UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
-v.-	:	15 Cr. 093 (VEC)
SHELDON SILVER,	:	
Defendant.	:	

- -X

THE GOVERNMENT'S MEMORANDUM IN OPPOSITION TO THE DEFENDANT'S MOTION TO DISMISS

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The United States of America respectfully submits this Memorandum of Law in opposition to the defendant's Motion to Dismiss the Indictment ("Def. Mem."). The defendant's motion relies on distortions and omissions, disregards the law, and is a transparent attempt to distract this Court and the public from the serious charges brought against the defendant. It should be denied.

PRELIMINARY STATEMENT

The public statements made by the U.S. Attorney's Office for the Southern District of New York ("the Office") at the time of the arrest of Sheldon Silver (the "defendant" or "Silver") hewed closely to the Complaint, repeatedly emphasized that the charges were allegations, and explicitly stated that the defendant was presumed innocent unless and until proven guilty. In subsequent remarks, the U.S. Attorney also did not in any way opine on the defendant's guilt and complied with all relevant rules and regulations in a manner consistent with his duties as the chief federal law enforcement officer in the District.

Nevertheless, in a calculated effort to malign the U.S. Attorney, and to mislead this Court and the public, the defendant misrepresents the relevant facts and fails to even cite, much less attempt to distinguish, controlling case law that squarely forecloses the unprecedented relief he seeks from this Court. Specifically, the defendant: (a) repeatedly truncates quotations and misuses an ellipsis in an attempt to make wholly appropriate statements of the U.S. Attorney appear improper; (b) lifts quotations out of context to suggest the opposite of their intended meaning; (c) distorts the facts surrounding his arrest to claim unfair prejudice where there was none; and (d) ignores an entire body of well-established caselaw, including holdings by the Second Circuit, that directly rejects the arguments he makes here. In truth, the U.S. Attorney's public statements related to this case and to public corruption matters more broadly have been entirely proper and in accordance with the rules of this Court, the guidelines of the Department of Justice ("DOJ"), and the New York Rules of Professional Conduct. The defendant has suffered no unfair prejudice warranting relief of any kind.

As the defendant's motion is not supported by the facts or the law, it should be denied in its entirety.

FACTUAL BACKGROUND

I. The Complaint

On January 21, 2015, before any of the statements that the defendant now alleges deprived him of an impartial grand jury were made, U.S. Magistrate Judge Frank Maas found probable cause to support issuance of an arrest warrant charging Silver with engaging in a multi-year scheme to deprive the citizens of the State of New York (the "State") of his honest services as a public official, to extort individuals and entities under color of official right, and to

conspire to do the same. Magistrate Judge Maas's finding of probable cause was based on a 35-page, single-spaced sworn complaint (the "Complaint") containing detailed factual allegations based on information obtained from dozens of witnesses and numerous documents and other evidence. The Complaint detailed a scheme whereby Silver received hundreds of thousands of dollars in undisclosed payments from a real estate law firm (the "Real Estate Law Firm") as a result of his official actions, and more than $3 million in additional payments as a result of directing $500,000 in undisclosed State funds to the research center of a doctor specializing in asbestos-related research ("Doctor-1") and other official actions Silver undertook for the benefit of Doctor-1 and his family. The Complaint further detailed numerous lies and omissions by Silver about the nature and source of his private income in his public statements and State disclosure forms, as well as Silver's efforts to conceal the truth through, among other things, his efforts to undermine the Moreland Commission to Investigate Public Corruption when it began inquiring into the source of his and other legislators' outside income.

Notably, the defendant does not claim, because he cannot, that the Complaint failed to establish a sufficient basis for Magistrate Judge Maas to find probable cause that Silver committed the crimes charged therein. Nor does the defendant contend that any of the statements contained within the Complaint were improper in any way, or that the grand jury was prohibited from considering the evidence set forth in the Complaint. Indeed, the defendant's motion does not challenge a single factual assertion in the Complaint.[1]

[1] The defendant argues in his written submission that it was somehow improper and "inconceivable" for the Government to charge the defendant initially by complaint instead of by indictment (*see* Def. Mem. at 18 (asserting that there was "no rational basis consistent with due process whatsoever" to proceed by complaint); *see also* Feb. 24, 2015 Tr. at 6 ("[t]here was no basis for proceeding by way of complaint, other than to prejudice the grand jury proceedings")),

II. The Defendant's Arrest

As the defendant concedes, on January 21, 2015 – the same day Magistrate Judge Maas signed the Complaint and issued a warrant for the defendant's arrest – this Office contacted counsel for the defendant, informed counsel about the Complaint and arrest warrant, and offered the defendant the opportunity to surrender the following morning. At approximately 8:00 a.m. on January 22, 2015, the defendant, who was accompanied by counsel, surrendered to the Federal Bureau of Investigation ("FBI") at the pre-arranged location of the Jacob K. Javits Federal Building at 26 Federal Plaza, New York, New York. Thus, quite contrary to the defendant's conclusory assertions that the Office used its discretion unfairly and in a prejudicial manner, the undisputed fact is that this defendant was granted the opportunity to surrender – unlike many other defendants, including other public officials – rather than be arrested.

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despite disavowing that position when asked about it in open court before the motion even was filed (*see* Feb. 24, 2015 Tr. at 8). The disavowal was appropriate: The Federal Rules of Criminal Procedure expressly provide for the use of complaints, and no rule of law or practice requires the Government to proceed by indictment when it possesses compelling evidence, as it did in this case, to the satisfaction of a neutral magistrate, that a public official had received millions of dollars in corrupt payments, and was continuing to receive those payments, while overseeing policies, programs, and funding connected to his corrupt scheme. Indeed, it is not unusual in this District, or other districts, for prosecutions of public officials (as well as innumerable others) to proceed in the first instance by criminal complaint. *See, e.g.*, *United States* v. *Seminerio*, 08 Cr. 1238 (NRB) (complaint against State Assemblyman filed S.D.N.Y. Sept. 9, 2008); *United States* v. *Kruger*, *Boyland, et al.*, 11 Cr. 300 (JSR) (complaint against State legislators filed S.D.N.Y. Mar. 9, 2011); *United States* v. *Smith, et al.*, 13 Cr. 297 (KMK) (complaint against State Senator filed S.D.N.Y. Apr. 1, 2013); *United States* v. *Stevenson, et al.*, 13 Cr. 161 (LAP) (complaint against State Assemblyman filed S.D.N.Y. Apr. 2, 2013); *United States* v. *Boyland*, 11 Cr. 850 (SLT) (complaint against State Assemblyman filed E.D.N.Y. Nov. 28, 2011); *United States* v. *Yee, et al.*, 14 Cr. 196 (CRB) (complaint against State Senator filed N.D. Ca. Mar. 24, 2014); *United States* v. *Cannon*, 14 Cr. 87 (FDW) (complaint against Charlotte Mayor filed W.D.N.C. Mar. 26, 2014); *United States* v. *Marono, et al*., 13 Cr. 20796 (WJZ) (complaint against local Mayor filed S.D. Fla. Aug. 6, 2013); *United States* v. *Cammarano, et al*., 10 Cr. 275 (JLL) (complaint against local Mayor filed D.N.J. July 21, 2009). Thus, the only thing "inconceivable" is for counsel to disavow an argument in open court because it was so clearly without merit and then file a motion advancing that same meritless argument.

Following his surrender, the defendant was driven in an unmarked vehicle from the basement garage of the Javits Federal Building to the basement garage of the Daniel Patrick Moynihan United States Courthouse at 500 Pearl Street, New York, New York, for further processing in advance of his presentment.

The defendant claims that this drive to the courthouse "produced an inevitable 'perp walk' effect," resulting in "[p]rejudicial images of Mr. Silver arriving in the back of a government vehicle and subsequently exiting the courthouse" that were "featured prominently in news stories throughout the day." (Def. Mem. at 4). As the actual record makes plain, however, there was no perp walk or "perp walk effect." To the contrary, the defendant's arrest was handled with great sensitivity – from the choice to allow the defendant to surrender, to the decision to drive the defendant to the courthouse as opposed to having federal agents walk the defendant across the plaza, to the use of an unmarked car to handle the transport.[2] Moreover, while the defendant asserts that the arrest somehow led to "[p]rejudicial" images of him "subsequently exiting the courthouse," those images had nothing to do with the manner in which he was arrested, but rather followed his presentment in court and in fact were orchestrated by the

[2] The defendant also contends – without any evidence – that prior to the unsealing of the Complaint, the Government leaked "detailed information" about the "investigation, the relevant witnesses, and the nature of the charges to be brought . . . with no suggestion that prosecutors had declined to comment to the reporters." (Def. Mem. at 3). This is plainly false. The very newspaper articles cited by the defendant in support of this claim in fact specified that "[d]etails of the specific charges to be brought against Mr. Silver were unclear on Wednesday night," and that spokesmen for both the FBI and the U.S. Attorney's Office "declined to comment." (Def. Ex. 15). In any event, there can be no argument of prejudice based on vague, middle-of-the-night reporting of a fact that became widely public later that same morning.

defendant.[3] It was the defendant himself who stood before reporters, photographers, and cameramen upon his exit from the courthouse to make a statement to the press on the courthouse steps – a fact noticeably omitted from the defendant's motion.

