

TESTIMONY OF REP. FRANK PALLONE, JR.

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
*“ACCOUNTABILITY, TRANSPARENCY, AND UNIFORMITY IN
CORPORATE DEFERRED AND NON-PROSECUTION AGREEMENTS”*

JUNE 25, 2009

Thank you Mr. Chairman - and thank you to the members of the subcommittee for holding this hearing and giving this issue the serious consideration it deserves. And thank you for inviting me to testify today. I also appreciate the attention Chairman Conyers and the full Judiciary Committee have devoted to this issue.

This is the second public hearing over the course of 15 months. The second public hearing since we learned about the prolific use and possible abuse of deferred prosecution agreements (DPAs) more than 18 months ago.

Over the course of these 18 months we have gained only piecemeal information about DPAs - that is one of the problems.

And what we have learned has been troubling; what we have learned raises more questions. The previous public hearing was an opportunity for those who have used DPAs, for those who have benefited from DPAs and for those who were supposed to have management responsibility over DPAs, to give a full, honest accounting. Unfortunately, they didn't. In fact, John Ashcroft, the former Attorney General, who profited enormously, was downright defiant in his refusal to be accountable. There were others who refused to testify and others who did testify but weren't equipped to offer the information Congress needs to meet its oversight responsibilities. I hope this pattern changes.

Over the last few years, it has come to light that some federal prosecutors are using their powerful positions to steer monitoring contracts to former employers and other influential people with which they have close ties. Some are no-bid contracts. Some appear to have no objective standards. Some, at the least, give the appearance of conflicts of interest.

With all that I have learned since I became involved with the issue in late 2007, when several cases in New Jersey surfaced, there are many unanswered questions, many empty explanations.

What we have learned about monitors and their lucrative contracts shows a lack of regulation, insufficient guidelines and no oversight. The first and most well-known example of this occurred when a consulting firm led by former Attorney General Ashcroft received a monitor contract from then-U.S. Attorney Chris Christie, his former employee.

This led Congressman Pascrell and me to introduce legislation that would eliminate the inconsistency and lack of proper oversight of monitors. Without a legislative fix or improved guidance from the Justice Department, U.S. Attorneys are writing their own rules. This leads to a broad spectrum of practices - often bad practices - from a U.S. Attorney dictating to the company who the monitor will be, to other U.S. Attorneys that merely reserve their right to veto the company's monitor choice.

I find it troubling that federal prosecutors have such tremendous discretion in appointing these corporate monitors. Allowing an unelected official unfettered leverage against companies and corporations who have potentially engaged in criminal behavior invites the type of abuse our judicial system is designed to prevent.

I am encouraged that former U.S. Attorney Chris Christie has joined us today to give his perspective on the issue. As one of the most prolific practitioners of this method of prosecution, there are many unanswered questions about the process he used to select and oversee these monitors.

The use of deferred prosecution agreements and corporate monitors has increased exponentially over the last few years. Without a strong set of guidelines to limit the politicization of the process, our justice system is suffering. I believe that the reforms offered in the legislation that Congressman Pascrell and I have authored are essential in rooting out any possible corruption or wrong-doing in the process of distributing these monitor arrangements. We cannot allow U.S. Attorneys or the Justice Department to have unyielding and absolute power in this process.