



Is DOJ Using Too Many Deferred Prosecution Agreements?

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The Senate Judiciary Committee recently held confirmation hearings for Jim Cole, a partner at Bryan Cave and well known D.C. white-collar defense lawyer, who is President Obama's nominee for deputy attorney general. During the confirmation hearings, an interesting back-and-forth occurred between Cole and Sen. Jeff Sessions (R-Ala.) regarding the use of deferred prosecution agreements.

Sen. Sessions first expressed his skepticism about the growing use by prosecutors of deferred prosecution agreements. Sen. Sessions noted that many corporations that are rife with fraud deserve to be charged and to suffer the consequences of their actions.

The below chart reflects recently released data by the GAO concerning the number of DPA/NPA's for fiscal years 2001 through 2009. Although the data clearly demonstrates there has in fact been an increase in the number of DPAs, the GAO does not reach any conclusions as to the cause of the increase.

Fiscal Year/ Number of DPA/NPA

2001	3
2002	3
2003	7
2004	11



2005	15
2006	25
2007	38
2008	21
2009	23

Cole struck the right balance in response when he differentiated between using deferred prosecution agreements for the corporation itself, thereby preserving the jobs and retirement accounts of innocent employees, and charging the individual officers responsible for the questionable conduct, thus holding the wrongdoers responsible for their actions.

As a matter of policy, the compromise suggested by Cole seems to address the conflicting concerns in the best manner. The deterrent value would still be served by charging the individual officers, yet the greater public (the employees and shareholders) would not suffer the consequences from the illegal actions of a few bad apples.

What was not discussed was what happens when the illegal actions of a corporate officer benefit the company and its shareholders and employees. In such circumstances, will the DAG nominee permit innocent shareholders and employees to benefit from potentially ill-gotten gains?

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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