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# Professional and Organizational Leadership Role in Ethics Management: Avoiding Reliance on Ethical Codification and Nurturing Ethical Culture

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## Abstract

The engineering profession has experienced some ethical cases that were rarely reported, scrutinized, or discussed because: they did not necessarily represent violations of existing codes even if they breached ethical principles; those within the organization were not prepared to take steps to address the issues or impose sanction; an/or some of the personnel associated with these cases resorted to silence to avoid being labeled as trouble-makers in their organizations and, perhaps, more broadly, in society. The goal of this paper is to heighten managerial awareness of ethical issues, interrelated ethical lapses, and appropriate responsive actions within professional engineering communities. As such, the authors reviewed recent well-known professional and organizational ethical cases including impact of leadership role and existing standards, and critically analyzed interrelated literature. The paper's case studies exemplify that because ethical issues are complex, intricate, and nuanced; bylaws are insufficient for establishing the inclusive culture for handling potential ethical situations. In fact, through what is known as the codification of ethics, it is possible that someone's conduct can totally fulfill all professional responsibilities but still be unethical. As such, ethical leadership is needed to provide the means for establishing appropriate norms so as to set the proper structures for addressing the diverse ethical matters. Perceptions about the responses of leaders to potential ethical lapses are a critical factor in formulating, changing, and maintaining ethical values at the individual and organizational levels. A leader's passive attitude toward ethical issues can be the signal for the ignored lapses to become the norm at not only the organizational level but also the society. Guided by the new Code of Ethics by the American Society of Civil Engineers, this paper aims to trigger the proper ethical behavior and expectations for the welfare of the engineering profession both in the present and future.

**Keywords** Ethics · Ethical culture · Leadership · Codifications · Ethical codes · Bylaws · Standards · Ethical norms · Values · Principles · Bystanders

## Introduction

According to traditional vertical leadership theories, top management personnel at organizations – whether at universities, companies, or professional societies – usually set the standards for ethical leadership within their work environments (Bryman, 2013; Ramthun & Matkin, 2012a, b). However, modern horizontal leadership theories suggest that all associated stakeholders to an organization are influencers and role models when it comes to setting and creating an ethical culture (Graham et al., 2020). Oladinrin and Ho (2016) highlighted that an ethical culture requires interactions between different enabling practices and factors, including: (1) Leadership; (2) Policy and Strategy; (3) People and Employees; (4) Partnership and Resources; and, (5) Primary Processes.

Oladinrin and Ho (2016) concluded that: (1) “leadership” is the most important prioritized factor, followed by “primary processes”, “people and employees”, and “policy and strategy”, whereas “partnership and resources” ranked the lowest; and (2) while all five factors are significant for the implementation of codes of ethics, “policy and strategy” is the factor with a perfect correlation.

Codes of ethics have not reduced the intensity or number of ethical lapses (Oladinrin and Ho, 2016) because many organizations have treated such codes as end goals or a checklist item to develop but not use (Ho et al., 2004). Despite the emphasis on the development and application of and training in codes of ethics, many organizations that experiences ethical lapses do so because of violations of laws and code principles, ethical norms, organizational values, and/or principles in various professional communities. Nudelman and English (2019) investigated 54 case studies that were grouped within the following seven categories: (1) witnessing unethical acts by professionals, including data falsification, failure to address potential health risks, and workplace misconduct; (2) application of coercion by colleagues and supervisors of others to commit unethical acts; (3) participation in potentially damaging conversations that put credibility for both the participants and those being discussed at risk, (4) pressure to cover up errors, (5) forgery of signatures regarding start and stop times for logging time at work or particular projects; (6) improper use of intellectual property, company time and resources, and (7) tensions between personal and professional duties.

Whether in academia or industry, many of the most serious ethical lapses were never reported or escalated for reasons related to organizational reputation, the cost of ethical resolutions, or diagnosis bias in evaluating the risks involved in ethical lapses (Oladinrin and Ho, 2016). For example, in 2019, the indictment of 57 coaches, academic administrators, parents, and counselors revealed that a series of bribes of around \$25 million were paid between 2011 and 2018 by parents to various members of academic communities so that their otherwise unqualified children could be admitted under special admissions programs at 11 different colleges and universities across the United States (Jaschik, 2021). Also, the previous Provost at the University of Michigan—Ann Arbor sexually harassed multiple members of the university community, including his own student, and employees through more than two decades as assistant professor, dean, and

ultimately, provost, and that the institution could have taken at times more actions to investigate his actions (Fitzgerald, 2020). Further, the level of misconduct in academic research has reached the point of having a tracking website, [www.retractionwatch.com](http://www.retractionwatch.com), that reports on the ethical misconduct in scholarly output in a variety of fields and domains. In all these aforementioned examples, there were professional and organizational codes and rules that applied. Actually, none of the conduct described in these brief examples involved debatable ethical issues or gray areas in the interpretation of the applicable laws to the conduct. However, neither legal nor ethical rules and codes were able to serve as guarantees for an ethical culture or even the curbing of unethical or illegal behavior. In fact, all of these situations failed to satisfy even the basic premises for a fair human life. As such, Vee & Skitmore (2003) noted that codes of ethics are a starting point but do not provide guarantees of organizational and professional ethics. Accordingly, the goal of this research is to provide a substantiated assessment of the impact of action and inaction in response to ethical dilemmas as well as the consequence of considering and focusing on codes for all ethical situations.

### **Motivation and Goal**

The authors have witnessed ethical lapses within the engineering community both in industry and academia. Examples included consultants not disclosing conflicts of interests when accepting work assignments, graduate students and/or post-doctor researchers not honoring their agreed-upon professional and ethical commitments to their advisors (and vice versa), professional who mix personal feelings in business decision, decision-makers not appreciating honest and professional feedback, hiring committees using subjective evaluations metrics to advance preferred candidates, faculty members mistreating graduate students by requesting tasks beyond the expected academic duties of these students, journal editors advancing editorial board requests from qualified colleagues within their own preferred professional networks while denying the same from at least equally qualified colleague, administrators denying faculty their rights because of their strong positions in prior matters, managers who set demanding goals without offering necessary resources, and faculty members using differing criteria in evaluating similar matters based on their own vested interests. Meanwhile, the aforementioned situations triggered the authors to write this paper, these examples are not part of the literature because most of them were not reported and/or documented for variety of reasons that were previously summarized and will be further detailed in this paper. As such, and based on this limitation that goes beyond the control of the authors, and as will be shown in the forthcoming "Research Methods" section of this paper, the authors decided to use other interrelated cases in the literature in heightening leadership awareness of ethical issues, associated ethical lapses, and appropriate responsive actions.

## Background Information

### Ethical Culture

Organizational culture is described as shared values, beliefs, and assumptions (Schein, 1996). Ethical culture is a subset of organizational culture that results from the interplay of formal ethical infrastructure “i.e., codes of ethics and training” and informal factors “i.e., peer behaviors and norms” (Berson et al., 2008). Threats and reprimands also represent major components within the dimension measures of the ethical culture (Harrison & Treviño, 2011 and Schwepker, 2001). However, with the growing complexity of the professional world, societies have become increasingly dependent on formal ethical infrastructure, including reliance on codes of ethics for formulaic analyses and responses for the management of ethical dilemmas. Codes of ethics provide written frameworks that specify and shape appropriate and inappropriate conduct (Downe et al., 2016). Organizations use codes of ethics to better evaluate and assess misconduct allegations (Fording et al., 2003; West & Davis, 2011).

