

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on Confronting Sexual Harassment and Other Workplace Misconduct in the Federal
Judiciary
June 13, 2018**

Good morning and welcome to this very important hearing today about confronting sexual harassment and other workplace misconduct in the federal judiciary.

On December 8, 2017, news broke that six women who previously served as law clerks on the United States Court of Appeals for the Ninth Circuit accused then-Judge Alex Kozinski of sexual harassment and other workplace misconduct in the federal courthouse.

Heidi Bond was one of those six women. She clerked for Judge Kozinski in 2006 and 2007, before going on to clerk for Justice Sandra Day O'Connor and Justice Anthony Kennedy on the Supreme Court of the United States.

In December 2017, following the news report, Ms. Bond published an accounting of her experience clerking for Judge Kozinski. Ms. Bond reported that on the very first day of her clerkship, right after taking her oath of office, Judge Kozinski clutched Ms. Bond's arm and announced with a smile to others: "It's too late now. She can't escape any longer. She's my slave." Ms. Bond tried to play it off as a joke. "I think you mean indentured servant," Ms. Bond recalled she said. "No, I meant slave," Ms. Bond recalled Judge Kozinski saying with a grin.

Ms. Bond's account of the sexual harassment she faced over the next year as a clerk for Judge Kozinski is harrowing. She describes three occasions when Judge Kozinski called her into his chambers, alone, showing her pornography on his work computer and asking her sexually suggestive questions. Each time, as Ms. Bond reported in December, she felt disgusted and horrified.

And while this was happening, Ms. Bond, and other law clerks like her, felt they had nowhere to go for help. They felt like they were entirely at the mercy of their very powerful and lifetime-appointed federal judge.

This is how Ms. Bond describes those encounters with Mr. Kozinski: "When this happened, I felt like a prey animal—as if I had to make myself small."

Ms. Bond reported that working in such an environment took an emotional toll. Ms. Bond recalled that she "began waking from sleep, heart racing, hearing imaginary double beeps summoning me to his office. I started not being able to sleep at all. By the time I left the clerkship, there were nights I would lie in bed and watch the darkened ceiling until I had to get up and go back to work."

On the last day of her clerkship, Judge Kozinski topped off a year of torment and abuse with a threat. He informed Ms. Bond that “the beauty of judicial confidentiality was that it went two ways.” Ms. Bond recalls Judge Kozinski explaining that “[a]s long as I never, ever told anyone what had happened in chambers with him, he would never tell anyone what had happened with me.”

Judge Kozinski apparently wasn’t interested in controlling his law clerks for just a year. According to Ms. Bond’s account, he wanted to have control over his law clerks long after they completed their clerkships. Judge Kozinski used confidentiality and threats to silence his former female law clerks, according to Ms. Bond.

Ms. Bond, one of the two women to first come out on the record about the harassment faced as a law clerk to Judge Kozinski, has been remarkably courageous throughout this entire process. By coming forward first, along with Emily Murphy, Ms. Bond has made it easier for other clerks in the future to feel more comfortable speaking out against judicial harassment. Because Ms. Bond unfortunately has experienced harassment firsthand from a sitting federal circuit judge, Ms. Bond is uniquely qualified to ascertain what changes could be made to prevent other law clerks from having a similar experience.

On December 20, 2017, nearly 700 judicial clerks and law professors sent a letter to the Chief Justice of the United States, the Administrative Office of the U.S. Courts, the Committee on Judicial Conduct and Disability, and the Federal Judicial Center. This letter took the entire judicial branch to task for its failure to prevent and address workplace harassment in the judiciary. Without objection, I will enter this letter into the record.

In his 2017 annual report, Chief Justice Roberts acknowledged that the judicial branch was not immune to the scourge of workplace harassment. The Chief Justice directed the AO to create a working group to examine the judiciary’s practices and standards of conduct. Specifically, the working group was tasked with evaluating whether the AO’s procedures for investigating and correcting inappropriate behavior were adequate, and to consider changes that could be made to improve codes of conduct, educational programs and complaint reporting procedures. Without objection, I will enter this annual report into the record.

The Chief Justice of the United States and his team had nearly six months to draft a report and propose serious solutions to the problem of sexual harassment and other workplace misconduct in the federal judiciary. After the Kozinski scandal and other allegations, it was a real chance to undertake reforms. But in too many ways, this vague report kicks the can down the road. It leaves to other part-time advisory committees the key task of formulating specific policy changes. It appears victims could be left wondering to whom they can report, with little instruction or transparency in the process or resolution.

Nearly every federal agency has an independent watchdog guarding against misconduct. And all federal entities—except the courts—have meaningful remedies, guidelines and procedures for addressing workplace harassment. It’s time for the federal judiciary to catch up.

Ms. Bond submitted a letter to the committee, responding to the working group's report. Without objection, I will submit it into the record.

