

# **Ethical Culture: The Controlling Factor in All Risk Management**

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# The Scary Slides: The Companies

# Ethical Lapses Since 2001

Adelphia	ADM	AIG (3)	Airbnb
Allergan	Allianz	Alstom	American Apparel
American Express	Apple (3)	Apollo Group	Archehos
Arthur Anderson	AstraZeneca	AT&T	Autonomy
Avon	Bally Total Fitness	Bank of America	Barclays (4)
Bayer	Baxter	BCBS	BCCI
BDO Seidman	BearStearns	Biovail	Bitcoin
Blackrock	Blue Bell	BNY	BNP Paribus
Body Shop	Boeing (4)	BP (3 )	Bristol-Myers Squibb
CalPERS (2)	Cardinal Health	Caterpillar	CBS
Cendant	Centene	Charter Communications	Chase (2)
Chesapeake	Chipotle	Chiquita	Chrysler (2)
Cintas	Citigroup (?)	Columbia HCA	Comcast

# Ethical Lapses Since 2001

ComEd	Computer Associates	Countrywide	Credit Suisse (4)
CSFB	CVS (2)	CXS	Cypriot
Davis-Besse (FENOC)	DaVita Health	Deloitte-Touche	Delphi
Deutsche Bank (2)	Dewey LeBeouf	Diamond Nuts	Downey S & L
Duke Energy	DuPont	Edward Jones	Eli Lilly
Enron	Entergy	Equifax	Ernst & Young
Evergrande			
Exelon (ComEd)	ExxonMobil	Facebook (4)	Fannie Mae (2)
Fidelity Investments	FIFA	Fireman's Fund	FirstEnergy
Fox News	Freedom Industries	Galleon Hedge	GameStop
General Electric (3)	General RE	GlaxoSmithKline (4)	Global Crossing

# Ethical Lapses Since 2001

Global Research	GM (4)	Goldman Sachs (4)	GoDaddy
Google (4)	Greensill	GroupOn	Hallmark Westland
HealthSouth			
Helig-Myers	Herbalife	HP	HR Block
HSCB	Hyundai	Ikea	ImClone
IndyMac	Insys	Intel	Johnson & Johnson
Kay Jewelers	Kia	Kindred Healthcare	Kmart
Kobe Steel	Kodak (2)	KPMG (4)	Kraft-Heinz
Krispy Kreme	Lehman Brothers	Lerner	Lifelock
Long Term Capital	Lordstown Motors		
Lucent	LuluLemon, Inc.	Madoff Investments	
Marriott Int'l	Marsh & McLennan	Massey Energy	Mattel
Medtronic	McKinsey & Co.	Merck	Merrill Lynch

# Ethical Lapses Since 2001

Microsoft	MF Global	Microstrategy	Milberg Weiss
MIT Media Lab	Mitsubishi	Mohawk Flooring	Moody's
Morgan Stanley	Mylan	Navient	Navistar Int'l
NBC ("Nitely")(Lauer)	New Century	New Eng. Patriots	New Orleans Saints
New Republic	New York Times	Nike	Nikola
Nissan	Nortel	Novartis (2)	Och-Ziff
Options (200)	Oracle	Overstock	Olympic Committee
Olympus	Oxy Media	Parmalat	PCAOB
Peanut Corp.			
Peloton	Penn State	Perdue Farms (2)	Pfizer
Pharma benefit companies	Pilot Flying J	Pixar	Purdue
Putnam (2)	Qualcomm	Qwest	

# Ethical Lapses Since 2001

PriceWaterhouseCoopers	Prudential	Radio Shack	Razorfish
RBS	Reebok	Refco	Robinhood
Royal Ahold	Royal Shell	SAC Capital	Satyam (India)
SCANA (Dominion)	Shaw Group	Siemens	Sloan Kettering
Société General	Social Finance (SoFi)	Sony	Sothebys
Southern Company	SPACs	Stanford Investments	Standard & Poors
Stanford University	Starbucks	Stitch Fix	Student loan lenders
Sutter Health (2)	Swedish Academy	Taco Bell	Taylor Beane
Takata	Temple University	Tenet (3)	Tesco
Tesla			

