

When Poetry Met Prose

Democracy requires decades, even centuries, to take root and flourish. It is a fragile flower. My own state, New York, has learned that it takes just three men in a room to cause devastating harm to a democratic system of governance. More than the foibles of individuals, the structural fault lines that run through the legislature have made possible a cascade of corruption that shows no signs of abating.

I spent nearly a decade as an insider of sorts in the state's capital, never venturing, however, behind the closed doors where the most important deals are decided. Before first winning a special election for a vacant state senate seat in February 1996 and soon after winning a full term, I had served as a dean at the City University of New York (CUNY), at which I also taught political science and educational administration. I lectured at times on the imperfect dynamics and relative merits of the classical liberal arena so well envisioned by English political theorists of the early eighteenth century. Within that arena, conflicting interests—those of business, labor, wealthy and influential individuals, and the broader public—grappled toward compromise that one hoped would benefit the greater good and resemble at least an approximate fairness.

As my early years as a New York State senator unfolded, those lectures seemed hopeful but in some ways quite innocent. Over time, I grew surprised, distressed, and finally repelled by the routine subversion of democratic values and processes in a state that was once among America's most progressive and activist, a trailblazer in economic development and the nurturing of a middle class, workers' rights, education, public health, and poverty amelioration.

By the end of 2004, after spending nearly ten years in the senate, representing large chunks of Brooklyn and, following a redistricting,

Staten Island, I had had enough of New York State politics. I took academic positions, first at Adelphi University on Long Island, and then at Wagner College on Staten Island. My decision not to run for reelection, the result of much soul-searching, gave me time thereafter to reflect on my legislative experiences.

I was not forced by political considerations to walk away from my rather cushioned perch in the legislature. There was little chance I would have been defeated for reelection, having won at least 65 to 85 percent of the vote every two years. Even though minority-party legislators get much less support from the leadership of their house than do members of the majority, they still enjoy numerous perquisites: media attention, phone calls from the likes of Hillary Rodham Clinton and Charles Schumer, and deference from community and business leaders. Legislators also receive travel reimbursement stipends (per-diem allowances for food and lodging), staff assistants, and regular paychecks—all for a job I treated as a full-time commitment but that many of my colleagues handled as part time. To this day, many legislators who have an outside source of income in addition to their legislative salary are apt to treat their public service as a part-time responsibility; interestingly, Common Cause New York reported in December 2015 that newer members enjoy higher outside earnings than more senior members with outside earnings do.¹ For the remaining 60 percent, their public office is their only job, as it was for me.

The legislature is in session for two or three days a week between early January and the third week in June. The typical lawmaker's workday during the session lasts only a few hours, with each gathering of the state senate lasting no more than an hour or so. For much of the six-month session, legislators' schedules consist largely of meeting with interest groups and constituents, and attending receptions and community meetings within their district. In late 2015, Long Island Assemblyman Charles Lavine wrote, "My colleagues and I work shockingly few hours: Next year we are scheduled to spend just 57 days in Albany between Jan. 6 and June 16, when the legislative session ends." More than half of that time is expended on the budget, leaving just 27 days "to consider all other governmental business, including more than 10,000 bills. There is little chance we'll get to more than a handful of those. Our part-time legislature fails the needs of the public and sets the lowest of expectations for legislators."²

Eventually I concluded that my full-time involvement in the legislature was taking a toll on my integrity and character, and left the legislature, even with the virtual certainty of another term. The gap between my perception of myself as collaborative, law-abiding, and both ethically and independently minded, on the one hand, and the expectations for lockstep political subservience enforced by supremely arrogant legislative leaders who especially marginalize their minority-party members, had widened with each year. I did not like what was happening to me or to my state government, just as I did not like serving as a veritable puppet. I concluded that I could not possibly make an important difference—despite occasional successes of which I was proud—by continuing to work from within a greatly compromised and corrupted system.

Additionally, I determined that it did not really matter whether Democrats or Republicans controlled Albany, then or in the future, because the place was thoroughly compromised. Absent strong and sustained pressure for reform over months and years, neither the members of my party—the Democrats—nor the Republicans were going to bring a clean, transparent, and dynamic democracy back to New York State.

Fully disgusted, I left Albany and turned my attention to researching and assembling, with Robert Polner, the book *Three Men in a Room*. My hope is to help bring change to one of this country's most secretive, intractable, and misgoverned legislatures. I also want to contribute to the cause of greater democracy in state capitols around the country. *Three Men in a Room* was originally published in 2006. I subsequently founded and became director and later dean of the Hugh L. Carey Institute for Government Reform at Wagner College. The institute is named for the governor who prevented bankruptcy for New York in a previous generation. During the last years of his life, Carey was committed to and involved in the reform institute that bears his name.

The time for substantive, systemic reform of the New York legislator is, more than ever, now. Indisputably, it is well overdue. That was the case when *Three Men in A Room* was published. Now, with the publication of this revised and updated edition a decade later, the problems have not gone away. Indeed, so deeply entrenched, like a spreading cancer they have worsened.

