

THE CLERKSHIPS WHISPER NETWORK: WHAT IT IS, WHY
IT'S BROKEN, AND HOW TO FIX IT

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Judicial clerkships are typically described in the rosiest of terms—as fostering lifelong mentor-mentee relationships between judges and clerks and conferring only professional benefits. The downsides of clerking are rarely discussed. The clerkship application process is opaque. Little information exists to help law students identify positive work environments and avoid judges who mistreat their clerks. The secretive, fear-infused method of information-sharing is known as the clerkships “whisper network.” Information about judges who mistreat their clerks is often not shared by those who possess it, including law school professors, deans, clerkship directors, and former clerks, with those who need it—students and recent alumni.

This Piece argues for democratizing information about judges and clerkship experiences in order to correct the lack of transparency in the clerkship application process that causes too many new attorneys each year to enter unsafe work environments. Through a Centralized Clerkships Database, where law clerk alumni from every law school can share their experiences with students considering clerkships, law students will have as much information as possible before making important career decisions. This initiative empowers historically marginalized groups to pursue judicial clerkships, thereby diversifying not just judicial chambers but also the upper echelons of the legal profession. Transparency benefits law students, law clerks, law schools, judges—and in this way, the entire profession.

INTRODUCTION

You want to clerk? Great. How will you avoid judges who harass their clerks? Some students say, “I’d ask someone.” But who are you going

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to ask? Clerkship directors tell students to “do their research.” But what research are you going to do when so little information about judges is available on an equitable basis?

I posed this question to Columbia Law students on November 17, 2022, at an event with my nonprofit, The Legal Accountability Project (LAP).¹ I launched LAP in late spring 2022 to correct both the lack of transparency in the clerkship application process and the lack of accountability for judges who mistreat their clerks—injustices that I personally experienced as a law student and law clerk. I now speak with law students and administrators to share LAP’s mission of ensuring positive clerkship experiences while extending support and resources to law clerks who do not have positive experiences.² I do not dissuade anyone from clerking³—in fact, clerking is an excellent option for many new attorneys. But both law students and law schools should prioritize positive clerkship experiences over the prestige of clerkships or number of clerkship placements, period—a balance that some law schools have historically struggled to strike.⁴ Furthermore, clerkship applicants must be intentional about identifying judges who create positive work environments. Under the current clerkship regime, many law students lack access to critical information. Better, more transparent processes are necessary.

A judicial clerkship is often described as a “gold star” or necessary checkbox for one’s next legal job.⁵ Whether a young attorney aspires to be a prosecutor, public defender, law firm partner, professor, or even a judge, most of their legal role models have probably clerked.⁶ Undoubtedly, these

1. See *The Gavel: Your Weekly Student Affairs Digest* (Colum. L. Sch., New York, N.Y.), Nov. 14, 2022, https://connect.law.columbia.edu/web_newsletter_view?email_uid=a7d5df55-61d3-11ed-bceb-0e3e5d452619 [<https://perma.cc/PTG5-EERW>].

2. See Kimberly Strawbridge Robinson, *Judicial Law Clerk Harassment Is Focus of New Non-Profit Group*, *Bloomberg L.* (June 1, 2022), <https://news.bloomberglaw.com/us-law-week/judicial-law-clerk-harassment-is-focus-of-new-non-profit-group> [<https://perma.cc/8BXB-QFKT>].

3. LAP visited more than twenty law schools in fall 2022 for programming and continues to visit additional schools. LAP aims to foster honest dialogue about the full range of clerkship experiences and to encourage students to make thoughtful decisions about the judges for whom they decide to clerk in a way that many clerkship applicants currently are not able to due to lack of information about judges.

4. See Aliza Shatzman, *Law Schools Are Part of the Problem—But They Can (and Should) Be Part of the Solution*, *Yale L. & Pol’y Rev. Inter Alia* (Aug. 29, 2022), https://ylpr.yale.edu/inter_alia/law-schools-are-part-problem-they-can-and-should-be-part-solution [<https://perma.cc/5CW2-7L3L>] [hereinafter Shatzman, *Law Schools Are Part of the Problem*].

5. See *Workplace Misconduct and the Federal Courts, Strict Scrutiny*, at 05:05, 32:58 (Apr. 27, 2020), https://strict-scrutiny.simplecast.com/episodes/workplace-misconduct-and-the-federal-courts-91BKn_a (on file with the *Columbia Law Review*) (describing the clerkship “pipeline that can begin . . . with [the] first judge that you clerk for”).

6. See Leah M. Litman & Deeva Shah, *On Sexual Harassment in the Judiciary*, 115 *Nw. U. L. Rev.* 599, 611–12 (2020) (describing the “personal and professional benefits” of

mentors encourage their mentees to follow in their footsteps and clerk as well.⁷

When I was a student (and aspiring homicide prosecutor) at Washington University in St. Louis School of Law, the messaging at my law school regarding clerkships—like that at most law schools—was uniformly positive.⁸ I was told that I would develop a lifelong mentor–mentee relationship with the judge for whom I clerked and that the position would confer only professional benefits.⁹ No one talked about the potential downsides of clerking—when judges abuse their positions of power and mistreat their clerks.¹⁰ Back when I was a law clerk during the 2019 term, I did not realize the enormous, unchecked power and influence that a judge could exert over my life, career, and reputation, even long after the clerkship had ended.

Unfortunately, up until recently, there was no easy, equitable way for law students to avoid judges who mistreat their clerks, nor to identify judges who are respectful bosses and create positive work environments.¹¹ Internal law school infrastructures are not set up to collect and disseminate this information to students considering clerkships.¹² LAP now offers concrete solutions to finally address these challenges.¹³ Information about misbehaving judges often does not get shared by the people who have it—professors, deans, clerkship directors, and mistreated

clerkships); Leah Litman & Aziz Huq, *How to Stop Judges From Sexually Harassing Law Clerks*, Wash. Post (June 9, 2021), <https://www.washingtonpost.com/outlook/2021/06/09/law-school-clerks-harassment-reform/> (on file with the *Columbia Law Review*) (“Because a federal clerkship is an all-but-essential qualification for a U.S. attorney, law professor, federal judge or partner at a white-shoe law firm, these one- or two-year posts are highly coveted. How they are doled out shapes the legal profession for decades.”).

7. See Litman & Shah, *supra* note 6, at 611–12.

8. See CCD Staff, *Nuts and Bolts of Applying to Judicial Clerkships*, Wash. Univ. St. Louis Sch. L.: Ctr. for Career Dev. Blog (May 4, 2018), https://sites.law.wustl.edu/WashULaw/CCD_Blog/nuts-and-bolts-of-applying-to-judicial-clerkships/ [<https://perma.cc/SQ2Z-Y6QY>] (describing clerkships as “rewarding” and noting that clerkships propel students to “the highest echelon of the legal profession”).

9. I have described the clerkship application process this way in numerous podcast interviews, public forums, and law school events. See, e.g., ABA Section of Civil Rights and Social Justice, *Chair Chat: Aliza Shatzman*, YouTube, at 02:00–02:25 (Dec. 7, 2022), <https://www.youtube.com/watch?v=vaR-h3OBll8> (on file with the *Columbia Law Review*).

10. *Id.*

11. See Jack Karp, *New Nonprofit to Focus on Judicial Law Clerk Harassment*, Law360 (June 2, 2022), <https://www.law360.com/articles/1498793> (on file with the *Columbia Law Review*).

12. See Shatzman, *Law Schools Are Part of the Problem*, *supra* note 4 (describing the institutional structures within the legal community that discourage law schools from collecting and reporting data about negative clerkship experiences).