III. The Press Release And Press Conference

Following the defendant's surrender and travel to the courthouse for presentment, the Government issued a press release and held a press conference in which it repeatedly framed the charges against Silver as allegations and emphasized that he was innocent unless and until proven guilty. At approximately 1:00 p.m. on January 22, 2015, the Government issued a press release (the "Press Release") (Def. Ex. 2), announcing that the defendant had been charged by Complaint and arrested on corruption-related charges. The Press Release, which was accompanied by the Complaint, emphasized throughout that the statements contained therein and in the Complaint were allegations that had not yet been proven. The title of the Press Release itself made clear that the release related to an arrest, rather than to a conviction or any adjudication of guilt, and that it was based on allegations in the Complaint. (*See* Press Release (title stating that Silver "*Allegedly Used Official Position to Obtain $4 Million in Bribes and Kickbacks*")). Moreover, the Press Release's quotations from the U.S. Attorney and the Special-Agent-in-Charge of the Criminal Division of the New York Field Office of the FBI specified that the assertions in the Complaint, as summarized in the Press Release, were "as alleged"; the factual descriptions in the Press Release were introduced with the statement: "According to the allegations contained in the Complaint unsealed today in Manhattan federal court:"; and the Press Release concluded by stating: "The charges contained in the Complaint

[3] *See, e.g.*, Def. Ex. 22 ("flanked by his three lawyers, [Silver] left the courthouse shortly after 3 p.m., stopping briefly to address the gathered media"); *see also* Def. Exs. 7, 14.

are merely accusations, and the defendant is presumed innocent unless and until proven guilty." (*Id.*).

At about the same time the Press Release was issued, the U.S. Attorney and the FBI Special Agent-in-Charge spoke about the charges at a press conference. The statements of the U.S. Attorney and Special Agent-in-Charge largely echoed those in the Press Release, and, like the Press Release, the U.S. Attorney repeatedly emphasized that the allegations in the Complaint were just that – allegations.[4] Indeed, the U.S. Attorney began the press conference by noting the unsealing of the Complaint, and in his first substantive statements made clear that he would speak about what was "alleged" in the Complaint. ("Over his decades in office, Speaker Silver has amassed titanic political power *but as alleged*, during that same time, Silver also amassed a tremendous personal fortune through the abuse of that political power. *The complaint charges* Speaker Silver in five counts . . . ." (Def. Ex. 1 at 1 (emphases added))).[5]

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[4] Silver also takes issue with posts on the Office's Twitter account that accompanied the Press Release and press conference, but again misleads the Court by omitting those parts of the Twitter feed that referenced "charges" and specifically linked to the Press Release, which in turn contained a link to the Complaint. (The full Twitter feed related to Silver's arrest, with time stamps, is attached hereto as Exhibit A). As is evident from the full Twitter feed, the statement referring subscribers to the Press Release was issued at the exact same time as the statements that the defendant alleges were improper. Thus, the challenged statements cannot be viewed in isolation, but instead must be viewed in the context of the statements in the Press Release (and the Complaint linked to the Press Release), and at the press conference, all of which made abundantly clear that the charges were allegations. Moreover, it is not unusual or inappropriate in any way for this Office to use Twitter as a means of augmenting other, more traditional, means of providing information to the public: The DOJ's website contains a link to numerous Twitter accounts maintained by U.S. Attorney's Offices around the country that are used for this purpose. *See* http://www.justice.gov/usao (containing link to Twitter entitled "Follow U.S. Attorneys"); https://twitter.com/TheJusticeDept/lists/u-s-attorneys-on-twitter/members (listing 60 U.S. Attorney's Offices as holders of Twitter accounts).

[5] In support of his motion, the defendant invokes that same quotation but misleadingly omits the use of the words "as alleged." (Def. Mem. at 4-5).

In fact, during the course of the press conference, which lasted approximately 36 minutes (a substantial portion of which was devoted to answering questions from the press in attendance), the U.S. Attorney used the words "allege(d)" or "allegation(s)" no fewer than *25 times*, and explicitly referred to the "Complaint" or the "charges" therein at least *35 times*. Moreover, visuals present during the remarks and referenced by the U.S. Attorney during his remarks were entitled "*Alleged* Asbestos Litigation Kickbacks" and "*Alleged* Real Estate Kickbacks" (emphases added). The defendant's motion fails to acknowledge or address this important and repeated framing of the U.S. Attorney's statements. Indeed, the defendant, in arguing that the U.S. Attorney "offered impermissible opinions about the defendant's guilt," repeatedly omits the phrase "as alleged" from purportedly objectionable quotations by truncating the quotations or replacing those words with an ellipsis. (*See* Def. Mem. at 14 (omitting from quotation of the U.S. Attorney's statements sentences beginning "*As alleged*, Silver corruptly used his law license . . . ." and "*As alleged*, Speaker Silver never did any actual legal work. . . ."); *supra* at n.5).[6]

The defendant also fails to acknowledge that the U.S. Attorney emphasized the presumption of innocence in his remarks at the press conference. Specifically, in response to questioning, the U.S. Attorney stated:

> We have brought charges. These are charges, I should make clear, as we always do with every case that we bring, we have to prove the charges. And Sheldon Silver, just like everyone else who gets charged by this office [or] by any state prosecutor, is presumed innocent unless and until proven guilty.

(Def. Ex. 1 at 6). *City & State* began its lead story on Silver's arrest by referring to these very

[6] Because the defendant's transcription of the press conference omits a number of the questions from the question and answer portion (*see, e.g.*, Def. Ex. 1 at 6-7), the Government has attached a complete transcription hereto as Exhibit B.

remarks: "While announcing the corruption charges against Assembly Speaker Sheldon Silver Thursday afternoon, U.S. Attorney Preet Bharara was careful to point out that the legislative leader is 'presumed innocent, unless and until proven guilty.'" Jon Lentz, *City & State*, *Corruption Case Against Silver Is Strong, Legal Experts Say* (Jan. 22, 2015).[7]

IV. The New York Law School Speech And The MSNBC Interview

On January 23, 2015, the U.S. Attorney gave a speech at New York Law School as part of a CityLaw breakfast series that had been scheduled long before the defendant's arrest. (*See* Def. Ex. 3 at 1). During the speech, the U.S. Attorney discussed "the problem of public corruption," and provided thoughts on "why it exists." (*See* Def. Ex. 3 at 1). In addressing public corruption in New York, the U.S. Attorney discussed several recent convictions obtained by this Office, including in cases against former State Assemblyman Eric Stevenson and former City Councilman Daniel Halloran.

The U.S. Attorney addressed the charges against Silver only briefly in his prepared remarks. (*See* Def. Ex. 3 at 5-6). During that brief discussion, the U.S. Attorney – as he did in the Press Release and in the press conference the day before – hewed closely to the Complaint and repeatedly made it clear that he was discussing only the "allegations" in the Complaint:

> I'm not talking about anything outside of *the four corners of the complaint* and *nothing beyond what I said yesterday*. But someone asked the question yesterday, ["]does it matter[?"]. And I said part of *the allegations of the case* are that the Speaker of the Assembly was secretly giving $250,000 grants on two occasions to a doctor who was causing patients to be referred to his law firm, thus causing a stream of payments into the Assembly Speaker's pocket. And he was

[7] This article was omitted from the articles attached to the defendant's motion, but is available at http://www.cityandstateny.com/2/politics/new-york-state-articles/new-york-state-assembly / corruption-case-against-silver-is-strong,-legal-experts-say.html%23.VMGX8HaeXCR#.VOzu3dq9KSM.

> doing this, *we allege in the complaint*, in a way that had no transparency and no one knew.

(*See* Def. Ex. 3 at 6 (emphases added); *see also id.* (describing evidence "as outlined in the complaint" and repeatedly stating that description is of what "we allege" and what "we say in the complaint")).

The defendant leaves these crucial statements out of his motion. Instead, twice in his motion, the defendant lifts a single quotation out of context in order to suggest the U.S. Attorney meant the *opposite* of what he actually said. The defendant quotes part of an answer to a question from the audience, in which the U.S. Attorney stated: "I'm the United States Attorney, and I'm subject to rules and to regulations and a lot of them, quite frankly, are stupid," in support of a scurrilous claim that the U.S. Attorney has admitted a willingness to ignore rules governing his conduct. (Def. Mem. at 9 n.7, 26, *citing* Def. Ex. 3 at 7).[8] To the contrary, the U.S. Attorney's remarks, made in response to a question about the Office's prosecutions of "complex financial cases," plainly reflected the U.S. Attorney's desire to promote compliance with governing rules as a minimum, but not sufficient, component of ethical conduct, rather than lawless disregard for rules as the defendant falsely claims:

> I will concede as I will when I talk to business groups that regulations are not perfect and rules are not perfect. I'm the United States Attorney, and I'm subject to rules and to regulations and a lot of them, quite frankly, are stupid. Don't tell the regulators I said that. Don't tell Washington. That can be so. If compliance officials in industry are only teaching people how to follow the rules as promulgated you're not teaching them much of anything. You're not teaching them to think for themselves how they should conduct themselves and behave properly. A, because the rules might not be perfect and they're usually geared towards the lowest

[8] In the second reference to this remark, for example, the defendant states: "Mr. Bharara may believe that the rules that govern his conduct 'quite frankly, are stupid.' Ex. 3 at 7. But they are the law of the land." (Def. Mem. at 26).

