Workplace Protections for Federal Judiciary Employees: Flaws in the Current System and the Need for Statutory Change

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Thank you, Chairman Johnson, Ranking Member Issa, and distinguished members of this Subcommittee for inviting me to testify today. My name is Laura Minor, and I worked in the federal judiciary at the Administrative Office (AO) of the United States Courts for 23 years. For most of that time, I served in positions that gave me direct insight into how the judiciary handles proceedings related to misconduct. Prior to my retirement, I served as the Associate Director for the Department of Program Services, a position directly under the Director of the AO. I am here today to describe to you what I learned about the judiciary's responses to workplace misconduct and why I believe statutory workplace protections—protections other than the ineffective internal procedures that currently exist—are necessary for employees of the federal judiciary.

I. **Background**

Before delving into the details of my time working for the judiciary, I would like to first provide some background about who I am and my qualifications to speak to the issues before you today. I am an attorney who graduated from Georgetown University Law Center, and I have spent over 35 years working in both the public and private sectors. I began my career with the Legal Aid Bureau of Maryland, where I represented abused and neglected children. I then spent nine years working in higher education at my alma mater, Georgetown University, where I handled harassment and sexual harassment cases in the university context. I left that position in 1994 to join the Administrative Office of the United States Courts.

During my 23 years working in the judiciary, I served in various positions that progressively involved more and more responsibility. I began my career at the AO as an attorney advisor in the Equal Employment Opportunity (EEO) Office, where I worked with AO and court staff on matters related to the judiciary's model Equal Employment Opportunity plan. I then moved on to positions with an internal focus on the business of the Administrative Office, including overseeing the agency's budget, procurement for the AO and the judiciary, and various other internal functions. In 2004, the AO Director at the time selected me to serve as the Chief of the Office of the Judicial Conference Secretariat, which staffs the Judicial Conference of the United States—chaired by the Chief Justice of the United States—and the Executive Committee of the Judicial Conference. In that capacity, I was responsible for supporting the policy-making apparatus of the judiciary.

During my tenure at the AO, I continuously served as the AO's Equal Employment Opportunity Officer, a position which allowed (and indeed required) me to become

intimately familiar with the agency and the judiciary's struggles to deal with discrimination and harassment issues. I was responsible for running the AO's reporting procedures; this included assisting AO employees who considered formally reporting misconduct and advising AO leadership on how best to address those complaints. This was a volunteer position that I held separately from my day job, and for which I was not separately compensated. I asked to remain in this role for most of my tenure—even when I changed roles or was promoted within the agency—because I thought I could make a difference. Nevertheless, after 16 years as the agency's EEO officer (with a few small gaps in between), I resigned from that position in 2013 due to my frustrations with the process. I felt that I could not effectively impact the way that the agency and the judiciary handled complaints of discrimination and harassment and that my concerns were not being taken seriously.

Despite my frustrations and eventual resignation from my role as EEO Officer, I continued working for the AO. The next year, the Director of the AO chose me to work directly under him as the Associate Director for the Department of Program Services, where I was responsible for leading an organization of over 500 employees and contractors. In 2016, I suffered a serious injury, which led me to retire from the judiciary a year later. I am still in touch with many of my friends and colleagues from the judiciary family and will be forever grateful to the federal judiciary, an institution that afforded me so many wonderful opportunities. I would especially like to thank Cecelia Wirtz, my passionate and committed teammate who fought the good fight for fairness and diversity within the judiciary.

I am testifying today with the support of many of those colleagues, my friends, and, most importantly, my family. I am a wife, a mother, and the grandmother of two young girls, Naomi and Olivia. I care deeply about making the world a better, safer, and more just place for them and others, which is why I am sharing my experience.

II. Experience Working in the Federal Judiciary

I worked for the federal judiciary for over two decades because I truly believe in the judiciary as an institution. But like any other employer, the judiciary must confront the realities of workplace misconduct. Despite numerous opportunities to do so for many years—through working groups, committees, and frank internal discussions—the judiciary has failed to adequately step up to this challenge.

Although there are multiple avenues through which employees can report misconduct, most judiciary employees tend to go through either the Fair Employment Practices System (FEPS) complaint process, available to AO employees, or the Employment Dispute Resolution (EDR) plan, available to all other judiciary employees. Much of my direct experience involved administering the FEPS plan as the AO's EEO Officer; however, I also became quite familiar with the EDR plan during my time in the judiciary.

As the agency EEO officer, I had oversight over harassment and discrimination cases that came into the FEPS office. Although the FEPS program director handled the day-to-day management of complaints, I focused on the overall process and discussions with management. When an AO employee filed a formal complaint, the program director and I were partners in the process; we discussed any issues and concerns that came up during the investigation phase, the preparation of any report, and issuance of a final decision by the AO Director. I would discuss with AO leadership how best to address the misconduct, including case settlement, termination, remedial training, and other alternatives. Before and during the reporting process, I would also serve as a sounding board for complainants, helping them assess how and whether to file a complaint. I developed a rapport with AO employees, because I was honest and forthright about their cases and about the realities of the process.

