

# SEXUAL HARASSMENT POLICY RECOMMENDATIONS

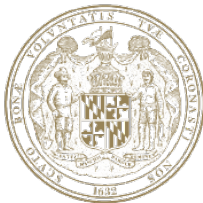


WOMEN'S CAUCUS | MARYLAND GENERAL ASSEMBLY

FEBRUARY 2018

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**WOMEN'S CAUCUS**  
**THE MARYLAND GENERAL ASSEMBLY**

Dear Maryland Legislative Leaders,

It is with great hope for the future that we present the Recommendations For a Harassment-Free Legislature developed by the Women's Caucus of the Maryland General Assembly. There are specific actions we can take that will make meaningful change to end sexual harassment in our legislative community.

Sexual harassment is nothing new – it has pervaded our workplaces before it even had a name. The term was first used in the 1970s but it was not until 1986 that the Supreme Court held that sexual harassment is a form of sex discrimination and therefore a violation of Title VII of the Civil Rights Act of 1964. However, Title VII of the Civil Rights Act specifically exempts elected officials and their personal staff from protections against discrimination. Our state statute which governs the Commission on Civil Rights contains the same carve out for elected officials and their personal staff.

Nonetheless, in 1993 the Maryland General Assembly became the 29th state in the nation to voluntarily develop an internal policy against sexual harassment. This was following high profile allegations of sexual harassment against a legislator that were raised by a lobbyist in judicial confirmation hearings. Unfortunately, as noted by the *Baltimore Sun* at the time, the policy established in 1993 did not extend protections to lobbyists. It did, however, establish an internal process for staff and members to report sexual harassment. Under this policy, all reports against members would be handled by the Presiding Officers or their staff. The policy maintains the same basic structure today, although it has been updated and modernized multiple times.

Despite this progress, the problem is far from solved. The recent #MeToo movement has brought to light a culture in which sexual harassment is still pervasive, and its harm too often ignored. According to the Equal Employment Opportunities Commission (EEOC) at least one in four women in this country experience sexual harassment in the workplace.

For these reasons, the Women's Caucus of the MD General Assembly has made sexual harassment in the legislature a priority. In 2016, under President Aruna Miller's leadership the Women's Caucus created a working group to research the current process of sexual harassment reporting and review policies and best practices in other states. We conducted confidential interviews with staff and interns to try to understand the extent of the problem, how harassment manifests itself in the legislature, and what prevents people from using the reporting process. After reaching out to national experts, the group identified the New York State Assembly's *Policy Prohibiting Harassment, Discrimination, and Retaliation* as one of the most comprehensive and innovative policies. We found that the Maryland General Assembly's policy

differed in definitions, reporting, investigation, disciplinary actions, training, and tracking (see Appendix A). At the November 30, 2016 Women's Caucus Retreat this report was presented, and the caucus agreed to continue our work into the next year.

In 2017, the sexual harassment workgroup reconvened, now chaired by Delegate Tawanna Gaines, and was charged with evaluating the Maryland General Assembly's current sexual harassment policy and, if necessary, identifying areas for improvement. We found a need for greater education on what constitutes sexual harassment, consideration of a climate survey to identify the prevalence of sexual harassment, as well as suggestion for more training. Feedback on the reporting process found that victims felt hesitant to report instances of harassment for fear of retaliation, as well as a perception of conflict of interest pertaining to the Attorney General's office (see Appendix B).

This session, we picked up from our 2017 efforts, establishing a new working group devoted to finalizing specific recommendations for modernizing our policy, expanding the pool of stakeholders covered to include lobbyists, and measures that would lead to increased confidence in the system. The group has consulted with a wide range of experts, including legal professionals, officials from other state legislatures, and public policy experts including those specifically concerned about false accusations. We also heard from individuals, including those who told stories on the record, as well as many more who shared their experiences anonymously, out of fear of retaliation.

We found there to be significant confusion around the current reporting process, a general reluctance from most stakeholders to report incidents to the presiding officers' chiefs of staff, a lack of confidence that repeat offenders were being identified, and a desire for the reporting and investigatory process to be further removed from the political context. There was also a desire for stronger confidentiality protections, and increased emphasis of the role of active bystanders in preventing or intervening to stop harassment. In addition, there was a strong desire to expand our policies to cover lobbyists.

Based on all of this work, the Caucus has developed 22 recommendations, which were adopted by the full body of the Women's Caucus on February 7, 2018. These recommendations have been organized into four categories: training, reporting, accountability and culture change.

### **Training**

Recommendations include not simply more training, but also better training that is tailored to our community's specific needs. We identify best practices, including those identified by the EEOC and those used in other state legislatures. For those members with special roles, additional training is recommended.

### **Reporting**

Our current system is not trusted by those who need it most. Recommendations for improving the reporting process include developing a truly anonymous reporting mechanism, creating multiple well-trained points of contact for receiving initial reports, increasing and clarifying confidentiality protections, as well as developing more robust protections against retaliation. It is important to note that nearly every person we spoke with about the current reporting system

pointed to the policy of reporting immediately to the Presiding Officers' staff as uncomfortable. We recommend redeveloping the reporting system to be as removed from the political context as possible.

### **Accountability**

We would like to increase confidence that members who engage in repeated behaviors of sexual harassment will be held accountable. Our recommendations would require the use of independent investigators to conduct investigations into alleged member misconduct, to remove the responsibility from any political stakeholders. We also recommend clearly stating in the policy that engaging in sexual harassment or sexual misconduct could lead to loss of current or future leadership position. While we celebrate that data collection of complaints was established in December 2017 by the Legislative Policy Committee, we recommend this be expanded to include tracking of all incidents and reports, including anonymous complaints and those received by all Chairs, Vice-Chairs, and anyone trained to receive initial reports. Now that we are tracking data, we want to make sure our system is capturing as much as possible, not just those reports coming through the Presiding Officers' and Human Resources offices. Finally, we recommend establishing accountability procedures for registered lobbyists. Right now, there is no mechanism for holding registered lobbyists accountable when they engage in sexually harassing behavior, which was an issue we heard about from several people we interviewed.

### **Culture Change**

A cultural evolution is taking place right now. As leaders are stopping to listen to the voices of those who have experienced harassment, and to learn about the implications of this harassment on their careers and personal well-being, they are developing empathy and deepening their understanding. It is this understanding that will lay the foundation for an improved climate which does not tolerate demeaning or sexualizing of women in the workplace. Real prevention requires an accurate understanding of our current climate and strong unwavering leadership from the top down to improve that climate. Recommendations include a climate survey that would provide specific information about our community, and will allow us to measure progress over time.

There are modest steps that we can take to address this important challenge. We look forward to working with the newly appointed Workplace Harassment Commission and applaud its mandate to create an environment free from all forms of harassment. Gender experts have long called for an intersectional approach to social change, and this commission is another opportunity to continue that work.

It's an exciting time for all of us who care about healthy workplace culture. Our work is far from done; we look forward to working with you without delay to implement these and any other recommended changes.

Sincerely,

A handwritten signature in black ink that reads "Ariana Kelly". The signature is written in a cursive, flowing style.

Delegate Ariana Kelly, President

# **POLICY RECOMMENDATIONS**

The #MeToo movement has brought to light thousands of instances of sexual harassment in the workplace. While the publicity surrounding the issue has exploded since the Fall of 2017, many individuals in the Maryland General Assembly (MGA) have been working quietly, long before 2017, to both reform the work culture and improve the legislature's response systems.

The Maryland General Assembly is not substantially different from other workplaces. What makes it unique, however, is the variability of the protections offered to survivors of sexual harassment depending on who the worker is: elected official, staff, intern, and lobbyist. While each of these workers is important to the MGA workplace, the focus of our efforts was primarily, though not exclusively, focused on the role of the legislator.

The Sexual Harassment Workgroup, a subgroup of the Maryland General Assembly Women's Caucus has dedicated many hours of research, discussion and debate to improving how sexual harassment allegations are handled. This group consulted with legal professionals who have expertise in this arena, officials from other states that have progressive policies on the topic, as well as individuals who have personally experienced sexual harassment in the MGA workplace.

What follows are recommendations that have been arrived at by consensus over many hours of thoughtful and serious consideration.

## **Training Recommendations**

1. The MGA should increase anti-harassment training frequency and availability by:
  - a. Ensuring a full training takes place within 15 business days of swearing in at the start of each new term and additional initial trainings take place within 15 days of swearing in for new members appointed mid-term.
  - b. Expanding access to staff training. Initial trainings should be conducted for all new staff including temporary session employees within 15 business days of their employment start date. A full group training should take place within the first year of employment for all employees.
  - c. All members and staff should repeat a full training at a minimum every two years.
  - d. Lobbyists should be required to participate in anti-harassment training as part of their required ethics training at a minimum every two years.
2. The MGA should incorporate information on bystander-intervention as part of the required training.
3. The MGA should incorporate information on specific anti-retaliation protections for staff, members, and lobbyists as part of the required training.
4. Full trainings conducted by the MGA should include vignettes and legislature specific examples of sexual harassment, retaliation, bystander intervention and accountability, as well as information on how confidentiality is managed at every step of the process. The full trainings should include at least in part members and staff in the same training

session to ensure trainees can learn from the experiences and perspectives of others at different levels within the organization. The MGA should consider partnering with the *Maryland State Ethics Commission* (which regulates lobbyists) to include lobbyists in these trainings as well.