> common denominator. But also it's a violation of how we should be teaching about doing the right thing. The analogy I tend to use is it's like if you only had teachers who were teaching to the test. The purpose of school is to educate people and make them wise and teach them how to learn for themselves.

(Def. Ex. 3 at 7) (emphasis added).[9]

The defendant also complains about the U.S. Attorney's remarks in an interview with a reporter for MSNBC on February 10, 2015 (the "MSNBC Interview"). The MSNBC Interview covered a wide range of topics, including terrorism, financial crimes, reform of the Rikers Island prison facility, and public corruption. (*See* Def. Ex. 4). When asked about the defendant's case, the U.S. Attorney declined to address the specific allegations of the Complaint, instead responding with general comments on the significant issues presented by persistent public corruption in the State legislature, as reflected by "years" of cases brought by this Office and other offices against State legislators:

> I think any time that a significant public official who's elected by the people is arrested, it's a big deal. And I think – we've seen in New York, in case after case after case (that's just the most recent one that you mentioned) – this office and some other offices had been bringing cases against elected officials for years now. And I think it goes to a core problem of – honesty and integrity in the state legislature.
>
> People forget that the state legislature, even though people don't know the names of the people who represent them as well as they know some other names in national politics, they're incredibly important. They decide how much taxes you pay in many instances. They decide how much rent you pay. They decide what schools you can go to. They decide a lot of things that matter to people.
>
> And when you see somebody who's been charged with (and we've convicted many, many people before this case) – and you see somebody

[9] The U.S. Attorney has emphasized this point publicly on numerous occasions, including in extended remarks on the topic to the Securities Industry and Financial Markets Association. *See* http://www.justice.gov/usao/nys/pressspeeches/2013/sifma2013.php.

> who has basically sold his office to line his pockets and compromised his integrity and ethics with respect to how to make decisions on all those issues I mentioned that affect people's lives, that's a big problem. And it's a big problem for democracy.

(Def. Ex. 4 at 2). As these comments demonstrate, the U.S. Attorney was careful not to offer opinions about Silver's case in particular. Rather, he answered the question by talking about the many cases brought by this Office and other offices against New York State public officials, many of which he noted resulted in convictions, and the problem of public corruption more generally. Later in the interview, when again invited to comment further about the charges against Silver, the U.S. Attorney declined to respond, answering simply: "we stand by what we wrote in the Complaint." (*Id.* at 4).

V. The Indictment

On February 19, 2015, a grand jury sitting in this District returned a three-count Indictment that charged the defendant with honest services mail fraud, honest services wire fraud, and extortion under color of official right. The defendant does not proffer any evidence that the Indictment was not properly returned, that anything improper occurred in the grand jury, or that he suffered any actual prejudice in the return of the Indictment.

DISCUSSION

I. Legal Standard

A. Grand Jury Proceedings Are Presumptively Regular

Grand jury proceedings carry a "presumption of regularity, which generally may be dispelled only upon particularized proof of irregularities in the grand jury process." *United States* v. *R. Enterprises, Inc.*, 498 U.S. 292, 301 (1991) (quoting *United States* v. *Mechanik*, 475

U.S. 66, 75 (1986) (O'Connor, J., concurring in the judgment)). *See also*, *e.g.*, *Hamling* v. *United States*, 418 U.S. 87, 139 n.23 (1974); *United States* v. *Leung*, 40 F.3d 577, 581 (2d Cir. 1994) (describing the "presumption of regularity that attaches to the grand jury proceedings"); *United States* v. *Nunan*, 236 F.2d 576, 594 (2d Cir. 1956) (same); *United States* v. *Gibson*, 175 F. Supp. 2d 532, 534 (S.D.N.Y. 2001) (same).

A defendant seeking to overcome the strong presumption of regularity faces a high bar, which can be met only in "truly extreme cases." *United States* v. *Broward*, 594 F.2d 345, 351 (2d Cir. 1979). Indeed, a defendant cannot carry that burden without demonstrating "some grossly prejudicial irregularity or some other particularized need or compelling necessity" that outweighs the Government's and the grand jury's substantial interest in secrecy. *Gibson*, 175 F. Supp. 2d at 534; *see also Dennis* v. *United States*, 384 U.S. 855, 869, 871-72 (1966). Such a showing requires more than mere "speculation and surmise," *Gibson*, 175 F. Supp. 2d at 534 (internal quotation marks omitted); rather, the defendant must present "persuasive evidence of actual grand jury prejudice" before the presumption of regularity may be overcome. *United States* v. *Burke*, 700 F.2d 70, 82 (2d Cir. 1983).

B. Pre-Indictment Publicity Is Not Grounds To Dismiss An Indictment Or Seek Related Relief

While not acknowledged, referred to, or distinguished anywhere in the defendant's motion, courts in the Second Circuit and across the country consistently have rejected efforts to dismiss an indictment, or in the alternative to permit inspection of grand jury minutes or investigation of grand jury proceedings, based on pre-indictment publicity. The Government is unaware of any case, in the Second Circuit or elsewhere, in which a court has dismissed an

indictment or permitted the inspection of grand jury minutes based on pre-indictment publicity, and the defendants have pointed to no such case.

The Second Circuit itself has decided two controlling cases, *United States* v. *Burke* and *United States* v. *Nunan*, neither of which is cited by the defendant, and both of which reject the same arguments made by the defendant here. *See Nunan*, 236 F.2d at 593; *Burke*, 700 F.2d at 82. In *Nunan*, the Second Circuit affirmed the district court's denial of a motion seeking to dismiss the indictment, or alternatively to inspect grand jury minutes, based on pre-indictment publicity in a public corruption case concerning a former New York State legislator who later became Commissioner of Internal Revenue. 236 F.2d at 579-81. The investigation and subsequent indictment relied on "various disclosures brought to light by" the "King Committee" – a congressional sub-committee charged with "the duty to 'Investigate the Administration of the Internal Revenue Laws.'" *Id.* at 592-93. The Second Circuit found that because "the various disclosures brought to light by the King Committee affected some of the highest ranking officials in the Internal Revenue Service, including appellant, it was inevitable that the resulting publicity would be sensational in character, and much of it was unfair, misleading, and at least to some extent, untrue and unwarranted." *Id.* at 593.

But despite the "sensational," "unfair, misleading," "untrue[,] and unwarranted" publicity, the Second Circuit agreed with the district court that there were no grounds to dismiss the indictment or, in the alternative, to permit inspection of the grand jury minutes. *Id.* at 593-94. In reaching that conclusion, the Second Circuit contrasted the grand jury's role from that of the petit jury, explaining that the grand jury was unique in its "historic function of ferreting out crime and corruption." *Id.* at 593. Because the record was "barren of any

evidence that the grand jurors were prejudiced or coerced by the publicity or by anything said or done by any member of the King Committee," and because the defendant failed to demonstrate that the evidence was insufficient to support the grand jury's probable cause finding, the Second Circuit found that the appellant had failed to "overcome the strong presumption of regularity accorded to the deliberations and findings of grand juries," or to merit reversal of the district court's denial of his "motion for an inspection of the Grand Jury minutes." *Id.* at 593-94.

In *Burke*, which involved participants in the highly publicized Boston College basketball "point shaving" scandal, 700 F.2d at 73, the defendants' request for a pre-indictment hearing to determine whether the grand jury was prejudiced by adverse pretrial publicity – a less-drastic form of relief not even sought by the defendant in this case – was denied by the district court. *Id.* at 82. On appeal, the defendants claimed that the district court's ruling denying them the right to inquire into the conduct of the grand jury was in error, and that "their right to a fair, impartial trial was jeopardized due to the widespread, adverse publicity" generated by news reports of the scheme ultimately charged in the Indictment. *Id.* The Second Circuit rejected this argument, relying in part on *Nunan*. Because the defendants in *Burke* "failed to cite any persuasive evidence of actual grand jury prejudice," but merely "contend[ed] in very general terms that [adverse news coverage and publicity had] prejudiced them," their argument was found to be "clearly insufficient to warrant reversal under prevailing law." *Id.*[10]

[10] While *Nunan* and *Burke* were decided post-conviction, both cases affirmed the denial of a motion to dismiss the indictment based on pre-indictment publicity without relying on the argument that a conviction renders any error before the grand jury harmless. Moreover, district court cases that have addressed similar motions prior to trial have applied the same standard. *See, e.g.*, *United States* v. *Myers*, 510 F. Supp. 323, 325 (E.D.N.Y. 1980) ("the moving defendant bear the heavy burden of demonstrating that he has suffered actual prejudice as a result of the publicity").

