

*Nothing is politically right
that is morally wrong.*



*Free and fair discussion
is the firmest friend of truth.*

MISSOURI SENATE
JEFFERSON CITY

FOR IMMEDIATE RELEASE

July 22, 2015

Senate Leader Tom Dempsey Releases Statement

The Senate Administration Committee has completed its inquiry into allegations made by a University of Central Missouri intern against Senator Paul LeVota, D-Independence, during the recently completed legislative session.

In view of the concerns raised by UMC to the Senate Administrator, we felt it was necessary to hire an independent investigator to work in coordination with investigators at the university looking into these allegations.

On July 16th the Senate Administration Committee met with the independent investigator to discuss his findings in advance of the release of today's report.

The Missouri Senate takes very seriously matters involving the public trust, especially matters related to the respectful treatment of staff, visitors and volunteers. Since the matter in question involves an official elected by the public, the committee decided it was appropriate to release the independent investigator's report to the public and to all members of the Missouri Senate for their consideration.¹

The reports released today present the details of the now concluded investigation in a full and comprehensive manner. All further inquiries are directed to the office of Senator Paul LeVota.

¹ Under Art. III, Section 18 of the Missouri State Constitution, the entire Missouri Senate is charged with responsibility for the discipline of its own members.

MEMORANDUM REPORT

TO: Administration Committee of the Missouri Senate
FROM: James "Jim" Nowogrocki, Esq. *JN*
DATE: July 22, 2015
RE: Investigation Report re: Workplace Harassment Complaint Filed by UCM Student Intern

I. INTRODUCTION

The Missouri Senate has adopted a Workplace Harassment Policy. The goal of the Workplace Harassment Policy is explicitly noted as being designed to "eliminate unwelcomed conduct and communications in which members and employees may engage or in which they may encounter in the course of their work ..." The policy also states "all those involved in the legislative process have a responsibility to contribute to a respectful work environment.

The scope of the Workplace Harassment Policy of the Missouri Senate specifically includes all Senate employees. Under that definition, it applies to "any intern, whether paid or unpaid." All Senators, staff members, employees of the Missouri Senate and student interns receive a copy of the Workplace Harassment Policy and mandatory orientation as to its contents.

A. Scope of Investigation

The Senate Workplace Harassment Policy provides that the Senate Administrator may appoint an investigator following a complaint of discrimination. The Senate Administrator received a letter dated April 22, 2015 from the Title IX Coordinator for the University of Central Missouri (UCM). The letter informed the Administrator that UCM was conducting an investigation into allegations of sexual misconduct by a Missouri Senator.

On May 6, 2015, I accepted such an appointment, from Senate Administrator, Marga Hoelscher, on behalf of the Missouri Senate Administration Committee, to serve as the investigator of the UCM complaint. Because the complaint involved a student intern, it was agreed that I would perform the investigation jointly with legal counsel for the University of Central Missouri.

After my appointment in May 2015, an investigation ensued which involved face-to-face interviews; video conferences; and telephone conferences from May 2015 through July 2015. All witnesses cooperated by making themselves available for questioning as part of the current investigation. I provided regular updates to Marga Hoelscher during the investigation. On July 16, 2015, I provided a verbal report about my investigation to the Senate Administration Committee.

The RESOLUTION OF A COMPLAINT provision, as set forth on Page 8 of the Missouri Senate Workplace Harassment Policy, is not within the purview of this investigation report.

II. COMPLAINT FILED ON BEHALF OF THE UCM INTERN

There were two claims submitted (on behalf of a female UCM intern) to Marga Hoelscher, Senate Administrator, by the Title IX Coordinator for University of Central Missouri. The Title IX Coordinator for UCM confirmed that the student's complaint was directed at Missouri Senator Paul LeVota. The claims by the UCM student intern are as follows.

1. The student experienced a pattern of sexual harassment including unwelcome text messages and explicit requests for sexual activity.
2. After reporting the unwelcome sexual misconduct displayed by the Senator to his chief of staff, the student intern was subject to retaliation.

1. Investigation of Claim One: Sexual Harassment/Text Messages

*The student intern stated that she received on-going text messages from Senator Paul LeVota in January 2015 which were non-work related. She stated that these text messages were not overtly sexual in nature.

