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# Buffalo Billion Probe: Bad Apples or Broken System? (/index.php/state/6331-buffalo-billion-probe-bad-apples-or-broken-system)

May 13, 2016 | by [David Howard King \(/index.php/reporters/david-howard-king\)](#)

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Gov. Cuomo in Buffalo (photo via The Governor's Office)

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As U.S. Attorney Preet Bharara's office issues a storm of subpoenas to the administration of Governor Andrew Cuomo and his close associates in relation to the state's Buffalo Billion economic development program, the governor and his aides have delivered a consistent message: the investigation targets the dealings of a few bad apples, the governor wasn't aware of any wrongdoing and he wants to get to the bottom of the situation as quickly as possible.

"I've said to all my people, and I've said to the U.S. attorney, any way we can find out and be helpful and be cooperative, we will be," Cuomo told reporters during a press conference in the Adirondacks on Tuesday. "Nobody wants the facts more than us. That's why we started our own private investigation. We know the questions: did two people act improperly? Did they represent companies they shouldn't have? Was there undue influence for those companies? Those are the questions, we now need the answers and we don't have the answers."

The message rings as spin to a number of expert observers who insist Cuomo has long overseen a system that allows, at the very least, for the appearance of pay-to-play to flourish as mini-economies have popped up around the state where connected consultants work with both state government entities and those looking to win state contracts, and where the state funnels money through non-profits, allowing them to avoid scrutiny and standard state contracting procedures.

Bharara's probe appears to have also spurred inquiries into surrounding issues by Attorney General Eric Schneiderman and Comptroller Thomas DiNapoli - all of whom, like Cuomo, are Democrats.

It is unclear whether the two men who have been reported to be at the center of the probe - longtime Cuomo aide Joe Percoco and Cuomo family associate and lobbyist Todd Howe - violated the law or how Bharara's many subpoenas that have targeted the executive chamber, former Cuomo aides, consultants, and businesses involved in the Buffalo Billion all fit together. However, the scope of the investigation and the deep layers of connections between and among some of the players involved makes it fairly clear that the target of Bharara's investigation is not simply two Cuomo associates.

Unlike New York City, New York State has no restrictions on what is referred to as "pay-to-play." Donors with business before the state are allowed to contribute the same amount as anyone else to a candidate campaign.

Meanwhile, the checks that exist on how the state awards contracts have been subverted by the use of non-profit entities that aren't subject to the same regulations. State Comptroller Tom DiNapoli and other government and budget watchdogs have criticized the proliferation of these entities and called for reform.

When acknowledging that investigators are looking into actions by individual actors and decisions that were made by state entities, Cuomo also announced "our own investigation with a private investigator who was from the U.S. attorney's office originally, Mr. Bart Schwartz." Though it is being explained differently, the move is seen by some watchdogs as designed only to target specific contracts and not intended to address what they say is a flawed system plagued by the appearance and risk of corruption, if not worse.

"The governor is trying to get in front of this issue and is saying a couple of people did something wrong, but the reality is that the entire system is ripe for corruption," said Ron Deutsch, executive director of The Fiscal Policy Institute, an independent group that analyzes New York fiscal issues.

Cuomo spokesperson Dani Lever declined comment, but pointed Gotham Gazette to a statement issued by Cuomo counsel Alphonso David. (Another Cuomo aide emailed a sarcastic comment to Gotham Gazette.)

Alphonso David issued a statement just as [the New York Daily News broke a story](http://www.nydailynews.com/news/politics/cuomo-aides-probed-shady-lobbying-conflicts-interest-article-1.2619360) (<http://www.nydailynews.com/news/politics/cuomo-aides-probed-shady-lobbying-conflicts-interest-article-1.2619360>) April 29 revealing that Percoco is a target of Bharara's probe, acknowledging allegations and announcing the independent investigation.

"This [federal] investigation has recently raised questions of improper lobbying and undisclosed conflicts of interest by some individuals which may have deceived state employees involved in the respective programs and may have defrauded the state," David wrote. "We take violations of the public trust seriously and we believe these issues must be resolved by further investigation by the U.S. Attorney. In the meantime, and as the [Buffalo Billion] program operates on a daily basis, the Governor has ordered an immediate full review of the program. Any grants made by this program will be thoroughly scrutinized – past, current or future."

David went on to say: "Ensuring the integrity of the contracting process for this program is paramount, so that the Buffalo Billion and Nano program can continue creating new jobs and revitalizing Upstate's economy."

The statement wasn't reassuring for many watchdogs, especially those who have long-criticized the Buffalo Billion program.

"The governor is looking at it in terms of the mistakes, or poor behavior of a couple aides that he seems to be disassociating himself with," said John Kaehny, executive director of Reinvent Albany. "But what the subpoenas are targeting seems to be the corruption risk and bid-rigging favoring the governor's campaign contributors. No one cares Todd Howe did something dumb. This is not what this is about - the governor sidestepped the larger issues."

