seen doing the “perp walk” on TV in the last couple of decades, it is clear that not having read much Aristotle lately was hardly their problem. As with the rest of us, major white-collar criminals don’t commit crimes because they are unable to distinguish between right and wrong, nor because they have carefully weighed the benefits of crime versus the likelihood of being caught and the severity of the punishment. Rather, social, cognitive, and psychological forces trap people into failing to do what they know is right.⁴²

³⁵ See RICHARD THALER: MISBEHAVING: THE MAKING OF BEHAVIORAL ECONOMICS (2017). Thaler has written multiple articles with important implications for behavioral ethics, including the following: Hersh M. Shefrin & Richard H. Thaler, *An Economic Theory of Self-Control*, 89 J. POL. ECON. 392 (1981); Richard H. Thaler & Erick Johnson, *Gambling with the House Money and Trying to Break Even: The Effects of Prior Outcomes in Risky Choice*, 36 MAN. SCI. 643 (1990).

³⁶ See, e.g., COLIN F. CAMERER ET AL., EDS. ADVANCES IN BEHAVIORAL ECONOMICS (2004); PETER DIAMOND & HANNU VARTIAINEN EDS., BEHAVIORAL ECONOMICS AND ITS APPLICATIONS (2007); RICHARD H. THALER, QUASI RATIONAL ECONOMICS (1991).

³⁷ See, e.g., RICHARD H. THALER ED., ADVANCES IN BEHAVIORAL FINANCE (1993); HERSH SHEFRIN, BEYOND GREED AND FEAR: UNDERSTANDING BEHAVIORAL FINANCE AND THE PSYCHOLOGY OF INVESTING (2000); ANDREI SHLEIFER, INEFFICIENT MARKETS: AN INTRODUCTION TO BEHAVIORAL FINANCE (2000); ROBERT J. SHILLER, IRRATIONAL EXUBERANCE (2000).

³⁸ Zingales, *supra* note 23, at 1343. See also Richard H. Thaler, *From Homo Economicus to Homo Sapiens*, 14 J. ECON. PERSPECTIVES 133 (2000).

³⁹ Examples include the tendency people have to be unduly obedient to authority and too eager to conform their behavior to that of other members of their in-group. See, e.g., Solomon Asch, *Opinions and Social Pressure*, in READINGS ABOUT THE SOCIAL ANIMAL 17 (J. Aronson & E. Aronson eds., 2004) (conformity bias); STANLEY MILGRAM, OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW (1974) (obedience to authority); PATRICIA H. WERHANE ET AL., OBSTACLES TO ETHICAL DECISION-MAKING: MENTAL MODELS, MILGRAM, AND THE PROBLEM OF OBEDIENCE (2013) (obedience to authority).

⁴⁰ Examples include the self-serving bias, the overconfidence bias, the in-group bias, ethical fading, framing, loss aversion, and incrementalism. See, e.g., DAVID BERREBY, US AND THEM: UNDERSTANDING YOUR TRIBAL MIND (2005) (in-group bias); Jason Dana & George Loewenstein, *A Social Science Perspective on Gifts to Physicians from Industry*, 290 JAMA 252 (2003) (overconfidence bias); FRANCESCA GINO, SIDETRACKED: WHY OUR DECISIONS GET DERAILED, AND HOW WE CAN STICK TO THE PLAN (2013) (framing); Gilles Grolleau, Martin Kocher & Angela Sutan, “Cheating and Loss Aversion: Do People Lie More to Avoid a Loss?,” https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2502819 (loss aversion); Albert H. Hastorf & Hadley Cantril, *They Saw a Game: A Case Study*, 49 J. ABNORMAL & SOC. PSYCHOL. 129 (1954) (self-serving bias); Ann Tenbrunsel & David Messick, *Ethical Fading: The Role of Self-Deception in Unethical Behavior*, 17 SOCIAL JUSTICE RES. 223 (2004)(ethical fading).

