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Co-Chairs' Picks To Write Moreland Report Were Nixed For Second Floor Insider [UPDATED]

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An assistant counsel to Governor Andrew Cuomo, who professed himself to be the author of the NY SAFE Act, was ultimately selected as the lead writer of the Moreland Commission on Public Corruption's December 2013 report after several independent candidates for the position were nixed, according to multiple sources within the Moreland Commission.

Alex Crohn, the self-proclaimed author of the SAFE Act, had not been the Moreland Commission co-chairs' first choice to write the much-anticipated report the Commission released on Dec. 2.

Their choice was Adam Skaggs, then a senior counsel to the nonpartisan Brennan Center for Justice and an expert on several areas central to the Commission's work, including campaign finance law.

Skaggs had interviewed for the job, was approved unanimously by the co-chairs—William Fitzpatrick, Kathleen Rice and Milton Williams—and was offered the position. However, the Commission's executive director, Regina Calcaterra, nixed the choice, making it clear that the governor's office did not approve of Skaggs' selection. Meanwhile, Skaggs had taken another job, at the Mayors Against Illegal Guns coalition.

After Skaggs was passed over, the Commission continued its search for an independent report writer. Other candidates with significant expertise in areas of the Commission's focus included Zephyr Teachout, a professor at Fordham University Law School and the former national director of the Sunlight Foundation, and Jenna Adams, a former staffer to Assemblyman Brian Kavanagh who is now state legislative director to New York City Comptroller Scott Stringer.

Ultimately, the co-chairs decided on Alex Camarda, the director of public policy and advocacy for the good government group Citizens Union. Camarda had been highly recommended for the position by Moreland commissioner Richard Briffault, a professor at Columbia Law School who is one of the nation's foremost authorities on government ethics. However, before Camarda was notified that he had been hired, Calcaterra threatened to resign as executive director if the Commission hired Camarda.

"I was considered for the position, but my understanding is ultimately a staff member from the governor's office assisted the Commission in writing the report rather than expend funds hiring an employee outside the government," said Camarda.

According to the dozen Commission sources interviewed for this article, all of whom spoke on the condition of anonymity so as not to anger the governor's office, Calcaterra was open with the Commission's staff and commissioners that she was closely coordinating with the governor's office, and that in many instances her demands were extensions of orders handed down by the Second Floor, in particular from the Secretary to the Governor, Larry Schwartz.

Calcaterra, who did not return calls for comment from City & State, had been appointed executive director of the Commission by Gov. Cuomo when he announced the Commission's creation on July 2, 2013. Just days earlier Calcaterra had wrapped up her work as the governor's appointee as executive director of the previous Moreland Commission he had called, which focused on the Long Island Power Authority and released its final report on June 22. Sources say that after Calcaterra threatened to resign over Camarda's hiring, the governor's office made it clear to the co-chairs that Calcaterra would be staying on, and that the executive chamber would not agree to the hiring of an independent, good government report writer.

By early October there was still no writer on board to draft the report, despite the days quickly ticking down to Dec. 1—the date on which Gov. Cuomo had mandated by executive order that the Commission release a preliminary report detailing its findings. As such, the co-chairs agreed to accept a report writer selected by the Second Floor, provided they would be allowed to hire a second independent writer to work alongside the executive chamber's choice.

The governor's office sent Alex Crohn. No independent writer was ever hired.

Ari Savitsky, a lawyer with the firm WilmerHale, was brought on as the report's nominal independent writer, however multiple sources depicted him as a glorified copy editor, not a primary writer of the report. Savitsky declined to comment when reached by City & State.

Crohn, a graduate of Harvard Law School, came to the Commission directly from the executive chamber, where he worked under Mylan Denerstein, the governor's counsel. Crohn spoke widely with members of the Commission about his work in the governor's office, claiming that he played a significant role in writing legislation. He was particularly proud of his role in authoring The New York Secure Ammunition and Firearms Enforcement Act of 2013, commonly known as the NY SAFE Act.

"This is the hardest thing I've had to write since the SAFE Act," several Commission sources recall Crohn bemoaning aloud on numerous occasions while working on the December Moreland report. Commission sources also say they overheard Crohn, who sat in the bullpen with the rest of the Moreland Commission's staff members, engaged in long conference calls that appeared to focus on the implementation of the SAFE Act.

Crohn could not be reached for this article, and the computerized message that answered his cell phone number stated that "the person you are trying to reach is not accepting calls at this time."

While Crohn's claims about authoring the SAFE Act could not be confirmed independently by any sources within the executive chamber, a review of Gov. Cuomo's public

schedule appears to substantiate that he was involved in the legislation to some degree. Two days after the SAFE Act was passed on Jan. 15, 2013, Crohn is listed as being in attendance at a meeting with the governor and several of his top aides, including Denerstein, as well as law enforcement officials Sgt. James Sherman of the New York State Police's Pistol Permit Bureau and Kevin Bruen, assistant counsel for the New York State Police.

