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Ariel Neuman and Benjamin Gluck Discuss FedEx Indictment in the Daily Journal

Attorneys Ariel Neuman and Benjamin Gluck authored the article, “FedEx Indictment Creates Bad Incentives” published by the Daily Journal.

The article discusses the dangerous incentives created by the federal government's indictment of FedEx on drug trafficking charges, related to FedEx's acceptance of shipments from internet pharmacies. Mr. Neuman and Mr. Gluck explain that beyond basic evidentiary difficulties assumed by the government with these charges, the policy implications are significant.

The indictment suggests that FedEx should have identified pharmacies engaged in illegal conduct and refused to ship packages from those entities, all without direct input from a law enforcement entity. Such outsourcing of law enforcement functions to private parties is highly problematic. "Putting the discretion for law enforcement in the hands of a private third party, which necessarily acts with limited information, creates dangerous incentives. Unlike the government, which can exercise discretion in its enforcement actions and which can only act upon a certain quantum of proof, a large, publicly traded company (like FedEx) will always over-enforce under this new regime. The upside of serving one customer will never outweigh the cost of a potential investigation, indictment, or conviction. Thus, even a whiff of controversy could lead to refusal of service by what has become the world’s common carrier. Many white collar defense lawyers now have stories of clients who are kicked out of their banks upon the receipt of the first government subpoena. The same type of result could follow in the shipping industry, with no allowance for potentially innocent targets of investigations."

They add, “It is ironic that at the same time as a consensus is growing that federal drug laws are too onerous, even as applied to genuine drug traffickers, a case like this would be filed against a nontraditional target like FedEx.” FedEx has pleaded not guilty to the charges in the indictment.