LAST WEEK IN DEFERRED AND NON-PROSECUTION AGREEMENTS: ARMING CHINA AND STEALING TRILLIONS FROM MUNICIPALITIES

I'm so old I remember the time, four years ago, when Democrats hated Deferred Prosecution Agreements.

Back in the days when Chris Christie, former US Attorney, was challenging Jon Corzine, once and future bankster, to be governor of New Jersey, Democrats made hay of the significant numbers of DPAs Christie signed, mostly with a series of medical device companies busted for kickbacks. After it was revealed Christie had picked his former boss, John Ashcroft, to make $52 million monitoring one of those medical device companies, it became a convenient way to show the corporatist corruption of Christie.

There was even a bit of discussion, in early 2009, about whether DPAs made banks more likely to engage in fraud because they assumed they'd get a DPA rather than a prosecution. Those discussions largely centered on the two DPAs AIG got in the mid-00s for fraudulently hiding its risk, which nevertheless didn't prevent AIG from taking on so much risk it blew up the entire financial system. One of the monitors of those DPAs—who arguably should have but didn't see AIG's ongoing fraud—was a guy by the name of James Cole. He's now the Deputy Attorney General.

And as recently as 2010, NJ Congressman Bill Pascrell had this to say, in response to the publication of a GAO report showing some improvement but greater need for oversight over

DPAs.

> One cannot ignore the spike of 38 deferred prosecution agreements in 2007, up from a mere four agreements in 2003. That proves that what was supposed to be an option to be used in rare circumstances had become the norm at the Department of Justice.
>
> [snip]
>
> It is imperative that the Congress reign in the unmitigated power that federal prosecutors hold to serve as judge, jury and sentencer in the deferred prosecution process.

And yet I have heard very little about the two DPAs signed last week–perhaps because big corporate impunity has become such a common occurrence in the post-crash era.

First, there's the deal Pratt & Whitney and two subsidiaries signed for evading export restrictions to help China build an attack helicopter. Effectively Pratt & Whitney laundered their production of some development helicopters–plus the military grade engine control module software to go with them–through a Canadian subsidiary. And when they finally admitted they had deliberately avoided US export restrictions on military equipment, they lied to DOJ about doing so. While they have to pay a $75 million fine, some of the charges are being deferred. And no individual has been charged with helping China get a helicopter designed to attack tanks.

So DOJ's punishment for a defense contractor to put Chinese civil contracts ahead of US national security is a big fine, deferred prosecution, but no jail time.

Even more troubling is the **Non-Prosecution Agreement** signed with Barclays over its manipulation of the LIBOR rate. Effectively, during the heady bubble days, Barclays colluded to lie about the interbank lending rate to maximize its own trades; as finance was crashing and Barclays itself had to pay higher rates for credit, it lied about that to imply the bank was healthier than it was. And while between DOJ, Commodity Futures Trading Commission, and Britain's Financial Services Authority, Barclays will have to pay around $475 million in fines, and while CFTC imposed the kind of mandated fixes that DOJ normally would under a DPA, Barclays is basically scot-free for colluding to lie about a rate that affects people throughout the financial system.

Matt Taibbi explains why this is so important: because when the banks said the LIBOR rate was lower than it really was, a lot of investors got a smaller return on their LIBOR-tracked investments than they otherwise would have.

> A sizable chunk of the world's adjustable-rate investment vehicles are pegged to Libor, and here we have evidence that banks were tweaking the rate downward to massage their own derivatives positions. The consequences for this boggle the mind. For instance, almost every city and town in America has investment holdings tied to Libor. If banks were artificially lowering the rates to beef up their trading profiles, that means communities all over the world were cheated out of ungodly amounts of money.

And the CFTC describes the scope of the trades pegged to LIBOR.

> LIBOR impacts enormous volumes of swaps and futures contracts, commercial and personal consumer loans, home mortgages and other transactions. For example, U.S. Dollar LIBOR is the basis for the settlement of the three-month Eurodollar futures contract traded on the Chicago Mercantile Exchange (CME), which had a traded volume in 2011 with a notional

> value exceeding $564 trillion. In addition, according to the BBA, swaps with a notional value of approximately $350 trillion and loans amounting to $10 trillion are indexed to LIBOR. Euribor is also used internationally in derivatives contracts. In 2011, over-the-counter interest rate derivatives referenced to Euro rates had a notional value in excess of $220 trillion, according to the Bank for International Settlements. LIBOR and Euribor are relied upon by countless large and small businesses and individuals who trust that the rates are derived from candid and reliable submissions made by each of the banks on the panels.

Now, it is expected that banks that beat Barclays to settlement may be treated more harshly. And DOJ implied that it might prosecute individuals at Barclays.

> The non-prosecution agreement applies only to Barclays and not to any employees or officers of Barclays or any other individuals.

So it may be that this NPA will help DOJ bring the hammer on the individuals and other banks that gamed the financial system to make sure it benefited them most of all.

But for the moment, Barclay's penalty still amounts to a wrist-slap given the magnitude of the crime.

Maybe it's time to return to the question of whether DOJ serves as an adequate judge, jury, and sentencer for these big corporations?