5. The MGA should make adequate resources available to ensure the Human Resources department can hire a highly-qualified in-house expert to conduct the increased number of trainings, increased data tracking responsibilities, and potentially an initial increase in the quantity of complaints in need of investigation and resolution that will result from these recommendations.
6. The MGA should offer remedial training as needed or warranted.

### **Reporting Recommendations**

1. The MGA should update our written policy to clearly describe the contact points, procedures and potential outcomes for two different types of reports:
  - a. Anonymous Reports:
    - i. The MGA should investigate truly anonymous mechanisms to implement this reporting type. The MGA should consider hotlines, app based services, etc. People making anonymous reports should be notified that their reports will not necessarily lead to an investigation or disciplinary action but will be included in data tracking and could help identify repeat offenders. Every effort should be made to notify anonymous complainants when another complaint is received about the same alleged perpetrator so the anonymous complainant can re-evaluate if they would like to file a formal complaint.
  - b. Formal Reports:
    - i. People making verbal or written complaints should be notified that their reports will be included in data tracking and could lead to a confidential informal investigation, mediation, counseling, or a formal investigation. The complainant should be notified of the outcome of any investigation.
2. The MGA should establish data tracking for anonymous reports and formal reports. Remedy data should be tracked for formal reports.
3. The MGA should expand the list of people who are specially trained and authorized to receive confidential initial reports of harassment to include: All committee Chairs and Vice-Chairs, the minority leader's office, the Women's Caucus, Black Caucus, and Latino Caucus staff person, and a selected contact in the State Ethics Commission. Reports received by these initial contacts should be confidentially conveyed to a Sexual Harassment Specialist (see recommendation 9 below) within Human Resources, and should be subject to data tracking.

4. Confidential reports brought by members or against members should remain confidential until the initial investigation conducted by the HR specialist is completed. Unless the reporting party requests notification of the presiding officers, confidentiality should be maintained until the resolution phase.
5. The *MGA Anti-Harassment Policy and Procedures* document should be updated to clarify how confidentiality for all parties is managed at every step of the reporting, investigation, and resolution process.

#### **Accountability Recommendations for Members and Staff**

1. The legislature should ensure the *Joint Committee on Legislative Ethics* immediately adopts a code of conduct for members with a clear and detailed definition of harassment in a legislative environment, what behaviors anti-retaliation prohibitions should prevent (including defining retaliation for members, staff, and lobbyists), and a detailed list of potential consequences.
2. The legislature should require the use of an independent investigator to work with the *Joint Committee on Legislative Ethics* to investigate any formal reports filed against elected members.
3. The MGA should expand the list of disciplinary actions possible for legislators found to be engaging in sexual harassment in the Human Resources policy to include the loss of leadership position or future leadership position along with warning, reprimand, reassignment, and expulsion. This should also be included in the Code of Conduct to be developed by the *Joint Committee on Legislative Ethics*.
4. The legislature should make anti-harassment training attendance by legislators subject to the Maryland Public Information Act.
5. Because of student interns' unique vulnerability within the workplace, the MGA should consult with the new Sexual Harassment specialist to design and adopt a policy based on best practices that prohibits sexual relationships between legislators and student interns (See New York Policy, 2007). Relationships between members or staff and their direct reports (including interns) should also be prohibited.

#### **Accountability Recommendations for Lobbyists**

1. The *State Ethics Commission* should adopt a Code of Conduct for lobbyists with a clear and detailed definition of sexual harassment, what behaviors anti-retaliation prohibitions should prevent and a detailed list of potential consequences. This Code of Conduct should be substantially similar to the Code of Conduct to be developed by the *Joint Committee on Legislative Ethics* for members.



2. The legislature should empower the *State Ethics Commission* to receive confidential reports, investigate & issue disciplinary action in response to sexual harassment allegations against registered lobbyists.

### **Culture Change Recommendations**

1. The MGA should develop a flow chart explaining the reporting and investigation process for each set of stakeholders. The flowchart should include bystander intervention as an option for interrupting or ending harassment. The MGA should distribute this flow chart to all members and encourage it to be posted in their offices.
2. The MGA should conduct an educational campaign for staff and members to include brown bag lunches with leadership, briefings with the respective caucuses, posting about the reporting process in restrooms and committee bulletin boards, etc. This educational campaign should include: information on employee rights, including who is protected under Maryland law and what courses of action are available including criminal and tort claims; the promotion of bystander intervention, information on the reporting process, descriptions of anti-retaliation protections, and direct contact information for the Annapolis or Maryland State Police, the *Joint Committee on Legislative Ethics*, and other direct-reporting contacts.
3. The MGA should include in our written anti-harassment policy a voluntary “self-help” procedure. The *New York Legislature Policies on Sexual Harassment* can be used as a model. In doing so, MGA should ensure the policy and language is supportive of victims who choose self-help, as well as victims who do not.
4. The legislature should require the implementation of a biennial and confidential climate survey by an outside vendor to assess the prevalence of workplace violations and existence of a hostile work environment in the Maryland General Assembly. The potential impact and consequences of requiring mandatory reporting should be assessed in the initial survey.

#### **For Further Information, Contact:**

Delegate Ariana Kelly, President	(410) 841-3642
Delegate David Fraser-Hidalgo, Co-Chair	(410) 841-3186
Delegate Carol Krimm, Co-Chair	(410) 841-3472

# SILENCED VOICES:

## Personal Stories from Inside the Maryland General Assembly

As part of our research, the Women Legislators of Maryland collected stories about perceived harassment from our peers, staff, interns, and lobbyists. Our goal was to develop an understanding of how sexual harassment manifests itself in the legislative environment.

What follows are a sampling of those stories. While all of these women are eager to share their stories anonymously in hopes that their voices can help stop this unwanted behavior and improve the culture, none are willing to be publicly named for fear of harm to their careers or professional reputations. It is out of respect for their wishes we have removed all personally identifying details from these stories.

"It's subtle enough that you have to pretend it didn't happen. But you know it did."

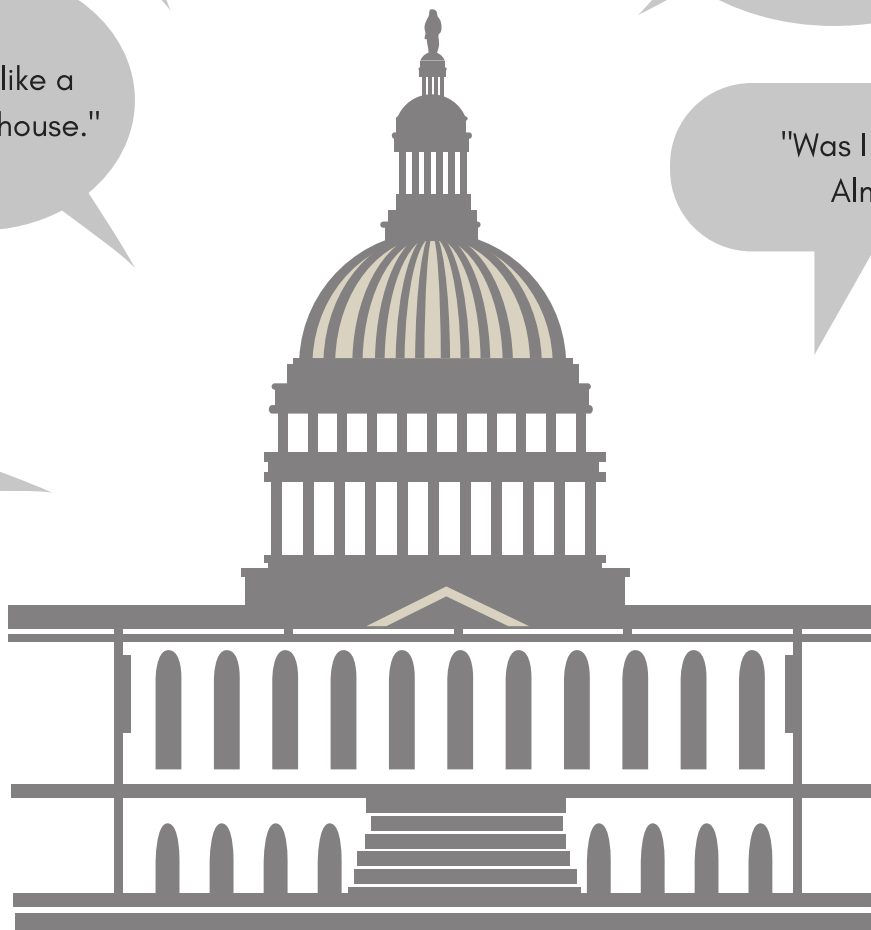
"I feel sick to my stomach every time I think about that incident."

