

# WAITING FOR THE EPIPHANY:

## SEXUAL HARASSMENT IN THE EMERGENCY SERVICES

Its consequences are  
ugly, and eliminating  
it won't be easy

By John Erich, Senior Editor

*Chiefs have an obligation to protect those under their command. (Thanks to the Second Alarmer's Association and Rescue Squad, Montgomery County, Pa., for their assistance with photos.)*

*Photos by Kaitlin Hartung*



**F**ive female paramedics sued the Chicago Fire Department in May, citing unwanted sexual conduct and contact from their superiors.<sup>1</sup> In Houston it's the Justice Department, which filed against the city in February, alleging sex-based discrimination against a pair of female firefighters.<sup>2</sup> In San Bruno, Calif., it's a male firefighter targeted for homophobic abuse.<sup>3</sup>

A quick scan for other jurisdictions where emergency services face lawsuits or other claims in 2018 involving sexual harassment, discrimination, or misconduct turns up San Diego; Port Orchard, Wash.; Fenton Township, Mich.; Rifle, Colo.; Galloway Township, N.J.; and—more than two years after such misanthropy may have helped fuel the suicide of firefighter paramedic Nicole Mitten-dorff—Fairfax County, Va.<sup>4-9</sup>

It isn't exhaustive, but that list is exhausting. It's been more than 50 years since the Civil Rights Act prohibited discrimination based on sex among other attributes, yet discriminatory and harassing behavior persists in the fabric of many emergency services.

"It starts with the fact that there are still many fire departments that don't have women on the job," says Cheryl Horvath, chief of Arizona's Tubac Fire District and past president of the International Association of Women in Fire & Emergency Services. "The fact that we're still celebrating the first woman in so many of these departments tells you we have a long way to go in that regard."

Women today comprise only about 4% of the fire service.<sup>10</sup> That there are so few means few have advanced to leadership positions—Horvath is one of only about 50 female fire chiefs in the U.S.<sup>11</sup> That's meant a long, slow process of lobbying for change, as opposed to implementing it directly, in a field built for the less-fair sex.

"The fire service in general hasn't done enough to make our work environment open to women," says Curt Varone, a longtime firefighter, attorney, and author in Rhode Island who covers the topic at his Fire Law Blog. "Our equipment, our strategies, our staffing levels are all premised upon the strength of a strong man, and we've not made an effort to change that.

We just put women into the environment and assume they'll meet the requirements. And there's a message there I think firefighters hear: that you have to find a way to get the job done, but you're not getting any more resources, and the equipment's not going to be configured for a woman to operate."

Change is hard, harder when your culture is highly fraternal and insular. Change threatens established orders—not only how "the guys" may do their jobs, but how they may talk, behave, or even walk around dressed in the firehouse. (We talk largely about fire departments here because so many of the highest-profile sexual harassment cases have involved them, but nonfire EMS services are hardly immune, as other recent cases show.<sup>12-14</sup>)

Living in proximity and facing intense situations together creates tight bonds that don't always open easily to outsiders—especially with any perception they're not fully up to a dangerous, demanding job. (Note, the same clannish mechanisms can drive hostility to other minorities.)

"What's happened is that the discrimination against women and people of color and those sorts of things has been sort of below the radar," says John K. Murphy, principal of the Washington-based Murphy Law Group, an attorney with more than three decades of fire and EMS experience. "The people who are the targets either just gut it out and don't say anything or quietly leave. But I think as generations have changed and there's more emphasis on equality and finally realizing the tenets of the Civil Rights Act, more people who have been harassed are willing to speak up and report it."

Certainly, within EMS and across society, many recent purveyors of abject sexual misconduct have been held to account. But others evade reckoning, and the problem remains large. For many women (or men) facing the daunting challenge of standing against an entire organizational power structure to stop abuse, it can still feel like a stacked deck.

"I have people tell me it's getting better," says Horvath. "Male chiefs will say, 'We're doing so much better, but just wait!' And I'm like, 'What are we waiting for?! We've been here for almost 50 years. What epiphany is

going to occur that shouldn't have already occurred?'"

## **Paid to Go Away**

"Why don't they just speak up? Hit back? Quit and go somewhere else? Stop being a victim?"

