

A working guide to the voluntary self-disclosure decision from 3 former DOJ Insiders

To Disclose or Not To Disclose

FEATURED ON ETHICSVERSE DAY 2026

“The Great AI Debate: Ethical Nightmare or Competitive Advantage?” aired 7/23/26



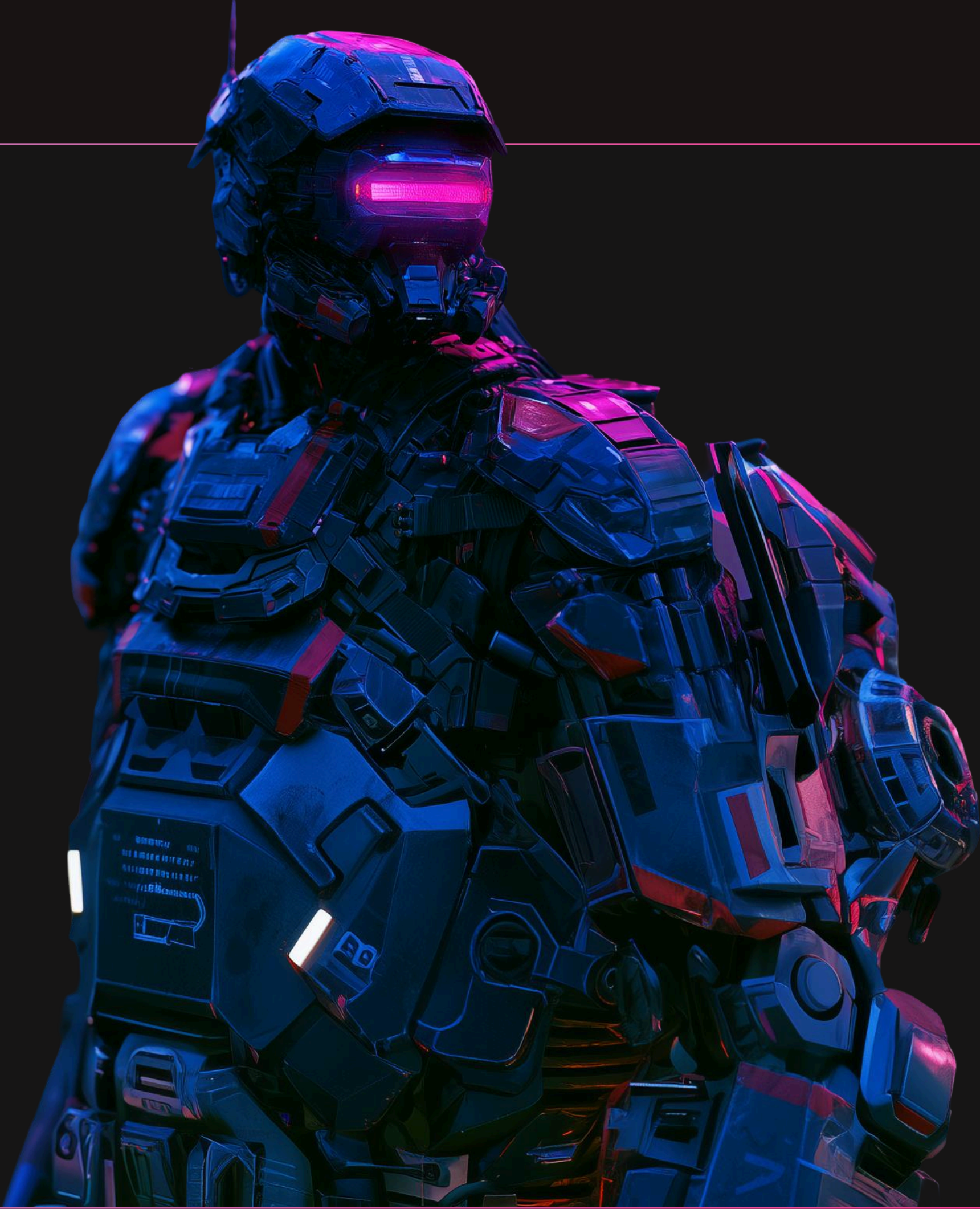
Sean Tonolli
Partner, Cahill Gordon & Reindel Formerly: Acting Principal Deputy Chief ,
DOJ Criminal Division Fraud Section, Former Assistant U.S. Attorney