The following day, Jan. 18, Crohn would be in attendance at another meeting with the governor, Denerstein, Elizabeth Glaser, then the deputy secretary for public safety, Sherman and Bruen, and on Jan. 29 he is listed as having been at a meeting that included New York State Police Superintendent Joseph D'Amico. Crohn also shows up on the governor's schedule on March 25, 2013, again in a meeting with Sherman and Bruen, and on Feb. 24, 2014, in a meeting with the governor, Denerstein and Bruen.

The governor's office declined to comment for this article.

Commission sources say that by Crohn's own admission, he was an unusual fit for the job, lacking, as he was, in professional expertise in ethics reform, campaign finance, the penal code or any of the other areas principally germane to the Commission's work. Despite this dearth of qualifications on-paper, Crohn would not only serve as the lead writer of the Commission's preliminary report—which, with the shutdown of the Commission, now appears will be its only report—and sources say he also wrote the much talked about dissent to the section of that report which recommended the introduction of publicly financed elections in New York State.

While one independent expert, who requested to remain anonymous so as not to upset the governor, said that it was not unheard of for the author of a report to also write its dissent, provided the dissent accurately reflects the perspective of the dissenting minority, a commission source bristled at what the source believed was an inherent conflict of interest.

"It's crazy," said the source. "It's nothing short of crazy. It's just completely counterintuitive."

Crohn did not end up writing the entire report. Several Commission sources say that the first draft submitted by Crohn was riddled with grammatical mistakes and factual errors. Moreover, as Jimmy Vielkind would write in Capital New York the day after the report's release, "its recommendations mirrored Cuomo's recent legislative platform" and seemed to be aimed chiefly at affirming the governor's agenda—thus undermining the appearance of the Commission's independence.

Appalled at the low quality of the work and its lack of specifics particularly in detailing the Commission's investigations, the co-chairs decided to silo off the executive summary of the report to Danya Perry, the chief of investigations for the Commission, since that would be the part of the report most likely to be read by the public and the media. According to multiple sources, Perry was selected because of her thorough knowledge of the status of the Commission's investigations and because the co-chairs trusted her. Some other sections of the report were handed off to Commission members who were experts in the respective areas covered.

Reached for comment, Perry declined to speak about the Commission.

After Perry completed the executive summary in November, the co-chairs refused to show it to Calcaterra, convinced that Calcaterra would instantly share it with the Second Floor. In response, sources say, Larry Schwartz called the co-chairs directly and insisted that they turn over the executive summary. But, Commission sources say the co-chairs were adamant in refusing, particularly Kathleen Rice, and the ensuing dispute caused a further breakdown in the co-chairs' already icy relationship with the Second Floor. Though the co-chairs would eventually yield and turn over the executive summary to the governor's office, thereafter the relationship between the two sides—the co-chairs and the executive chamber—would be characterized by mutual distrust.

Sources say the simmering tension split the Commission into two distinct factions: on one side, the three co-chairs, the lion's share of the commissioners, Perry and the investigations team, and the vast majority of the staff; on the other, a few commissioners like Onondaga County Executive Joanie Mahoney, and staff members directly selected by the governor's office, namely Calcaterra, Crohn, and the Commission's press secretary, Michelle Duffy.

The dissent inserted into the December report over the Commission's decision to recommend the introduction of the public financing of elections in New York State was a glaring illustration of this fissure within the Commission.

It was not until a week or two before the report's due date on Dec. 2—technically the report was supposed to be delivered on Dec. 1, but the first was a Sunday—that the notion that it would include a dissent was first brought up. Mahoney, a close ally of Governor Cuomo's, led the charge to include the dissent, as well as the effort to get other commissioners to sign on to it. Mahoney would also later claim to some of her fellow commissioners that she wrote the dissent, though multiple sources assert that it was actually authored by Crohn.

As previously reported by the Daily News' Ken Lovett, at the morning meeting of the Commission on Dec. 2, the day the report was released to the public, a great debate erupted among the commissioners over the inclusion over the word majority in the dissent. Tensions were riding high, particularly as some of the commissioners were only seeing the dissent for the first time that morning—slipped in, as it was, at the 11th hour.

The underlying significance of the debate over the word majority was a belief held by many members of the Commission that the Cuomo administration was orchestrating the introduction of the dissent to undercut the significance of the Commission's support for public financed elections. As Lovett wrote at the time, "Cuomo aides were pushing for a dissenting opinion on the issue. The thinking is that Cuomo, hoping to wind down the commission, can try and push the Legislature to agree to many of the commission's other recommendations. He then would be able to argue that the Senate GOP wouldn't go along with public financing, an issue that even had the commission split."

