

LANNY BREUER ADMITS THAT ECONOMISTS HAVE CONVINCED HIM NOT TO INDICT CORPORATIONS

I've become increasingly convinced that DOJ's head of Criminal Division, Lanny Breuer is the rotting cancer at the heart of a thoroughly discredited DOJ. Which is why I'm not surprised to see this speech he gave at the NYC Bar Association selling the "benefits" of Deferred Prosecution Agreements. (h/t Main Justice) He spends a lot of his speech claiming DPAs result in accountability.

And, over the last decade, DPAs have become a mainstay of white collar criminal law enforcement.

The result has been, unequivocally, far greater accountability for corporate wrongdoing – and a sea change in corporate compliance efforts. **Companies now know that avoiding the disaster scenario of an indictment does not mean an escape from accountability.** They know that they will be answerable even for conduct that in years past would have resulted in a declination. Companies also realize that if they want to avoid pleading guilty, or to convince us to forego bringing a case altogether, they must prove to us that they are serious about compliance. **Our prosecutors are sophisticated. They know the difference between a real compliance program and a make-believe one.** They know the difference between actual cooperation with a government investigation and make-believe cooperation. **And they know the difference between a rogue employee and a rotten corporation.**

[snip]

One of the reasons why deferred prosecution agreements are such a powerful tool is that, in many ways, a DPA has the same punitive, deterrent, and rehabilitative effect as a guilty plea: when a company enters into a DPA with the government, or an NPA for that matter, it almost always must acknowledge wrongdoing, agree to cooperate with the government's investigation, pay a fine, agree to improve its compliance program, and agree to face prosecution if it fails to satisfy the terms of the agreement. All of these components of DPAs are critical for accountability.

But the real tell is when he confesses that he "sometimes—though ... not always" let corporations off because a CEO or an economist scared him with threats of global markets failing if he held a corporation accountable by indicting it.

To be clear, the decision of whether to indict a corporation, defer prosecution, or decline altogether is not one that I, or anyone in the Criminal Division, take lightly. **We are frequently on the receiving end of presentations from defense counsel, CEOs, and economists who argue that the collateral consequences of an indictment would be devastating for their client.** In my conference room, over the years, I have heard sober predictions that a company or bank might fail if we indict, that innocent employees could lose their jobs, that entire industries may be affected, and even that **global markets will feel the effects.** Sometimes — though, let me stress, not always — **these presentations are compelling.** [my emphasis]

None of this is surprising, of course. It has long been clear that Breuer's Criminal Division often bows to the scare tactics of Breuer's once and future client base. (In his speech, he boasts about how well DPAs and NPAs have worked with Morgan Stanley and Barclays, respectively.)

It's just so embarrassing that he went out in public and made this pathetic attempt to claim it all amounts to accountability.