

The Richard and Sandi Conniff Leaders in Business Ethics Speaker Series

Presents:

Cheryl K. House

Adobe vice president and Chief Compliance Officer

Wednesday February 27, 2019

6:00pm - 7:30pm

Student Union Theater

SJSU Campus



Cheryl K. House

**Adobe vice president and
Chief Compliance Officer**

Cheryl K. House is Adobe vice president and Chief Compliance Officer. Cheryl began her career as a Corporate Securities associate at Ware & Friedenrich, a Palo Alto law firm that is now part of DLA Piper., where she worked on IPOs, mergers & acquisitions, and public company SEC filings. In 1998, she came to Adobe as their first Corporate Securities Counsel, and since joining, at various times she has led Adobe's Legal support for HR, Privacy, Anti-Piracy, Procurement, IT, Real Estate, Facilities, Corporate Subsidiaries, and Compliance. Cheryl has been Adobe's Chief Compliance Officer since 2013.



To register please visit:

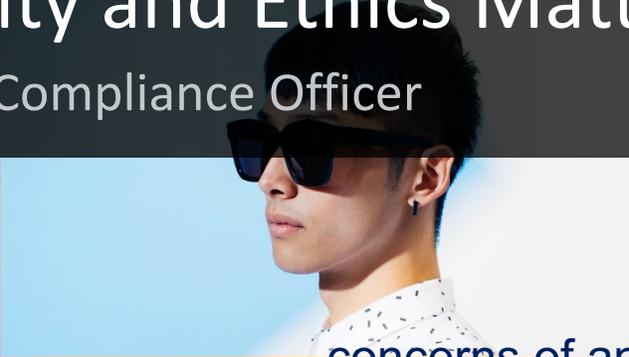
www.sjsu.edu/cob/conniffspeakerseries

Admission is free, due to limited seating this event requires pre-registration

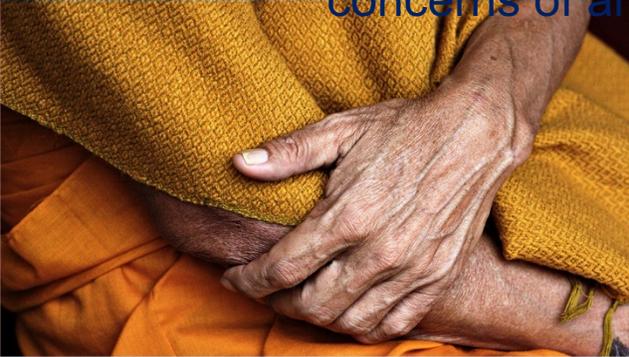


Why Do Integrity and Ethics Matter in a Corporate Setting?

Cheryl House | Chief Compliance Officer



concerns of an ethical nature



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Adobe Core Values – The Foundation

GENUINE
EXCEPTIONAL
INNOVATIVE
INVOLVED



Uber Greyball Software



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Adobe Stock

Uber Greyball Software: Background

- Software that could tag select customers and show a different version of the app
 - Obscured the actual location of Uber drivers from customers who might inflict harm
 - Could deny service to individuals suspected of violating the terms of service
 - Used to identify Lyft employees to thwart attempts to “slog” (recruit) Uber drivers
- Uber Legal department reviewed and approved its use
- Engineers saw the opportunity to use the same methods to evade law enforcement by tagging suspected government officials
 - Created a playbook with a list of tactics for general managers in more than a dozen countries
- At least 50 people inside Uber knew about Greyball, including the General Counsel and a Board member/former SVP of global operations

Uber Greyball Software: Public Discovery

Q TECHNOLOGY

The New York Times

March 3, 2017

How Uber Deceives the Authorities Worldwide

US | Mar 9, 2017

An update on “greyballing”

— Written by Joe Sullivan, Chief Security Officer

We have started a review of the different ways this technology has been used to date. In addition, we are expressly prohibiting its use to target action by local regulators going forward.

Uber Issues Beyond Greyball

DAVEY ALBA BUSINESS 06.21.17 02:42 PM

A SHORT HISTORY OF THE MANY, MANY WAYS UBER SCREWED UP

BUSINESS NEWS MAY 4, 2017 / 4:07 PM / 2 YEARS AGO

Exclusive: Uber faces criminal probe over software used to evade authorities

5 MIN READ



Dan Levine, Joseph Menn

SAN FRANCISCO (Reuters) - The U.S. Department of Justice has begun a criminal investigation into Uber Technologies Inc's use of a software tool that helped its drivers evade local transportation regulators, two sources familiar with the situation said.