*The intern described the text messages as unwelcome with content such as referring to her as "perfect and beautiful" and "we are secret friends," along with text messages from the Senator in the evening and on weekends inquiring about the intern's whereabouts. The female intern described these text messages to another UCM student intern as "possessive" not sexual. For example, she described such text messages as asking "where are you" and "what are you doing this weekend."

*The student intern does not have any of these text messages. She has since changed telephones and no text messages could be recovered after attempts to do so.

*Senator LeVota has denied sending any inappropriate text messages to the student intern. He also denied sending the intern text messages on the weekend. The Senator did not have any text messages accessible for inspection as part of the investigative interview. He declined to have a forensic examination of his telephone, citing privacy concerns about personal information on his telephone.

*During his investigative interview, Senator LeVota stated that he sent group text messages to the student interns in his office involving their various tasks and assignments during the 2015 Session of the Missouri Legislature. According to the Senator, he sent the intern text messages inquiring about her well-being when she had a personal illness during the internship.

*Other witnesses reported that they observed text messages arriving from Senator LeVota on the student intern's telephone during non-worked related hours.

2. Investigation of Claim One: Sexual Harassment/ /Explicit Requests for Sexual Activity

* During her investigative interview, the student intern stated that in her view, there were two unwelcome requests for sexual activity made by Senator LeVota on January 26, 2015. The student intern stated that she, the Senator and his chief of staff, Ron Berry, attended a lobbyist event at Gumbo Bottoms in downtown Jefferson City that Monday evening.

*The three left the Gumbo Bottoms event, according to two witnesses, and returned to the Senator's office in the Capitol building. Mr. Berry said he picked up some work materials and left the Senator's office that evening by himself.

*Thereafter, the student intern told investigators that the Senator stated that since she had consumed alcohol at Gumbo Bottoms, she should spend the night at his home/duplex in Jefferson City so the intern would not have to drive back to where she was staying in Fulton, Missouri. The student intern, who is of the legal drinking age, reported that she had a few drinks with dinner at the Gumbo Bottoms event. The student intern described the Senator as being intoxicated that evening. According to the student intern, she and the Senator drove their separate vehicles to his duplex.

*The intern stated that while in the Senator's duplex, he offered her a glass of wine and made some derogatory comments about her boyfriend. The UCM female intern reported that Senator LeVota twice made the comment, "If you want to sleep with me tonight, I won't tell you no." The student intern stated that she considered these statements to be explicit requests to have sex and that she said "No." The intern said the Senator then apologized and continued acting in a flirtatious manner.

*Senator LeVota denies that the student intern was ever in his Jefferson City duplex. According to the Senator, he was not present when the UCM female intern was in an intoxicated state. Senator LeVota stated that he did not make any sexual advances to the student intern. When asked why the student intern would make such a report, the Senator stated that he believes that she is "not telling the truth." The Senator stated he left the Gumbo Bottoms event and went home.

*The student intern stated she slept that evening on the couch in the Senator's duplex and that there was no physical contact between them. The student intern also noted that the Senator made derogatory and inappropriate comments about her boyfriend (include a reference to the boyfriend's penis.) Senator LeVota denied making any such comment. The student intern reported that the Senator asked "weird" questions in reference to a dating app that evening. At

one point, the student intern also reported that the Senator made some reference to the effect that “she had never had good sex with a man.” Senator LeVota denied making any such comment.

*In investigative interviews, the student intern gave her description of the interior layout of the duplex; its location; the staircase leading to the second floor location; the type of door lock at the duplex and the color of the couch.

*Mr. Berry told investigators that the next morning on January 27th, he observed the student intern’s appearance as “not being all together.” He asked her if anything was wrong. According to Mr. Berry, she replied “No” at that time.

*Subsequently, the student intern told two other UCM students that the Senator had engaged in this conduct on January 26th.

*Senator LeVota reported that during a social outing in late January 2015, the UCM intern made a reference that she was gay. The Senator said he replied that she should figure out what she wanted to do. When asked about this interaction, the UCM student intern stated that she used a reference to “liking other women” only as a means to deflect any unwelcome conduct which might be directed to her as a female.

*There were no other allegations concerning a request for sexual activity or sexual harassment during the internship. The UCM female intern stated that she didn’t consider the Senator’s conduct toward her as criminal activity, rather she would like to see some accountability for this conduct that she recounted during her interviews.

