

Good Afternoon. For the record I am David Gomberg from House District 10 on the Central Coast. I have a brief statement before I directly address the contents of the Report.

It is important to me that all Oregonians enjoy a welcoming workplace free of discrimination, harassment, and incivility. I have worked to advance those goals my adult entire life.

I am sensitive, aware, and committed to improving working conditions in our Capitol. I am deeply troubled that over 40 complaints have been filed in the past year. I am similarly troubled that we remain focused on either cataloging confidential reports or on public hearings like this one rather than on atonement, improvement, and reconciliation. We're focused on finding fault and not on making things better. And as a legislator, I'm concerned about what these 40 investigations cost.

I strive to treat everyone with respect, kindness, and humor.

I'm not perfect and I've made mistakes. I suspect many of us make unintentional mistakes as we struggle to understand changing behaviors and standards. But when I make mistakes, I acknowledge them. I apologize. And I take affirmative steps to not repeat them.

Some of you will recall that early in my career I said or did things in my Capitol office that made some in the legislative community uncomfortable. I apologized and took steps to help me better understand how my actions might affect others. I made sure it didn't happen again. That was in 2013. I was told my apology was accepted and the matter closed.

The Report you are considering today references this history. What I want to tell you is I was never told what I had allegedly done. I wasn't questioned, or allowed any response by the Speaker, Employee Services, Legislative Counsel, or by BOLI. I've read things in the press that are absolutely untrue and when the BOLI report was released, I was shocked by allegations that no one discussed with me. I've submitted multiple public information requests to try and learn about these past events. The response was that no documents about my behavior exist.

Several years later, the Speaker referenced me in a statement to the media where she said, "I have only received workplace harassment complaints about one House member". But the BOLI report confirmed that no less than four House members had been the subject of complaints. A report published by OPB said there had been a dozen complaints in the Capitol. So while the Speaker's public statement focused continuing attention on me, her statement that I was the only one was not correct.

Women deserve to be heard and I believe they should be listened to. But due process matters. And unless you know what you have done, you can't apologize, you can't correct your behavior, and you cannot defend yourself. I have met frequently with our Legislative Equity Offer to discuss these concerns.

Now to the matter at hand.

On October 21, I was asked to meet with the Speaker. I had been told the meeting was about water and sewer policy, but when I arrived, she surprised me with news that a concern had been raised regarding my behavior. She did not provide any specifics. I only later learned the details of the concern through a public information request. And now you have those details as well. So let's talk about them.

Last year I received devastating medical news. My doctor believed I had an aggressive and potentially lethal case of prostate cancer.

Though we told no one, Susan and I thought of little else during the Fall of 2019. But in late September, fortunately, my diagnosis changed and the situation was no longer life-threatening. However, some routine issues persisted and my physician recommended several possible courses of medication – each of which had side effects. One would cause dizziness; one is also used to treat erectile dysfunction; and one would increase hair growth.

Susan and I spoke of the good news on the way to the OBI Dinner in Portland October 7. Looking back, I would describe our mood as celebratory.

There were no legislative staff at this private event and few legislators. The cocktail party was loud, crowded, and friendly. When a friend asked how I was doing, I gave him an honest answer. I told him what I just told you – that I had received some good news but my doctor wanted to prescribe medicine that would have those side effects. He laughed and asked which I chose.

Susan was present during this conversation. The investigative report is unclear on this important point, but she is here with me today and can confirm she was standing right next to me.

It is also worth noting that while other people were nearby, I was speaking to a male lobbyist. He was not interviewed for this investigation. Ms. Johnston's interview will confirm that while other people were nearby, they were not directly engaged in the conversation and said nothing to me.

Unfortunately, someone sitting nearby overheard part of the conversation and felt uncomfortable. The report states, "Rep. Gomberg's 'joke' made this person 'think unnecessarily about Rep. Gomberg's private parts'". This individual stressed that she did not wish to make a complaint.

This person told a supervisor who was not at the dinner. The supervisor did not want to make a complaint but told the Speaker who was also not present. The Speaker then called me in and initiated this review.

Was I joking about cancer? I was certainly *talking* about cancer. It is part of my nature to share personal challenges in a self-deprecating way which might be seen as joking. I had hoped to highlight the serious but awkward health choices men of my age face.