"It feels like a fraternity house."

"Was I sexually harassed?  
Almost every day."

"I froze and he put his hands all the way up my skirt."

"He literally never spoke to me again."



"I hate it when you're at a crowded reception or something, and some man needs to get past you. Instead of using words, or tapping on an appropriate body part, they use the opportunity to touch you in a gross sexual way, caressing your shoulder, or the small of your back. **It's subtle enough that you have to pretend it didn't happen. But you know it did.**"

– Current Staffer

"A legislator came into my office and sat down very close to me. We were alone in my boss' office and he closed the door. He started telling me how I had a lot of potential, reached over and started rubbing my knees. **I froze and he put his hands all the way up my skirt.** I stood up and asked him to leave."

– Current Staffer

"I was introduced to a senior male legislator amongst a group of other staff. **When we went to shake hands he held mine longer than necessary and began to caress the inside of my palm with his finger.** I didn't want to pull away or make a scene at the time, and felt generally stunned. He smiled boldly and said he looked forward to working with me. I generally tried to avoid him after that." – Former Staffer

"I asked a Senator I had worked for to write me a recommendation for law school and he said he'd only do it because I had cleavage exposed that day."

– Former staffer

"I worked as a lobbyist for a healthcare provider that provides women's reproductive health care. A male legislator on a health committee asked me to get him a case of condoms, size large. He explained to me that he was very busy during session, and didn't want to get anyone pregnant. At first I thought he was kidding, but he asked me again several times. Finally I said absolutely not, because it would violate ethics laws. **He literally never spoke to me again.** He was an important vote in the primary committee for bills of interest to my employer."

– Former Lobbyist

“A male legislator described the color and print on his boxers and talked repeatedly about his “junk” in my office. Sometimes we work with legislators who are only a few years older and the line between friendly and professional is blurred. **It feels like a fraternity house.**”

– Current Staffer

“One time, I was standing in the corner of a hallway waiting for a meeting. An older male legislator walked up to me, invaded my personal bubble and leaned in close to me, trapping me where I was standing. He smiled and said ‘man, that dress is really working for you.’ Thankfully, someone else came in the hallway and, recognizing what was happening, loudly said hello to me. The legislator winked at me and walked away. **I feel sick to my stomach every time I think about that incident.**”

– Former Staffer

“A senior legislative colleague put his hand on my thigh in front of several colleagues. When I scolded him, he shamed me.”

– Current Legislator

“I went to a conference after party where I drank too much. Another lobbyist offered to get me safely in a taxi and instead took me to his room, got fully undressed and pushed me onto his bed. **I had to run from his room.**”

– Former Lobbyist

“I was offered a ride home from a legislative reception in Eastport from a colleague. Instead of driving me home, he pulled the car over to the side of the road, locked the doors, grabbed my breasts, and stuck his tongue in my ear. **I had to push him off me forcefully, struggle to unlock the door, and walk home.**”

– Current Legislator

# SEXUAL HARASSMENT WORKGROUP MEMBERSHIP

The workgroup mission was to understand and evaluate the efficacy of our existing sexual harassment policy, and make recommendations for improvement if necessary. We would like to thank all members of each workgroup phase, as well as, the experts and professionals who donated their time to offer their expertise. We would also like to extend our gratitude to Catherine Hill, Executive Director of the Women's Caucus and Jenna Williams, Legislative Director for Delegate Ariana Kelly, for their work on this report as well as to Marsha Wise, former Executive Director of Maryland Women Legislators of Maryland, for her work with the Caucus' 2016 and 2017 committees.

## **Policy Recommendations Workgroup, Report Issued February 2018**

*The Policy Recommendations Workgroup consulted with experts, legal professionals, and officials from other state legislatures in order to finalize specific recommendations for modernizing the Maryland General Assembly policy.*

Delegate David Fraser-Hidalgo, Co-Chair

Delegate Carol Krimm, Co-Chair

Delegate Kumar Barve

Delegate Bonnie Cullison

Delegate Kathleen Dumais\*

Delegate Shelly Hettleman

Delegate Brooke Lierman

Senator Cheryl Kagan

Delegate Ariana Kelly

Delegate Susan McComas

Delegate Maricé Morales

Delegate Meagan Simonaire

Senator Will Smith

Delegate Geraldine Valentino-Smith

Delegate Mary Washington

**Policy Evaluation Workgroup (SHE Committee), Report Issued March 2017**  
*The Policy Evaluation Workgroup assessed the Maryland General Assembly's current sexual harassment policy in order to identify areas for improvement.*

Delegate Tawanna Gaines, Chair  
Delegate Kumar Barve  
Delegate Bonnie Cullison  
Delegate Kathleen Dumais  
Delegate David Fraser-Hidalgo  
Delegate Shelly Hettleman  
Delegate Ariana Kelly  
Senator Nancy King  
Senator Susan Lee  
Delegate Brooke Lierman  
Delegate Susan McComas  
Delegate Maricé Morales  
Delegate Aruna Miller  
Delegate April Rose  
Delegate Meagan Simonaire  
Delegate Geraldine Valentino-Smith  
Delegate Mary Washington  
Senator Will Smith

**Policy Clarification Workgroup, Report Issued November 2016**  
*The Policy Clarification Workgroup researched the current process of sexual harassment reporting, reviewed policies and best practices in other states, conducted confidential interviews.*

Delegate Ariana Kelly, Chair  
Delegate Bonnie Cullison  
Delegate Shelly Hettleman  
Delegate Maricé Morales  
Delegate Meagan Simonaire

*\*Delegate Kathleen Dumais abstained from voting on the final recommendation.*

## WORKGROUP RESOURCES

- Report of Select Task Force on the Study of Harassment in the Workplace, July 2016, U. S. Equal Employment Opportunity Commission
- Sexual Harassment Policies and Training in State Legislatures, NCSL, July 2017
- Anti-Harassment Policy and Procedures, Maryland General Assembly, updated December 2017
- *Legislative Branch Personnel Rules*, Oregon State Legislature Sexual Harassment Policy
- Oregon Independent Investigation: “Final Investigation Report Regarding Complaints Against Senator Jeff Kruse” by Dian Rubanoff, Peck Rubanoff & Hatfield PC, Feb 2018
- “Policy Prohibiting Harassment, Discrimination, and Retaliation,” New York State Assembly
- *HB 1053 Policies against workplace harassment; legislative branch*. Virginia General Assembly, 2018
- *HB 1057 Sexual harassment training; legislative branch*. Virginia General Assembly, 2018
- *HR 4822 The Congressional Accountability Act of 1995 Reform Act*. United States Congress, 2018
- *S. 2236 Congressional Harassment Reform Act*. United States Congress, 2018
- Letter from the Men of the Maryland General Assembly, Nov 29, 2016 (Appendix A)
- Sexual Harassment Policy Evaluation Committee Report, Women Legislators of Maryland, March 2017 (Appendix B)
- Sexual Harassment in the Workplace Report, Women Legislators of Maryland, May 1993
- "Why Sexual Harassment Exists in Politics," New York Times, November 2, 2016
- “Fraternity Atmosphere Can Make State Capitols Hotbeds of Sexual Harassment,” USA Today, August 22, 2016
- "Annapolis Mad Men," Center Maryland, January 2015
- “Assembly Warned on Sexual Harassment Women’s Caucus Not Consulted, Vents Annoyance,” The Baltimore Sun, September 16, 1993 (Appendix C)
- “The Case of the Failed Nomination: Subtexts in a State Legislature” Florestano, Patricia Journal of Political Science and Politics, September 1993 (Appendix C)

# **WORKGROUP EXPERT TESTIMONY AND TECHNICAL SUPPORT**

- Lori Mathis, Human Resources Manager, Maryland Department of Legislative Services
- Dea Daly, Ethics Counsel, Maryland General Assembly
- Sandra Brantley, Counsel to the General Assembly, Office of the Attorney General
- Glendora Hughes, General Counsel for Maryland Commission on Civil Rights
- Victoria Gruber, Former Chief of Staff to President Mike Miller
- Alex Hughes, Chief of Staff to Speaker Mike Busch
- Robin Schavitz, Retired Lobbyist, Maryland Government Relations Association Lifetime Achievement Award Recipient, (Transcript in Appendix D)
- Julia Pitcher Worcester, President, Maryland Government Relations Association
- Toni Holness, Public Policy Director, ACLU of Maryland
- Monica Ramirez, Deputy Director of Labor Council for Latin American Advancement, Co-Founder of TIMES UP
- Kathleen Cahill, Employment Attorney and Experienced Independent Investigator
- Carol R. Miaskoff, Associate Legal Counsel Office of Legal Counsel, U.S. Equal Employment Opportunity Commission
- Nina Smith, Former Press Secretary, State of Maryland, Governor Martin O'Malley Administration (Transcript in Appendix D)
- Terry O'Neill, Executive Director, The National Employment Lawyers Association
- Joyce Oliner, Human Resources Training Consultant and Employment Attorney
- Merrick Rossein, Independent Neutral Investigator Counsel to New York State Assembly
- Gillian Thomas, Senior Staff Attorney, ACLU Women's Rights Project
- Maria Lloyd Price, Counsel, Office of U.S. Senator Kirsten Gillibrand
- Michelle Daugherty Siri, Executive Director, Women's Law Center of Maryland
- Andrea Johnson, Senior Counsel for State Policy, National Women's Law Center
- Confidential interviews with current and former staff members, lobbyists and legislators (Pages 10-12)



# **APPENDIX A:**

## **MATERIALS PRESENTED TO WOMEN'S CAUCUS ANNUAL RETREAT NOVEMBER 30, 2016**

- “Handling a Complaint of Sexual Harassment Under MGA’s Anti-Harassment Policy” Developed for the Women’s Caucus by Sandra Brantley, Assistant Attorney General, November 15, 2016
- Employee Definitions: Maryland State Law Governing Commission on Civil Rights and Civil Rights Act of 1964
- Letter from the Men of the Maryland General Assembly, November 29, 2016
- Report of Select Task Force on the Study of Harassment in the Workplace, July 2016, U. S. Equal Employment Opportunity Commission (available for download: [www.eeoc.gov/eeoc/task\\_force/harassment/report.cfm](http://www.eeoc.gov/eeoc/task_force/harassment/report.cfm)).

