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AN EXECUTIVE BRIEFING

The True Cost of a DOJ 'Willful Violation' Prosecution

Why the C-Suite's Most Expensive Safety Net Rarely Holds

If you are a CEO, CTO, or CISO, your calendar is full of risks that feel like they belong to the company: breach liability, regulatory filings, audit findings, shareholder exposure. There is one category of risk that does **not** belong to the company — and that is a federal criminal prosecution for a 'willful violation' of regulation. That one belongs to you, personally. And the safety net you have always assumed is stretched beneath you — your Directors and Officers (D&O) insurance — is not what you think it is. [Note: Page five features two educational videos that readers love.]

This briefing is not a general compliance reminder. It is a candid look at three facts: 1) how often the DOJ wins these cases, 2) who it is focused on, and 3) what your D&O policy will actually do for you when a conviction lands. The conclusions are not comfortable. They are grounded in the DOJ's own enforcement data and the standard language of modern executive liability policies.

Part 1. The DOJ's Enforcement Record

The Department of Justice does not file federal charges casually. By the time an Assistant U.S. Attorney decides to indict, the investigation into the case often stretches back years, and the evidentiary record is considered nearly airtight by the prosecution. The outcomes reflect that selectivity: **the overall federal conviction rate sits between 90 and 95 percent** across all cases that reach the prosecution stage.

90–95%	88.7%	>90%
Overall Federal Conviction Rate	DOJ Fraud Section 2025	Trial Conviction Rate

In 2025, the DOJ's Fraud Section is the specialized arm responsible for **healthcare fraud,** financial crimes, and market and consumer fraud. DOJ's Fraud Section — charged 265 individuals and obtained 235 convictions. The Health Care Fraud Unit alone charged 194 people and convicted 150. The Market, Government, and Consumer Fraud Unit obtained 75 convictions — more than it charged in that year, because the total includes cases unsealed from earlier indictments. Roughly 90 percent of federal defendants plead guilty rather than face trial, and for those who do fight their cases in court, conviction rates still exceed 90 percent.

The reason for plea bargains is arithmetic, not cowardice. **Federal sentencing guidelines impose substantially longer sentences after a trial loss than after a plea.** Defendants who believe they are innocent still frequently plead guilty because the downside of losing at trial is too catastrophic to risk. This dynamic means that by the time charges are filed, the executive's realistic options are already narrow: **accept a negotiated outcome, or roll the dice against an opponent with a 90-plus percent win rate.**

Part 2. The C-Suite Is the Target

For most of the past two decades, corporate prosecution meant prosecuting the corporation — fines, deferred prosecution agreements, compliance monitors. Individuals were charged in only about 34 percent of cases where a corporate entity reached a negotiated criminal settlement. That era is over. The DOJ has made individual accountability an explicit enforcement priority, and its charging patterns reflect that shift.

For closely-held organizations — where the line between corporate decision-making and individual responsibility is shorter — top management is convicted in roughly **51 % of cases**. The 'willful violation' charging theory is designed precisely for executives: it alleges that a specific individual, in a position of authority, either knew about a regulatory obligation and consciously chose to disregard it, or was aware of a substantial risk of a violation and failed to act.

The role titles in the crosshairs have expanded. The 2022 federal conviction of Joseph Sullivan, Uber's former Chief Security Officer, for his handling of a 2016 data breach established that a CISO's incident-response decisions can themselves serve as the basis for a criminal charge. Sullivan did not write malicious code or steal data. He made decisions about disclosure. Those decisions resulted in a federal conviction. The message reached every security officer in the country: your title does not insulate you; your decisions define your exposure.

The same logic applies to CTOs whose architectural choices affect regulated data, and to CEOs whose strategic direction sets the organization's risk posture. Delegation is not a defense. **If compliance raised a concern, if legal counsel outlined the obligation, if a risk assessment flagged the vulnerability — and the violation continued — prosecutors will argue the paper trail pointing toward willful disregard ends at the executive with the authority to stop it.**

Part 3. The D&O Insurance Illusion

This is where this briefing becomes genuinely uncomfortable, because most executives fundamentally misunderstand what their D&O policy does in a criminal context. The misunderstanding is costly at the wrong moment.

D&O as a Conditional Loan: The Recoupment Trap

When criminal charges are filed, your D&O policy will likely begin paying your legal defense costs. This is called **advancement of expenses**. Attorneys, expert witnesses, investigators, court costs — the insurer pays as the bills come in. For a complex federal case, those bills routinely reach seven figures, and in high-profile matters they can run well beyond $4 million before trial even begins.

