My Moreland Mission

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I remember the day Governor Cuomo called me and said "Mr. District Attorney, I have a real challenge for you." He was right.

Ethics issues have plagued Albany for decades. This had taken its toll on public trust. The problem was not that the state lacked adequate prosecution capacity. After all, we have sixty-two District Attorneys, four U.S. Attorneys, and a statewide Attorney General. The problem was the weakness of laws addressing official misconduct and the failure of the Board of Elections to enforce regulatory compliance.

Governor Cuomo recognized this problem and proposed new legislation last year called the Public Trust Act. It included new bribery laws that allowed district attorneys to do their job, an independent enforcement capacity at the Board of Elections, and more disclosure laws, as well as a call for public financing of campaigns. In an unprecedented move, all 62 elected District Attorneys supported the Public Trust Act.

Last year, the Governor told the legislature if they ended the session without passing the Public Trust Act, he would empanel a Moreland commission to identify weaknesses in the current law and help make the new law a reality. True to form the legislature failed to act and the Governor empanelled a commission pursuant to executive order.

The Moreland Act was passed 100 years ago to empower governors to bring about reform. Under the Act, the governor has subpoena power to investigate "the management and affairs" of any state agency, board or commission.

While the Governor could have done the investigation himself, as has been done in the past, he chose to appoint a group as a commission presumably to provide a buffer in this confrontational task with the legislature. I was asked to co-chair along with Nassau County District Attorney Kathleen Rice and former Assistant U.S. Attorney Milt Williams.

The commission's short term goal was: to help get the legislature to enact effective legislation as soon as possible. The Governor had said publicly and privately that he expected a short role for the Moreland Commission and that it would go out of existence once it fulfilled its intended purpose. He said, "we don't need another prosecutorial agency to exist long term," and that he did not want another Feerick Commission which went on for three years and accomplished little in the way of reform. But he also said the commission would continue in existence until the law was passed. Therein was our power.

We had a short deadline for results. We negotiated directly with the legislature to try to achieve reform. This lasted for several weeks. It was an interesting experience to say the least. Our negotiation was complicated by the legislature's questioning of our authority in court and also their position that the

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Governor was overstepping his authority in using a Moreland Commission to get the legislature to accept reforms. The co-chairs had several meetings with representatives of both the Assembly and the Senate, and briefed the remainder of the commission, but it was clear we were nowhere close to agreement on a suitable law.

We had a five-month deadline to issue a report. We conducted several investigations that were insightful and issued hundreds of subpoenas. People have asked about the "independence" of the commission, as if it came into being on its own. It was the Governor's legal authority that created it, allowed it to exist, and authorized it to issue subpoenas or not. But our judgment and credibility were valued and respected. Specifically, as we were conducting the investigation on behalf of the Governor and the Attorney General, the law required that we report to the Governor's office and the Attorney General's Office on a weekly basis and discuss our activities. While both District Attorney Rice and I each had our own independent authority to issue subpoenas as District Attorneys, in this situation we were not operating under our own legal authority but rather under the Governor's. However, as the Governor and Attorney General valued our collective experience, the executive order required the three co-chairs to agree on issuance of subpoenas. There were no subpoena decisions made without our approval and in making those decisions we were allowed to use our own independent professional judgment based on our collective experience, and we did.

The legislature contested our subpoena authority and the cases went to court. We made several criminal referrals, and recently sent information pertaining to per diem abuse to the U.S. Attorney for the Northern District of New York and the state Attorney General.

We issued our report last December as required laying out our findings and recommending legislation. This report was largely included in the Governor's January State of the State and more importantly in his executive budget proposal.

Several weeks later the Governor and the legislature announced agreement on the Public Trust Act which is largely as recommended by our Moreland Commission. The criminal reforms include items district attorneys have long fought for. The Act conformed state bribery law to federal law by removing the need to prove a quid pro quo, raised the penalties for bribery, created mandatory lifetime bars from holding public office, lobbying and obtaining state contracts if convicted of corruption crimes, and created a new series of public corruption crimes for corrupting or defrauding the government. The law was widely praised, from Broome County District Attorney Gerald F. Mollen, who stated that the bill "exemplifies the assurance of and commitment to restoring trust in Albany," to Rockland County District Attorney Tom Zugibe, who called the bill "a major step forward in the effort to clean up Albany," to Dean of University at Buffalo Law School Makau Mutua, who called it "a great leap forward for New York and a huge blow against public corruption in our state."

The Public Trust Act also reformed the Election Law by creating an independent enforcement counsel to investigate and bring actions without Board of Elections approval. If the Board deadlocks on criminal referrals on party lines, the enforcement counsel breaks the tie and can issue subpoenas or refer the matter to a district attorney or the Attorney General. As my co-chair Milt Williams and I said at the time, the

"paper tiger" days of the Board of Elections are over and we can begin to rebuild public trust. The Act also expanded the scope of what constitutes independent expenditures to get at those truly political ads disguised as issue ads, and requires independent expenditure organizations to register and make periodic disclosure with the Board of Elections.

This is not to say the Public Trust Act is a perfect outcome. It isn't. It did not include broad public campaign finance reform, which an overwhelming majority of Commissioners had recommended. In fairness, public finance is a controversial topic in this state and is vehemently opposed by the Republicans in the State Senate. (As a matter of disclosure I am a Republican). To the legislature, public financing of campaigns is a matter of ideology not enforcement. They argued it was improper and coercive for the Governor to use the commission to leverage them into changing their long-held belief and to pass it. I understand the Governor's sensitivity to their charge. But the Public Trust Act did include a demonstration program of state campaign finance using public finance dollars, which is a watershed advance by the Republicans in the 30-year public finance debate.

There are also some lessons learned. In retrospect, the Commission was too big at 25 members. Some members were appointed by the Governor and some by the Attorney General and they had different perspectives. Leaks to the press were frequent, unauthorized, and largely inaccurate, and they were frustrating and undermining of the Commission. We experienced the staffing issues one would expect at a start-up organization. Whatever else, we asked each other for trust, and some members, for whatever reason, violated that trust.

All said, at the end of the day, we accomplished much. The Public Trust Act became law. Our duty performed, the Moreland is now disbanding properly. The law establishing the Moreland provided that referrals go to the Attorney General, which staffed the commission, and other law enforcement officials as appropriate. As I said March 31, all cases and materials are being referred to appropriate law enforcement officials including district attorneys and U.S. attorneys. The files contain numerous leads to be pursued to determine whether any criminal activity occurred. The U.S. Attorney in the Southern District also wanted a copy of the files, and myself and co-chair Milt Williams agreed he should get them. Of course, there are those who would prefer to practice the act of SCHADEN FREUDE and focus on what they perceive to be failures. I myself am still distressed that we as a Commission were unable to force legislators to disclose exactly what it is they do to earn lucrative outside income, not an unreasonable request of a person purportedly entrusted with serving the public good. The reality is, however, that that issue would still be in litigation long after the full term of Moreland had expired and it is left for another day. My focus is on the good that Moreland accomplished.

I have been the Onondaga District Attorney for over 22 years and am proud of the work we've done. But in many ways I feel co-chairing the Moreland Commission was a great accomplishment because it was about achieving broad reform. Ensuring the public trust is the basis of our democracy. The Governor told me when he asked me to take the job that there was a reason this goal had never been accomplished before and that it would be hard. He was more than right. But he said, too, that he had confidence in our abilities and that when we finished our work we would have taken a giant step in restoring the public's trust in government. He was right there as well.