However, studies have questioned the impact of such codes in improving ethical behavior (Beeri et al., 2013). The literature offers various theories to study the efficacy of ethical governance in practice (Boltanski, 2010; Brey, 2000; Helin & Sandström, 2010; Introna, 2005; Jensen et al., 2009; Laffin, 2009; West & Davis, 2011). There is consensus that ethical standards do not, and cannot, control or affect behaviors and culture unless interpreted and translated into actions (Downe et al., 2016).

### Leadership and Ethical/Unethical Leadership

Successful leaders have ethical qualities that are intrinsic to their identity and clear to those throughout the organization (Cowell et al., 2013). In many cases, employees base their behaviors on the role models they see in top management as well as the associated reward and disciplinary systems (Ruiz-Palomino & Martinez-Cañas, 2014).

Brown et al. (2005) refers to leadership as “*the demonstration of normatively appropriate conduct through personal actions and interpersonal relationships, and the promotion of such conduct to followers through two-way communication, reinforcement, and decision-making.*” According to existing literature, leadership is usually managed either in a passive transactional manner that aims to set parameters, reward good performance, and discipline according to preset bylaws, or in a proactive transformational style that entails providing individualized consideration, intellectual stimulation, inspirational motivation, and idealized influence (Bandura, 1977; Bass, 1990; Downe et al., 2016). As such, proper leadership dictates certain commitments and associated behaviors to maintain social solidarity within the organization and beyond.

On one hand, Trevino and Brown (2005) describe ethical leaders as transactional moral persons who are honest and trustworthy, take good care of their employees, do the right things in both their personal and professional lives, make decisions based

on values and ethical decision processes, are fair and concerned about stakeholders' interests and long-term outcomes, communicate with their employees about their ethical and values-based expectations, and use the reward system to hold employees accountable for ethical conduct. Brown and Mitchell (2010) conclude that unethical leadership involves behaviors that are either illegal or violate existing ethical norms.

The passive reaction of any leader to unethical practices can increase the magnitude, severity, and impact of incidents. Over time, these leadership behaviors affect organizational culture and can silence those within the organization because they no longer have trust leaders to enforce rules and norms. This cloud of tolerance in an organization can ultimately contribute to continuing and possibly increase ethical lapses. In addition, leaders can develop blind spots when making decisions about when presented with ethical dilemmas. Those blind spots, an inability to see the effects and consequences of their actions on stakeholders, can be the result of ego or the lack of feedback from employees, reliance on direct reports from limited individuals or groups, or personal pressures (Shaw, 2014). Other concerns, beyond ethical analysis, dominate these leaders in their analysis. Their focus is not on the harms that have or could result from their decisions to ignore codes, processes, and norms or to minimize their importance in decision-making. Their focus is on pressures, the perceived costs of honoring codes and norms, and the additional effort involved in taking investigative steps and enforcement actions.

## Research Methods

### Overview

This paper adopted a two-step interdependent desktop research approach. This approach was utilized by many previous research efforts including, for example, analyzing exculpatory clauses (Khalef et al., 2021), substantial Completion (Abdul Nabi et al., 2021), transportation projects (Elsayegh et al., 2020), building information modeling (Assaad et al., 2020), among others. In the first step of this research, the authors reviewed recent well-known ethical cases that have had different managerial implications. Mainly 6 cases studies were analyzed within three different target contexts where: Target 1: examines set of cases in relation the failure in leadership to properly apply existing codes in ethical lapses as well as its resulting impact on organizational culture; Target 2: inspects set of cases regarding the impact of over-reliance on codes of ethics or lack thereof in understanding the nuances of ethical problems; and, Target 3: tackles set of cases that involves consequences of leadership failure to timely respond and take appropriate disciplinary actions. These cases represent a mixture between engineering-based situations as well as managerial and leadership ones. In selecting those cases, the authors intentionally opted to not mention cases related to any individuals within the academic engineering community because the purpose of this paper is not to personalize any matter but rather to focus on the broader spectrum of managing ethical dilemmas and understanding their associated contexts.

In the second step of this research, the authors studied professional and organizational leadership roles in leading beyond ethical codification, and in creating and sustaining an ethical culture. Effective ethical leadership requires a dynamic framework that is not limited to laws, regulations, and ethical codes. Beyond those basic and mechanical standards are ethical norms, values, and principles, which are the underlying fiber of organizational cultures. This step beyond the checklist approach of superficial applications provides a more effective understanding of the broader contexts needed for the recognition of, and response to, ethical violations.

### **Target 1: Leadership Failure to Properly Apply Existing Codes in Ethical Lapses and Its Impact on Organizational Culture**

In this section, the authors will provide two cases studies: a case study on Boeing and its flawed leadership judgment, and another case study on McDonald's and its ethically problematic CEO. This section tackles leadership failure to properly apply existing codes in ethical lapses and the resulting impact on organizational culture. The factual background as well as application and analysis of each case is provided in the subsequent sections.

#### **Case 1: Boeing and Flawed Leadership Judgment**

##### **Factual Background**

Facing stiff competition from Airbus, Boeing needed a plane that carried more passengers than its then-current 737. Rather than design a new plane with the time and cost required, Boeing made the decision to redesign its 737 to create the 737MAX. To get the lift that the heavier plane needed, the plane's angle of attack changed. Boeing elected not to install an extra sensor for pilot alerts on the angle of attack and made the decision not to require new training for pilots of the plane, despite its critical differences.

Without the extra sensor, pilots were placed in a situation of having only 10 s to take action to avert a crash once the automatic systems began pushing the plane downward because of the heavier plane's altered angle of attack. Without training and awareness of this issue, most pilots would not be able to manually correct within the 10 s even if they could muster the strength it would take to overpower the push downward.

A Lion Air 737MAX crashed in October 2018, killing everyone on the plane. Post-crash analysis concluded that a sensor malfunction caused the automatic systems to push the nose of the plane down when the plane needed to climb, and the pilots were unable to take over and force the climb. The Federal Aviation Administration (FAA) agreed with the analysis and attributed the action to the sensors. The FAA required Boeing to temporarily notify airlines and pilots about the sensor malfunction and develop a permanent fix within 10 months (Kitroeff & Gelles, 2019). On March 10, 2019, an Ethiopian Airlines 737MAX crashed, killing everyone on board. The physics in the crashes appeared to be similar.

With broader investigations, both the FAA and the House Transportation Committee uncovered troubling e-mails and instant messages of Boeing employees. Those messages reflected Boeing employees' concerns about the safety of the redesigned plane. In 2016, instant messages between Mark Forkner, then Boeing's chief technical pilot for the Boeing 737 MAX, and Patrik Gustavsson, discussed the plane's maneuvering characteristics augmentation system (MCAS) system (House Report, 2020). Mr. Forkner had experienced some problems with the MCAS in using the 737MAX simulator, "Granted, I suck at flying, but even this was egregious. It's running rampant" (House Report, 2020). The simulator data showed that it took most pilots longer than the 10 s afforded to correct the plane. Mr. Forkner felt that Boeing needed to alert pilots to these issues. Boeing did not convey the Forkner concerns to its customers. In a later e-mail, Mr. Forkner wrote that he had not been candid with the FAA on the issues present, "So, I basically lied to the regulators (unknowingly)." Other employee e-mails that emerged in the investigation stated the following (Kritoeff, 2020): "This airplane is designed by clowns, who are in turn supervised by monkeys", "I still haven't been forgiven by God for the covering up I did last year", "Would you put your family on a Max simulator trained aircraft? I wouldn't".

## Application and Analysis

**The Failure of Leadership** Failure of leadership at Boeing to take corrective actions in relation to employees' concerns raised an alarming warning about the company values and policies. The failure to fully investigate an issue or incident to determine the depth of the violation is actually communication to employees of leadership's distaste for handling code and legal violations. Slow-walking investigations or superficial investigations send a similar signal because employees cannot see outcomes or actions. The result is skepticism and cynicism about stated company values and the inconsistency of actions with those values. Employees who violate codes, standards, values, and behaviors and then face no disciplinary action can escalate violations. Through its lukewarm responses, leadership grants a license for the behaviors.