3. Investigation of Claim Two: Retaliation

*In sum, the student intern felt that after she declined what she considered sexual advances, she was subject to retaliation in the internship. The alleged retaliation consisted of then being shunned by the Senator; her removal from one-on-one projects with the Senator; her no longer receiving assignments concerning proposed rape kit legislation; and, being subject to derogatory name-calling by the Senator. The student intern reported that she felt isolated and subjected to the rumor mill around the Capitol that she was “trouble” and should be avoided.

*On February 2, 2015, the intern requested to meet with Ron Berry at J Pfenney’s in Jefferson City. Mr. Berry served as the primary contact for the student interns in the Senator’s office. At that time, the student intern told this investigator that she described to Mr. Berry the incident of January 26th. In his investigative interview, Mr. Berry noted that the student intern had given him her description of the events. On February 2nd, the student intern explicitly requested that Mr. Berry not tell anyone about their discussion, as she feared retribution. On that day, the student intern requested that the matter be kept “off the record” as she would deal with it herself. Mr. Berry requested that the UCM intern give him notice of any ongoing inappropriate conduct toward her.

*It is my understanding that the student intern filed a Title IX complaint with UCM in March or April of 2015. UCM then made a formal complaint with the Senate Administrator in late April 2015. This is the only complaint that was filed by the student intern with the Senate Administrator or any other member of the Missouri Senate in this time period.

*Senator LeVota stated that he had no knowledge of the February 2nd meeting until his investigation interview.

*The intern stated that in February 2015 she cut her hair in a dramatic fashion so that she would appear less feminine in an effort to detract from being treated adversely because of her gender. Prior to that change, the UCM intern also reported that the Senator touched her hair on a few occasions and said "you have pretty hair."

*The intern did have two absences in early February 2015, including medical treatment for a personal illness and being absent for a few days to attend to a family matter.

*There were conflicting reports about the female student's performance of her internship after January 26th and after February 2, 2015. One member of the Senator's staff didn't observe any noticeable changes in the intern's demeanor or her being subjected to "name-calling."

*A fellow UCM student intern said he observed that the complainant was treated in a derogatory manner, though not sexual, by the Senator. This same UCM intern reported that he observed that the female intern's one-on-one meetings with the Senator "went to nothing" compared to the beginning of the internship.

*Mr. Berry completed a performance evaluation of the female student intern in March 2015, as requested by UCM, and he generally gave her positive marks.

*Senator LeVota stated that he felt the UCM female intern acted in a manner that she didn't want to be present in the Capitol because of other personal matters.

*Based upon information obtained from multiple investigative interviews, it is difficult to objectively quantify a change in her work assignments. According to the student intern, she had an uncomfortable relationship with Senator LeVota after January 26th.

*Another UCM intern described the complainant's demeanor as "sad and frustrated" in the February to March time frame.

4. UCM Withdraws the Student Interns from Senator LeVota's Office

*The UCM assistant professor who oversees the internship program confirmed that the female student had been placed in Senator LeVota's office.

*The UCM professor made a personal visit to Jefferson City on January 27, 2015. During that visit, the professor noted that there were no complaints about the student intern from the Senator or his staff. The UCM professor thought the student intern "was in her element" as part of the legislative work. At that time, there was no mention of sexual harassment.

*On March 18, 2015, upon request of the student intern, the UCM professor met with her at a coffee shop in Warrensburg, MO. At that time, the UCM professor observed that the student intern was emotionally distressed and wanted to leave the internship program. The student intern mentioned unwanted sexual advances by Senator LeVota. The UCM professor recounted that the student intern reported that she was not receiving assignments from the Senator and that the student intern was not being called by her real name. The student intern used the term "hostile environment," according to the UCM professor.

*Given that the student intern was so distressed about being in the internship, it was decided that she could complete the semester at UCM. The UCM professor then gave notice to Ron Berry, chief of staff, that the two UCM interns would not be returning to the internship in Jefferson City.

*In April 2015, the student intern communicated with Mr. Berry and stated that she left the internship because of the conduct of the Senator and not because of anything to do with Mr. Berry.

III. CONCLUSION

If there are any follow up questions, please let me know. I appreciate the opportunity to be of service to the Missouri Senate in this matter.

JGN



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MEMO

TO: Senator Tom Dempsey
President Pro Tem

FROM: Marga Hoelscher
Senate Administrator

DATE: July 22, 2015

RE: Workplace Harassment Report

Attached is the Workplace Harassment Report as requested during the Administration Committee meeting on July 16, 2015.

