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Judge Faults Bharara but Keeps Charges Against Silver

Mark Hamblett, *New York Law Journal*

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New York State Assembly Speaker Sheldon Silver speaks to the media as he leaves the Southern District federal court Jan. 22 after his arrest on public corruption charges. Silver is surrounded by his counsel, from left, Joel Cohen, a partner at Stroock & Stroock & Lavan; and Steven Molo and Justin Shur, partners at MoloLamken.

AP/Mary Altaffer

Former Assembly Speaker Sheldon Silver's attempt to dismiss the corruption charges against him was rejected Friday, but not without some sharp words from the judge for Southern District U.S. Attorney Preet Bharara.

Southern District Judge Valerie Caproni, in denying Silver's motion to dismiss, criticized Bharara for venturing "close to the edge" in January with public comments about corruption in Albany on the day that Silver was charged and in the days that followed.

Silver's attorneys claimed that Bharara tainted the grand jury with statements about accusations that Silver used his

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Judge Faults Bharara

position in Albany to generate fees from personal injury asbestos litigation firm Weitz & Luxenberg and a second that specialized in real estate tax appeals. The attorneys claimed that the chief prosecutor later prejudiced his case for a fair trial with more comments once Silver had been indicted.

"In this case, the U.S. Attorney, while castigating politicians in Albany for playing fast and loose with the ethical rules that govern their conduct, strayed so close to the edge of the propriety of governing his own conduct that defendant Sheldon Silver made a non-frivolous argument that he fell over the edge to the detriment of the defendant's prejudice," Caproni wrote in *United States v. Silver*, 15-CR-93.

While "the court does not condone the government's brinkmanship relative to the defendant's fair trial rights or the media blitz orchestrated by the U.S. Attorney's Office in the days following Mr. Silver's arrest," Caproni said, Silver had failed to meet the standard for dismissal.

On Jan. 22, when Silver surrendered, Bharara described the charges against the longtime political powerhouse as part of "the show-me-the-money culture of Albany."

"How could Speaker Silver, one of the most powerful members of the Legislature of New York, earn millions of dollars in outside income without compromising his ability to honestly serve his constituents? Today, we provide the answer: He didn't," Bharara said.

Caproni, in her opinion Friday, said Bharara was careful to use the word "alleged" in his comments, but his remarks "could reasonably have been interpreted to reflect the U.S. Attorney's personal views as to Silver's character or guilt with respect to the charges filed against him."

Bharara followed those comments with a speech the next day at New York Law School in which he ripped decision-making in Albany as run by "three men in a room," referring to the governor, the Assembly speaker and the Senate majority leader.

Silver's attorneys, Joel Cohen of Strock & Strock & La

and Steven Molo of Molo Lamken LLP, claimed that Bharara had violated ethics rules with his comments.

Prosecutors responded that the motion to dismiss the indictment was based on "a calculated effort to malign the U.S. Attorney," whose public statements about Silver's arrest were "squarely within the role and duty of the U.S. Attorney as the chief law enforcement officer in this district, to speak out about the causes of public corruption and potential means of combatting it" (NYLJ, March 6).

Caproni said that the ethics issue was not before her. She only said she was "troubled" by Bharara's remarks that "appeared to bundle together unproven allegations regarding the defendant with broader commentary on corruption and a lack of transparency in certain aspects of New York state politics."

The judge easily denied the defense request to poll the grand jury or review the grand jury minutes, saying it takes a particularly strong showing to overcome the presumption of secrecy accorded to grand jury deliberations.

Unlike a trial jury, she said, a grand jury is not expected to operate in a sterile environment "completely immunized" from public reports.

"Moreover, given the dynamics of a grand jury, it could not have been a surprise to any member of the grand jury that heard this matter and voted a true bill that the U.S. Attorneys' office—including the U.S. Attorney who signed the indictment on which they were asked to vote—believed Mr. Silver to be guilty," she said.

In the end, Caproni said there was no evidence that Bharara's comments substantially influenced the grand jury's decision to indict the former speaker.

She closed by cautioning the parties that "this case is to be tried in the courtroom and not in the press."

Mark Hamblett can be reached via email or on Twitter

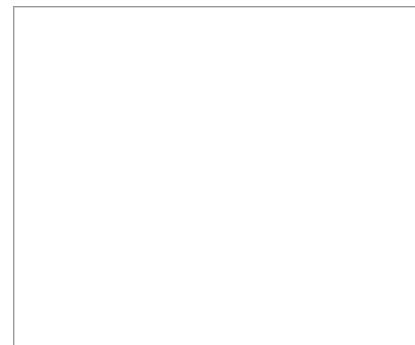


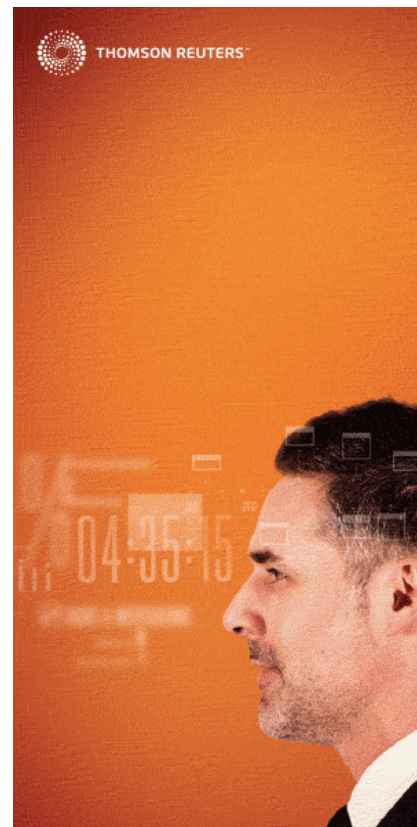
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