

**Re:** Report of Conclusions and Recommendations from  
Investigation of Discriminatory Harassment and  
Related Issues at New York Public Radio

**To:** Audit Committee of the New York Public Radio  
Board of Directors

**From:** Keisha-Ann Gray  
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**Date:** April 22, 2018

## Memorandum

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### Scope of Investigation

The Audit Committee of the NYPR Board of Directors retained Proskauer to conduct an investigation to identify any systemic issues of inappropriate workplace conduct, including sexual harassment, racial bias and bullying and to make recommendations regarding those issues.

This investigation focused on issues that arose on several shows in recent years, as a means to understand (1) how complaints have been brought forward and handled; (2) whether policies have been accessible and mutually understood across the organization; and (3) whether there has been reluctance to report inappropriate workplace conduct and, if so, what factors may have contributed to that reluctance.

The investigation included:

- Interviews of 36 current and former NYPR employees and outside witnesses;
- Review of NYPR written employment policies and procedures;
- Review of written communications/complaints among current and former staff and guests and NYPR human resources and senior management and notes of meetings related to those issues;
- Review of news reports and NYPR's responses to internal and external inquiries concerning its working environment;
- Review of relevant employment records;
- Review of and interviews regarding memorandums describing other employment-related reviews, surveys, procedures and recommendations being considered or implemented by NYPR, both internally and with the assistance of numerous consultants.



This report includes conclusions arising from our investigation and recommendations aimed both at preventing discriminatory and bullying behavior and at creating an environment in which inappropriate conduct is brought to the attention of human resources or senior management so it can be remedied expeditiously.

This investigation did not include interviews of employees in every area of NYPR and is distinct from the numerous separate projects being conducted by NYPR concerning employee policies, employee relations and organizational and work culture changes. We suggest that the Audit Committee also consider the recommendations being generated by these other workplace-improvement projects. There is some overlap as to recommendations from those groups (subsequent to our formulation of recommendations, we have been provided with descriptions of recommendations made thus far through these other projects).

The Audit Committee directed the scope of this investigation. NYPR management had no involvement in determining the scope of the investigation, who could be interviewed, or what conclusions were reached or what recommendations were made. Most interviews were conducted (and factual assessments made) by Deborah Shapiro, Esq., an independent investigator with no relationship with NYPR or Proskauer prior to the investigation of issues addressed in this report.

### **Conclusions and Assessments**

In recent years, there has been offensive and at times discriminatorily harassing conduct in violation of NYPR policies by a small number of individuals, including hosts of shows and administrative staff. We have not found evidence, however, of systemic discrimination, which we define as pervasive discrimination or discriminatory harassment that is known and tolerated by senior management. The number of such violations, and the response to that conduct once senior management or human resources learned of them, do not indicate that discrimination or discriminatory harassment has been pervasive or condoned by senior management or human resources. Significant and prompt disciplinary action was taken in most cases where violations were found. Of course, no amount of harassing conduct is acceptable, which is why this report includes recommendations of numerous measures in addition to those otherwise being considered and implemented by NYPR.

We note, however, that we cannot rule out the existence and impact of unconscious bias across the organization even where there may not be evidence of overt discriminatory motives. We understand that this issue is being explored through other work environment projects being undertaken by NYPR.

Unlike issues of discrimination, non-discriminatory bullying behavior was, however, known and tolerated in certain circumstances for months or even years before serious corrective actions were taken.

There does appear to have been a systemic problem in that knowledge of sexually harassing conduct often was not conveyed to human resources or senior management until months or years after the events. In some cases, those who had experienced sexual harassment did not inform

any supervisors of their concerns. In others, front-line managers were on notice of concerns about sexual harassment but did not inform human resources or senior management about those issues. This failure sometimes was because the manager had (improperly) committed to maintain the confidentiality of those concerns, which should have been conveyed to human resources.

As this occurred with respect to numerous managers, it seems fair to conclude that this was at least partly due to a lack of clarity by managers about their responsibilities and the procedures to be followed. It may not have been made sufficiently clear to managers that they had an absolute responsibility to bring complaints or information forward even where the complainant asks for absolute confidentiality.

There was—based on our investigation and on published news reports—evidently a culture in which information about inappropriate bullying and harassing behavior was not always brought forward, whether because of fear of reprisals, lack of confidence in human resources to take action, an assumption that star hosts were untouchable, or other factors. Although this problem is not unique to NYPR, there clearly was unacceptable conduct that made employees and members of the NYPR community uncomfortable and undermined NYPR’s stated goal to have a respectful working environment.

