TESTIMONY OF
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ACTING CHAIR, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
U.S. HOUSE OR REPRESENTATIVES COMMITTEE ON HOUSE ADMINISTRATION
"PREVENTING SEXUAL HARASSMENT IN THE CONGRESSIONAL WORKPLACE: EXAMINING REFORMS TO THE CONGRESSIONAL ACCOUNTABILTY ACT"
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Chairman Harper, Ranking Member Brady, Members of the Committee: good morning, and thank you for the opportunity to testify before you today about a subject that for weeks now has consumed headlines: sexual harassment – something many of us have known to be widespread and far too common, but which only now is being fully brought into the light.

Since early October, when news of what was then known simply as "the Weinstein scandal" broke, the issue of sexual harassment – what it is, how to prevent it, how to detect it, and how to deal with it when it is uncovered – has dominated the nation's collective conversation. I am pleased to offer my thoughts and add my voice to that dialogue this morning.

By way of introduction, I am Victoria Lipnic, and I am presently the Acting Chair of the United States Equal Employment Opportunity Commission. I have served as a Commissioner of the EEOC since Spring 2010, when I was appointed to the Commission by then-President Obama. President Trump designated me Acting Chair on January 23, 2017, and I continue to serve in that role today.

Prior to my time at the Commission, I served as Assistant Secretary of Labor for Employment Standards for seven years in the George W. Bush Administration, and before that, as Republican Workforce Policy Counsel to the House Education and Labor Committee. As a former House staffer, I can say it's usually more stressful to be in front of the dais down here, than behind it with you all up there.

When I first joined the EEOC in 2010, I was struck by the number of harassment complaints the EEOC would see every year, the cases we would litigate, and the egregious behaviors we were addressing on behalf of victims of harassment. I had a conversation with our then-Chair, the late Jackie Berrien, and she expressed the same concern and asked me to look into it.

I spoke with every one of our District Directors around the country (we have 15 district offices and a total of 53 field offices) and all of our Regional Attorneys. I was astonished, but also deeply concerned that, to a person, I was told the same thing: the EEOC could, if it wanted to, have a docket consisting of nothing but harassment cases generally, and sexual harassment cases specifically.

But, these offices also told me, we cannot simply bring more harassment cases each year, when we have many statutes we are charged to enforce, addressing all forms of discrimination on many different bases. This fact, and the concern on a leadership level with the persistence and pervasiveness of the harassment claims we at EEOC continued to see, led to the establishment of the Select Task Force on the Study of Harassment in the Workplace – an outside group of

experts that the EEOC convened under the leadership of our then-Chair, Jenny Yang, following a public Commission meeting on Workplace Harassment in January 2015. I was honored to co-chair the Select Task Force alongside my Democratic colleague, Commissioner Chai Feldblum.

The goal of creating the Task Force was to see if we could find new, innovative, ways to address what we at the EEOC knew was a pernicious and pervasive problem in America's workplaces. We wanted to speak to or reinforce the work of prevention, not just address, as the enforcement agency, liability issues.

In assembling the Task Force, we wanted to include legal experts with experience in workplace harassment, but also sought to cast a broader net, and reach beyond "the usual suspects" to bring in a range of views and disciplines. Ultimately, the Task Force included members of both the management and plaintiffs' bar; organized labor and trade associations; academics, including social scientists; compliance experts, and worker advocates.

We did not confine ourselves to simply those voices, however. Over the next fifteen months, the Task Force convened a number of hearings, many public, some closed, in which it solicited testimony from an even broader range of perspectives: experts in workplace investigations; academics who worked most closely with the data we have on workplace harassment; other government agencies who have worked to address harassment in their workplace; and experts in organizational leadership and management.

The work of the Task Force concluded in June 2016, with the release of the final Co-Chairs Report – almost 30 years to the day after the United States Supreme Court handed down its landmark decision, *Meritor Savings Bank v. Vinson*, in which it held, for the first time, that sexual Harassment was a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964.

Our lengthy report includes our findings with respect to research and data; the economic business case to be made for rooting out harassment, even in the face of so-called "superstar" harassers; an analysis of workplace harassment "risk factors" which an employer can review to help gauge the risk of harassment in its workplace; a lengthy discussion of workplace harassment training – what works, and what plainly has failed to work; and a series of simple, practical "checklists" for employers wishing to assess their anti-harassment policies, reporting systems, and training.