Watching the cascade of legislative indictments and convictions that has gone on since 2006, I have felt, as an uneasy veteran of Albany, even

more dismayed and disappointed. The New York legislature essentially went from being a statewide embarrassment to a disgrace of national notice. This slide was, for me, personal. One slow morning, I looked back over the recent years and assessed my former senate colleagues. I realized that nearly one in 6 of the 114 individuals who had served in the 61- to 63-member senate³ between 2000 and 2014—including many people I know quite well and worked with closely—had gone on to indictment, trial, and very often to prison, their lengthy public service brought to a sudden and dishonorable halt, their reputations tarnished. As a state senator, I had found myself surrounded by many decent, hard-working elected representatives, but my retrospective tally of wrongdoers in the legislature confirmed that I had been working among a sizable cohort of bad actors, some of whom I had long suspected of conducting themselves unethically, and others, I was shocked to discover, harbored a criminal disposition. I wondered about the reasons for their falls—both the issues in their personal characters and, more so, the institutional provocations that makes the dysfunctional legislature susceptible to illegal behavior.

In politics, as in all professions, there will always be people who will grossly violate ethical canons, but the New York State legislature has shown itself to be especially resilient in this regard: all too willing to accept standards that are far lower than desirable, with inadequate defenses against wrongdoing, hazy parameters for appropriate behavior, and many slippery slopes. The recent years have left this untrusty trail littered with scandals. Tragically, leaders in top-tier positions of power in the upper house, the New York State Senate, have incurred charges of corruption or malfeasance, while the same fate befell more than 16 percent of the senators who served at any time between 2000 through 2014.⁴

Quite unforgettable, as I look back, was the resignation of the implacable Governor Eliot Spitzer, former state attorney general, in a sudden and dismaying prostitution scandal in 2008. Equally, if not more troubling in a way, was what happened to Alan Hevesi, another once-respected public servant. During his career in public life, Hevesi wrote the doctoral dissertation “Legislative Leadership in New York State,” taught political science classes at Queens College, and served as a Queens assemblyman and then as the New York City comptroller before finally winning election as the state comptroller. A sought-after expert on corporate governance and ethics, he nonetheless headed to prison in April 2011 for a felony “pay-to-play” scheme that involved the New York State Common Retire-

ment Fund, after earlier being forced to resign as the state comptroller when he pleaded guilty to a misdemeanor involving using state employees for personal errands. Hevesi, whose tenure as an elected official dated back forty years, saw his reputability implode in New York State Supreme Court in October 2010 when he admitted he had approved a public investment of \$250 million from the state pension fund (of which the state comptroller is sole trustee) in return for almost \$1 million in personal benefits from a California businessman. Those benefits included hotel and travel arrangements for him and his family during excursions to Italy and Israel, \$380,000 in bogus consulting fees paid to a friendly lobbyist, and more than \$500,000 in campaign contributions.

If these scandals involving major, statewide elected officials had any positive aspect, it was that they increased the public's desire for state government reform. During his campaign and on his election as governor in 2010, Andrew Cuomo, previously the state attorney general, argued strongly that the time had come to clean up Albany. He pledged "to restore honor and integrity to government," as his "New NY Agenda," a blueprint of priorities he published during his campaign, cited as his first objective if elected.⁵ His initial year in office produced the Public Integrity Reform Act of 2011 (PIRA), which made several notable, albeit limited, improvements in both ethics and disclosure despite the legislature's usual intransigence.⁶ Originally called the Clean Up Albany Act of 2011, PIRA created a Joint Commission on Public Ethics (JCOPE) with jurisdiction over all elected state officials and their staffs, along with all registered lobbyists. The commission superseded the state Commission of Public Integrity, which itself was a merging of the state Ethics Commission and the New York Temporary State Commission on Lobbying. The merging was part of the Public Employees Ethics Reform Act of 2007, a significant reform effort under the short-circuited governorship of Eliot Spitzer.⁷ While PIRA increased financial disclosure requirements for state employees, including legislators, and made those disclosures publicly available on the JCOPE website, it gave JCOPE the power only to *investigate* members of the legislature. Enforcement remained under the purview of the Legislative Ethics Commission—controlled, problematically enough, by the leaders of both houses.⁸

When he found the legislature unreceptive to additional reforms, Governor Andrew Cuomo established a state Commission to Investigate Public Corruption in August 2013 under the Moreland Act of 1907.⁹

The commission was appointed “to probe systemic corruption and the appearance of such corruption in state government, political campaigns and elections in New York State.” Armed with subpoena powers, the Moreland Commission had three cochair and altogether twenty-five members, including many sitting district attorneys and former state and federal prosecutors. The state attorney general, Eric Schneiderman, a former state senator from Manhattan, swore in the members of the new Moreland panel as deputy attorneys general. After several months of intensive inquiry, the commission put out a preliminary report in December 2013. The report emphasized its concern over legislators’ outside income as well as abuse of programmatic legislative grants known as “member items” and budget “earmarks” for special projects; unlawful use of campaign accounts and the need for campaign finance reform and possibly public financing of political campaigns; weaknesses with the state Board of Elections; and the need for additional criminal laws to fight corruption.¹⁰

