

United States Senate

WASHINGTON, DC 20510

January 3, 2019

James C. Duff
Director
Administrative Office of the U.S. Courts
One Columbus Circle N.E.
Washington, D.C. 20544

Dear Director Duff:

We write regarding the report and recommendations made by the Federal Judiciary Workplace Conduct Working Group (the “Working Group”) earlier this year to address sexual harassment and misconduct in the federal judiciary. We appreciate the Working Group’s efforts, but remain concerned that its recommendations do not adequately address two key issues.

First, during the Committee’s June 13, 2018 hearing on the Working Group’s report, witnesses raised concerns about the failure to perform a complete, retrospective review of sexual harassment and misconduct within the federal judiciary.

As former EEOC Chairwoman Jenny Yang testified, using the small number of formal complaints and feedback from employees to draw conclusions about the overall rate of harassment may not provide an accurate or complete picture of the problem. As she explained, “about 70 percent of individuals experiencing harassment never report it,” and a low number of complaints “may be a sign that the existing complaint mechanisms do not have the trust of employees” and may not be indicative of the true scope of workplace harassment itself. Ms. Yang recommended that the Judiciary undertake “further study through an external assessment to provide a baseline to measure progress – and to identify additional barriers to reporting and intervention,” which could be “led by an external entity or expert team with credibility and experience talking to employees.”

Second, hearing witnesses raised concern with the lack of a process to ensure that claims are reviewed by independent, trained investigators. Jaime Santos, a former law clerk, testified that while the Working Group report acknowledged the “need to provide employees with numerous avenues for reporting misconduct,” it “does not explain how the judiciary will ensure that credible allegations are investigated thoroughly, fairly, and by impartial individuals who are properly trained in conducting workplace investigations.” Ms. Yang also testified about the need for a process that is “fair to all parties,” and recommended the use of outside investigators, particularly where allegations are made “against a judge or senior level individual, cases that involve significant media attention, or anytime there is concern about the objectivity or capacity of the existing internal process.”

The newly announced Office of Judicial Integrity is a positive development and may help address these concerns, but it is not clear what role this office will play in the filing and investigation of complaints and whether it is situated to provide a uniform, independent mechanism for the reporting and investigation of claims. The importance of having an

independent office to oversee sexual harassment and misconduct claims has been recognized across industries, including by Congress in its recent legislation to reform the Congressional Accountability Act. There is no reason why the federal judiciary cannot do the same.

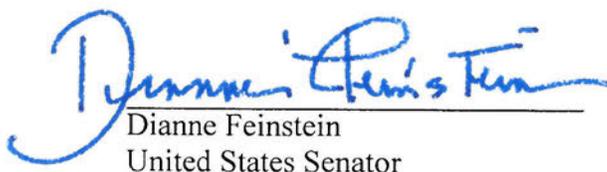
In light of the foregoing, we strongly urge the Administrative Office to take the following steps:

1. Conduct a comprehensive, retrospective review of the prevalence of sexual harassment in the federal judiciary. We ask that you share your findings with the Senate Judiciary Committee within 90 days.
2. Provide an avenue for the confidential reporting of claims of sexual harassment and workplace misconduct and establish a clear, uniform process to ensure that claims are investigated by independent, trained investigators. The Office of Judicial Integrity should enhance transparency by publishing clear guidelines to govern the complaint and investigation process.

In addition, we request a staff briefing to explain, among other things, the staffing and mission of the Office of Judicial Integrity and how it will impact the filing and handling of sexual harassment and misconduct claims.

Please contact Rachel Appleton at 202-224-7703 if you have any questions. We look forward to working with you to address these remaining issues and thank you for your assistance and attention to this important matter.

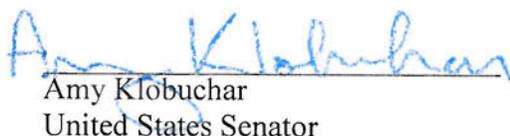
Sincerely,

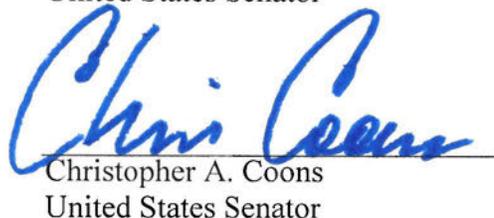

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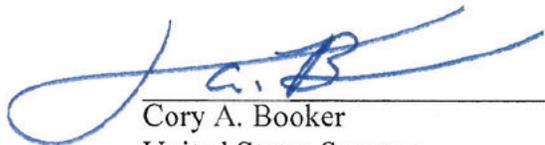

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cc:

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary

The Honorable Lindsey O. Graham
United States Senator
Committee on the Judiciary

The Honorable John G. Roberts Jr.
Chief Justice of the United States
United States Supreme Court