## Case 2: McDonald's and Its Problematic CEO

### Factual Background

The board of McDonald's did an abbreviated investigation into the conduct of their then CEO, Steve Easterbrook, in November 2019. Mr. Easterbrook had admitted that he had engaged in an electronic relationship with an employee. The board concluded that it did not have enough evidence to show that Easterbrook's behavior (sending sexually explicit text messages, photographs, and engaging in FaceTime calls with an employee) involved "dishonesty, fraud, illegality or moral turpitude," the four grounds for termination of Easterbrook's contract.

McDonald's code of ethics prohibited amorous and/or sexual relationships between executives and employees. Mr. Eastbrook had denied to the board



that he had any physical relationship. Not finding a breach of any of those four terms but concluding that there was poor judgment, the board ended Mr. Easterbrook's tenure with a severance package of \$700,000 in cash, and \$17.4 million in stocks. Some reports put the value of the package at \$40 million (Enrich & Abrams, 2020; Kelly, 2020; Luna, 2020).

However, the board settled with Mr. Easterbrook before conducting a complete investigation. The board had not reviewed all of Mr. Easterbrook's e-mails, including those on the company server. In its haste to resolve the issues, the board also did not conduct interviews with employees about Mr. Easterbrook's conduct. Shortly after Mr. Easterbrook's settlement and departure, at least three employees came forward and reported that they had sexual relationships with Mr. Easterbrook (Haddon & Vranica, 2020). E-mails on the company server revealed that Mr. Easterbrook had attempted removal of his amorous e-mails. He had removed his e-mails from the company server and sent them to his aptly named Hotmail account. However, Mr. Easterbrook did not understand or forgot that those e-mails were still present on the company server in his "sent" folder. The e-mails included "dozens of nude, partially nude or sexually explicit photographs and videos of various women, including photographs of the reporting company employees that Easterbrook had sent as attachments to messages from his company account to his personal e-mail account" (Geller & Creswell, 2021).

The board found that Mr. Easterbrook had violated his contract terms with respect to the "dishonesty" and "moral turpitude" clauses and filed suit to claw back the severance payment, something that Mr. Easterbrook challenged. However, a year into the battle, Mr. Easterbrook gave back \$108 million in compensation, "the largest clawback in corporate history" (Geller & Creswell, 2021).

## Application and Analysis

### Code and Legal Violations

Mr. Easterbrook had violated basic and clear provisions of McDonald's code of conduct on relationships between executives and employees. That code is grounded in the need to comply with federal EEOC standards that require employers to provide a working environment free from actual sexual harassment and prevent an atmosphere of sexual harassment that can exist through language, jokes, e-mails, and relationships. Mr. Easterbrook's e-mails established a prima facie case for violations of both McDonald's code of ethics and federal law. Upon his repayment of the \$108 million, he released a statement through McDonald's that acknowledged his violations, "During my tenure as CEO, I failed at times to uphold McDonald's values and fulfill certain of my responsibilities as a leader of the company. I apologize to my former co-workers, the board, and the company's suppliers for doing so" (Geller & Creswell, 2021).

## The Ethical Culture of Ongoing Violations, Little Enforcement, and Silence

Among the additional allegations are that the head of HR joined in on the drinking and inappropriate comments to women at the company's 2018 Christmas party (Haddon & Vranica 2020). There was an investigation of these incidents by legal counsel with this conclusion: Heavy drinking was inappropriate. The only action taken was a warning to stop such behaviors. The lack of teeth in enforcement policies is strong communication about company values. They are values in word and on paper but not in adherence. Leadership thereby grants future licenses for the behavior.

### Hiring and Firing a Star Performer

Mr. Easterbrook was a stellar performer. During his tenure, McDonald's stock price nearly doubled, costs were reduced, as his innovations proved to strengthen sales. When an organization has a star performer at the helm, diagnosis bias affects board investigations. When the star's business successes are placed in juxtaposition with the ethical lapses by those stars, boards tend to temper penalties and enforcement. This deference contributes to the ability of the star to control the organization. Sometimes referred to as motivated blindness, leaders remain silent when it is in their best interest to do so (Bazerman & Tenbrunsel, 2011). Part of their motivation is preservation of organizational reputation.

Known as the Bathsheba factor, successful leaders, lacking honest feedback around them, engage in behaviors that are beyond social norms and, in some cases, beyond common sense. Affairs, waste in the form of private jet travel, pressuring compliance and ethics officers to reveal the identity of employees who have reported issues anonymously, offering relatives employment, deals, and perks, and even, as in the case of Elon Musk, defying regulatory agencies such as the Securities Exchange Commission. They are powerful, charismatic, successful, inflated of ego, lacking direct supervision, and possessed with an ability to influence the behaviors and views of others (Ludwig & Longenecker, 1993). Ethical failures in these leaders is not a product of pressure but isolated success. Easterbrook was so successful at McDonald's that the board deferred to his judgment in all things, including its own defiance of the basic protocols for the investigation of executives.

### Target 2: Impact of Over-Reliance on Codes of Ethics or Lack Thereof in Understanding the Nuances of Ethical Problems

In this section, the authors will provide two additional cases studies: a case study on entrepreneurial leaders who fake it until they make it, and another case study where they did not make it. This section inspects the impact of over-reliance on codes of ethics or lack thereof in understanding the nuances of ethical problems. The factual

background as well as application and analysis of each case is provided in the subsequent sections.

### **Case 3: Entrepreneurial Leaders Who Fake it Until They Make it**

#### **Factual Background**

Trevor Milton founded the Nikola Corporation (formerly the Nikola Motor Company) in 2014 and went public in June 2020 (Forbes, 2021), with the goal of developing and selling zero-emission semi-trucks (Nikola, 2021). By the mid-2020s, the company attracted much interest and investment although it generated almost no revenues. Following an announcement in September 2020 that GM would take an 11% stake (\$2 billion) in the company, Nikola's shares increased as much as 53% (Kopecki, 2020). Two days after the announcement, a report by Hindenburg Research claimed that Nikola had purchased its technology from another company. Hindenburg also wrote in its report that a video showcasing a Nikola truck was fabricated because it gave the impression of an operational truck while, in reality, it was a truck without a working engine simply rolling down a hill (Bushey & Campbell, 2020). Milton stepped down as CEO a few days after that report. Nikola faced growing concerns and fraud allegations which affected the value of the company's stock and triggered a probe by SEC (Robinson & Ludlow, 2020). A severance package allowed Milton to keep \$3.1 billion (Wayland & Kopecki, 2020).

Nikola, along with investment partner GM, then admitted that the video was not one of a truck moving on its own electric power (Boudette & Ewing, 2020). Engineers at Nikola had warned Milton not to use the terms "functioning" and "fully built" about the company's truck (Boudette, 2020). Mr. Milton posted the video to YouTube, calling the truck "functioning" and "fully built" (Michaels, 2021).

In July 2021, a grand jury charged Milton with three counts of criminal fraud (Wayland, 2021). As of November 2021, the company was in settlement negotiations with the SEC to pay a \$125 million civil penalty. The company aims to survive the fallout and stride by releasing its new truck (Wayland, 2021).

#### **Application and Analysis**

##### **Code and Legal Violations**

There were violations of federal securities laws. Professional codes for engineers would dictate that they do not represent something as a working technology when it does not exist. However, despite the cold, hard facts facing those working on the development of a hydrogen-based engine, only a hedge fund firm (Hindenburg Research) that had positioned itself short in the company's shares was able to break the news to investors and the public.