The state Moreland Act authorizes a governor to appoint a person or persons “to examine and investigate the management and affairs of any department, board, bureau or commission of the state.”¹¹ In recent years, though, the act has been used as a means to investigate matters outside the executive branch, such as the failed response of some public and publicly regulated utilities to the great damage wrought by Hurricane Sandy in 2012.¹² Cuomo’s Commission to Investigate Public Corruption shined a light on the legislative branch (beyond the boundaries of the executive branch) by focusing on the oversight and investigative responsibilities of the state and local boards of elections (part of the executive branch) as well as JCOPE. The commission stated that its members were “tasked with, among other things, reviewing the adequacy of existing state laws, regulations and procedures involving unethical and unlawful misconduct by public officials *and the electoral process and campaign finance laws* [emphasis added]. They will also examine whether existing laws and regulations have been fairly and vigorously enforced and what changes must be made to such enforcement. The Commission is directed to make recommendations to toughen and improve existing laws and procedures.”¹³

Governor Cuomo initially said that he was giving the Moreland Commission the authority to conduct the investigation as it deemed appropriate so it could ferret out corruption anywhere in state politics, calling it, at its empaneling, “totally independent,” and adding, “Anything they want to look at, they can look at—me, the lieutenant governor, the

attorney general, the comptroller, any senator, any assemblyman.”¹⁴

After moving independently to illuminate the dark corners of Albany, however, the Moreland Commission ended up, as many things in the Capitol, serving merely as something used in the high-stakes negotiations in 2014 over the annual state budget among the governor and the two leaders of the assembly and senate (then Sheldon Silver and Dean Skelos). In March of that year, nearing the end of his first term, Cuomo inexplicably shuttered the commission, only halfway through the originally planned eighteen-month investigation of the state government. He insisted it had accomplished its major objectives and went on to say he was satisfied with changes in the state’s bribery and financial disclosure laws to date.

If indeed the commission had become something merely to be traded in these high-stakes negotiations, the reason might have been that it issued subpoenas for all records of yearly outside income of \$20,000 or more earned by assembly members and senators, and the subpoenas threatened to expose possible conflicts of interest by Assembly Speaker Silver and Senate Majority Leader Skelos themselves. Unsurprisingly enough, the leaders of the assembly and senate did not appreciate the commission’s scrutiny. They retained legal representation to battle its subpoenas on behalf of the legislature as a whole.¹⁵ Cuomo rendered the legal questions over the subpoenas moot,¹⁶ however, in abruptly discontinuing the panel as of April 2014, just as three-men-in-a-room talks over the key content of the 2014–2015 state budget were entering their most decisive closed-door phase.

Why he opted to close down the commission, or what cooperation or concessions the sudden action might have gained for him at the negotiating table, is not known. The governor himself evidently had his own problems with the Moreland Commission as it had developed. Friction arose between the executive branch and some of the commission’s investigators, with the governor’s office “objecting whenever the commission focused on groups with ties to Governor Cuomo or on issues that might reflect poorly on him,” according to a front-page *New York Times* article exploring the causes of the panel’s premature closure.¹⁷

Cuomo also faced criticism for the commission shutdown during his reelection campaign. Fordham University law professor Zephyr Teachout, an expert on the pervasive problem of political corruption and the intertwining issue of campaign finance reform,¹⁸ challenged him in the Democratic primary, drawing widespread attention and praise for her reform arguments. Nonetheless, Cuomo prevailed over Teachout and a

third candidate with more than 60 percent of the vote.¹⁹ He went on to win reelection easily.²⁰

The legislative leaders must have breathed a bit easier with the Moreland Commission decommissioned, despite the public uproar over its disbandment. Speculation that Silver and Skelos each had had a personal stake in the panel's discontinuance, not merely an institutional one, was reinforced when U.S. Attorney for the Southern District of New York Preet Bharara intervened forcefully. Bharara dramatically had the files of the commission shipped to his lower Manhattan office in order to follow up on the panel's lines of inquiry.²¹

Media initially focused on alleged interference in the Moreland Commission investigations by aides to the governor, as well as possible motivations for the commission's shutdown.²² Federal prosecutors interviewed members of the commission²³ but eventually concluded that evidence was insufficient to proceed with prosecution in connection with its shutdown.²⁴ Governor Cuomo maintained that there had been no wrongdoing because, as a creation and extension of the governor's office, Moreland Act commissions are subject to gubernatorial control.²⁵

Whatever the principal reason or reasons for the commission's ill-starred fate, the panel's files apparently contributed to the eventual indictments of the two sitting legislative leaders in 2015, Assembly Speaker Sheldon Silver and Senate Majority Leader Dean Skelos. Even more than the Spitzer and Hevesi scandals, Bharara's intricate prosecutions of these men shook up the elaborate insider rationales and justifications for the legislature's long-standing secretive, top-down manner of operating. Though at this writing the mode remains largely intact, it came under public criticism as perhaps never before.