Courts around the country have agreed with the Second Circuit on this issue. In *United States* v. *Waldon*, 363 F.3d 1103 (11th Cir. 2004) (*per curiam*), for example, the Eleventh Circuit explained that the argument that pre-indictment publicity unfairly prejudiced a defendant "misconstrues the role of the grand jury, which is an 'investigative and accusatorial [body] unimpeded by the evidentiary and procedural restrictions applicable to a criminal trial.'" *Id.* at 1109 (quoting *United States* v. *Calandra*, 414 U.S. 338, 349 (1974)). Any concern about "adverse publicity" arises out of "its effect on the fairness of the ensuing *trial*, and not its effect on the grand jury." *Id.* (emphasis in original); *see also United States* v. *York*, 428 F.3d 1325, 1330-31 (11th Cir. 2005) (affirming district court's refusal to dismiss indictment based on adverse pre-trial publicity even where pre-trial publicity warranted transfer of venue for trial based on "the entirely different functions of the grand jury vis-a-vis the trial jury and the different types of evidentiary restrictions before each body"); *United States* v. *Washington*, 705 F.2d 489, 499 (D.C. Cir. 1983) ("Since the concern over adverse publicity is its effect on the fairness of the ensuing trial . . . it was not error to fail to hold an evidentiary hearing concerning the effect of pre-indictment publicity on the grand jury."); *United States* v. *Brien*, 617 F.2d 299, 313 (1st Cir. 1980) (any "taint of a grand jury will be purged by the deliberations of an untainted petit jury"); *United States* v. *Polizzi*, 500 F.2d 856, 888 (9th Cir. 1974) (same).

Indeed, several courts have suggested that pre-indictment publicity can *never* serve as a basis for dismissing an indictment. As the D.C. Circuit has explained, "[i]t is well-settled law that pre-indictment publicity is an inadequate grounds upon which to base the dismissal of an otherwise properly returned indictment." *Washington*, 705 F.2d at 499 (internal quotation marks omitted); *see also In re United States*, 441 F.3d 44, 64 (1st Cir. 2006) ("It is doubtful that

adverse publicity claimed to affect a grand jury states a basis for dismissal."); *Waldon*, 363 F.3d at 1109 ("[I]t does not appear that any indictment has thus far been dismissed on the ground that it was induced by prejudicial publicity.") (internal quotation marks and alterations omitted).

C. Cases Involving Prosecutorial Misconduct Do Not Apply

The defendant cannot distinguish *Nunan*, *Burke*, and cases reaching similar holdings in other Circuits by alleging that here the U.S. Attorney committed prosecutorial misconduct by purportedly causing unfair pre-trial publicity. The holdings in these cases do not turn on the alleged source or nature of the publicity (which the Second Circuit in *Nunan* explicitly found was "unfair, misleading, and at least to some extent, untrue and unwarranted," 236 F.2d at 593), but rather on whether the defendant proffered specific evidence of actual prejudice that overcame the strong presumption of regularity of grand jury proceedings, and on the unique role that the grand jury plays in investigating criminal conduct. Moreover, it is unremarkable that the arrest of the longtime Speaker of the Assembly on allegations that he committed a large-scale and long-running honest services fraud and extortion scheme generated substantial publicity, and it plainly would have done so regardless of any statements made by the U.S. Attorney.

In an effort to find support for his baseless argument, the defendant misleadingly characterizes several cases as supporting dismissal of an indictment when the court in those cases in fact did not grant that relief and instead noted the heavy burden faced by defendants seeking such relief. (*See* Def. Mem. at 16 (citing *United States* v. *Williams*, 504 U.S. 36 (1992) (reversing dismissal of indictment because there is no obligation to present exculpatory evidence to the grand jury); *United States* v. *Fields*, 592 F.2d 638 (2d Cir. 1978) (reversing dismissal of indictment despite finding that attorneys with the Securities and Exchange Commission acted

improperly); *United States* v. *Kilpatrick*, 821 F.2d 1456 (10th Cir. 1987) (reversing dismissal of indictment despite finding multiple Rule 6(e) and other violations)). The remaining cases cited by the defendant in which indictments actually were dismissed are inapposite, as they all involved actual misconduct that created real prejudice during grand jury proceedings or trial.[11]

II. The Defendant's Motion Should Be Denied

In light of the above facts and caselaw (and the defendant's misstatement of both), it is clear that the defendant's motion is without merit. The defendant has not identified any "evidence of actual grand jury prejudice" resulting from adverse pretrial publicity, as he must do in order to obtain any of the relief he seeks. *Burke*, 700 F.2d at 82; *Nunan*, 236 F.2d at 593. Nor could the defendant make any credible claim of actual prejudice here, where the grand jury's decision to indict him upon a finding of probable cause confirms the neutral magistrate judge's decision to issue an arrest warrant under that same probable cause standard, and the defendant fails to allege, much less demonstrate, that the facts set forth in the Complaint were insufficient to support Magistrate Judge Maas's or the grand jury's probable cause determinations.

Instead, the defendant vaguely asserts that "[c]ourts have found violations from similar statements" to those he challenges here. (Def. Mem. at 14). But like much in the

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[11] (*See* Def. Mem. at 16 (citing *United States* v. *Stein*, 541 F.3d 130, 136 (2d Cir. 2008) (prosecutors violated defendants' Sixth Amendment right to counsel of choice); *United States* v. *Jacobs*, 547 F.2d 772, 778 (2d Cir. 1976) (dismissal of perjury count, while allowing substantive count to proceed, based on prosecutors' failure to warn the defendant prior to compelling her grand jury testimony that she was a target); *United States* v. *Estepa*, 471 F.2d 1132, 1137 (2d Cir. 1972) (specific evidence that the government knowingly misled the grand jury by eliciting hearsay testimony as if it was first-hand knowledge); *United States* v. *Chapman*, 524 F.3d 1073, 1090 (9th Cir. 2008) (indictment dismissed based on "egregious[ ]" violations of *Brady/Giglio* and misrepresentations to the court); *United States* v. *Leeper*, No. 06-Cr-58A, 2006 WL 1455485, at *4 (W.D.N.Y. May 22, 2006) (prosecutor failed to charge the grand jury on an essential element of the offense and otherwise misled the grand jury)).

defendant's motion, that assertion also is not accurate, and in any event, is not relevant. In none of the cases cited by the defendant did the court rule that a violation of any legal or ethical rule had occurred, let alone a violation that would warrant inspection of grand jury minutes or dismissal of the indictment. For example, in *United States* v. *Corbin*, the defendant sought to dismiss the indictment based on pre-indictment publicity, relying on the same argument advanced by the defendant here – namely, that prosecutorial statements violated Rule 3.6 of the New York Rules of Professional Conduct. 620 F. Supp. 2d 400, 408, 411 (E.D.N.Y. 2009). The court found no such violation, however, even though one version of the government's press release in that case did not contain any statement noting that the charges in the complaint were merely allegations, and the release quoted the United States Attorney (Benton J. Campbell at the time) as stating – without making it clear that these were allegations based on the complaint: "The defendant violated the law by failing to file truthful federal tax returns . . . . He then compounded his crime by lying to federal agents to cover his tracks." *Id.* at 411. Rather, the court in *Corbin* cautioned that "[i]t is not [the court's] obligation to determine such matters involving the Rules of Professional Conduct." *Id*. "Instead," the court explained, "it is the Court's obligation to determine whether the press release has compromised this criminal proceeding and the future trial." *Id.* The court treated that question – just as did the precedents cited above – as limited to whether the defendant could ultimately obtain trial by an impartial jury, and it determined that he could. *Id.*[12]

Likewise, in *United States* v. *Smith*, 985 F. Supp. 2d 506 (S.D.N.Y. 2013), the court did

[12] The defendant also cites *United States* v. *Perryman*, 12 Cr. 123 (ADS), 2013 WL 4039374, at *13 (E.D.N.Y. Aug. 7, 2013), but that case, like *Corbin*, held that the pre-indictment statements at issue had not denied the defendant the right to a fair and impartial jury.

not, as the defendant inaccurately suggests, find a "violation" of any legal or ethical rule. *See id.* at 539-40. Indeed, the court entered a protective order over the defendants' opposition based on a finding that the defendants' trial rights were unaffected by statements made by the U.S. Attorney that the defendants alleged were objectionable. *See id.*[13]

Perhaps recognizing that his effort to dismiss the Indictment finds no support in the facts or the law, the defendant ultimately retreats to a request that the grand jury transcripts be made public, or that grand jurors be subjected to *voir dire*. But as set forth above, without a showing of actual evidence of grand jury prejudice and a particularized need – which the defendant does not even attempt to make here – grand jury materials must remain sealed. *See, e.g.*, *Burke*, 700 F.2d at 82; *In re Grand Jury Investigation*, 683 F. Supp. 78, 79-80 (S.D.N.Y. 1988).

Courts consistently have refused to permit inspection of grand jury transcripts or to conduct *voir dire* on similar facts for good reason: "[T]he mere challenge, in effect, of the regularity of a grand jury's proceedings would cast upon the government the affirmative duty of proving such regularity. Nothing could be more destructive of the workings of our grand jury system or more hostile to its historic status." *United States* v. *Johnson*, 319 U.S. 503, 513 (1943).[14] Moreover, if the defendant were able, on the basis of speculative allegations, to

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[13] The defendant also cites comments by the Honorable Richard J. Sullivan made during a panel discussion in which he questioned the appropriateness of comments made by this Office in press releases. (Def. Mem. at 20). Judge Sullivan, however, later noted that it was an issue about which "reasonable people can disagree." Jacob Gershman, "Federal Judge Chides Bharara for 'Tabloid' Press Operation," *The Wall Street Journal*, Oct. 16, 2013, at http://blogs.wsj.com/law/2013/10/16/federal-judge-chides-bharara-for-tabloid-press-operation.

