

**TESTIMONY OF ALEXANDRA R. COLL
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE
INTERNET**

**“Workplace Protections for Federal Judiciary Employees: Flaws in the
Current System and the Need for Statutory Reform.”**

March 17, 2022

Introduction

Chairman Johnson, Ranking Member Issa, and members of the Subcommittee: thank you for calling this important hearing and for the opportunity to testify today. My name is Ally Coll and I am the President of the Purple Campaign, a non-profit organization I co-founded in 2018 to address workplace harassment by implementing stronger corporate policies and establishing better laws. I am also an attorney and an adjunct professor at George Mason University, where I teach civil rights law.

In the fall of 2017, after Tarana Burke’s longstanding #MeToo movement went viral, I made the difficult decision to publicly share, for the first time, my own experience with sexual harassment as an 18-year-old Congressional intern. It was only then—fifteen years after the harassment occurred—that I learned that, because I was an intern and not a full-time employee when I was sexually harassed, I wasn’t protected under existing federal law.

I chose not to report my harassment through formal channels at the time it occurred for a variety of reasons. I don’t recall now whether I received anti-harassment training when I started my internship in the U.S. Senate, but if I did, the program did not leave me with a clear understanding of how to report misconduct or about the process for investigating and addressing such incidents.

More importantly, I understood from informal conversations I had at the time with others on the Hill that this Senator’s inappropriate behavior was an open secret in Congress. People told me that they were sorry about what happened to me, but not surprised, because I was “his type” or he was known to be “handsy.” The message I internalized at age 18 from such comments was that sexual harassment was simply a cost of doing business on Capitol Hill—something my colleagues viewed as regrettable, but ultimately not worth doing anything about. The fact that I lacked any statutory protections under federal law confirms this viewpoint.

That changed after my story and many others like it came out and lawmakers on both sides of the aisle and in both chambers took action to create stronger protections under federal

law for Congressional branch employees. I had the opportunity to work with lawmakers as they drafted new legislation to better protect their workers, and in December of 2018 the Congressional Accountability Reform Act was enacted. The bill improved upon the original Congressional Accountability Act of 1995 (the CAA) by creating broader statutory protections for Congressional employees; expanding coverage of federal labor laws to interns, fellows, detailees, and others; and by making significant improvements to the process for reporting, investigating, and resolving claims of workplace misconduct.

Harassment in the Federal Judiciary

Despite Congress's swift action to create greater statutory protections for its employees in the wake of #MeToo, there is still a segment of the workforce in which employees remain completely unprotected by federal labor laws: the federal judiciary.

In his 2021 Year-End Report, Chief Justice John Roberts asserted that workplace misconduct in the federal judiciary is confined to "several high-profile incidents" and "not pervasive within the Judiciary."¹ With all due respect to the Chief Justice, the stories you just heard from the brave witnesses who testified before me today, together with additional evidence described below, make clear that workplace misconduct **is** a significant problem in the federal judiciary, and that the institution's efforts at self-policing have failed.

In January of this year, the Administrative Office of the U.S. Courts sent a training registration form to thousands of judiciary staffers asking if they had "witnessed wrongful conduct in the workplace." After the first 40 employees responded to the question, revealing that 34 of them—85 percent of respondents—answered that they **had** observed some form of inappropriate behavior, the judiciary shut down the question, removed it from the survey, and claimed that the result was "an unfortunate administrative error."²

This pattern is supported by more than 20 current and former employees of the federal judiciary who filed an amicus brief in *Jane Roe v. United States et. al*, a case brought by a former public defender who was sexually harassed by her supervisor and retaliated against when she came forward. The amici explained that "Roe is hardly alone, both in terms of the harassment she faced and how the judiciary's reporting procedures failed her" and described harassment, bullying, and discrimination—frequently based on sex, race, sexual orientation, and pregnancy status—they were subjected to and witnessed in courts and defenders' offices across the country.³

¹ 2021 Year-End Report on the Federal Judiciary, at 4, <https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf>.

² Ann Marimow, *Federal courts drop survey question about workplace misconduct, but not before judges' staffers said they'd witnessed such problems*, The Washington Post, Jan. 14, 2022, https://www.washingtonpost.com/politics/courts-law/federal-court-workplace-misconduct/2022/01/13/1c4a0b6e-7481-11ec-bc13-18891499c514_story.html.

³ Brief for Named and Unnamed Current and Former Employees of the Federal Judiciary who were Subject to or Witnessed Misconduct as Amici Curiae, p. 3, *Jane Roe v. United States et al.*, No. 21-1346 (4th Cir. 2021) [hereinafter *Jane Roe Amicus Brief*].