The longtime Democratic speaker of the assembly, who had become leader of the overwhelmingly Democratic body in 1994, was arrested and handcuffed in front of news cameras for alleged fraud and embezzlement. It was a case built on Bharara's investigation into the millions of dollars of outside income Silver received from two law firms—Weitz and Luxenberg, the prominent personal injury law firm where Silver was counsel, and Goldberg and Iryami, a relatively obscure two-attorney law firm run by Silver's longtime friend and former counsel Jay Arthur Goldberg, both of which paid referral fees to Silver.²⁶ While the former had appeared on Silver's annual financial disclosure filings, the latter had not.²⁷

Silver was accused of steering \$500,000 in state funds to a Columbia University Medical Center clinic run by Dr. Robert Taub that treated patients with mesothelioma, a rare cancer directly related to asbestos exposure. He was also alleged to have provided assistance to Taub's charity, on whose board Taub's wife sat. In return, Taub's clinic directed some of its patients to Weitz and Luxenberg, one of the leading law firms handling asbestos claims. Silver received an estimated \$4 million from the firm for the referrals. At Silver's trial, Dr. Taub testified that he was surprised that the assembly speaker told him not to discuss with anyone their evolving relationship dealing with the clinic—not even with the person who introduced them.²⁸ Silver's concern was money. At trial, the managing partner of Weitz and Luxenberg described how Silver was annoyed by delays in payment he was drawing for the mesothelioma patient referrals to the law firm with which he was associated.²⁹

Until shortly before his indictment, the public was unaware of Silver's affiliation with Goldberg and Iryami, a firm that works to secure reductions in New York City real estate taxes for property owners.³⁰ One of Goldberg and Iryami's major clients happened to be the largest political donor in the state—developer Leonard Litwin and his Glenwood Management, responsible for \$10 million in contributions to political campaigns and party committees from 2004 to 2015. Silver was alleged to have used his power and influence to steer Glenwood Management and another developer to hire Goldberg and Iryami, for which he received 25 percent of the fees the firm earned.³¹

Given the legislature's weak financial disclosure requirements concerning the source and amount of outside income—marginally strengthened by PIRA in 2011, and again in 2014 when the Moreland Commission was shut down—just who might have been trying to influence the assembly speaker with regard to the state budget, policies, and legislation was difficult to discern. Litwin and his real estate development firm were not charged in the case, but media outlets reported that Glenwood Management was the “Developer 1” described in Silver's indictment,³² and its lobbyist testified at Silver's trial.³³

Silver's indictment, handed down by the grand jury in January 2015—a day after the newly reelected Governor Andrew Cuomo delivered his State of the State address and budget address—sent shockwaves through the state government. It also appeared to disrupt the three-men-

in-a-room negotiations over the state's \$142 billion annual budget, and it left legislators teetering from the political reverberations and public outrage. Yet the indictment of one of the state's most powerful elected representatives was not so very shocking. Over the prior fifteen years, *thirty-three* Democratic and Republican legislators in the assembly and senate had already been forced to leave office due to criminal charges, ethical lapses, and alleged wrongdoing.³⁴ Even before Silver resigned as assembly speaker, federal prosecutors had prevailed on a few state legislators to wear a hidden recording device to record their colleagues talking.³⁵ This was Albany as New Yorkers had come to know it. The surveillance was reminiscent of investigations of the mob, a sign of how far the legislature's reputation, while never one immune from scandal in its long and colorful history, had fallen in our own time, long past the days of Tammany Hall. Silver's arrest itself added to an embarrassingly lengthy streak of recent corruption cases.

After his indictment, Silver attempted to hold onto his well-consolidated power. Initially he was supported overwhelmingly by the Democratic conference he still headed, including members with reputations as progressive reformers.³⁶ As pressure from editorial boards and constituents built, sentiment changed and he simply had no choice but to resign the speakership. It was not something he had planned to do; he had kept such tight control over the assembly throughout his tenure that he lacked an heir apparent. Silver's majority leader (his "number two"), an upstate assemblyman with a low profile outside his district and the Capitol, had little chance of winning sufficient support because the speaker's position traditionally goes to a member from New York City (like Silver, whose district was on the Lower East Side of Manhattan). The New York City delegation comprises the majority of the chamber's Democratic conference. A contest to succeed Silver followed, which Bronx County Democratic leader and Assemblyman Carl Heastie won.³⁷ Heastie was elected to the post by the 150-member chamber, sailing through despite allegations and questions media reports raised about some of his past financial decisions and use of campaign funds.³⁸ By many accounts, he acquitted himself well in the state budget talks into which he was plunged, affording lawmakers greater consultation on major sticking points, such as the terms for renewal of rent regulations for tenants and tax breaks for real estate developers, than many had come to expect from his tight-lipped predecessor.³⁹ With Silver out of the speakership and the Moreland Commission

out of business, Cuomo worked out a flurry of budget deals with Heastie and Skelos (prior to Skelos's indictment). The deals dealt with rent regulation and tax credits for real estate developers in New York City—both of which were then on the verge of expiring—as well as criminal justice and aid to public, parochial and charter schools. These agreements were incorporated into the massive budget package known in Albany as the Big Ugly—“the product of an expensive annual carnival of dysfunction,” as Jim Dwyer wrote in the August 13, 2015, *New York Review of Books*.⁴⁰ The legislature passed it.

