

## **AABANY 2025 Fall Conference**

### **Working with Cooperators and Whistleblowers Across Cultures and Systems**

New York Law School

Saturday, September 27th, 2025

10:45 AM – 12:15 AM

#### **Speakers**

Rahul Agarwal, Partner, Friedman Kaplan Seiler Adelman & Robbins

Anden Chow, Partner, MoloLamken LLP

Yi Liu, Senior Counsel, Labor and Employment Division, New York City Law Department

Elizabeth Mo, Counsel, The Law Firm of Hugh H. Mo, P.C. (“Mo Law”)

Michael Ramos, Partner & Chief Risk and Compliance Officer, Nardello & Co. LLC

Li Yu, Partner, Bernstein Litowitz Berger & Grossmann LLP

#### **Moderator**

Pei Pei Cheng De Castro, Partner, Barclay Damon LLP

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#### **Agenda**

**Total Duration: 90 minutes**

10:45 AM – 10:50 AM (5 min)	Welcome & Introduction
10:50 AM – 11:15 AM (25 min)	Criminal Cooperator Scenario <ul style="list-style-type: none"><li>• Difference between hypotheticals between cooperators and whistleblowers</li><li>• Hypothetical 1: “The Silent Partner”</li></ul>
11:15 AM – 11:40 AM (25 min)	Whistleblower/retaliation scenario <ul style="list-style-type: none"><li>• Hypothetical 2: “The Reluctant Reporter”</li></ul>
11:40 AM – 11:05 AM (15 min)	Moderator Comparison & Reflection on Cross-cutting themes <ul style="list-style-type: none"><li>• Tips to handle situation when your legal strategy clashes with the client’s cultural instincts</li><li>• Personalized cross-functional work with immigration, HR, or other counsel</li></ul>
11:05 AM – 12:15 PM (5 min)	Q&A

#### **NY CLE Credit**

1.5 Areas of Professional Practices  
(Transitional and non-transitional)

## **CLE Materials**

### **Hypo 1: Cooperators – “The Silent Partner”**

- U.S. Sentencing Guidelines (U.S.S.G.) § 5K1.1 (Government motion allows downward departure if defendant provides “substantial assistance.”)
- 18 U.S.C. § 3553(e), Allows court to sentence below mandatory minimums upon government motion.
- Proffer Agreements & “Queen for a Day”, Fed. R. Evid. 410 & Fed. R. Crim. P. 11(f). Limited use immunity but statements can be used for impeachment or derivative leads.
- S, T, or U visas, or deferred action, may be available for key cooperators.

### **Hypo 2: Whistleblowers – “The Reluctant Reporter”**

- Sarbanes-Oxley Act (SOX), 18 U.S.C. § 1514A
- False Claims Act (FCA), 31 U.S.C. §§ 3729–3733 (qui tam + retaliation § 3730(h))
- Title VII of the Civil Rights Act (42 U.S.C. § 2000e et seq)
- 240 C.F.R. Part 21F (SEC whistleblower regulations)
- 26 C.F.R. § 301.7623 (IRS whistleblower regulations)
- *Murray v. UBS Securities LLC*, 601 U.S. 23 (2024) (elements of Sarbanes-Oxley retaliation claim)
- *U.S. ex rel. Polansky v. Executive Health Resources*, 599 U.S. 419 (2023) (the federal government’s authority to dismiss qui tam case over whistleblower’s objection)
- *U.S. ex rel. Silbersher v. Allergan*, 46 F.4<sup>th</sup> 991 (9th Cir. 2022) (public disclosure requirements of the False Claims Act)

## **I. Hypo 1: Criminal Cooperator – “The Silent Partner” (20 minutes)**

**Team 1:** (3 panelists) Rahul Agarwal (Friedman Kaplan), Elizabeth L. Mo (Mo Law), Michael Ramos (Nardello & Co. LLC),

### **Summary:**

You represent a mid-level executive at a crypto startup charged in a federal wire fraud and conspiracy case, among other charges. The government wants your client to proactively cooperate against company leadership (CEO, CFO, venture capitalists, etc.) and possibly elected officials. Company leadership includes distant relatives. Your client, from an East Asian immigrant background, fears cultural and community backlash. He faces immigration consequences because his H-1B visa was sponsored by this crypto startup, and the initial petition he signed may have included false information. Client speaks English but not as fluently as he thinks, and declines interpreter assistance if/when he meets with prosecutors. The government wants proactive cooperation, such as controlled calls, possibly wearing a wire, etc.