Q Search

Bloomberg

Oct. 11, 2017

Uber Pushed the Limits of the Law. Now Comes the Reckoning

The ride-hailing company faces at least five U.S. probes, two more than previously reported, and the new CEO will need to dig the company out of trouble.



Uber Issues Beyond Greyball

- CEO Travis Kalanick resigned June 2017
- Transportation for London announced it would not renew Uber's license to operate in London (Sept. 2017)
 - "Not fit and proper" to hold an operator license (citing Greyball and lax policies on reporting crimes and conducting driver background checks)
 - In June 2018, Uber was granted a 15-month probationary license (ongoing legal challenges)
- 5 US Dept of Justice criminal probes as of Oct. 2017:
 - Greyball software
 - "Hell" software, allegedly used to track Lyft drivers
 - Payment of bribes to foreign government officials (Indonesia police, +)
 - Violation of price-transparency laws (discounts offered to some customers but not others)
 - Theft of intellectual property (from Waymo, via Otto)
- 2016 privacy breach publicly disclosed in Nov. 2017 after new CEO learned of it, led to **\$148M** settlement with US attorneys general
 - Uber had paid \$100,000 to hackers who stole personal data of 50M riders and 7M drivers

Uber Culture

Secretive

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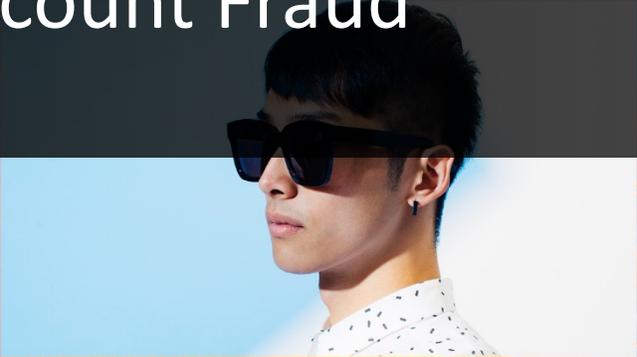
Competitive to the Extreme

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Limited Control Functions



Wells Fargo Account Fraud



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Wells Fargo Account Fraud: Background

- “How do you sell money?” Get existing clients (“customers”) to buy as many products as possible
 - Wells Fargo was a leader in “cross-selling”—selling additional products or services to existing customers
 - Intense pressure to achieve aggressive or even **mathematically impossible quotas**
 - 2004 internal report recognized this as a huge incentive to cheat based on fear of losing their jobs
- Wells Fargo documentation/formal messaging was good
 - Wells Fargo Code of Ethics prohibited “gaming”:
 - “the manipulation and/or misrepresentation of sales or referrals . . . in an attempt to receive compensation or to meet sales goals”

Wells Fargo Account Fraud

Reality: **gaming** was so **widespread** it spawned a lingo and blatant misrepresentations:

“Pinning”: assigning customers PINs without their knowledge in order to impersonate them on Wells Fargo computers and enroll them in products

Obviously false driver’s license numbers: MOOREWfooooo, issued 1/1/2000

193,000 non-employee accounts opened from 2011 to 2015 with “@wellsfargo.com” as the email domain

Large loans with customer immediately repaying part of them (banker credited for the larger loan)