# Ethical Lapses Since 2001

Theranos	TierOne Bank	Time Warner	Titan
Toshiba (2)	Toyota	Trinity Highway	Turing Pharma
Tyco Int'l	Uber	UBS	Under Armour
Unions	United	United Health (2)	Universities
Universities & Admissions	Universities & Sports	Valeant	Volkswagen
Wachovia	Walmart	WaMu	Wells Fargo (4)
Weinstein Group	Westar	WeWork (We)	Wirecard
World Bank	WorldCom	WPP	Wynn Co.
Xerox	Zantac	Zenefits	Zynga



# Ethical Lapses ( Health Care)

Tenet Health Care	Sutter Health	Parkland Community Hospital	Sloan Kettering Memorial
VA	UC Irvine	Yale Medical	Banner Health System
Life Care Centers	eClinicalWorks (ECW)	Medstar Ambulance	Community Health Systems
Carolinas Healthcare System	Pacific Alliance Medical Center	Genesis Health Care	UnitedHealth Group
Mount Sinai	Poplar Health Care	BCBS Texas	Theranos
Norman Regional Health	Sloan-Kettering		



# Two Observations

# 1. None of the events were close calls.

Anticompetitive  
practices

Misleading  
regulators

Lying to federal  
investigators

Certification of  
processes that  
were not done

Taking gifts  
and conflicts

Embezzlement

Bribery

Withholding  
information  
from regulators

No real  
product

**2. Those involved in any type of ethical lapse were aware of their ethical lapses.**

- As early as April 2010, key implementation specialists and others charged with working with the electronic health records systems (including the pharmacist and physicians) at Rikers Island raised concerns about the systemic failures of ECW software to record medications given to inmates.
- ECW refused to make the corrections due to cost of changing the system and notifying all its clients of the flaws.

# ECW flaws in software

**Only drugs required to meet certification standards were in the program**

*"We've known for a long time Visit Summaries is supposed to count all encounters on the denominator but the MAQ Dashboard only counts unique patient visits. I'm not sure how to justify our numbers on this one."*

- As a result, ECW clients (39,480) submitted inaccurate attestation information and false information for CMS incentive payments

# ECW Internal e-mail on visit record flaws in its software

**\$155-million fine**

**\$30 million to whistleblower  
(consultant to Rikers and hospitals on  
HER implementation)**

# College Admissions Scandal

- *"We just met with (our older daughter's) college counselor this am. I'd like to maybe sit with you after your session with the girls as I have some concerns and want to fully understand the game plan and make sure we have a roadmap for success as it relates to (our daughter) and getting her into a school other than ASU!"*
  - Mossimo Giannulli whose daughter was admitted to USC as a crew rower despite no experience in rowing crew after her parents paid \$500,000 to a charity they created. The charity paid of the crew coach, the Giannullis (Lori Laughlin and Mossimo ) then deducted the \$500,000.

# College Admissions Scandal

- *"To be honest, I'm not worried about the moral issue here. I'm worried about the, if she's caught doing that, you know, she's finished."*
  - Gordon Caplan, private equity lawyer and co-chairman at the law firm, Wilkie Farr & Gallagher LLP, named "Dealmaker of the Year," by American Lawyer, who was arrested in the Varsity Blue admissions scandal
- Caplan's daughter's ACT score went from 22 to 32 after Caplan paid \$75,000 to Rick Singer to pay a proctor to alter her test. Kaplan felt a score of 33 was too much of a stretch.





**There are no singular  
rogue events.  
The Overarching Risk?**

**Ethical Culture**

# The Ease of the Rogue Label

- Trying to isolate the root cause to individuals
- Ethical and legal lapses do not make the headlines unless there are organizational issues
- You do not know what the next great risk will be
- Risk of not thinking through organizational issues with introspection
- Where are you as an organization?