### **Discussion Questions:**

1. Applicable laws/cases?
2. How do you assess your client’s credibility?
3. How do you decide whether to pursue cooperation?
4. How do you balance cultural sensitivity with strategic risk in advising your client?
5. What steps do you take to ensure informed consent?
6. What safeguards do you request from the government (*e.g.*, immigration protections, interpreter use, limits on surveillance)?
7. How do you weigh the pros and cons of cooperation given language and cultural credibility risks?
8. How do you advocate for a client in a system that may not recognize cultural hesitation?
9. How do you advise the client in dealing with his employer? Company in-house counsel, if they have counsel?
10. From a prosecutor’s perspective, how would you encourage cooperation?

### **General Takeaways:**

1. Cooperating with federal prosecutors depends on case-specific factors.
2. Cooperator will have to admit/accept responsibility
3. Cooperation takes time. It may not lead to an immediate case resolution favorable to the client.
4. Cooperation is risky. Client may lose bargaining leverage in resolving case.

## **II. Hypo 2: Whistleblower (20 minutes) - “The Reluctant Reporter”**

**Team 2:** (3 panelists) Anden Chow (MoloLamken LLP), Yi Liu (NYC Law Department), Li Yu (Bernstein Litowitz Berger & Grossman LLP)

### **Summary:**

The whistleblower is a mid-level South Asian female HR manager at a U.S. subsidiary of a Southeast Asian family-owned manufacturing plant conglomerate, who reported falsification of safety inspection records internally to the compliance department. This implicates certifications the subsidiary has made in large scale supply contracts with federal and state authorities. After reporting, she faces workplace hostility and is hesitant to escalate further due to cultural norms discouraging confrontation. The U.S. subsidiary company wants to resolve the matter quietly but anticipates intense regulatory scrutiny, parent company complications and PR/media backlash.

### **Discussion Questions:**

1. Define the perspective:
  1. Representing the whistleblower
  2. Representing the company (in-house counsel)
2. What are potential applicable laws?
3. How do you balance legal obligations with the whistleblower’s cultural reluctance to “make waves”?
4. How do you advise the company on avoiding or addressing retaliation?
5. How do you build trust with the whistleblower to preserve evidence and prevent harm?
6. How do privilege, internal investigations, and regulatory obligations intersect here?
7. What happens if regulators later accuse the company of ignoring “red flags”?

### **Takeaways:**

1. Address cultural factors thoughtfully while meeting legal requirements.
2. Protect whistleblowers to encourage safe and effective reporting.
3. Advise whistleblowers about their rights and explain risks.
4. Coordinate closely with legal, HR, and compliance to mitigate risk.
5. Balance privilege and transparency carefully during investigations.

## **Participant Takeaway Checklist**

### **I. Cooperators – “The Silent Partner”**

- **Applicable Regulations/Law:** USSG §5K1.1, proffer agreements, plea/cooperation rules, immigration consequences.
- **Credibility Assessment:** Language barriers, interpreter needs, cultural hesitation.
- **Strategy Decisions:** Risks of proactive cooperation (wires, controlled calls, testimony).
- **Cultural Sensitivity:** Anticipate family/community backlash while advising candidly.
- **Informed Consent:** Explain cooperation options clearly; confirm client understands.
- **Safeguards:** Negotiate immigration protections, scope limits, safety measures.
- **Bargaining Leverage:** Time cooperation carefully to avoid weakening defense.
- **Advocacy:** Frame cultural reluctance without undermining credibility.

**Bottom Line:** Cooperation is case-specific, time-sensitive, and requires balancing cultural, immigration, and credibility concerns.

### **II. Whistleblowers – “The Reluctant Reporter”**

- **Applicable Regulations/Law:** Dodd-Frank, Sarbanes-Oxley, state/local statutes.
- **Cultural Reluctance:** Address hesitation to “make waves” while meeting legal obligations.
- **Anti-Retaliation:** Advise company on compliance, policies, monitoring.
- **Trust Building:** Preserve confidentiality, encourage documentation, protect evidence.
- **Privilege:** Structure investigations carefully to preserve attorney–client privilege.
- **Coordination:** Align HR, compliance, in-house, and outside counsel.
- **Regulatory Risks:** Anticipate accusations of ignoring “red flags” if issues buried.

**Bottom Line:** Protect whistleblowers, manage company risk, and integrate cultural understanding into compliance and investigation strategy.