⁴¹ One of the most significant situational factors is exposure to money, as indicated above. Ethical conduct and judgment can also be impacted by environmental factors such as transparency, lighting, cleanliness, and even smells. See Jonathan Haidt, *Can You Teach Businessmen to be Ethical?*, WASH. POST, Jan. 13, 2014 (lighting); THALMA LOBEL, SENSATION: THE NEW SCIENCE OF PHYSICAL INTELLIGENCE 3 (2014) (cleanliness); Jackson Lu et al., *Polluted Morality: Air Pollution Predicts Criminal Activity and Unethical Behavior*, __ PSYCHOL. SCI. __ (2017) (in press)(pollution); CHRISTIAN MILLER, CHARACTER & MORAL PSYCHOLOGY 70 (2014) (transparency); ROBERT M. SAPOLSKY, BEHAVE: THE BIOLOGY OF HUMANS AT OUR BEST AND WORST 493 (2017) (smells)

⁴² Max H. Bazerman & Ovul Sezer, *Bounded Awareness: Implications for Ethica*, 136 ORG. BEHAV. & HUM. DECISION PROC. 95 (2016).

What to do? Soltes recommends:

Appreciating our lack of invincibility—our inherent weakness and frailty—offers us the best chance of designing the appropriate mechanisms to help manage these limitations. If we learn to be more suspicious of our gut feelings when placed in new or difficult situations, we can acknowledge the need to create more opportunities for reflection and to bring in the viewpoints of others to question us. If we humbly recognize that we might not always even notice the choices that will lead us astray, we are more likely to develop ways to identify and control those decisions. But it's only when we realize that our ability to err is much greater than we often think it is that we'll begin to take the necessary steps to change and improve.⁴³

Bazerman and Sezer of Harvard agree with Soltes, suggesting that the key to recognizing ethical implications in decision-making is two-fold. First, we must teach people behavioral ethics so that they can be aware of the weaknesses of their moral intuitions and be more thoughtful and purposeful in addressing ethical challenges. Second, we should use “nudges,” which are prompts informed by behavioral ethics research that make it easier for people to do the right thing, and harder for them to do the wrong.⁴⁴

III. Ethics Unwrapped Videos & Teaching Resources

Behavioral ethics is an important step beyond moral philosophy, which tends to simply presume, albeit often wrongly, that once a moral actor figures out the right thing to do, it will be done.⁴⁵ And it is certainly an improvement on economics, which erroneously theorizes that people rationally weigh the advantages and disadvantages of a particular ethical decision before acting which, as Soltes suggests through evidence, is completely inaccurate in the great majority of cases.⁴⁶

One of the authors of this article has been a true scold, writing at length about the importance of behavioral ethics in understanding human morality,⁴⁷ about how to teach behavioral ethics,⁴⁸ and about the beneficial impact that teaching behavioral ethics can have,⁴⁹ even though it is obviously only part of an adequate business ethics education.

The other author is a philosopher and filmmaker who knows that teens spend most of their waking hours looking at screens⁵⁰ and that videos can be an effective means of teaching them.⁵¹

⁴³ SOLTES, WHY THEY DO IT, *supra* note 30, at 329-30. See also Eugene Soltes, *Teaching Versus Living: Managerial Decision Making in the Gray*, 41 J. MGMT. EDUC. 455 (2017) [hereinafter “Soltes, *Teaching*”] (urging the teaching of behavioral ethics).

⁴⁴ Robert A. Prentice, *Behavioral Ethics: Can It Help Lawyers (and Others) Be Their Best Selves?*, 29 NOTRE DAME J. L. ETHICS & PUB. POL'Y 35, 47-85 (2015) (explaining how application of the principles of behavioral ethics has a meaningful chance of improving ethical behavior). For other articles making similar suggestions, see Shahar Ayal *et al.*, *Three Principles to REVISE People's Unethical Behavior*, 10 PERSPECTIVES ON PSYCHOL. SCI. 738 (2015); Francesca Gino *et al.*, *Morality Rebooted: Exploring Simple Fixes to Our Moral Bugs*, 34 RES. IN ORG. BEHAV. 63 (2014); Ting Zhang *et al.*, Pinar Fletcher, Francesca Gino & Max Bazerman, *Reducing Bounded Ethicality: How to Help Individuals Notice and Avoid Unethical Behavior*, 44 ORG. DYNAMICS 310 (2015).

⁴⁵ ALBERT BANDURA, MORAL DISENGAGEMENT: HOW PEOPLE DO HARM AND LIVE WITH THEMSELVES 27 (2016) (“moral theorists usually ignore the gap in moral theorizing, leaving the impression that moral thought automatically begets moral action.”).

