QUESTIONS FROM CHAIRMAN GRASSLEY

1. Director Duff mentioned that he met with you several times while the working group was compiling its report. Were you satisfied with the content of those meetings or the working group's approach?

As Director Duff testified, my colleagues and I met with the Working Group on three occasions. We provided a memorandum detailing our suggestions for reforms that the federal judiciary could adopt to combat harassment in the judiciary and ways to inspire public confidence in the Working Group's process. I also had at least two telephone calls with Director Duff outside of Working Group meetings.

On each of these occasions, Director Duff and the Working Group members were gracious, receptive to our ideas, and repeatedly thanked us for the work we have been doing to bring these issues to the judiciary's attention. They asked detailed, well-informed questions that demonstrated their commitment to this endeavor. They asked us for our views on numerous potential reforms, and we discussed ways to overcome some of the challenges to those reforms—both practical challenges and cultural ones. The Working Group members exhibited a genuine willingness to improve the federal judiciary when it comes to the issue of harassment and deep concern that any judiciary employee may have experienced harassment. Furthermore, though my colleagues and I have, from the beginning, focused on harassment specifically, the Working Group asked for our views on other abusive behaviors and how to improve civility more generally within chambers.

Nevertheless, I was not entirely satisfied with the Working Group's approach. On several occasions, members of the Working Group were unwilling to provide my colleagues and me with information about the process for investigating complaints or with details about the reforms being considered. As I mentioned in my testimony, I was also disappointed with the Working Group's failure to conduct any type of retrospective survey to examine the scope of harassment issues within the judiciary, its decision to not include current or recent law clerks as permanent members of the Working Group, and its decision to not allow us review and comment on any draft Report or the details of any proposed reforms before submitting its proposals to the Judicial Conference of the United States. Doing any of these things could only have strengthened the Working Group's final product and allowed the Working Group to avoid some of the criticisms that its proposals have received.

Finally, although I was very pleased with the interactions my colleagues and I had with the Working Group members on the three occasions we were invited to meet, I cannot comment on the Working Group's approach beyond those meetings. Because my colleagues and I were not members of the Working Group, I do not know, for example, what subject-matter experts the Working Group met with or how the Working Group considered the views and interests of other stakeholders

within the judiciary (*i.e.*, judges, law clerks, externs, and the many other groups of employees who will be affected by the Working Group's recommendations).

2. You mentioned that law schools, which may have the most information about harassment in the judiciary, have not always had a cooperative relationship with the Administrative Office and judicial branch in reporting harassment when they know about it.

a. Do you believe that the incentive structure for law schools is similar to that of harassment victims?

In some ways, law schools and harassment victims face similar disincentives to reporting harassment. Both law schools and harassment victims fear retaliation for reporting harassment, and any effective reforms must address this fear of retaliation and the barriers to reporting that it causes. But the disincentives for harassment victims are far more acute. Law schools likely fear that if they report harassment, their institutional relationships with the judiciary will suffer through reduced clerkship hiring numbers, which are important to recruiting prospective law students. Meanwhile, harassment victims worry that reporting will destroy their careers and reputation within the legal community. Furthermore, law schools—particularly those that send students to clerkships and externships in large numbers—enjoy far more institutional protections than law students and externs, who are at the very beginning of their legal careers and have everything to lose. For these and other reasons, I believe law schools have a responsibility to take action to work with the judiciary and with law students to address these issues. Law schools have less to fear and much more clout to effect change.

b. How can law schools contribute to the effort to outing judges who repeatedly harass their clerks?

I do not believe there should be an organized effort to "out" judges. Instead, my colleagues and I have focused on institutional reforms to train judges and other judiciary employees on appropriate and inappropriate conduct, to provide avenues for reporting that employees feel comfortable using without fear of retaliation, and to provide the judiciary with the information it needs to appropriately address concerns of harassment or other improper conduct by anyone who works for the judiciary.

Law schools can contribute to this effort in numerous ways. First, they could publicly acknowledge the problem of harassment in the judiciary and the ways they have enabled and failed to protect and support their students. This type of acknowledgment could inspire confidence by students and alumni; it could also reassure students that law schools are committed to being part of the solution.