### **III. Cross-Cutting Themes & Final Takeaways**

- Balance cultural sensitivity with legal/ethical obligations.
- Translate law into plain, accessible advice to clients.
- Early communication with government/regulators can shape outcomes.
- Trust is foundational: cultural awareness builds client confidence.

- Multidisciplinary teamwork strengthens strategy.
- Credibility and trust across cultural divides are often outcome-determinative.

**Notes:**

## **Faculty Biography**

### **Rahul Agarwal**

White collar and Litigation Partner, Friedman Kaplan Seiler Adelman & Robbins

**Rahul Agarwal** is a white collar and litigation partner at Friedman Kaplan Seiler Adelman & Robbins, where he represents and counsels companies, individuals, and governmental entities in complex civil litigation, white collar defense, regulatory investigations, and crisis management. Before entering private practice, Rahul served as a federal prosecutor in the U.S. Attorney's Office for the District of New Jersey, where he led and supervised major prosecutions involving securities and healthcare fraud, public corruption, and civil rights violations, and where he received the Department of Justice's Director's Award for Superior Performance. He was promoted to Deputy Criminal Chief, Executive Assistant United States Attorney, and, eventually, Acting Principal Assistant United States Attorney (the second-highest ranking position in the Office).

Following his tenure as a prosecutor, Rahul served as Deputy Chief Counsel to the Office of the Mayor of New York City, advising the Mayor and City Hall on a variety of legal and policy matters and providing oversight across more than ten city agencies. Rahul serves on the Board of Directors of the Sonia & Celina Sotomayor Judicial Internship Program, the Lawyers Advisory Committee of the New York City Urban Debate League, and as an Editor for the ABA's Litigation Journal. Rahul is a past President of the South Asian Bar Association of New York, having served in that role in 2011.

Rahul earned his B.A. from Brown University and J.D. from Columbia Law School.

### **Pei Pei Cheng De Castro**

Partner, Barclay Damon LLP

**Pei Pei Cheng de Castro** is a Partner at Barclay Damon LLP. She has more than 20 years of experience in private practice and at the highest level of New York State government, including Deputy Counsel to Governor, Executive Deputy Inspector General at the Office of the Metropolitan Transportation Authority Inspector General, and Director of Investigations at the state ethics and lobbying commission. She has represented clients across a range of industries in complex commercial litigation; she has also assisted clients with complex regulatory and compliance issues, including ethics and lobbying, government and internal investigations, and criminal defense in federal and state courts. Her experience is also invaluable when providing representation with respect to governmental inquiries and interactions in New York City, New York State, and federally. In her role as deputy counsel to the governor of New York, Pei Pei managed high-profile disputes and controversies for all executive agencies, handled special projects for the governor, oversaw executive state litigation, and was liaison to the Office of the Attorney General and to the State Comptroller. She further had responsibility for matters involving ethics, risk management, compliance, and procurement across New York State's executive



agencies. While in her role as deputy counsel to the governor, Pei Pei also served as counsel to the Executive Chamber, which works to advance the governor's policy initiatives and agenda by overseeing government operations and coordinating with state agencies, federal and local governments, and community stakeholders. Pei Pei served as a part-time adjunct professor of law at Fordham Law School and New York Law School. She is on the Advisory Board for the Museum of Chinese in Americas, Chair of the New York State IOLA Board, Senior Fellow at the Center for New York State and City Law, and founding trustee for the Central Queens Academy Charter School.

Pei Pei earned her B.A. from University of California, Berkeley and J.D from New York Law School. Pei Pei currently serves as one of the Vice Presidents of Programs & Operations at AABANY.

### **Anden Chow**

Partner, MoloLamken LLP

**Anden Chow** is a Partner at MoloLamken LLP who assists companies and individuals in complex domestic and cross-border criminal, regulatory, and asset forfeiture investigations. He advises on U.S. economic sanctions, AML regulations, the FCPA, cryptocurrency issues, and asset tracing. He also represents clients in high-stakes civil litigation. Prior to joining MoloLamken, Mr. Chow spent nearly a decade as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York, Mr. Chow investigated and litigated federal matters involving fraud and international financial transactions, including sanctions evasion, FCPA violations, and money laundering through both traditional and cryptocurrency platforms.

