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The Sheldon Silver Case

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The Sheldon Silver Case: What Comes Next?

An expert overview of the on-going case against the former speaker of the New York State Assembly.



January 29, 2015

Who is Sheldon Silver?

Sheldon Silver was the Speaker of the New York State Assembly from 1994 until January 28, 2015. He represents Manhattan's Lower East Side as a Democrat, which he has since 1976.¹

What are the allegations against Silver?

The federal criminal complaint charges that Silver, since 2000 or earlier, "us[ed] the power and influence of his official position to obtain for himself millions of dollars of bribes."² In the complaint, the U.S. Attorney for the Southern District of New York (who has jurisdiction over Manhattan), outlines \$4 million in illicit funds disguised as outside income.³ Allegedly, Silver took kickbacks from various parties for whom he secured state funding or directed outside business.⁴

Why does this case matter?

For decades, Silver has played a keystone role in New York politics. Traditionally, New York's governor, speaker, and State Senate Majority Leader—collectively known as the "three men in a room"—control the state policy agenda and hold outsize sway over budget negotiations.⁵ Silver has been one of those three men for more than 20 years, as governors and senate leaders changed.

What happens next?

Silver voluntarily surrendered to the FBI on January 22. Next, federal prosecutors will present the case to a grand jury, which will decide whether the charges merit an indictment. Often an indictment contains more charges than the complaint presents, but the lengthiness of the complaint against Silver suggests that federal prosecutors included all the charges they currently intend to pursue.

Assuming the grand jury returns an indictment, the case moves to District Court. Silver will be arraigned and enter a plea. Silver's press statements indicate he will likely plead not guilty.⁶ The judge will set a trial date and a schedule for discovery and pretrial motions. At any point, Silver and the U.S. Attorney may reach a plea deal. Prosecutors may also obtain a superseding indictment changing or augmenting the charges, depending on how the investigation develops.

What happens if Silver is convicted?

Prior to a conviction, Silver is presumed innocent and can continue to hold office. If Silver is found guilty, by plea or by trial, he would have to resign from the Assembly. The statutory penalties for the charges in the complaint range up to 20 years for each count, 100 years in aggregate. However, the Sentencing Guidelines are merely advisory and judges may lower sentences based on certain delineated facts of the offense and characteristics of the defendant. The presiding judge would decide on Silver's sentence after hearing arguments from the parties and reviewing a report by the U.S. Probation Department.

Will this case lead to changes in Albany?

Democratic lawmakers announced on January 28 that they will replace Silver as Speaker. State Assembly Majority Leader Joseph Morelle stepped in as interim speaker, with an election for a permanent replacement to be held on February 10.⁷ Silver has indicated he will not interfere with the transition, but maintains his innocence and has not made plans to resign. More broadly, the Silver case and the resultant public outcry might prompt the legislature to enact long-stalled ethics reforms, particularly regarding restrictions on how legislators may receive outside income and their duty to disclose it.

Alleged Violations:

- Title 18, United States Code, §§ 1346, 1341, 1343 – Theft of Honest Services, charging a scheme to deprive another of the intangible right of honest services through the use of the mails and wires.
- Title 18, United States Code, § 1349 – Conspiracy to commit honest services fraud.
- Title 18, United States Code, § 1951 - Interference with commerce through extortion by obtaining property to which Silver was not entitled under color of official right.

1: Silver currently represents District 65, although the number and borders have changed periodically due to redistricting. 2: William Rashbaum, Sheldon Silver, Assembly Speaker, Took Million in Payoffs, U.S. Says, NY Times, January 22, 2015. 3: US V. Sheldon Silver, Criminal Complaint, January 22, 2015. 4: Visualization of the schemes available at www.nytimes.com/interactive/2015/01/22/nyregion/sheldon-silver-indictment.html. 5: Marc Santora, US Attorney criticizes Albany's 'Three men in a room' culture, January 23, 2015. 6: Ibid. 7: Jesse McKinley, Sheldon Silver to be replaced as Speaker of the New York State Assembly, NY Times, January 27, 2015. Photo Credit: Yana Paskova/Getty Images.