WORKPLACE HARASSMENT REPORT

Policy Background

The Senate Administrator is responsible for investigating all reports of workplace harassment including allegations of sexual harassment. This report provides information regarding a sexual harassment complaint against Senator Paul LeVota. The report provides the steps taken to promptly and thoroughly investigate the matter and provides a timeline of the investigation process.

In accordance with the Missouri Senate Workplace Harassment Policy¹, workplace harassment by a senator or an employee of the Senate is prohibited. The goal of the policy is to ensure all allegations of harassment are quickly and respectfully handled. The policy applies to all Senators and employees of the Missouri Senate and includes all legislative facilities as well as covers the interaction of Senators and employees at legislatively sponsored events, professional meetings or seminars, and those activities which involve legislative business. In the policy, the definition of an employee includes "Any permanent, temporary, full-time, or part-time employee, whether hired by the Senate, a Joint Committee, or by a Senator, and any intern, whether paid or unpaid."

To make a complaint under the policy a person does not need to have the basis for a full legal claim to the Missouri Human Rights Commission or other appropriate agency. The intent of the policy is to stop unwelcome sexual conduct before the conduct reaches that level. The Senate acts to protect all persons from unwelcome sexual conduct and communications whether or not that conduct or those communications rise to the level of a legal claim of sexual harassment. The policy further states that the Senate will act to correct problems brought to its attention through the policy.

¹ The Senate Employee Handbook released June, 2015 provides the sexual harassment policy for the Missouri Senate. The Workplace Harassment Policy of the Missouri Senate, adopted February 11, 1993, reviewed by Research staff and approved for redistribution on November 9, 2006, was the policy in effect prior to the release of the Senate Employee Handbook. Information referenced in the "Policy Background" section above is included in both documents.

The policy summary reflects the strong commitment of the Senate to provide Senators and its employees with an environment free from harassment and retaliation, and of its commitment to handle all complaints thoroughly and completely, regardless of who brings them or against whom they are brought.

Senate Administrator Responsibilities

The Senate Administrator is responsible for investigating sexual harassment or misconduct complaints². Because of the sensitivity of the complaint, it was determined early in the investigation process (see timeline) that an outside independent counsel with expertise in employment law would be engaged to interview affected parties and provide legal advice. Jim Nowogrocki, from Weiss Attorneys At Law, was selected to serve as the independent counsel. Because the complaint involved a student intern, the outside counsel performed the investigation jointly with the University of Central Missouri (UCM).

Throughout the process I maintained close communication with the independent counsel to ensure the investigation was moving forward in a timely manner and to provide information regarding the Senate's organizational structure and policies³. I suggested individuals to be interviewed from Senator LeVota's office. I also made decisions regarding postponing interviews when parties involved in the investigation process requested postponements.

Timeline

On multiple dates, I spoke with the independent counsel, Jim Nowogrocki, regarding the investigation and was provided with a general recap of each interview. The timeline below is intended to provide a general sense of the timing of the investigation. It doesn't present each communication that I had with Jim regarding the investigation.

² The sexual harassment training materials include detailed information regarding the reporting of workplace harassment and the responsibilities of the Administrator regarding the steps of an investigation. All Senators, employees and interns are required to certify that they completed the sexual harassment training program.

³ The Senate's organizational structure is unusual as it relates to staff working in Senators' offices. Staff are considered Senators' staff and serve at the pleasure of the individual Senator. The Senators set staff compensation, work hours, and assignments. Senate Leaders and the Senate Administrator have no supervisory authority over employees in other Senators' offices. (See Senate Rule 28)

The following provides a timeline relating to the sexual harassment complaint and the investigation that followed:

About April 15, 2015 – I received an anonymous call asking if my position was the appropriate position to report sexual harassment allegations. The caller did not provide his name and gave little information regarding the potential complaint. The caller said the allegations involved a Senator and a student intern. The caller did not provide his identity because the individual alleging the misconduct had not agreed to participate in the investigation. The caller noted they would learn more the following week.

The following morning I informed Senator Dempsey of the unusual call.

Tuesday, April 28, 2015 – The Senate Administrator received a letter dated April 22, 2015 from the Title IX Coordinator for the University of Central Missouri (UCM). The letter informed the Administrator that UCM was conducting an investigation into allegations of sexual misconduct by a Missouri Senator.

The Coordinator invited me to participate in a joint investigation and asked that I contact the University by April 29, 2015 to schedule a meeting if I was interested in pursuing the joint investigation. This correspondence did not identify the names of the student intern or the Senator.

