



Chairman Jerry Nadler
U.S. House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, DC 20515

Chairman Hank Johnson
Subcommittee on Courts, Intellectual Property, and the Internet
U.S. House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, DC 20515

March 9, 2020

Dear Chairmen Nadler and Johnson:

We, the undersigned organizations, write to thank you for holding a hearing on February 13 to discuss the pressing issue of protecting judicial branch employees from sexual harassment and other workplace misconduct. The hearing was powerful and illuminating, and we hope that it will serve as the predicate for subsequent action.

We are especially grateful for the warmth and support that you and your colleagues provided former Ninth Circuit clerk Olivia Warren during her testimony. A decision to come forward with such a harrowing story in any venue, let alone one as public as a congressional hearing, is extremely difficult, and we appreciate the kindness and consideration offered to her from the dais.

As we heard that day from Ms. Warren—and from her fellow witnesses Deeva Shah, Dahlia Lithwick, and Chai Feldblum—the judiciary has simply not done enough to encourage and facilitate the reporting of misconduct. While the judiciary, through its Workplace Conduct Working Group, has taken some steps to improve accountability, there remains a lack of clarity around reporting procedures and the confidentiality requirements thereof. Therefore, wrongdoing goes unreported and unaddressed.

Ms. Shah, a founding member of Law Clerks for Workplace Accountability, summed up the state of affairs during her testimony: “It is unclear whether the Working Group intends to propose any further recommendations or whether the Judicial Conference plans to adopt any changes in the near future. The common refrain our organization hears from current clerks is

that clerks still do not feel comfortable reporting abusive behavior or misconduct. More must be done to ensure meaningful change.”

We now look to you as leaders of the committee and subcommittee of jurisdiction to take the lead. Our organizations stand ready to assist in that effort. To that end, we echo the witnesses’ recommendations for specific items to consider when formulating solutions that will protect judicial branch employees:

- Grant all employees within the judiciary, irrespective of their employment category, the protections in anti-discrimination statutes such as the Civil Rights Act.
- Reform the Judicial Conduct and Disability Act and its definition of “judicial misconduct” in order to capture sexual harassment and a more complete range of misconduct.
- Create reporting and resolution mechanisms that are independent, confidential, and uniform in order to better facilitate and encourage the disclosure of misconduct.
- Create explicit statutory whistleblower protections for all judiciary employees and contractors.
- Excise the option of resignation or retirement for federal judges as a means of escaping accountability amid allegations of wrongdoing, by permitting, if not requiring, Judicial Councils and the Judicial Conference to investigate misconduct even after the judge in question has resigned or retired.
- Strengthen reporting requirements and conduct climate surveys so that Congress and the public have better access to data about hiring and demographic statistics, frequency and category data on reports of misconduct, and details about steps taken to address misconduct allegations.

Chairman Johnson began the hearing with a simple truth: “The more than 30,000 women and men who work for our federal courts have a right to a workplace free from sexual harassment, discrimination, isolation and retaliation.” We agree wholeheartedly.

And we appreciate how Chairman Nadler’s statement put into focus the need to ensure that those charged with upholding the law must themselves be held responsible for their actions: “Culture change starts with the recognition that the judiciary is more than just its judges, and that protecting powerful judges from accountability and embarrassment is not the same as protecting the integrity of the judiciary, especially if it leaves law clerks and other employees more vulnerable to misconduct.”

We are heartened to know there are such strong advocates as yourselves dedicated to upholding both judicial integrity and judicial accountability. Calling a public hearing, inviting witnesses with direct experience, and welcoming suggestions for reform make a powerful formula for change.

Thank you again for your leadership in exploring ways to better protect employees of our judicial branch. We look forward to collaborating with you on implementing solutions.

Sincerely,

ACORN 8
Fix the Court
Government Accountability Project
Project On Government Oversight
Protect Democracy
Public Citizen
Whistleblowers of America