Second, law schools should provide formal guidance to law professors and career services employees about how to respond if a current or former student contacts them regarding harassment or abuse. This guidance should emphasize the information and support that a law school can provide.

Third, law schools can work with other law schools and the judiciary to create an avenue for reporting harassment or other abusive behavior. Such a mechanism could be crafted to insulate schools and alumni from the potential for retaliation. For example, law schools could require that any credible concerns of harassment by a member of the judiciary or judiciary employee be reported to an independent office that works with all law schools. If the office receives a certain number of complaints about the same individual, it could be required to report the concerns to the Administrative Office of the U.S. Courts without revealing the name of the law school(s) or individual(s) who reported the concern. The judiciary could then be required to launch a thorough investigation to address the matter. This mechanism is just an example of one of the numerous methods that may be appropriate. Law schools should work together to take prompt action to study this issue, involving, career services professionals, law students, and alumni as equal partners in the process.

c. What concrete steps should the judiciary take to work with law schools to improve exit interviews and other processes to get feedback from former/current clerks?

First, the judiciary should engage in prompt, meaningful discussions with law schools that send externs and law clerks to the federal judiciary. The judiciary should make clear that it welcomes reports from law schools about harassment or other misconduct by judges or judiciary employees, that law schools will not face reduced clerkship hiring as a result of reporting, and that it fully expects the cooperation of law schools as equal partners in ensuring that judiciary employees have a safe and respectful working environment. Law schools and the judiciary should discuss any retaliation concerns that law schools might have[1] and mechanisms that could be put in place to ensure that law schools cannot be retaliated against for reporting misconduct to the judiciary.

Second, the judiciary could work with law schools to conduct a survey of former clerks and externs to determine, among other things, (i) the extent of any harassment issues; (ii) when those issues were reported, what occurred when they were reported; and (iii) when those issues were not reported, why they were not reported. Many law schools already have informal clerkship feedback mechanisms and could expand upon this institutional knowledge to assist the judiciary.

[1] We understand through our discussions with law students who have made attempts to work with their law schools regarding these issues that law schools purportedly fear defamation lawsuits as a result of reporting judicial harassment.

3. Senator Blumenthal made the case that the policy of "no work, all pay" for judges who retire amid misconduct allegations should cease.

a. In your opinion, should judges who harass their employees lose their taxpayer- funded pensions?

As I mentioned during my testimony, I think this proposal is worth further study, and it might be an appropriate consequence in extreme cases. My focus, however, continues to be institutional reforms to prevent harassment; provide appropriate avenues for reporting that employees are comfortable using; and ensure that reports are investigated fairly, thoroughly, and impartially. I fully support the Working Group's recommendation that if a judge resigns amid allegations of harassment or misconduct, the judiciary should conduct a full, fair, and impartial investigation aimed at determining whether any individuals or norms enabled that behavior, and how that behavior could be prevented in the future. I would welcome the opportunity to work the judiciary to develop and implement such a program.

b. In your opinion, what repercussions should judges who harass their employees face?

In my view, consequences for harassment by a judge or a judiciary employee should be proportionate to the nature of the misconduct. There should be a variety of consequences, such as training, formal censure, suspension of the privilege of hearing cases, and suspension of the privilege of hiring law clerks or externs, among others.

c. How can the judiciary reform its current policies to adequately punish judges?

I believe the judiciary has in place policies to adequately punish judges or any other judiciary employees who are found to have engaged in misconduct, but it lacks adequate policies and procedures to ensure that that misconduct is reported and properly investigated. For my views on the reforms that could improve reporting and investigating misconduct, I refer you to my written testimony and to the Comments Regarding the Working Group's Report that my colleagues and I will be providing to the Judicial Conference within the coming week. I will be happy to provide the Committee with a copy of those Comments when we submit them.

4. Senator Kennedy mentioned that there can be differences between "major league pigs, minor league pigs, and sometimes pigs." How should the judiciary distinguish between the worst offenders who should receive the maximum punishment and the offenders who deserve the minimum punishment?