Per the letter, the student, who had interned in a Senator's office from January 9, 2015 to March 12, 2015, had informed UCM that the student experienced a pattern of sexual harassment including unwelcome text messages and explicit unwelcomed requests for sexual activity and the student was subjected to retaliation in the office.

Also on **Tuesday, April 28, 2015**, I informed Senator Dempsey of the letter noting that the identity of the Senator was not included in the letter.

Wednesday, April 29, 2015 – I participated in a conference call with UCM’s Title IX Coordinator, the Deputy Title IX Coordinator, and a member of UCM’s President’s Office to gain a better understanding of the University’s request for a joint investigation and the allegations included in the complaint. Todd Scott, Majority Caucus General Counsel, participated in the call with me. During the conversation, I asked if the student was alleging that a criminal offense had occurred and UCM staff indicated that there were “no allegations of a crime.” It was also determined that the student was over 18. There was mention that the student was concerned about the investigation harming the student’s reputation. There was agreement that if I proceeded with the investigation I would protect the identity of the student.

The remainder of the conversation focused on Title IX requirements and aspects of a joint investigation. The University clearly noted their focus would be related to the student’s needs and they would be issuing their own report that would not be public. The joint investigation provided the opportunity for the Senate investigation and UCM to share information, cooperate in evidence fact-finding, and jointly interview witnesses.

After the call, Todd indicated that he would inform the Attorney General’s office of the letter received from the University and the need for legal expertise relating to workplace harassment complaints.

About Thursday, April 30, 2015⁴– The UCM Title IX Coordinator confirmed that the complaint was against Senator LeVota in a private telephone conversation. I shared the identity of the Senator with no one other than Senator Dempsey, Senator Keaveny, and counsels.

Friday, May 1, 2015 – Letter was received from James Farnsworth, Chief of Staff for the Attorney General, authorizing the Senate to retain outside counsel to represent the Senate and agreeing that costs would be paid from the Legal Expense Fund. The letter noted that even though the identity of the Senator was unidentified, due to the allegations being raised against

⁴ Notes indicate this confirmation occurred on April 29, 2015.

an elected official, the Attorney General's Office did not want the perception of a conflict of interest.

Also on May 1, 2015, I received an email from UCM's Title IX Coordinator indicating that UCM's attorney wanted to contact someone from my office regarding a joint investigation.

Monday, May 4, 2015 – I met with Senator Keaveny and Senator Dempsey to discuss potential candidates to hire as outside counsel with expertise in employment law. The decision was made to pursue a joint investigation with the UCM.

Tuesday, May 5, 2015 – Senator Dempsey, Senator Keaveny, and I called Jim Nowogrocki. During this call, Senator Dempsey asked to see if he would be interested in serving as the Senate's independent investigator, as well as providing the Senate with legal advice relating to the sexual harassment complaint.

Also on **May 5, 2015**, I informed the University that the investigation would be a joint investigation and participated in a conference call with University staff and counsels. Parties on the call discussed the need for me to notify the Senator of the allegations and asked that I inform the Senator not to communicate with the student.

During this call we discussed the need to convey to all parties involved in the interview process the need to be discreet due to the nature of the complaint. It was noted that anyone interviewed could be accompanied by counsel or a support person of their choice.

Wednesday, May 6, 2015 – I presented Senator LeVota with a letter from me informing him of the complaint and told him that under the Senate Workplace Harassment policy retaliation would not be tolerated. He was asked to not communicate with the intern alleging the misconduct. Senator Keaveny also attended this meeting. Senator LeVota denied all of the allegations included in the complaint.

Thursday, May 7, 2015 – The Administration Committee authorized the Senate Administrator to enter into a Legal Services Fee Agreement with Jim Nowogrocki, on behalf of the Administration Committee, to provide legal counsel and advice relating to a workplace harassment complaint.

Monday, May 11, 2015 – Wednesday, June 24, 2015 – Joint interviews of parties were conducted by Jim Nowogrocki and the UCM attorney.

Thursday, June 25, 2015 – Discussed with Jim Nowogrocki the best method to present information to the Administration Committee.

Thursday, July 16, 2015 – Administration Committee heard a presentation from Jim Nowogrocki with details regarding the complaint including statements and evidence gathered during the investigation process.

Prepared by Marga Hoelscher
Senate Administrator
July 20, 2015