[14] The defendant's reliance on *In re Grand Jury Investigation*, No. 87 Civ. 963, 1987 WL 8073 (E.D.N.Y. Feb. 23, 1987), is misplaced. The court there conducted *voir dire* only after it determined there was actual evidence that a *prima facie* Rule 6(e) violation had occurred, as the government conceded that there had been leaks of confidential grand jury information. *Id.* at

obtain dismissal of an indictment or an investigation of grand jury proceedings so too would every other defendant who claims that he was subject to adverse pre-indictment publicity. It is for precisely this reason that the Supreme Court and the Second Circuit require real evidence of actual prejudice, a standard that the defendant wholly fails to satisfy.

III. The U.S. Attorney's Statements Were Proper

With no argument that comes close to meeting the standard required for the relief he seeks, the defendant is left with a series of baseless and disparaging personal attacks on the U.S. Attorney alleging violations of certain ethical rules, guidelines, and policies. These pejorative arguments provide no conceivable basis for dismissing the Indictment or the other relief sought in the motion and fail even on their own terms.[15] The U.S. Attorney's statements violated no ethical rule, did not unfairly prejudice the defendant, and were consistent with the stated mission of the DOJ.

The ethical rules cited by the defendant provide that lawyers, including prosecutors, have a duty not to make out-of-court statements that "will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." N.Y. R. Prof'l Conduct 3.6(a); *see also* Local Crim. Rule 23.1(a); 28 C.F.R. § 50.2(b)(2). The rules further provide that a "statement ordinarily is likely to prejudice materially an adjudicative proceeding" if it expresses "any

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*6. Here, of course, the defendant does not claim, and the Government does not concede, that a Rule 6(e) violation occurred, and there is no evidence of any such violation.

[15] The defendant's reliance on unrelated opinion pieces from India consisting largely of *ad hominem* attacks on the U.S. Attorney, and on articles referencing this Office's wholly unrelated prosecution of insider trading cases, the vast majority of which remain unaffected by a recent reversal in the Second Circuit (currently being challenged by the DOJ and the Securities and Exchange Commission) (Def. Mem. at 21-23), is misplaced and highlights the complete lack of any legitimate basis for the defendant's motion.

opinion as to the guilt or innocence of a defendant." N.Y. R. Prof'l Conduct 3.6(b)(4); *see also* Local Crim. Rule 23.1(d)(7); 28 C.F.R. § 50.2(b)(6)(vi).

As set forth in detail above, the U.S. Attorney was careful not to express "any opinion as to the guilt" of the defendant, and indeed stressed repeatedly that the defendant "is presumed innocent unless and until proven guilty." (Def. Ex. 1 at 6). Moreover, the U.S. Attorney's statements about the defendant's case hewed closely to the allegations in the Complaint and were appropriately framed as allegations. Indeed, despite all the defendant's accusations, he cannot identify a single factual statement made about this case that falls outside the four corners of the Complaint. Thus, at the end of the day, the defendant is left to complain, not about substance, but about the language the U.S. Attorney used when describing the Complaint's allegations to the public. But none of the legal or ethical sources invoked by the defendant requires a verbatim recitation of the Complaint or the use of any magic words.

When the defendant's rhetorical objections and mischaracterizations are swept aside, the remaining challenged statements by the U.S. Attorney simply describe accurately the broader context in which these charges were brought and attempt to "provide federal leadership in preventing and controlling crime," one of the DOJ's core missions.[16] Since 2007, at least 18

[16] The DOJ's full Mission Statement is: "To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans." *See* http://www.justice.gov/about.

In addition, the FBI, a component of the DOJ, has made combating public corruption its top priority among criminal investigations nationwide due to the grievous harm public corruption inflicts on the public, and the central role that federal authorities must play in combating corruption wherever it may be found. *See* FBI: Public Corruption, *available at* http://www.fbi.gov/about-us/investigate/corruption ("Public corruption poses a fundamental

current or former New York State legislators have been convicted of serious crimes by federal, state, and local prosecutors and charges are pending against three other members of the Legislature, including the defendant.[17] These numbers do not include many other individuals who were convicted after they sought improper benefits from State legislators or otherwise abused their positions of trust in State government. Accordingly, this Office, consistent with the DOJ's mission and priorities, has dedicated resources and provided federal leadership, both before and during the tenure of this U.S. Attorney, to combating public corruption through prosecutions of public officials who use their office for self-enrichment or who otherwise abuse their official positions; calling the public's attention to how public corruption afflicts our State's public institutions; and seeking ways to prevent and control it.

In light of the DOJ's mission and the multitude of public corruption convictions in New York, the majority of which were obtained in cases brought by this Office, it is squarely within the role and duty of the U.S. Attorney, as the chief federal law enforcement officer in this District, to speak out about the causes of public corruption and potential means of combating it. The U.S. Attorney's comments about the underlying causes of public corruption are no different than his comments about the causes of gang violence in Newburgh, the heroin and prescription pill epidemic, securities fraud on Wall Street, or civil rights abuses on Rikers Island.

Nothing in any of the legal or ethical sources cited by the defendant prohibits the Government from describing its charges to the public, from placing those charges in context, and

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threat to our national security and way of life. It impacts everything from how well our borders are secured and our neighborhoods protected … to verdicts handed down in courts … to the quality of our roads, schools, and other government services. And it takes a significant toll on our pocketbooks, wasting billions in tax dollars every year.").

[17] The entire State Legislature consists of only 213 members.

from speaking more broadly on issues of criminal justice. Nor do those sources require the U.S. Attorney to refrain from providing federal leadership on preventing and controlling persistent, serious crimes, in accordance with the DOJ's mission, at the same time the Office is investigating and prosecuting individuals accused of engaging in those crimes. The statements made by the U.S. Attorney that are challenged here are fully compatible with the proper and fair administration of justice and did not violate the defendant's rights in any way.

CONCLUSION

For the reasons set forth above, the Government respectfully requests that the Court deny the defendant's motion in its entirety.

Dated: March 5, 2015
New York, New York

Respectfully submitted,

PREET BHARARA
United States Attorney

By: _____/s/_____
Carrie H. Cohen/Howard S. Master/
Andrew D. Goldstein/James M. McDonald
Assistant United States Attorneys

US Attorney SDNYVerified account@SDNYnewsJan 22

#SDNY #USAO press conference at 1pm with @NewYorkFBI to announce public corruption charges against Sheldon Silver

0 replies37 retweets9 favorites
Reply
Retweet37Retweeted37
Favorite9Favorited9
More

- Share via Direct Message
- Share via email
- Embed Tweet
- Pin to your profile page
- Unpin from profile page
- Delete Tweet

- Retweets 37
- Favorites 9
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10:12 AM - 22 Jan 2015

US Attorney SDNYVerified account@SDNYnewsJan 22

ICYMI: #SDNY charges Sheldon Silver with public corruption offenses. Read the PR here http://go.usa.gov/JFP9

0 replies20 retweets7 favorites
Reply
Retweet20Retweeted20
Favorite7Favorited7
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- Share via Direct Message
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- Pin to your profile page
- Unpin from profile page
- Delete Tweet

- Retweets 20
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4:21 PM - 22 Jan 2015

US Attorney SDNYVerified account@SDNYnewsJan 22

Bharara: Silver monetized his position as Speaker of the Assembly in two principal ways & misled the public about his outside income

0 replies10 retweets8 favorites
Reply
Retweet10Retweeted10
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- Share via Direct Message
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4:21 PM - 22 Jan 2015

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Bharara: Politicians are supposed to be on the ppl's payroll, not on secret retainer to wealthy special interests they do favors for

0 replies55 retweets29 favorites
Reply
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- Share via Direct Message
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4:21 PM - 22 Jan 2015

SHELDON SILVER VIDEO PRESS CONFERENCE TRANSCRIPT

Date:	January 22, 2015	
Time:	12:00:00 – 12:36:39 EST	
Language:	English	
Participants:	Preet Bharara	(PB)
	Rich Frankel	(RF)
	Journalist	(ASIDE)
Key:	Unintelligible	(UI)
	Inaudible	(IA)
	Phonetically	(PH)
	Stutters	(ST)
	Voice Overlap	//
	Stated Incorrectly	(SIC)
	Background Conversation	[ ]

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PB: Good afternoon everyone. My name is Preet Bharara, and I'm the United States Attorney for the Southern District of New York. Today, we unseal a criminal complaint charging the longtime leader of the New York State Assembly, Sheldon Silver, with public corruption. Speaker Silver surrendered to the FBI in Manhattan earlier this morning and we expect him to be presented in Federal Court this afternoon.

Over his decades in office, Speaker Silver has amassed titanic political power. But as alleged, during that same time, Silver also amassed a tremendous personal fortune through the abuse of that political power. The complaint charges Speaker Silver in five counts with corruptly seeking legal business from a handful of people and entities with significant business or interests before the State and then corruptly profiting from the legal fees that were paid.

All told, we allege that Silver corruptly collected some $4 million in bribes and kickbacks disguised as referral fees. Those disguised bribes and kickbacks account for approximately two-thirds of all of Silver's outside income since 2002. So today, in order to prevent Silver from accessing his alleged ill-gotten gains, we also announce that the Court has issued warrants allowing us to seize approximately $3.8 million in alleged fraud proceeds that Silver had disbursed among eight different bank accounts at six different banks.