# Shades of Compliance and Ethics

**Variable  
Compliance  
Discretionary  
Self-definers**

**Interpretive  
Compliance  
Amoral  
Technicians**

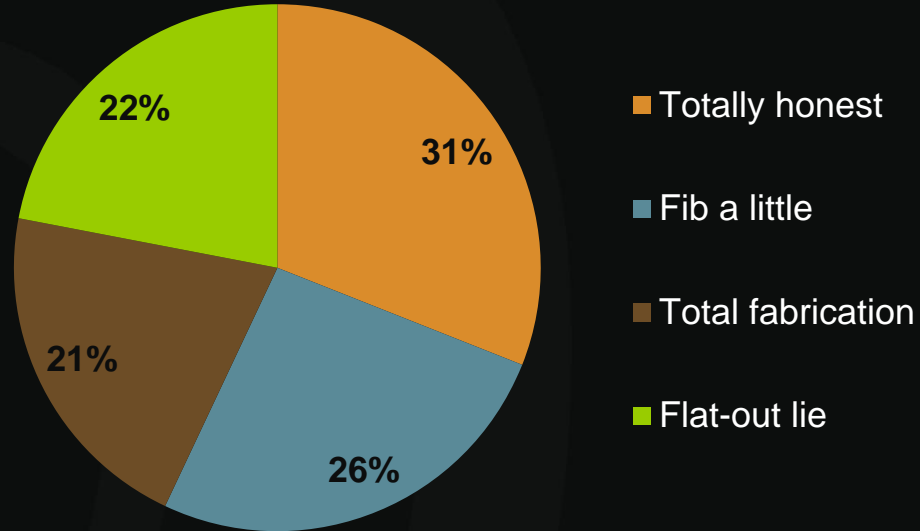
**Compliance  
with Laws  
and  
Regulations**

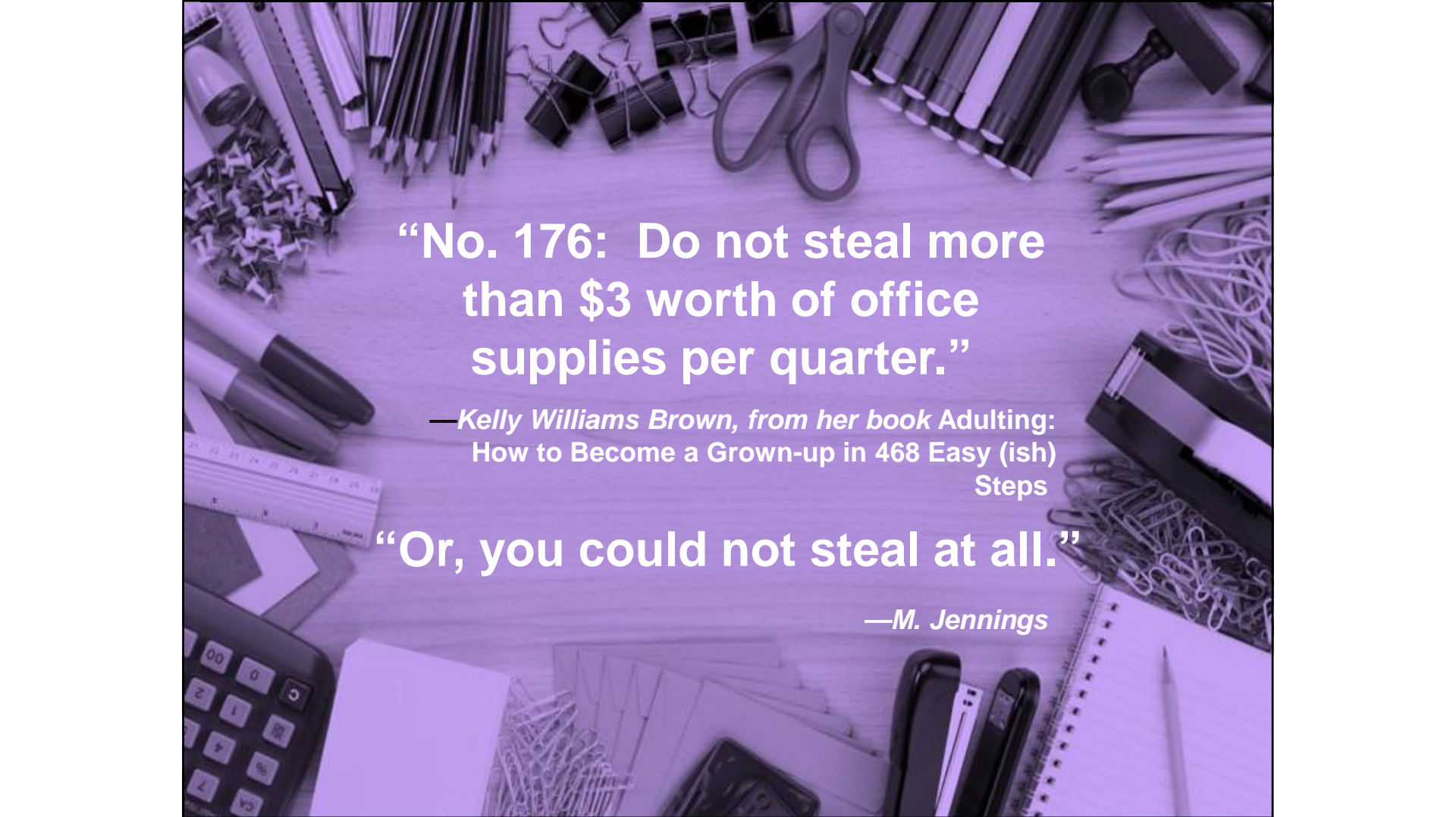
**Compliance  
with Laws,  
Regulations,  
Policies, and  
Values  
(Could vs.  
Should)**