## **Handling a complaint of sexual harassment under the MGA's anti-harassment policy**

- ✓ The overriding goal of the policy is to ensure a workplace free of discrimination where all members and staff are treated with respect.
- ✓ The policy applies to members, all employees (full-time, part-time, temporary and contractual), interns, and pages.
- ✓ The policy encourages prompt reporting of complaints. The MGA policy lists specified persons to whom complaints should be made. Those persons include Lori Mathis, Vicki Gruber, Alex Hughes, Joy Walker, and Val Kwiatkowski. The DLS policy specifies different list of persons to receive reports from DLS employees.
- ✓ Complaints may be made orally or in writing. A person complaining may be the victim of the conduct or simply a witness to it. Anonymous reports are investigated to the extent possible based on the information provided.
- ✓ The person receiving a complaint is to reassure the individual making the complaint that any adverse action taken in retaliation against an individual for reporting sexual harassment or for participating in an investigation is a serious violation of the policy.
- ✓ Complaints may be resolved at an early stage through a variety of methods such as mediation with both parties or talking with the individual who acted inappropriately and demanding that person stop the offensive behavior.
- ✓ If the problem cannot be resolved early to the satisfaction of the individual who made the report and, if a different person, the individual who was the target of the inappropriate behavior, Lori Mathis will promptly conduct an investigation. The investigation is kept confidential to the extent possible. Lori's investigation typically includes talking to the victim of the inappropriate behavior and potential witnesses. Lori may also gather corroborating evidence such as text messages and emails.
- ✓ If the complaint involves an employee of DLS, Warren Deschenaux is informed. If the complaint involves a member, it will be brought to the attention of the relevant presiding officer and may be brought to the attention of the relevant minority leader. Lori will discuss with them the results of her investigation and inform them whether remedial measures need to be taken. On occasion, Sandy Brantley, as Counsel to the General Assembly, is informed to advise whether the remedial measure contemplated is legally sufficient.
- ✓ The presiding officers may refer any matter, including an allegation of sexual harassment, to the Ethics Committee. Also, when appropriate, a complaint rising to a criminal level is referred to the State Prosecutor's Office.
- ✓ Remedial measures may include disciplinary action. For employees, disciplinary action may include warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay, or termination. For members, disciplinary action may include warning, reprimand, reassignment, or other punishment allowed under Article III, Section 19 of the Maryland Constitution.
- ✓ The victim of the harassment is informed of the punishment and any other remedial measures.
- ✓ Any party to a complaint may appeal to the appropriate presiding office within 10 days of receiving notice of the complaint. The presiding officer will make a decision on the appeal within 45 days.

## **Employee Definitions**

### **Maryland State Law Governing Commission on Civil Rights Exempting Elected Officials and their Personal Staff**

Maryland Code, State Government Article § 20-601(c):

(c) (1) “Employee” means an individual employed by an employer.

(2) Unless the individual is subject to the State or local civil service laws, “employee” does not include:

- (i) an individual elected to public office;
- (ii) an individual chosen by an elected officer to be on the officer’s personal staff;
- (iii) an appointee on the policy making level; or
- (iv) an immediate adviser with respect to the exercise of the constitutional or legal powers of an elected office.

### **Civil Rights Act of 1964, Title VII**

#### **Exemption for elected officials and their personal staff**

This Maryland language is extremely similar to what appears in Title VII of the Civil Rights Act of 1964 (42 USC 2000e), as the definition of “employee”: [eeoc.gov/laws/statutes/titlevii.cfm](http://eeoc.gov/laws/statutes/titlevii.cfm)

(f) The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.



THE MARYLAND HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401

November 29, 2016

Delegate Aruna Miller, President  
Women Legislators of Maryland  
200 Lowe House Office Building  
Annapolis, MD 21401

Dear President Aruna Miller,

As President of Women Legislators of Maryland, we thank you for taking up the issue of sexual harassment prevention in the Maryland General Assembly. We are appreciative of your efforts and offer our assistance and support.

As male state legislators we were concerned by the November 2, 2016 *New York Times* article "*Why Sexual Harassment Exists in Politics*"<sup>1</sup> and the August 22, 2016 *USA Today* article "*Fraternity Atmosphere Can Make State Capitols Hotbeds of Sexual Harassment*".<sup>2</sup> Harassment in Maryland's legislature was also reported on in January 2015 in the Center Maryland blog post "*Annapolis Mad Men*".<sup>3</sup>

Unfortunately, even here in the Maryland legislature we are not immune to sexual harassment. Some of us have witnessed these behaviors. Many of us have heard stories about inappropriate behavior from colleagues, staff, interns, and lobbyists. Victims often feel comfortable sharing these stories only after they have left employment at the Maryland General Assembly because of fear of professional retaliation. This is not surprising, as the June 2016 *Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace* reports that in any workplace 87-94% of victims of harassment do not file a complaint. In a political environment, we understand the pressure is even greater not to report incidents.

We would like Maryland to follow states like New York to take proactive steps to make the Maryland General Assembly the safest and most supportive political environment for women in the nation. As legislators we want our colleagues, staff, and interns, as well as the lobbyists and citizens that work with us to have an environment free from sexual harassment. We are aware of situations of men harassing women, women harassing men, and men and women harassing same gender victims. Still, we recognize the majority of perpetrators of legislative sexual harassment are men in power, and the majority of victims are female. As male legislators we do not condone this behavior, and we encourage the body to take a lead in ensuring our state legislature is following best practices

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<sup>1</sup> <http://www.nytimes.com/2016/11/03/us/politics/why-sexual-harassment-persists-in-politics.html>

<sup>2</sup> <http://www.usatoday.com/story/news/nation-now/2016/08/22/sexual-harassment-state-legislatures/88928118/>

<sup>3</sup> [http://centermaryland.org/index.php?option=com\\_easyblog&view=entry&id=1170](http://centermaryland.org/index.php?option=com_easyblog&view=entry&id=1170)

to prevent harassment, and when necessary, support victims and counsel and appropriately discipline perpetrators.

With this in mind, we encourage the Women's Caucus Special Committee on the Sexual Harassment Policy to consider the following recommendations to modernize our current policy based on the findings of the above mentioned *June 2016 EEOC Report*:

1. Strengthen the sexual harassment policy as it applies to members and their personal staff. These groups are specifically carved out of federal and state legal protections against sexual harassment, making them more vulnerable to harassment than DLS employees or the general public. This should include strengthening our policy as it pertains to prevention, education and enforcement.
2. Develop within our policy clear definitions of harassment, retaliation, and sanctions that are relevant for a legislative environment.
3. Clarify for members and staff how the anti-retaliation provision of our current policy is enforced.
4. Clarify for members and staff how the anonymous reporting provision of our current policy is implemented.
5. Expand the policy to cover lobbyists as potential victims and potential perpetrators. Changes in state ethics laws may be needed to accomplish this goal.
6. Ensure there is adequate data collection and coordinating of complaint reporting to identify and address individuals who are repeat offenders.
7. Develop policies that encourage or require bystander reporting.
8. Increase the quantity and quality of sexual harassment training for all employees, including members and their personal staff.

We would like to draw your attention to p. 45 of the EEOC report which states that "training is an essential component of an anti-harassment effort. However, to be effective in stopping harassment, such training cannot stand alone but rather must be part of a holistic effort undertaken by the employer to prevent harassment." We look forward to working with you and the Women Legislators of Maryland to develop just such an holistic approach to preventing harassment and ensuring the Maryland General Assembly is the best place in the nation for women to work in politics.