13. See Legal Accountability Project, <https://www.legalaccountabilityproject.org/> [<https://perma.cc/989D-ZV3M>] (last visited Jan. 28, 2023). LAP’s mission is to ensure that law clerks have positive clerkship experiences and to extend support and resources to those who do not. *Id.*

clerks—with the people who need it: students applying for clerkships.¹⁴ The informal, secretive, fear-infused process of backdoor information-sharing between holders of information and prospective clerks is often referred to as the clerkships “whisper network.”¹⁵ But clerk-to-student or administrator-to-student information-sharing is inefficient at best and ineffective at worst.¹⁶ Too many graduating law students each year unwittingly enter hostile work environments because they do not have the information they need before applying.¹⁷ This is no way to treat the next generation of attorneys. The status quo is unacceptable. Law students and recent alumni should be armed with the information they need before applying so they can make informed decisions about this important first step in their careers.

This Piece explains the concept of the clerkships whisper network—what it is and why it’s broken. Law schools’ misaligned incentives feed into a clerkships-industrial complex and a competition between some law schools to send as many students into clerkships as possible, rather than fostering a desire to ensure that every student who wants to clerk can identify a positive work environment. There are also structural deficiencies in the legal community that discourage law clerk reporting—either formally to the judiciary or informally to law schools. Law clerks who experienced mistreatment are notoriously unwilling to report back to their alma maters, thereby enabling some law school administrators to disclaim responsibility for—or discount entirely—the scope of this problem in judicial workplaces.¹⁸ Still other schools simply do not have the infrastructure and resources to collect and disseminate information about alumni’s clerkship experiences to students through formal channels. Law students considering clerkships face a dangerous system in which those with information about which judges mistreat their clerks may be incentivized not to share that information with prospective clerks.¹⁹

Part I explains what a clerkship is; why they are so coveted; the issues that can arise within judicial chambers; and law clerks’ limited options for redress. It also explores why the structure and nature of clerkships make these positions particularly conducive to workplace issues, thereby underscoring the importance of ensuring that fewer clerks enter unsafe work environments in the first place. Part II explains the concept of the

14. Telephone Interview with Law School Administrator A (Summer 2022) (on file with author) (stating that it is best to allow clerks to gather information for themselves rather than for administrators to provide “second-hand information”).

15. See Litman & Huq, *supra* note 6 (critiquing the “ad hoc whisper networks that presently exist” regarding clerkships).

16. *Id.*

17. Interview with Law Student A (Fall 2022) (on file with author).

18. See Telephone Interview with Law School Administrator A, *supra* note 14.

19. Telephone Interview with Law School Administrator B (Spring 2022) (on file with author) (discussing reasons why the law school does not share information with students about judges who mistreat their clerks).

“clerkships whisper network” and why structures in the legal community preclude information-sharing. Part III critiques law schools’ existing clerkship resources. Part IV explores the scope of judicial misconduct in state and federal courts, highlighting several former law clerks’ experiences to underscore these broken systems and explain why they must change. Part V explains what LAP is doing to increase transparency in the opaque clerkship application process by democratizing information about judges. This Piece concludes with a call to action: Law students should demand change now.

I. CLERKSHIPS: THE BEST OF CIRCUMSTANCES, THE WORST OF CIRCUMSTANCES

Thousands of law students from more than a hundred law schools launch their legal careers with clerkships each year, intending to develop lifelong mentor–mentee relationships with the judges for whom they clerk. The potential downsides to clerking are rarely discussed. This Part explains what clerkships are and why they are so sought after. It then discusses what can go wrong during a clerkship and the limited options for redress.

A. *What Are Judicial Clerkships, and Why Do Students Want Them So Badly?*

A judicial clerkship is typically a term-limited position in which a new attorney—often fresh out of law school, or perhaps after gaining one or two years of work experience²⁰—spends a year or two working for and learning from a judge.²¹ While tasks vary based on the type of court,²² level

20. See Gregg Costa, *Clerking to Excess? The Case Against Second (and Third and Fourth) Clerkships*, 102 *Judicature*, no. 3, 2018, at 22, 26 (“The traditional clerkship model, in which the clerk comes to work for the judge straight out of law school, gives the judge who wants it a special role as the clerk’s first legal employer.”).

21. See, e.g., *Judicial Clerkship Program*, Univ. Tex. Austin Sch. L., <https://law.utexas.edu/judicial-clerkships/> [<https://perma.cc/AHK3-5YNR>] (last visited Jan. 26, 2023) (“These one-to-two year positions can be one of the most rewarding jobs in a legal career.”).

22. New attorneys can clerk in either state or federal court. State court clerkships span all fifty states plus Washington, D.C., and the territories, creating enormously decentralized processes. See, e.g., *Clerking on the D.C. Court of Appeals*, D.C. Cts., <https://www.dccourts.gov/court-of-appeals/judges/clerkships> [<https://perma.cc/L2K8-LMNE>] (last visited Jan. 26, 2023). Law students often apply for federal clerkships via the Online System for Clerkship Application and Review (OSCAR). See *Work for the Federal Judiciary: Learn More About Becoming a Federal Law Clerk or Staff Attorney*, OSCAR, <https://oscar.uscourts.gov/> [<https://perma.cc/KBE5-SKAD>] (last visited Aug. 19, 2022).

of court,²³ and type of judge,²⁴ most law clerks conduct research; write orders, opinions, and bench memos; and accompany the judge to court.²⁵ Importantly, law clerks assist with judicial decisionmaking, rendering clerkships valuable both for the clerks soaking up information and for their future employers, who benefit from gaining insight into the judges before whom they appear.²⁶ Law clerks who aspire to become trial attorneys receive a crash course in trial lawyering from the attorneys who appear before the court.²⁷

The legal community places an enormous premium on judicial clerkships.²⁸ They are considered a necessary first step for certain legal jobs.²⁹ Most government jobs require one year of work experience—a euphemism for a clerkship expectation.³⁰ Law firms offer large bonuses to those who clerked.³¹ Most professors in the legal academy have done at least one clerkship—and they create pipelines to judges for the law students they teach.³²

23. In both the federal and state court contexts, clerkships are typically available in district or trial courts, intermediate appellate courts, or a supreme court.

24. Clerks may work for an associate judge or a senior judge; the judge may sit on an Article III court—one of the traditional federal courts—or a specialized Article I court—a legislative court without the full powers of an Article III court.

25. Duties of Federal Law Clerks, OSCAR, https://oscar.uscourts.gov/duties_of_federal_law_clerks [<https://perma.cc/XL4U-586B>] (last visited Mar. 12, 2023).

26. See Paul Horwitz, *Clerking for Grown-Ups: A Tribute to Judge Ed Carnes*, 69 *Ala. L. Rev.* 663, 679 (2018) (stating that some judges “seek ideological kinship from their law clerks”).

27. See *Judicial Clerkships*, *Stan. L. Sch.*, <https://law.stanford.edu/careers/career-possibilities/judicial-clerkships/> [<https://perma.cc/B5BK-CNQ3>] (last visited Jan. 26, 2023) (noting that clerking “is an excellent opportunity to become familiar with pretrial and trial procedures and to hone legal research, writing and advocacy skills”).

28. See Nicholas Alexiou, *To Clerk Or Not To Clerk . . . It’s Actually Not Much of a Question, Above the L.* (June 7, 2018), <https://abovethelaw.com/2018/06/to-clerk-or-not-to-clerk-its-actually-not-much-of-a-question/> [<https://perma.cc/NTG8-24LP>] (“[T]he reason to clerk is that you will learn more during that year, or multiple years depending on your clerkship, than you will during the same period of time in any other sort of legal job.”).

29. *Id.* (“[F]or some practice groups such [as] appellate litigation, a clerkship is likely necessary to work in that field at all.”).

30. See, e.g., *Legal Careers*, DOJ, <https://www.justice.gov/legal-careers> [<https://perma.cc/FD4B-A66A>] (last visited Apr. 6, 2023).

31. See Kathryn Rubino, *Elite Law Firm Will Offer \$150,000 in Clerkship Bonuses, Above the L.* (Apr. 26, 2022), <https://abovethelaw.com/2022/04/elite-law-firm-will-offer-150000-in-clerkship-bonuses/> [<https://perma.cc/67Y3-NUNN>]; see also *Legal Hiring—Benefits*, Cravath, Swaine & Moore LLP, <https://www.cravath.com/benefits/> [<https://perma.cc/TZ63-ZACG>] (last visited Jan. 26, 2023) (noting that incoming associates who complete one clerkship receive a \$50,000 bonus while those that complete two get a \$70,000 bonus).