Here is the clause most executives have never read: advancement of expenses is not the same as payment. It is conditional. Virtually every modern D&O policy contains a 'fraud' or 'illegal acts' exclusion, triggered by a **final, non-appealable adjudication** that the executive committed a willful or criminal act. When that finding is entered, the insurer's **recoupment right** activates. The insurer can claw back every dollar it has advanced.

Read that again. The money your policy paid toward your defense becomes a debt you personally owe, due upon conviction. It is not forgiven. It is not discharged in bankruptcy in most circumstances. It is a personal obligation tied directly to a criminal judgment. The insurance that felt like protection functions, in the worst case, as a **high-interest, non-dischargeable loan** with a repayment trigger that fires at the exact moment of maximum financial distress.

Criminal Fines and Penalties: Never Covered. Ever.

The second illusion is simpler and starker. **D&O insurance does not cover criminal fines, court-ordered penalties, or restitution. Not partially. Not under special circumstances. Never.** This is not a matter of policy negotiation. It is public policy law. **Insurers are prohibited from indemnifying individuals against the punitive consequences of proven criminal conduct, because allowing insurance to absorb criminal penalties would eliminate their deterrent purpose.**

In most jurisdictions, corporate indemnification is similarly barred. Your employment agreement cannot save you. Your company's promise to 'make you whole' does not extend to the criminal penalties themselves — only, at most, to civil and defense costs, and even that is limited by state law. Consider what a post-conviction financial picture looks like for a hypothetical executive found guilty of a willful violation in a significant healthcare or data privacy case:

ILLUSTRATIVE SCENARIO: Post-Conviction Financial Exposure	AMOUNT
Defense costs advanced by D&O carrier over 3 years	**$4,200,000**
Criminal fine imposed at sentencing	**$2,500,000**
Court-ordered restitution to victims/government programs	**$8,750,000**
D&O recoupment claim (clawback of advanced defense funds)	**$4,200,000**
TOTAL PERSONAL FINANCIAL EXPOSURE	**$15,450,000**

Every figure in that table is realistic.

- Healthcare fraud penalties can reach three times the amount of improper billings, with per-claim multipliers on top.
- State data privacy regulators now routinely impose eight-figure penalties for breaches tied to willful security failures.
- Securities and financial fraud cases regularly produce individual fines and disgorgement in the tens of millions.

The defense-cost figure is conservative for a three-year federal prosecution involving expert witnesses, forensic analysis, and trial preparation. **Every dollar in that table — including the recoupment claim — is owed personally, by the individual executive, with no insurance absorbing the impact.**

What Your D&O Policy Will NOT Do in a Willful Violation Conviction:

- It will not pay your criminal fines, statutory penalties, or court-ordered restitution — these are uninsurable as a matter of public policy.
- It will not protect you once a final adjudication of willful or criminal conduct is entered — the exclusion activates on that finding.
- It will not forgive the defense costs already advanced — the insurer's recoupment right turns those advancements into a personal debt.
- It will not protect you against personal profit exclusions — any allegation of bribes, kickbacks, or illegal gains can deny coverage outright.
- It will not preserve its limits indefinitely — defense costs erode the policy's total coverage dollar-for-dollar under 'burning limits.'

Part 4. Why Delegation Is Not a Defense

Executives instinctively reach for delegation as a liability management tool. You have a Chief Compliance Officer. You have a General Counsel. You have outside auditors and a risk committee. Surely their sign-off transfers the risk away from you.

It does not. The willful violation standard does not require that you personally executed the prohibited act. It requires that you knew, or were reckless about, a specific regulatory obligation — and that you had the authority to cause the organization to comply. For a sitting CEO, CTO, or CISO, both conditions are typically met before the conversation even starts. What remains is the evidence. The two videos on page five explain the concept of willful violation very well.

That evidence increasingly lives in electronic form. Emails to the board. Slack messages to the compliance team. Quarterly risk reports. Memos from outside counsel. Minutes of executive committee meetings. In the current legal landscape, prosecutors rarely need a confession. Instead, prosecutors now rely on a documented trail—often electronic, thorough, time-stamped, and preserved—that demonstrates an executive was aware of a risk but failed to act. **Executive liability shifts dramatically when the CTO or CISO formally notifies the CEO and the Board of Directors (BOD) of the technical inability of the status quo to address critical issues such as regulatory compliance or the "Harvest Now, Decrypt Later" threat.** Given that major tech titans like Microsoft, Google, and IBM anticipate that current encryption will become obsolete around 2029 (an event termed Q-Day), this notice transfers the primary liability for inaction from the CTO/CISO to the CEO and the BOD. Any inaction by a CEO or BOD is a “willful violation”.