Sincerely,

Delegate Benjamin Brooks (D10)

Delegate Dan Morhaim (D11)

Delegate Dana Stein (D11)

Delegate Eric Ebersole (D12)

Delegate Clarence Lam (D12)

Delegate Eric Luedtke (D14)

Delegate David Fraser-Hidalgo (D15)

Delegate Marc Korman (D16)

Delegate Kumar Barve (D17)

Delegate Andrew Platt (D17)

Delegate Jeff Waldstreicher (D18)

Delegate Al Carr (D18)

Delegate David Moon (D20)

Delegate Will Smith (D20)

Delegate Alonzo Washington (D22)

Delegate Ereik Barron (D24)

Delegate Mark Chang (D32)

Delegate Andrew Cassilly (D35B)

Delegate Charles Barkley (D39)

Delegate Kirill Reznik (D39)

Delegate Shane Robinson (D39)

Delegate Steve Lafferty (D42A)

Delegate Cory McCray (D45)

Delegate Charles Sydnor (D44B)

Delegate Pat Young (D44B)

Delegate Jimmy Tarlau (D47A)

Delegate Carlo Sanchez (D47B)

CC: Senate President Thomas V. Mike Miller, House Speaker Michael Busch

# **APPENDIX B:**

REPORT FROM THE SEXUAL HARASSMENT  
EVALUATION COMMITTEE  
MARCH 16, 2017

Women Legislators of the Maryland General Assembly, Inc.  
200 House Office Building  
Annapolis, MD 21401  
410-841-3013  
[womens.caucus@house.state.md.us](mailto:womens.caucus@house.state.md.us)  
WomenLegislatorsMD.org

Report of the  
Sexual Harassment Evaluation Committee Meeting

March 16, 2017

Delegate Tawanna Gaines, Chair, and the members of the Committee were tasked with evaluating the current Sexual Harassment Policy of the Maryland General Assembly. The purpose of the evaluation was to outline a strategy and the goal was to modify current policy with presiding officers playing a major role in the evaluation process.

A brief overview of the problems involved, including inappropriate behavior from colleagues, staff, interns, and lobbyists, as reported to various legislators, was presented. There was discussion concerning the fact that victims feel uncomfortable reporting instances of harassment for fear of retaliation.

The Committee was advised that the state of New York has taken a proactive approach and that we should look at their policy. New York's policy provides a much broader approach to an allegation of sexual harassment alleged against a Member.

The Committee held three meetings and we included in our discussions:

Lori Mathis, Human Resources  
Sandra Brantley, Attorney General's Office  
Alex Hughes, Chief of Staff, Speaker's Office  
Victoria Gruber, Chief of Staff, President's Office  
Dea Daly, Ethics Counsel

Under the current Maryland General Assembly Anti-Harassment Policy and Procedures guidelines, we were informed that the victim should report any incidences of sexual harassment to the Speaker's or President's office. The Chief of Staff initially meets with the victim and gathers information, if the victim wishes to file a report, it is then referred to the President and/or Speaker and to Lori Mathis in Human Resources. In the past, the Speaker has personally counseled the alleged offending party and usually that sufficed to stop the harassment. If the matter is referred to Lori Mathis, she conducts an investigation and interviews both the offending party and the victim and possible witnesses. If the investigation supports a finding of a violation of the current policy, prompt, effective remedial action is taken including, but not limited to,

training, referral to counseling or disciplinary action determined to be appropriate under the circumstances.

If the investigation does not support a finding that the policy was violated, the individual making and the one against whom the allegation was made shall be advised. Both will be advised that retaliation for making the complaint is prohibited. There is an appeal process.

There was much discussion suggesting more education as to what constitutes sexual harassment, perhaps including vignettes to make participants more aware of what is appropriate and what is not. There was discussion concerning a survey to ascertain the extent of the problem but caution was advised due to the political and public nature of the General Assembly. A suggestion was made for more training.

There seems to be a reluctance, under the current guidelines, to report allegations of sexual harassment for fear of retaliation. There was discussion concerning designating an ombudsman or third party to hear allegations and offer advice. There also seems to be a perception of conflict of interest pertaining to the Attorney General's office.



# **APPENDIX C:**

## **HISTORICAL INFORMATION ON THE DEVELOPMENT OF THE MARYLAND GENERAL ASSEMBLY ANTI-HARASSMENT POLICY**

- “The Case of the Failed Nomination: Subtexts in a State Legislature” Patricia Florestano, *Journal of Political Science and Politics*, September 1993
- “Assembly Warned on Sexual Harassment - Women’s Caucus Not Consulted, Vents Annoyance,” John W. Frece, *The Baltimore Sun*, September 16, 1993

## The Case of the Failed Nomination: Subtexts in a State Legislature

Patricia S. Florestano, *University of Baltimore*

Just nine days after what was to have been a routine confirmation hearing, John S. Arnick, a 23-year member of the Maryland House of Delegates, withdrew his name from consideration for a position on the Baltimore County District Court. Arnick became the first gubernatorial nominee for a judgeship since 1968 who did not receive confirmation. This event touches upon a number of underlying subtexts of interest to political scientists, especially those who follow state legislatures and their processes—judicial confirmation procedures at the state level, prevalence of “insider-vs.-outsider” mentality within a state legislature, persistence of sexism in the environment of a state capital, impact of women legislators on the political culture and procedures, citizen attentiveness to the political process, and the consequences of the growing use of radio shows and telephone calls to influence the actions of elected officials.

### Sequence of Events

On Monday, February 8, during the 1993 session of the Maryland General Assembly, the Senate Executive Nominations Committee convened. Among the items on the agenda was the governor's nomination of John S. Arnick to a ten-year term as a district court judge. Arnick was a legislative veteran who had served as House majority leader and chairman of the Environmental Matters Committee and the Judiciary Committee. Chairing the latter committee has often led to judicial appointments for former chairs. Following the announcement of the nomination but prior to the Senate confirmation hearing, the Baltimore County Judicial Nominating Commission had approved the gubernatorial recommendation.

In a surprise appearance, Judith A. Wolfer, an attorney and former

lobbyist, described for the committee a dinner meeting arranged during the prior legislative session with Arnick, herself, and a female gubernatorial aide. According to Wolfer, she and the aide sought the support of Arnick, then chairman of the House Judiciary Committee, to enact a bill dealing with domestic violence. During the dinner, Arnick allegedly used lewd, racist, and sexist language. Wolfer told the committee that the nominee called all women “lying bitches,” made crude references to female anatomy, and used a sexual vulgarity to describe women who assert that they are abused by their husbands. According to Wolfer, Arnick said that women claim they have been beaten to gain an advantage in divorce cases. Following her comments before the committee, Arnick declined to testify and the committee, unaccustomed to controversy, postponed the vote for several days.

Wolfer's testimony provoked a major political drama in Annapolis. Phone calls to radio shows began the next day, February 9. A few supported the nominee, but most either demanded his resignation or an investigation of the charges. At that point, however, observers in the state capital did not yet regard the public response as a formidable obstacle to the nomination.

On February 10, Arnick met with supporters to fashion his response. During the meeting, the participants, including the governor's appointments secretary, debated how the nominee should answer the charges and who should testify for him at the next hearing. On February 11, the governor announced his continued support for Arnick. At the same time, the appointments secretary and various well-known lobbyists visited senators on the nominee's behalf, while another meeting was held in preparation for the hearing.

To accommodate the TV camera

crews on February 12, the hearing was moved to the largest committee room in Annapolis. During the four-hour meeting, eight witnesses, of which two were women, testified against Arnick. The majority of the 40 witnesses on his behalf were women. Accompanied by the speaker and the House majority leader, Arnick was the final witness. Although denying the charges of bigotry, he said that he could not remember the details of the dinner meeting discussion that had been held the year before.

Generally voicing the opinion that one conversation should not spoil a lengthy and notable career, the members of the committee disregarded the charges that Arnick's behavior made him unsuitable to be a judge and voted 14-4 to recommend that the full Senate confirm him to the district bench. Having completed their work, the committee members left Annapolis late Friday assuming that the nomination was once again in good shape. The full Senate vote was scheduled for February 16.

Over the weekend, however, new questions arose. Did the gubernatorial aide who had been at the dinner in question fail to testify because she was discouraged by the governor's office, various senators, or legislative staff? The newspapers reported that she had been prepared to testify to a continued pattern of harassment by Arnick. A second question: Was Arnick truthful when he testified under oath that he could not recall what was said during that dinner? Several people, including another delegate, recalled that following the dinner Arnick had been alerted that his behavior had troubled the lobbyists. Citizens began to call legislators at their homes.

At noon on February 14, a number of legal and feminist interest groups held an unusual Sunday news conference outside the State House to demand that the Senate postpone

the vote until a more exhaustive inquiry could be conducted. The Public Justice Center, the nonprofit legal services corporation for whom Ms. Wolfer had lobbied Arnick the previous year, ran radio advertisements asking for the nominee's defeat and urging listeners to call their state senators. Thousands of opponents of the nomination called talk shows and their legislators. By late Monday, February 15, the legislative switchboard reported over 2,500 calls, more than double the range of 1,000 to 1,500 calls normally received each day of a legislative session. Almost all of the calls questioned Arnick's fitness to be a judge; callers also complained about the Senate's handling of the confirmation process.