To such glib questions, Amie Morningstar has some insight. The first full-time female firefighter in her hometown of Circleville, Ohio, Morningstar faced a ludicrous litany of on-the-job malice for over a decade that ranged from juvenile (someone urinated in her shampoo) to life-threatening (the sabotage of her facemask). In August she won a \$3.35 million judgment for it.

"I grew up in Circleville," Morningstar says. "My father was terminally ill, my mom battled seizures, and my oldest son has a heart condition. Taking care of them was a huge part of my identity and life. So I realized that if I became a paramedic and firefighter in my community, it would let me not only provide financially for my family but also always be there if something happened. For me Circleville was my only option—serving my community and family and friends meant so much to me."

What she got for that was nearly every tawdry form of abuse imaginable.

Morningstar began volunteering for Circleville EMS in 2001; it merged with the Circleville Fire Department soon after. She earned her fire certification in 2003 and when the departments merged applied to be a volunteer firefighter. Suddenly volunteer applicants had to pass a physical test they didn't before.

Morningstar passed the test and became a volunteer but wasn't given gear, so she couldn't go on runs. She didn't get her gear for four years. During this time she applied to be a full-time firefighter-paramedic with CFD but was passed over for a male with no certifications. She reapplied in 2007, only to see the required agility test made more difficult. When she passed it anyway, a captain said, "It looks like it's time to make this test harder," and wrote in a report, "Unfortunately, it is time to allow a female into the department."<sup>15</sup>

Morningstar was hired but given a 90-day probationary period; for men it was 30. Then the gear theft and tamper-



## COVER REPORT: SEXUAL HARASSMENT



ing started. Her gloves, hoods, and radio vanished (2007); her mask was sabotaged (two weeks after 9/11). She found what appeared to be semen on her bed (2012). Clothes continued to be stolen and destroyed. Word of the harassment rose all the way to Mayor Don McIlroy, and the department issued a warning against equipment tampering, but nothing substantively changed.

By 2015 Circleville had a lieutenant position open. Chief Marc Zingarelli told Morningstar not to bother testing, as she wouldn't pass, and the position was going to someone else. Then Zingarelli called her a "bitch" in front of test administrators.

At the same time there were sexual advances from a city employee, including instances of forced physical contact. Morningstar ultimately complained about that, to no avail, and in 2015 that employee "grabbed her by the waist and put his head into her chest."<sup>15</sup> A major meeting ensued; Zingarelli called her a "bitch" again, and Morningstar was put on administrative leave while the city employee remained on the job.

The next Monday Morningstar drafted

a letter to the chief and mayor expressing her desire to file a formal complaint and not work with that individual any longer, and saying she was taking a few days off. Her pursuer was then fired, but not without a memo "emphasizing the extra workload his departure would cause."<sup>15</sup>

The chief's verbal abuse continued: *bitch, whore, slut, cunt*. Nearing the end of her rope, Morningstar complained to the city, which investigated but found no violation of policy. Zingarelli was reinstated, and more incidents occurred: missing keys, someone breaking into her locker, cold shoulders from some colleagues (though support from others).

When she finally sued in December 2015, Morningstar went on paid administrative leave. When that expired, believing the problems hadn't been resolved, she didn't return to work and was fired. Her suit alleged gender discrimination, infliction of emotional distress, retaliation, violations of the Equal Pay Act and Ohio Public Policy Tort, a hostile work environment, and sexual harassment.

Those claims were ultimately narrowed, but the eventual trial lasted just a week

before the jury awarded Morningstar \$3.25 million in compensatory damages, plus \$100,001 in punitive damages against Zingarelli. An appeal is still possible, says attorney Brian Duncan, who represented Morningstar for the Cincinnati-based law firm BKD, LLC.

"My reaction as a whole is just that I'm incredibly humbled," says Morningstar. "I feel vindicated. I feel I'm not standing alone anymore. But while I don't want to take away from the verdict, you can't help but to feel, after a situation like this, that you're kind of just being paid to go away. That's hard to swallow. You kind of wish it didn't end there."

