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# U.S. Attorney Preet Bharara is on the warpath

How two of Albany's biggest political players hope to beat him in court.

By Judith Messina



U.S. Attorney Preet Bharara is cleaning up Albany corruption.

Photo: Bloomberg News

U.S. Attorney Preet Bharara has won nine out of 10 cases against a parade of disgraced Albany lawmakers since taking the helm of the Southern District of New York in 2009, prevailing in three trials and garnering six guilty pleas. Now in his crosshairs are two of New York's biggest political animals: former Assembly Speaker Sheldon Silver and former Senate Majority Leader Dean Skelos, whose trials are scheduled to begin in November.

Mr. Bharara may also be hunting the biggest game of all in New York: Gov. Andrew Cuomo, whom he has criticized for disbanding the Moreland Commission on public corruption. Last week, word broke that Mr. Bharara is investigating \$1 billion in funding provided by the governor to help revive Buffalo. Mr. Cuomo said over the weekend that he had no role in awarding the so-called "Buffalo billion" to bidders.

Aggressive and media-savvy, Mr. Bharara portrays himself as the white knight cleaning up the "cauldron of corruption" in Albany. Even in the case he lost, the defendant ended up behind bars. In 2011, a federal jury found William Boyland not guilty, but the Democratic assemblyman was convicted three years later, courtesy of Mr. Bharara's Eastern District counterpart Loretta Lynch, who is now U.S. attorney general.

"Bharara is on the warpath," said James Cohen, a criminal-defense professor at Fordham University Law School. "He thinks the whole thing is a sewer, and he's in a position to make some change."

To do it, the prosecutor has used techniques perfected in fighting terrorists and organized crime, employing stings,

wiretaps, video surveillance and undercover FBI agents to catch politicians in the act.

He then uses his perch to wage a media campaign that generates momentum and sets the stage for a trial or, in the majority of cases, a guilty plea. He has used similar tactics to snare miscreants on Wall Street, where his track record is even more impressive, winning more than 80 convictions and guilty pleas, although one of his insider-trading victories was thrown out on appeal last year.

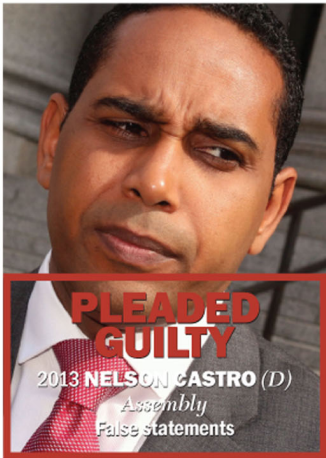


Photo credit: Crain's composite

Despite the notches already on his belt, his crusade against Albany may just be starting. Last January, after filing his initial complaint against Mr. Silver, he held a press conference where he described the alleged schemes in graphic detail and hinted of more indictments to come.

"And so our unfinished fight against public corruption continues," he told his audience. "You should stay tuned."

Mr. Skelos was indicted in May for extortion and soliciting bribes, having allegedly used his political influence to help two companies and, in the process, secure cash payments and a virtual no-show job for his 33-year-old son, Adam, who is also under indictment.

Mr. Silver is charged with fraud and extortion, accused of directing state grants to a Columbia University physician and researcher, and pushing legislation favorable to real estate developers in exchange for referral fees of nearly \$4 million from law firms. An eighth, money-laundering charge alleges that Mr. Silver did favors for an investor who allowed him to hide financial gains through investments.

Both men have asserted their innocence and filed motions to dismiss the indictments. Mr. Silver's attorneys say that a "media blitz" by the prosecutor has tainted the case.

"He didn't commit a crime," Steven Molo, one of Mr. Silver's attorneys, told *Crain's*. "That's the defense."

Judge Valerie Caproni has rejected Mr. Silver's motions, but also reprimanded Mr. Bharara for trying the case in the media, warning him that he "strayed so close to the edge of the rules governing his own conduct" that Mr. Silver's contention of prejudice was "nonfrivolous."

To beat Preet, Mr. Silver's lawyers are likely to rely in part on a 2010 U.S. Supreme Court ruling—which they have cited in motions—that reined in the government and narrowed the scope of actions that can be deemed bribery or extortion. Prosecutors have to show that the lawmaker knew the money was provided in exchange for performing an official act. Mr. Bharara did so last year, persuading a federal jury to convict Democratic Assemblyman Eric Stevenson of taking \$20,000 in bribes to help businessmen build adult day-care centers in the South Bronx.

"It doesn't have to be an explicit agreement, but they have to show a relationship," said Edward J. Loya Jr., a counsel with Venable and a former prosecutor in the Public Integrity Section of the Justice Department.

The Supreme Court's reinterpretation worked for Mr. Skelos' immediate predecessor, former GOP Senate leader Joe Bruno. After he was found guilty in 2009 of mail fraud in connection with payments from an Albany businessman, Mr. Bruno got his conviction vacated on appeal. A retrial last year on bribery charges cleared him on all counts.

"It's not necessarily easy to prove a quid pro quo," said James Jacobs, a professor at NYU Law School and director of its Center for Research on Crime and Justice.