**Compliance  
and Ethics  
Are Part of  
Decisions,  
Strategy,  
Performance  
Metrics,  
Discipline**

# Self-Definers: We draw our own ethical lines

How honest are you in your Twitter, Facebook, etc.?





**“No. 176: Do not steal more  
than \$3 worth of office  
supplies per quarter.”**

**—*Kelly Williams Brown, from her book *Adulting:  
How to Become a Grown-up in 468 Easy (ish)  
Steps****

**“Or, you could not steal at all.”**

**—*M. Jennings***

# Amoral technicians and Gaming: Interpretive Compliance

American Express and new business credit cards (\$600 for each new business)	Prosecutor decisions and rate-of-completion compensation	Auto service surveys of customers
Health care: Coding	The cobras in Delhi	Fitness programs and employee creativity
Paid online reviews and deletions of negative reviews	College admissions	Line queues: VA
Crime stats (lower charges and reclassifying crimes)	Employee engagement and ethics surveys	Staffing levels – nursing homes
EBITDA vs. GAAP	Vaccine Gaming	Meeting certification
Health care and physician payments	Health care and patient privacy	



# The Sandbox

**Culture can curb or increase  
ethical and legal lapses  
Why would they think this is  
acceptable behavior here?**

# Five Key Cultural Focus Points

Rules and  
Enforcement

Slow Walking  
Investigations

Financial  
Drivers and  
Pressures

Language  
and Unwitting  
Messaging

Leaders



# **Cultural Focus Point #1: Rules and Enforcement**

# Rules and Regulations

Why do we care?

The “Why” Behind the Rule

- Focused training: “What Does Your Signature Mean?”

The gradual erosion of clear standards

The line keeps moving

The neurological activity on “moving the line”

# Enforcement's Power

- *“Enforcement is to organizations what integrity is to individuals.”*

M.M. Jennings

- *“The clearest and most powerful mode of organizational communication is whom we hire, whom we fire, whom we discipline, and how we treat those who raise ethical issues, questions, and concerns.”*

M.M. Jennings

# Hiring: Whom are you bringing in?

- Ethics screening
- Past employment history
- Hiring of stars
- Fast growth: slips on qualifications
- In a fast-growing company, the culture is at risk:  
Lack of training, feedback, and enforcement

# Whom are you retaining and promoting? And how long does it take?

- Those we leave in place despite noncompliance or spotty compliance.
- Those we promote despite noncompliance or spotty compliance
- Provides a license for bigger ethical/legal lapses and crosses into organizational issues.
- License becomes the culture and influences decisions and behaviors in the culture.

**Cultural Focus  
Point #2.  
Slow walking  
investigations**

# **Enforcement: Waiting, Hoping, Arguing, and, Sometimes, a Lack of Resources**

- **The backlog is the message**
- **Slow-walking investigations is the message**
- **The failure to talk with the right people during investigations is the message**
- **The failure to stop the conduct is a message**
- **The failure to discipline is the message**



**The failure to stop some behaviors breeds employee-developed solutions to their resulting problems**

**Nurses and death certificates**



## Errors in medication

1. Prescription wrong
2. Interpretation errors
3. Transcription incorrect
4. Preparation errors
5. Computer/system errors