Zingarelli stepped down, taking a month's paid vacation in September before retiring with full honors and benefits October 1.<sup>16</sup>

### An Employer's Responsibility

States may have their own laws, but sexual harassment is also a federal matter, under the purview of the Equal Employment Opportunity Commission. It was with the EEOC that the ACLU filed charges against Fairfax Fire and Rescue in May. That's a required precursor to a federal lawsuit.

Harassment can include unwelcome sexual advances, requests for sexual favors, and other sexualized badgering. However, it doesn't have to be strictly sexual—it can include offensive remarks about a person's sex, e.g., women in general. Both men and women can commit harassment and be its victims.

Sexual harassment claims fall into two types: quid pro quo, or "this for that," and hostile work environment. The former involves providing or denying some benefit based on a response to sexual advances; it can only be perpetrated by someone in authority. The latter occurs when speech or behavior is "so severe and pervasive that it creates an intimidating or demeaning environment...that negatively affects a person's job performance."<sup>17</sup> Anyone, even nonemployees, can contribute to a hostile work environment.

An employer is liable if harassment culminates in a tangible employment action (firing, demotion, etc.) and may be even if

it doesn't, unless it can show it acted to prevent and correct the behavior or the victimized employee never complained. Retaliation (a feature of many emergency services cases) is also prohibited.

While quid pro quo is often clear, hostile work environment can be greyer. In the emergency services, locker-room talk, teasing, and even pranks can be common. Not every joke is an offense—but behavior that's repeated, targeted, and continued against an unwilling subject can be.

"I think the people who commit sexual harassment in large measure don't see how their behavior fits into the definition of sexual harassment," says Varone. "The typical guy who is accused of this rationalizes his behavior in some way: that it's somehow OK for him to do this, or she had it coming. And when I say 'she had it coming,' that's often because of perceived issues with a particular female. It could be competency issues, it could be personality issues, it could be other types of things about her that somehow kind of justify what he's done [in his mind]."

To some degree the power to define harassment lies with the victim. If you're the new woman in the department and always seem to be the one tasked to clean toilets, is that harassment or your job?

"Some people would say it's your job. Others would say, 'Well, nobody's done it for the last three years except for me when I'm on shift.' That becomes a harassing behavior, and the eye of the beholder is kind of the telling point," says Murphy. "You have to look at the practices and pattern of what's gone on in the organization. There's a tipping point where it does become discriminatory, and that's when I say, 'I've had enough. I'm not cleaning the toilets anymore. I've been in the department four years, and the captain's still making me do this. This has become a hostile work environment.' It's my viewpoint, not anybody else's viewpoint."

### 'A Darkness I Didn't Know'

If a jury agrees, that can mean major financial pain for a department. The damage to a victim is harder to quantify but potentially more serious.

"In the beginning I think I found myself kind of compartmentalizing things," says Morningstar. "To continue going to work every day and fulfilling my dream, I had to almost downplay the things that were happening—if I allowed myself to think of them in their entirety, it caused way too much stress. So as time went on—and I don't think I quite realized it then—I almost had to downplay my self-worth and value so I wasn't getting too overworked about the things that were happening."

It was basically a survival strategy: Morningstar convinced herself putting up with such treatment was an act of strength—she wanted to tough it out, believed she could eventually prove herself to her tormentors' satisfaction. But it's a rare abuser who can be placated that way. Instead those attempts at persevering ground away at her own self-esteem and emotional wellness.

"Now that I'm removed from it," Morningstar says, "I realize I wasn't being strong or resilient. It would have taken much more

strength to stand up to it." But when she did, as she'd feared all along, it meant her job.

Even worse consequences followed.

"It was almost as if all the walls I'd built up through the years to keep being able to deal with everything just came crashing down, and I experienced a darkness I did not know existed," Morningstar says. "I'd lost my identity. I felt shame and lost that sense of being a strong, resilient woman who'd dealt with everything. I didn't know how to deal with it, because I'd never dealt with mental illness before, and that's when self-harm and suicidal obsession started.