For many years, New Yorkers have asked the question, “How could Speaker Silver – one of the most powerful men in all of New York – earn

millions of dollars in outside income without deeply compromising his ability to honestly serve his constituents?" Today, we provide the answer: he didn't. As alleged, Silver corruptly used his law license and took advantage of lax outside income rules as a cover to secretly pocket millions of dollars through his official position.

For many years, New Yorkers have also asked the question: "What exactly does Speaker Silver do to earn his substantial outside income?" Well, the head scratching can come to an end on that score, too, because we answer that question today as well: he does nothing. As alleged, Speaker Silver never did any actual legal work. He simply sat back and collected millions of dollars by cashing in on his public office, and his political influence.

Now we are by no means the only ones to have sought answers to these important questions. The Moreland Commission, as you may recall, tried to get to the bottom of some of these questions also, but a deal was cut that cut off the Commission's work. To the great relief of Sheldon Silver, who furiously fought its subpoenas and urged the Commission's early shutdown, Moreland was made to close its doors after only nine months - its work barely begun, and while litigation over those subpoenas about Sheldon Silver's outside income was still pending before a State judge. So my office, as you know, took possession of all of the Moreland files and merged the Commission's incomplete investigations with our own ongoing ones. And it quickly became clear that the mystery of Silver's outside income needed to become an even greater priority. As today's charges make clear, the show-me-the-money culture of Albany has been perpetuated and promoted at the very top of the political food chain. And as the charges also show, the greedy art of secret self-reward was practiced with particular cleverness and cynicism by the Speaker himself.

Now let me get into some of the details of the charges we announced today.

The central allegation in this case is that Speaker Silver successfully sought ways to monetize his public office, and that he did so in violation of Federal law. As alleged, Silver quietly and cleverly figured out how to monetize his position as Speaker of the Assembly in two principal ways. In both cases, as alleged, Silver cynically abused his law degree and New York's lax disclosure rules to disguise kickbacks as legal referrals.

Let me talk about the first. As alleged in the complaint, in 2002 Sheldon Silver established an arrangement with the law firm of Weitz & Luxenberg, which was mostly in the business of asbestos litigation. That arrangement called for him to be paid $120,000 a year, even though Weitz & Luxenberg admits hiring him based on his official position, rather than any work he was expected to perform for clients of the firm.

But that wasn't enough for the Speaker, because Sheldon Silver understood that he could substantially supplement his income if he could cause asbestos referrals to be made to the firm. Now the problem for

Sheldon Silver was that he was neither a doctor, nor an asbestos lawyer. So Silver did not have any relevant legal or medical expertise. But what he did have, what he did have was extraordinary power over State money that he had the ability to dole out quietly, even secretly.

So Silver, as we allege, in the early 2000s, forms a relationship with a doctor who is an expert in asbestos-related disease, and who can get Silver what he wants, because he treats many patients who might have asbestos-related claims. Silver wants referrals so that he can substantially increase his income, even without doing a lick of work.

So, as alleged, he asks the doctor to refer people who have asbestos diseases to Silver at the firm of Weitz & Luxenberg, with which Silver had conveniently formed an affiliation. But the doctor, the doctor wants something too. What the doctor wants is money to fund his research at a hospital in New York. And it turns out that the doctor is in luck, because as I mentioned, Sheldon Silver has access to enormous amounts of public money, including an $8.5 million fund, from which he can in his sole discretion, without disclosure and without transparency, cause funds to be distributed to the doctor's research center. And that's exactly how it worked. Sheldon Silver tells the doctor to send referrals to Weitz & Luxenberg from which Sheldon Silver profited through referral fees and, in return, Silver, on multiple occasions, takes official action for the benefit of the doctor and the doctor's interests.

As you'll see if you look at the complaint, first, Silver causes a $250,000 State grant to go to the doctor's research center, then he causes a second $250,000 dollar grant to go to the center. Then, when the ability to secretly pay money from the State evaporated because of a sudden change in the law, Silver finds other ways to use his official position to perform favors for the doctor. Silver helps the doctor's family member get a job, Silver directs $25,000 in State funds to a not-for-profit where another family member of the doctor served on the board, and Silver even gets the Legislature to issue an official resolution honoring the doctor.

And so at the end of the day, all told, we allege that Sheldon Silver effectively converted $500,000 in public money into over $3 million in personal riches, which is a nice profit on being a public official.

By the way, as described, Silver did all of this without ever disclosing to Weitz & Luxenberg, or to the public, that he had directed a half million dollars to the doctor's research center. And as with so many things depicted in the complaint, Silver did things quietly and under the radar.

Now let me talk about the second corrupt way that Sheldon Silver illegally monetized his public position. That was based on his power over the real estate industry. Once again, Silver uses his affiliation (ST) with a law firm. In this case, a tiny real estate law firm, whose lead partner is his former Assembly Counsel. That firm has only two lawyers and a narrow, very narrow specialty: tax reductions. In other words, it helps developers make applications to the City of New York to lower their property taxes.

Unlike with the asbestos law firm, Silver keeps his financial arrangement with the real estate law firm completely secret. He doesn't even comply with State disclosure laws requiring him to identify with specificity all sources of income.

But as is the case with the asbestos referrals, Sheldon Silver does not have any relevant legal qualification - none. He has no real estate tax experience whatsoever. But what he does have, again, is tremendous authority and power - authority and power he was privileged to have by virtue of his public position – over rent control laws and tax abatement laws that are critically important - even existentially important - to the business models of some of the largest real estate developers in the state.

And he abuses that power, just as he does in the healthcare context that I just described. Let me tell you that story.

As alleged, some years ago, Sheldon Silver approaches two prominent developers of substantial properties in Manhattan; one personally, and the other though a lobbyist - which lobbyist, by the way, was hired by the developer to lobby Silver. And he asks those developers to switch law firms and hire a different law firm - the real estate law firm that Silver had a secret financial arrangement with.

And the developers - they oblige. And that is not surprising, because Silver is a powerful political leader in the state, who holds sway over so many laws and policies near and dear to the developers' bottom lines. So the developers hire the firm, and pay a cut of whatever millions of dollars the real estate law firm saves them in property taxes, and Silver gets a cut of that cut, and he gets it secretly.

In return, as alleged, Silver does not disappoint those developers when it comes to official State business that they care about. During the time that Silver is pocketing money from developers, he continues to hear out lobbyists who are working in favor of one of these very developers. And as set forth in the complaint, certain of that developer's recommendations ultimately are adopted by the Legislature. And as set forth in the complaint, when rules come up for renewal that are absolutely critical to the financial success of those developers, the developers are pleased with how Sheldon Silver comes out on their issues. In fact, as the complaint describes, on one occasion, a real estate industry group stated that landlords were surprised by how favorable Silver was to their position, and that Silver could have done more for tenants.

And so, as alleged, in exchange for exercising power over issues that were of concern to the developers, Sheldon Silver converted his public authority over property laws into $700,000 in personal profit, and none of that has ever been publicly disclosed.

If you look at the charts to my right, uh, they depict graphically how simple a scheme it was, and how parallel they are. As I described, with respect to the asbestos litigation kickbacks, we have Sheldon Silver, as

described in the complaint, has a relationship with a doctor, um, does official favors for that doctor to the tune of $500,000 dollars in State grants.

Similarly, in the case with the real estate kickbacks, Sheldon Silver develops a relationship with real estate developers - some of whom he knows because they lobby him - and is in a position to exercise power over real estate and tax abatement laws. And then manages to line his pockets, in both instances, essentially through law firms that serve as pass-throughs, so that he could hide what were essentially kickbacks, and bribes, as legal referrals. In that case, over $3 million, and in this case, over $700,000 dollars.

Now as you can see, a theme running through all of these charges is secrecy – the hallmark of many a criminal scheme – and Silver's was no different. Indeed, the complaint sets forth the many ways that Speaker Silver lied and misled the public about his outside income to hide his scheme. Um, you can look at the complaint to see the others, but here's one that is particularly egregious. In response to recent questions about Silver's outside income, the Speaker had his spokesperson flatly state that "None of Silver's clients had any business before the State." But as we allege, it would be hard to find a more blatant falsehood, given that Sheldon Silver was retained by one of the largest developers in the entire state, with huge business before the State Legislature that Speaker Silver himself purports to help to lead. In fact, I urge you to read the portion of the complaint that lays this out. You'll find it at paragraph 32.

In other words, what we allege is that Sheldon Silver, Speaker of the New York State Assembly, was in fact on retainer to a mammoth real estate developer, at the very same time that the chamber he dominates was considering and passing legislation vitally affecting the bottom line of that developer, at the very same time that he was hearing out lobbyists paid by that developer, and at the very same time, that he was deliberately keeping secret from the public any information about this lucrative side deal in violation of the law. And by the way, many of the laws described in the complaint that are important to the real estate industry are up for renewal in the Legislative session that has just begun.

Politicians are supposed to be on the people's payroll, not on secret retainer to wealthy special interests they do favors for. These charges, in our view, go to the very core of what ails Albany: lack of transparency, lack of accountability, and lack of principle, joined with an overabundance of greed, cronyism, and self-dealing.