At least six current or former members of the Cuomo administration have been targeted by subpoenas. The administration has defended [some of them](http://nypost.com/2016/05/10/cuomo-wont-defend-all-of-his-probed-aides/) (<http://nypost.com/2016/05/10/cuomo-wont-defend-all-of-his-probed-aides/>).

A review of a number of businesses targeted by Bharara's subpoenas shows that most of them are regular contributors to Cuomo's campaigns. That leads some observers, including Kaehny, to believe that Bharara is interested in the state's economic development subsidy programs as a whole.

"The Buffalo Billion is just a microcosm of the pay-to-play racket that has engulfed economic development under Governor Cuomo," said Kaehny. "It is just a giant machine that takes in donations and doles out grants to donors. It is remarkable in its scope, consistency, and is dramatic in how it all leads back to the same people. What caught Bharara's interest in this is a system - not a rogue agent, not a bad apple, it's a system."

Jennifer Rodgers, formerly of the U.S. Attorney's office and current executive director of Columbia's Center for the Advancement of Public Integrity, said she does not believe that is the case.

"I wouldn't say the fact that the U.S. Attorney is involved means it is systemic," said Rodgers. "This is important enough even if it is just two guys who took bribes for grants with their position, and importance makes it a very worthy case to pursue. If I learned two guys were taking all this money and were involved in these subsidies, I would think they were good targets," said Rodgers.

However, Rodgers said she understands why there is suspicion about the overall system. "I think it is a disaster of a system that everyone in good government sees as asking for trouble - there is no oversight. At the same time, it is not the U.S. Attorney's job to change the system. Their job is to charge guys with criminality. I could see issuing a grand jury report that says 'by the way this system is asking for trouble,' but it is not the crux of what he does."

Blair Horner, executive director of the New York Public Interest Research Group, said without knowing what Bharara knows, it is impossible to judge what he is really after. "But I would say opacity in government increases the risk for corruption. What is so notable about how the Cuomo administration operates is they keep their decision-making process behind closed doors and he only shows the public what he wants them to see. This is the governor who ordered agencies to delete their emails and who still hasn't told us how the Tappan Zee Bridge will be funded and it's half completed."

Gerald Benjamin, a professor of political science at SUNY New Paltz noted that the fact SUNY Polytechnic President Alain Kaloyeros has been subpoenaed and appears to have been a target of the probe since the fall, "makes it a much bigger matter that could be focused on systemic practices."

Kaloyeros has overseen much of the Buffalo Billion contracting and has become a major figure (<http://www.gothamgazette.com/index.php/government/5912-alain-kaloyeros-powerful-centerpiece-of-buffalo-billion-could-become-household-name>) in the Cuomo administration as the governor has ramped up his economic development programs.

"The issue we have is confidentiality," Kaloyeros told Gotham Gazette by Facebook messenger last fall when being asked (<http://www.gothamgazette.com/index.php/government/5925-buffalo-billion-boss-offers-cancels-interview-claims-threat-of-jail>) about the Buffalo Billion investigation. "We were instructed in no uncertain terms not to comment on the inquiry from down South with the threat of jail which is being interpreted as we are the target of an investigation. So that part we cannot comment on beyond what we were authorized to say publicly."

Gov. Cuomo has distanced himself from Percoco and Howe. Percoco, who has been characterized as a third son to Mario Cuomo, worked at Andrew Cuomo's side since his days at HUD. Percoco left the administration for part of 2014 to run the governor's reelection campaign. He later filed income disclosure forms with the Joint Commission on Public Ethics (JCOPE) revealing he received income from two developers with business before the state while managing the governor's campaign.

Todd Howe, the Washington lobbyist who had a relationship with Mario Cuomo and worked for Andrew Cuomo's 2014 campaign under Percoco, has been involved in steering donations (<http://www.capitalnewyork.com/article/albany/2016/05/8598650/lobbyist-steered-subpoenaed-companies-cuomo-campaign>) from contractors to Cuomo and attended a fundraiser with Cuomo as recently as December, according to Politico New York (<http://www.capitalnewyork.com/article/albany/2016/05/8598974/cuomo-attended-december-fundraiser-embattled-lobbyist-aide-and-develo>), which reported that Howe steered donations from "several development and energy companies" to Cuomo's reelection campaign.

Cuomo has said he allowed Percoco to take on outside work because he was strapped for cash. The governor has denied he had much of a relationship with Howe. Cuomo rejected the idea that he should have questioned Percoco on whether his outside clients had business with the state, telling reporters on Tuesday, "No. The state has tens of thousands of employees; they're not supposed to be cross-examined to make sure they're following the rules, right?"

Horner rejected Cuomo's assertion that he shouldn't have kept himself apprised of Percoco's outside work. "It is the governor's responsibility. He allowed Percoco to take outside work in the first place. This guy is not a hands-off administrator. That being said, he can't know everything."