The amici's experiences echo that of Olivia Warren, a former law clerk who testified before this Committee in February 2020. Warren described how she was warned to "brace [herself] for 'your grandfather's sexism'" before her clerkship had even begun, and how the judge she worked for told her that allegations of sexual harassment were made by women who had initially "wanted it" and that women generally were "liars who could not be trusted."⁴ As Warren explained, the "frustrations and obstacles" she encountered in attempting to use the judiciary's internal procedures to report the harassment "indelibly colored [her] view of the judiciary and its ability to comprehend and adjudicate harm."⁵

In the words of former Chair of the Equal Employment Opportunity Commission (EEOC) Jenny Yang, these public stories represent only "the 'tip of the iceberg.'"⁶ As Yang explained in her 2018 testimony before the U.S. Senate Judiciary Committee, it is misleading to use "the small number of formal complaints to draw any conclusions about the overall rate of harassment or other inappropriate conduct" in the federal judiciary, because about 70 percent of people who experience harassment never report it.⁷

Indeed, the federal judiciary has acknowledged as much. In 2018, the judiciary's Workplace Conduct Working Group found that its employees "are hesitant to report harassment and other inappropriate behavior for a variety of reasons, including lack of confidence that they will be believed, fear that no action will be taken, and concerns that a complaint will subject them to retaliatory action or affect future job prospects."⁸

This conclusion is supported by the fact that, as James Duff, then-Director of the Administrative Office of the U.S. Courts, told the U.S. Senate Judiciary Committee, in 2017 there were **zero** reports of sexual harassment filed in the federal judiciary.⁹ This complete absence of reports indicates not that the federal judiciary is a workplace devoid of misconduct, but rather that its hierarchical culture and opaque reporting procedures have created an environment in which employees are afraid to report.

⁴ *Protecting Federal Judiciary Employees from Sexual Harassment, Discrimination, and Other Workplace Misconduct: Hearing Before the Subcomm. on Cts., Intell. Prop., and the Internet of the H. Comm. on the Judiciary*, 116th Cong. (2020), <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=2791> (testimony of Olivia Warren) [hereinafter *Warren Testimony*].

⁵ *Id.* at 1, 17.

⁶ *Confronting Sexual Harassment and Other Workplace Misconduct in the Federal Judiciary: S. Comm. on the Judiciary*, 115th Cong., (2018), at 3, <https://www.judiciary.senate.gov/imo/media/doc/Yang%20Testimony.pdf> (testimony of Jenny Yang) [hereinafter *Yang Testimony*].

⁷ *Id.*; see also, *Report of the Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace*, U.S. Equal Employment Opportunity Commission, (2016), <https://www.eeoc.gov/select-task-force-study-harassment-workplace>.

⁸ *Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States*, (2018), https://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf.

⁹ Letter from James C. Duff, Dir., Admin. Office of the U.S. Courts, to Chairman Grassley & Senator Feinstein, (Feb. 16, 2018), at 2, <https://www.judiciary.senate.gov/imo/media/doc/2018-02-16%20AOUSC%20to%20Grassley,%20Feinstein.pdf>.

While some of the *Jane Roe* amici “reported their experiences through formal processes,” many “did not feel able to do so without considerable risk” and others “have faced explicit retaliation for their attempts to address wrongful conduct.”¹⁰ Moreover, of “the dozens of current and former judiciary employees who expressed interest” in joining the amicus brief, “only about a third felt able to share their experiences,” even anonymously.¹¹

Warren likewise explained to this Committee that she did not feel comfortable using the judiciary’s reporting procedures because she “could not trust that they would receive the information confidentially or with an open mind,” particularly after the Judicial Integrity Officer told Warren that confidentiality was not guaranteed, and that she could not answer Warren’s questions about how to interpret the judiciary’s rules or reporting processes.¹² As a result, Warren feared retaliation and “did not feel safe reporting to the judiciary.”¹³

Despite this mounting evidence of workplace misconduct—and after decades of working groups, task forces, and status reports examining the issue—the federal judiciary has failed to meaningfully protect its employees from harassment and discrimination. As a result, federal legislation is necessary to ensure that the more than 30,000 people who work in the federal judiciary are afforded the same right to an equal workplace that Congress has guaranteed to employees in other institutions.

The Judiciary Accountability Act

While myriad federal laws—such as Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act—safeguard employees’ right to be free from discrimination and harassment at work, until the 1990s these laws did not apply to employees of the three branches of the U.S. government.¹⁴ In 1995, however, Congress extended coverage of federal employment laws to Congressional employees through the CAA and to Executive Branch employees through the Presidential and Executive Office Accountability Act.¹⁵

A provision of the 1995 CAA required the Judicial Conference to draft a report including recommendations it had for legislation to provide its employees with rights, protections, and procedures under federal law. The resulting Conference Report, however, resisted the enactment of such legislation, citing the “fundamental need to preserve judicial

¹⁰ *Jane Roe Amicus Brief* at 1.

¹¹ *Id.* at 2.

¹² Letter from Jill B. Langley, Judicial Integrity Officer for the Federal Judiciary, to Jamie A. Santos, Goodwin Proctor LLP, (June 17, 2019) (Attachment to *Warren Testimony*), at 2.