Accounts customers never asked for and didn’t want, often with fees

Minors with more than a dozen accounts

“Shredding”: forging signatures and shredding the evidence



Wells Fargo Account Fraud

- **Employees raised complaints to**

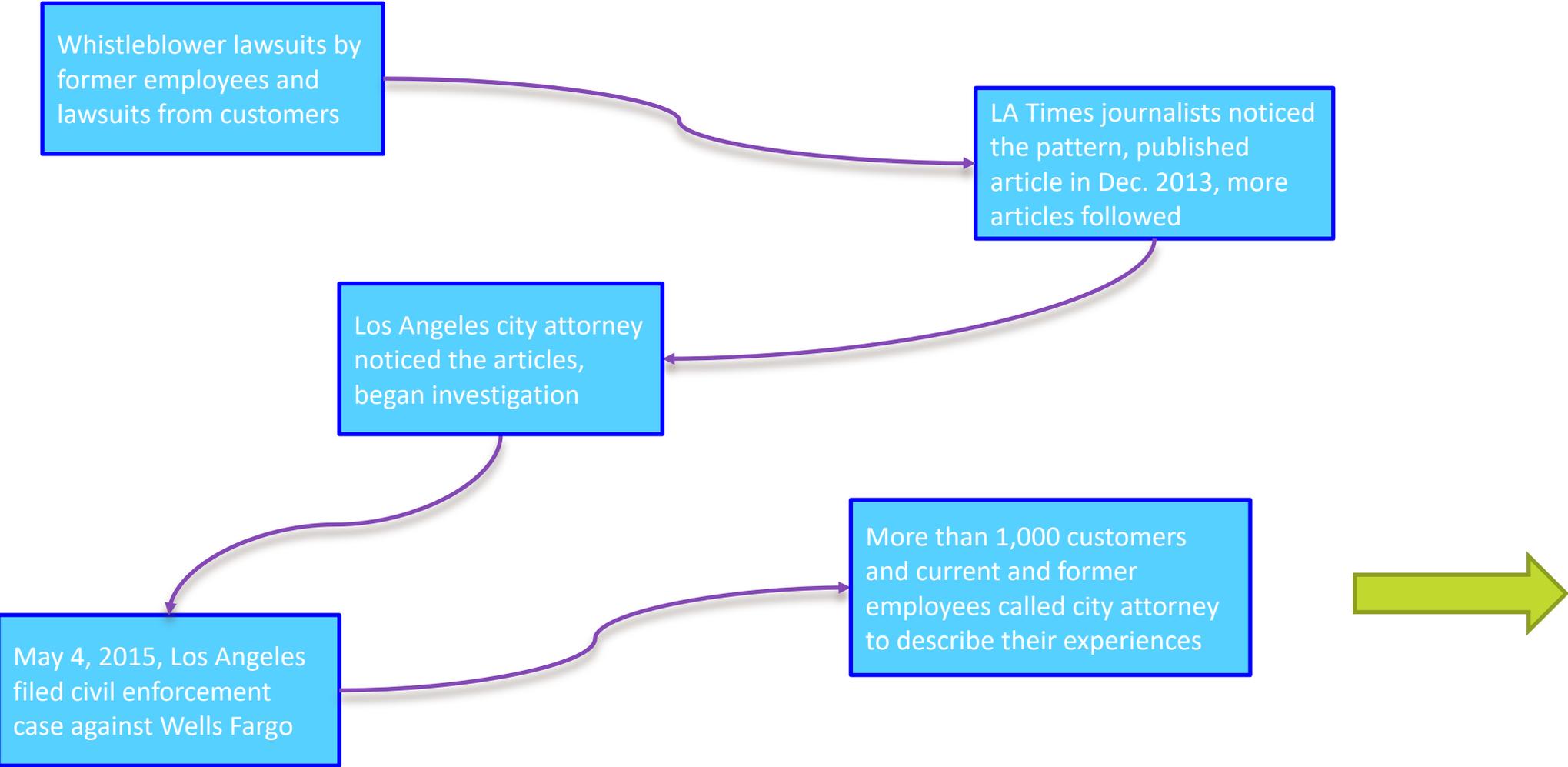
- Supervisors
- Regional banking head
- Legal department
- The ethics hotline

as early as 2005, and continuing over the next decade...

- **Nothing changed**

- No one seemed to care; career progression continued for those engaged
- Often no response to the complaints
- No follow-up on issues
- Some employees alleged retaliation soon after raising issues, leading to their termination

Wells Fargo Account Fraud: Public Discovery



Wells Fargo Account Fraud: Public Discovery

- Sept. 8, 2016: **\$185M** combined penalty announced to settle charges of fraudulent conduct “on a massive scale” with
 - Consumer Financial Protection Bureau (CFPB)
 - Office of the Comptroller of the Currency
 - City and County of Los Angeles
- Wells Fargo employees then began coming forward publicly about the long-standing issues, inciting widespread anger among consumers and legislators
- Sept. 2016: US Senate hearing with CEO John Stumpf, led by Sen. Elizabeth Warren
- Oct. 12, 2016: Stumpf announced resignation (forfeited ~\$70M)
- ~5,300 employees fired as a result of fraudulent sales from 2011-2016
- Civil and criminal lawsuits, including **\$480M** securities class action settlement (May 2018)

Wells Fargo Account Fraud: Public Discovery

AMERICA

Wells Fargo Hit With \$1 Billion In Fines Over Home And Auto Loan Abuses

April 20, 2018 · 9:12 AM ET

Wells Fargo launches ad campaign to leave accounts scandal behind.
Not everyone is buying it
By JAMES F. PELTZ | MAY 09, 2018 | 3:00 AM

From the Magazine

HOW WELLS FARGO'S CUTTHROAT CORPORATE CULTURE ALLEGEDLY DROVE BANKERS TO FRAUD

Most Americans have assumed their bank accounts are sacrosanct. But with the major scandal unfolding at Wells Fargo, angry former employees illuminate the alarming pressure that allegedly led local bankers to defraud perhaps more than a million customers.



