

LANNY BREUER'S CONFLICTS

NYT has a story based off a CREW FOIA for details of FBI's investigations into John Ensign's efforts to buy off his mistress' husband. While the details show Ensign was even more sleazy than we knew, I'm at least as interested in this passage:

The Justice Department's decision not to charge Mr. Ensign was widely seen as a sign of its skittishness about prosecuting and potentially losing public corruption cases in the wake of stinging courtroom defeats against former Senators [Ted Stevens of Alaska](#) and [John Edwards of North Carolina](#). The documents confirm that speculation: In an internal email in 2011 assessing the chances of prosecuting Mr. Ensign, a top prosecutor wrote that "the legal theory is possible with the right facts" but that the "mere response" of helping a former Senate employee to find work "is not enough." Another prosecutor wrote that "this is a really tough case to win."

The documents show that the investigation was also complicated by a legal conflict; Lanny A. Breuer, head of the Justice Department's criminal division at the time, had worked with a defense lawyer in the Ensign camp at Mr. Breuer's prior law firm, Covington & Burling. Mr. Breuer was temporarily recused from the Ensign investigation as a result of the conflict, the records show, but later got a waiver that allowed him to oversee it with certain restrictions, officials said.

In 2012, Mr. Breuer and the Justice Department decided not to bring criminal charges against Mr. Ensign.

Even the Senate (!) was willing to discipline Ensign. But DOJ chose not to. And at the center of that decision was Lanny Breuer, whose once and future firm, Covington & Burling, represented Ensign. And yet Breuer found a way to un-recuse himself from the case.

It is not at all a surprise that Breuer didn't manage his conflicts well. I [argued](#) that he didn't back in 2009, when he made the decision to bury Dick Cheney's CIA leak investigation interview (and make no mention of [his quasi-grand jury appearance](#)), even though he had represented John Kiriakou in the CIA leak case (and in helping him avoid grand jury testimony, [hide that Cheney and Libby knew Plame was CIA](#) earlier than they said they did).

Ironically, that was also for a CREW FOIA.

Maybe CREW should just skip the interim step and FOIA all the times Breuer ignored the conflicts he had on issues he presided over?