We took away a number of "top line" lessons learned through the study of the Task Force, which I would take this opportunity to share:

First, workplace harassment remains a persistent problem. Almost fully one third of the approximately 90,000 charges received by EEOC in fiscal year 2015 included an allegation of workplace harassment. This includes, among other things, charges of unlawful harassment on the basis of sex, race, disability, age, ethnicity/national origin, color, and religion.

Second, workplace harassment, particularly sexual harassment, too often goes unreported. Common workplace-based responses by those who experience sex-based harassment are to avoid the harasser, deny or downplay the gravity of the situation, or attempt to ignore, forget, or endure

the behavior. The least common response to harassment is to take some formal action - either to report the harassment internally or file a formal legal complaint. Employees who experience harassment may not report the harassing behavior because they fear disbelief of their claim, inaction on their claim, blame, or social or professional retaliation.

Third, an effective anti-harassment effort must start at the top, and leadership and accountability are crucial. Workplace culture has the greatest impact on allowing harassment to flourish, or conversely, in preventing harassment. The importance of leadership cannot be overstated - effective harassment prevention efforts, and workplace culture in which harassment is not tolerated, must start with and involve the highest level of management of the company. And at all levels, across all positions, an organization must have systems in place that hold employees accountable for this expectation.

Finally, training must change. Much of the training done over the last 30 years has not worked as a prevention tool - it's been too focused on simply avoiding legal liability. I believe effective training can reduce workplace harassment, but even effective training cannot occur in a vacuum - it must be part of a holistic culture of non-harassment that starts at the top. Similarly, one size does not fit all: training is most effective when tailored to the specific workforce and workplace, and to different cohorts of employees.

I understand that the Committee is contemplating, among other things, changes to procedures designed to address workplace harassment that may be suffered by employees in the legislative branch, and I am happy to offer my thoughts on any such changes or proposals, as well as discuss EEOC's charge resolution procedures. In the interest of giving the members of the Committee full background, I discuss below the EEOC's procedures with respect to discrimination charges in both the private and federal sectors. While these procedures share the same fundamental purpose, they are considerably different in practice.

Private Sector Procedures

In the private sector, if someone feels they are the victim of discrimination, including unlawful workplace harassment, they can file a charge of discrimination with the EEOC. This charge sets forth the who/what/where/when and why of an allegation of discrimination. Depending upon the state in which they live, and whether or not there is an active state anti-discrimination agency in place, an employee must generally file a charge within either 180 or 300 days of the last act of discrimination. The charge is then served on the employer, who is invited to respond to it by setting forth its own position.

Prior to investigation, in many cases, if both the employee and the employer agree, a charge may be sent to mediation in an attempt to reach a voluntary settlement.

If the parties choose not to mediate, or if mediation fails, EEOC's field staff will then conduct an investigation. This may involve requests for documents and information; interviews with witnesses; and in some instances, the subpoena of information. Upon conclusion of its investigation, the EEOC will determine whether or not it has reasonable cause to believe unlawful discrimination has occurred.

If the EEOC does *not* find cause to believe the employer engaged in discrimination, an employee is given a "right to sue" letter, and may pursue his or her own remedies in federal court.

If the EEOC *does* find cause to believe discrimination has occurred, both parties are again invited to attempt to settle the case, via the conciliation process mandated in Title VII, our authorizing statute. Indeed, given that resolution of a charge before engaging in litigation is the statute's preferred outcome, in cases where it may be deemed useful, EEOC will often engage in "pre-determination" settlement discussions, even before a cause determination is made.

If the parties are unable to come to resolution of the charge in the conciliation process, one of two things will happen: either EEOC will choose to litigate the case on behalf of the aggrieved party; or the agency will issue a right-to-sue notice and allow the charging party to pursue his or her own private relief in court. I stress for the Committee's benefit that EEOC is not Legal Services – while we receive almost 100,000 new charges of discrimination each year, in the last fiscal year, with our given resources, we brought 184 federal lawsuits under all of the statutes we enforce, combined.