Mr. Silver's attorneys have argued that, at most, some of the allegations describe undisclosed conflicts of interest. The question is whether a jury will be sympathetic.

"[Juries] impute upon the defendant a higher standard when it's a politician or a lawyer—they think they should know better," said Edward Sapone, who represented ex-Yonkers Councilwoman Sandy Annabi on appeal of her conviction for taking payments in exchange for supporting a real estate development. That case was brought by Mr. Bharara, whose jurisdiction includes Westchester.

### **Playing defense**

Criminal-law experts said Mr. Skelos and Mr. Silver are also likely to try to blunt the impact of witnesses' testimony, especially those who have been granted nonprosecution agreements, arguing that their testimony is compromised by the prosecutor's deal. Those with nonprosecution agreements include Dr. Robert Taub, the medical researcher in Mr. Silver's case who received state grants, and a development executive, [reportedly from Glenwood Management](#), which allegedly concealed payments to Adam Skelos.

In Dean Skelos' case, where wiretaps caught conversations between him, his son, the companies and other government officials, the defense might try to show that the words really meant something else or were taken out of context. To be convincing, however, those interpretations need to be substantiated by other evidence.

"It boils down to corroboration," said Mr. Sapone. "A simple argument won't cut it."

Mr. Skelos might also try to earn sympathy from the jury as having done it all for his son, portrayed in the U.S. attorney's complaint as financially dependent on his father.

"It's not a legal defense, but it may have some kind of human appeal," said Jennifer Rodgers, executive director of Columbia University's Center for the Advancement of Public Integrity and a former federal prosecutor.



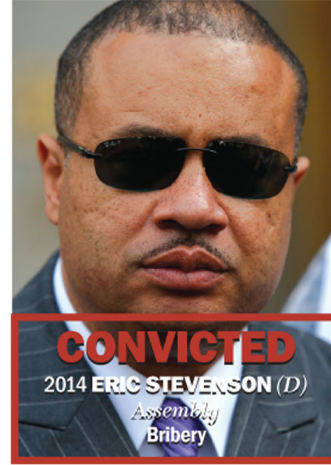
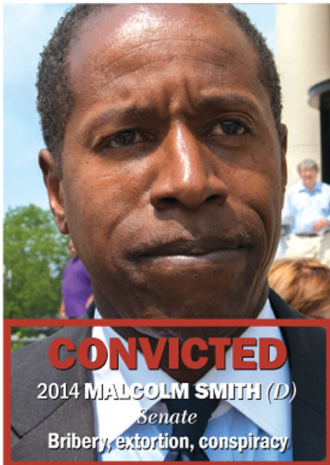
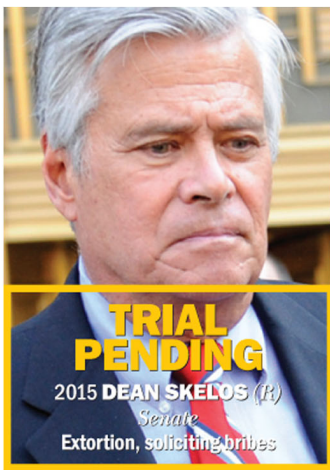


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Then there's the Albany-business-as-usual defense. In their motion to dismiss, Mr. Silver's attorneys argued that Mr. Bharara brought the case because he objects to "longstanding features of New York state government that [he] finds distasteful," but which are not illegal.

Mr. Bharara has railed against Albany's "show me the money" culture, including the fact that legislators convicted of a felony can still collect a pension if they took office before 2012. Since 2000, 14 have reportedly continued to do so. Arguably at the top of his list is Albany's lax outside employment rules, which allow lawmakers to hold jobs without having to disclose who their clients are. Indeed, the heart of his case against Mr. Silver is the U.S. attorney's contention that he was able to make money from outside work as a result of his power in Albany.

"Outside money and the way in which people can be associated with outside firms makes it very difficult to figure out what they're getting for that," Mr. Bharara told a *Crain's* audience last year.

In other words, it makes it easy for lawmakers to disguise bribes as legal income.

### What's next

Similar arguments reportedly put forth at trial by former state Sens. Thomas Libous and John Sampson—that clubby relationships with lobbyists are all in a day's work—went nowhere with juries. Both tried to cover up their actions, creating the impression that they knew it wasn't legal. Both were convicted.

Some are betting Messrs. Silver and Skelos will forgo trials. "My guess is a plea before [the trials] or maybe an adjournment and then a plea," said Fordham's Mr. Cohen.

Mr. Molo vowed, "There will be no guilty plea."

In the meantime, the two pols' lawyers' fees are reportedly climbing. Mr. Skelos has launched an online defense fund. Replete with an endorsement from the executive director of the Association for a Better Long Island, the website

proclaims the innocence of Mr. Skelos and his son, reminds New Yorkers of the senator's 30-plus years of good works on their behalf and berates the U.S. attorney for trying to inflict financial hardship on the defendants and put them at a "strategic disadvantage."

"They have to have a lot of bravado and use every legal argument," said Doug Muzzio, a Baruch College professor, podcaster and veteran observer of the New York political scene. "I can't wait to see the next steps."

*A version of this article appears in the [September 21, 2015, print issue](#) of Crain's New York Business as "Preet vs. Albany".*

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