BY BETHANY MCLEAN
SUMMER 2017



BUSINESS

Wells Fargo agrees to pay \$480 million to settle securities-fraud lawsuit over fake accounts

By JAMES F. PELTZ | MAY 04, 2018 | 4:15 PM

Excessive Sales Goals

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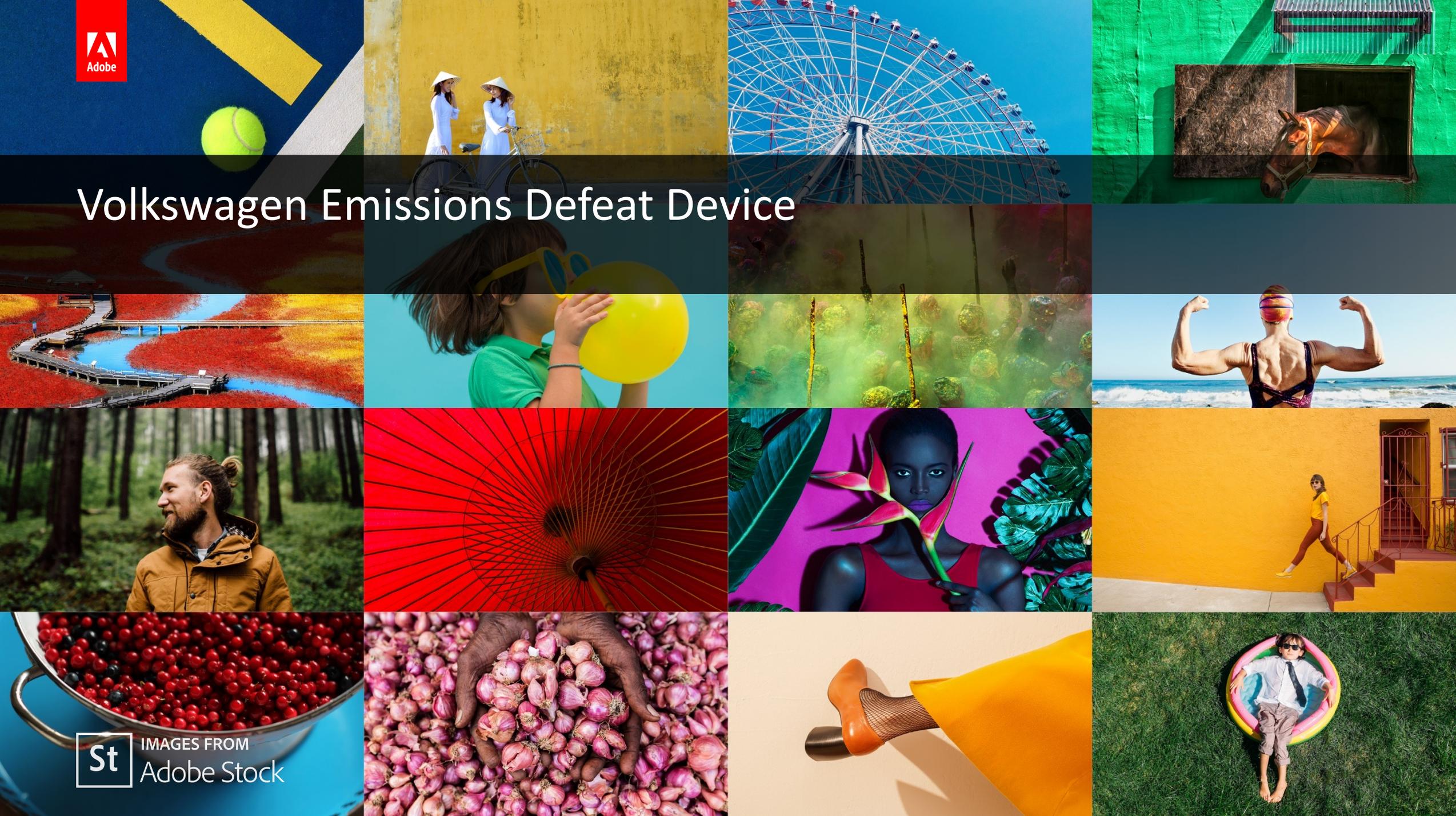
Decentralized Control Functions