Consider the granular and human factors



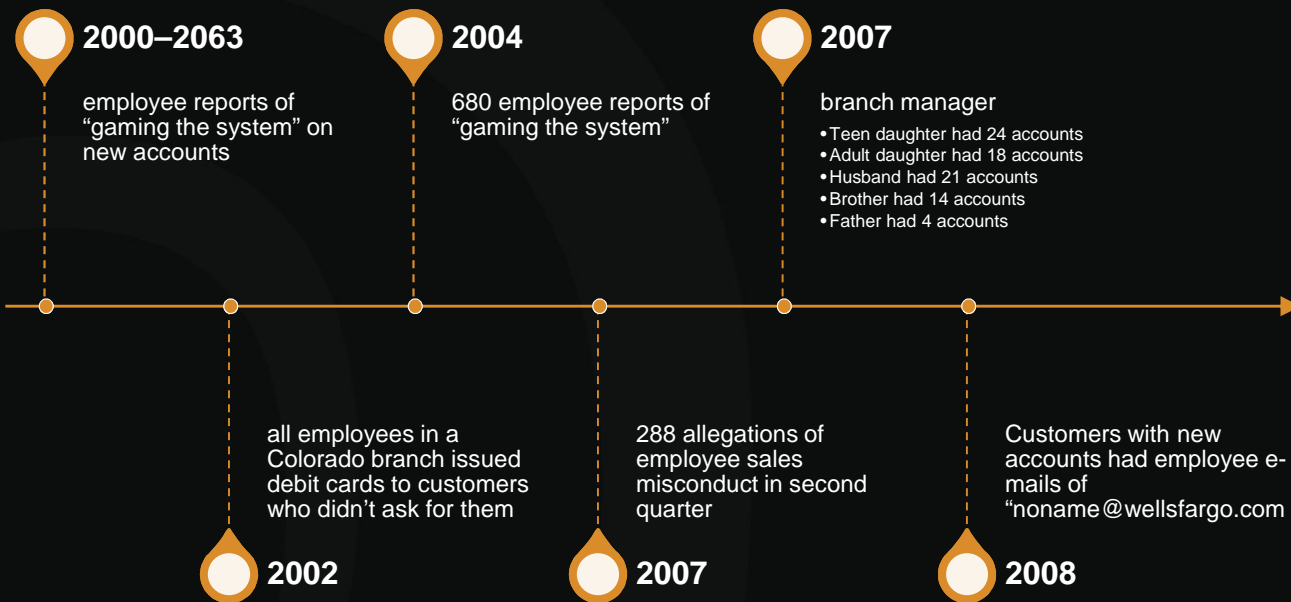
# **Cultural Focus Point #3: Financial Drivers and Pressures**

**“Big, hairy, audacious goals”:  
aka Performance Goals and  
Evaluations, Raises, Bonuses**

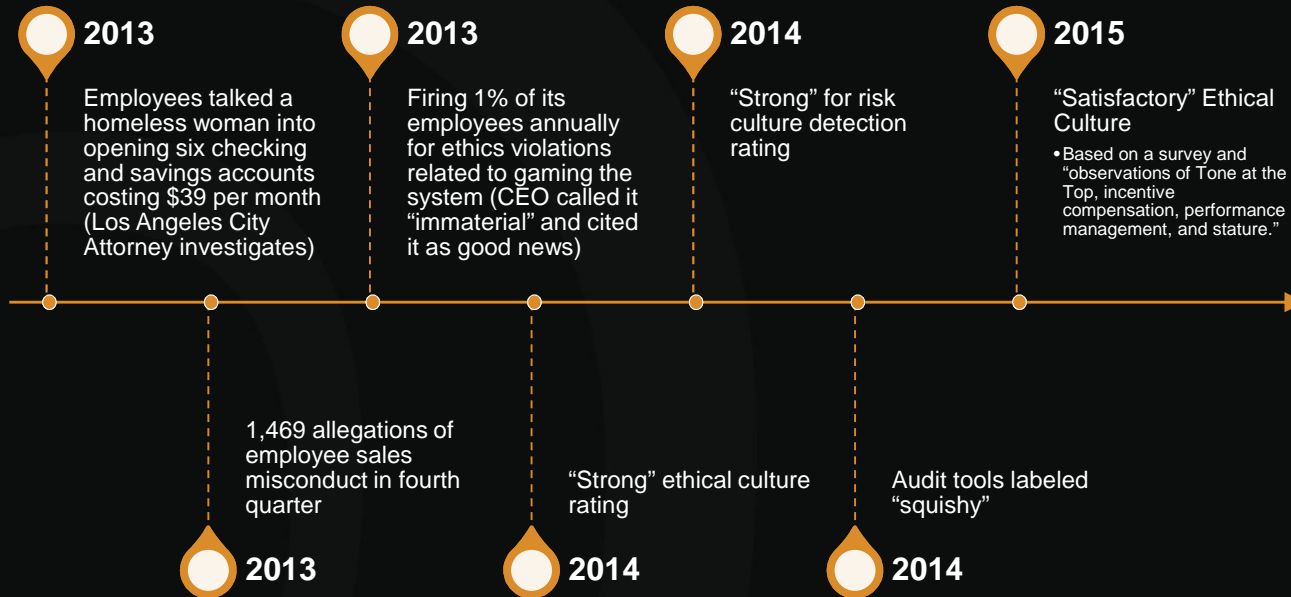
*“They will get there; it just might not be real.”*