Today, I want to share that same candor with you and describe what I told every AO employee that sought my advice before filing a complaint. I told these employees that if they chose to report, I would help them in whatever way I could. But I also made sure they knew how hard it would be to report and what they should expect. I warned them that the process favored management. I reminded them that, although the system appeared to be designed to protect employees, in practice that was not the case. In practice, the reporting process did not protect the employee as much as it protected the institution, a truth that would permeate every step of their attempt to report. And I also explained that the remedies available to employees—even if a complaint was successful—were highly limited and unlikely to lead to a fulfilling result.

My advice was not based on a few isolated incidents or issues, but what I saw as a pattern in almost every case. When employees formally chose to report misconduct, oftentimes investigations were biased against the individual filing the report and conducted in a way that favored the interests of those with greater power and influence. Over the years, I observed a cycle that discouraged people from speaking

out for fear of retaliation or losing out on opportunities. At every step of the way, I saw the institution circle the wagons—a myopic focus on protecting the institution instead of making it better.

Without revealing any identifiable details of specific complaints that I helped shepherd through the process, I noticed that management within the judiciary employed the same tactics in dealing with these complaints. Complaints were frequently chalked up to "bad management" instead of discrimination or harassment, minimizing the individual concerns about that specific case and allowing everyone to ignore any patterns—either in reports of misconduct or in how the AO chose to address them. In one case, our investigation verified that a supervisor had racially discriminated against an employee multiple times; there were witnesses for many of the incidents, and the complainant had taken copious notes about each statement the supervisor had made. Nevertheless, the narrative in management became that the complainant was a "problem employee." Although I recommended termination of the supervisor, my recommendation was ignored until the next EEO officer—months later—reviewed the complaint, was horrified by the result of the investigation, and also recommended termination. Discouraged by these events, I frequently began hoping that a complainant would have a perfect record, because otherwise, it was too easy for management to simply blame the problem on the employee. Even that thought was frustrating, however, because it underscored the difficulty of ever succeeding on the merits and highlighted how unfair the system truly was.

The lack of knowledge, training, and awareness was also glaring. Even well-meaning individuals would immediately question the veracity of any allegation, instead asking whether the complainant was actually competent at their job or about other unrelated issues. For example, even when presented with a textbook case of sexual harassment, I heard someone in management opine that there was nothing particularly attractive about the complainant, an assessment intended to diminish the misconduct that had occurred.

Although my goal was to serve as an impartial resource for both agency leadership and employees, management did not always seem to have the same goal. While I worked for the AO, there was a tendency to hire friends of management into the agency, a pattern that was known to most employees. Not only did that lead to hiring individuals who were not always the most qualified for the job, it also meant that the agency hired supervisors who were not always the most qualified to manage. This practice ultimately affected the reporting process and the likelihood

that an employee would report, because employees did not feel comfortable reporting a supervisor that they knew had connections to agency management.

Each of these issues pervaded any ability to find an effective resolution. Even in the most egregious cases, termination of an employee who was found to have engaged in misconduct was not a viable option. For example, based on an investigation, I recommended that the agency prevent a certain employee from supervising others in the future. Although that employee was temporarily removed from a supervisory position, the agency eventually brought them back to supervise again despite that guidance.

I did my best to address these comments and issues on a one-off basis; however, I was at a loss on how to address them at a systemic level. During my time as the EEO officer, I pushed for appeals to be heard outside of the agency. I told management that employees would be highly unlikely to report if the final decision rests with the AO Director, a procedure that rendered the reporting system meaningless. At no point during my tenure was I successful in creating that process, although a version of that process is available now, over a decade later. I also encouraged management to be more transparent about the reporting process and about underlying issues related to a lack of diversity; for example, I recommended sharing statistics within the agency about the makeup of our workforce and the resolution of FEPS complaints. I was told that was not possible. On multiple occasions, I also told management that the FEPS process was too complicated and burdensome for employees. Employees had to make decisions that would require a lot of thought, even for those well-versed in the process. In any other context, these types of decisions would usually benefit from guidance from a lawyer. Instead, we asked our employees to navigate the system with little guidance and the hope that they knew the right people to talk to and the right questions to ask.

As the agency EEO officer, I was not shy about my concerns with these processes. For over 15 years, I repeatedly told the leadership about the issues I saw. I told them that the existing procedural mechanisms deterred reporting and that I did not think actual remedies were available for those who reported. I also noted how frequently I saw employees leave the judiciary after facing misconduct or attempting to report it. In almost every case, the employees were worse off because of their experiences—they were more hurt, more cynical, and more worn down.