Hui Chen
Co-Founder, CDE Advisors
Formerly: First-Ever Compliance
Counsel Expert, US Department
of Justice



Matt Axelrod
Partner, Gibson Dunn I Formerly:
Assistant Secretary for Export
Enforcement, Senior Counselor,
Special Counsel to The White House



Assistant Attorney General A. Tysen Duva came to Ethicsverse Day with a clear message: come in early. He walked through the four mechanisms of the corporate enforcement policy he helped author — self-reporting conduct the Department doesn't already know about, full cooperation, full remediation, and no aggravating circumstances — and pointed to the flowchart attached to the policy. He was direct about what the Department wants. "We want you in the flow chart to be in the green," he said. "That's why we're doing this."

Asked how quickly a company actually has to decide, he offered that you can disclose right away when you know almost nothing, or wait and produce a 120-page report, and the ideal sits somewhere in between.

The reaction that followed from the panel of DOJ insiders was the same that most compliance officers have: awesomely helpful, thank you. Nobody knows what that means.

The three panelists who debriefed Duva's remarks had each sat in a different seat on this exact decision.

Hui Chen was the Justice Department's compliance counsel and wrote the first iteration of the guidelines prosecutors still use to evaluate compliance programs. She has also been a compliance officer, and now advises companies as a principal at CDE. She has been on both sides of the table and wrote part of the table.

Sean Tonolli was a deputy chief in the Fraud Section until the end of 2025 and is now a partner at Cahill Gordon & Reindel. He was in the room when the current approach was built — the flowchart Duva was pointing at, Tonolli's team developed on whiteboards, specifically so a compliance officer could carry it to a board.

Matthew Axelrod was Assistant Secretary for Export Enforcement at the Bureau of Industry and Security, and before that served at the Justice Department under Deputy Attorney General Sally Yates, whose individual accountability memo still shapes what cooperation credit requires.

Between them: the person who wrote the standard, the person who applied it to live cases, and the person who ran a parallel enforcement regime. All three now advise companies making this call.

SECTION 01

Before Anything Else, Find Out Whether You Have A Choice

These criteria mean you should disclose immediately

Most of what follows assumes a genuine decision. Often there isn't one. Several regimes impose an affirmative duty to report that exists entirely independently of the Justice Department's incentive program, and once one is triggered the question stops being whether or not you should disclose, and instead becomes how fast and to whom. Run this screen first.

Government Contracts

- If you hold federal contracts, the mandatory disclosure rule requires written disclosure to the agency inspector general when you have credible evidence of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuities, or a violation of the civil False Claims Act, or a significant overpayment. Knowing failure to disclose is independent grounds for suspension or debarment.

Medicare And Medicaid Overpayments

- An identified overpayment must be reported and returned within 60 days, and retaining it past that window creates False Claims Act exposure. Going to the Justice Department does not stop this clock.

Bank Secrecy Act Filings

- Covered institutions have a mandatory suspicious activity reporting obligation on its own timeline.

Public Company Obligations

- Materiality can compel disclosure of an investigation or resolution regardless of what you decide regarding the DOJ, and your auditor has independent reporting duties once illegal acts surface.

Export Controls And Sanctions

- Disclosure to BIS, OFAC, and the State Department is formally voluntary, but the mitigation for disclosing and the exposure for not disclosing are both large enough that these behave in practice like a third category. Applied Materials agreed to pay \$252.5 million to BIS; Bosch agreed to \$36 million.

Run this screen in the first days after a report lands, not after the investigation closes. A mandatory obligation discovered late is a second problem stacked on top of the first.

This resource is not legal advice, and no framework substitutes for counsel who knows your facts. It is a structure for thinking, and for making sure the right questions get asked before the decision gets made.

SECTION 02

The Case For Self-Disclosure

Why you should go to the DOJ first

The current policy is more generous, and more specific, than what preceded it. Under the department-wide corporate enforcement policy, a company that voluntarily self-discloses, fully cooperates, and timely and appropriately remediates, absent aggravating circumstances, gets a declination. Not a presumption of one, but a guaranteed declination. Disgorgement, forfeiture, and victim compensation are still owed.