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Deference to Management



Volkswagen Emissions Defeat Device



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VW Emissions Defeat Device: Background

- In early 2000's, VW decided to launch a major diesel car campaign in the US
- VW procured Engine Control Unit software for its diesel cars: the car needed to know when it was on a stationary rig, so that various automated systems could be disabled and prevent damage to the car/surroundings
 - The providing company warned VW that it would be illegal to use the software to avoid emissions compliance during normal driving
- VW engineers were tasked with developing a car that met performance and fuel economy targets while also meeting newly-required emissions standards
 - After several years of working on this, they realized they could not reach all of these goals within the timeline and budget they'd been given

VW Emissions Defeat Device: Background

- Instead, around 2006, the engineers chose to program the Engine Control Unit to switch from its normal good fuel economy and high NO_x (nitrous oxide) emissions to a low-emission, compliant mode when it detected an emissions test
 - Labelled “acoustic condition” in the coding
 - Defeat device use spread among VW brands
 - VW conducted two recalls to “fix” the software
- Company falsely certified compliance each year, as well as made false statements to the EPA, CARB and VW customers when questions arose
 - “Clean Diesel” slogan
 - VW received “green car” subsidies and tax exemptions over years based on the emissions testing results
 - Over 11 million cars sold worldwide with defeat device from 2008-2015
- Various “real world” testing reports highlighted discrepancies between real-world results and laboratory results ~2014; EPA sought an explanation from VW

VW Emissions Defeat Device

- Summer 2015: EPA informed VW it would not approve VW's 2016 model year vehicles for sale in the US; EPA continued to seek explanations
 - Internally, VW scrambled to respond
- VW formally admitted the installation of “defeat devices” in Sept. 2015
 - EPA issued notice of Clean Air Act violations and ordered a recall of nearly 500,000 vehicles in the US
 - DOJ settlement: agreed “Statement of Facts” described how managers repeatedly sanctioned the use of the system despite some employees’ objections and encouraged engineers to hide their actions
 - CEO resigned 5 days later
- At least 40 people in management at VW knew about the defeat devices, for periods ranging from 18 months to 10 years
 - Management had been warned about “possibly illegal” practices occurring from 2011

VW Emissions Defeat Device: Impact

VW Reports First Quarterly Loss In This Century, At \$1.8 Billion

October 28, 2015 · 7:16 AM ET

Volkswagen Will Pay U.S. Diesel Car Owners Up To **\$10 Billion**
June 28, 2016 · 11:04 AM ET

Volkswagen To Plead Guilty, Pay **\$4.3 Billion** In Emissions Scheme Settlement

January 11, 2017 • The Justice Department also announced the indictments of **six VW executives**. Volkswagen has admitted equipping diesel vehicles with software to cheat emissions tests and then lying to regulators.

High-ranking U.S.-based Volkswagen executive Oliver Schmidt has been sentenced to **seven years in prison** and ordered to pay a **\$400,000 fine** for his part in a decade-long diesel-emissions cheating scandal. Dec. 6, 2017

VW Emissions Defeat Device: Impact

- **Regulators** in multiple countries began investigating VW:
 - US
 - In June 2016, VW agreed to pay **\$14.7B** to compensate car owners (**\$10B**) and address environmental harm (**\$4.7B**) in the US (settling with DOJ, EPA, FTC & California)—addressing 2.0-liter diesel engines, NOT 3.0-liter engines
 - In Jan. 2017, VW also agreed to pay **\$4.3B** to settle civil and criminal allegations and pled guilty to 3 criminal felony counts
 - 25 other states' attorney general and FBI investigating
 - Germany fined VW **\$1.2B**
 - South Korea is seeking up to **\$48B** in penalties
 - VW Brazil was ordered to pay owners and the government almost **\$700M**
- **Criminal investigations** of individuals are underway/completed:
 - In 2016, a US VW engineer pled guilty to conspiracy in the US
 - In Jan. 2017, 6 high-level executives were indicted in the US for conspiracy, wire fraud and Clean Air Act violations
 - In May 2018, former CEO Martin Winterkorn indicted by US on fraud and conspiracy charges
 - In June 2018, German police arrested CEO of Audi, Rupert Stadler

