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When It Comes to Wall Street, Preet Bharara Is No Hero

The prominent U.S. attorney fired by Donald Trump this weekend has been justly acclaimed for his pursuit of political corruption. But his treatment of the Wall Street executives involved in the financial meltdown was far less confrontational.

by [Jesse Eisinger](#)

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Preet Bharara, then U.S. attorney for the Southern District of New York, at Trump Tower in November 2016 (Drew Angerer/Getty Images)

After his election in 1968, President Richard Nixon asked Robert Morgenthau, the US Attorney for the Southern District of New York, to resign. Morgenthau refused to leave voluntarily, saying it degraded the office to treat it as a patronage position.

Nixon's move precipitated a political crisis. The president named a replacement. Powerful politicians lined up to support Morgenthau. Morgenthau had taken on mobsters and power brokers. He had repeatedly prosecuted Roy Cohn, the sleazy New York lawyer who had been Senator Joe McCarthy's right-hand man. (One of Cohn's clients and protégés was a young New York City real estate developer named Donald Trump.) When Cohn complained that Morgenthau had a vendetta against him, Morgenthau replied, "A man is not immune from prosecution merely because a United States Attorney happens not to like him."

Morgenthau carried that confrontational attitude to the world of business. He pioneered the Southern District's approach to corporate crime. When his prosecutors took on corporate

fraud, they did not reach settlements that called for fines, the current fashion these days. They filed criminal charges against the executives responsible.

Before Morgenthau, the Department of Justice focused on two-bit corporate misdeeds—Ponzi schemes and boiler room operations. Morgenthau changed that. His prosecutors went after CEOs and their enablers—the accountants and lawyers who abetted the frauds or looked the other way. “How do you justify prosecuting a nineteen-year old who sells drugs on a street corner when you say it’s too complicated to go after the people who move the money?” he once asked.

Morgenthau’s years as United States Attorney were followed by political success. He was elected New York County District Attorney in 1974, the first of seven consecutive terms for that office.

There are parallels between Morgenthau, and Preet Bharara, the U.S. attorney for the Southern District who was fired by President Trump this weekend.

Like Morgenthau, the 48-year old Bharara leaves the office of US Attorney for the Southern District celebrated for taking on corrupt and powerful politicians. Bharara prosecuted two of the infamous “three men in a room” who ran New York state: Sheldon Silver, the Democratic speaker of the assembly and Dean Skelos, the Republican Senate majority leader.

He won convictions of a startling array of local politicians, carrying on the work of the Moreland Commission, an ethics inquiry created and then dismissed by New York’s Gov. Andrew Cuomo. (This weekend, Bharara cryptically tweeted that “I know what the Moreland Commission must have felt like,” a suggestion that he was fired as he was pursuing cases pointed at Trump or his allies.)

But the record shows that Bharara was much less aggressive when it came to confronting Wall Street’s misdeeds.

President Obama appointed Bharara in 2009, amid the wreckage of the worst financial crisis since the Great Depression. He inherited ongoing investigations into the collapse, including a probe against Lehman Brothers.

He also inherited something he and his young charges found more alluring: insider-trading cases against hedge fund managers. His office focused obsessively on those. At one point, the Southern District racked up a record of 85-0 in those cases. (Appeals courts would later throw out two prominent convictions, infuriating him and dealing blows to several other cases.)

Hedge funds are safer targets. The firms aren’t enmeshed in the global financial markets in the way that giant banks are. Insider trading cases are relatively easy to win and don’t address systemic abuses that helped bring down the financial system.

Even there his record was more mixed than is popularly understood. As Sheelah Kolhatkar demonstrates in her propulsive and riveting [“Black Edge,”](#) when it came to bringing his biggest whale to justice, Steve Cohen of SAC Capital, the Southern District blinked. They did not charge him, only securing a guilty plea from his firm.

Present and former prosecutors say Bharara did not give much emphasis to investigations arising from the financial meltdown, an approach shared by his boss, Attorney General Eric Holder. Justice Department insiders say many of those inquiries withered not because they were unpromising, but because [they had little support](#).

Bharara missed an opportunity by not bringing any significant criminal charges against individuals in the wake of the collapses of Lehman, investment bank Merrill Lynch, the insurer AIG, the mortgage securities and [collateralized debt obligation businesses](#), or the myriad public misrepresentations from bank CEOs about their finances.

Bharara and senior officials in Washington argue that there were no criminal cases to file after the 2008 crisis. But the U.S. attorney’s office in Manhattan did pursue significant civil cases against the banks for their mortgage activities, cases that had to prove misconduct by the “preponderance of the evidence.” And DOJ did win guilty pleas from the banks themselves, an indication that prosecutors might have been able to charge individuals for their part in crimes their institutions had acknowledged. Academics who studied those years, including Columbia’s Tomasz Piskorski and James Witkin and Chicago’s Amit Seru [found widespread patterns of fraud](#) in the mortgage business.

The exception makes this failure all the more puzzling. As I detailed in 2014, Bharara’s office [brought one case for misconduct](#) during the financial crisis — against a mid-level banker. Prosecutors charged Kareem Serageldin of Credit Suisse with overseeing traders who knowingly misrepresented the value of mortgage securities. Serageldin pleaded guilty and went to prison.

Serageldin’s colleagues in the industry and others familiar with Credit Suisse found it hard to believe that he was the only person involved in that particular fraud.

Bharara’s reluctance to pursue senior executives was seen in other investigations of big banks. His office wrested a \$1.7 billion fine from JPMorgan Chase over its complicity in the Bernie Madoff Ponzi scheme, but it brought no charges against individual bankers.

One odd aspect of his tenure was the Southern District’s willingness to defer to other jurisdictions when it came to Wall Street cases.

Historically, the SDNY has been the leading enforcers of securities laws, nicknamed the “sovereign district” for its propensity to grab corporate fraud cases from elsewhere on the flimsiest of jurisdictional pretexts. Under Bharara, the southern district let other U.S. attorneys claim investigations into residential mortgage-backed securities, the instruments at the heart of the financial crisis. Those other offices were not nearly as versed in complex

financial cases as their colleagues in Manhattan. In addition, Bharara's office ceded post-financial crisis investigations into foreign exchange and global interest rate manipulation to prosecutors working from the Justice Department's headquarters.

Like Morgenthau, Bharara was a prominent figure in the New York landscape, given to well-orchestrated press conferences and memorable sound bites. Like Morgenthau, he did not leave office quietly, even though the president has a longstanding right to name his own U.S. attorneys. And like Morgenthau, he may try to parlay his martyrdom into elective office.

But if he runs on his record of convictions, as prosecutors often do, voters might want to consider as well the list of possible targets he never pursued.

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