As an African-American woman, I too faced discrimination while working at the AO. Given what I had seen as the EEO officer, I did not believe that the issues I—or other employees—faced could be effectively addressed internally. Despite my faith and belief in the judiciary as an institution, I felt hopeless about the judiciary as an employer. By 2013, despite over a decade of service as the agency's EEO officer, I accepted that I could no longer make a difference and resigned from that position.

After my resignation from that role, I remained with the AO and was eventually promoted to the Associate Director of Program Services. Given the length of time I served as the EEO officer, I still provided advice and offered guidance to my replacement. I am aware of the incremental changes that have been made to these reporting procedures and processes since then; however, I do not believe they are or can be sufficient.

III. A Culture of Silence

Although I am particularly well-versed in the deficiencies of FEPS, which governs reporting for employees of the AO, I am also familiar with the other avenues for reporting within the judiciary. While I was a staff attorney at the AO, our office also served as a resource for judiciary employees who were contemplating reporting through the EDR plan. Moreover, as the Secretary to the Judicial Conference for many years, I was privy to complaints of judicial misconduct and how the judiciary's policy-making body attempted to address them.

Given my experience, I commend Ms. Clark and Ms. Strickland for sharing their experiences with us today. I am sorry for what they were forced to endure and thank them for your efforts to address the misconduct that them experienced. Their testimony is particularly important because, contrary to what the judiciary has said in recent years, issues of misconduct within the judiciary are not limited to a few bad apples or bad managers. Although the media has focused on the most extreme, egregious instances of harassment and discrimination, I urge this committee to understand the pervasive nature of misconduct and not ignore the many instances of harassment, discrimination, and abusive conduct that go unreported. Moreover, Ms. Clark and Ms. Strickland also shared the difficulties they faced in attempting to report through the EDR process. Many of these flaws are not accidents or one-off issues with how the process was applied; the problems were the logical outcome and intended consequences of the reporting procedure's design.

In my opinion, the lack of effective reporting practices and procedures is merely a symptom of the larger problem: the root cause of the judiciary's inability to effectively address misconduct is its culture, a culture that no amount of self-policing can fix. Based on my 23 years of experience in the judiciary, the culture of the judiciary makes it incapable of holding people accountable for discrimination and harassment. The irony is that while judges are responsible for holding many of us accountable, they do not hold each other accountable. The judiciary is far more interested in protecting the status quo than addressing the real problems their employees face.

My testimony today does not come lightly. During my time in the judiciary, I worked with many wonderful federal judges, people who I greatly admire and respect. As the Secretary to the Judicial Conference, I saw how the judiciary can truly be thoughtful about legal issues in the courtroom. My criticisms are not directed to any particular judges. I understand that you will also hear from Judge McKeown and Judge Robinson today, for whom I have the utmost respect. I have worked with them before, and I commend them for the changes the Working Group has made to the internal reporting processes and procedures. I understand the difficulty and the gravity of their work, because I also tried for years to reform these processes and procedures.

But my work on these issues is why I firmly believe that no internal tweaks or changes can comprehensively address the pervasive problems of misconduct and harassment within the federal judiciary. As someone who tried for years to push for change from inside the system, I learned the significant limitations of asking for accountability from the very people that I had to work with every day. Although self-policing may be effective in other industries and professions, it requires awareness, full and fair processes, and a cultural commitment to address these issues. But as I saw for 23 years—and from what I can see today and what we all have heard—the judiciary's insistence on self-policing only serves its interest in self-protection.

IV. Conclusion

In concluding my testimony today, I want to address the importance—as well as the limitations—of statutory protections for employees of the federal judiciary. To be honest, I felt that the lack of any external oversight or accountability made cultural change highly unlikely, if not impossible, during my time working for the judiciary. In contrast, the Judiciary Accountability Act provides many necessary protections

to these employees, protections that apply to most other employees in the United States and do not depend on internal oversight alone to effect change. These basic workplace protections will hopefully serve three functions. First, I hope that they will provide employees of the federal judiciary with more concrete enforcement mechanisms than the current procedures, which lack clarity, impartiality, and any discernable remedy. Second, I hope this legislation will help chip away at the judicial exceptionalism that unfortunately shrouds any discussion of the judiciary as an employer. And third, I hope these workplace protections will jumpstart a cultural change within the judiciary, one where accountability is the norm—not just in the courtroom but in chambers and in our administrative offices.

Although the proposed legislation is necessary, it is also the bare minimum to create and preserve effective change. The judiciary will need significant resources to implement these programs in any meaningful way. And the judiciary will still need time to cultivate a culture of accountability. Although this legislation will make it easier for employees to report misconduct, statutory protections alone cannot prevent discrimination and harassment from occurring altogether.