"It humbled me very quickly. Before I perceived myself as being this incredibly strong woman who was defying the odds and staying strong within this department, and now I'd become just this shell of a person who couldn't even do the simplest daily tasks without panic and anxiety that completely overwhelmed me. I'd been a caregiver my whole life, and I couldn't even take care of myself. If it were not for

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### Developing a Voice

**How one harassment victim found the strength to stand against it—and now shares that with others**

I go to work to earn an income, support my family, and experience personal fulfillment. No one goes to work for abuse, harassment, or to be demeaned. What I would like to talk about is something that should never occur at work and experiences no one should endure—yet they do and must be addressed.

Discussion of sexual harassment, let alone choosing “speak up” or formally file a complaint, in my experience, is frankly taboo. Unfortunately EMS often has a culture where “it’s just the way it is” or “I was just joking” is the norm, making filing or addressing complaints a challenge. In my employment I have not seen sexual harassment addressed beyond provision of policies as part of a cursory first-day orientation. Addressing management of sexual harassment allegations for line staff, supervisors, and managers is rare beyond the onboarding process.

I had a long route to understanding sexual harassment and learning how to handle it in an EMS career. As a provider, my learning curve was steep. I experienced quid pro quo requests, inappropriate gestures and comments, and unwanted physical contact. As a young provider, when I reached across a desk, a male employee pulled my duty shirt forward and commented upon my anatomy. Subsequently I faced an administration representative and peers who said, “He would never do that.”

My buttocks have been grabbed and pinched more times than I can count. I am quite adept with a clipboard as a result. I have been propositioned for sexual favors. Male and female partners have suggested I would enjoy their company while inappropriately touching themselves. As a female supervisor, I have been publicly accused of dating male subordinates, providing sexual favors for male employees’ advancement, and favoring male employees. The list is not exhaustive. As an administrator I found myself having to respond to similar alleged behavior and amend policy and guidance documents to accurately meet regulatory requirements.

It wasn’t in my recipe of life learning to know how to deal with sexual harassment or, later, manage the process of handling an allegation. I had to learn to speak up. Being caught off-guard and stunned when experiencing an event is a real and valid reaction. It is also difficult, in any profession, to speak up to or against author-

ity figures. These are well-known phenomenon in medicine and other professions.

I changed my behavior to maintain a public image that was above reproach. My words carry weight, and I want to always be perceived and treated as a professional. This means leadership and professionalism have some social downsides: after-work social hour is never going to be on my calendar; comradery is always on the radar and mindfully bounded. It is a hard path to take. I did struggle to find a strong voice and eventually learned to effectively have difficult conversations as well as understand the nuances of regulation and policy. I sought out formal education, discussions with senior administrators, communications practice, and opportunities to work with leaders and professionals outside of EMS.

I am now a mentor and have a formal education in administration. It is my role to guide those who do not have the formal training or social competencies to develop strong, knowledgeable voices to effectively advocate for themselves. As a leader I support building systems that promote ethical behavior and cultures of accountability. It is not the onus of the individual subjected to sexual harassment to “solve the problem.” EMS leaders can change the culture—some already have. There are systems that actively promote cultures of accountability. They have strong human resources departments staffed by individuals with HR as a true expertise. Culture and expectations are set and exemplified by senior leadership and supported at all levels. It is time to replicate those successes.

I contribute to this issue to stimulate discussion in the fervent desire to see EMS continue to professionalize and realize the greatest autonomy for providers. My career has afforded me the opportunity to grow from a young EMT to a paramedic and into roles in EMS operations and administration. I acknowledge the changing social pressures and environment to which I contribute, including the #MeToo movement and its influence in the workplace for both men and women. It is with consideration and after deliberation with peers, mentors, and family, as well as reflecting on my experiences as provider and administrator, that I have requested this commentary be published anonymously.

For additional information regarding sexual harassment, see [www.eeoc.gov/laws/types/sexual\\_harassment.cfm](http://www.eeoc.gov/laws/types/sexual_harassment.cfm).

*The author’s name has been withheld at her request. She has been in EMS for more than 15 years.*

my faith and my family, I can assure you, I would not be sitting here today.”

Whether it’s the old cliché of caregivers having trouble caring for themselves or just the Type A personalities drawn to the emergency services, Morningstar didn’t—and doesn’t—wear the victim role well.