### **Yi Liu**

Senior Counsel, Labor and Employment Division, New York City Law Department

**Yi Liu** is a Senior Counsel at the New York City Law Department in the Labor and Employment Division. He represents the City of New York, Commissioners and employees of the City's departments and agencies on Labor and Employments matters in Federal and New York State Courts, Article 78 and Administrative Proceedings. Previously, Yi served as a Deputy Bureau Chief at the Kings County District Attorney's Office. As a Deputy Bureau Chief, Yi supervised a team of assistants on all aspects of prosecution from initial intake and case evaluation to hearings and trials. As a Senior Assistant District Attorney, Yi conducted numerous hearings as well as jury and bench trials on violent felony offenses. Yi also led investigations involving police corruption within the New York City Police Department and identity fraud relating to various banks and financial institutions. Yi is an active member of the National Asian Pacific Islander Prosecutors Association, Asian American Bar Association of New York, and National Asian Pacific American Bar Association. He currently serves as the Chief Operating Officer of the NAPIPA Foundation

and a Co-Chair of the Government Enforcement and Compliance Committee of NAPABA. Yi previously served as a vice co-chair of the Prosecutor's Committee of the AABANY.

Yi earned his B.A. from CUNY Baruch College and J.D. from Southern University Law Center.

**Elizabeth L. Mo**

Counsel, The Law Firm of Hugh H. Mo, P.C. ("Mo Law")

**Elizabeth L. Mo** began her legal career as an Assistant District Attorney at the Manhattan District Attorney's Office, serving in both the Trial and Investigation Divisions, including the Financial Frauds Bureau and Crime Strategies Unit. She also served as Legal Counsel for a high-end NYC events and catering company that provided job training and employment to survivors of domestic violence and human trafficking, where she oversaw all labor and employment matters, internal policies, and investigations.

Currently, Ms. Mo co-chairs the National Asian Pacific American Bar Association's Government Enforcement and Compliance Committee. She is an active member of the Asian American Bar Association of New York, where she previously co-chaired the Young Lawyers Committee.

Ms. Mo's commitment to public service is longstanding. Before law school, she served as a Paralegal Specialist in the U.S. Department of Justice's Outstanding Scholars Program, working in the Public Integrity Unit at the U.S. Attorney's Office for the Eastern District of New York (EDNY). During law school, she gained additional experience as a Legal Intern at EDNY and as a Legal Extern at the U.S. Department of Labor's New York Regional Solicitor's Office.

Ms. Mo earned her B.A. in International Relations from Mount Holyoke College and J.D. from Boston University School of Law.

**Michael Ramos**

Partner & Chief Risk and Compliance Officer, Nardello & Co. LLC

**Michael Ramos's** legal and investigative career has spanned more than 30 years. At Nardello & Co., Michael has managed large litigation support investigations across multiple jurisdictions involving internal fraud, defense against RICO actions, libel cases, and criminal defense matters.

Clients quoted in Chambers praise Michael for being, "Very strategic and creative and has a deep understanding of the corruption and international investigations space" and continue that "He has a great sense of knowing what the end result will be and how things will go into evidence. This makes him better equipped to zero in on valuable intelligence."

Prior to joining the firm, Michael served as an Assistant US Attorney in the Eastern District of New York. Earlier in his career, he clerked for the Honorable Joan M. Azrack in the Eastern District of New York and then worked at Zuckerman Spaeder LLP. Before his legal career, Michael was an associate director with another international investigations firm, where he

conducted pre-transaction due diligence, asset searches, and fraud investigations on behalf of Fortune 500 corporations, financial institutions, law firms, and foreign governments.

Michael earned his B.A. from Rutgers University and J.D. from Brooklyn Law School.

**Li Yu, Partner**

Bernstein Litowitz Berger & Grossmann LLP

**Li Yu** is a partner in BLBG's New York office, where he represents whistleblowers in qui tam actions and shareholders in securities cases.

Li Yu is a seasoned trial and appellate lawyer with deep experience in healthcare fraud and financial fraud cases. He served for over a decade in the Southern District of New York U.S. Attorney's Office as an Assistant U.S. Attorney and Senior Counsel for the Civil Fraud Unit. In those roles, he investigated and litigated cutting-edge civil fraud cases involving drug marketing kickback schemes, Medicare Advantage risk adjustment fraud, pharmacy billing fraud, medical device fraud, and mortgage fraud. Li's efforts led to major settlements yielding over \$800 million in total government recoveries.

Li also has experience in congressional investigations and securities enforcement from having served as senior counsel to the Senate Permanent Subcommittee on Investigations and having worked in the enforcement department at FINRA. In addition, he teaches two courses at Brooklyn Law School—one on healthcare regulation and one on congressional investigations.

Li earned his B.A. from Wesleyan University and J.D. from Columbia Law School.