Connecting the Morgan Lewis Dots

By: Kristi Hodges

The Nevada congressional delegation is throwing a hissy fit over the recent US Department of Energy (DOE) contract award to Morgan, Lewis & Bockius LLP. They are beating the fraud, waste and abuse drum. They are accusing the Yucca project of another conflict of interest. This is because the law firm has represented utilities (against the DOE) and—in late 2001—registered as lobbyists for the Nuclear Energy Institute (NEI).

They are missing something, though. Do they remember Jim Mattimoe and Bob Clark?

Mattimoe and Clark were the Yucca Quality Assurance (QA) leaders who were railroaded by this same law firm—also in late 2001. There were a gazillion news articles at the time. And the story even made the Drudge Report. But if the delegation still can’t remember, this is what happened:

The DOE paid Morgan Lewis about a half-million dollars to conduct an internal investigation of allegations made against the former QA leaders. The investigation led to Mattimoe’s firing and Bob Clark’s removal from his federal director position.

But Mattimoe fought back. He sued the DOE and his former employer (Navarro) for wrongful termination. The US Department of Labor (DOL) investigated and agreed that Mattimoe had been impermissibly fired. But the DOL went a step further. They found that the DOE had directed the actions against Mattimoe. And that direction was illegal. The DOE, shielded by immunity, was technically off the hook. But that didn’t stop the DOL from declaring the DOE’s actions as “extraordinarily egregious.”

About the Morgan Lewis work product, the Labor Department wrote:

> Though the Respondent [Navarro] has submitted a voluminous report, the Morgan Lewis audit, it is determined that there is insufficient verifiable and credible evidence in it to conclude that it is not more than a sophisticated recitation of anonymous charges designed to provide pretextual reasons to support an already-decided upon course of action to terminate Mr. Mattimoe.

When the news about the DOL decision broke, the Nevada senators didn’t miss a beat to beat on DOE. With accusatory statements like, “They set this guy up!” (Reid) and “It doesn’t pass the smell test” (Ensign),” the senators demanded an investigation. But that investigation never happened. And no one went to jail.

One might ask: “Why would a respected law firm like Morgan Lewis risk its reputation on a railroad?” The answer is, as it usually is: Just follow the money.
Again in late 2001 the DOE Inspector General was investigating another law firm: Winston & Strawn. The firm held the lucrative Yucca legal services contract, but its contract had been challenged by a competitor. Winston & Strawn attorneys had done legal work, including lobbying, for the NEI. And there were potential organizational conflicts of interest. When the IG issued a critical report, Winston & Strawn had to go.

Déjà vu?

The Winston & Strawn contract was on the rocks when Morgan Lewis performed its investigation of the QA leaders. The Las Vegas Review-Journal would later identify Morgan Lewis as a top contender for replacing Winston & Strawn. Therefore, one could easily reason that Morgan Lewis had given its client, the DOE, the investigation report that it wanted.

And what the DOE had really, really wanted was for its QA organization to stop pursuing quality problems. These were problems that the project would not (or could not) fix. The Site Recommendation was on the line. Therefore, Morgan Lewis was hired under the guise of addressing alleged whistleblower issues. But its actual mission was to railroad the QA leaders. This would, in turn, cause the QA oversight function to crumble—as it did shortly thereafter.

But Mattimoe fought back again. He next sued Morgan Lewis for defamation. It took a lot of courage for a little guy like Jim Mattimoe to take on an international law firm. But he did. He eventually settled out of court. But that was after Morgan Lewis was presented with an interesting document. I had found it during a routine record search. And it appeared to be a smoking gun.

The Las Vegas Sun had reported that Morgan Lewis signed on as lobbyists for the NEI 18 days after delivering its investigation report. But the document that I found was evidence of NEI work well before delivering its report.

Morgan Lewis, although a different attorney, was acting as NEI’s counsel on Yucca-related issues in June 2001. This coincided with the investigation of the QA leaders. So Morgan Lewis, too, had a potential organizational conflict of interest. And no evidence to the contrary was provided.

This appeared to be Winston & Strawn all over again. But it was much, much worse. Morgan Lewis attorneys had railroaded those charged with assuring that a potentially dangerous project would remain safe. And reasonable minds would conclude that they had done so for a potential 50 million dollar contract. Faced with spirited congressional objection, the DOE had to select another law firm.

But five years later, when no one was watching, the DOE awarded Morgan Lewis that same contract—at potentially twice the price (109 million dollars). Even more incredulous is that Yucca already has a 50 million dollar legal contract (Hunton &
Williams, LLP). And that firm was also hired to complete and defend a license application.

The Nevada delegation has asked for a new investigation. And they might get it. But Jim Mattimoe, Bob Clark, and I are still waiting for the one we were promised five years ago. These things can take time, though. Just ask Morgan Lewis who waited five years for their big payday.

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