But we will keep at it, because the men and women of the FBI, and of my office, still subscribe to the quaint view that no one is above the law, no matter who you are, who you know, or how much money you have. And so our unfinished fight against public corruption continues; you should stay tuned.

I want to thank the many people who brought us to this point before I turn

the podium over to the FBI. Uh, this was a lot of work on the part of a lot of people, not only because we had our own independent investigation, but then took over the burden of continuing an investigation that had already begun, with respect to the Moreland Commission. And so, this is an extraordinary example of extraordinary work by, I think, extraordinary people.

Uh, first I'm joined here by the Federal Bureau of Investigation, represented today by Rich Frankel, the Special Agent in Charge of the Criminal Division, George Khouzami, Assistant Special Agent in Charge, and James Barnacle, Supervisory Special Agent. I also want to thank, uh, those of the FBI who have helped today - make today's case possible, including FBI Special Agents Richard Wilfling, Paul Takla, and Elizabeth Bracco.

I want to recognize the dedicated career prosecutors, and criminal investigators in my office, who work so hard to make this case possible. And I don't think there's, there's a group of people anywhere who has done more to make sure that, uh, our leaders behave with integrity - and if they don't, they're accountable for it - then the group of people who are the team in my office. And they are in this case Assistant U.S. Attorneys Howard Master, Carrie Cohen, Andrew Goldstein, and James McDonald, supervised by Arlo Devlin-Brown, the chief of my office's Public Corruption Unit, and Criminal Investigators Bob Ryan and John Barry, who were absolutely essential in getting this case done.

And I also want to thank the leadership of the office, that spent uh, extra time making sure that this case got done. Uh, Deputy U.S. Attorney Rich Zabel, Criminal Division Chief Joon Kim, and Chief Counsel Dan Stein.

And I think people in New York, and elsewhere, should be really proud of the dedicated career men and women, who have done so much work on this case, and cases like it.

Now let me call Rich Frankel, Special Agent in Charge of the FBI's Criminal Division to the podium.

RF: Good afternoon. For nearly two decades, Sheldon Silver has serve - has served as Speaker of the New York State Assembly – a position that has afforded him significant power over the workings of State Government. As alleged, Silver took advantage of this political pulpit to benefit from unlawful profits. When all was said and done, Silver amassed nearly $4 million in illegitimate proceeds. He also arranged for approximately $500,000 in State funds to be used for projects that benefited his - his personal plans. The nature of his earnings went virtually undetected, until today.

Silver's wallet was enriched through his association with a physician, to whom he issued State grants, and other favors made possible through his official position. In exchange for favors, the physician referred patients

with asbestos-related diseases to Silver at Weitz & Luxenberg - a law firm where he was affiliated as Counsel.

In the end, Silver received over $3 million in proceeds from the patients referred to him and more than $500,000 in state money was allocated for projects that directly benefited the doctor and his family.

But the special treatment did not stop there. Silver also received more than $700,000 in kickbacks after leading two real estate developers with business before the State to a law firm run by a co-conspirator with whom he had entered into a corrupt relationship. He later supported a proposal made by one of the developers, which was in substantial part enacted into legislation in 2011.

We hold our elected - we hold our elected representatives to the highest standards, and expect them to act in the best interests of their constituents. In good faith, we trust they will do so while defending the fundamental tenants of the legal system. But as we are reminded today, those who make the laws don't have the right to break the laws.

Thanks, as always, to our partners in this and so many investigations: U.S. Attorney Preet Bharara, Assistant U.S. Attorney and Chief of the Public Corruption Unit, Arlo Devlin-Brown, Assistant U.S. Attorneys Carrie Cohen, Howard Master, Andrew Goldstein, and James McDonald.

I'd also like to thank and congratulate the investigative team that worked together to address corruption in New York. I extend my sincere congratulations to Robert Ryan and John Barry, Criminal Investigators from the Southern District of New York, as well as FBI Special Agents Rich Wilfling, Paul Takla, and Elizabeth Bracco, as well as Supervisory Special Agent James Barnacle, and Assistant Special Agent in Charge George Khouzami, for their work on this important investigation. Thank you.

PB: Thanks Rich. I can't imagine you have any questions, but if you do, I'm happy to take them (chuckling). Yeah.

ASIDE: I want to ask you first of all, um, you don't pull up the public corruption cases over the last few years, but when you look at this complaint, the allegations are (UI) compared to what we've seen in the past. I wanted to see what your reaction was though in comparison to the other charges - the other constant complaints we've seen in the past. Are you sad, angry, (UI) just more of the same out of Albany. What (ST) did you think?

PB: First of all, I don't think any particular emotion I have matters, and is not relevant, but, uh, look – I think the complaint speaks for itself. When you have an allegation not against - any time you have an allegation, uh, especially when it's proven against a public official, that is dispiriting.

And when you have an allegation against someone who's a public official, not just in a rank and file capacity, but a leader of an entire body who, uh,

is known to be - in the parlance of Albany – one of the three men in the room – that is especially dispiriting. So, the nature of the person who is being charged obviously matters, and is different from the kinds of cases we have brought before. Uh, separate and apart from that, the nature of the allegations, uh, I don't know that it's that radically different from some of the other cases that we have brought, but it is, um, it is troublesome, uh, and worrisome when the charges we describe go to, what I've described as - as the core of the problem there.

It's about money, it's about lobbying, it's about powerful interests, it's about lack of transparency, it's about all of those things that, uh, that you see in case, after case, after case. All of which seem to be tied together in the allegations in this particular case. Yeah.

ASIDE: There are still several Democrats in the Assembly that are standing by him. What do you make of that?

PB: You should ask them. Um, you know we (ST) have brought charges; these are charges. And, I should make clear - as we always do in every case that we bring - uh, we have to prove the charges.

And Sheldon Silver – just like everyone else who gets charged by this office, by any state prosecutor, is innocent - is presumed innocent - unless and until proven guilty. Um, but as to, you know, what the threshold is for other politicians to stand by a particular politician who holds great sway over them, you would have to ask them that question.

ASIDE: You said stay tuned for more possible. Uh, are you talking about Moreland Commission stuff, or is this also from other (IA)?

PB: As I said, in this case and as we outlined in the complaint, um, we have been looking at Speaker Silver's outside income for some period of time, and then merged our investigation with new material that we got from the Moreland Commission. We have a number of public, uh, corruption investigations going on. We had them before the Moreland Commission existed, and we have them after the Moreland Commission was, uh, shut down. So I'm not going to say which are, are merger cases, and which aren't, and I'm not going to tell you which people we're looking at. So, “stay tuned” was intentionally very vague (laughing). Yeah.

ASIDE: Mr. Bharara, I was wondering if you think that Governor Cuomo's decision to shut down the Moreland Commission while Sheldon Silver was filing, um, uh, charges to shut down - to prevent them from making disclosures, makes the Governor complicit in helping, uh, Speaker Silver to cover up this financial (IA)?

PB: I'm not going to comment on that. I think I've, I've made my view about the shutting down of the Moreland Commission clear. Um, that's all I'll say. Yeah.

ASIDE: Is Mr. Silver accused of extorting the Governor when it comes to

quashing the Moreland Commission? And if not, who is he accused on - whom is he accused of extorting?

PB: Um, I think it's laid out in the complaint in counts four and five both, uh, extortion under color of official right and conspiracy to commit that extortion, with respect to the developers, um, from whom he, he tried to get money passed through a law firm. Not, not the Governor, no. Yeah.

ASIDE: How commonplace do you think this practice is in Albany?

PB: Well, um, when you say "this practice" - if you mean by public corruption, it's really commonplace based on the cases that we have brought.

ASIDE: I mean specifically, (UI) referrals, as opposed to, you know, kickbacks and stuff?

PB: Yeah. Well, we brought a case some years ago, before I was the U.S. Attorney. You know, the, the public corruption work of this Office preceded me, and will, will, you know, come after me also, or someone from the State Legislature was, uh, not a lawyer, and was taking money as a consultant. So, it's - it is, um, - it's not the first time that someone in public office has tried to figure out a way to monetize his office. I think we were up here two years ago quoting from people who were, um, taped on body wires talking about how important it was for them to figure out a way, as public officials, to capitalize on that and make money. So, the, the theme of people trying to make money from their public position is not a new one.

ASIDE: So, how long did this, uh, investigation go on for? How long were you looking at (IA)?

PB: I think we say in the complaint, that we began looking at some of these issues in June of 2013.

ASIDE: Sir, if Mr. Silver's charged, why aren't the real estate developers charged, and why isn't the doctor charged? And how do you show the quid pro quo it's a good thing to refer patients who need help, and to delegate money from the State to help a hospital out? Where's the quid pro quo? How (IA)?

PB: Yeah. As to the first, you know, we make decisions about charging based on all the facts that we have. Um, I should've said, as I always say, the investigation is open and ongoing, and is not done.

Um, with respect to the doctor, based on a lot of circumstances - um, as I think is outlined in the complaint - he received a non-prosecution agreement, uh, for his decision to cooperate with us, and provide testimony. Um, as to how you decide - you know, you figure out whether something's a quid pro quo or not - uh, as I think case law says, and common sense tells you, it is very rare that you have a written agreement

in which someone says, I'll pay you this bribe, and then you do this favor for me. There are a lot of people who are not so bright in office, but there are few who are, you know, that silly and stupid (chuckling).