“To identify myself as a victim, that’s hard,” she says. “It almost inhibits me from being able to heal and truly move on, because I just can’t accept that this is where I’m sitting. I feel so robbed of every-

thing I fought for. And for what? What did I do? What was wrong with me?”

“It’s going to be a lifelong battle. There are days where you tell yourself, *Come on, this is just a chapter in your life. You’ve overcome it. It’s fine.* And then I have times where I pass the cemetery and realize I’m not going to have the honors there that firefighters who retire from the city of Circleville get. Some people find that silly, but it’s something we all look forward to that was robbed from me. I don’t get that honor.

That’s hard for me to accept.

“My mother had a heart attack the first of the year, and we almost lost her. My dad scooped her up and took her to the hospital himself instead of calling 9-1-1, and all I can think about is, *If I’d been at work, he would have called me.* I’m not going to get to serve and protect my family like I deserve to, and that’s an internal battle I’m not sure ever will go away.”

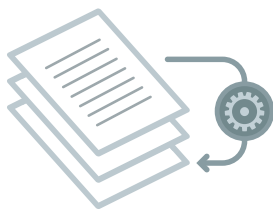
It’s also difficult not knowing if any of the culprits in Circleville—the he-man



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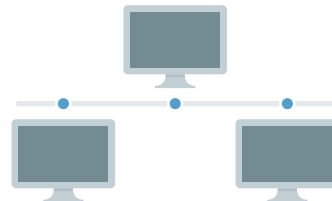
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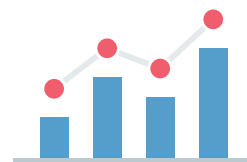
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woman haters and the officers and others who should have done something but didn't—have really learned anything. Insurance will pay the judgment, Zingarelli got a cushy exit, and everyone else...well, they got what they wanted, didn't they?

"It almost feels like they won, because I'm not there, and it didn't affect them personally in any way," Morningstar says. "You think, *Well, the jury spoke loud and clear, maybe it'll promote change.* Then, not even a week later, the city's giving the chief paid vacation until he retires. And I sit here and think, *You never offered me my job back. You never even offered to right the wrong.*"

### Strategies

Allowing that kind of harm to someone a chief is charged to protect should be very upsetting. In the interests of protecting both provider welfare and the jurisdictional bottom line, here are some key steps.

First, have a written antiharassment policy and clear process for making complaints. Consider a reporting outlet outside the department—for instance, to a

city HR structure—to avoid potential bias and retaliation (though that didn't help Morningstar). Complaints must be reliably moved up the line as appropriate and acted upon fairly and quickly. Beyond being interviewed, accused harassers shouldn't be involved in their own investigation.<sup>18</sup>

Even before a complaint is investigated, take steps to make sure any harassment can't continue—for instance, change schedules or put the accused on non-disciplinary leave with pay. Any separation shouldn't burden the complaining employee, however, as that could amount to retaliation.

"A good policy will outline the sort of conduct we want to see and behavior that's not acceptable," says Murphy. "Then there has to be some sort of consequence. You need a discipline policy that outlines the whole procedure of filing a charge, doing the investigation, having the hearings, and then some appeal process. We need to remember both rights: the rights of the employee targeted and the rights of the employee accused."

Supplement policy with quality training (both Varone and Murphy offer it in this and related areas), but know that policy alone won't be enough.

"My concern by saying you have to have a good policy is that some chief can say, 'All right, I'll spend some time and develop a good policy, and that will solve all my problems.' It won't," says Varone. That's because sexual harassment isn't a technical problem, with a solution that's known, but an adaptive challenge—about changing hearts, minds, values, and belief systems. "When you look at the lawsuits I've got catalogued," he adds, "those organizations all had sexual harassment policies."

Where they more likely went wrong is culture, and changing that is tougher. It comes from the top down, so leaders have to model the behavior they want to see. "Some of these departments always want to put their firefighters through training, but the chiefs never have to go," notes Horvath. "That's a critical mistake. No firefighter in their right mind would look up to a chief who's not willing to lead the charge."

From the other end, grooming and pro-

moting women into leadership roles can help infuse the upper ranks with awareness and sensitivity to these problems. And cities and departments have to invest—in the people, the equipment, the training, and the accommodations to nurture it.