This is why every compliance escalation that reaches an executive’s desk should be treated as a legal notice. Awareness is a precondition of willfulness. How you respond once you are aware determines whether that awareness becomes a defense or a liability.

Part 5. What to Do Before There Is a Case File

By the time the DOJ or one of the 50 states’ regulatory agencies serves a subpoena or issues a target letter, the most important decisions about your personal exposure have already been made. Remediation at that point is **damage control, not protection**. The actions below should be treated as urgent, ongoing executive hygiene — not one-time legal projects.

Four Actions for Every C-Suite Executive:

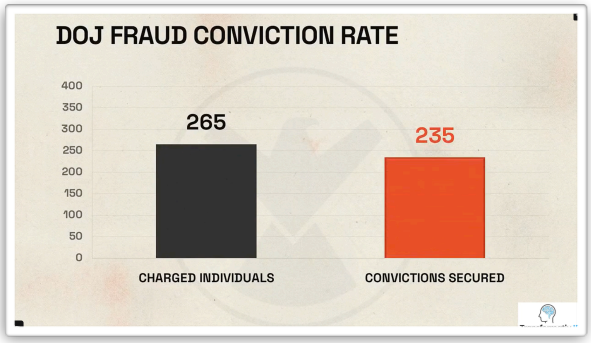
- **Commission a personal review of your D&O policy. Retain independent coverage counsel — not your corporate broker — to analyze the recoupment provisions, the exact language of the fraud exclusion, the trigger for final adjudication, and the definition of 'insured person.' (CISOs especially: confirm in writing that your role is covered.)**
- **Separate your personal legal exposure from the company's.** Ask your General Counsel a different question than you normally ask: not 'what is the company's risk,' but 'what is my personal criminal exposure in my current role.' The answers are different.
- **Document your responses to compliance escalations.** When a risk is flagged, your written response becomes your defense. Ambiguity becomes willful disregard. Clarity becomes due care.
- **Consider individually-held Side A DIC coverage.** This is supplemental coverage that activates when corporate indemnification is unavailable — including insolvency or derivative claims. It does not solve the criminal fine problem, but it materially reduces the defense-cost recoupment risk.

The Bottom Line

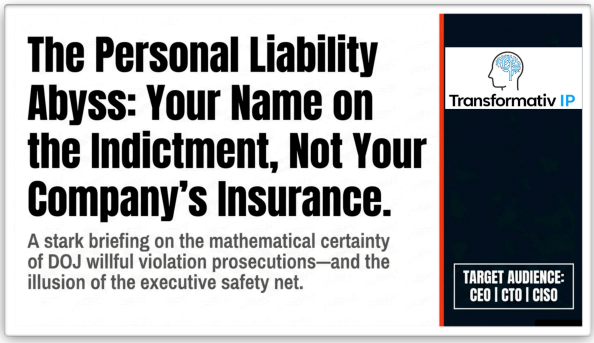
The DOJ convicts at rates approaching certainty. Its Fraud Section is structurally focused on individual executives. The willful violation standard is designed to reach decisions made at your level. The D&O policy that feels like protection is, in a criminal-conviction scenario, a defense-funding loan with an activation trigger at the worst possible moment — and it **never** covers fines, penalties, or restitution.

This is not a pessimistic forecast. It is the operating reality reflected in the DOJ's own enforcement data and the standard language of the insurance industry. The executives who navigate this landscape well are not the ones who trust their coverage. They are the ones who **read it, stress-test it, and make decisions today, assuming it may not hold.** The safety net is narrower than the marketing suggests. Plan accordingly.

Cinematic Video Explaining Willful Violation (4min)



Narrated SlideDeck Video re: C-Suite Liability (2min)



This article is intended for informational and educational purposes only and does not constitute legal, financial, or insurance advice. Executives should consult qualified counsel and experts regarding their specific circumstances, policy terms, and jurisdiction.

Data sources: DOJ Fraud Section 2025 Year in Review; DOJ Criminal Division public reports; Alston & Bird LLP DOJ Analysis (Feb. 2026); Arnold & Porter / AFS Law DOJ Fraud Section Takeaways (2025); Wiley Law DOJ Year-in-Review Alert (2025); U.S. Sentencing Commission Annual Report (2024); Transactional Records Access Clearinghouse (TRAC); NACD Director Essentials on D&O Insurance; Harvard Law School Forum on Corporate Governance.