Because of so many highly successful Silicon Valley companies, a phenomenon of "fake it until you make it" has permeated the ethical culture of the area and its companies. The level of fraud is astonishing even when compared with the financial

frauds of WorldCom, Enron, and HealthSouth. Those companies had products that were successful but when demand waned, and their growth could not continue, they resorted to manipulation of their earnings. In the “fake until you make it” syndrome, there is no product; there is a great deal of misplaced faith in the organization’s leadership and in the misguided vision and defiant determination of that leadership to make an unfeasible product feasible. These are diabolical schemes that inflate the value of these companies through gross exaggerations about their products. Even as it becomes clear the product does not and cannot exist, those within the organization cannot stop the behaviors of their leaders. Their behaviors involve violations of perhaps one of the earliest codes of ethics: Thou shalt not bear false witness. In these companies, because of the level of ownership of the “visionary” leaders, the only correction engineers can offer is their resignations. Their ethical dilemma is whether their departures are silent as they move along to other opportunities or noisy in the sense of becoming a whistleblower (Jubb, 1999).

#### **Case 4: Theranos: Faked It and Never Made It**

##### **Factual Background**

In 2003, Elizabeth Holmes, founder, and CEO established Theranos as a consumer healthcare technology company with the mission of revolutionizing the blood-testing industry. Just a few drops of blood from a finger prick could provide the patient profile quickly and inexpensively. By 2014 the company had managed to raise \$945 million from investors, valuing the startup at \$9 billion (O’Brien, 2021). Ms. Holmes became Silicon Valley’s first female billionaire through just promises of her product. The technology never worked (Morang, 2021).

In 2018, the U.S. Securities and Exchange Commission (SEC) charged Ms. Holmes and Ramesh “Sunny” Balwani, COO, with securities fraud. They had raised nearly \$1 billion from investors through an elaborate, years-long fraud in which they made false statements about the company’s technology, business, and financial performance (SEC, 2021). Ms. Holmes was convicted on four of the 11 charges of fraud. (Griffith & Woo, 2022).

According to the Association of Certified Fraud Examiners, a Theranos employee raised concerns about the company’s research and test results and requested a meeting with Ms. Holmes. When rebuffed, the employee contacted the *Wall Street Journal* (Moody, 2021). The *Wall Street Journal* then published a critical report on Theranos, alleging rampant management incompetence based on interviews with ex-employees. The report concluded that Theranos had inflated the capabilities of its proprietary technology (Carreyrou, 2021). Just prior to the publication of that article, Ms. Holmes was still working to raise another \$200 million in capital for the company (Primack, 2021).

At Ms. Holmes’ trial, Dr. Adam Rosendorff, lab director at Theranos testified that nine days before the product launch for patients, Ms. Holmes asked in an e-mail how many tests for their product had completed federal regulatory guidelines. A staff member responded that the answer was none (Somerville, 2021). The tests

continued to produce inaccurate and implausible results. Dr. Rosendorff left the company in 2014. By 2017, the Centers for Medicare and Medicaid Services and other regulators were suspending Theranos labs for its flaws in operations that put patients at risk (Weaver, 2017). That same year, Walgreens, one of its investors, as well as patients, also began filing civil lawsuits. Testimony at the trial revealed that Theranos secretly ran its blood tests on commercial devices because its technology only did 12 blood screens and the results on those tests were implausible.

### **Application and Analysis**

Both the Nikola and Theranos cases have factors in the other cases. There are bad things going on in the belly of the organization that were effectively communicated, either to the leaders themselves or to someone who can effect change, such as a board member or the board itself. However, the distinguishing factor in these two cases is that the leaders who are perpetuating fraud are the majority owners of the company. Basic governance standards suffer and employees have no route for internal self-correction. Their only hope is external pressure applied through media outlets and then picked up by regulators. The blockade in Theranos and Nikola was the owners and founders of the company. This is a form of singular leadership that blocks disclosure and reform. The so-called noisy employee departure is the sole mechanism for fixing internal harms (Jubb, 1999).

### **Target 3: Consequences of Leadership Failure to Timely Respond and Take Appropriate Disciplinary Actions**

In this section, the authors will provide two additional cases studies: a case study in Michigan State University in relation to failure in leadership, and another case study in on leaders with noblesse oblige from Penn State University. This section involves consequences of leadership failure to timely respond and take appropriate disciplinary actions. The factual background as well as application and analysis of each case is provided in the subsequent sections.

### **Case 5: Leadership Failures at Michigan State University**

#### **Factual Background**

Dr. Larry Nassar was a physician who had been affiliated with Michigan State University's Sports Medicine Clinic as well as USA Gymnastics. Complaints about Dr. Nassar's unconventional examinations and treatments of the gymnasts in the program began in 1997 and continued until 2015 when Dr. Nassar was indicted in 2016 on various felony charges of sexual abuse and molestation of minor women. Dr. Nassar entered a guilty plea to abusing and molesting nearly 500 minor females under the guise of providing cutting-edge medical treatment. He was sentenced in 2018 to 40 to 125 years and faces additional sentencing for similar charges brought in another Michigan county.

Not until the *Indianapolis Star* ran its Pulitzer-prize winning article on Rachael Denhollander (a victim of Nassar) did the Nassar abuse become public. That article was published in 2016 and the criminal charges followed. Following the criminal charges came civil lawsuits brought against Michigan State and the Olympic Committee, Michigan State settled the lawsuits with the gymnasts for \$500 million in 2018 (Bauer-Wolf, 2018). The U.S. Department of Education issued its complaint against Michigan State for its “systemic failure to protect students from sexual abuse” over decades (Green, 2019). Michigan State paid a \$4.5 million fine to settle the Department of Education charges and agreed to undertake sweeping changes to ensure campus safety for students and all other related individuals.

Inaction in this case was not the result of failures on the parts of the gymnasts to report their concerns about Dr. Nassar. The failures came because those leader to whom they turned did not address the issues they raised in a manner that would have encouraged other victims to come forward. The failures of leadership at Michigan State can be documented because following the Nassar criminal charges, the Michigan State Board of Trustees asked the Michigan Attorney General (AG) to conduct an investigation to determine the role of university employees and administrators in allowing the harm to the young women to continue for so long. An interim report issued by the AG revealed troubling conduct by university officials in creating obstacles to the release of information. Despite all that had occurred in suppressing action and disclosure of the Nassar conduct, university administrators began an effort to stonewall investigators. For example, when the AG’s special investigator requested that Michigan State provide all documents related to how administrators responded to the concerns raised by the gymnasts, Michigan State “drowned” investigators in irrelevant information described as follows: “*Unresponsive documents such as the University’s Bed Bug Management-Infection Control policy, various restaurant coupons,... offered absolutely no assistance in determining who at the University knew of Nassar’s abuse and when they knew it*” (Forsyth, 2018).

There were at least 11 Michigan State employees who were told about Dr. Nassar’s behaviors (Berg, 2018). Those at Michigan State who took no action or protected Dr. Nassar have experienced consequences for their silence with criminal charges, termination of employment, and the loss of their licenses. Moreover, former Michigan State President Lou Anna K. Simon was charged with lying to Michigan State Police about her knowledge of Dr. Nassar’s sexual abuse (Smith & Davey, 2018). She was charged with what is known as process crimes or crimes related to conduct in the investigation and not the underlying conduct alleged in the investigation (neglect of duty). Eventually, the Michigan Court of Appeals dismissed the criminal charges because Dr. Simon said that she was aware that Dr. Nassar was “under review” but did not know the substance of the allegations (LeBlanc & Kozlowski, 2021).