Fall short of full voluntariness and there is still a graduated path. A good-faith self-report that doesn't technically qualify, or a qualifying disclosure carrying aggravating circumstances, can still yield a non-prosecution agreement with a term under three years, no monitor, and a reduction of 50 to 75 percent off the low end of the sentencing guidelines range. Companies that cooperate and remediate without disclosing at all can still get up to 50 percent off.

Balt is the model. The company self-disclosed while its own investigation was still running, cooperated, remediated, disgorged roughly \$1.2 million, and coordinated a parallel resolution with French authorities. The Department declined to prosecute and indicted two individuals.

Beyond the mechanics, three arguments carry real weight:

The alternative is worse when you lose the option.

- Scoular did not disclose. It still earned cooperation and remediation credit, which brought its penalty down 25 percent off the bottom of the range — but it forfeited the declination path entirely and ended up with a public deferred prosecution agreement, a criminal information, and over \$10 million out the door.

Someone else may tell them first.

- Matt Axelrod put the timing question in its plainest form: the thing driving the decision is making sure that if they're going to hear about it, they hear about it from you. The infrastructure for someone else getting there first keeps growing — the SEC's whistleblower program logged a record 24,980 tips in fiscal 2024, whistleblowers filed a record 979 qui tam suits that year, and the Department now runs its own whistleblower awards program.

Cooperation credit requires individuals, and individuals talk.

- Tonolli called providing evidence about individual wrongdoers table stakes. Corporate criminal liability is vicarious — prosecutors need at least one person whose conduct they can prove beyond a reasonable doubt. Every person who could be that individual is also a person who could go to the government.

SECTION 03

The Case For Not Disclosing

What the DOJ doesn't tell you

This is the half of the conversation that rarely makes it into published guidance, and it was the most substantive part of the panel.

You Are Reasoning From A Censored Sample

- Hui Chen's core structural point: declinations and prosecutions generate public records. Companies that investigated, remediated, and chose not to disclose generate nothing. Neither do companies that declined an invitation to cooperate and watched the matter die. So the case law of practitioner intuition is built almost entirely from disclosure outcomes, which makes disclosure look more inevitable than it is.

Detection Risk Is Not Uniform, And The Agency Is Not A Neutral Narrator Of It

- An enforcement body has an institutional interest in being seen as likely to find out. In reality the probability of independent discovery varies enormously by category — close to certain in False Claims Act matters, considerably lower historically in FCPA matters, somewhere in between in national security enforcement. Roughly 41 percent of companies in FCPA matters self-reported the underlying conduct, which tells you how much that enforcement area has depended on companies volunteering.

Disclosure Is Expensive Before Any Penalty

- The average FCPA investigation runs about 39 months at an average monthly cost over \$1.5 million — roughly \$62 million in disclosed expense before a dollar of penalty. Add reputational harm from a resolution that will be made public, follow-on litigation, collateral consequences, and the obligation to hand over evidence against your own people.

Capacity Has Changed

- Matt Axelrod laid out the enforcement environment plainly: competing priorities that rank above corporate enforcement, fewer prosecutors in the FCPA unit and across U.S. Attorney's offices, and fewer agents on corporate cases as resources shift to violent crime and immigration. The FCPA unit went from 32 prosecutors to 22. FCPA corporate resolutions fell from nine in 2024 to three in 2025.

Companies Have Rights, And Using Them Is Not Bad Faith

- Hui Chen's strongest passage: the corporate compliance community is the only place in America that talks as though a government knock at the door means you're finished. Corporations have rights. People have rights. You can contest an investigation. She described a matter from her own Fraud Section tenure where prosecutors approached a company, the company declined to hand over more and told them to send a grand jury subpoena, and the case effectively ended there — because grand jury work is expensive when other companies are walking evidence in voluntarily. Her framing to hold onto: not cooperating is not the same thing as bad faith.

Over-Disclosure Is Real

- Chen's example: a company found a small foreign bribery matter in Thailand, roughly \$50,000 across several years. Outside counsel flew out two or three times, interviewed everyone, and brought the whole thing to the Department. She and the prosecutors stepped into the hallway afterward and asked each other why the company was there.