⁴⁶ Soltes, *Teaching*, *supra* note 43.

⁴⁷ Robert A. Prentice, John Hasnas & Alan Strudler, *New Directors in Legal Scholarship: Implications for Business Ethics Research, Theory, and Practice*, 20 BUSINESS ETHICS QUARTERLY 503 (2010); Robert Prentice, *Ethical Decision-making: Finance Professionals Need More Than Good Intentions*, 16 FIN. ANALYSTS J. 17 (2007).

⁴⁸ Robert Prentice, *Teaching Behavioral Ethics*, 31 J. LEG. STUD. EDUC. 325 (2014); Meme Drumwright, Cara Biasucci & Robert Prentice, *Behavioral Ethics and Teaching Ethical Decision-making*, 13 DECISION SCI. J. INNOV. EDUC. 431 (2015); Robert A. Prentice, *Teaching Ethics, Heuristics, and Biases*, 1 J. BUS. ETHICS EDUC. 57 (2004).

⁴⁹ Robert A. Prentice, *Behavioral Ethics: Can It Help Lawyers (and Others) Be Their Best Selves?*, 29 NOTRE DAME J. L. ETHICS & PUB. POL'Y 35 (2015).

The authors have produced and made readily available around 100 ethics videos as part of the Ethics Unwrapped educational program. To ensure that the Ethics Unwrapped scenarios are research-based, the authors have enlisted the help of content experts to draft the video scripts. These experts include not only the authors, but also educators Mary Gentile of the University of Virginia, Lamar Pierce of Washington University-St. Louis, Deni Elliott of the University of South Florida, and Meme Drumwright of the University of Texas. Importantly for purposes of this article, the great majority of Ethics Unwrapped videos have some aspect of behavioral ethics as their focus.

All videos are available on YouTube, and subtitled in Spanish. The videos, along with substantial written resources—video transcripts, case studies, discussion questions, teaching notes, lists of additional resources, and the like—are also available at Ethicsunwrapped.utexas.edu.⁵²

Currently the Ethics Unwrapped website contains:

- Approximately 50 glossary videos that use animation to succinctly (in two minutes or less) define many key ethical terms, including several that are critical to understanding behavioral ethics such as:
 - Behavioral Ethics
 - Bounded Ethicality
 - Conformity Bias
 - Ethical Fading
 - Loss Aversion
- Slightly more than 30 “Concepts Unwrapped” videos that include more detailed explanations of important ethical concepts. The narration is read over animation and edited together with student interviews. The average length is 6-10 minutes. Topics include all those mentioned above in the glossary series, and many others including:
 - Fundamental Attribution Error
 - Moral Muteness
 - Obedience to Authority
 - Incrementalism
 - The Tangible & the Abstract
- A twenty-five minute documentary, “In It to Win,” featuring disgraced lobbyist Jack Abramoff, which is supplemented by six short videos that explain how his situation illustrates several key behavioral ethics concepts, including:
 - Framing
 - Moral Equilibrium
 - Overconfidence Bias
 - Rationalizations
 - Role Morality
 - Self-serving Bias
- Eight videos introducing and illustrating Mary Gentile’s Giving Voice to Values program⁵³ that is widely used and very helpful in training individuals to speak up for the right thing and do so effectively.

⁵⁰ Megan Willett, *A Study Says Teens are Spending Nearly All Their Waking Hours Staring at Screens*, BUS. INSIDER, May 26, 2016, <http://www.businessinsider.com/teens-average-phone-screen-usage-2016-5>.

⁵¹ See Mariana Garcia Serrato, *Watch-Think-Write and Other Proven Strategies for Using Video in the Classroom*, KQED LEARNING, Aug. 23, 2016, <https://ww2.kqed.org/learning/2016/08/23/watch-think-write-and-other-proven-strategies-for-using-video-in-the-classroom/>.

⁵² [Http://ethicsunwrapped.utexas.edu](http://ethicsunwrapped.utexas.edu).

⁵³ See MARY GENTILE, *GIVING VOICE TO VALUES: HOW TO SPEAK YOUR MIND WHEN YOU KNOW WHAT’S RIGHT* (2012), <http://www.darden.virginia.edu/ibis/initiatives/giving-voice-to-values/>.