## Application and Analysis

### The Use of Codes to Shift Responsibility and Avoid Cultural Change

That Dr. Simon escaped criminal prosecution is the central explanatory factor in understanding why codes are ineffective in curbing behaviors. In organizations that Nassar's gruesomeness, entire department procedures, manuals, rules, and codes are revamped. However, revamping codes will not fix everything. The human mind knows few limits when it comes to the capacity to find loopholes, ignore rules and codes, and harm others for personal gratification. There are Nassars in every organization. Some are financial fraud tricksters. Some make up products that do not exist, some embezzle. The issue is whether the culture can see and stop those who shatter norms before the harm is catastrophic.

At Michigan State there were layers of managers, supervisors, and higher who were not sounding alarms or using the authority that they had to investigate, enforce, discipline, and, in this case, terminate the perpetrator. In such cases, the usual focus of post-harm analysis is on events that are categorized the actions of a single rogue with tragic consequences that could not have been foreseen nor prevented. Those types of conclusions continue the dominance of code-centered cultures that exist within the facile framework of checklist compliance. With that approach, leaders are not held accountable for their role in allowing that conduct to continue for so long without proper attention. Jensen et al. (2009) highlighted that codification of ethics in standardized statements can never fully capture and direct the decisions needed across the diversity of situations in which ethical issues arise.

While codes of ethics can provide context for some practices and interpretations; ethical leadership is necessary for creating an environment for proactively shaping the culture and using appropriate intervention as a reinforcement of the ethical norms within the organization. Downe et al. (2016) The interim Michigan Attorney General report concluded that the ongoing complaints from survivors on employees at Michigan State, "reveals a problem that cannot be explained as mere isolated, individual failures; it is evidence of a larger cultural" (Forsyth, 2018).

### Codes and Application

Notably, there are criminal laws that require those to whom individuals report sexual molestation or abuse to report such disclosures to proper authorities. Most of those at Michigan State who experienced personal consequences were prosecuted for their failure to report. That failure to report had the serious consequence of cutting off even the possibility of an investigation. Furthermore, the presence of investigators can empower individuals to report issues. Ultimately, it can lift the cone of silence and embolden employees and others to report ethical lapses.

In the tradition of "it's not the crime, it's the coverup," others who were prosecuted were charged with violations that apply to interfering with investigations. In the cases of Dr. Simon and Ms. Klages, the process crimes alleged involved lying to investigators. There is a fine line between lying to investigators and poor recollection that becomes inconsistent. Those types of crimes are difficult to prove because

of the nature of statements given by those charged. Unless there are e-mails or other witnesses, it is difficult to prove something such as Dr. Simon's knowledge about the Nassar issues. Lying to investigators can be proved only by presenting tangible evidence that refutes the individual's claim of no knowledge, a sort of smoking-gun-level of evidence. However, whether Dr. Simon should have been told about the nature of the Nassar investigation is another issue that should be addressed in the ethical debriefing of this case. The reluctance to disclose bad news up the line in organizations is part of the culture that keeps employees silent.

Michigan also has laws and regulations that apply to those who work for the state of Michigan. Those laws impose criminal liability for the willful failure to properly supervise. "Willful" demands a higher standard of proof that requires showing something more than negligent supervision or leadership. Ironically, in many of the cases involving leaders at Michigan State, what was codified helped some leaders walk away from the scene of a horrific sexual abuse case that had occurred on their watches for decades. Many involved, who had full knowledge of the Nassar issues, were permitted to simply end their relationships with Michigan State but not face disciplinary consequences. As Rachel Denholland, a Nassar victim, criticized the National Collegiate Athletic Association (NCAA) and stated that "the NCAA needs to revisit their legislation." The long list of applicable federal statutes and regulations in the Nassar case include: (1) Clery Campus Security Policy and Campus Crime Statistics Act; (2) The Equal Employment Opportunity Commission (EEOC); (3) Civil Codes of Conduct; (4) the NCAA Rules and Regulations; and (5) Michigan State Internal Rules and Codes.

### Case 6: Penn State University and Leaders with *Noblesse Oblige*

**Factual Background** The sexual abuse scandal at Penn State University (Penn State) preceded the Michigan State Nassar scandal by five years. In 2011, with the announcements of the indictment of former Penn State football assistant coach Gerald "Jerry" Sandusky, a grand jury had issued an indictment against Sandusky for sexually assaulting at least eight underage boys inside or near university property over a period of approximately 15 years (Ganim, 2011). There were e-mails and other documents that indicated administrators at Penn State were aware of the behaviors of Sandusky as early as 1998. In 1998 local officials were investigating Sandusky based on a mother's report that Sandusky had showered with her 11-year-old son in the Penn State football shower. Sandusky, an assistant football coach at the time, had received permission to use its athletic facilities for his charity, Second Mile. Second Mile was devoted to helping disadvantaged boys in Pennsylvania have recreational experiences (Sullivan, 2012). The issues with the permissions for Second Mile and the conflicts of interest are independent studies in ethical leadership. The close connections and conflicts between Penn State and Second Mile should have been addressed even without the Sandusky pedophile issues.

Although it was not clear how administrators at Penn State came to know about the 1998 incident, there are e-mails that indicate their concern as well as their inaction. Between May 4 and May 30, 1998, there were notes and e-mails between Gary Schultz, the senior vice president for finance and business at Penn State, and Tim



Curley, the Penn State athletic director. Mr. Schultz instructed University Police Department Chief Thomas Harmon to keep him informed as his investigation proceeded. Mr. Schultz called Sandusky's behaviour "at best inappropriate and worst sexual improprieties" (Sullivan, 2012).

Notes and e-mails also indicate that Penn State's Athletic Director, Tim Curley, notified Penn State's president at that time, Graham Spanier, and then-head football coach, Joe Paterno. Dr. Spanier would later deny that he was aware of the Sandusky issue, noting that he received too many e-mails per day to keep track of all ongoing issues. Chief Thomas did not enter the Sandusky incidents in the University's crime log and explained to Mr. Schultz that he would keep a file and call it "Administrative Information," thereby avoiding both a criminal investigation and public records laws disclosure requirements. The investigation was closed with no action taken except a conversation between Mr. Schultz and Sandusky with notes indicating that Sandusky was remorseful and agreed not to shower with any of the children in the Second Mile program at the campus. There was no formal documentation of the warning to Sandusky, only the e-mails of Dr. Spanier and Mr. Curley confirming the conversation.

When Sandusky retired in 1999, he asked for permission to continue using Penn State facilities. Risk management officials refused to approve the request if the use was for the Second Mile because of liability problems. However, Sandusky was given emeritus status, that allowed him to have continued use of the football facilities between 1999 and 2001 where five of the victims were assaulted. Several janitors witnessed some of the incidents and were advised to report them. They did not make reports because of their fear of being terminated (Sullivan, 2012).

Michael McQueary, a graduate assistant with the football program, witnessed Sandusky sexually molesting a boy in the football showers. Mr. McQueary reported what he had seen to Coach Paterno. Mr. McQueary then met with Coach Paterno, Dr. Spanier, Mr. Schultz, and Mr. Curley. The initial plan was to banish Sandusky from Penn State facilities and disclose the incident to both Second Mile and the Department of Public Welfare. That plan was put aside in favor of having Sandusky tell the Second Mile Board about the incident and obtain counselling. Dr. Spanier wrote the following in an e-mail about the proposal where Tim stated that: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed (Sullivan, 2012). Later, Mr. Schultz also responded favourably: Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization (Sullivan, 2012).