Although NYPR is not unique in experiencing a broader cultural moment in which people are coming forward with complaints about conduct that occurred months or even years earlier, this systemic problem is ultimately the responsibility of senior leadership. A lack of confidence that human resources would take complaints seriously appears to have been part of this problem. As noted above, it also may not have been made sufficiently clear to lower-level managers that they were strictly required to bring information about harassment forward, even where they had been asked by complainants to keep information in confidence.

It is the responsibility of NYPR senior management to implement changes to prevent recurrence of such inappropriate conduct and to create an environment in which complaints are brought forward. It is hard to know whether some of the measures recommended in this report and by the other groups and consultants recently engaged by NYPR would have resulted in the deterrence of inappropriate conduct and/or the earlier surfacing of complaints, but it is certainly possible.

As to why complaints were not conveyed earlier as to conduct that had occurred months or years before, some issues appear to be particular to NYPR and some are broader:

- The revelations and outpouring of long-suppressed complaints in October 2017 concerning Harvey Weinstein spurred a world-wide eye-opening about sexual harassment and the ability and need for victims to come forward, particularly in the media and entertainment industry. Katie Couric aptly described the #MeToo movement as being like “a long-dormant volcano that’s erupting”. The timing of the complaints and public reports about NYPR hosts—just a month after the Harvey Weinstein stories began to appear—seems tied to this broader moment.

- When asked (in this investigation and in news reports) why they did not report conduct earlier, staff gave varying reasons, including:
  - That they now somehow felt the need to come forward to tell their stories and to try to promote change;
  - Their previous belief that a culture of inappropriate conduct is just how the radio business works or (for those who had worked in television) that radio must be like television in terms of what is deemed acceptable conduct.
  - That they assumed their jobs and career opportunities would be in jeopardy if they complained about the conduct of program hosts.
  - They assumed nothing would change even if they did complain.
  - In a number of instances, staff had confided in managers (below the level of senior management) about sexually harassing conduct but asked that these concerns not be forwarded to human resources, and the managers did not understand their strict responsibility to bring those issues forward to human resources nevertheless. If these managers had informed human resources and/or senior management of sexually harassing conduct that came to their attention in a timely manner, it might have been possible to “connect the dots” and earlier remedial action might have been taken.
  - In one instance, a manager stated that it was unclear (prior to training being conducted) that it was a strict requirement to report concerns to human resources. We note that the policy in effect at the time stated that managers are “expected to engage with HR immediately.” This language may have left some doubt as to whether reporting by managers was an absolute requirement even where the employee reporting a concern asks for confidentiality and that human resources not be informed.

A number of staff expressed the view (as reported in interviews and post-departure correspondence) that the departures of numerous women of color were attributable to race and/or gender discrimination or were in retaliation for their having made complaints. We did not find evidence sufficient to support these allegations. Whatever its merits, this perception reflects a lack of confidence in the fairness of decision-making and the addressing of complaints.

A number of factors may have fed this perception. Clear expectations were not set—for complainants, witnesses or managers—as to what would happen during and following the making of a complaint and an investigation. Some staff involved in the reporting of inappropriate conduct did not hear back as to how their complaints had been handled, and were left with the impression that nothing was done, even when significant investigative and remedial steps had, in fact, been taken. The human resources department has sometimes been perceived—particularly in response to allegations about non-discriminatory bullying—as trying to smooth over issues (*e.g.*, telling an employee she is too sensitive) rather than exploring and addressing them, whatever the merits of the complaint. Whatever the merits of the concerns about the



human resources department, it is important that employees have confidence that it will protect their right to a respectful and discrimination-free work environment. Many of the recommendations below are aimed at achieving that end.

## **Recommendations**

In light of the above conclusions, we suggest a number of measures to promote a workplace at NYPR that is respectful and free from harassment and discrimination. NYPR management should formulate a plan to coordinate the recommendations made in this report and through other workplace-improvement projects being conducted by NYPR.