Importantly for Cuomo, the budget was adopted April 1, 2015, the beginning of the new state fiscal year, meaning it was on time (technically, however, it was a couple of hours past the midnight deadline). Past years' state budgets had been adopted weeks or months late, even as late as August, a symbol of state government dysfunctionality and a symptom of the distrust between the leaders of the different branches under past governors, including George Pataki and David Paterson.⁴¹ Passing an on-time budget became for Andrew Cuomo, a talking point, if not a point of pride; he reportedly handed out hockey pucks to celebrate when the legislature approved a budget deal by the deadline in a previous year.⁴²

The issue of corruption stayed very much in the news, however, especially as Silver's monthlong trial was not to begin until late 2015. Silver's attorney claimed that the former speaker's alleged corruption amounted to business-as-usual for the legislature because it is a part-time institution and, due to the fact that many legislators hold outside jobs, merely created the appearances of conflicts of interest such as those facing his client. Those apparent conflicts, he claimed, were quite unexceptional and certainly not illegal.⁴³

The jury disagreed. On November 30, 2015, capping heavy publicized proceedings, Silver was convicted of all charges; he automatically lost his seat in the assembly and was sentenced on May 3, 2016, to twelve years in prison for corruption schemes that generated more than \$5 million in gains. “Silver's corruption cast a shadow over everything he has done,” said Justice Valerie Caproni of the federal court in Manhattan, who also ordered Silver to make restitution of more than \$5 million and pay a fine of \$1.75 million. At the time of this writing, the former speaker was appealing his conviction.⁴⁴

The story of Albany corruption retained its high public profile because of Bharara's concurrent prosecution of Senate Majority Leader

Dean Skelos, who was arrested along with his son, Adam Skelos, in May 2015, four months after Sheldon Silver's indictment. The father was alleged to have used his influence to help his son at the public's expense. According to the twenty-two-page indictment, "Dean Skelos attempted to secure and did secure hundreds of thousands of dollars for Adam Skelos, including . . . over \$100,000 in payments and health benefits from a medical-malpractice insurer who provided Adam Skelos with a no-show job while actively lobbying Dean Skelos on legislative matters."⁴⁵ In the prosecutor's complaint, the malpractice insurance firm went unnamed but was identified in media reports as a politically connected company in Long Island's Nassau County, the home of Skelos's senate district.⁴⁶

Skelos was also accused of trading the legislative needs of Glenwood Management to leverage additional benefits for his son. Glenwood senior vice president and general counsel Charles C. Dorego, who was also its point-person on lobbying and political contributions, was said to have arranged for Adam Skelos to receive a \$20,000 commission from a title insurance company for work he did not perform. Dorego additionally arranged for the younger Skelos to receive a consulting job at the environmental firm AbTech Industries, which had connections to Glenwood Management. The firm paid Adam Skelos \$200,000, and subsequently obtained a contract with Nassau County allegedly after Dean Skelos exerted his influence.⁴⁷

The Skelos indictment and trial provided a rare insight into how the leaders of the New York legislature have viewed their power. Skelos was recorded on a wiretap as saying, "I'm going to be president of the senate, I'm going to be majority leader, I'm going to control everything, I'm going to control who gets on what committees, what legislation goes to the floor, what legislation comes through committees, the budget, everything."⁴⁸ The indictment also led some to speculate that Skelos's desire to limit renewals of rent regulation and New York City's 421-a housing construction tax-credit program to two years was intended to maximize his ability to exploit interested parties in the real estate industry, including Glenwood Management.⁴⁹

Like Silver, Skelos tried briefly to cling to power in Albany, but was forced to resign from his leadership post, replaced by Long Island's John Flanagan, as members of the entire senate felt considerable pressure from their constituents, advocacy groups, and the media. His resignation as majority leader, when it did come, was more symptomatic of life in the legislature than it was anomalous: it actually took place just as another state leader—Senate Deputy Majority Leader Tom Libous of Binghamton—was

facing criminal charges as well (and thus could not succeed Skelos).⁵⁰ Tom Libous was one of six senate leaders who was arrested within the prior ten years after holding a top-tier leadership position for a long or short duration (the others being Dean Skelos, Joe Bruno, Malcolm Smith, Pedro Espada Jr., and John Sampson, who had also served chair of the senate's Ethics Committee).

Libous was a long-serving state senator who had succeeded Binghamton's former senator, Warren Anderson, whom I especially admired for having served with a memorable sense of public purpose as the Republican Majority Leader during the 1970s New York City fiscal crisis and many years thereafter. Prosecutors alleged that Libous made false statements to the Federal Bureau of Investigation (FBI) about his role in getting his son, Matthew, a job with a politically connected Westchester County law firm. They alleged the senator arranged for an Albany lobbying firm to pay one-third of his son's \$150,000 salary at the law firm. Senator Libous, according to prosecutors, promised that the law firm would have to "build a new wing" to handle all the new business he would send its way.⁵¹ In July 2015, a jury found him guilty of lying to the FBI, which is a felony. Sick with cancer, he was sentenced to six months of electronically monitored home confinement rather than the six-month prison term possible for the charges. So tarnished, he died on May 3, 2016 (the day of Silver's sentencing).⁵² Libous's son, meanwhile, served prison time for a related federal tax conviction.⁵³

Dean and Adam Skelos were convicted of all charges on December 11, 2015, ending the senator's thirty-year career in the legislature.⁵⁴ The father drew a five-year prison sentence on May 12, 2016, and the son, six and a half years. The former majority leader also was ordered to pay \$800,000 in restitution and fines.⁵⁵ As of this writing, the Skeloses were appealing their convictions. Their case reflected the potential for legislative leaders and other state lawmakers to misuse their offices to enrich themselves and their families at public expense—as when, for example, legislative earmarks to fund projects in a member's district end up benefiting the legislator's own family members. Several recent corruption cases also reflected the unsavory ties lawmakers may have with lobbyists, law firms, and companies seeking to obtain special advantage from the legislature with the help of individual legislators.