At 6 p.m. on Monday, Arnick sent a letter to the Senate president seeking a delay in the confirmation vote and the scheduling of a third committee hearing to obtain additional testimony. Arnick seemed to believe that given time, the furor would subside; but that was not to be. The members of the Black Legislative Caucus declared themselves in opposition to the nomination. The members of the Women's Legislative Caucus, which had initially endorsed Arnick, scheduled a meeting as several of its members publicly called for a reversal of their earlier vote. Following the traditional Monday evening session, many senators were privately willing to admit that they wanted to be rid of the problem; more specifically, they did not want to record their vote on this issue. Several called for the governor to withdraw Arnick's name. That night, Arnick met with his supporters who reportedly told him there was little hope for his confirmation.

By February 16, legislative leaders were using the newspapers to publicly discourage Arnick from continuing to seek a seat on the bench. Committee staff also reported that several other women now wanted to testify against the nomination. Whatever these witnesses wanted to say, it appeared that the senators did not want to hear them.

On Wednesday afternoon, February 17, the former legislative leader ended his battle for a Maryland judgeship by asking the governor to

withdraw his nomination. The astonishing nine-day uproar that began with accusations of sexism ended in a public outcry insisting that the Maryland General Assembly denounce sexist attitudes and turn down the nomination.

## The Obvious Lesson

Those of us who observe the state capital scene were surprised that the state legislators did not seem to grasp that times have changed and behavior once regarded as unremarkable was no longer acceptable. Nor did the legislators seem to recognize the parallels between the local situation and recent celebrated cases on the national scene. As in the Supreme Court confirmation hearings for Clarence Thomas, the charges dealt with sexual harassment and denigration of women. In neither the Congress nor the state legislature did members understand the public's distaste for elected officials who demean women or give the appearance of having done so. As in the attorney general confirmation hearings for Zoe Baird, the elected officials behaved like insiders who were not sensitive to the reactions of those outside their daily world. In brief, the nomination failed because the candidate's reported behavior and attitudes toward women were offensive to the public and put in doubt his ability to execute the responsibilities of a judgeship in a fair and equitable manner.

If that were all there were to the story, it would likely be only of passing interest, even within Maryland. Upon examination, however, the episode highlights a number of subtexts of concern to scholars and observers across the country.

## Judicial Selection Process

The initial issue highlighted by the case is the quality of the process for selecting and confirming judges. In Maryland, the public was ill served by both the executive and legislative procedures for selecting and approving judicial appointments. First, because Maryland law allows a judicial nominee to serve before con-

firmation by the Senate. The obvious result is that someone can be appointed, sworn in, seated, and preside for months before being confirmed—the situation with Arnick. The rationale for this practice has been that courts do not have to wait until the legislature's 90-day session to fill vacancies. As a result of the Arnick case, however, several pieces of legislation were introduced to either prevent a nominee from being seated without Senate confirmation or to allow the Senate Executive Nominations Committee to meet for approval purposes between legislative sessions.<sup>1</sup>

The second concern involves the work of the state legislative and local government committees. Both the Senate committee and the local judicial nomination commission were content to hold routine nonprobing hearings prior to approving the nomination. In terms of thoroughness and background checks, the quality of the local endorsement process varies greatly from county to county, but it is a uniformly low visibility activity that receives little attention from the media or the citizens. The woman who testified against Arnick said later that she would have appeared at the county commission hearing had she known of the nomination. If such committees are to be effective, they need to be as thorough as possible, and the public needs to be aware of their activities.

The third troublesome aspect of the process is the quality of selections by the governor. Arnick had applied for judicial vacancies before and been rejected; it was no secret in the state capital that his nomination was a political favor for the speaker. Members of the governor's staff admitted that they were aware of the allegations against Arnick but did not raise them with the governor or the appointments secretary. It is not difficult to make the case that the former majority leader should never have been nominated at all.

## Sexism in the Legislature

The persistence of the problems of sexual harassment is the second issue. If recent national attention on this issue might have led us to hope that

tolerance for such alleged behavior was changing, the Arnick case does not support that hope. According to legislators, lobbyists, staff, and reporters, the behavior attributed to the judicial nominee was not uncommon. The legislative community generally acknowledges that sexual innuendo or various levels of sexual harassment are an occasional part of the cost of getting things done in the State House.

Wolfer's testimony simply brought the issue into public view. Many lawmakers now say that they hope the controversy will raise the sensitivity of the legislature about sexual harassment, but no one is convinced that there will be measurable changes in behavior. Ironically, this aspect of the controversy also generated the introduction of proposed legislation. The Legislative Women's Caucus filed an unsuccessful bill that would have changed the state's motto, which now reads—in Italian—"manly deeds; womanly words."<sup>2</sup>

### Influence of Women Legislators

Mention of the Legislative Women's Caucus brings us to the third issue: the impact of electing larger numbers of women. The last several elections have seen major gains in the number of women elected to the Maryland General Assembly; they have captured 36 out of 141 seats in the House of Delegates and 10 out of 47 seats in the Senate. The state ranks 17th in the nation in terms of its 23% proportion of female legislators (National Conference of State Legislatures). Nevertheless, women lawmakers continue to be a small proportion of a group in which the standards for getting along and getting ahead were created by the male members. To be effective, both males and females believe that they must follow those standards.

Much of our literature indicates that electing women to legislative bodies will make a difference in both the content of legislation and the behavior of legislators.<sup>3</sup> While I accept the general validity of that theory, it was disappointing that Maryland did not bear it out in prac-

tice. As noted earlier, sexual harassment has not become a thing of the past simply because of the increased number of women elected to office. Additionally, numerous women's groups and advocates in the state publicly voiced their disappointment in the actions of the female members of the General Assembly in this case.

The Women's Legislative Caucus had endorsed Arnick's nomination earlier. Following the surprise testimony alleging his improprieties, the caucus convened their weekly session and, to the surprise of observers, did not retract their endorsement. Additionally, a number of women legislators, including the chairwoman of the caucus, went on record individually in his support, several of them defending his overall record on issues of importance to women. A caucus member made a derogatory remark about the critical female witness, for which she later apologized. When the caucus did not retract its endorsement, several women outside of the legislature wondered aloud if the elected women really made any difference; one woman said, "It's not just the men who don't get it." Once the public controversy over the nomination hit its full force, the caucus was openly divided. Many of them wanted the endorsement retracted, including an aide to the caucus chair who quit to dissent from the endorsement. When Arnick finally announced that he was withdrawing, a large number of the women legislators continued to voice their support for him. All of which raised questions once again about whether women do behave differently than men as legislators, or, more importantly, whether they go along with existing customs in order to be part of the "club," which raises our fourth issue.

### The Culture of the Legislature: Insulation and Isolation

The fourth issue inherent in this controversy is the "us-against-them," the "insider-vs.-outsider" mentality that continues to prevail in state capitals. Put another way, those in the legislative community believe that ordinary citizens do not understand, nor can they judge, what goes on in

the state capital. Lawmakers, staff, and lobbyists, whose work and lifestyles focus on the State House, are captive to the frenzied pace, the intensity, and the traditions of the legislative process. In their view, only those who have experienced the pressures of legislative sessions can render discerning opinions.

This attitude of separateness reinforces the ethos of the legislature as a club, where loyalty is crucial. Because power is controlled by a small core of leadership and committee chairs, rank-and-file members learn the lesson early that confronting such power entails sizable risks.<sup>4</sup> Anyone who would oppose a leadership initiative or testify against an "insider" does so at his or her own peril. In a state legislature like Maryland's where each chamber has five or fewer major committees and authority is held by a small core of leaders, other members need leadership help to enact their own bills. While female lobbyists and legislators may privately complain about questionable behavior, most do not complain publicly. It is likely that the presence of the speaker at the nominee's side throughout the confirmation process deterred some from opposing the nominee.

These attitudes have been nurtured by the traditional belief that constituents are mostly indifferent to the activities in the state capital. That brings us to our final issue: citizen attentiveness and the expression of public opinion.

### Democracy by Spotlight and Telephone

As in many states, Maryland's legislators have been accustomed to concluding their governmental endeavors with little or no attention from their constituents back home. Alan Rosenthal noted, "legislatures once had some distance from the public. The institution did its thing and the public paid attention or didn't."<sup>5</sup> But, as with so many other things, this case highlights how that too has changed. The newspapers and talk shows provided detailed coverage of the charges against Arnick and the reactions of the legislators. Legislators did not seem to



notice or understand that their work was not undisclosed and that, in fact, their actions were under intense public scrutiny. Neither did they anticipate the magnitude of citizen outrage.<sup>6</sup>

Having learned from newspapers, television, and radio shows what was happening in the State House, citizens used those radio shows together with calls to their legislators to express their unhappiness. These were the same citizens who had spent the previous year "calling in" to radio and television shows about Clarence Thomas, Ross Perot, Bill Clinton, Zoe Baird, and anything else on the national scene that provoked them. Now they were focused on the state legislature. Once legislators understood the volume of calls and letters against Arnick that were arriving in their offices, they changed their minds about the nomination.