1. Providing greater clarity, through training and through plain-English written explanations, as to how NYPR policies and procedures work with respect to anti-harassment and discrimination.
  - It should be clear to complainants, witnesses and those accused as to (1) how the investigative process works; (2) what the human resources department does; (3) what information will or will not be shared during an investigation and after its conclusion; and (4) that managers on notice of complaints or violative conduct *must* report it to human resources, and that requests to treat reports of violative conduct as confidential cannot be honored.
  - An important step was taken earlier in 2018 with the creation of a plain-English description for managers as to how the process works when someone makes a complaint of sexual harassment or other discrimination, and what is expected of managers when they become aware of inappropriate conduct, including both the further reporting of that conduct as well as intervening in the moment if they experience or see inappropriate conduct themselves.
2. Creating an anti-bullying policy so employees understand that NYPR expects a respectful environment and so as to distinguish between inappropriate behavior and legitimate supervisory criticism. This can be a free-standing policy or a modification of the current anti-harassment/anti-discrimination policy, to expand the policy to prohibit not only unlawful conduct but also conduct that does not meet NYPR's standards for a respectful workplace.
  - a. Neither NYPR's handbook nor its code of conduct clearly prohibits non-discriminatory bullying conduct, although Walker's memos to staff have stated that NYPR expects there to be a respectful workplace.
  - b. A reality of employee relations and employment law is that when someone engages in a combination of non-discriminatory abusive behavior as well as discriminatory harassment, all the inappropriate conduct may merge in the eyes of those experiencing it. Conduct that previously may have been perceived as simply rude will often be seen as part of a pattern of conduct with discriminatory motives once there is an incident of discriminatory conduct. That is, being an "equal opportunity abuser" is not an excuse.

3. Revising the NYPR anti-harassment policy to prohibit conduct *against* third parties (not just by third parties), in recognition that NYPR's workplace and work product involves the regular participation of guests on shows and other third parties. At present, NYPR's policies prohibit discriminatorily harassing conduct only toward employees, although Walker's November 21, 2017 memo included guests, contractors and visitors as those entitled to feel valued and respected. NYPR policies and training should make clear that the use of economic power by program hosts to take advantage of guests or others is unacceptable and will not be tolerated.

NYPR should find a way for third parties involved in NYPR product to understand that they can and should report inappropriate conduct. In January 2017, the hotline (electronic, not voice, reporting) that previously had been only for reporting whistleblower issues was expanded to encompass reporting of harassment and discrimination complaints. This resource should be made available (through NYPR's web site or otherwise) to guests and other third parties.

4. Improving the complaint-investigation process:
  - a. There should be training of human resources staff in conducting effective investigations, which would include training on communication to those involved about progress and outcomes to the extent appropriate, and explaining to others why more information is not being shared. There is no written protocol for the human resources department today to conduct investigations of employee complaints.
  - b. Historically, the general counsel's office has not routinely been involved in assessments of complaints and investigations; in-house counsel should be involved in such matters both for risk assessment purposes (under both law and contracts) and to consider what remedial steps may be warranted. The general counsel's office should collaborate in assessing how an investigation should be handled and what actions, if any, are warranted following its completion.
  - c. The human resources department appears under-staffed, resulting in the head of human resources conducting investigations rather than being able to assess complaints and investigations along with legal counsel. NYPR has indicated that it already plans to add two staff members to the human resources department, focusing on the content area.
5. Addressing the demand by numerous staff (and the broader movement in American workplaces) for "zero tolerance" of sexual harassment, while clarifying that not all harassing conduct necessarily will result in termination of employment.
  - a. There should not be any tolerance of discriminatorily harassing conduct. That does not mean, however, that every instance of harassing conduct, regardless of severity, must result in the termination of employment. NYPR may reasonably determine that conduct that is not severe or recurring may be addressed

effectively through disciplinary and other measures designed to prevent problems in the future.

- b. Part of the framework of the law concerning workplace discrimination is that the accused employee may not retaliate against the accuser, and is expected to continue to work with him/her as usual. That is a two-way street; in the event the accused is not terminated, the accuser may need to continue to work with the co-worker who engaged in the harassing conduct.
  - c. There are times when legal risks—whether concerning statutory issues or a collective bargaining agreement or individual employment agreement—are factors in deciding whether and when an employee who engages in inappropriate conduct will be terminated. It is not always possible to share with the complainant-employee the reasons why certain actions will or will not be taken.
6. Providing an explanation for maintaining confidentiality of certain information, and that certain situations may call for more disclosure than others. This concerns confidentiality as to both complainants and those accused of misconduct.
- a. Numerous NYPR staff reported concerns to managers and requested that those concerns remain confidential; as noted above, NYPR should make clear that managers are required to bring complaints of legal and/or policy violations to human resources, but that human resources will endeavor to maintain as much confidentiality as possible while still addressing the issue so that any improper conduct is not repeated, and that appropriate disciplinary measures can be taken. It is evident from this investigation (and is perhaps obvious) that publicizing to all staff the fact that a complaint has been made will sometimes unavoidably identify the complainant, which could deter the making of complaints in the first place.
  - b. Routinely publicizing the fact that someone has been accused of discriminatory harassment is also problematic, as it may poison the work environment against someone whose behavior can be corrected and where termination is unwarranted. There may, however, be situations where inappropriate conduct is so widespread that reporting of the complaint and results of an investigation should be made to all those affected. There is no rigid rule to be applied.
  - c. A factor to be considered is that some discrimination and harassment complaints may not be meritorious. Publicizing a finding of the lack of merit of a complaint may be unnecessarily damaging to the person who complained, or even viewed as retaliatory. It should be noted that the EEOC finds fewer than 10% of charges it receives are supported by “reasonable cause” (and in some years fewer than 5%). Publicizing a complaint is likely to get attention, while the notice of a finding of lack of merit (like a correction to a news story) seldom gets the same attention.
7. Improving the flow of information about harassing and other inappropriate conduct. A challenge in the media industry that is larger than NYPR is that employees working on a