Clearly, the figurative Hall of Shame in Albany has really bulged of late, and the reason, in large measure, is the spadework of federal prosecu-

tors, particularly U.S. Attorney Bharara, using the federal honest-services fraud statute where New York State corruption laws were inadequate. Bharara assiduously developed the cases against Silver and Skelos as well as others in the state capital, which proved a target-rich environment. Bharara effected a significant shift in the current state of politics as usual in Albany. President Barack Obama had appointed him in 2009,⁵⁶ and Bharara began the prominent job as federal prosecutor by investigating more than 100 finance and business executives and prosecuting insider trading in the wake of the 2007–2008 Wall Street meltdown.⁵⁷ He subsequently turned his attention to Albany and its culture of corruption, especially after Governor Cuomo shut down the Moreland Commission in March 2014.⁵⁸

After announcing the indictment of Silver at the start of 2015, reporters asked Bharara if he was satisfied and finished with Albany. He answered the question ominously: “Stay tuned.” His office was hardly finished investigating the state government. In fact, it was already investigating Skelos and putting the entrenched *modus operandi* of the legislature on notice. Only a day after Silver was indicted, the prosecutor delivered a speech at New York Law School in which he ridiculed the state’s secretive, rigidly controlled manner of operating. I myself had depicted the legislature in a similarly undemocratic fashion in *Three Men in a Room*. I hoped it would act as a catalyst for reform as well as an analysis of the workings of the legislature. But a decade later Albany remains as insular and unrepresentative as it did when the book came out. Bharara, who quoted from the book during his speech, made clear that the lack of public accountability inherent in the three-men-in-a-room construct—with its last-minute negotiations privately conducted by the governor and the two top legislative leaders, and the marginalization of the other members of the legislature—might have helped bring about the kind of malfeasance his office was looking into.⁵⁹

The secretive, authoritarian mode of the Capitol, the federal prosecutor continued in the address, discouraged average citizens from understanding the process or thinking that they could possibly have a meaningful effect on major issues before the legislature and government agencies.⁶⁰ He echoed this point when he subsequently accepted an invitation to speak before the Kentucky legislature, after securing the Silver and Skelos convictions. As he told the Bluegrass State’s legislators, referring to Albany corruption: “People knew, and did nothing. This, perhaps, was

the most unfortunate feature of the status quo in my home state—the deafening silence of many individuals who . . . saw something and said nothing.”⁶¹

If Silver and Skelos lose their appeals and are incarcerated, then nine former New York State legislators will be in prison. The late Libous would have brought the number in federal custody to an even ten.

A waterfall of scandals can indeed erode the public’s confidence in government and willingness to participate in politics and government, as well as voter turnout. Flagrant misuse of power in New York has become routine—a kind of cost of doing business in the legislature. The many instances of corruption of elected officials with whom I worked, and many others since, did not happen in a vacuum, but several deep-seated factors instead precipitated them. Among these are loosely designed, sometimes ambiguous and often poorly enforced legislative ethics rules; torrents of campaign cash and the loopholes and party committees through which they gush; platoons of lobbyists with relatively easy access to lawmakers that no average citizen enjoys; and the essential powerlessness of most legislators, who quickly learn they must go along to get along. For many legislators, the benefits of acquiescence outweigh the risks of using their power to speak out, so disagreement or debate with the nearly omnipotent legislative leaders is rare. For some lawmakers, whether or not they feel demoralized by their second- and third-class status, whether or not they have outside income, the opportunities to commit ethical breaches for self-gain have been too ample and easy to ignore. A sizable number, albeit a minority of the total, convince themselves that they are entitled to use their office to enrich themselves and have done so.

Consider, for example, just one telltale aspect of the perennially lax atmosphere, based on my legislative tenure: assembly members and senators did not need to submit any proof of their expenses when they submitted vouchers for food and lodging reimbursements for the days they spent working in Albany—it was all automatic. State lawmakers may request the maximum of \$111 a day for lodging and \$61 for food and other per-diem expenses, the tax-exempt limit currently allowed by the Internal Revenue Service (IRS).⁶² They may also obtain reimbursement for actual travel expenses (for taxi, bus, train, or air, or tolls paid while driving), along with the IRS allowance for mileage driven. While they must provide receipts for travel costs and detail any mileage they have driven,

reimbursement from the legislature for food and lodging remains based on the honor system. Many legislators can and do realize thousands of dollars in reimbursement payments each year—no receipts needed, no questions asked, and, until the reforms of 2015,⁶³ no requirement that the member actually be working in the Capital Region, just that he or she was present. The top recipient of reimbursements in the first half of 2015 was an upstate assemblyman who drew \$19,500 for travel, food and lodging, all legal under the assembly's rules.⁶⁴ Like so many other arrangements in Albany, the reimbursement procedures are wide open for abuse.