Aside from the red flags sent up by donations and dealings with the air of conflict of interest, watchdog groups say they believe Bharara may be examining the Buffalo Billion because it is clear that up until now on one on the state level has been.

Cuomo and the Legislature crippled the Comptroller's ability to audit deals made regarding the Buffalo Billion in 2011, DiNapoli and others say (<http://www.timesunion.com/local/article/DiNapoli-We-used-to-have-more-oversight-over-6554885.php>), by passing legislation that prevented auditing of SUNY, CUNY, hospital or construction funds. That is important to the Buffalo Billion because the state funnels cash for Buffalo Billion contracts through two non-profits controlled by SUNY.

On Wednesday, DiNapoli unveiled a series of proposals (<http://www.gothamgazette.com/index.php/state/6328-comptroller-calls-for-state-budget-transparency-fiscal-reform>) to bring more transparency to state spending - a few which would likely impact how the state funds the Buffalo Billion. His plan would ban lump sum appropriations, create a council to plan capital spending, and require economic development program proposals to be scored and ranked in a public database.

"Public authorities are not subject to the same checks and balances that apply to state agencies, resulting in hundreds of millions of dollars being spent annually with limited oversight," reads the release from DiNapoli's office. "DiNapoli's proposal would require state-funded public authority projects to be scored and ranked using measurable and objective criteria. His proposal also requires more disclosure of public authorities' spending and financing activities."

Deutsch has been advocating for such a database for years. "My entire career I've been calling the efficacy of these programs into question," said Deutsch. "We saw Empire Zones move to cater to where businesses wanted to be rather than have them come to economically disadvantaged areas," Deutsch said of an economic

development program that was a hallmark of Republican Governor George Pataki. "Every once in awhile there's a bad deal, or someone breaks the law and people pay attention for a little while."

While calling for his own investigation of the Buffalo Billion, Cuomo has simultaneously downplayed the role of the state's existing ethics body in preventing possible conflicts of interest. Asked whether JCOPE should have flagged Percoco's filing that showed him taking income from groups with business before the state, Cuomo told reporters on Tuesday: "JCOPE has proven effective. Can an agency always be more effective? But I don't think this is about JCOPE. We're looking at two individuals to see if they've done anything improper. The first responsibility lies with that individual." Cuomo also told reporters that you have to engage in criminality to be a target of JCOPE.

JCOPE is able to give administration officials guidance in taking outside work. It is unclear if JCOPE issued such an opinion in the case of Percoco. The commission has been headed by a succession of three Cuomo aides since its inception. Seth Agata, the new and third head of the commission, once served as Cuomo's counsel, where he wrote to JCOPE to ask for clearance for Cuomo to earn hundreds of thousands of dollars to write a memoir for a company that has business before the state. Permission was granted.

The Legislature has shown little interest in reforming how the state doles out subsidies. Senate Majority Leader John Flanagan, a Republican from Long Island, told State of Politics (<http://www.nystateofpolitics.com/2016/05/flanagan-dont-pull-back-from-economic-development/>) on Wednesday that the state should be "forging ahead" with current economic development programs. "The executive has an inherent responsibility to be overseeing these projects from start to finish," Flanagan said. "I don't think we should be scaling back anything. Can we take a closer look, put it under a microscope, fine. But people need jobs. This is a great way to create economic development."

Cuomo's creation of an independent investigation is worrying to some because of the governor's history with independent commissions.

"Bart Schwartz is not independent, Alphonso David is not independent, Seth Agata is not independent," said Kaehny. "The public will not get the truth unless the facts are independently accessed and the governor is incapable of investigating himself. We've seen what happens when the governor says 'Follow the money wherever it may lead' - as soon as the money brought [the] Moreland [Commission to Investigate Public Corruption] back to the governor and his real estate contributors at REBNY, Cuomo pulled the plug...No one is good at investigating themselves," said Kaehny.

Rodgers, of CAPI, said that she has faith in Cuomo's independent investigation. "The U.S. Attorney's Office will proceed with their work regardless of what internal investigation is going on," said Rodgers. "And Bart Schwartz being chosen to head the internal investigation is a good sign for the credibility and independence of whatever findings he makes. If the governor's office had chosen someone with less credibility, you could see that there might be suggestions about tampering with witnesses and other evidence (i.e. that the governor's investigation might try to taint the government investigation during their own evidence collection), but I don't think you'll see any of that here with Bart in charge."

Asked if voters should have faith in Schwartz's investigation, Horner replied, "They should have faith in Preet Bharara."

On Thursday, following the sentencing of former Republican Senate Majority Leader Dean Skelos, Bharara issued a statement trumpeting the conviction and sentencing of Skelos and former Democratic Assembly Speaker Sheldon Silver. The statement included a reference to Cuomo-controlled investigations. "These cases show--and history teaches--that the most effective corruption investigations are those that are truly independent and not in danger of either interference or premature shutdown."

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by David King, Albany editor, Gotham Gazette

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