¹³ Olivia Warren, *Enough Is Not Enough: Reflection on Sexual Harassment in the Federal Judiciary*, 134 Harv. L. Rev. F. 446, 452 (2021).

¹⁴ See Robert M. Agostisi and Brian P. Corrigan, *Do as We Say or Do as We Do?: How the Supreme Court Law Clerk Controversy Reveals a Lack of Accountability at the High Court*, Hofstra Labor & Employ. Law Journal: Vol. 18: Iss. 2, Article 10, (2001), <https://scholarlycommons.law.hofstra.edu/hlelj/vol18/iss2/10>.

¹⁵ See Robert M. Agostisi and Brian P. Corrigan, *Do as We Say or Do as We Do?: How the Supreme Court Law Clerk Controversy Reveals a Lack of Accountability at the High Court*, Hofstra Labor & Employ. Law Journal: Vol. 18: Iss. 2, Article 10, at 8-9, (2001), <https://scholarlycommons.law.hofstra.edu/hlelj/vol18/iss2/10>.

independence” and arguing against the need for Congress to “micro-manage or unnecessarily bureaucratize the day-to-day management of the courts.”¹⁶

Despite its role as the institution tasked with enforcing anti-harassment and discrimination laws to other workplaces, the federal judiciary continues to resist calls to provide such statutory protections to its own employees. In its 2021 Annual Report released just this week, for example, the Judicial Conference reiterated its opposition to the creation of statutory workplace rights for federal judiciary employees because doing so would “interfere[] with the internal governance of the Third Branch.”¹⁷

On July 29, 2021, several members of this Committee, together with their colleagues, introduced the Judiciary Accountability Act of 2021 (the JAA)—bipartisan, bicameral legislation to provide strong statutory rights and protections against discrimination, sexual harassment, retaliation, and other forms of workplace misconduct to federal judiciary employees. The JAA would finally ensure that federal judiciary employees have the same basic statutory protections that are guaranteed to most other workers in America.

First and foremost, the JAA would give judicial branch employees the same anti-discrimination rights and remedies private sector employees have had for decades, and that employees here in Congress and in the Executive Branch now have as well.¹⁸ The JAA would also protect whistleblowers by explicitly prohibiting retaliation against them and providing them with the right to sue for relief if they are retaliated against. Again, unlike most other federal employees, judicial branch employees currently have no statutory protection against retaliation, which leads to an increased fear of reporting misconduct.

Like the CAA, the legislation would also establish various institutional programs, commissions, and offices to increase transparency around the process for reporting and addressing misconduct in the federal judiciary and provide employees with more information about their rights and options. The JAA calls for the establishment of a comprehensive workplace misconduct prevention program, which would be overseen by a newly established Commission on Judicial Integrity. The Commission would include members who are experienced in investigating and enforcing relevant civil rights laws, as well as current federal judiciary employees and former law clerks.

The JAA also calls for the establishment of an Office of Judicial Integrity to administer a nationwide, confidential reporting system; a comprehensive training program addressing workplace behavior and bystander intervention; and public reporting of demographic

¹⁶ See *Id.* at 10 (quoting the Rep. Of The Proceedings Of The Jud. Conf. Of The United States (Dec. 1996)).

¹⁷ *The Courts and Congress—Annual Report 2021*,

<https://www.uscourts.gov/statistics-reports/courts-and-congress-annual-report-2021>.

¹⁸ Judicial branch employees who have attempted to assert claims under Title VII of the Civil Rights Act of 1964, the federal law that provides most employees with anti-harassment, discrimination, and retaliation remedies in situations where their employer’s internal policies and procedures fail to do so, have had their claims dismissed by the EEOC due to a lack of jurisdiction. See, e.g., *Kiesha D. Lewis v. Roslynn Mauskopf*, No. 1:22-cv-00189-CKK (D.D.C. 2021).

information for judicial clerkship positions. It would also create a Special Counsel for Equal Employment Opportunity that would be empowered to investigate all workplace misconduct complaints, including misconduct by judges, and regularly audit the judicial branch's misconduct programs and procedures, and report back to Congress on its findings.

In addition, the JAA would require regular assessments of the federal judiciary's workplace culture to determine the effectiveness of judicial branch policies designed to prevent and remedy harassment and discrimination, and ensure judiciary employees are entitled to the same workplace protections currently enjoyed by those in the private sector and other branches of the federal government.

Finally, the JAA would make clear that discrimination and retaliation constitute judicial misconduct, ensure that the judicial misconduct laws apply to all federal judges and justices, and guarantee that all allegations of misconduct will be investigated, regardless of whether the judge subsequently resigns, retires or passes away.

Thank you for your time and attention today—and on behalf of the more than 30,000 people who work in the federal judiciary today, I urge you to pass the Judiciary Accountability Act and ensure that federal judiciary employees are guaranteed the basic, fundamental right to work in an environment free from harassment and discrimination, and that nobody—not even the most powerful, lifetime appointed judges—are above the law.