particular show who seek to advance at NYPR or in the broader radio or media world may feel that their career depends on staying in the good graces of the host or others in leadership positions. A number of those interviewed who had left NYPR conveyed the concern that they would have damaged their careers had they complained while at NYPR, and this fear was also articulated by a number of people cited in news articles concerning NYPR. Although none of these individuals pointed to evidence that others had actually experienced such retaliation, this perception must be addressed. NYPR needs to build a level of confidence that it is intent on fostering and preserving a respectful work environment and that all employees—even “stars”—are held to that standard, and that no one will suffer adverse consequences for alerting NYPR to inappropriate conduct.

- a. Staff should be invited, on a regular basis, to provide feedback concerning their working environment. Whether this takes the form of a “360 review” and/or the solicitation of feedback through an annual anonymous questionnaire, or some other method (such as an annual survey of employees), employees should be helped to understand that NYPR wants to know whether its workplace is respectful and businesslike. We note that a culture survey was conducted in 2017 and that management has already indicated its intent to conduct an annual survey of employees.
  - b. Exit interviews should be conducted in a thorough, systemic manner, both at the time of separation and in a follow-up discussion six months later, when individuals may feel freer to discuss their experiences and views. If at all possible these interviews should be conducted in person and a written record should be created. Such interviews can be the source of information and insights that current employees may be hesitant to provide.
  - c. Town hall meetings should be conducted on a regular basis.
  - d. We understand that other workplace projects underway involve efforts to identify and remedy cultural issues that may have perpetuated some of the problems regarding information-sharing.
8. There should be robust background checks to avoid hiring bad actors (this is a cautionary recommendation; it is not our conclusion that NYPR unknowingly hired people with a history of misconduct).
  9. Personal services contracts should, if possible, include provisions to allow NYPR to take action upon a finding of improper conduct.
  10. The NYPR Board (either its Audit Committee or a special committee formed for this purpose) should be provided with regular reports as to the number and type of complaints of discriminatory or bullying conduct and how those complaints have been investigated and addressed. This reporting should be systematic and regular (such as quarterly) so as to be clear when issues are to be reported to the Board, and to give the Board committee insight into whether there are systemic issues or trends regarding such complaints.

11. The NYPR Board committee should also be provided with regular updates as to progress in formulating and implementing recommended changes to employment policies and procedures and other efforts to promote a respectful and productive workplace.
12. It is our understanding that NYPR has recently committed to or taken a number of steps to promote and maintain a respectful, discrimination-free work environment, including but not limited to:
  - a. Conducting online anti-discrimination training in early 2017 and live anti-discrimination/anti-harassment training in early 2018;
  - b. Conducting a compensation benchmarking study;
  - c. Establishing a Diversity, Equity and Inclusion Committee with employees from across NYPR;
  - d. Conducting management training
    - i. This training is important to ensure that managers provide effective supervision and performance feedback, to avoid employees having no idea how they are doing, and then feeling surprised by criticism, which can lead employees to suspect that discrimination is to blame.
    - ii. Management training should address the reality that having great ideas for NYPR's programmatic content does not necessarily make someone an effective manager.
  - e. Adding two staff members to the human resources department to support the above-referenced initiatives and to help ensure effective handling of employee complaints.
  - f. With the assistance of a consulting organization, NYPR is defining a broad range of "out of bounds" behavior, whether discriminatory harassment or bullying, with a defined process for reporting, investigating and resolving those complaints.