Workplaces across the United States—from private companies to educational institutions to government agencies—have addressed this precise issue when crafting their own workplace misconduct policies. Typically, relevant considerations include, among other things, (i) whether the behavior occurred on a single occasion or was part of a pattern; (ii) whether the behavior involved inappropriate comments that were made generally or were targeted at a particular individual; and (iii) whether the behavior involved inappropriate touching. I urge the judiciary to consult with organizations that have studied and created these types of policies so it can benefit from those efforts.

5. Law clerks only work in chambers for short periods of time, yet their harassment reports are investigated by judges or justices who may have worked with the subject of their complaints for decades. Is it a surprise that clerks are reluctant to report harassment for fear that their complaints will not be investigated impartially?

It is not a surprise; to the contrary, reluctance to report misconduct by a judge or any other judiciary employee is entirely expected for a law clerk at the very beginning of her legal career. But it is because of this obvious reluctance that the judiciary must make even greater efforts to understand and then remove the barriers to report that exist. As I noted in my written testimony, the lack of transparency regarding how complaints will be investigated is itself a barrier to reporting. Furthermore, if judges are investigating misconduct by other judges, especially other judges within their own circuit or district, that would likewise serve as a significant (perhaps insurmountable) barrier to reporting for law clerks and other judiciary employees. Not only are judges not trained investigators, but the potential for inadvertent bias and the obvious appearance of a conflict of interest would likely make it impossible for a law clerk to feel comfortable coming forward to report harassment by a judge.

6. Would a nationwide office of trained professionals with standardized procedures, an office completely independent from the judicial branch, be more capable of impartially investigating harassment reports than district and circuit judges and justices? Please explain.

I agree that harassment investigations must be investigated thoroughly, fairly, impartially, and by uniform procedures, and I also believe judges should not investigate harassment by other judges. I do not, however, support an IG Bill at this time. An independent judiciary is important, and I believe the judiciary should have the opportunity to address these issues on its own, just as many other companies and organizations have started to do in the wake of the #MeToo movement. If the right mechanisms are in place for reporting and investigating misconduct, and employees feel comfortable using them, then I do not believe a completely independent body that is unrelated to the judiciary is required.

Furthermore, the judiciary also has two centralized bodies that can help to provide oversight: the Administrative Office of the U.S. Courts and the Judicial Conference of the United States. The judiciary has acknowledged that it has a problem with harassment, and the Administrative Office and Judicial Conference should have the opportunity to address those issues and ensure that every circuit is taking efforts to do so as well.

7. Would a standardized, nationwide policy for reporting, investigating, and penalizing perpetrators of harassment be more effective than the judiciary's current decentralized approach? Please explain.

I agree with Ms. Yang's testimony that there should be numerous avenues for reporting harassment and other forms of misconduct, including a confidential national reporting system for both reporting and investigating misconduct. While some employees may feel more comfortable reporting misconduct within their district or circuit, other employees may feel more comfortable reporting confidentially to an office independent from any particular district or circuit. I do not advocate for the abolition of decentralized reporting avenues but rather for the addition of a national reporting avenue. If, however, the judiciary retains decentralized reporting avenues within judicial districts or circuits, they should be required to disclose allegations of harassment and the results of harassment investigations to the Administrative Office and the Judicial Conference.

8. Should the judiciary establish a nationwide clerkship transfer program for harassment victims, given that victims may still be reluctant to report harassment if they can only transfer to judges within their current district or circuit?

I agree that law clerks or other employees who experience harassment or other forms of abusive behavior, particularly within judicial chambers, should be permitted to transfer to another position. In some instances, transfer within the district or circuit may be appropriate, while in other instances remaining within the district or circuit may not be feasible. I believe this issue is best considered on a case-by-case basis, but the judiciary should develop clear procedures and guidance governing how transfer decisions are made. It should also make this information available to employees. In the case of externs, such programs can be crafted in conjunction with the relevant law school.

9. You noted that law clerks are typically law students who see judges as "demigods." Do you believe that the perception that judges are untouchable and all-powerful influences victims of sexual harassment? How can the judiciary change clerks' perception of judges?

My comment about law students viewing judges as "demigods" was intended to communicate a slightly different point. Law students are often in awe of judges, and for good reason: judges are usually highly accomplished and also responsible for adjudicating the rights of the most vulnerable in society and of the most powerful. Many law students, including myself, begin working for judges whose opinions inspired them long before the clerkship began. This is a healthy perception that can lead to a wonderful relationship between a judge and a law clerk—one of lifelong mutual respect and mentorship.