32. See *Judicial Clerkships*, *Univ. Chi. L. Sch.*, <https://www.law.uchicago.edu/clerkships> [<https://perma.cc/45X9-L9YN>] (last visited Jan. 26, 2023) (“Students interested in applying for judicial clerkships are aided by a faculty committee, the Office of Career Services, faculty and their assistants, programs, and resources in the Office of Career Services.”).

Clerkships are typically described in the rosiest of terms: fostering lifelong mentor–mentee,³³ or even quasi-familial,³⁴ relationships between judges and clerks and creating pathways to future career success.³⁵ During each clerkship application cycle, much ink is spilled to highlight the benefits of clerking.³⁶ Law schools routinely bring alumni to campus to discuss their positive clerkship experiences.³⁷ The messaging around clerkships on law school campuses is nearly always positive.³⁸ Few former clerks are willing to speak openly and honestly about less-than-positive experiences.³⁹ The legal community has created a culture of silence and fear around the judiciary: one of deifying judges and disbelieving law clerks.⁴⁰ Law clerks are actively dissuaded from sharing negative clerkship

33. See *Why Clerk?*, Univ. Tex. Austin Sch. L., <https://law.utexas.edu/judicial-clerkships/why-clerk/> [<https://perma.cc/6NLM-6VS3>] (last visited Jan. 26, 2023).

34. See generally Horwitz, *supra* note 26, at 672 & n.53 (“The literature is replete with law clerk remembrances of judges who treated their law clerks as their ‘family.’”).

35. See *Where Should I Clerk and Where Can I Clerk?*, Cornell L. Sch., <https://community.lawschool.cornell.edu/careers/judicial-clerkships/clerkship-advice/why-should-i-clerk-and-where-can-i-clerk/> [<https://perma.cc/PLK7-FLKW>] (last visited Jan. 26, 2023) (describing the value of clerkships to professional advancement across a range of legal careers).

36. See Alexiou, *supra* note 28.

37. See *Clerkships*, Wash. Univ. St. Louis Sch. L., https://sites.law.wustl.edu/WashULaw/CCD_Blog/clerk/ [<https://perma.cc/2QWK-2X9H>] [hereinafter *Clerkships*, WashULaw] (last visited Jan. 26, 2023).

38. See *Zoom Interview with Law Student B (Fall 2022)* (on file with author) (describing the positive tone of law school programming around clerkships).

39. The few former clerks who have shared their negative experiences publicly have done so by testifying before Congress. See *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. 11 (2020)* (testimony of Olivia Warren) [hereinafter *Olivia Warren House Judiciary Testimony*]. For a letter to the Senate Judiciary Committee, see *Letter from Heidi S. Bond, Former L. Clerk, 9th Cir., to the Senate Comm. on the Judiciary (June 11, 2018)*, <http://www.courtneymilan.com/metoo/workinggroupletter.pdf> [<https://perma.cc/VSX4-ES42>] [hereinafter *Letter from Heidi S. Bond*]. For a *Washington Post* story on the misconduct Ms. Bond’s letter addresses, see Matt Zepotosky, *Prominent Appeals Court Judge Alex Kozinski Accused of Sexual Misconduct*, *Wash. Post* (Dec. 8, 2017), https://www.washingtonpost.com/world/national-security/prominent-appeals-court-judge-alex-kozinski-accused-of-sexual-misconduct/2017/12/08/1763e2b8-d913-11e7-a841-2066faf731ef_story.html (on file with the *Columbia Law Review*) [hereinafter *Zepotosky, Judge Accused of Sexual Misconduct*].

40. Protecting abusers and disbelieving survivors is not unique to the legal community, nor to the judiciary. See Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. Pa. L. Rev. 1, 3 (2017) (exploring how disbelief is the dominant response to rape victims on college campuses and evidencing how this “credibility discounting” threatens justice throughout the criminal system). Based on the author’s numerous conversations with current and former law clerks, however, fear about saying anything less than positive about the judges for whom they clerked, even many years later, pervades the clerkship landscape. See, e.g., *Zoom Interview with Law Clerk (Fall 2022)* (on file with author) (describing the fear that former clerks may experience regarding filling out post-clerkship surveys).

experiences, fearing reputational harm that will hinder their ability to secure their next jobs as well as retaliation by the judges who mistreated them.⁴¹ Judges are venerated in the legal community, starting in classrooms during the first year of law school.⁴² Some attorneys, particularly those in positions of prestige and influence, confer this power upon judges.⁴³ Judges seek deference not just in their rulings but in all things.⁴⁴ Perhaps one's judicial philosophy is not a good indicator of how they treat their employees behind closed doors.⁴⁵ Yet the legal community lionizes judges rather than considering them as government employers running small workplaces with all the pursuant fallibilities.⁴⁶

B. *What Can Go Wrong During a Clerkship?*

More judges mistreat their law clerks than the legal community would care to admit.⁴⁷ There is an enormous power disparity between

41. Zoom Interview with Law School Administrator C (Summer 2022) (on file with author); see also *supra* note 40. As the author was preparing to file a formal judicial complaint, preparing to speak publicly about her experience, preparing to submit written testimony to the House Judiciary Committee, and even since the author has been visiting law schools, the author was told on numerous occasions that “the right professional decision would have been not to report” and that speaking publicly would “tarnish [her] reputation.” Documentation on file with the author; see also *infra* note 102.

42. See, e.g., Collection, Tribute to Judge Stephen Reinhardt, 120 Yale L.J. 515, 515–85 (2010) (a collection of five articles dedicated to the career of Judge Reinhardt).

43. Zoom Interview with Law School Administrator D (Fall 2022) (on file with author) (indicating that clerks may feel that the abuse they receive is worth it in the long run).

44. See Litman & Shah, *supra* note 6, at 616, 625 (asserting that deference to the judge as a jurist must not translate to deference to the judge as an employer due to the power imbalance between judge and clerk).

45. “Progressive” judges as well as judges known to rule in favor of women’s issues and workers’ rights are not exempt from problematic behaviors. See Olivia Warren House Judiciary Testimony, *supra* note 39, at 1; Ben Wizner, The Exile: In Memory of Judge Stephen Reinhardt, ACLU (Apr. 4, 2018), <https://www.aclu.org/news/civil-liberties/exile-memory-judge-stephen-reinhardt> [<https://perma.cc/YX32-GA3Y>].

46. The author advocates a reenvisioning of the judicial appointments process, one that focuses more on judges as employers and less on judicial appointees whose political philosophies certain actors agree with.

47. In 2018, U.S. Courts Administrative Officer James Duff stated that in some years, including 2016, there were “zero” complaints filed by law clerks against judges. Confronting Sexual Harassment and Other Workplace Misconduct in the Federal Judiciary: Hearing Before the S. Comm. on the Judiciary, 115th Cong. (June 13, 2018), <https://www.c-span.org/video/?446971-1/senate-committee-examines-workplace-misconduct-federal-judiciary> [<https://perma.cc/J8EC-3L3J>] [hereinafter Confronting Sexual Harassment Hearing Video]. But the judiciary only created a separate “judicial employees” category for its judicial complaint data in 2019, so it would have been nearly impossible to assess the number of complaints filed by law clerks. Status Report From the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States 3 (2019), https://www.uscourts.gov/sites/default/files/working_group_status_report_to_jcus_september_2019.pdf [<https://perma.cc/3MBR-APVY>] [hereinafter Working Group Status Report]. Furthermore, the dearth of complaints by law clerks against judges is likely due in part to the lack of channels

fresh-out-of-law-school clerks in their first legal jobs, who depend on their bosses for references and career advancement, and often-life-tenured judges,⁴⁸ the most powerful members of the profession.⁴⁹ A judicial chambers's structure is both isolated and hierarchical: Two to four clerks, perhaps a judicial assistant, and a powerful judge work long hours behind locked doors in stressful circumstances.⁵⁰ There is nowhere for a mistreated law clerk to go to seek assistance.⁵¹ Each judge's chambers is its own fiefdom.⁵² Other judges who witness or hear about a colleague's misconduct often take the position, "Not my chambers, not