One of the most troubling aspects of this case is not that the Arnick nomination was rejected. The troubling aspect is that rather than being rejected on the basis of a serious inquiry into the merits of his nomination, it was rejected because legislators counted telephone calls. While it may be reasonable to believe that the callers were right and justice prevailed, it is also reasonable to be uneasy about what issues will be the focus of citizens' outrage next time.

## Conclusion

It is likely that the failed nomination of John S. Arnick will have a profound effect on the way that the Maryland General Assembly does business. It is also likely that it could have an effect on the coming election for governor and the potential gubernatorial candidacy of the speaker of

the House. Not only was the governor highly visible throughout the process as the nominee's strongest advocate, he was among the last to accept the likelihood of the nominee's defeat. Most importantly, the speaker never indicated publicly that he understood public concern about Arnick's behavior. Additionally, it is equally likely that this episode will cause notable legislative turnover in 1994 when members of both houses of the legislature must stand for reelection.

Beyond the confines of the state, the episode vividly highlighted many of the subtexts and issues that we as political scientists ponder continuously. It suggests the need for states to examine existing judicial confirmation processes in order to avoid the troublesome aspects of Maryland's problem. It suggests the need for scholars to continue examining the impact of electing a more diverse body of legislators to state houses, together with the parallel issue of diversity as a mitigating influence on sexism in state legislatures. It suggests the need to learn more about the complex environment of state legislatures in which a club-like atmosphere characterized by an insistence on absolute loyalty devolves into an us-against-them attitude towards the citizenry. Finally, we need to think carefully about the citizens' heightened use of "phoning-in" to tell public officials what to do, and how officials should respond to such citizen activism.

## Notes

1. The Maryland General Assembly adjourned April 12, 1993, without enacting any of those bills.
2. Although the proposed change in the

motto failed, creative lawmakers took another tack to deal with a motto perceived by many as sexist. The House Ways and Means Committee, two weeks before the end of the session, voted to change the translation and insert into the state law books: "strong deeds, gentle words." This legislation also failed.

3. The numerous research in this area includes Malcolm E. Jewell and Marcia Lynn Whicker, "Women as State Legislative Leaders," paper given at the Southern Political Science Association meeting in Tampa, Florida, 1991; Sue Thomas, "Evaluating the Impact of Women Legislators on Political Policies and Processes: The Content of Success," paper given at the Midwest Political Science Association meeting, Chicago, 1991; "The Impact of Women on State Legislative Policies," paper given at the Annual Meeting of the American Political Science Association, Atlanta, Georgia, 1989; David B. Hill, "Political Culture and Female Political Representation," *Journal of Politics*, 43 (No. 1-2): 159-168; Pippa Norris, "Women in Congress: A Policy Difference?" *Politics*, No. 1, 1986.

4. This aspect of the case was discussed at length by Charles Babington and Richard Tapscott, in "Among Md. Legislators, Loyalty Is Name of Game," *The Washington Post*, February 21, 1993, pp. B1, B5.

5. *The Washington Post*, February 21, 1993, B5.

6. According to a poll taken February 26-28, of 811 registered voters who said that they regularly vote in elections, 56% of the respondents did not believe that Arnick should have been confirmed. Mason-Dixon Political/Media Research Inc., of Columbia, conducted the poll which was reported in *The Evening Capital*, March 5, 1993, p. 1.

## About the Author


Patricia S. Florestano

Patricia S. Florestano is visiting professor of government and public administration and senior research fellow in the Schaefer Center for Public Policy of the University of Baltimore. She served

seven years as vice president for governmental relations for the University of Maryland System, representing the System in the state capital and before Congress. Her current research interests center on state government policy and administration.



# Assembly warned on harassment Women's caucus, not consulted, vents annoyance

 [articles.baltimoresun.com/1993-09-16/news/1993259086\\_1\\_harassment-general-assembly-women-legislators](https://articles.baltimoresun.com/1993-09-16/news/1993259086_1_harassment-general-assembly-women-legislators)

September 16, 1993|By John W. Frece | John W. Frece, Staff Writer

Seven months after a sexual harassment controversy ripped apart Maryland's General Assembly, the legislature's presiding officers yesterday put lawmakers on notice that sexually offensive behavior will be punished.

Senate President Thomas V. Mike Miller Jr. and House Speaker R. Clayton Mitchell Jr. unilaterally issued an eight-page policy that defines sexual harassment and sets up procedures for reporting, investigating and resolving complaints.

But their action immediately was criticized by the new chair of the General Assembly's women's caucus, who said she was "shocked" that the two men had drafted and put into effect a sexual harassment policy without giving women legislators any advance warning or bothering to ask for their input.

"Even if this document was perfect, and we accepted it, you just don't do things this way," said Del. Betty Workman, D-Allegany, adding that it was discourteous to present women legislators with, in effect, a fait accompli.

The caucus held its own hearings on the topic earlier this year and fully expected to be consulted, Ms. Workman said.

Mr. Mitchell, a Kent County Democrat, could not be reached for comment last night, but Senator Miller, a Democrat from Prince George's, said they decided it was better to put a policy in place now and worry about modifications later.

Otherwise, he said, months would likely pass while legislators and other groups debated what the policy should say.

Mr. Miller acknowledged that the policy was drafted largely in response to the emotional and divisive confirmation hearings in February of former Baltimore County District Judge John S. Arnick.

Mr. Arnick, a veteran legislator who had expected easy confirmation, was instead bumped from the bench after he was accused of using vulgar and sexist language during a dinner meeting with two female lobbyists a year earlier.

'Firebrand in the night'

"The John Arnick incident made us all aware of what could be happening in Maryland," Mr. Miller said.

"It was a firebrand in the night that awakened Annapolis to a

situation that had been dormant, but was looming on the horizon," the senator said.

In a cover letter accompanying the policy -- which was mailed to every delegate and senator yesterday -- Mr. Miller and Mr. Mitchell noted that 28 other states already have such policies in effect.

"It is our responsibility for creating and maintaining a work environment in which all members and employees of the Maryland General Assembly are treated with respect and are free from sexual harassment," they said.

The policy, which was drafted by the staffs of the president and the speaker, applies to all 188 lawmakers and all legislative staff.

State Sen. Janice Piccinini, a Baltimore County Democrat who had called for a more extensive investigation of Mr. Arnick's behavior before any confirmation vote, said last night the policy was long overdue. She nevertheless commended the speaker and president for issuing it.

"There will be a lot of secretaries who will be very happy to hear this," Ms. Piccinini said, suggesting that clerical or other staff members are more often the subject of sexual harassment than are legislators themselves.

"Through the women's caucus, I have spoken to many of my colleagues and people who work in the General Assembly who feel [sexual harassment] definitely exists, but through fear they have never articulated it publicly," she said.

#### Harassment defined

The new policy defines sexual harassment as "any unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature when:

- \* "Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- \* "Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
- \* "Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

The policy outlines how complaints should be filed and to whom, stipulates who will investigate complaints and what sorts of questions are likely to be asked, and describes how complaints could be resolved.

Discipline for persons found guilty of violating the policy could range from requiring an apology

to suspension or even firing.

Counseling or training also could be ordered.

Senator Miller said the policy "absolutely" would have covered the Arnick incident.

The policy specifically states that any interaction between legislators or General Assembly employees "away from the legislative complex at legislative sponsored events, professional meetings or seminars, and those activities which involve legislative business" would be covered.

It also covers "sexually offensive or sexually harassing behavior by [legislators] and employees in the course of their work with such third parties as press persons, lobbyists, visitors, constituents, service persons, or state employees employed by other branches of government."

Avenue for complaints

The complaint section of the policy, however, does not appear to give anyone other than legislators or legislative employees an avenue in which to file a complaint.

Mr. Miller said that was not the intent, and if modifications are needed, he and Speaker Mitchell are willing to listen.

"The public should have a forum to go to to make their views known," he said.

He said, however, that a policy needed to be put in place "in case, God forbid, some other incident occurs.

"The issue has lingered since the matter was brought to a head through the Arnick proceedings, and it was felt we have to have a policy in effect now," he said.

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# **APPENDIX D:**

## **PUBLIC TESTIMONY TRANSCRIPTS**

- Ms. Nina Smith, February 7th 2018
- Ms. Robin Schavitz, January 31st 2018

**Public Testimony: Ms. Nina Smith**  
Former Press Secretary, State of Maryland, Governor Martin O'Malley  
Administration

*Maryland Women's Caucus Weekly Meeting*  
February 7, 2018, 8:40 AM

**Delegate Ariana Kelly:** At the top of our agenda, I wanted to welcome a special guest this week. Nina Smith who is a former staffer is here to join us. Come on up, Nina. She reached out to us and we have been collaborating with her as we developed the recommendations in the work group with Delegate Krimm and Delegate Fraser-Hidalgo. She thought she could provide a perspective as a former staff person, so thank you so much for joining us.

**Nina Smith:** Thank you so much for having me. Good morning President Kelly, past President Miller, the members of the executive board, and members of the Women Legislators of Maryland. Thank you for having me this morning.