Um, so you, so you prove, so you prove by circumstances - which I think are outlined, uh, fairly compellingly in the complaint - you had a person, and you should (ST) - I think there are documents that describe what the doctor's understanding was, and I think those documents make clear that the doctor's understanding was, uh, if I make sure that you have this stream of, of, uh, referrals that go to this law firm, then I can get something for that. That, I think, we believe a jury will find to be a quid pro quo.

And with respect to the real estate side - remember we're talking about two ways in which he, uh, had outside income that we think was unlawful - with respect to the real estate side of the case, um, that was a situation in which he made a direct request to the developers, in one case through the lobbyist who had been hired by the developers to go get him to do things. Uh, and by definition, they had business before the State, because presumably that's why you hire a lobbyist, to lobby on issues relating to the State, including lobbying specifically Sheldon Silver.

And as outlined in the complaint, Speaker Silver says to that lobbyist who was sent to help orient him in favor of the developers, uh, you tell them to switch law firms and send their tax abatement work to this other firm, when Sheldon Silver knew that firm was run by a former colleague of his, and he had a secret financial arrangement with them, uh, whereby he would get money. You know, a jury will decide whether or not that's a quid pro quo, uh, but we think it is.

ASIDE: Another public corruption press conference like this announcing a corruption case, you mentioned a culture of Legislative problems that's come up lately, that it's nature that it's, uh – that more cases like this can (UI). Since that press conference, has any uh, State, uh, legislative action being taken, and if not, what do (IA)?

PB: I don't remember which press conference you're talking about. There was this intervening Commission that started and stopped. Um, you know, I'm not a - I'm not a legislative expert. I think that I have said many, many times, both at this podium and at other places, that solving the public corruption problem in Albany, and in the City, and in other places, is more than a prosecutor's problem. The legislators themselves have to step up, the public has to step up, the press has to step up. Um, and there's no one panacea, or solution.

I'll give you an example of something by the way - I don't know if you followed this from the complaint. Uh, with respect to the asbestos side of the case, we allege that on two separate occasions, $250,000 was given out of what was essentially an $8.5 million discretionary fund from which the Speaker himself could give money at his will, and his whim.

And, uh, the ability to do that in a secret way, and a non-transparent way, ended, uh, I think in 2007 because remarkably, there was a little bit of reform that occurred then, and as soon as the law changed, with respect to the Speaker's ability to in a non-transparent way dole out money to anybody he wants, including to the doctor with whom we say he had a corrupt relationship, that money stopped.

And as we also see in the complaint, there was nothing that prevented a very, very powerful Speaker, uh, who had other avenues to provide money to somebody with whom he had a relationship - if he cared and believed in the work that was being done, mesothelioma research, and helping people who maybe became diseased after working on 9/11 - there's nothing that prevented that Speaker with all that power, and all those purse strings, from continuing to give money to that fellow, and he stopped, we allege, because he could no longer keep it secret, because it was a corrupt relationship. So that's an example just from the complaint of something that happened in 2007. When more disclosure is required, and more disclosure is necessary, it makes it a little bit harder for bad people to do bad things.

ASIDE: (UI) the 2007 (IA).

PB: I think it was the Budget Reform Act? Yeah.

ASIDE: (UI) theft of honest service charges against, uh, uh, Speaker Silver. Are you more confident that the Government will be able to succeed in bringing charges - these charges - given, uh, the past cases have not been as, as successful?

PB: You're asking us if we hope we'll prevail? The answer is yes.

ASIDE: With regards to specifically to the theft of honest services? How do you feel it's -

PB: We only, we only - well, because we allege that there were - these were basically kickbacks and bribes. And, uh, and there was a Supreme Court decision a few years ago, that eliminated some ability to charge honest services fraud - which I think is what you're referring to - um, but it left clearly open the, um, prosecutor's ability to charge quid pro quos, which is why Mr. Dienst asked that excellent question. And, and we believe we make that out.

ASIDE: Excuse me, was the, was the immunity needed to force attorney on the Grand Jury testimony (UI)?

PB: I'm sorry –

ASIDE: Was the immunity order needed to force the attorney (UI) Grand Jury testimonies and other statements to the Government?

PB: We (ST) grant immunity requests very infrequently, very, very, rarely,

and we take those requests very seriously. And I'm not going to get into the reasoning in this, in this particular case, but from time to time, you do that in the criminal justice system, and the criminal justice system allows for it. And we felt it was appropriate in this case.

ASIDE: How much of your case comes from the files of the Moreland Commission? Could you have made, and brought these charges just on what the Moreland Commission got (IA)?

PB: I'm not going to say how much was them, how much was us. Um, what we say in the complaint very clearly is we were looking at this, and we were, uh, delving into some of the details, and the Moreland Commission was asking some of the same excellent questions, and we took over, and the common - I mean, it's hypothetical. I don't know the answer to that. Um, that's all I'll say.

ASIDE: What kind of sentencing are we looking at? How much time could uh, the Speaker potentially spend in prison?

PB: There are five counts. The maximum on each of the counts is 20 years. Um, again, that's just a guideline. That doesn't mean that's what the actual exposure is, because the sentence is up to the judge. In consideration of the sentencing guidelines, which are not, you know, mandatory, but those are the maximums. Yeah.

ASIDE: Could you speak to the time of the arrest? Yesterday, uh, Speaker was on (UI), Cuomo was re-elected (UI) (IA)?

PB: No. We bring cases when we have the evidence, and we have crossed all the T's and dotted all the I's. If we'd been able to do the arrest, and got to the point where we could've done it two months ago, we would've done it then. If we didn't feel like we were ready to do it today, we wouldn't have done it today.

A lot of people spend a lot of time speculating about timing of things. Um, we do the case when it's ripe.

ASIDE: A possible prosecution (UI). You said there was a non-prosecution agreement on the doctor's side -

PB: I'm not going to comment on who else is potentially subject to criminal liability beyond what's already in the - what's already in the complaint.

ASIDE: Did he pay taxes on all this money?

PB: I'm not going to comment on what taxes he did or did not pay.

ASIDE: Can we hear from the Chief of the, uh, Public Corruption, on what it was like working on this case? I'd like to hear from (IA).

PB: I don't think, I don't think Arlo wants to come up to the - I'll tell you what

it was like for him! (laughing) I'll (ST) -

ASIDE The FBI, uh, person then.

PB: Absolutely.

ASIDE: Come up and talk about this case. What was it like working with the U.S. Attorney's Office, and what was the process (UI)?

RF: All I'm going to say is that we worked extensively on, on every case we work is with the U.S. Attorney's Office. We have a great relationship with them. We work with their investigators, uh, daily, hourly.

Um, this was truly a joint effort between the FBI, and the Southern District of New York. Um, and, uh, uh, we're lucky to work with these prosecutors. Uh, we truly think we have the best prosecutors in the United States.

ASIDE: Who set up the roadblocks (UI)?

RF: Uh, I don't want to go into road blocks, other than to say, um, whatever road blocks we did have, you know, we'll have discussions. We'll continue to work through any of those road blocks. Uh, uh, there are always issues in cases, and you always work through those issues.

Uh, and I don't want to go into specifics at this time, because again, as the U.S. Attorney has said, this is an ongoing investigation, and we will continue on with it.

ASIDE: What's the difference between a civil complaint and a civil indictment?

PB: One's a complaint, and one's an indictment. It (ST) - I'm sorry. (chuckling)

A complaint, a complaint - a complaint is approved by a judge upon the affidavit of a law enforcement officer, based on probable cause.

An indictment is a document that is approved by, uh, a Grand Jury - a Federal Grand Jury.

And so, when you, when you proceed by complaint, um, that doesn't negate the necessity of ultimately having to obtain an indictment if you go forward, so you can expect an indictment in the future.

ASIDE: As you said, you've been investigating since June 2013. From then ‘til now, did you see any modification, or increase, uh, in attempt to hide this, in relation to the Speaker?

And respectively, if the Speaker's lawyer argues that the client referral is work, how do you (IA)?

PB: Well, for the second question, show up in court and you'll find out. With respect to the, uh, to the first, I don't know if there's any example in the complaint that goes to your question of whether or not there were additional attempts to hide. I think what's significant is not whether or not there were, there were greater attempts to hide, uh, conduct and transactions, and bribes and kickbacks over the last period of months, but that that was a hallmark of the entire scheme that goes back many, many years. Um, there were very, very few people who knew about any aspect of this.

With respect to the real estate, uh, kickback scheme, there were virtually no human beings who knew all the details of it.

Uh, and that, you know, going back to the question someone asked earlier about what road blocks you have; that's a little bit of an investigative road block.

When someone is smart and clever about how they are hiding streams of payment, and the disclosure laws don't make it any easier for you; that can be a road block.

But, you know, luckily we were able to clear away the road block, and proceed to the point where we are. Last question.

ASIDE: (IA)?

PB: Yes we have.

ASIDE: (IA)?

PB: Uh, it's frozen (chuckling) -

ASIDE: Yes...

PB: And, and he (ST) can't access it, uh, without leave of the Court, and at such time as there is a conviction, uh, then we take the proceeds, basically. Thanks everybody.