It is also true, however, that judges have the potential to wield an enormous amount of power over a law clerk's career. Particularly for female law clerks, law clerks of color, and law clerks who are first-generation attorneys and lack a solid professional support network, the fear of retaliation can be difficult to overcome. But there are measures the judiciary can take to overcome these fears. If the judiciary communicates—consistently and often—that it does not tolerate harassment, if it demonstrates that it truly welcomes reports of harassment and will appropriately investigate those reports when they are made, and if it creates a culture of respect for judiciary employees, then inroads can be made to encourage reporting. Furthermore, the more that law clerks see these messages communicated by *judges*, not simply by orientation materials, human resource professionals, or judiciary policies, the more they will have faith that their reports will be believed and handled properly.

10. Is sexual harassment in the federal judiciary symptomatic of a wider problem within the legal profession, or is the federal judiciary particularly susceptible to harassment?

In my view, sexual harassment is a significant problem within the legal profession more generally, just as it is a problem within the entertainment industry, the media industry, and within the halls of Congress. One thing these industries all have in common is the concentration of men in positions of power, which can allow harassment to thrive and be concealed. Just as I encourage law firms and other legal organizations to take measures to improve the retention and promotion of female attorneys, I encourage every member of the Committee to take a close look at the judicial nominees it considers. Through its responsibility for the judicial confirmation process, the Committee plays perhaps the most important role in ensuring that the individuals who become federal judges have the appropriate judicial temperament to wield their enormous power respectfully, and reflect the diversity of the legal profession.

11. Is harassment within the federal judiciary symptomatic of a wider culture of disrespect for law clerks?

I do not believe there is a wide culture of disrespect for law clerks. Clerking is a privilege, and law clerks are generally viewed as playing an indispensable role in chambers. Most judges treat their law clerks with respect and many treat their law clerks like family. But some judges do not, and I commend the Working Group's focus on abusive behavior beyond harassment, including the civility of the judiciary more generally.

12. In your opinion, if all recommendations from the working group were adopted, would these victims feel that they could come forward with their claims?

I do not believe the Working Group's recommendations will, if adopted, fix all of the problems in the judiciary. As I noted in my testimony and as my colleagues and I will discuss more thoroughly in our Comments Regarding the Working Group's Report, additional steps should be taken to address this concern. But more importantly, the Working Group's current recommendations are not intended to be the end-all-be-all. The Working Group made clear in its Report, and the members of the Working Group have repeatedly communicated to my colleagues and I, that these recommendations are the beginning of a long-term, sustained effort to prevent and address harassment in the judiciary. The Working Group's recommendations are a good start, but much more needs to be done.

13. The way the system works now, each circuit and each district is responsible for its own reporting, investigation, and discipline. But I'm afraid the system allows for favoritism and corruption. It's harder to discipline people you work with every day, see every day, and have lunch with every day.

a. From your experience, can you give us some examples of how this favoritism has played out?

Because instances of employees reporting harassment by federal judges are virtually nonexistent, I think it would be difficult to provide examples of favoritism playing a role in investigating harassment or imposing discipline when harassment is substantiated. I agree, however, that it is difficult to investigate and discipline one's peers, and any system in which judges investigate each other for workplace misconduct provides the opportunity for bias (intentional or inadvertent) as well as the appearance of bias.

b. Which circuits are the best and the worst?

As Ms. Yang and I both testified, it is impossible to know which circuits have the most significant problems with harassment absent a survey of current and former employees. I urge the judiciary to undertake such a survey using an independent third party to determine the extent of harassment issues, barriers to reporting, and any ways in which employees were discouraged from reporting in the past.

QUESTIONS FROM RANKING MEMBER FEINSTEIN

1. In what ways can the Working Group's recommendations be improved to ensure judiciary employees are better protected from sexual harassment?