I sit before you an imperfect messenger, delivering an important message. While I've been asked to speak to you today on behalf of former staffers who have graduated from these hallowed halls, I will speak to you about my experiences specifically.

I got my start in politics here, as an intern in the General Assembly, back in 2004. I worked for Senator Gwendolyn Britt--a titan and a trailblazer who put her body on the line to desegregate Glen Echo Park, and joined the freedom riders across the American South. She carried a quiet power, here, in Annapolis, and her office was a sanctuary, but it didn't shield me from the worst parts of my dream career.

In the eight years I worked in Annapolis, I was touched without permission. There was a legislator who told me he wanted to perform a sexual act in front of a lobbyist. Another would reach out to me at the most inappropriate hours asking me to come to their room. One legislator rubbed his private parts on me. I started buttoning my blouses a little higher after I noticed that the Chief of Staff to a Congressman wasn't being friendly, he was looking down my shirt. Another set of legislators embarrassed me until I slurped down oysters, telling me all the while that it was a powerful aphrodisiac.

Each incident left me feeling ashamed. I had no idea how to deal with what I was seeing, experiencing, and feeling. I talked to more experienced women around me. They told me to wear longer dresses, to avoid form-fitting or attention-drawing clothing--advice they used to navigate landmines in their own political careers.

As a young staffer, I knew my value lay in my relationships. I knew the women I reached out to were looking out for me the best way they knew. My job and future trajectory were in the hands of these same men. Fear for my livelihood stopped me from saying anything initially. This is political life, and it

certainly didn't help for someone like me to rock the boat. So after awhile it just became normal, always expected. I mentored young staffers in the years since and gave them that same advice.

The MeToo movement changed things. It was a shock to the system really. I talked to other staffers, some of whom still work in and around Annapolis. All of us had similar stories, a few went public, most have stayed silent. It was those same conversations that led me to write a letter focused on sexual harassment policies in Annapolis--the reporting structure and the training policies we have. We found in our research that there were several glaring holes in the General Assembly's policy, and we put together some recommendations hoping to dig at the root of the problem, rather than using the power of this moment through a press story.

Maybe this movement is more than a moment. It has given power back to thousands of victims robbed of their voices by societal and cultural norms that made this kind of behavior ok, way too many times. I know because I am one of the many who allowed it to happen. The letter was an attempt to correct that wrong. It's that same feeling that in some ways forced me to be here, today, in front of you.

I am no longer connected to Annapolis as much. I am now a business owner, and my firm's work has gone well beyond the sphere of influence that still holds many of my colleagues silent and chokes off their fear, anger, and anguish. I recognize that regardless of sensational news headlines or the predators featured prominently in them, it's the environment that gives these folks power over those who literally cannot afford to fight back.

I applaud the Women Legislators of Maryland for putting forth recommendations that address the underlying cultural issues here in Annapolis, namely: a lack of transparency to help understand the scope of the problem, murky and politicized reporting process, a process that fails to empower victims, and an abysmal training structure that seems to imply to all of us that we don't take sexual harassment seriously. I believe the final recommendations offered today speak to those concerns.

I would only ask that we work to install these structures and support and help young staffers to understand their options if they do experience harassment. We should clearly define boundaries in the workplace and educate staffers, legislators, advocates, all of us, so that they can spend the duration of their careers doing the people's work. We must for the generations who will come behind us. That is what will really make this movement moment actually matter. I am grateful to all of you for listening. I sincerely hope I did my colleagues proud today, and I thank you for your time.

**Public Testimony: Ms. Robin Schavitz**  
**2018 Maryland Government Relations Association Lifetime**  
**Achievement Award Recipient, Retired Lobbyist**

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**Robin Schavitz:** Thank you madam chair and members of the committee. I appreciate the opportunity to be here this morning. I don't have a time limit, you have the time limit--and my car which is parked in a place where they'll probably give me a ticket - although it won't be the first ticket I got here on the streets of Annapolis.

Thank you very much for inviting me, Madam Chair and members. Some of you I know, some of you I don't, but it's a pleasure to be here to talk about an issue that everyone's talking about, but no one really wants to talk about in many respects.

Back in 1980, there were very few women lobbyists walking the halls of Annapolis. I was a lot younger obviously. I watched members of the general assembly because even back then there were a lot of women in the Maryland General Assembly. And I don't know what the statistics are, but sadly while your numbers have increased, I think back in 1980 I would've thought there'd be more members who are women in the General Assembly come 2018. But that's a topic perhaps for another day.

I think that things have changed and the experiences I had as a young woman--I grew up in the madmen era, so there were things that I did, that I heard, that I responded to, that would be totally inappropriate today.

The last time the Maryland General Assembly had a discussion about harassment was back in 1993 when a member of the General Assembly was up for judgeship and there was a lot of discussion about how he had behaved with a particular lobbyist. **But even back then there were lobbyists who said as changes were proposed (I'm not sure that any of them actually remain) "you can do whatever it was to Robin, she's grandfathered in (or out)"--and I laughed about it because that was the coping mechanism of the day.**

My circumstances and everyone's circumstances are unique. I was young, I was married, I had two children--or one, and one on the way. I had a lot of home support. I had a great guy. No offense to members of the General Assembly (male members of the general assembly), but they couldn't compete with the attractiveness of my husband.

Ok, but putting that aside, what really drives a lot of young women into this field is power. Power is the aphrodisiac. So that, there were people who I wanted to get near who were men, who were powerful, and

that was what attracted me to them. So the behaviors that occurred back then were not appreciated, but they were in some ways acceptable.

And I can sit here and say I was never raped. Was I sexually assaulted? Possibly, if you look at the definition. **Was I sexually harassed? Almost every day.**

What did I do about it? My internal mechanism was “I’m gonna beat you at your own game, fellas”. But today is a different time, and today is a different era. And a time of--as we discussed- Delegate Kelly and I - of saying to a group of women legislators who have a lot of say in how you direct policy. **To say “just put on your big girl pants and get on with your day”--that’s not today.**

And I’ve sat back and watched my television and all the affronts of men. And every day is another revelation, and I said “you know what, even the littlest offenses have to be brought out” because we can’t let go. That pendulum has to swing back to the middle, but we’re not ready to bring it back to the middle because we’re still uncovering the affronts and--what Delegate Glenn just said, I’m so sorry, that’s awful--how you can deal with it in a body where everyone is supposed to be collegial and work together is your challenge.

What I would say--I think the direction you’re going in with your recommendations to the General Assembly are very, very important because who else, where else would it come from except from this body?

My whole experience as a young staffer, which is how I started here, and I worked for members of the General Assembly that sat right in these desks in the ways and means committee, and two are women and one was a man, all on the same committee. There were so many issues I hoped and wished that the women’s caucus would take up on behalf of women. This is a time when you have to look at your colleagues and say, “hey, this is not acceptable”.

On the other hand, we don’t want you to fall into what was reported--honestly, we still get a copy of the Washington Post at our house--and on the front page (this is Monday’s paper), it says “MeToo has a chilling effect in the workplace”. And I want you to be aware of the fact that there are worse things than sexual harassment. There are worse things than someone putting their hand on the back of your back and rubbing it. There are worse things than someone giving you an inappropriate hug. What’s worse for you all--and I know that every woman in this room has experienced it, I’m sure--when you are sitting in a room and making a point and no one’s listening. And you are sitting in a room and you don’t even get your hand recognized. Or you are sitting in a room, where you do get to say something, and no one says anything, and five minutes later a male colleague says exactly what you just said and everyone says, “oh my god, he’s so brilliant!”.

So this is not a pep rally for you, but what I would say to you is that you have to grasp this moment and be leaders. You don’t even have to worry about being offensive. You can make your case, but recognize that there could be a backlash, and you have to worry about that.

Now, you're gonna love my answer to the backlash. My answer to the backlash is make sure more women get elected to your bodies. And make sure your leaders understand. I have nothing against any of the men here in the General Assembly--up until today, and before I say this, they still probably would've returned my phone calls. But it wouldn't be so terrible if there were all women chairs in the General Assembly. It wouldn't be terrible if the Speaker of the House and the Senate President were women. That would not be terrible because I can remember a time when everybody was a man. And this is very important. I had a lot of women who worked for me. Proud mother of two sons, but if I had to be honest about it, there were many men who worked for me who are fabulous and they sing my praises as a boss and a mentor, but I looked for women to mentor. I wanted them to achieve.

And one of them said to me, "you're different than other women."  
And I said, "what are you talking about?"

And she said, "you're not jealous of me. You give me every opportunity. You don't feel any kind of competitive disadvantage to have me sitting here learning from you."

And I said, "that's ridiculous, I would never feel that way."

But I observed in my experience, there was a lot of that. Once I've reached my glass ceiling, those women didn't want to see other women coming up. And I think you as leaders have to be aware of how important it is to recognize those women, because that's the only way. When there is an equal level of power-sharing between men and women then all this stuff is gonna die down and go away. Thank you for the opportunity. If you have any questions I'm happy to answer them.