- Twenty-eight videos in the brand new “Scandals Illustrated” series that use scandals “ripped from the headlines” to stimulate discussion about various behavioral ethics concepts. The videos are accompanied by case studies, discussion questions, and other supplementary materials.

These videos generally introduce students to particular behavioral ethics topics with applications provided by the student interviews in the videos. By use of the discussion questions that are provided, students may take a deeper dive into the concept. The case studies provide students an opportunity to apply the concepts in a concrete fashion. The additional resources included allow both students and teachers to study the concept in a very thorough fashion.

These videos also present many opportunities for flexible learning. Students may watch videos inside class or outside class. After watching outside class, they may write a reflection paper or answer the discussion questions on the Ethics Unwrapped website, and come to class prepared to discuss. They may watch in class and follow with a discussion in groups or among members of the entire class. Discussions may focus on the content of the concept, on its applicability to the class’ coursework, and/or on its consistency with the students’ experience in their personal lives.

IV. An Example: Incrementalism

To illustrate how Ethics Unwrapped might be a useful teaching tool, we’ve selected as an example the concept of incrementalism. Students are often overconfident about their ability to handle ethical challenges because they want to do the right thing, they were “raised right,” they’ve studied Kant and Bentham, and they’re just sure that when faced with an ethical dilemma they can reason through to the right answer.

Convicted felon Steven Garfinkel, former CFO at DVI, told Eugene Soltes: “What we all think is, when the big moral challenge comes, I will rise to the occasion.”⁵⁴ Unfortunately, when students face ethical challenges in real life, the challenges are not typically accompanied by bright lights and blaring trumpets announcing the arrival of a moment of truth. Because of incrementalism—the “slippery slope”—ethical challenges sometimes slip in on little cat feet. Instead of a bright line separating black from white, our ethical challenges typically arrive on a continuum, and “[w]e rarely have a rational explanation for an intuitive sense that a line has been crossed on a continuum.”⁵⁵

In writing about the atrocities performed by the Nazis and also by “normal” German citizens who could have passed any modern standard psychological test, Glover wrote: “Sometimes people’s actions seem to be disconnected from their sense of who they are. *This may be because they slide into participation by imperceptible degrees, so that there is never the sense of a frontier being crossed.*”⁵⁶

There is relevant biological evidence confirming this phenomenon. Studies using fMRI (functional magnetic resonance imaging) scanners show that the brain appears to adapt to small lies, sending smaller and smaller negative signals to the liar, ultimately desensitizing him or her to the lying behavior.⁵⁷

Wrongdoers “typically say that whether it be embezzlement, tax fraud or corporate offenses, after that first wrongful act, it always gets easier to commit the next wrong and to live with it.”⁵⁸ One reason posed for this progression is that rationalizations are much more convincing when we are justifying small, step-by-step changes rather than one large, abrupt change.⁵⁹

⁵⁴ Soltes, *Teaching*, *supra* note 43, at 455.

⁵⁵ ROBERT M. SAPOLSKY, *BEHAVE: THE BIOLOGY OF HUMANS AT OUR BEST AND WORST* 470 (2017).

⁵⁶ JONATHAN GLOVER, *HUMANITY: A MORAL HISTORY OF THE TWENTIETH CENTURY* 403 (2d ed. 2012) (emphasis added).

⁵⁷ Erica Goode, *Why Big Liars Often Start Out as Small Ones*, N.Y. TIMES, Oct. 24, 2016, <https://www.nytimes.com/2016/10/25/science/why-big-liars-often-start-out-as-small-ones.html>. Goode’s article is a popular summary of Neil Garrett et al., *The Brain Adapts to Dishonesty*, 19 NATURE NEUROSCIENCE 1727 (2016).

⁵⁸ Hank Shea, “Top Ten List of Lessons Learned from White-collar Criminals, (2007), <http://www.stthomas.edu/new/ethical-misconduct-can-morph-illegal-wrongdoing/>.

⁵⁹ Francesca Gino et al., *How Unethical Behavior Becomes Habit*, HBR BLOG, Sept. 4, 2014, <https://hbr.org/2014/09/how-unethical-behavior-becomes-habit>.