for reporting misconduct. See U.S. Cts., Table S-22: Report of Complaints Commenced and Action Taken Under Authority of 28 U.S.C. 351–364 During the Period from 10/1/2019 to 9/30/2020 (2020), https://www.uscourts.gov/sites/default/files/jb_s22_0930.2020.pdf [<https://perma.cc/4S4E-98GA>] [hereinafter U.S. Cts., 2020 Report] (last updated Nov. 2021) (the first year in which there was a separate "Judicial Employees" category of complainants); U.S. Cts., Table S-22: Report of Complaints Commenced and Action Taken Under Authority of 28 U.S.C. 351–364 During the Period from October 1, 2018 to September 30, 2019 (2019), https://www.uscourts.gov/sites/default/files/data_tables/jb_s22_0930.2019.pdf [<https://perma.cc/3RSC-W5JL>]; U.S. Cts., Table S-22: Report of Complaints Commenced and Action Taken Under Authority of 28 U.S.C. 351–364 During the Period Ending September 30, 2018 (2018), https://www.uscourts.gov/sites/default/files/jb_s22_0930.2018.pdf [<https://perma.cc/GX8F-WRTR>]; U.S. Cts., Table S-22: Report of Complaints Commenced and Action Taken Under Authority of 28 U.S.C. 351–364 During the 12-Month Period Ending September 30, 2017 (2017), https://www.uscourts.gov/sites/default/files/jb_s22_0930.2017.pdf [<https://perma.cc/7EKC-UMWX>]; U.S. Cts., Table S-22: Report of Complaints Commenced and Action Taken Under Authority of 28 U.S.C. §§ 351–64 During the 12-Month Period Ending September 30, 2016 (2016), https://www.uscourts.gov/sites/default/files/data_tables/jb_s22_0930.2016.pdf [<https://perma.cc/4VER-2V2U>].

48. State court judges, who are elected or appointed for fixed terms with the option for reelection or reappointment, often perceive themselves to have de facto life tenure since they rarely face robust challenges to seeking another term. Zoom Interview with State Court Judge A (Spring 2022) (on file with author) (describing reelection as a "formality," as judges typically run unopposed).

49. See Confronting Sexual Harassment and Other Workplace Misconduct in the Federal Judiciary: Hearing Before the S. Comm. on the Judiciary, 115th Cong. 2 (2018) (statement of Jaime A. Santos) [hereinafter Jaime Santos Senate Judiciary Testimony].

50. See Litman & Shah, *supra* note 6, at 616.

51. The existing avenue to address wrongful conduct by judges is known as Employment Dispute Resolution (EDR). See U.S. Cts., Model Employment Dispute Resolution (EDR) Plan (2019), <https://www.uscourts.gov/sites/default/files/guide-vol12-ch02-appx2a-model-eeo-plan.pdf> [<https://perma.cc/2RRA-HLG3>]. This process is neither impartial nor confidential, underutilized, and offers outrageously inadequate processes for mistreated clerks. See, e.g., Brief for Named and Unnamed Current and Former Employees of the Federal Judiciary Who Were Subject to or Witnessed Misconduct as Amici Curiae in Support of Appellant Jane Roe at 35–39, *Strickland v. United States*, 32 F.4th 311 (4th Cir. 2022) (No. 21-1346) (explaining that Employee Dispute Resolution, or EDR, is the sole option for mistreated federal law clerks, and that remedies under EDR are inadequate); Short Circuit, Clerks and Harassment, Inst. for Just., at 08:37 (June 10, 2022), <https://ij.org/podcasts/short-circuit/short-circuit-223-clerks-and-harassment/> (on file with the *Columbia Law Review*).

52. See Jaime Santos Senate Judiciary Testimony, *supra* note 49, at 2.

my business.”⁵³ These features make clerkships particularly conducive to workplace mistreatment in the worst of circumstances.⁵⁴

C. *What Is Mistreatment, and How Pervasive Is It?*

Mistreatment covers everything from rude, sexist, or racist comments;⁵⁵ to yelling or throwing things in chambers;⁵⁶ to otherwise legally actionable gender discrimination and harassment, were the judiciary not exempt from Title VII of the Civil Rights Act.⁵⁷ Anecdotally, these problematic behaviors are pervasive and unaddressed in both the state and federal courts.⁵⁸ The dearth of data in this space allows judges to get away with misconduct and enables judiciary leadership to disclaim responsibility for problematic behaviors within their ranks.⁵⁹ Until recently, the federal judiciary had been unwilling to even conduct a workplace culture assessment to survey judiciary employees about workplace climate.⁶⁰ Even now, judiciary leadership, including the

53. *Id.* at 4. While some state bar associations have promulgated rules about judges reporting on their colleagues’ misconduct and poor health, see, e.g., D.C. Code of Judicial Conduct 2.14, 2.15 (2018) (explaining that D.C. Courts judges are expected to report on a judicial colleague’s misconduct or poor health), anecdotally these processes are underutilized.

54. See Chai R. Feldblum & Victoria A. Lipnic, EEOC, Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace 16 (2016), https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf [<https://perma.cc/799G-9F93>] (describing why women rarely file formal complaints).

55. Documentation on file with author.

56. Documentation on file with author.

57. See 42 U.S.C. § 2000e-16(a) (2018) (listing federal employees covered by the Act).

58. See *supra* note 40.

59. See Workplace Protections for Federal Judiciary Employees: Flaws in the Current System and the Need for Statutory Change: Hearing Before the Subcomm. on Cts., Intell. Prop. & the Internet of the H. Comm. on the Judiciary, 117th Cong. 14 (2022) [hereinafter Workplace Protection Hearings] (combined written statement of Hon. M. Margaret McKeown, J., 9th Cir., & Hon. Julie A. Robinson, J., D. Kan., on Behalf of Jud. Conf. of U.S.); see also John G. Roberts, Jr., 2021 Year-End Report on the Federal Judiciary 4–5 (2021), <https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf> [<https://perma.cc/Y6AB-EM2D>].

60. See Ann E. Marimow, Judges Accused of Sex Discrimination, Bullying, Internal Survey Shows, Wash. Post (May 16, 2022), <https://www.washingtonpost.com/politics/2022/05/16/judges-accused-discrimination-bullying/> (on file with the *Columbia Law Review*) [hereinafter Marimow, Judges Accused of Sex Discrimination] (last updated May 20, 2022). Troublingly, the D.C. Circuit seems more concerned about identifying the source of the “leak” than about what the leaked survey data show: Harassment and retaliation are pervasive and unaddressed in the D.C. Circuit. See Ann E. Marimow, Court to Investigate Leaked Survey Alleging Misconduct Among Judges, Wash. Post (May 20, 2022), <https://www.washingtonpost.com/politics/2022/05/20/dc-court-survey-leak-investigation/> (on file with the *Columbia Law Review*); Ann E. Marimow, Federal Courts Drop Survey Question About Workplace Misconduct, but Not Before Judges’ Staffers Said They’d Witnessed Such Problems, Wash. Post (Jan. 14, 2022), https://www.washingtonpost.com/politics/courts_law/federal-court-

Administrative Office of the U.S. Courts⁶¹ and the Judicial Conference of the United States,⁶² have not committed to publicly reporting the results of their planned workplace assessment—an enormous red flag.⁶³

Some individual circuits conduct workplace assessments, intended for private policymaking rather than public consumption. A 2021 D.C. Circuit workplace assessment revealed that fifty-seven judiciary employees personally experienced harassment or retaliation and 134 witnessed or heard about mistreatment.⁶⁴ These data suggest a significant problem. Yet there is an enormous data mismatch between those results and the fact that very few law clerks file complaints⁶⁵ under the Judicial Conduct and Disability Act,⁶⁶ the formal judicial complaint process, each year. Further, the judiciary does not report data on employees' use of the available Employee Dispute Resolution (EDR) Plan—another gap in potentially instructive information.⁶⁷ The dearth of law clerk complaints does not

workplace-misconduct/2022/01/13/1c4a0b6e-7481-11ec-bc13-18891499c514_story.html (on file with the *Columbia Law Review*) (indicating that thirty-four out of forty respondents surveyed reported observing inappropriate behavior).