The Working Group's Report makes a number of important recommendations to protect employees from sexual harassment. In particular, the Working Group recommends increased training for judiciary employees and judges about appropriate and inappropriate conduct, and bystander training to instruct employees and judges how to intervene when they witness harassment. These training recommendations are sound, but they lack detail about the nature of that training, whether the training will be mandatory or discretionary, the content of the training, who will be responsible for developing the training, whether increased funding is required to develop and implement the training, and other details.

Furthermore, progress in protecting employees from sexual harassment requires a broader cultural change. As the Working Group's report recognizes, judges must hold each other accountable when they observe inappropriate behavior or the types of red flags that Heidi Bond referenced in the letter she submitted to the

Committee. The Judicial Conference should develop concrete measures that must be taken throughout each of the judicial circuits to ensure that this occurs. Implementing exit interviews—specifically, exit interviews that are developed by a third party with expertise in developing workplace climate surveys—would help the judiciary to identify and address harassment or the warning signs of a working environment that could lead to sexual harassment.

2. What measures should the judiciary adopt to increase the likelihood that employees will report harassment and misconduct?

My colleagues and I will be submitting to the Judicial Conference our Comments Regarding the Working Group's Report that detail our suggestions regarding the measures the judiciary should adopt to increase reporting of harassment and misconduct. I will be happy to provide the Committee with a copy of those Comments when we submit them.

3. In the letter you signed to Chief Justice Roberts, you asked the judiciary to develop a confidential national reporting system for employees to report harassment or misconduct by a judge or other judicial employee.

a. Can you please explain why a confidential national reporting system is needed for judicial employees?

As Ms. Yang testified, there should be numerous avenues for reporting harassment and other forms of misconduct. These avenues should be confidential and should allow employees to feel comfortable when having difficult conversations about sensitive topics. While some employees feel more comfortable reporting misconduct within their district or circuit, other employees may feel more comfortable reporting confidentially to an office independent from any particular district or circuit. A national reporting avenue would ensure that employees in smaller districts or circuits—where all local employees know each other well—are not siloed into reporting to someone who may be close to the accused harasser. Such a system would also allow employees to contact someone prior to reporting to seek guidance about what conduct qualifies as harassment, what the various reporting mechanisms are, and what happens once the victim files a report. Furthermore, the judiciary currently lacks a clear method to compile complaints on a national level. A national reporting service could serve that purpose and analyze any trends or specific concerns for districts, circuits, and the judiciary as a whole.

4. Under the judiciary's existing procedures, complaints filed by employees for sexual harassment and misconduct are referred to the chief judge of each circuit or district for investigation.

b. In your view, does referring complaints to the chief judge discourage employees from reporting sexual harassment and misconduct?

Yes, I believe that a reporting avenue that refers complaints to the chief judge of the district or circuit for investigation may discourage some employees from reporting sexual harassment and misconduct. If an employee experiences harassment by another employee, the victim may be reticent to report the misconduct to avoid the issue being escalated immediately to the judicial level. For this reason, I fully support the Working Group's recommendation that avenues of reporting, investigating, and resolving misconduct be created that do not require referral to a judge.

If an employee experiences harassment or misconduct by a judge, the knowledge that the report will be referred to another judge for investigation and resolution could discourage employees from reporting misconduct as well. Indeed, the lack of virtually any official complaints of harassment by judges is perhaps the best illustration that this process discourages reporting. Judges are not trained workplace investigators, and investigating one's peers creates at least the appearance of potential bias, if not actual bias (whether intentional or inadvertent). The Working Group has not yet focused on the procedures for investigating allegations of harassment, but in my view, this issue is a crucial if the judiciary hopes to be effective in encouraging reporting.

c. In your view, would employees be more likely to report sexual harassment and misconduct if their complaints were assigned to an independent investigator? Please explain.

I believe employees would be more likely to report sexual harassment and misconduct if they felt confident that their complaints would be assigned to someone who is trained to investigate workplace misconduct and who will conduct a fair, thorough, and impartial investigation. I do not believe this means that the investigator should not be a judiciary employee, but he or she should be someone that has sufficient independence to assure employees of a fair and impartial investigation.

d. Would the creation of an independent office within the judiciary responsible for workplace relations increase the likelihood that employees would report sexual harassment and misconduct? Please explain.