For example, Patrick Schiltz warned young practicing lawyers about overbilling, which is endemic in the profession:

Let me tell you how you will start acting unethically: It will start with your time sheets. One day, not too long after you start practicing law, you will sit down at the end of a long, tiring day, and you just won't have much to show for your efforts in terms of billable hours. It will be near the end of the month. You will know that all of the partners will be looking at your monthly time report in a few days, so what you'll do is pad your time sheet just a bit. Maybe you will bill a client for ninety minutes for a task that really took you only sixty minutes to perform. However, you will promise yourself that you will repay the client at the first opportunity by doing thirty minutes of work for the client for "free." In this way, you will be "borrowing," not "stealing."

And then what will happen is that it will become easier and easier to take these little loans against future work. And then, after a while, you will stop paying back these little loans. You will convince yourself that, although you billed for ninety minutes and spent only sixty minutes on the project, you did such good work that your client should pay a bit more for it. After all, your billing rate is awfully low, and your client is awfully rich.

And then you will pad more and more—every two minute telephone conversation will go down on the sheet as ten minutes, every three hour research project will go down with an extra quarter hour or so. You will continue to rationalize your dishonesty to yourself in various ways until one day you stop doing even that. And, before long—it won't take you much more than three or four years—you will be stealing from your clients almost every day, and you won't even notice it.⁶⁰

The rationalizations and accompanying desensitization to emotions (such as guilt and shame) that often keep us on the straight and narrow,⁶¹ are conversely significant drivers of incrementalism. As Debra Comer and Gina Vega note:

Over time, however, if people violate their moral standards in response to situational pressures, they may gradually become inured to substandard behavior and desensitized to the intensity of moral encounters. Just as virtuous character develops through habitual good acts, dishonorable character may develop as individuals habituate to performing immoral deeds of incrementally greater intensity. Through a process of desensitization, we could grow accustomed to acting in ways we once thought we never would or could.⁶²

V. Using Ethics Unwrapped

How can Ethics Unwrapped be helpful in teaching incrementalism and other behavioral ethics topics?

One assignment might be to ask students to find famous ethical scandals that have been traced, in whole or in part, to the impact of incrementalism. There are many—incrementalism has been assigned a significant causal role in numerous ethical scandals, including: Enron's securities fraud,⁶³ telecom giant

⁶⁰ Patrick Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 917 (1999).

⁶¹ On the role of emotions in the self-regulation of moral conduct, see generally CRAIG E. JOHNSON, *MEETING THE ETHICAL CHALLENGES OF LEADERSHIP: CASTING LIGHT OR SHADOW* 192 (5th ed. 2015); MICHAEL SHERMER, *THE MORAL ARC: HOW SCIENCE AND REASON LEAD HUMANITY TOWARD TRUTH, JUSTICE, AND FREEDOM* 359 (2015).

⁶² Debra R. Comer & Gina Vega, *The Personal Ethical Threshold*, in *Moral Courage in ORGANIZATIONS: DOING THE RIGHT THING*, 25, 31 (D. Comer & G. Vega, eds., 2011).

⁶³ BETHANY MCLEAN & PETER ELKIND, *THE SMARTEST GUYS IN THE ROOM* 132 (2003) ("the Enron scandal grew out of a steady accumulation of habits and values and actions that began years before and finally spiraled out of control.").

WorldCom's securities fraud,⁶⁴ KPMG partner Scott London's insider trading,⁶⁵ Bernie Madoff's Ponzi scheme,⁶⁶ lawyer Marc Drier's Ponzi scheme,⁶⁷ the U.S. military's mistreatment of prisoners at Abu Ghraib,⁶⁸ the Ford Pinto's design disaster,⁶⁹ lawyer John Gellene's jail term for lying to a judge,⁷⁰ General Motors' defective ignition scandal,⁷¹ the electric industry's infamous price-fixing scandal of the 1950s and 1960s,⁷² the My Lai massacre in Vietnam,⁷³ and Nick Leeson's rogue trading that sank Baring's Bank.⁷⁴ Indeed, as noted above, many believe that incrementalism was a major driver of the horrors that Nazism perpetrated and that "normal" German people accepted and even assisted.⁷⁵

Another assignment might be to ask students to write about the impact of incrementalism in their own personal lives. Our experience is that students will sometimes talk about "a friend" who cheated on a minor assignment in high school, but soon found himself or herself cheating on much more significant assignments. Another common experience students report relates to being given an expense account during their first internship and being told, perhaps by another intern, that it would probably be okay to put a minor personal purchase on the expense account. One minor personal item becomes another minor personal item which becomes a slightly larger personal item and away it goes until the student looks back and can't believe what he or she did. This assignment can turn a theoretical discussion into a very personal experience for the student, but can create unexpected issues. Some students may feel that they have no choice but to reveal something sensitive that they'd prefer the professor not know. Also, certain disclosures might require mandatory reporting by the professor under Title IX. So be cautious with such an assignment.