There is, of course, no shortage of checkered, ethically compromised statehouses in the United States. But New York's image as not only corrupt, but also as one of the least deliberative and perhaps most lax and dysfunctional has only grown with each new scandal-stained year, especially given the unusually large volume of business that continuously flows through the Capitol. The Moreland Commission's preliminary—and only—report, studies by good-government groups and academics, and media reports, op-eds and editorials have all served to support the widespread view that the New York legislature needs wholesale structural reform. The guilty verdicts against the legislature's former top two leaders—two of the “three men in a room”—one after the other, have not only hardened public perceptions but, in some ways, caused the legislature to gird itself reactively against proposals for meaningful reform and examples of best practices from other statehouses.

While the federal prosecutions under the forceful Bharara have been exceedingly helpful in illuminating where corruption festers, they are not the ultimate answer to what ails the state polity. As the Moreland Commission wrote, “Public corruption is a New York problem that requires a New York solution.”⁶⁵ I certainly agree.

Given the constitutionally enshrined autonomy of the senate and assembly chambers, a counterbalance to the powerful executive branch, bringing democracy and effectiveness to the legislature will require continuous pressure and quite possibly consideration of a constitutional convention, which the public has a right to vote for, or against, once every twenty years, next in November 2017.⁶⁶ In a 2015 data-driven survey of all the states, the respected Washington, D.C.-based Center for Public Integrity, gave only three states a grade higher than D- for their policies and procedures to combat secrecy, questionable ethics, and conflicts of interest. That New York

merited a D– in the ranking⁶⁷ further shows that the force for change needs to come from sources largely *outside* the hidebound legislature itself. These include reform-minded legislators in each party, reform groups, citizen litigants, academic researchers, media outlets, and the power of social media to awaken new voices and calls for action. Whatever avenues by which structural reformation and democratizing may coalesce, voters will always retain the ultimate means of redress in a democracy—the ballot. They can elect new legislators, and, unlike in 1977 and 1997, when voters turned down a constitutional convention measure because they were concerned about highly emotional issues such as abortion, the death penalty, and aid to private and parochial schools, a convention can, in 2017, open this door to badly needed legislative reform and reduce corruption.

My motivation for updating *Three Men in a Room* is really based on a fundamental belief: Americans are entitled to a voice in their state politics and a clear window on its dealings. This is especially so in a world where quickly transmitted information is power, and secrecy—which is so antithetical to well-informed choices or allowing ideas and policies to be debated or debunked—runs rampant at all levels of government. Winston Churchill memorably called democracy the worst form of government except for all the other alternatives.⁶⁸ Democracy can be improved even if it cannot be perfected, and the American people have a right to a real democracy, rather than merely window dressing or photo opportunities and public relations, the parts that make up the current charade that calls itself democracy in Albany. Real democracy is what our soldiers are asked to fight for in foreign lands. For public participation to be short-circuited anywhere within the United States, as is exemplified every day in the Empire State, should be galling and unacceptable to us all. Tragically, only in presidential election years do more than 50 percent of voting-age individuals go to the polls. In nonpresidential years, when state legislators and governors are elected, turnout is approximately one-third of potential voters. In off-year special elections, the turnout is between 5 and 10 percent.

Still, New Yorkers are sensitive to the problem of corruption afflicting their state government. Recent polls reveal deep-seated disappointment in the conduct of state government. A Quinnipiac University survey of New York voters in mid-2015 found that 55 percent of those polled would favor, in theory, banishing the entire legislature, or cleaning house, with just 28 percent saying the current crop could be counted on to

eradicate corruption.⁶⁹ There could hardly have been a more discouraging evocation of public perception than an April 2016 Siena Research Institute poll: Of 802 registered voters surveyed, 93 percent said they believed that corruption in their state government was a very serious or somewhat serious problem, and 65 percent said they thought the problem even extended to legislators from their own area.⁷⁰

All of us should support the extremely important recommendation that we, as citizens, begin looking to our state governments for a restoration of both the idea and the practice of good government in our country. Advocates of reform will not be acting in a vacuum. In New York, they have laid down important markers since the early 2000s, but there almost certainly will be the need for a state constitutional convention to achieve reform. Allowing the cascade of ethical and legal improprieties to continue unimpeded in the coming months and years would be regrettable, to say the least. I would venture to call it unthinkable.

Look back to recent history and you can see that contemporary pressure building for reform did not begin with Bharara's important prosecutions and is not a flimsy reed. Rather, as anyone can see, the foundations for change run deeper.