The Penn State Board of Trustees was not told about any of the incidents. However, in November 2011, The Pennsylvania Attorney General announced the indictments of Sandusky, Curley, and Schulz. Dr. Spanier issued the following statement: the allegations about a former coach are troubling, and it is appropriate

that they be investigated thoroughly. Protecting children requires the utmost vigilance. With regard to the other indictments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and worked daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former University employee. Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity, and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately (Sullivan, 2012). It is important to note that, Sandusky was convicted on all 45 pressed charges of sexual abuse and received the maximum sentence of 442 years.

### Application and Analysis

The criminal code violation, in this case, was uniform across the university and it was the failure to report the incidents to local authorities as required by Pennsylvania law. Even those within the community who were aware of Sandusky's conduct did not abide by this criminal code provision because the football program was the Penn State community. A county prosecutor noted that he chose not to notify Penn State officials because he was worried "about Old Main (the building where administrators were located on the campus) sticking their nose in the investigation." (Sullivan, 2012).

There were the civil violations such as the treatment of Mr. McQueary after he raised his concerns about Sandusky. He recovered under whistleblower protections in Pennsylvania for employees who have raised legal issues against organizations. The findings of DOE were also identified in the failure to follow processes for the investigation and disclosure of sexual offenses on the campus.

The head of the NCAA executive committee said, "I was so appalled at just the thought of those children and what was being done, and that nobody made a phone call, for God's sake." The sanctions were imposed based on violations of NCAA values of integrity and accountability and not on any rule violations. While the NCAA was unwilling to impose sanctions based on principles and values in the Michigan State case, it was willing to do so in this case. Upon receiving the sanctions, Penn State accepted them, but the sanctions were challenged by two government officials, challenges that came as the NCAA was in the process of lifting them.

Penn State violated one of its code provisions as well as the Clery act with the decision to not classify the initial reports on Sandusky as investigations at the university. Societal norms were breached with the failure to take action. A mother outside the university had filed a report about the conduct of Sandusky years before any public disclosure but the goal from the beginning to handle the issue quietly. The ethical decision-making process was so flawed that the desired outcome controlled all actions and decisions as more conduct and reports arose. The goal of leadership was the protection of the Penn State football brand. The leaders had set a tone that made following the rules impossible.

## Managerial Lessons Learned from Case Studies

In analysis of the ethical lapses presented in the case studies, the authors were able to categorize the aforementioned misconducts in leadership roles under the five aspects to avoid by managers. These included the following: (1) failure to comprehensively investigate as well as take appropriate corrective action; (2) incompliance with ethical codes as well as applicable laws that enforce appropriate organization behavior; (3) fraudulent behavior and acts that promote self-interest of self or organization but not its end user; (4) lack of accountability and silence in reporting to avoid scrutiny of self or organization; and, (5) directly or indirectly communicating a normalized the culture in the organization that perpetuates a false idea of righteous forms of conduct related to ethical leadership.

Ethical leaders, with good intention, maintain to avoid not one but all principles leading to morally correct decisions. As seen from the cases, turning a blind eye to ethical issues will not only hurt (in many forms) individuals and organizations, but, oftentimes, the truth prevails as to come back at those parties committing those misconduct. As such, ethical leaders shall, with no self-interest, promote a culture of honesty, integrity, and accountability to its organizational and other staff. Inevitably, this shall support a culture that does not institutionalize unethical behavior of any sort, be it at a leadership position or not. Thus, full compliance with all relevant ethical codes and applicable laws becomes a quintessential apotheosis in embodying the foundation in benefitting the majority, free from intrinsic and individual desires that can transgress ethical moral or conduct. Learning from past cases of preceding mishaps helps shape better ethical leaders from the professional and organizational perspective managerial roles.

## Professional and Organizational Leadership Role in Ethical Culture

### The Pitfalls of Ethical Codification

#### The Presence of Codified Standards can be and was Ignored

All of the cases studies involved organizations subject to internal, local, federal, and professional oversight in the form of codified rules and regulations. Yet all the cases illustrate that their presence, as the literature discusses, was ignored (Jensen et al., 2009). Despite all the codification, the individuals found loopholes, interpretations, and application distinctions that served as justification for their conduct. In the Nassar case, compliance with the law was central to the functioning of a university because the terms and conditions of the receipt of federal funding depended on that compliance. In terms of local laws (state), clearly, a physician sexually assaulting a patient is a criminal violation. Both federal education regulations and local laws require that certain steps be taken, and procedures followed on campuses with allegations of sexual assault. However, in Nassar's mind, as his statements to the court indicated, he was providing a form of treatment and not engaged in the sexual assault of the young gymnasts. The sexual

assault and reporting issues were even more clear in the Penn State case because of the minors involved.

The McDonald's case is representative of hundreds of well-publicized cases that involved news networks, members of Congress, directors, actors, producers, and high-ranking members of the military. The protections against sexual harassment have their origins in and have been federally codified since the 1964 Civil Rights Act that prohibits discrimination on the basis of sex. Courts began defining discrimination on the 1970s and by the 1980s, the definitions of *quid pro quo* conduct, as well as atmosphere of harassment, were foundations for both federal and individual enforcement actions (*Meritor Savings Bank v. Vinson* 1986). Yet neither the codification nor the damage recoveries against employers served to curb the behaviors.

At the organizational level, ethical code prohibitions on amorous and/or consensual relationships are standard content. From a management perspective, the principle is nearly universal because reporting lines require literal and figurative arms-length relationships. Nonetheless, over the past decade executives at major corporations have resigned or been terminated because of affairs or issues of sexual harassment and including McDonald's, Microsoft (Bill Gates), Best Buy (Brian Dunn), Liberty University (Jerry Falwell Jr.), Intel (Brian Krzanich), Priceline (Darren Huston), American Apparel (Dov Charney), Highmark (Kenneth Melani), and Hewlett-Packard (Mark Hurd) (McCoy, 2018).

The Boeing case is representative of many other product design and production cases such as the Ford Pinto exploding gas tank, the NASA O-ring problem and the decision to launch despite the risk, and the GM ignition shutdowns. Engineers were aware of defects that carried a high risk of fatalities but proceeded with their projects despite raised concerns. In some cases, such as the Pinto and GM situations, fatalities had already occurred, but no changes were made. In all of these product defect cases, there were reporting requirements regarding the defects both during design and production and after-sales discoveries to federal agencies in addition to the professional ethical standards of safety. Yet the projects went forward with resulting fatalities.

The Nikola and Theranos cases are representative of hundreds of entrepreneurial organizations whose CEO/founders suffer from the Bathsheba syndrome and subscribe to a view that the federal securities laws that require disclosure of material information are not applicable in situations in which you are operating at the edge of technology. The mantra of "fake it until you make it" is the rationalization away from honesty as part of a code of ethics and statutory full-disclosure standards.

**The Loophole and Interpretation Pitfalls of Codes** The regulatory nature of codes of ethics attempts to dictate solutions for every situation (West & Davis, 2011). This focus on interpretation can misdirect leaders from the need for a more thorough review of the issue, a broader attempt to collect factual information, or better reasoning in the application of terms and sanctions to conduct and situations. Highly structured and rigid codes of ethics lead to a narrow interpretation of their application and less time devoted to discussion of stakeholders, risk, and even the simple weighing of possible outcomes. In the Boeing case, at one point, there was an internal debate

about whether they were facing a safety or certification issue with the MCAS system and the 737MAX.

Eisenbeiss (2012) concluded that relying on procedural rules is unlikely to be adequate and that codes of ethics do not change or govern conduct. In fact, codified principles do not guarantee a complete basis for action as they require application in complex and heterogeneous situations (Downe et al., 2016). Cowell et al. (2013) added that compliance at any regulatory level cannot be fully enforced by codified practices. Such standardizations usually create a void because the codification of ethics involves a relationship of power between limited exemplified rules on one hand and exposure to ethical misconduct that is either not properly captured by these rules or is so rigid in definitions that those involved interpret around the application of the code (Cowell et al., 2013).