The videos explain and clarify the concept of incrementalism. The discussion and paper should bring home to students the impact that incrementalism may have on their own lives and ethical decision-making. Ideally, the takeaway for students will be Clayton Christensen's message that it is easier to be ethical 100% of the time than 98% of the time because, due to incrementalism, 98% becomes 93%, which becomes 86%, which becomes 72%, and so on.⁷⁶

⁶⁴ CYNTHIA COOPER, EXTRAORDINARY CIRCUMSTANCES: THE JOURNEY OF A CORPORATE WHISTLEBLOWER 1 (2008).

⁶⁵ SOLTES, WHY THEY DO IT, *supra* note 30, at 6.

⁶⁶ BONNIE KIRCHNER, THE BERNARD MADOFF INVESTMENT SCAM (2010).

⁶⁷ *Id.* at 267.

⁶⁸ ERIC FAIR, CONSEQUENCE: A MEMOIR 2 (2016).

⁶⁹ Malcolm Gladwell, *The Engineer's Lament*, THE NEW YORKER, May 4, 2015, at 46.

⁷⁰ MILTON C. REGAN, JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER 303 (2004):

Moral behavior to some degree is a matter of habit. The ways people routinely approach and react to circumstances shape them in subtle ways over time, much as continuous incremental changes in the course of a river can shift its course. The fact that Gellene tended to cut corners on occasion may have eroded some of his resistance to dishonesty, leaving him with dwindling ethical resources to withstand temptation. Each small misstep may have pushed him further down the ethical slippery slope, so that lying to the court in the Bucyrus case seemed like an incremental, not a momentous step to take.

⁷¹ Floyd Norris, *History Gives Other Cases of G.M.'s Behavior*, N.Y. TIMES, March 28, 2014, <https://www.nytimes.com/2014/03/28/business/history-offers-other-examples-of-gms-behavior.html>.

⁷² JOHN G. FULLER, THE GENTLEMAN CONSPIRATORS: THE STORY OF THE PRICE-FIXERS IN THE ELECTRICAL INDUSTRY 58 (1962).

⁷³ JONATHAN GLOVER, HUMANITY: A MORAL HISTORY OF THE TWENTIETH CENTURY 60 (2d ed. 2012).

⁷⁴ CLAYTON M. CHRISTENSEN, HOW WILL YOU MEASURE YOUR LIFE? 188 (2012).

⁷⁵ GLOVER, *supra* note 56, at 35, 67, 83, and 349; ROBERT JAY LIFTON, THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE 195 (1986); Jonathan Lowell, *Managers and Moral Dissonance: Self-Justification as a Big Threat to Ethical Management?*, J. BUS. ETHICS 17, 20 (2012); MICHAEL SHERMER, THE MORAL ARC: HOW SCIENCE AND REASON LEAD HUMANITY TOWARD TRUTH, JUSTICE, AND FREEDOM 320 (2015), *quoting* CHRISTOPHER BROWNING, THE PATH TO GENOCIDE (1995). Interestingly, incrementalism also characterized the decision-making and actions of those who resisted the Nazis, sometimes by harboring Jews; they also often began with small acts of kindness that evolved into greater acts of courage and compassion. EYAL PRESS, BEAUTIFUL SOULS: SAYING NO, BREAKING RANKS, AND HEEDING THE VOICE OF CONSCIENCE IN DARK TIMES 44 (2012).

⁷⁶ Larissa MacFarquhar, *When Giants Fail: What Business Has Learned from Clayton Christensen*, NEW YORKER, May 14, 2012, at 95.