61. The Administrative Office of the U.S. Courts (AO) is the administrative arm of the federal judiciary. See Judicial Administration, U.S. Cts., <https://www.uscourts.gov/about-federal-courts/judicial-administration> [<https://perma.cc/Y85V-2M8Z>] (last visited Jan. 26, 2023).

62. The Judicial Conference of the United States is the policymaking body for the federal courts. Governance & the Judicial Conference, U.S. Cts., <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference> [<https://perma.cc/UQV3-DDRX>] (last visited Jan. 28, 2023).

63. See Nate Raymond, Federal Judiciary to Survey Employees Nationally on Harassment, Misconduct, Reuters (Sept. 20, 2022), <https://www.reuters.com/legal/government/federal-judiciary-survey-employees-nationally-harassment-misconduct-2022-09-20/> [<https://perma.cc/7QM5-X94M>] (quoting U.S. District Judge Claire Eagan as saying that “[w]hether the results of the confidential survey would be made public ‘remains to be seen’”).

64. See Marimow, Judges Accused of Sex Discrimination, *supra* note 60.

65. See U.S. Cts., 2020 Report, *supra* note 47 (showing that only five judicial employees filed formal complaints during the surveyed period).

66. The Judicial Conduct and Disability Act is the complaint process by which law clerks, attorneys, and litigants can file complaints against federal judges. Judicial Conduct & Disability, U.S. Cts., <https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability> [<https://perma.cc/BJ6J-PSF5>] (last visited Mar. 23, 2022). Disciplinary options include sanctions and—theoretically—removal from the bench via congressional impeachment. FAQs: Filing a Judicial Conduct or Disability Complaint Against a Federal Judge, U.S. Cts. (June 2016), <https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability/faqs-filing-judicial-conduct-or-disability-complaint> [<https://perma.cc/2P4J-STDV>] (last updated July 2021).

67. Telephone Interview with Confidential Source (Spring 2022) (on file with author) (discussing the EDR plan for complaints). EDR data is not collected—let alone publicly reported—because data collection and dissemination are not explicitly required in the 2019 Model EDR Plan, and there are concerns about confidentiality and a chilling of employees' use of the EDR Plan if even high-level data were reported. But EDR data would be instructive to either quantify the scope of the problem or indicate that although the judiciary touts its EDR Plan as the catchall solution to harassment in the judiciary, the Plan is underutilized.

mean that judges do not mistreat their clerks; rather, it suggests insufficient avenues for safely reporting mistreatment.⁶⁸

D. *What Actions Can Law Clerks Take if They Are Mistreated?*

Troublingly, the federal judiciary is exempt from Title VII of the Civil Rights Act of 1964.⁶⁹ Law clerks have no legal recourse if they are mistreated by judges.⁷⁰ The existing option to address wrongful conduct in the judicial workplace is EDR.⁷¹ This is a toothless process that is neither impartial nor confidential, since other judges in the courthouse where the complainant law clerk and misbehaving judge work are tasked with investigating and potentially disciplining their judiciary colleagues.⁷² Internal self-enforcement leads to a lack of discipline for judges who mistreat their clerks.⁷³

II. THE CLERKSHIP SYSTEM IS BROKEN

68. See Letter from Olivia Warren to the House Subcomm. on Cts., Intell. Prop. & the Internet (Mar. 17, 2022), <https://docs.house.gov/meetings/JU/JU03/20220317/114503/HHRG-117-JU03-20220317-SD002.pdf> [<https://perma.cc/Y89F-79UV>] (underscoring that the judiciary's internal process offers an inadequate avenue for law clerks to report mistreatment); see also Broken Law, Confronting Harassment Within the Federal Judiciary, *Am. Const. Soc'y*, at 35:44 (Oct. 19, 2021), <https://www.acslaw.org/podcast/episode-20-confronting-harassment-within-the-federal-judiciary/> (on file with the *Columbia Law Review*) (explaining that federal judicial employees going through the process “frequently cannot find counsel” and, even when they can, struggle to pay for it on their own because “there are no damages available at the end of [the] process”).

69. 42 U.S.C. § 2000e-16(a) (2018). The House and Senate Judiciary Committees are currently considering legislation, the Judiciary Accountability Act, that would extend Title VII protections to judiciary employees. See H.R. 4827, 117th Cong. (2021); see also S. 2553, 117th Cong. (2021).

70. See § 2000e-16(a) (exempting employees of the federal judiciary, except those in the competitive service, from Title VII).

71. See U.S. Cts., Model Employment Dispute Resolution Plan 1–3, https://www.uscourts.gov/sites/default/files/guide-vol12-ch02-appx2a_oji-2019-09-17-post-model-edr-plan.pdf [<https://perma.cc/2WW8-8EPS>] (last revised Mar. 8, 2022). The terms “employment” and “employee” are used interchangeably when referring to EDR plans. EDR is the internal courthouse dispute resolution plan overseen by judges in the courthouse where the complainant law clerk and respondent judge work. *Id.* at 7–8. The process can take several months between the investigation, hearing, and appeal process, overshadowing much of a law clerk's one-year clerkship. See *id.* at 8–11 (requiring hearings within 60 days after the complaint is filed and written decisions within 60 days of the hearing).

72. *Id.* at 7–8; see also Cara Bayles, Can US Courts Police Themselves on Workplace Misconduct?, *Law360* (Sept. 22, 2021), <https://www.law360.com/articles/1423474> (on file with the *Columbia Law Review*) (criticizing EDR plans for their lack of guaranteed confidentiality and lack of standardization among circuits); *supra* note 51.

73. See Bayles, *supra* note 72 (describing safeguards against judicial misconduct as “very cosmetic”).

Due to these troubling features about the structure and nature of clerkships, it is particularly important that law students identify judges who will respect them, create positive work environments, and, ideally, support them throughout their careers.⁷⁴ Unfortunately, there is no easy, equitable way for students or recent alumni considering clerkships to avoid judges with a history of misconduct.⁷⁵ This Part explores some of the ways that information about misbehaving judges is shared—or not shared—with the clerkship applicants who need it.⁷⁶ It first critiques the standard law school advice—that students should “do their research” about judges prior to applying—given the lack of accessible information about judges. It then explains the concept of the “clerkships whisper network,” describes who possesses information about judges who mistreat their clerks, and discusses why both law schools and former clerks are incentivized, under the current regime, not to share this information with prospective clerks.

A. *“Do Your Research”*

The current mechanisms for students to identify judges to apply to—and those to avoid—are broken. Typically, law students⁷⁷ create lengthy lists of judges they plan to apply to.⁷⁸ They may share these lists with law school officials, professor mentors, former employers, or law clerks; they

74. The author uses phrases like “unsafe work environments” and work environments “particularly conducive to harassment” not to dissuade anyone from clerking but, rather, to underscore the urgency and severity of the problem.

75. LAP has created a Centralized Clerkships Reporting Database to combat these broken whisper networks. See Legal Accountability Project, Centralized Clerkship Reporting Database, <https://www.legalaccountabilityproject.org/clerkship-reporting-database> [<https://perma.cc/Q7YH-P8WW>] (last visited Jan. 27, 2023).

76. See Telephone Interview with Law School Administrator A, *supra* note 14; Interview with Law Student A, *supra* note 17; Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law Student B, *supra* note 38; Zoom Interview with Law School Administrator C, *supra* note 41; Zoom Interview with Law School Administrator D, *supra* note 43. Every law school campus urgently needs changes.