The cases summarized here illustrate a thought process of those involved in the code/ethical lapses summarized by a classic phrase, "It depends on the meaning of". This introduction to code avoidance is then followed by a conclusion that what has been done or what they are proposing to do does not violate the law, any codes, or regulations. For example, Sandusky described his interactions with the boys in the shower as "horseplay," a type of fun. The farcical Title IX investigation at Michigan State concluded that there was no sexual harassment by Dr. Nassar because their findings concluded, "We cannot find that the conduct was of a sexual nature." In the Boeing case, the company did not report the problems it was seeing with the 737 MAX redesign to the FAA because it concluded that there was a certification issue, not a safety issue.

Referring to a Boeing test pilot's problem trimming the MAX due to repetitive MCAS activations, a Boeing engineer asked: "*Is this considered a safety or certification issue?*". And on June 20, 2016, a colleague responded: "*I don't think this is safety, other than [sic] the pilot could fight the MCAS input and over time find themselves in a large mistrim*". Despite, as noted in the case, Mr. Forkner's testing on the simulator that showed most pilots could not fight it in time, the issue was not reported as a safety issue, just a certification issue (House Report, 2020).

Applying ethical codes to any context often needs further interpretation (Downe et al., 2016). Formal ethical measures cannot be regarded as comprehensive and inclusive in handling all potential violations, and solely relying on them for this purpose does not address the organizational and cultural problems that employees face. Written and definitive rules may appear to lead to proper behavior. However, these scenarios illustrate that codes cannot change the conduct because of the institutionalization of certain behaviors (Doig & Skelcher, 2001). In the Boeing case, the culture was one of pushing forward with the plane regardless of the safety concerns of the employees. One engineer wrote to a colleague as management was minimizing deficiency reports or rationalizing away the need for some kind of a fix, "[T]hey are ploughing forward regardless of the danger, failing to appreciate the implication of Boeing failing to qualify a Boeing device. They are failing to appreciate that a delay would be less costly than the incurred costs...."

Some dominant individuals and/or groups within organizations have used the ethical framework to preserve their positions, suppress dissenting voices, and harm challengers (Cowell et al., 2013). As an example, Trevino and Brown (2005)

highlighted that while Bernie Ebbers, the CEO of WorldCom, was regarded as a great leader in terms of growing the company to be a superpower in the telecommunication field, his leadership was identified as the creator of a fraud culture (supposedly only at the top executive level) that included conspiracy, securities fraud, filing false financial statements, and ending in one of the largest scandals and bankruptcies in U.S. history. Wells Fargo had employees fabricating 3.5 million accounts to meet their quotas for new accounts and new account services. Such quotas helped them earn incentive rewards. Concerned employees, managers, and even ethics and compliance officers who raised questions or reported the account creation were ignored or marginalized during this period of massive fraud. Most recently, in November 2021, the former dean of the Fox Business School at Temple University was convicted for submitting false data about the School's admission and acceptance process to the US News & World Report (Jaschik, 2021; Planas, 2021).

Reactions to ethical situations are dependent on the culture within organizations and include overt actions, developed structures, organized protection, subtle threats of retaliation, and hidden controls and exercises of power over those who object to the ethical lapses (Scott, 1985). Consequently, codes of ethics are only a starting point Tayan (2019). The general parameters in codes of ethics provide the foundation for in-depth investigations, discussions, and analyses at all levels as ethical issues arise.

### Supporting Ethical Culture

In each of the cases, there were not only violations of ethical codes, but there were also violations of the law. Leaders create ethical cultures through many factors, including their actions in resolving ethical dilemmas. Their inactions fall short because of the absence of solid processes for investigation and sanctions and the failure to apply norms and legal standards. Decisions of leaders that could include tolerance of deviant workplace behaviors (DWB) and the lack of organizational citizenship (OCB) create the ethical culture (Zoghbi-Manrique-de-Lara & Suárez, 2014).

Along a similar line of thought, in organizational searches, the general target is to fill positions with professionals who on one hand possess certain technical and interpersonal skills while also on the other hand are good candidates for the work environment and culture. Evaluating the former requirements (i.e. technical and interpersonal skills) is relatively easy, but the main question is: what does a 'good candidate for the work environment and culture' mean? (1) Does it mean someone who can understand and help attain the mission, goal, and objectives of the work place; (2) does it mean someone who professionally and honestly voices her/his opinion about matters but eventually abides and supports the decisions of the group, or (3) does it mean someone who just performs what the boss desires to attain his/her own interests (such as being promoted, rewarded, etc.)? The authors realize that many professionals argue "we hire for attitude and not for skill". Interestingly enough though, this aforementioned notion—that was mainly started by Southwest Airlines—meant by hiring for attitude is that an organization looks in their potential new employees for a "warrior spirit" and their future potential (Taylor, 2011) but never meant the

person who just goes with the flow. As such, the authors argue that organizational health would perhaps benefit the most from “yes” to the first two questions and “no” to the third one. Along the same token, while diversity hires are rightly promoted for all great reasons that would significantly benefit organizations and societies altogether, it is perceived that prevalence of homogeneity hires would also deny the due rights of qualified professionals as well as limit the opportunities for organizational and societal advancement and flourishing by just bringing in and limiting opportunities to alike people.

### **Proactive Leadership Processes**

Leaders need proactive organizational checks and balances in place of passive reliance on a partially effective, albeit efficient, sets of rules (Bovens, 1998; Greasley et al., 2006). For example, in the Michigan State case, the failure of then-university president Simon to become informed about ongoing investigations set the tone for the investigation. A hands-off approach that relies on a sterile process will produce sterilized results. Also, in ethical situations emotions typically run high as leaders sort through the actions and inactions of the individuals involved and find resolutions that are consistent with the ethical expectations of those in the organization. When a leader takes effective action in response to an ethical breach, those within the organization are empowered to raise concerns. Proper resolution by leaders of ethical issues demonstrates leaders’ commitment to ethical conduct. (Downe et al., 2016). In the Boeing, Michigan State, and Penn State cases, the leaders had made their desires clear, but those desires were not consistent with the best interests of their organizations or stakeholders. In the McDonald’s case, the failure of the board to conduct a proper investigation resulted in an ethical rebellion by employees who knew that the board did not have all information and that it would be unjust to allow Easterbrook to flee sanctions for failures to be forthcoming in the board’s shallow investigation.

### **Minimizing the Bystander Effect**

One of the critical associated challenges with speaking up about ethical problems is that it requires people with core values, focusing on the harm aspects of ethical lapses. Some of the victims at Michigan State and Penn State chose silence because they considered it a safer and more secure option, despite the associated stress. Many remained sullen and mute as they witnessed organizational and individual carnage. Encouraging employees to speak up—while not being able to prove with all certainty that they are right—can mark employees with the tags of ‘difficult to work with’, ‘confrontational’, ‘troublemaker’, ‘not-let-go’, and other similar subjective, and, too often, incorrect descriptions. This problem is compounded more with the presence of rigid and non-inclusive rules as well as the absence of the proactive transformational ethical leadership.

Those who have raised ethical matters and then experienced sanctions, retaliation, or backlash often succumb to a “bystander” effect and assume a self-preservation posture either to: (1) maintain their own security, safety, and peace of mind, or (2) in

some cases obtain what they need and/or desire. The bystander effect is also known as the Genovese effect, named for Kitty Genovese, a murder victim in a New York City apartment complex, whose neighbors heard her fatal attack but took no steps to help. This effect takes hold in organizations when members witness harm but choose not to get involved. (Fischer et al., 2011) The literature related to the Genovese effect from 1964 to 2010 had one conclusion: When many people are present in a critical situation, the likelihood of individual intervention to help decreases based on factors such as whether the situation is dangerous, whether perpetrators were present, and the potential costs and/or rewards for intervention (Fischer et al., 2011).