Since at least early 2002, many newspapers across New York State have played a consistently strong role in the push for legislative reform, editorializing powerfully about the need for systemic changes of many aspects of New York State's government. Most editorial writers have aimed their quills at the processes and practices designed to perpetuate the iron grip on decision making held by three people: the governor, the assembly speaker, and the senate majority leader, regardless who they happened to be at any given time.⁷¹

The last ten to fifteen years of editorializing, then, have firmly established the rationale for change. The *New York Times* began a lengthy string of significant editorials in February 2002 decrying what the editors correctly termed a deadlocked and demoralizing situation in the state capital, given many built-in incumbent protections. The paper assumed an incumbent-wary stance in its candidate endorsements, determined to see the entrenched status quo shaken up or at least sent a message: make substantial changes or get out of the way.⁷² Many more editorial boards and columnists around the state have exhorted readers to vote against the incumbent, whatever his or her history of securing funds for projects

directed to the district or the degree of influence in the Albany hierarchy, and regardless of the caliber of his or her opponent.⁷³

The frustration editorial boards expressed, whether they were conservative, liberal, or centrist, was highly understandable. Officeholders in Albany have no term limits and are rarely voted out of office because of the extraordinary powers of incumbency accorded to them in a self-serving system of rules and practices geared to the cultivation of campaign funds and “safe” districts. The districts are not created by a body independent from the legislature’s leaders, as in some states, but by the majorities of each house in the New York legislature.

Not surprisingly, then, the *New York Times* returned to its nonendorsement posture vis-à-vis Albany incumbents during the 2014 election cycle. With the heavily favored and well-funded Andrew Cuomo running for reelection as governor, the newspaper refused to endorse him in the Democratic primary.⁷⁴ Governor Cuomo managed to persuade the Republican-led state senate to go along with assembly-supported bills legalizing same-sex marriage and tightening the state’s gun control laws after horrific mass shootings in other states while reducing pension payouts for future public employees (a cause of many editorial boards, though the bane of public employee unions).⁷⁵ Despite his having gained timely approval of the yearly state budget throughout his first term, a feat that had eluded his predecessors, the incumbent governor had only partially made good on his campaign pledge to make cleaning up Albany his “Job Number 1.”⁷⁶

Nor was Cuomo successful in ending the gerrymandering of legislative districts, a longtime practice that had resulted in a truly shameless 98 percent reelection success rate for legislators.⁷⁷ Instead, the 2012 redistricting was conducted under the control of Assembly Speaker Silver and Senate Majority Leader Skelos,⁷⁸ and a constitutional amendment passed in 2014 promised only a bipartisan redistricting guided by some written standards and not the nonpartisan independent redistricting that government reform groups argued were needed to draw fair districts.⁷⁹ Cuomo was also unable to firm up the state’s loophole-riddled campaign donor laws—at least during the first five years of his leadership.

In 2004, then-Nassau County Executive Tom Suozzi, a Democrat, launched a notable effort to highlight the severity of corruption in Albany called the “Fix Albany” campaign. Under his early banner, Suozzi successfully targeted for defeat a Long Island incumbent who he said was too close to the Democratic assembly speaker and would never challenge

Sheldon Silver's failure to address ballooning Medicaid expenses and inefficiencies, a problem putting pressure on suburban counties to raise property taxes. Tom Suozzi argued that his constituents on Long Island and around the state deserved a greater voice in Albany through their elected state representatives. The challenger whom Suozzi backed was someone he said would confront the problems in Albany with more vigor and independence than the longtime incumbent did. Although incumbents almost never lose an election in New York State, and especially those from Long Island, this time one actually did: Glen Cove city council member Charles Lavine defeated a well-liked, competent, six-term Democratic assemblyman in the Democratic primary. Lavine's victory sent a message to Speaker Silver that there were political consequences for avoiding the subject of legislative reform.⁸⁰ Suozzi also recruited a Democrat to challenge Majority Leader Skelos for his Nassau County senate seat, but this candidate was unsuccessful in the November general election. Suozzi later lost the Democratic nomination for governor in 2006 to then-Attorney General Eliot Spitzer and was defeated in his 2009 reelection bid for Nassau County Executive by Republican Edward Mangano.⁸¹

Additionally, Republican state senator Nancy Lorraine Hoffman of Syracuse fell to an insurgent candidate who, like Lavine, bore a similar message about the need for reform to the senate majority leader position (then held by Joe Bruno, a Republican representing Rensselaer County and Saratoga Springs).⁸² However, her successor has become a leader in the Independent Democratic Conference (IDC), which is rewarded for its support of the senate's Republican majority with chairs of important committees, all of which give their members an extra stipend.⁸³ Republican state senator Nick Spano of Westchester County survived a surprisingly strong challenge from Democratic Westchester County Legislator Andrea Stewart-Cousins and won by eighteen votes.⁸⁴ Stewart-Cousins rebounded in a rematch two years later in 2006, defeating Spano, who in 2012 would plead guilty to federal tax evasion charges and draw a prison sentence of a year and a day;⁸⁵ in contrast, Stewart-Cousins rose to Democratic Minority Leader and holds that position at the time of this writing.⁸⁶

Even before Stewart-Cousins's victory in 2006, reinvigorating the legislature was unquestionably an issue for legislators to reckon with. Both Republican and Democratic incumbents who had never dared broach the issue now gave it, at the very least, a cursory endorsement, and some even made it the focus of their campaigns.