M.M. Jennings

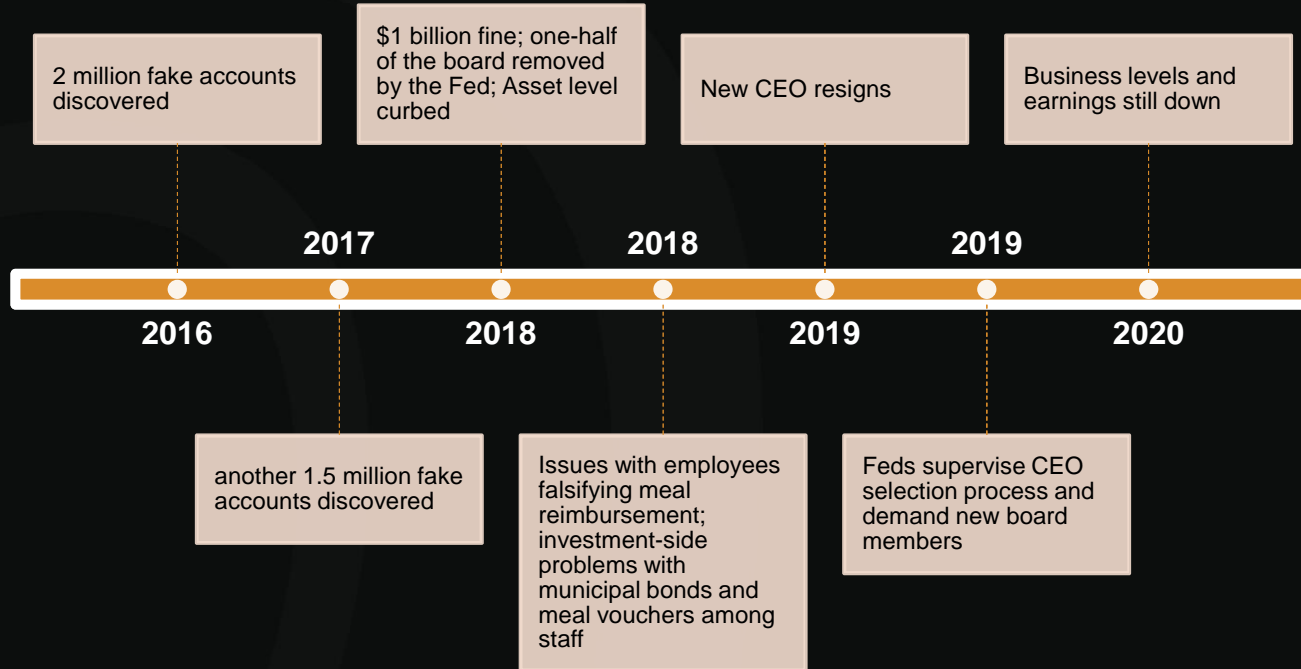
# Wells Fargo History



# Wells: Percolating Issues and Comfort



# Wells Fargo: Events After Discovery



# Countermanding the Pressure

- Diagnosis Bias
- How issues are framed
- Lack of training on reputational risk
- Failure to see future costs

*“Sometimes desperate is the same thing as stupid.”*

Matt Dillon, *Gunsmoke*

*“Man gets spooked, he can’t think too good.”*

- Festus Hagen – counseling a young man who was running from the law, *Gunsmoke*

# Focusing on Reinforcement

- Managers leading ethics discussions: You can't get an ethical culture with one hour of training per year
- Examples of ethical dilemmas and resolutions: What is in the news about health care organizations?
- Measurements: What discussions did you have throughout the year?