In my view, there should be numerous avenues for reporting harassment and other forms of misconduct, including a confidential national reporting system for both reporting and investigating misconduct that is operated outside of the chain of command of any particular judicial circuit. While some employees may feel more comfortable reporting misconduct within their district or circuit, other employees may feel more comfortable reporting confidentially to an office independent from any particular district or circuit. According to the Working Group's Report, the Administrative Office of the U.S. Courts is establishing an Office for Judicial Integrity to address these issues. If that office has the resources to serve as a reporting avenue and individuals trained to thoroughly, fairly, and impartially investigate misconduct, I believe employees would be more likely to report sexual harassment and other misconduct.

5. What type of information should the judiciary collect from employees to ensure it has a comprehensive understanding of the scope of sexual harassment and misconduct?

The judiciary should work with an independent third party with expertise in workplace sexual harassment surveys to collect at least the following information from employees and externs within the past ten years:

i. whether the employee experienced harassing behavior (sexual harassment or harassment based on race, sexual orientation, or any other protected class);

ii. whether the employee witnessed harassing behavior;

iii. whether the employee experienced any other forms of abusive or disrespectful behavior from a superior and the nature of that behavior;

iv. whether the harassing behavior experienced or witnessed was committed by a judge, law clerk, judicial assistant, as well as other job categories of individuals who work within the judiciary;

v. if the employee communicated the behavior to a member of the judiciary, a member of human resources, or any other judicial official in a supervisory role and, if so, to whom the report was made and what occurred when the report was made;

vi. if the employee did not communicate the behavior, why he or she did not do so; and

vii. what measures would have made the employee feel more comfortable reporting the behavior.

Furthermore, the judiciary should track and publicly disclose demographic law clerk hiring data. The judiciary should also closely analyze this demographic data on a chambers-by-chambers basis to determine whether bias (either intentional or implicit) may be playing a role in hiring decisions. Doing so could provide some insight into whether particular judges, districts, or circuits are avoiding hiring women out of retaliation or fear of being accused of harassment, which would help combat some of the concerns Senator Harris expressed during the hearing.

6. The Working Group has proposed some changes to its education and training programs to help law clerks and employees understand their rights in the workplace. What additional steps should the judiciary take to ensure that law clerks and employees understand their rights in the workplace?

The Working Group included in its Report several of the recommendations my colleagues and I provided about how to raise awareness of employees' rights in the workplace, including making all policies easily accessible from every judicial circuit's intranet homepage. Each circuit should also develop one-page, easy-to-understand guidance documents setting forth all avenues for reporting misconduct or obtaining informal guidance about rights in the workplace. These documents should be provided during orientation and posted prominently throughout courthouses and within each judge's chambers. Furthermore, because people listen when judges speak, I recommend that any training sessions or discussions regarding workplace harassment include judicial participation. Doing so will not only ensure employees' attention, it will also send an important message that every member of the judiciary is invested in ensuring a workplace free from harassment or other forms of abusive behavior.

7. What steps should the judiciary take to ensure that judges and other supervisors understand their obligations to refrain from sexual harassment and misconduct? How can the judiciary ensure that these steps are effective?

The Working Group's suggestions to encourage judicial accountability will help to ensure that judges and other supervisors understand their obligations to not just refrain from sexual harassment but to report any misconduct by their peers or other judiciary employees. As the Report emphasizes, judges have a responsibility to hold each other accountable because judges are more likely to listen to their peers than to outsiders. The Working Group therefore asked the Judicial Conference to revise the Judiciary's Code of Judicial Conduct to reflect that judges have an obligation to report misconduct. The Judicial Conference's codification of this obligation would send an important signal that the Judiciary takes reports of harassment seriously. The Judicial Conference could strengthen the effect of this Code change in at least

two ways. First, the Judicial Conference could clarify this obligation. Neither the Code of Conduct nor the Working Group's Report clarify what kind of conduct judges have an obligation to report and how a judge should report such conduct. These types of clarifications are essential to ensure this obligation is not a hollow one. Second, and related to the first, the Judicial Conference could implement the bystander training recommended in the report. Judges must not only understand their obligation to ensure a safe and respectful workplace in every chambers, but also have the tools that allow them to fulfill this obligation.

