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The Next Top Prosecutor and White Collar Crime

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Candice Anderson was 21 when she lost control of her Chevrolet Cobalt in a moving stall caused by a defective ignition switch, [drove into a tree and killed her fiancé](#). Two years later, in 2006, Texas police charged her with reckless homicide. Her parents liquidated their retirement account to pay for her defense. She pled guilty, spent five years on probation, paid \$10,000 in fines, and had to live with the shame of the crime on top of the grief of the accident. In 2014, General Motors (GM) sent Anderson a letter explaining that her accident was the company's fault. A judge in Texas cleared her criminal record a few weeks ago.

The Department of Justice has opened a criminal investigation into GM's conduct and the next attorney general will decide whether and how to charge the company. President Obama's nominee, Loretta Lynch, will need to make a break with the misguided policies of her predecessor, Eric Holder, when the GM case hits her desk.

Under Holder, the Justice Department has handled white collar criminal cases involving the largest companies in the world with "deferred prosecution agreements," a form of settlement that does not require the defendant to acknowledge any criminal culpability, no matter how heinous the crime. Instead, these special deals require the defendant to pay large sums of money in civil penalties. Given their ample financial resources, such sums end up being an affordable cost of doing business.

Deferred prosecution agreements undermine the straightforward application of white collar criminal laws that punish everything from racketeering and fraud to deadly violations of health, safety, and environmental laws. The Obama Justice Department has entered roughly twice the number of deferred prosecution agreements as the George W. Bush administration and has been [rightly criticized](#) for embracing the corrupt notion that some firms may be "too big to jail."



switches. The [facts of the case](#) that have emerged so far are nothing less than notorious. In 2005, GM employees assigned to test drive the Cobalt reported “moving stalls” if they brushed the key ring with a knee. A GM engineer secretly re-designed the switch, effective in 2008 Cobalts, but made sure the part number did not change, leaving unlucky owners of older versions on the road. Reports from Indiana University and a Wisconsin state patrolman correctly identifying the defect were ignored.

A sardonic [2005 column](#) in the Cleveland Plain Dealer observed, correctly as it turned out, that GM excused the stalling as a mere matter of customer inconvenience because drivers could still steer the car manually after the engine turned off. “So,” wrote Christopher Jensen, auto editor,

if you're whisking along at 65 mph or trying to pull across an intersection and the engine stops, that's what you do. Only a gutless ninny would worry about such a problem. Real men are not afraid of temporary reductions in forward momentum.

Concern over how Lynch will handle the GM case is justified because Toyota got such a [sweetheart deal](#) just last March. The company stood accused of covering up its deadly sudden acceleration defect for many years while blaming crashes on drivers who put their floor mats down wrong. Even after the fiery death of California highway patrolman Mark Saylor, his wife, and two passengers, recorded on a stomach-turning 911 call, the Justice Department blinked. The deferred prosecution agreement with Toyota collected \$1.2 billion, an amount that prompted a Holder press conference and victory lap. But the giant carmaker walked away with a clean criminal record.

Will GM get Toyota treatment? Senators should ask Ms. Lynch what she thinks of the deferred prosecution option.

What's the rationale for such arrangements? In a fit of what can only be described as hubris, [Holder has said](#) that he worries about criminal charges putting such giant corporations out of business, losing thousands of jobs nationwide. The Justice Department's bout of anxiety goes all the way back to the [implosion of Arthur Andersen, Enron's accountant](#). As soon as that scandal broke, clients left the accounting firm in droves. Employees at Arthur Andersen's Houston office shredded tons of documents before the Securities and Exchange Commission arrived with a subpoena. Months later, when the firm's existence was already



appellate courts. years later, the Supreme Court overturned these convictions for reasons having nothing to do with core crimes. But the real point is that the Justice Department did not put Arthur Andersen out of business. Rather, Arthur Andersen’s cozy relationship with Enron put it out of business.

The Justice Department is so preoccupied with what can only be described as an urban legend that it routinely allows defense attorneys to bring in teams of economists who explain how working people will suffer if prosecutors indict and prospective defendants go out of business. This little-known procedure creates the worst double standard for white collar crime and street crime.

The criminal law punishes and deters. It is also supposed to implement society’s moral values. One is that justice is blind: to race, to class, to politics. Nominee Lynch will have the opportunity to end the fuzzy thinking that underlies deferred prosecution agreements. We can only hope she’s ready to adjust Justice’s revered blindfold? It’s been slipping.

This post originally [appeared on ACSblog](#).



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