Recent research reveals more complex emotional and motivational reasons that witnesses to dangerous or harmful situations do or do not take action. (Hortensius & de Gelder, 2018). Bystanders are influenced by organizational culture and attitudes about behaviors in making decisions about intervention (Fischer et al., 2011). The growth of the bystander effect within any community marginalizes, even more, those who wish to raise ethical issues, which contributes to a culture of nonreporting.

### Ethics Education and Associated Leadership Role in Engineering

Oladinrin and Ho (2016) referenced various studies that confirmed that unethical acts have tainted the engineering community and that quality control in ethics programs suffers from serious shortcomings. Bielefeldt et al. (2018) highlighted that 65% of faculty believed undergraduate engineering programs do not offer sufficient education related to ethics and its associated broader impacts. Student outcome 4 of the Accreditation Body for Engineering and Technology (ABET, 2019) highlights the importance of ethical and professional responsibilities. All ABET-accredited civil engineering programs have either developed dedicated professional ethics courses and/or integrated ethical concepts across different courses within their undergraduate curriculum. All associated professional licensure entities at the national and state levels in the U.S. incorporate professional ethics as part of their assessment and evaluation exams. However, Bielefeldt et al. (2020) provided the most common topics included for ethics in engineering: professional practice issues “66%,” sustainability “55%,” the societal impacts of engineering and technology “50%,” and safety “49%,” The least studied topics were ethical failure “23%,” ethical theories “8%,” and other issues including leadership “4%.” Engineering ethics education has primarily focused on the professional and technical job-related duties and their broader context, with less emphasis on the associated organizational capacities and evolving leadership roles.

In July 2017, the American Society of Civil Engineers (ASCE) added Canon # 8 to its code of ethics regarding fair treatment of others, which provides for a commitment to avoiding actions that unduly harm others and avoiding unduly favoring others (ASCE, 2019). On October 26, 2020, ASCE issued a new Code of Ethics that shifts from the eight fundamental canons approach to a new stakeholder hierarchy focusing on society, natural and built environment, profession, clients and employers, and peers (ASCE, 2020). While protection of the public remains paramount under the new code, the shift in the code is to promote the understanding that protection of the public is not the only ethical obligation of an engineer. Hoke (2020).



In a shift to the inclusion of Aristotelian ethics, truth and objectivity are now recognized as being at the core of public trust. Section 1(c) requires engineers to “*express professional opinions truthfully and only when founded on adequate knowledge and honest conviction.*” The code also addresses equity and inclusion with Sect. 1(f) requiring members to “*treat all persons with respect, dignity, and fairness, and reject all forms of discrimination and harassment*”. The ASCE’s new Code of Ethics is not only taking a more comprehensive and dynamic approach for emphasizing usability and enforceability of the engineer’s ethical responsibilities (Walpole, 2019), but it is also crystallizing how ethics require ethical choices, not deterministic solutions (Kirkpatrick, 1989). The code now highlights the need for leadership (not just leaders) development paradigms (Simmons et al., 2017) that includes assuming a societal service role (Russell, 1999).

Literature suggests that both students and professionals need to be properly trained to recognize potential ethical lapses and develop the skills to respond to ethical issues. While case studies can focus on discerning between ethical and unethical behavior, team-based projects and workshops can promote discussion and debate (Nudelman & English, 2019). Similarly, Sinha et al. (2007) suggested using real-world cases and invited guest lectures as well as multiple required and elective courses to explore ethical theories, concepts of critical thinking, and major ethical issues. Esparragoza et al. (2019) suggested determining the level of ethics’ learning in the engineering curriculum using three constructs of knowledge, strategic processing, and interest. Bielefeldt et al. (2020) provided that co-curricular activities can encompass system thinking and connection to broader contexts, which in turn promote effective and efficient moral and ethical development.

Engineering programs should develop appropriate educational activities to effectively and efficiently promote the true ethical premise of ABET’s student outcome number 4. Also, the authors hope that all civil engineering programs and ASCE will promote incorporating the true essence of ASCE’s new Code of Ethics in both undergraduate/graduate curriculums as well as professional development education and lifelong learning. Context and application require case studies that provide means for beginning the training of future engineers in understanding how ethical lapses occur, how they are tamped down in organizations, and how actions of leaders affect whether the issues are resolved properly because of proactive intervention through the input, feedback, and discussion in a culture that welcomes the exchange of views and ideas.

## Conclusion

Codes cannot be fully comprehensive in handling all potential ethical violations. One of the effects of the codified approach in investigating ethical dilemmas is the loss of interpretive flexibility as well as adherence to dictated solutions for every situation. As such, ethical codes alone do not curb unethical conduct. Ethical leadership is more than merely following the rules and procedures of ethical codes but also includes proper personal ethical values, norms, and principles needed in diverse ethical situations. The frequent reference to “tone at the top” is often repeated but rarely

understood. While a leader can be effective in facilitating and enabling an ethical culture from the top, a leader's actions in handling and resolving ethical issues profoundly influence the organizational ethical culture. Without input from—as well as effective interaction with—those throughout the organization who are experiencing or witnessing ethical issues, an ethical culture cannot take hold or survive. If those experiencing or wrestling with ethical issues are not given opportunities or processes for raising ethical questions, issues, and concerns; the ethical culture declines and it is consumed by increasing and unresolved ethical problems. The organizations in these case studies went from single issues to international news because their leaders failed to provide opportunities, appropriate responses, and actions when those first ethical missteps occurred. For example, in almost all cases provided within this paper, poor initial handling of an ethical related issue resulted over time in negative news headlines for all associated stakeholders.

Perceptions about the responses of leaders to potential ethical lapses are a critical factor in formulating, changing, and/or maintaining the organizational ethical culture. One of the effects of poor handling of ethical issues is creating a broad reluctance among different stakeholders to raise and address such critical issues. The challenge is that those who observe the fate of others—who have raised ethical matters and then experienced sanctions, retaliation, or backlash—often succumb to the bystander effect and assume a self-preservation posture to obtain what they need from the decision-makers and the system. As in each of the cases, the growth of this passive attitude results in an ethical culture that is self-destructive. Eventually, ethically questionable decisions become the norm because those within the organization do not raise ethical issues and questions with the associated leaders. Speaking up about ethical breaches requires a supportive culture. In resolving ethical issues, professional and organizational leaders can have the opportunity to mentor and educate in analyses of ethical issues but also help individuals self-manage ethical dilemmas. A dynamic stakeholder-centered framework will simultaneously interpret ethical codes, bylaws, and standards and blend them with ethical norms, values, and principles to develop engineering professionals in academia or industry.

This paper advocates a more ethically interactive organization in which leaders are comparing themselves to the types of organizations detailed in this overview of cases. Effective ethical leadership exists before ethical lapses through actions. Leaders communicate through their decisions on hiring, firing, and enforcement. Ethical leadership is also demonstrated through the quality of investigations and the fairness of processes used for disciplinary actions. The codes were in place at all levels in all of these cases, yet employees committed the types of breaches that resulted in front-page headlines about the organizations. Those headlines were more tragic and more damaging because, in each case, there were leadership failures along the way. Whether due to fear, past inactions, or frustrated lines of communications, employees gave up on reporting, not because they were ignoring their ethical codes and norms but because their leaders appeared to be doing so.

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