

Inside the Morgan Lewis Investigation of Alleged Misconduct at NPR

BY ERIN MULVANEY

A Morgan, Lewis & Bockius investigative report published Tuesday about alleged sexual misconduct at NPR offered a rare public glimpse into a company's internal reporting mechanisms and a law firm's recommendations on moving forward amid the #MeToo movement.

Morgan Lewis partner Grace Speights in Washington, head of the firm's labor and employment group, led the team with partner Margaret Rodgers Schmidt and associate Jocelyn Cuttino. NPR's report on the investigation included a link to the report, and was reportedly distributed to NPR employees. NPR hired Morgan Lewis to lead an independent investigation in the aftermath of harassment claims against a senior editor.

Companies ever more face pressure about how much to open up about internal investigations. NPR said in its piece Tuesday that NPR chief executive Jarl Mohn and chief operating officer Loren Mayor vowed to release the Morgan Lewis report. While specific to NPR, the recommendations offer broad guidance for companies that are taking fresh looks at their own practices.

"We are committed to implementing its recommendations to ensure we have a workplace where everyone feels safe and respected," an NPR spokesperson said in a statement. "The past months have shown that sexual harassment is a serious, widespread problem, pervasive in every industry and many organizations; NPR is no exception."

The two-month investigation examined allegations of sexual harassment against Michael Oreskes, the



Photo: Diego M. Radzinski/NLJ

Grace Speights of Morgan, Lewis & Bockius, in Washington, D.C. (2015)

former senior vice president of news, and questions about when management became aware and what the company did when it learned. Oreskes resigned in November, apologizing for "wrong and inexcusable" workplace behavior.

"This report represents the independent findings of Morgan Lewis and contains our observations based on the totality of information we collected and reviewed. Other than the scope of our assignment, NPR did not impose any constraints on the investigation and provided its full cooperation. No representative of NPR edited this report," the report said.

The firm's investigative team said it interviewed 86 current and former NPR employees—71 women and 15 men. According to the report: "Most interviews were of current and former staff members who requested to be

interviewed. We identified and requested to interview certain members of management. We met with interviewees primarily on an individual basis and held one group interview. The interview sessions took place in person and by telephone, and lasted an average of 30 minutes to 1.5 hours."

Baker Botts partner William Jeffress Jr., a lawyer for Oreskes, didn't immediately comment about the Morgan Lewis report. Oreskes, through his lawyer, declined to comment.

Here's a broad snapshot of some of the recommendations Morgan Lewis offered to NPR:

- **How to regain trust with employees? Hire an outside firm to investigate harassment complaints.** The Morgan Lewis report noted several factors that contributed to a "very prominent distrust of management." Staff at the news outlet reported incidents where they reportedly raised concerns and there was not an adequate response and where managers reportedly were not held accountable for not addressing workplace conduct. One step Morgan Lewis recommended: Use an outside law firm to investigate complaints.

"This would help to insert a level of objectivity into the process that many perceive is not present. If investigations are transitioned back to HR, HR personnel should be trained on best practices for conducting investigations," according to the report. "When investigations are closed, there needs to be clear communication with complainants regarding the findings of the investigation and resolution, recognizing that confidentiality concerns may prohibit disclosure of personnel actions."

NPR general counsel Jon Hart was involved in reviewing workplace complaints against Oreskes based on his seniority at the company, according to the Morgan Lewis report. That interaction included Hart meeting with Oreskes about his conduct, and reviewing expenses. Hart, according to the report, in at least one instance gave Oreskes a "stern talking to." The Morgan Lewis report said: "Attempts by several members of management and legal to counsel

Mr. Oreskes about his inappropriate behavior were unsuccessful."

- **Identify any history of sexual harassment at the new-hire stage.** The Morgan Lewis team recommended: "In the hiring process, we recommend that NPR conduct background checks and inquire about prior sexual harassment issues to the extent possible after obtaining a release from the candidate that permits NPR to do so. We recognize that such issues may not be disclosed for confidentiality reasons, but the attempt should still be made. One potential way of inquiring about such issues is to conduct blind reference checks, which an outside search firm can conduct."

- **Companywide training, and conduct it in-person.** "With respect to training, we think that NPR must conduct companywide sexual harassment training, and we recommend that such training take place in person. In-person training can be more effective as there are fewer distractions and more employee engagement in the training," according to the Morgan Lewis report. The report also suggested NPR create a sexual harassment response committee made up of HR personnel, legal representatives and staff members as another venue for making complaints.

- **Gender-equity studies can show companies a lot about workplace culture.** The Morgan Lewis interviews revealed issues of an imbalance in pay and promotions between men and women, and men were often hired into position for which they were not qualified. "We suggest that NPR conduct a gender equity study of compensation and promotions. Additional forms of training should also be considered, including management skills training and civility training, preferably in person. NPR should also consider implementing an anti-bullying policy and related procedures for making complaints under that policy," according to the report.

Erin Mulvaney covers labor and employment issues from the Swamp to Silicon Valley. She's a Texas native based in Washington, D.C. Contact her at emulvaney@alm.com. On Twitter: @erinmulvaney