The judiciary can ensure that these steps are effective by creating a national reporting system and by collecting information regarding harassment concerns on a nationwide level. A centralized office with authority over issues of workplace misconduct (presumably the Office of Judicial Integrity that is being created within the Administrative Office) could compile information on the number of reports received from each district and circuit, both from judges and other employees. The data and information obtained could be used to enhance and refine the judiciary's efforts for years to come. Furthermore, the Judicial Conference should undertake meaningful efforts to encourage the Chief Judge of each judicial district and circuit to speak to both judges and other employees directly after changes are made. These efforts would help to ensure that all judges understand the importance of the Judicial Conference's adopted reforms.

8. In your testimony before the Judiciary Committee, you recommended that law schools work collaboratively with judiciary to help protect law clerks from sexual harassment.

e. Can you expand on the role that law schools play in the clerkship process?

Law schools play a critical role in almost all parts of the clerkship process because law students are the primary pool of prospective externs and law clerks. Law schools work with judges to create hiring timelines. Law school career services offices often maintain databases with information about each federal judge for whom students have clerked. These databases contain information about how to contact past clerks who were alumni of the law school, what a particular judge looks for in candidates, and even prior clerks' thoughts on their clerkship. Law schools also frequently control the mechanics of the application process: recommendation letters, an informal referral network between professors and many judges, and application compilation, among other things. Law schools also provide students with guidelines on how to interview with a judge, instructions on accepting an offer, and guidance on how to conduct oneself during the clerkship. More importantly, law professors are repositories of information regarding the actual dynamics of a particular clerkship. Law school professors frequently hear from students they recommended about the positive and negative experiences a clerk has during the

clerkship. These professors frequently encourage—or discourage—students from applying to certain judges.

f. What steps should law schools take to protect their students from sexual harassment and misconduct in clerkships and internships?

Law schools' primary responsibilities regarding these issues should be to support their current or former students who experience harassment or misconduct, and to work with the judiciary to ensure that harassment and misconduct are addressed when law schools become aware of these issues. I have described measures law schools can take to fulfill these responsibilities in response to Senator Grassley's Question 2. But there may also be measures law schools can take to protect their students from misconduct as well. Most importantly, law schools can engage in meaningful discussions with law students who have made efforts to propose reforms at the law-school level; law schools should solicit students' input on reforms that could best protect them. Law schools could also consider pre-clerkship meetings or orientation sessions with students who are going to begin a clerkship upon graduation or with students who are about to begin an externship. These sessions could describe the range of experiences clerks and externs have working in judicial chambers, describe the rights and responsibilities of clerks and externs, and describe the support law schools can offer if students need it.

Finally, law schools could also provide employment resources to current and former students who decide to report abusive workplace conduct. For example, law schools could help any clerk who decides to leave a clerkship due to abusive behavior by providing assistance in finding another job.

QUESTION FROM SENATOR AMY KLOBUCHAR

In the hearing, we discussed your view that the Federal Judiciary Workplace Conduct Working Group's report does not go far enough—in part because the Working Group did not provide for a sufficient role for law clerks in developing its recommendations.

- **Can you elaborate on why it is critical to have input from former law clerks when discussing how we can encourage Judiciary employees to come forward with complaints?**

Input from recent former law clerks is necessary because even well-intentioned judges and judicial executives cannot be expected to recognize their own blind spots, especially when they are on the powerful end of a disparate power dynamic (judge-law clerk). Providing current and recent law clerks with a seat at the table helps to ensure that the reforms being considered will actually be effective in practice. Furthermore, involvement by current and recent law clerks would improve public

confidence that the judiciary is considering measures that are in the best interests of judiciary employees.

While my colleagues and I greatly appreciated the opportunity to provide the Working Group with our suggestions on several occasions, I believe recent and former clerks should have been included as formal members of the Working Group. As I discuss in greater depth on pages 8-9 of my written testimony, providing us with a seat at the Working Group's decisionmaking table would have allowed us to make more meaningful recommendations informed by access to the documents and data considered by these groups, including the thousands of comments the judiciary received from current and former employees. It would have allowed us to ensure that the Working Group's recommendations were specific enough to be effective and implementable. And it would have improved public confidence in the judiciary's response to the harassment reports that resulted in the Working Group's formation.

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