77. See Zoom Interview with Law Student B, *supra* note 38. The process is even more challenging for alumni considering clerkships several years post-graduation. Law schools are still willing to serve as a resource, and many alumni circle back with their alma maters for interview advice and assistance as well as letters of recommendation. See, e.g., Zoom Interview with Law School Administrator D, *supra* note 43 (stating that alumni return to the clerkship office for assistance with the application process). But since much of the “whispering” and information-sharing occurs in person, on campus, and between students and law school officials, alumni considering clerkships may be even less likely to access the information that law school officials are willing to share about judges. Zoom Interview with Law Student B, *supra* note 38.

78. Many students reported to the author that they applied to at least one hundred judges, often through OSCAR. See, e.g., Zoom Interview with Law Student B, *supra* note 38; Zoom Interview with Law Clerk, *supra* note 40; see also documentation on file with the author. Many law school officials told the author that they tell students to “apply broadly,” meaning across the United States and across the political spectrum. See, e.g., Zoom Interview with Law Clerk, *supra* note 40. The author herself submitted nearly one hundred applications when she was applying for clerkships between 2017 and 2018.

may not.⁷⁹ The reasons why students do not share their lists include lack of time (the clerkship application process is enormously time-consuming) and distrust that their institutions will share negative information about judges with them, even if they ask for it directly.⁸⁰

Law school administrators tell students to “do their research” about judges prior to applying—or at least prior to interviewing.⁸¹ But the processes by which law students frantically seek information about judges could hardly be characterized as “research.”⁸² Students may reach out to law clerk alumni from their law schools if their schools maintain and share contact information with students and if alumni have previously clerked for the judges to whom they are applying.⁸³ These are enormous “ifs.”⁸⁴ The majority of students cannot rely on alumni networks.⁸⁵ Numerous students describe “researching” online anonymous blogs for information about judges who mistreat their clerks.⁸⁶ Some schools conduct post-clerkship surveys of their alumni, which may be stored in searchable

79. See Zoom Interview with Law Student B, *supra* note 38; Zoom Interview with Law Clerk, *supra* note 40.

80. See Zoom Interview with Law Student B, *supra* note 38; see also Zoom Interview with Law Clerk, *supra* note 40. The author spoke with former clerks who faced mistreatment and did report back to their law school clerkship directors. One clerk characterized the experience this way: The clerkship director “doesn’t write anything down. [They] keep[] everything in [their] head.” See Zoom Interview with Law Clerk, *supra* note 40.

81. See Telephone Interview with Law School Administrator A, *supra* note 14; Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law School Administrator C, *supra* note 41; Zoom Interview with Law School Administrator D, *supra* note 43; see also Legal Accountability Project, The Legal Accountability Project—“Do Your Research”—Penn Law 11/10/22, YouTube (Feb. 26, 2023), https://www.youtube.com/watch?v=sAshg_XYSbE (on file with the *Columbia Law Review*).

82. See Zoom Interview with Law Student B, *supra* note 38; Zoom Interview with Law Clerk, *supra* note 40.

83. See Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law School Administrator C, *supra* note 41.

84. See Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law Student B, *supra* note 38.

85. See Zoom Interview with Law Student C (Summer 2022) (on file with author).

86. Zoom Event with Law Students (Fall 2022) (on file with author) (describing how students conduct research about judges). Several students flagged the Top Law Schools forum. See Best and Worst Judges to Clerk For Forum, Top L. Schs., <https://www.top-law-schools.com/forums/viewtopic.php?f=34&t=202778> [<https://perma.cc/8B89-BF2R>] (last visited Jan. 28, 2023). Both students and law school officials reference The Robing Room (a website where attorneys—not law clerks—can review judges before whom they have appeared) and the Almanac of the Federal Judiciary (which has a “judicial temperament” section). See Bob Ambrogi, Wolters Kluwer’s Almanac of the Federal Judiciary Now Includes Access to Judges’ Profiles and Reviews From Courtroom Insight, LawSites (Apr. 11, 2022), <https://www.lawnext.com/2022/04/wolters-kluwers-almanac-of-the-federal-judiciary-now-includes-access-to-judges-profiles-and-reviews-from-courtroom-insight.html> [<https://perma.cc/2REY-Q3CA>]; Robing Room, <https://www.therobingroom.net/judgesarejudged> [<https://perma.cc/6VJZ-9KLM>] (last visited Jan. 28, 2023).

internal law school databases.⁸⁷ However, there are few negative reports about judges.⁸⁸ This is because (1) law schools ask questions not intended to elucidate information about mistreatment;⁸⁹ (2) they send the message that negative reports are not welcome;⁹⁰ (3) they actively dissuade students from writing negative reports;⁹¹ or (4) law clerks fear retaliation or reputational harm, so they choose not to write reports at all.⁹²

No school has a monopoly on information about judges. Every school has a ceiling on the number of judges they can keep track of. Tracking efforts depend on whom alumni have clerked for in the past. The existing “resources” for students to use to avoid judges who mistreat clerks are outrageously inadequate. Since this prestigious first legal job has outsized influence over young attorneys’ future career prospects, a better system is necessary.⁹³ Furthermore, law schools may face misaligned incentives that preclude them from sharing unvarnished information with students about judges who mistreat their clerks.⁹⁴

87. See Shatzman, *Law Schools Are Part of the Problem*, supra note 4. The author has chosen not to share which law schools maintain these resources, since the schools consider them proprietary information. But many judges with whom the author has spoken know that these databases exist and know which schools maintain them.

88. See Interview with Law Student A, supra note 17; Telephone Interview with Law School Administrator B, supra note 19; Zoom Interview with Law Student B, supra note 38; Zoom Interview with Law Clerk, supra note 40; Zoom Interview with Law School Administrator C, supra note 41; Zoom Interview with Law School Administrator D, supra note 43.

89. Several students and alumni described the tone of their law school’s post-clerkship survey as, “You had a great experience, right?” See Zoom Interview with Law Student B, supra note 38.

90. Telephone Interview with Law School Administrator E (Summer 2022) (on file with author) (stating “we only have good judges” in the area). At least one law school’s post-clerkship survey includes a note that law clerks who experienced harassment should contact the clerkships dean rather than fill out the school’s post-clerkship survey. See Zoom Interview with Law Student B, supra note 38.

91. Several clerkship directors described to the author their efforts to convince mistreated law clerk alumni not to write negative reports about their clerkships in their schools’ post-clerkship surveys. These administrators characterized this as looking out for law clerks’ reputations. See, e.g., Zoom Interview with Law School Administrator C, supra note 41.

92. See Zoom Interview with Law Clerk, supra note 40; Zoom Interview with Law School Administrator C, supra note 41.

93. See *When Judges Mistreat Law Clerks: An Interview With Aliza Shatzman*, at 24:27, Original Jurisdiction (Nov. 30, 2022), <https://open.substack.com/pub/davidlat/p/when-judges-mistreat-law-clerks-an> (on file with the *Columbia Law Review*) [hereinafter *When Judges Mistreat Law Clerks*] (“What makes it a unique job is that judges have outsized influence over their former clerks’ lives, careers, and reputations, and that this first legal job for many folks has outsized influence over their future career success . . .”).

94. See Telephone Interview with Law School Administrator A, supra note 14; Interview with Law Student A, supra note 17; Zoom Interview with Law School Administrator D, supra note 43; supra notes 40, 90; see also *When Judges Mistreat Law Clerks*, supra note 93, at 10:17 (“I reached out to my law school . . . [and] found out that the judge has a history of harassing his clerks, which law school officials . . . knew about . . . at the time

B. *What Is the “Clerkships Whisper Network”?*

The clerkships whisper network is the backdoor, secretive method of information-sharing or “whispering” about mistreatment.⁹⁵ Those with information about judges who mistreat their clerks—either current or former clerks speaking from personal experience⁹⁶ or law school administrators⁹⁷—may, but do not always, share information with prospective applicants.⁹⁸ Law clerks considering whether to report their negative experience seek anonymity, worrying about reputational harm in the legal community and retaliation by judges.⁹⁹ Law clerks “whisper” because they have been taught to be fearful: This pervasive terror about incurring the wrath of a judge is partially a legal-community construct.¹⁰⁰ Judges have outsized influence over their former clerks’ career advancement, even many years later.¹⁰¹ Legal employers defer to judges’ references, not wanting to jeopardize their ability to appear before these judges in court.¹⁰² One professor who advises students on clerkships explained, “After graduation, your prospective employer won’t always call your professors, even if they

I accepted the clerkship . . . but decided not to share that with me . . . because they wanted another . . . student to clerk.”).