I'll highlight some of the observations Ms. Bond's letter makes. Ms. Bond identifies that harassment occurs as part of a pattern of abusive behavior, and rarely occurs as an isolated incident. For example, she noted that a precursor to harassment and misconduct is control and isolation of employees. Banning employees from socialization with other chambers and with their own co-clerks, refusing to allow clerks use of court email addresses, demanding grueling and rigid hours—all of these actions effectively cut off their interactions with other chambers and HR.

Ms. Bond identifies a number of troubling warning signs that may indicate severe employee mismanagement and misconduct. Ms. Bond then suggests several recommendations on how to respond to these precursors. These recommendations are valuable and specific. We've heard similar comments from other law clerks who have spoken to the Committee. I urge members of the working group to read Ms. Bond's statement in full.

I was equally impressed with Ms. Santos's recommendations for improving the Working Group report and I look forward to hearing her testify about them today.

I want to thank the brave women who spoke out against this harassment, both publicly and to staff on the Senate Judiciary Committee. Speaking out against powerful federal judges in a system that doesn't always protect victims takes tremendous courage. But because of your bravery, we can hopefully begin to make real, significant changes to these power imbalances that allow harassment to thrive.

I would like to recognize Kendall Turner, one of the law-clerk representatives who provided recommendations to the working group.

While I was disappointed in the working group's report overall, the report did make some useful recommendations. In particular, the group recommended extending the time for initiating an EDR claim from 30 to 180 days, expanding the scope of EDR Plans to cover interns, and requiring judges to report harassment. I was also encouraged by the recommendation to revise the judicial conduct rules.

But the working group's report fell short in eight different ways.

First, the working group did not include any current or former law clerks on its panel.

Second, its report is exceedingly vague concerning the pervasiveness of sexual harassment in the federal judiciary.

Third, the report did not set any timeframe for the judiciary to implement its recommendations.

Fourth, the report gave little specific guidance about how the judiciary should amend its codes of conduct. This is particularly disappointing because several Circuit Court reports released in the 1990s provided specific, detailed examples of adequate policy language. Thus, the working group report fell far short of the quality of reports on workplace harassment from twenty years ago.

Fifth, the report did not recommend establishing a national reporting mechanism. So it leaves victims no other avenue except to report to the chief judges of their local district or circuit courts. This is a major issue because the report gives no guidance on how a chief judge should conduct an adequate investigation and does not require a chief judge to even produce a report describing the methodology and findings of the investigation to the AO or to the victim. Moreover, law clerks may be intimidated by reporting to a local chief judge, instead of an independent national office.

Sixth, the working group gave no specifics about the AO's new Office of Judicial Integrity. It didn't outline a budget or select staff for this office.

Seventh, the report doesn't create a formal (or even informal) uniform complaint process. The Office of Judicial Integrity will merely provide "advice" and "counseling" to clerks and court staff.

Finally, the report gave no apology for, or even acknowledgement of, what went wrong in the case of Judge Kozinski, and it didn't indicate how its recommendations will prevent a similar scenario from happening again.

While some of the limited number of substantive recommendations contained in the report were a step in the right direction, the report has left far too much out.

After reviewing the report last week, the Committee scheduled this hearing to discuss the report, along with misconduct and sexual harassment in the Federal Judiciary more broadly. After that announcement, former and current employees of the Federal Judiciary began contacting the Committee. As our staff listened to the reports of sexual harassment and other misconduct, some themes began to emerge. The accounts of these whistleblowers often included phrases like: "I wouldn't go to the Chief Judge, if you did you could be fired." Courthouse staff, some separated by thousands of miles, were told things like: "the Chief Judge has my back." It was not unusual for these accounts to include staff reporting incidents to their HR director only to be met with a response of "oh no, not again" or "I hope it's not the person I think it is because the Chief will be really angry."

Since December, sixteen additional whistleblowers from all across the country alleged similar experiences with attempting to report harassment, waste, and other unprofessional workplace misconduct. It was the same complaint time and again: employees would report misconduct and harassment, only to have their claim tossed aside or buried. Many of these whistleblowers are of the mindset that there is no reason to report misconduct or abuse. That no matter how many

times or to whom they report, "it is only going to get buried." This is a repeated concern. And it is unacceptable.

In addition, I heard about several other individuals who refused to share their problems with my staff because they lack the whistleblower protections afforded to other federal agency employees. Imagine that. There are those who have important information to share or painful problems to report, yet they feel they have no way of safely reporting them to Congress. Again, this is unacceptable.

Judicial employees deserve to be protected from isolation, retaliation, and misconduct. They deserve an independent, impartial reporting mechanism that they can trust. With no clear established reporting or investigation protocol, or independent third party to ensure all complaints are properly reviewed, judges or those in positions of authority are free to dismiss genuine complaints.

It is clear that this problem is not contained to one circuit or one courthouse.

In his testimony today, I hope that Director Duff will be able to provide the Committee with a more specific details on how the AO plans to confront and fix these serious problems of sexual harassment and other workplace misconduct in the federal judiciary.

Finally, I still have not heard any apology from the Judiciary to these female law clerks who Judge Kozinski victimized. The Judiciary declined to take any action against Judge Kozinski, following his resignation, and he still receives his federal pension.