VW Emissions Defeat Device: Impact

- Dozens of **class actions** around the world
- Sales impact
 - Switzerland banned sales of VW diesel cars
 - VW suspended sales of TDI cars in the US Sept. 20, 2015 (permanently ended for Volkswagen, Audi and Porsche brands)
 - New car sales for VW fell ~8% in the US and ~7% in Germany in 2016 (declines offset by growth in China and Eastern Europe)
 - New VW focus on all-electric cars
- Stock price
 - VW stock price lost $\frac{1}{3}$ of its value in 2 days; it took over 3 years to return to same point

Afraid of Failure

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Hierarchical

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Lacking in “honesty and openness”



What Does Adobe Do?



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BUSINESS ETHICS – The Foundation

- Adobe is committed to
 - Promoting **integrity** and maintaining high standards of **ethical** conduct in all of our activities
 - Treating our employees, customers, vendors, partners, stockholders and the community in which we work with **dignity & respect**
- CODE OF BUSINESS CONDUCT is applicable to everyone acting on behalf of Adobe: employees (permanent or temporary), contingent workers (agency temps, independent contractors, vendor and other representatives' employees) and interns

EACH REPRESENTATIVE creates Adobe's culture.... Our reputation is founded on the personal integrity of our employees and representatives and our commitment to our guiding business ethics principles

Establishing Ethics in a Corporate Setting

- Formal training, both live and online, to set expectations and reinforce the Adobe values for all employees
- Executive commitment—helping ensure that our executives around the world continue to reinforce these values: in meetings, in messages, and in their actions
 - Ongoing discussions with executives about setting the “tone from the top”
- Strong Controls—providing protections to prevent wrong actions, e.g.:
 - Segregation of duties: different group of employees to check/audit the actions of empowered employees
 - Centralized “gatekeeper” functions reporting into the CEO separately from business units
- Investigating potential issues, and taking action when issues are substantiated
 - Multiple, well-publicized channels for reporting
 - Coordination for a cross-company view to identify patterns and trends
- **(Emerging)** Data analytics: identifying patterns in data, and acting on anomalies

Key Element: Reporting and Investigating

Employees have a **duty to report potential misconduct** – **even if not directly involved**.

Adobe commits to **promptly investigate** and take appropriate action against anyone who is found to have violated a policy.

- Multiple channels available (no need to report to the suspected offender!)
- Lack of action (or perceived lack of action) leads to reduced reporting of misconduct in the future