Matt Axelrod, From The Other Direction, Drew The Line That Reconciles Most Of This.

- The easy call is that you should investigate internally, find out what happened and why, and remediate so it stops. The hard call is the one additional step of walking in and serving yourself up. And if you take the easy-call steps and don't disclose, and the government does come knocking, you can still go into full cooperation mode and get substantial benefits — without having guaranteed yourself a public resolution.

SECTION 04

How Fast is Fast Enough?

How is “prompt disclosure” defined?

AAG Duva didn't define prompt, and neither does the policy, with one exception.

The general standard requires disclosure within a reasonably prompt time after becoming aware of the misconduct, and expressly places the burden on the company to prove that it was timely. Voluntariness also collapses if the conduct is already known to the Department, if you had a preexisting duty to report it, or if disclosure comes after an imminent threat of disclosure or investigation.

The one hard number sits in the whistleblower provision. If someone reports internally and also goes to the Department, you can still qualify for a declination provided you self-report as soon as reasonably practicable and no later than 120 days after receiving the internal report.

Sean Tonolli flagged the drift in that language, and it matters. The earlier version simply said within 120 days. The current department-wide policy says as soon as reasonably practicable but no later than 120 days. As he put it, they muddied the water. 120 days is now an outer limit rather than a landing zone. What practitioners heard from officials informally was a matter of weeks or a few months, certainly not a year or longer.

The clock starts when you become aware, not when your investigation finishes. That means the investigation and the disclosure analysis have to run in parallel. The policy contemplates disclosing before an internal investigation is complete.

Sean Tonolli's caution is the one to carry into the boardroom. You owe your shareholders an informed decision, and you cannot make one under the assumption that you must run in the second an allegation lands. The answer is speed in scoping, not speed in committing.

SECTION 05

Ten Questions To Work Through

Work these in order. The first one can end the exercise.

- 01

Is There A Mandatory Reporting Obligation?

Run the screen from Panel 1. If any lane is triggered, discretion is largely gone.
- 02

Is The Conduct Provably Criminal, Or Is It A Policy Violation?

Not every failure is a crime. Prosecutors are directed away from routine business practices and de minimis courtesies.
- 03

Is There An Identifiable Individual Whose Conduct Can Be Proven?

Corporate liability is vicarious. If there is no provable individual, ask what exactly you would be disclosing.
- 04

How Likely Is Independent Discovery?

Answer this by category, not by instinct. Government-funds fraud is near-certain to surface. Foreign bribery historically is not.
- 05

Who Already Knows?

Internal reporters, departed employees, third parties, joint venture partners, the counterparty's counsel. Any of them can start your clock.
- 06

Is The Conduct Ongoing Or Historic?

Ongoing conduct you cannot stop without disclosing is a different problem than closed conduct.
- 07

Is It Isolated Or Systemic, And Does It Reach Senior Management?

These map directly onto the aggravating circumstances — pervasiveness, egregiousness, severity of harm, recidivism within five years — that determine whether a declination is even available.
- 08

What Is The Jurisdictional Footprint?

Parallel foreign exposure can force a timeline regardless of your U.S. analysis, as Balt's coordinated French resolution shows.

09 What Does This Cost Either Way?

Investigation and counsel, disgorgement, penalty exposure, reputational and litigation consequences — against the cost of a government-initiated case discounted by your honest answer to question 4.

10 What Does The Board Actually Want, And Does It Know Enough To Want It?

Hui Chen's observation applies here: where compliance struggles most is with senior individuals, because legal, compliance, and HR have limited ability to hold them accountable. That is when the board has to step in rather than receive a briefing.

Decision record fields

Capture these while the analysis is live, not afterward.