Federal Sector Procedures

In 1972, Congress gave the EEOC oversight over enforcement of non-discrimination laws covering the federal workforce. The Commission has established procedures for reporting and resolving harassment claims in the federal sector, which differ in some material ways from its private-sector procedures.

If a federal employee believes he or she is the victim of workplace discrimination, including harassment, the first step is for that employee to contact an EEO Counselor *at the agency where he or she works*. Generally, an employee must contact the EEO Counselor within 45 days from the date discrimination is alleged to have occurred. In most cases, an EEO Counselor will give an employee the choice of participating either in EEO counseling or in an alternative dispute resolution (ADR) program, such as a mediation program.

If the matter is not settled during counseling or through ADR, the charging party can file a formal discrimination complaint against the agency with that agency's EEO Office. That complaint must be filed within 15 days from the date notice from an EEO Counselor about how to file a complaint is received.

Once a formal complaint has been filed, the agency will review the complaint and decide whether or not the case should be dismissed for a procedural reason (for example, a claim was filed too late). If the agency doesn't dismiss the complaint, it will conduct an investigation. The agency has 180 days from the date the complaint is filed to complete its investigation.

When the investigation is finished, the agency will issue a notice giving an employee the choice to either request a hearing before an EEOC Administrative Judge, or to ask the agency to issue a decision as to whether or not discrimination occurred without a hearing.

If an employee asks the agency to issue a decision and no discrimination is found, or if the employee disagrees with some part of the decision, he or she can appeal the decision to EEOC or challenge it in federal district court.

If an employee wants to ask for a hearing, he or she must make a request in writing within 30 days from the day a notice from the agency about hearing rights is received. If a hearing is requested, an EEOC Administrative Judge will conduct the hearing, make a decision, and order relief if discrimination is found.

Once the agency receives the Administrative Judge's decision, the agency will issue what is called a final order which will state whether the agency agrees with the Administrative Judge and if it will grant any relief the judge ordered. The agency has 40 days to issue its final order, which will also contain information about the employee's right to appeal to EEOC, the right to file a civil action in federal district court, and the deadline for filing both an appeal and a civil action.

An appeal to the EEOC's Office of Federal Operations must be received no later than 30 days after receipt of the agency's final decision. EEOC appellate attorneys will review the entire file, including the agency's investigation, the decision of the Administrative Judge, the transcript of what was said at the hearing (if there was a hearing), and any appeal statements. The EEOC will then issue a decision on the appeal.

An employee can ask for reconsideration of the EEOC's decision, but must show that the decision is based on a mistake about the facts of the case or the law applied to the facts. Reconsideration must be requested no later than 30 days after receipt of EEOC's decision on the appeal (the agency also has the right to ask EEOC to reconsider its decision). Once the EEOC has made a decision on a request for reconsideration, the decision is final.

An employee must go through the administrative complaint process before he or she can file a lawsuit. There are several different points during the process, however, when the employee has the opportunity to quit the process and file a lawsuit in court, including:

- After 180 days have passed from the date a complaint was filed, if the agency has not issued a decision and no appeal has been filed;

- Within 90 days from the date the agency's decision on a complaint is received, so long as no appeal has been filed;

- After 180 days from the date an appeal was filed, if the EEOC has not issued a decision; or

- Within 90 days of receipt of the EEOC's decision on an appeal.

Conclusion

As the Committee contemplates changes to Congressional anti-harassment systems and procedures, I am happy to offer myself, my staff, and our agency as a whole, as a resource to you. I would also commend to the Committee a set of "promising practices" for preventing and combatting workplace harassment that the EEOC recently issued and published on our website, which I believe have been provided to Committee staff.

In conclusion, I will return to touch on a key finding of the Report of the Select Task Force on Harassment, and offer this single piece of advice to the Committee: it was our conclusion that no system of training, monitoring, or reporting is likely to succeed in the absence of genuine and public buy-in from the very top levels of an organization. The effort and commitment of time and resources to an anti-harassment effort has to be REAL. Simply put, we have seen all too clearly how "training for training's sake" – the stuff that makes peoples' eyes glaze over, or serves only as the butt of jokes on sitcoms like "The Office" – simply will not be effective in combatting this scourge. We can, and we must, do better.

Thank you for your time this morning. I am pleased to answer any questions you may have.