95. See Deborah Tuerkheimer, *Unofficial Reporting in the #MeToo Era*, 2019 U. Chi. Legal F. 273, 284–85 (describing the “Traditional Whisper Network” and “Double Secret Whisper Network” as allowing women to share stories of “sexual violation” either face-to-face or anonymously through technology).

96. Law clerks who witnessed or heard about problematic behaviors in neighboring chambers may also be tasked with sharing this information with prospective clerks. Based on the author’s numerous conversations with students about the clerkship application process and their information-gathering tactics, prospective clerks frequently reach out to clerks from other chambers within the courthouse to seek information about their potential employers.

97. “Law school administrator” refers to professors, deans, and clerkship directors.

98. See Telephone Interview with Law School Administrator A, *supra* note 14; Telephone Interview with Law School Administrator E, *supra* note 90; see also Zoom Interview with Law School Administrator D, *supra* note 43 (stating that only the administrator has access to the post-clerkship surveys they conduct).

99. See *supra* notes 40–41.

100. See *supra* notes 40–41. During LAP’s fall 2022 law school visits, several female professors approached the author after events to tell her that “the right professional decision would have been not to report,” to defend the female attorneys who made those statements to the author during summer and fall 2021, and to convey that they share this sentiment with students to prepare them for the legal profession. Students should demand a safer, fairer profession rather than accepting this status quo.

101. See Aliza Shatzman on *Judicial Accountability*, Ipse Dixit, at 03:35–03:40 (Jan. 13, 2023), <https://shows.acast.com/ipse-dixit/episodes/aliza-schatzman-on-judicial-accountability> (on file with the *Columbia Law Review*) [hereinafter, Shatzman on *Judicial Accountability*]; see also *supra* note 40.

102. Related statements were made by multiple law school professors at events with LAP in fall 2022, including at Washington & Lee University School of Law on October 6, 2022. Video on file with the author.

are listed as references—but they will call your judge.”¹⁰³ If a law clerk makes even a lukewarm statement about their judge, they fear the judge will give them a lukewarm reference that will destroy their career.¹⁰⁴ For these reasons, information about judges to avoid is not shared with those who need it: students.

C. *Current and Former Clerks as Holders and Sharers of Information*

If a student’s law school maintains a list of alumni contact information and they are applying for clerkships with judges for whom alumni have previously clerked, students may reach out to former clerks.¹⁰⁵ If this list does not exist at their law schools, they may use other networking mechanisms to seek information, such as LinkedIn,¹⁰⁶ contacting friends at other schools,¹⁰⁷ and asking mentors from summer jobs.¹⁰⁸ But the whisper network puts the onus on mistreated clerks to relive their negative clerkship experience—retraumatizing them—whenever students reach out.¹⁰⁹ Mistreated clerks are notoriously unwilling to share information, sometimes even removing themselves from law clerk alumni contact lists.¹¹⁰ Students must either maintain their own networks or attend a school that maintains one.¹¹¹ The many students whose law schools lack

103. *Id.*

104. As the author’s own clerkship experience indicates, see *infra* Part IV, this remains a possibility, considering that the judiciary has neither laws nor policies in place to prevent retaliation. But when law clerks do not report, the judges who mistreated them will likely mistreat other clerks. Stopping the cycle of abuse starts with sharing these experiences and warning the next generation of clerks.

105. See Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law Clerk, *supra* note 40; Telephone Interview with Law School Administrator E, *supra* note 90.

106. Based on the author’s research and conversations with law school administrators, law clerks often do not list the name of the judge for whom they clerked on LinkedIn.

107. Some students with whom the author spoke reached out to friends at law schools with more robust resources, and these friends shared their law school resources with their less well-connected colleagues. Documentation on file with the author.

108. Law students expressed to the author during several of LAP’s fall 2022 events that even when they conduct this outreach beyond their law schools, attorneys are still unwilling to share negative information about judges with them. They may use euphemisms like “fit” when they mean to imply mistreatment; the burden is on students to read between the lines. See Zoom Interview with Law Student B, *supra* note 38.

109. Zoom Interview with Law Clerk, *supra* note 40. In the author’s experience speaking with former clerks who have faced mistreatment, some remain traumatized many years later.

110. Documentation on file with the author. When alumni remove themselves from these lists, this means that the information about judges who mistreat their clerks is even less likely to be shared. Removing oneself from a list of law clerk alumni should be a red flag to law school administrators. Unfortunately, that is not always the case.

111. See People’s Parity Project, A Student’s Guide to Judicial Clerkships 2–3 (2020), <https://peoplesparity.org/wp-content/uploads/2020/04/Clerkships-Guide.pdf> [<https://perma.cc/LWY6-KXY7>] (demonstrating how students maintain their own networks); Vail Kohnert-Yount, HLS, Stop Funneling Unknowing Students to Known Harassers, Harv. L. Rec. (Feb. 19, 2020), <http://hlrecord.org/hls-stop-funneling->

robust networks of law clerk alumni are disadvantaged.¹¹² They may unwittingly walk into hostile work environments because they could not access critical information.¹¹³

D. *Law School Administrators as Holders and Sharers of Information*

A law school's clerkship director, dean of career services, or professors may maintain information about law clerk alumni's negative experiences.¹¹⁴ Unfortunately, law school officials thereby serve as gatekeepers of information about misbehaving judges. Since law clerk alumni often downplay or do not report back if they had negative experiences, law schools do not possess complete information about judges who mistreat their clerks.¹¹⁵ This enables some officials both to discount the scope of the problem¹¹⁶ and to disclaim responsibility, stating, for example: "We're blessed to work with only good judges in [this circuit]. All our alumni have positive clerkship experiences!"¹¹⁷ Law school officials' "blacklists" about judges do not capture the scope of the problem either.¹¹⁸

unknowing-students-to-known-harassers/ [https://perma.cc/3TSX-RCXN] ("Because HLS has failed to support students . . . we are forced to rely on a whisper network that we have to be lucky to even have access to.").

112. See Diversity and Federal Clerkships with Danielle Barondess and Steven Arango, Jabot (July 2, 2020), <https://podcasts.apple.com/us/podcast/diversity-federal-clerkships-danielle-barondess-steven/id1386838312?i=1000481767035> (on file with the *Columbia Law Review*).

113. Zoom Interview with Former Law Clerk A (Fall 2022) (on file with author). Several law clerks described the experience of entering prestigious appellate clerkships with co-clerks whose law schools maintained much more robust clerkship resources than their own alma maters—those co-clerks reportedly rattled off the names of judges known to mistreat their clerks.

114. Zoom Interview with Law School Administrator D, *supra* note 43.

115. Zoom Interview with Law Clerk, *supra* note 40.

116. Several law school administrators told the author that they did not believe that harassment during clerkships was a problem. One said, "Harassment is not happening in clerkships, it's just new attorneys adjusting to their first jobs." See Telephone Interview with Law School Administrator A, *supra* note 14. Other examples of administrators' attempts to discount negative clerkship experiences include, for example, "I know all the judges," and "It is our school's official policy that we do not warn students about judges who mistreat their clerks." Zoom Interview with Law School Administrator D, *supra* note 43. See Telephone Interview with Law School Administrator A, *supra* note 14; Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law School Administrator C, *supra* note 41; Zoom Interview with Law School Administrator D, *supra* note 43; Telephone Interview with Law School Administrator E, *supra* note 90.

117. See *supra* note 90.

118. The author encountered several law school administrators who expressed that they maintained blacklists of judges to avoid, but that they did not share those judges' names with students. See Zoom Interview with Law School Administrator C, *supra* note 41; *supra* note 19.