- Date awareness established, and by whom (e.g., "hotline report received 14 March; escalated to GC 16 March")
- Mandatory obligation screen: which regimes checked, outcome (e.g., "FAR N/A — no federal contracts; 60-day rule N/A")
- Scope as currently understood, and known gaps (e.g., "three countries confirmed, fourth unresolved")
- Individuals identified and evidentiary status (e.g., "two named, one corroborated by documents")
- Detection-risk assessment and basis (e.g., "moderate — departed employee had access to records")
- Decision, decision-maker, and date (e.g., "defer disclosure pending scope; GC and Audit Committee chair; 2 April")
- Review date (e.g., "reassess 1 May or on any new fact")

SECTION 06

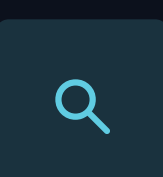
An Index of Issue Types

When to disclose promptly, investigate further, or handle internally



Disclose Promptly, Or You Likely Have No Choice

- Credible evidence of a FAR-covered violation on a federal contract — no discretion, and non-disclosure is its own basis for debarment
- An identified Medicare or Medicaid overpayment — 60-day clock, independent of any DOJ decision
- Foreign bribery with a cartel or transnational criminal organization nexus — the first FCPA enforcement criterion, and Scoular shows the Department will pursue modest, historic conduct that touches it
- Export control or sanctions conduct with national security implications
- Conduct implicating senior executives or the board — pervasiveness and management complicity are aggravating circumstances that can foreclose a declination
- A whistleblower who has already gone external, or credibly signaled they will — voluntariness collapses on an imminent threat of disclosure
- Ongoing conduct that cannot be stopped without disclosing it
- Activity triggering a suspicious activity report



Investigate First, Then Decide

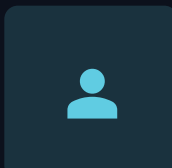
- A single-source or anonymous allegation of uncertain credibility
- Conduct whose criminality is genuinely unsettled
- Third-party or agent conduct where the company's knowledge or authorization is unestablished
- Accounting irregularities of unclear intent



Investigate First, Then Decide

- Allegations surfacing through litigation or a commercial dispute, where the source has an incentive to overstate

Note: this group is where the clock is most dangerous, because it feels like a pause and isn't one. Run the investigation and the disclosure analysis on parallel tracks.



Handle Internally, Or Route To The Right Regulator

- Internal policy violations with no criminal exposure
- HR and employment matters
- Expense, gift, and hospitality violations below any materiality threshold
- Immaterial books-and-records issues remediated internally
- Technical self-referral violations that belong in the regulator's own disclosure protocol rather than at the Justice Department
- Matters squarely within a sector regulator's jurisdiction
- A small, historic, fully remediated matter where the honest answer to "why are we here" is that nobody asked the question

OUTRO

In Conclusion

A decision not to disclose is not obstruction. It is an assessment of cost and risk — and like any such assessment, it is only defensible if you can show the work.

Hui Chen's guidance on this was the most concrete practical advice in the hour. What she would document, under privilege and to the hilt: that you found it, that you thoroughly investigated it, that you did a root cause analysis, and that you fully remediated. Then, if the government does come knocking, you decide at that point how much you want to cooperate — from a position of having already done the work rather than scrambling to reconstruct it.

She is not recommending that anyone walk away from misconduct. Her condition is full remediation, and she is explicit that remediation without accountability for individuals is window dressing. You cannot credibly claim to have strengthened a program without root cause analysis, without organizational justice, and without dealing with the people involved. Those are not separate exercises.

The record should establish four things:

- What you found, and the limits of what you could determine
- How you investigated, including scope decisions and why you drew the lines where you did
- Why the conduct did or did not create the exposure that would compel disclosure, with the mandatory-obligation screen documented
- What you changed, at the level of root cause and individual accountability, not just controls

The policy is real, the benefits are real, and for a large share of matters walking in early is the right answer. But the policy answers a question the compliance officer isn't actually asking. It describes what happens after the decision. It doesn't help make it.

What the panel offered instead was a discipline. Find out first whether the decision is even yours, because a mandatory obligation removes the debate. Separate the easy call from the hard one — investigate, understand, and remediate regardless, because none of that depends on what you eventually decide about disclosure. Then make the hard call deliberately, weighing what disclosure actually costs against an honest estimate of whether this would ever have surfaced without you.

And whichever way you go, write down why. The company that disclosed and the company that didn't are both, eventually, going to be asked to explain themselves. Only one of those conversations is scheduled.