Instructors who are not familiar with Ethics Unwrapped, or with teaching ethics in general, can use the Curated Resources section of the Ethics Unwrapped website to help select videos and case studies to integrate into their courses. In Curated Resources, videos and case studies are grouped under nine broad categories or topic areas (e.g., Behavioral Ethics, Law & Policy, Leadership, Professional Ethics, Organizational Ethics, etc.). Within each category, there is an overview of the ethics themes covered, a “Start Here” selection of videos with case studies and additional videos with case studies (sorted by academic discipline) that are pertinent to the topic area.

VI. Assessing Ethics Unwrapped

Ethics Unwrapped has become a meaningful part of the undergraduate ethics curriculum on the University of Texas at Austin campus in academic areas such as fine arts, liberal arts, communications, natural sciences, education, and business. The effort to integrate ethics into the curriculum has been successful, in large part, because the videos and accompanying resources offer both flexibility and scalability. The initiative also flourished, of course, because the videos resonate with a diverse student population that is keen on watching (i.e., not reading) to learn.

We surveyed approximately 8,600 undergraduate students on campus over the course of two academic years to assess the impact of Ethics Unwrapped videos on teaching and learning ethics. The assessment surveys generated some tangible findings; for example 90% of students found the videos “helpful” or “very helpful” for explaining ethics concepts. Student confidence levels for dealing with ethics topics rose greatly with video instruction, too. Indeed, more than half of students reported being “not at all confident” or “minimally confident” in their ability to identify, explain, discuss, or apply ethics concepts *before* viewing a video. Of the students who were uncertain, 79% reported becoming “confident” or “very confident” in their abilities to recognize, discuss, and apply ethics concepts *after* viewing a video. And, while only 8% of students wrote comments, more than half of the comments showed a deeper level of engagement with the ethics topic or offered praise for the videos.

As part of the assessment, we also surveyed approximately 40 faculty members on campus (as well as a handful of instructors from other institutions) who were teaching ethics using Ethics Unwrapped. While this is a relatively small sample size, there appear to be clear trends among respondents. Namely, the videos offer a versatile supplemental resource for teaching ethics across a wide range of disciplines, class sizes, and instructional formats, including traditional seminars, blended learning, and online courses.

While the majority of faculty respondents used Ethics Unwrapped videos in traditional in-person seminars or lectures, approximately 25% of instructors used the videos in online courses or flipped classrooms. The videos served various functions regardless of classroom format—as the primary tool to teach ethics concepts; to initiate classroom discussion; to introduce a course topic; to prompt student writing assignments; to illustrate case studies in class.

Ninety-five percent of faculty members surveyed found the videos “helpful” or “very helpful” for teaching and learning, and 91% found the accompanying teaching resources “helpful” or “very helpful.” Approximately 82% of faculty members surveyed intended to use Ethics Unwrapped videos in future courses, and 85% said they would recommend Ethics Unwrapped to colleagues. Nearly half of the faculty members surveyed had learned about Ethics Unwrapped from a colleague. Overall, both the student and faculty surveys suggested a well-integrated ethics program yields significant benefits to student learning, and using Ethics Unwrapped videos is an effective way to introduce students to basic ethics concepts.

VII. Conclusion

When the authors teach behavioral ethics, we are often told by students and other adult listeners that this was the most interesting ethics presentation they had ever heard. The psychology of human ethical decision-making is endlessly fascinating.⁷⁷ More importantly, behavioral ethics is perhaps the most important topic

⁷⁷ See DAN ARIELY, *THE (HONEST) TRUTH ABOUT DISHONESTY: HOW WE LIE TO EVERYONE---ESPECIALLY OURSELVES*(2012); MAX H. BAZERMAN & ANN E. TENBRUNSEL, *BLIND SPOTS: WHY WE FAIL TO DO WHAT’S RIGHT AND WHAT TO DO ABOUT IT* (2011); FRANCESCA GINO,

that can be taught in an ethics course. KPMG accountant Scott London did not go to jail because he didn't know that insider trading was wrong. Bernie Madoff did not go to jail because he did not know that running a Ponzi scheme was wrong. Volkswagen is not paying billions of dollars in fines because its employees thought that fooling environmental regulators was a proper thing to do. Unlike purely philosophical approaches to teaching ethics, a behavioral approach helps close the gap between what people know that they should do and what they actually choose to do. The experience of scores of teachers and thousands of students indicates that Ethics Unwrapped provides a useful tool for teaching behavioral ethics lessons.