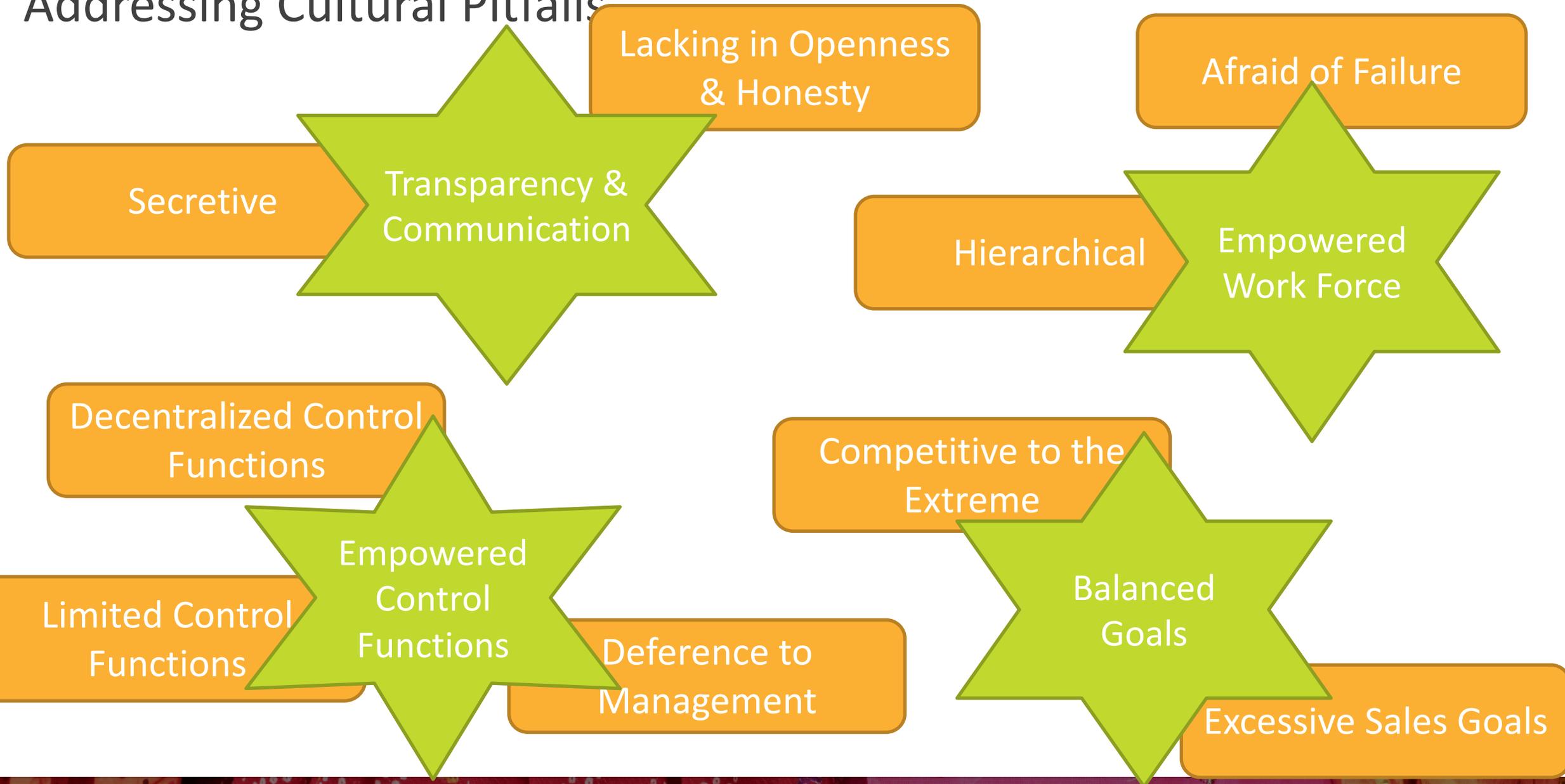
Adobe does not allow retaliation against anyone who reports a concern or who cooperates with an investigation.

- Reports must always be in good faith, though
- Retaliation, or fear of retaliation, also leads to reduced reporting of misconduct

Who Makes Up the Adobe Compliance Department?

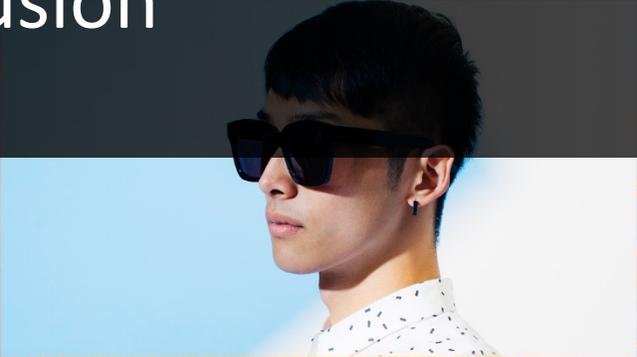
- 4 attorneys (including Chief Compliance Officer), varied backgrounds:
 - Employment/Corporate Securities
 - Antitrust
 - Compliance
- 2 forensic accountants
- 5 program managers, varied backgrounds:
 - Sales operations, Sales
 - Trade compliance/Export control
 - Privacy
 - Government contracts compliance

Addressing Cultural Pitfalls





Conclusion



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The Chalk Line of Ethics

Marianne Jennings, professor of legal and ethical studies in business at Arizona State University:

“It’s like chalk. There’s a **chalk line**: It’s white; it’s bright; you can see it. But once you **cross over it** a few times, it gets **dusted up and spread around**. So **it’s not clear anymore**, and it just **keeps moving**. By the time you realize what’s happening, if you say anything, **you’re complicit**. So the questions start coming to you:

‘How did you let this go?’”

Guiding Principle

Some guiding questions:

- Would public disclosure of this embarrass me or the company?
- What are the intentions of this? Are they appropriate?
- Who will benefit? Who will be harmed? Is that appropriate? Will it *appear* appropriate?

The primary question should not be “Is it legal?”—sometimes that answer is grey. But rather, the primary question should be

“Is it the right thing to do?”

