

# Exhibit B

To: Subcommittee on Courts, Intellectual Property, and the Internet  
From: Anonymous Former Law Clerk, submitted through counsel<sup>1</sup>  
Date: March 17, 2022  
Re: Hearing on Workplace Protections for Federal Judiciary Employees

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Dear Chairman Johnson, Ranking Member Issa, and members of this Subcommittee,

Thank you for the opportunity to submit written testimony today. My testimony arises from my attempt to use the federal judiciary's Employment Dispute Resolution (EDR) process to report the harassment and discrimination that I faced during my clerkship. I understand that the judiciary has stated on multiple occasions that the newest version of the EDR plan can effectively address misconduct. I disagree. I ultimately succeeded on the merits of my EDR complaint, but the process still failed me.

As a brief background, because I graduated from a top law school with excellent grades, I was able to launch my legal career with the most prestigious and competitive of first legal jobs: a clerkship in the federal judiciary. I was proud and thrilled. I hoped to develop research and writing skills, become familiar with the judicial process, and gain a powerful mentor.

But the harassment began on Day One and only escalated from there.<sup>2</sup> I was openly taunted on the basis of my gender expression, sexual orientation, and religion. The bullying and harassment were ongoing, pervasive, and continuous.<sup>3</sup> My modest aspirations of learning and being mentored were quickly replaced with a more primitive goal: just make it through the year.

Clerking is a tremendously insular experience. I spent 60-80 hours a week working with just a handful of people. The nature of the job requires that almost everything that occurs in chambers remains confidential, a practice reinforced multiple times when I began clerking. My judge was protected by his lifetime appointment, and his permanent staff had been working with him for over a decade. Relative to any of them, I was powerless, working a one-year term alone in a city where I had no friends and no support system. I wanted to quit, but I could not; I did not have the financial means to be unemployed for even a brief period, and I knew that legal employers for the rest of my career would have questions about a clerkship that ended before the one-year mark. Instead, I daydreamed every

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<sup>1</sup> To preserve my anonymity, I am submitting this letter through my counsel at Kecker, Van Nest & Peters LLP. *See* Letter of Deeva V. Shah.

<sup>2</sup> The harassment I faced was not from the judge but from a member of the judge's staff. Harassment and discrimination in this uniquely isolated environment can take many forms.

<sup>3</sup> As I explain at the end of this letter, I submit this letter anonymously because I am concerned about potential retaliation. For that reason, I also do not provide specific, identifiable details about the harassment and discrimination I faced, nor do I believe such details are necessary given the meritorious result of my EDR complaint.

morning about getting hit by a bus on the way to work. To put it lightly, my mental health suffered.

It took months for me to muster the courage to go to Human Resources to learn about the EDR options, and months after that to make the decision to file a formal complaint. When I finally spoke to the Human Resources Director about what was happening to me, almost six months into my one-year clerkship, I learned that I was running out of time to file a complaint. The policy forbade reporting incidents over 180 days old, regardless of whether there was an ongoing pattern of such behavior. If I wanted to capture my experiences to date, I had to be prepared to file a complaint immediately, with six months of my clerkship still ahead.

I spent the next three months trying to decide whether to file a complaint. I was scared of retaliation, of burning bridges with my judge, and of losing future opportunities. I had worked so hard to obtain this clerkship, and I had already survived several months of the job. I consistently received glowing feedback on my substantive work. If I could just finish out the year without making a fuss, I could leave with a positive reference from a powerful judge. Filing a complaint meant losing what I had sacrificed so much to gain. I felt alone in facing this massive decision. And all the while, because of the 180-day statute of limitations, every day that I delayed resulted in losing another day of my early experiences of harassment.