Co-chair Milton Williams in particular was adamant that the report not say majority, because it made it sound like the vote within the Commission in favor of recommending public

financing was closer than it actually was. He pushed to make the distinction clear that the Commission unquestionably recommended publicly financed elections in New York State, even though seven of its 25 commissioners had signed on to a dissent.

Eventually, the commissioners agreed that the several instances of majority would be omitted. Still, the co-chairs were so suspicious that Calcaterra would try to make last-second unapproved alterations to the language in the report that from the late morning when the commissioners' meeting was adjourned until the report was finalized that evening—a period in excess of six hours—the co-chairs literally stood over Crohn as he put the finishing touches on the report to personally assure themselves of the integrity of the document.

Around 6 p.m. Calcaterra left the co-chairs and Crohn as they were reviewing the final draft of the report and went to her office. At 6:05 p.m. the report was made public on the Commission's website without the co-chairs signing off on its release. It was not until an article from Nick Reisman of Capital Tonight appeared on the State of Politics blog referencing the report's release that the commissioners and staff realized that it had already gone out—and that the version made public still included the majority language.

Multiple sources recall that the commissioners present were livid, particularly Williams, and immediately sought out Calcaterra to insist that the report be corrected on the Web. Shortly thereafter, without the press being notified, the changes were made.

As Lovett would report the following day, a number of Commission sources doubted that the release of the wrong version of the report had been unintentional on Calcaterra's part. This suspicion was fanned by the fact that Reisman's fully-formed blog post front-loaded with details of the dissent came out at 6:10 p.m.—just 5 minutes after the report was released—leading some Commission staff members to speculate that Reisman had been leaked details of the report in advance by someone pushing the dissent angle. These theories were further reinforced when Mahoney went on Capital Tonight that very evening and infuriated a number of her fellow commissioners by publicly questioning the Commission's ability to be wholly independent.

“I think we're making a mockery of this whole process if we try to pretend that a group of us that's been appointed by the attorney general and the governor is investigating the attorney general or the governor,” said Mahoney on Capital Tonight a few hours after the report was released.

Whether these occurrences are evidence of a coordinated strategy to undermine the report or mere coincidence, what is verifiable is how surprisingly subdued the governor's office's reaction was to the release of report. Exactly six months earlier, the executive chamber had played up to maximum effect the press conference in which the governor announced the creation of the blue ribbon commission and the appointment of its 25 commissioners.

At that press conference, Cuomo said, “This is a powerful signal, and I want to signal to two audiences. One are the elected officials in the state of New York—we're going to raise the bar on public integrity, public trust. And second is the people of the state. I want to say, ‘Look, we have the best people in the business watching.’”

Six months later, there would be no press conference rolling out the report. The first time the governor would address the report would be the morning after its release, when he called in to the Brian Lehrer Show on WNYC, primarily to provide updates about the Metro-North crash in the Bronx that had occurred two days earlier.

In the interview, Cuomo was relatively low key about the Commission's uniqueness and impact: "To clean up Albany, I think the Moreland Commission's basic point is when the combination of money and politics is not a good combination. Now, you can say 'Yes, we know that. We knew that from the Feerick Commission. We know that in Washington, and we know that in every state government.' And it's true."

Though Cuomo said, "The Moreland Commission report makes [the] case very well" that stricter ethics legislation needed to be passed in Albany, several Commission sources construed the governor's comments as minimalizing the Commission's importance and work to date, particularly when he noted "there are obviously some questions in the report that we still have to develop and work through."

One Commission source with no apparent connection to the executive chamber speculated that perhaps the governor had downplayed his response to the report in light of the tragic train crash the day before. Another source rejects this theory, pointing out that the evening of Cuomo's Brian Lehrer appearance the governor held a lavish \$50,000 top ticket fundraiser at the Roseland Ballroom with a much-publicized special performance by Billy Joel.

Despite all of the heated battles and dramatic showdowns over the report, virtually every source interviewed for this article both on and off the record expressed that they were largely satisfied with how it ultimately turned out from a substantive standpoint.

"I thought then—and I still think now—that it was a good product, and a lot of good people worked really hard on it, and I think its message resonates even today," said Moreland co-chair William Fitzpatrick.

Still, Fitzpatrick admitted that the way the report was released did not go the way he had imagined when he signed on to be a co-chair. When Gov. Cuomo first offered him the job, Fitzpatrick, the district attorney of Onondaga County for the last 22 years, says he saw it as "the opportunity of a lifetime for a prosecutor to be able to potentially clean up one of the most corrupt state governments in the nation."

"In my mind I pictured myself and Kathleen and Milt walking up to Governor Cuomo as if we were Earl Warren handing Lyndon Johnson the Warren Commission report, but there was so much last minute stuff going on that the roll-out wasn't what I expected," Fitzpatrick said. "But that's neither here nor there. It eventually made its way into the public's domain."

Additional reporting by Michael Johnson