USA Huber and NPAs

1. Judicial Watch "Who is John Huber"
2. Cases That Sputter Out
3. Google search list "Sputter Out"
4. Non Prosecution Agreement Statistics (NPA)
5. Too big to prosecute Google Search list
6. UTA NPA
7. Wells Fargo "No one will go to jail."
8. The Dangerous Incentive Structures of Non prosecution and Deferred Prosecution Agreements
9. Justice Deferred Too Big to Jail
10. NPA Morally Suspect
11. Bar the Use of NPAs
12. Gowdy video
13. Dissertation/Paper NPA/DPA
14. United States Federal Sentencing Guidelines United States v. Booker Though the Federal Sentencing Guidelines were styled as mandatory, the Supreme Court's 2005 decision in United States v. Booker found that the Guidelines, as originally constituted, violated the Sixth Amendment right to trial by jury, and the remedy chosen was excision of those provisions of the law establishing the Guidelines as mandatory. In the aftermath of Booker and other Supreme Court cases, such as Blakely v. Washington (2004), Guidelines are now considered advisory only. Federal judges (state judges are not affected by the Guidelines) must calculate the guidelines and consider them when determining a sentence but are not required to issue sentences within the guidelines. Those sentences are still, however, subject to appellate review. The frequency in which sentences are imposed that exceed the range stated in the Guidelines has doubled in the years since the Booker decision.
15. Cardoza Law Review "Negotiated Shame"
16. Federal Alternative-to-Incarceration Court Programs
17. "Shaming … a creative, alternative sentencing option"
18. Shame On You: An Analysis of Modern Shame Punishment as an Alternative to Incarceration
19. For Shame! Public Shaming Sentences on the Rise

Prosecution Deferred, Justice Denied
http://www.nytimes.com/2013/12/14/opinion/prosecution-deferred-justice-denied.html
By DAVID M. UHLMANNDEC. 13, 2013
ANN ARBOR, Mich. — THE Justice Department is reportedly about to enter into a $2 billion deferred prosecution agreement with JPMorgan Chase over its role in Bernard L. Madoff's Ponzi scandal, the latest example of the government's troubling reluctance to bring criminal charges against major corporations.

The use of deferred prosecution and non-prosecution agreements, which began during the George W. Bush administration and has increased under President Obama, allows companies to avoid criminal charges if they pay substantial penalties, improve their compliance programs and cooperate with authorities. The companies do not plead guilty. They are not convicted of any crimes. They do not receive criminal sentences.

From 2004 through 2012, the Justice Department entered into 242 deferred prosecution and nonprosecution agreements with corporations; there had been just 26 in the preceding 12 years. The department's criminal division now uses "noncriminal alternatives" in most of its settlements with corporations. From 2010 to 2012, the division reached twice as many deferred prosecution and nonprosecution agreements with corporations as there were plea agreements.

We're not talking about small cases involving technical violations of the law. Prosecutors agreed to a deferred prosecution with HSBC in 2012 even though the bank was involved in nearly a trillion dollars' worth of money laundering, much of it from drug trafficking. In another recent case, the department struck a nonprosecution agreement in the Upper Big Branch mine disaster of 2010 that left 29 miners dead in West Virginia. Massey, the mine owner, had concealed over 300 safety law violations from government inspectors.

The failure to prosecute the likes of JPMorgan, HSBC and Massey minimizes their culpability and raises doubts about the government's commitment to fighting corporate crime. The Justice Department would never allow individuals who committed such serious crimes to escape prosecution. Why is there a double standard for corporate defendants? And why has the Obama administration continued the questionable corporate crime policies of the Bush administration?

The government has offered various explanations for this lenient approach. In the case of JPMorgan, prosecutors reportedly were worried that a prosecution could imperil the company and its employees, just as charges against the accounting firm Arthur Andersen in 2002 for its role in the Enron scandal led to the collapse of the company, and thousands of job losses. But Andersen was exceptional; it could not survive as an accounting firm after its conviction for accounting fraud. Studies have shown that criminal prosecution is rarely a death penalty for a corporation.

Defenders of deferred prosecution agreements call them a middle ground. But there is already a middle ground — civil enforcement — in areas like antitrust, environmental crimes, securities fraud and tax evasion, as exemplified by the $13 billion civil settlement reached last month with JPMorgan over its role in the mortgage crisis.

The government still brings criminal charges in some high-profile cases, notably against BP and Transocean for the 2010 oil spill in the Gulf of Mexico and the current case against SAC Capital Advisors for insider trading.

But these examples are increasingly rare. Perhaps the government believes that corporate prosecution serves little purpose because companies cannot go to jail. The better view is that criminal prosecution holds companies responsible and expresses societal condemnation in ways that lesser sanctions cannot.

Prosecutors have an obligation to make principled decisions. If corporations commit serious crimes, they should be prosecuted; they should not be allowed to buy their way out of criminal liability. On the other hand, if criminal charges are not warranted, the government should not threaten prosecution as a way to pressure companies to accept these "noncriminal alternatives."

Deferred prosecution and nonprosecution agreements, if they occur at all, should be limited to first-time corporate offenders and relatively minor cases where civil or administrative enforcement options are not available — or perhaps in exceptional cases like Andersen, in which innocent employees would suffer. Noncriminal alternatives should never be allowed in egregious cases like those of JPMorgan, HSBC or Massey.

The Justice Department must develop policies to limit the use of these agreements. Doing so will ensure a principled and consistent approach, uphold the rule of law and restore confidence in the government's efforts to combat corporate crime.

David M. Uhlmann, a law professor at the University of Michigan, was chief of the environmental crimes section at the Justice Department from 2000 to 2007.