Everything changed for me when it came time to interview candidates for the next clerkship term. Bright-eyed, intelligent, eager law students from all over the country were flying to our city and arriving in chambers to interview, desperate to impress us and to secure this life-changing opportunity. As I interviewed these candidates, I was not asking, “*Who is most qualified?*” but rather, “*How can I choose someone to subject to this experience?*” As I participated in offering the job to two wonderful applicants—one of whom shares with me an identity that had been the basis for some of the most hurtful harassment I’d experienced—I knew I could not make peace with my role in the hiring process if I did not simultaneously take any action within my power to address the hostile work environment in my chambers. I decided to file a formal EDR complaint.

I filed the complaint about nine months into my one-year clerkship. I could not wait any longer; I had already lost the ability to include several salient stories from my onboarding process, and two of the most robust, overt, and well-witnessed incidents of harassment and discrimination had taken place exactly six months earlier. I would have vastly preferred to file a comprehensive complaint after the conclusion of my clerkship, but I did not have that option. I could only show up every day and continue to do my best as a clerk, even as my complaint detonated on my chambers like a bomb.

I did my best to continue performing my job while the judge, my co-clerk, and chambers staff were subjected to detailed interviews about each and every allegation in my complaint. No one in my chambers received any guidance, support, or training about how to handle the impacts of the investigation. I had the strong

impression that the individuals overseeing the investigation had never conducted one before. I also had the strong impression that, to the extent my allegations were taken seriously, they were concerning because of their reflection on the judge and the federal judiciary, and not because of their impact on me. The outcome of my case reaffirmed that impression.

About a month after I filed the complaint, I received a written decision. The decision validated the truthfulness of my allegations and found, in very clear terms, that I had been subject to harassment and bullying that contributed to a hostile work environment. The decision stated that any distributed copies of the decision should remain confidential, although I had never agreed to keep my allegations or the outcome of the complaint confidential. Notably absent from the decision were any required modifications to the work environment, only limited recommendations regarding training. I also learned that the EDR Policy did not empower the Hearing Officer to impose remedies impacting the chambers of another judge—only to make recommendations—a fact that was not apparent from the text of the policy. The investigator congratulated me on my favorable decision and sent me back to my office.

That was the end of the process. I had to continue working in chambers for two more months. There were no consequences to the finding that my work environment was hostile and no discernable efforts to correct the problems identified. At no point did anyone from Human Resources contact me again or ask if the issues had been resolved. To the contrary, I experienced retaliation from the staff member against whom I had filed the complaint; they refused to speak with me, even about job-related functions. When my clerkship ended, I provided feedback to the Human Resources Director about how I felt disappointed and let down by the process. No one ever followed up. After everything I had risked, I was left with no reason to believe that the situation would be any better for the incoming clerks. I had succeeded, but still, I had failed.

I was able to finish out the year and move on to an excellent opportunity, but the experience has had a lasting impact. I do not use my judge as a reference when applying for jobs. I am anxious when starting new jobs and hyper-alert to the possibility of harassment. I do not view Human Resources as a safe or useful workplace resource. In an exit interview for the job I had following my clerkship, I mentioned that there were assignment issues that had gone unaddressed. The Human Resources staff member shared many ways she could have intervened to improve my experience in that workplace. I regretted that I did not approach her sooner, but after my experience with the judiciary, it simply had not occurred to me that Human Resources could provide me with any meaningful support. That conversation also highlighted the many ways in which the judiciary's reporting procedures are less effective and far less meaningful than the basic protections available in other workplaces. I cannot provide a rational explanation for that difference other than that the judiciary sees itself as an exception to the rules it is tasked with interpreting.

Though it is difficult to recount my experience with the federal judiciary's EDR process, I will continue to do so in every setting available to me, knowing that clerks continue to cycle through my judge's chambers every year without any protections or oversight. However, I retain my anonymity because I know that my judge's name carries so much more power than mine. Moreover, the EDR process made the limits of my power perfectly clear: even if I am corroborated, believed, and validated, nothing will change. I did everything a person in my position could do, and still I accomplished nothing at all. These limits on my power are the logical outcome of the judiciary's EDR process, even—and especially—when the process performs as designed.

I hope that changes now. Thank you for your consideration.