"You mention something like a nursing station in the firehouse, and elected officials roll their eyes," says Varone. "But those same officials are the ones saying, 'We want women and don't understand why these lunkhead guys won't accept them!'"

Engage problems early, before they grow. Every officer should be clear on exactly what to do about harassing or disrespectful behavior. Take these cases seriously in house before they burst outside. Understand that workforces today are diverse, and that's not changing. And understand "tradition" doesn't trump rights.

"I think if we look at it as a cultural improvement issue, as opposed to a diversity issue, it opens up a toolbox for how we can resolve some of it," says Horvath. "As a fire chief, you should always be concerned about culture—you always want to make sure you're providing the best possible work environment for everybody in the organization to be successful."

Above all, don't believe it can't happen to you. Even with all the above measures in place, ongoing vigilance is necessary to keep things aboveboard.

"If you have women in your fire department, you have a sexual harassment problem—it's that pervasive," says Varone. "And that should say something about how difficult a challenge it is. Because we have some very good leaders and terrific organizations out there, and it's the kind of issue where both labor and management can rally around a solution, and it's still defied solution for 50 years."

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## Preparation Through Simulation

**Supervisor SimLabs are a novel way to train for delicate situations like sexual harassment reports**

In all levels of healthcare and public safety, we stress the importance of regular training and practical education. However, EMS is notorious for not training or preparing our leaders for the critical roles they hold. The skills needed to be a great field provider are not necessarily predictive of leadership competency or success.

The EMS Supervisor SimLab is a program developed specifically to educate and train EMS leaders. Like patient care simulation, the SimLab is a practical learning environment in which EMS supervisors and managers are challenged to tackle real-life ambulance service personnel and operational issues. The participants are provided with fact-based scenarios during the workshop and participate in practical skills exercises that require they analyze each fact pattern, create a plan, and take supervisory action.

The EMS Supervisor SimLab is facilitated by a pair of EMS attorneys, Scott Moore and Brian Werfel, who weave the relevant legal standards and their extensive EMS backgrounds into a practical EMS supervisory learning experience. They guide the discussion and exercises with participants, challenging common practices and highlighting the most strategic investigative procedures and techniques. The SimLab provides supervisors with skills and strategies they can immediately implement upon returning to their agency.

### Sexual Harassment

Over the last 16 months, we have conducted numerous SimLabs tackling an issue that has received a great deal of focus from the media and regulatory agencies: sexual harassment. Sexual harassment remains a significant problem in the American workplace.

Despite 40 years of antiharassment legislation and employer education, there has been little real progress made at preventing it. The EMS Supervisor SimLab brings an actual EMS-based sexual harassment scenario to these supervisors and managers to guide them to the appropriate response to a #MeToo-type incident in their organization.

The SimLab teaches attendees how to recognize and respond to all types of harassment in an EMS workplace. During this practical exercise, supervisors respond to a harassment complaint, conduct an investigation, interview the complainant and accused, and collect and weigh the credibility of the evidence. Finally we walk through how to draft an accurate and legally defensible investigative report.

Since January of this year, more than 125 pieces of antiharassment legislation have been filed around the country. Many states are enacting stricter standards for supervisor education as it relates to sexual and other forms of harassment. The SimLab assists employers with preventing and responding to sexual harassment in an EMS workplace. The simulated educational experience ensures frontline supervisors receive an interactive and scenario-based understanding of the critical role they play in preventing and reducing harassment in the workplace.

The best way to predict how your supervisors and managers will act when faced with a difficult and legally complicated situations is to train early and often.

*Scott A. Moore, Esq., is the principal for EMS Resource Advisors, LLC, a full-service human resources and leadership-development consulting firm in Topsfield, Mass. He is a licensed attorney specializing in human resources, employment, and labor law and spent more than 28 years in EMS. Contact him at [smoore@emsresourceadvisors.com](mailto:smoore@emsresourceadvisors.com).*

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### ABOUT THE AUTHOR



John Erich is the senior editor for EMS World. Reach him at [john.erich@emsworld.com](mailto:john.erich@emsworld.com).