It was certainly not my intention to reference my “private parts” and I remember that I actually focused more on how medication would affect my hairline.

I deeply regret that anyone who overheard my comments felt uncomfortable. In the context of the entire brief encounter, I feel there was a misunderstanding or that someone did not hear the entire story. I honestly do not believe that most people in a similar situation would conclude I was sexualizing the conversation.

Let’s be very clear. I was speaking primarily to another man about my personal health. The conversation was about prostate cancer, not erections. I used medical language you hear on the television every day. Everything I said was factually true. And my wife was present.

That’s about it. I hope and trust the Committee will see this unfortunate situation for what it is and not an act of harassment or incivility.

Now because I have the Committee’s attention, I wanted to comment briefly about the investigation process. I share these details not because I expect they will affect your decision, but because you are in the best position to comment on how investigations should be conducted in the future.

I find this process troubling on many levels. Please remember that we were far from the Capitol at a private event, that my wife was present, and that I was not talking to legislative employees. Someone overheard a conversation, told someone else who was not present, who told the Speaker who was not present.

To be clear:

- There is no complaint. The people raising these concerns said they did not want to file a complaint and declined to even speak with an investigator.
- Rule 27, Section 11(h)(i) requires that an investigator first review all conduct reports before initiating an investigation to determine whether the reported conduct could be prohibited under the rule. The Final Investigation Report states on page four, *“Sandmeyer requested that I perform a retroactive ‘facial review’”*.

So let’s look at the timeline: A conduct report was submitted on October 9, 2019. I was interviewed by the investigator on November 15, 2019. Jackie Sandmeyer, Acting Legislative Equity Officer, was appointed on November 21. So if Sandmeyer requested

the preliminary “facial review”, an investigation was well underway before a that review was conducted.

- The Final Investigation Report states on page four, that definitions of prohibited conduct of the version of Rule 27 in effect at the time the complaint is received shall apply.

On October 7, before the Equity Officer was appointed in November, Rule 27 only applied to legislators, legislative staff, and assembly employees – not to lobbyists or the public. Similarly, the old Rule 27 did not apply to situations outside the State Capitol. The rules in place last October do not apply and the newer definitions of Rule 27 are being applied retroactively.

- Rule 27 requires investigations to be completed in “no more than 84 days”. The deadline for a final report was January 1, 2020. However, that report was not issued until April 16, 2020 and without advanced justification for the delay. So instead of 84 days, this process has taken 191.

Quite simply, there are no complaints filed. I’m accused of violating rules that didn’t apply at the time, a preliminary review was only completed after the investigation was underway, and more than twice the allowed time was used.

Sadly, I believe these rules will discourage our own staff or anyone else from talking to a legislator when they understand we are all mandatory reporters and any information shared will necessarily take the situation out of their control, leading automatically to an investigation and hearing. If our rules require us to file reports when the people involved want no formal report and decline to be involved in the investigation, then there is something wrong with our rules.

I have thought about these events every day for the past six months. They are often the first thing I think of in the morning and the last thing I think of at night. I worry about my personal reputation, about my career, and most of all, that someone heard part of a conversation, got the wrong impression, and I’m not allowed to talk to them about it.

I have raised procedural questions because when our rules are not applied completely or consistently, they become arbitrary and political. At some point, bad process becomes bad behavior. Lives are affected by these proceedings and the rules should matter more than they clearly do.

Anyone offended by my words at the OBI dinner is entitled to everything they asked for. They did not ask to be involved in a six-month formal investigation and public hearing. They asked for the Speaker to talk to me about the situation. She did not. It took a public records request to even find out what we were talking about.

Those people are also entitled to something they did not ask for - an apology. And since I may not speak to them privately, I offer it to them here publicly. I'm sure they are watching. I'm sincerely sorry my words made you uncomfortable. I promise you it was never my intention to reference anything other than my health concerns. I would be very pleased to talk with you more if you wish.

Finally, since my prostate will certainly be in the news, I want to conclude by telling you I believe strongly that we need to talk more openly and candidly about health challenges as Oregonians age. That includes once-awkward subjects like breast exams, colonoscopies, and yes, prostate testing. The more we talk, the more we will test. And that will save lives.

I would hope we could learn from each other in this way without anyone feeling uncomfortable.