# **Cultural Focus #4: Our Language and Unwitting Signals**



# Rationalizing is comforting and easier.

“That’s none of my business.”

“Who am I to judge?”

“That’s the way they do it at \_\_\_\_\_.”

“That’s the way it’s always been done.”

“It doesn’t really hurt anyone.”

“If we don’t do it, someone else will.”

“If you think this is bad, you should have seen ..”

“The system is unfair.”

“Who’s to know?”

“Rankings/ratings will suffer.”

“For all I do around here...”

“I was just following orders.”

“It’s a gray area.”

# So, we make it all gray!

- Why is it important that it be gray to you?
- Is it legally gray?
- Is it ethically gray?
- Is it a good-faith disagreement?
- What if it's not a gray area?
- Does everyone believe it's a gray area?
- Interpretation vs. loophole vs. nondisclosure of relevant information

*“There will always be a gray area.”*

M.M. Jennings

- *“What happened does not reflect who we are.”*
- *“There are misunderstandings about what happened.”*
- *“You have to understand our industry.”*
- *“We have a really good reason for doing what we did.”*
- *“There was significant confusion in our billing.”*
- *”It’s a very common method by which most of California hospitals deliver and bill anesthesia.”*

Cynthia H. Craft, “Sutter Health Agrees to \$46 Million Settlement for Billing Practices,” *Sacramento Bee*, Nov. 5, 2013, <http://www.sacbee.com/2013/11/05/5881145/sutter-health-agrees-to-46-million.html>.

**Rationalizations  
Leaders Use  
After a Problem**  
**The rest of the world  
doesn’t get it.**

- “No exceptions. No excuses.” (Atlanta Public Schools)
- “Failure is not an option.” (NASA)
- “Sharpen your pencil!”
- “The Power of Yes.” Washington Mutual
- “Find a way.”
- “Do whatever it takes.”
- “Go the extra mile.”
- “100% results, all the time.”
- “Extra effort, extraordinary results.”
- “Staying at #1.”
- “Margins matter.”
- “Committed to deliver despite all obstacles.” (CDDAO)
- “On time, every time.” (Southwest Air)
- “Achieve the edge.”
- “70% Comfort. 100% Alignment”
- “Never question success.” Kidder Peabody
- “Fire, Ready, Aim!”
- “Go for Gr-eight!” (6.1 products per customer vs. 2.7 industry)(Wells)

# The Motivational Mantras and License to Act

# Cultural Focus Point #5: Leaders

# Leadership: That “tone at the top” thing The Iconic and Powerful Leader

## Looking for the Bathsheba Syndrome

Ludwig, Dean, Longenecker, Clinton, “The Bathsheba Syndrome: The Ethical Failure of Successful Leaders,” 12 (4) *Journal of Business Ethics* 265 (April 1993)

# The Bathsheba Syndrome

- Leader with a humble past
- Dramatic and rapid rise to power/success
- Strong skills
- Charismatic personality
- Strategic vision
- Strong ethics
- Called upon to lead

# Calvin Coolidge– Bathsheba Factor

- Did not run for a second term despite wild popularity
- *“Eventually, surrounded by all ‘yes’ people you start to believe you are grander than you are; humility is gone.”*



# Checks and Balances for Leaders

- Audits of expense accounts
- How does the front line perceive those at the top?
- Remember: Leaders do lead (in all ways):
  - Louis Gerstner and his first day at IBM
- Employees know everything leaders say
- Language about regulators, CIA, and temporary nature

# Moving to a Focus on Culture and Risk

## Why would they believe their behavior was acceptable?

Was what they did wrong?

What do you think reinforced the decisions they made?

What made them think what they were doing was acceptable behavior here?  
Introspection by leaders

How do they defend their actions?  
What was your response?  
When was your response?