In fact, law clerk alumni who have faced mistreatment are notoriously unwilling to report back to their law schools.¹¹⁹ There are several reasons for this. First, they may fear reputational harm in the legal community, especially if they are hoping to rely on someone from their law school—whether a professor or a dean—as a reference in lieu of the judge who mistreated them.¹²⁰ Additionally, law clerk alumni may feel shame or worry they will be judged harshly by law school officials—either that they will not be believed or that administrators will blame them.¹²¹ Furthermore, mistreated clerks may report to their schools but ask that the information not be shared.¹²² Law schools are then placed in the “challenging” position of either warning students without disclosing the alumni’s identities or not warning them at all.¹²³

Law school officials who receive negative information from students and alumni about judges “informally” via phone calls and emails have neither established mechanisms for documenting this information nor processes for ensuring that future applicants are warned.¹²⁴ Not all schools share information about misbehaving judges with students.¹²⁵ Professors and administrators often “water down” negative experiences.¹²⁶ Law school officials claim they must weigh what to do when they receive conflicting reports—one positive experience and one negative—and they muse about whether they should share neither or both with students.¹²⁷ Administrators describe negative clerkship experiences as a “poor fit” or “personality clash” between clerk and judge.¹²⁸ These characterizations miss the mark. Law students do not need euphemisms from those they trust to have their best interests at heart—they need the unvarnished truth. Furthermore, when professors, rather than the clerkships office,

119. See *supra* note 40.

120. Zoom Interview with Law Clerk, *supra* note 40.

121. See Zoom Interview with Former Law Clerk B (Fall 2022) (on file with author).

122. Documentation on file with the author.

123. Telephone Interview with Law School Administrator F (Spring 2022) (on file with author) (stating that the law school does not warn students of notoriously misbehaving judges). Several law schools shared with the author that their express policy is not to warn students about judges who mistreat their clerks. Documentation on file with the author.

124. See Telephone Interview with Law School Administrator A, *supra* note 14; Zoom Interview with Law Clerk, *supra* note 40; Zoom Interview with Law School Administrator C, *supra* note 41; Zoom Interview with Law School Administrator D, *supra* note 43; Telephone Interview with Law School Administrator E, *supra* note 90; Telephone Interview with Law School Administrator F, *supra* note 123.

125. See Telephone Interview with Law School Administrator A, *supra* note 14; Interview with Law Student A, *supra* note 17; Zoom Interview with Law Clerk, *supra* note 40; Zoom Interview with Law School Administrator C, *supra* note 41; Zoom Interview with Law School Administrator D, *supra* note 43; Telephone Interview with Law School Administrator E, *supra* note 90; Telephone Interview with Law School Administrator F, *supra* note 123.

126. See *supra* notes 116, 117, 125 (citing interviews with law school administrators).

127. See *supra* notes 116, 117, 125 (citing interviews with law school administrators).

128. See *supra* notes 116, 117, 125 (citing interviews with law school administrators).

maintain this information, students are more heavily burdened to connect with the right professors prior to applying.¹²⁹ Law students need unadulterated information straight from the mouths, pens, or keyboards of mistreated clerks—not siloed-off half-truths filtered to law schools' comfort levels.

III. CLERKSHIPS ARE LAW SCHOOLS' EXPRESS PURVIEW—AND THAT'S A PROBLEM

The clerkship application process has resisted efforts at transparency, standardization, and centralization.¹³⁰ Every law school runs its clerkship program differently.¹³¹ Some schools offer numerous resources for students considering clerkships, while some have fewer.¹³² Generally, within a career services office, there is a private sector director, a public sector director, and at least one clerkships director or dean—someone whose sole role is to help students secure clerkships.¹³³ Many prestige-obsessed law schools are caught up in the clerkships machine—churning out cover letters and resumes, letters of recommendation, and law clerks. Some clerkship directors express that it seems extreme that law schools need several full-time staff members to help students secure clerkships.¹³⁴ They also suggest that understaffed clerkship teams are resistant to changes aimed at protecting law clerks from harassment not because they do not care but because they are overworked and under-resourced.¹³⁵

For law schools, both the raw number and the prestige of clerkships their graduates secure factor into the informal public perception of the schools.¹³⁶

129. See *supra* notes 116, 117, 125 (citing interviews with law school administrators).

130. Documentation on file with the author, based on conversations with numerous law school deans and clerkship directors between May 2022 and the present. See, e.g., *supra* note 123.

131. See *supra* note 130.

132. See *supra* note 130. The robustness of a school's clerkship program is not necessarily tied to its U.S. News and World Report (USNWR) ranking. See Robert Morse, Kenneth Hines, Eric Brooks & Daniel Lara-Agudelo, Methodology: 2023 Best Law Schools Rankings, U.S. News & World Rep. (Mar. 28, 2022), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> (on file with the *Columbia Law Review*).

133. See, e.g., OCS Staff Directory, Harv. L. Sch., <https://hls.harvard.edu/ocs/about-ocs/ocs-staff-directory/> [<https://perma.cc/N2KE-QLR9>] (last visited Apr. 8, 2023); see also Bernard Koteen Office of Public Interest Advising, Harvard L. Sch., <https://hls.harvard.edu/bernard-koteen-office-of-public-interest-advising/> [<https://perma.cc/688D-CB3D>] (last visited Apr. 8, 2023).

134. See, e.g., Telephone Interview with Law School Administrator A, *supra* note 14.

135. *Id.*

136. While the top law schools' withdrawal from the USNWR rankings might make them less resistant to change, it is not simply the rankings that are problematic. See Anemona Hartocollis & Eliza Fawcett, As More Top Law Schools Boycott Rankings, Others Say They Can't Afford to Leave, N.Y. Times (Nov. 18, 2022), <https://www.nytimes.com/2022/11/18/us/law-school-rankings-test-scores.html> (on file with the *Columbia Law Review*) (noting that several highly ranked law schools have boycotted

Especially among similarly ranked schools, the robustness of a school's clerkship program draws both the most competitive law school applicants and the best faculty members (who themselves bring with them cherished clerkship networks and relationships with judges).¹³⁷ Law schools' relationships with the judiciary are enormously intertwined.¹³⁸ Disrupting the system is risky, even if increased transparency is in students' best interest.¹³⁹

Law schools are incentivized to convince students to clerk.¹⁴⁰ They invest substantial resources in this endeavor.¹⁴¹ The clerkship application process within law schools is both regimented and disorganized. For "nuts and bolts" questions, law schools are meticulous.¹⁴² Yet when students seek assistance in identifying judges who will respect them, they describe the system as "a black box," "confusing," and "opaque," and they express enormous distrust of their institutions' motives and willingness to share information.¹⁴³ Law schools' existing clerkship processes include programming, reliance on alumni networks, and post-clerkship surveys of law clerk alumni.

In addition to "nuts and bolts" clerkship programming,¹⁴⁴ law schools invite alumni back to campus to discuss their positive clerkship experiences.¹⁴⁵ They also invite judges—including judges who are alumni—to campus to build relationships with students.¹⁴⁶ Prior to LAP's campus visits this school year, the law school messaging around clerkships was overwhelming positive, and clerkship applicants lacked a critical perspective.

the rankings). Law schools can (and do) tout their clerkship numbers on their websites. See, e.g., Clerkships, Geo. L., <https://www.law.georgetown.edu/clerkships/> [<https://perma.cc/VWF6-DUQ9>] (last visited Jan. 28, 2023).

137. See Zoom Interview with Law Student D (Fall 2022) (on file with author).

138. See Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law Student B, *supra* note 38; Zoom Interview with Law School Administrator D, *supra* note 43; Telephone Interview with Law School Administrator E, *supra* note 90.

139. Clerkship teams take their success in this arena quite personally—proposed disruption may be perceived as criticism. See, e.g., Telephone Interview with Law School Administrator B, *supra* note 19.

140. See, e.g., Telephone Interview with Law School Administrator A, *supra* note 14; Telephone Interview with Law School Administrator B, *supra* note 19; Telephone Interview with Law School Administrator E, *supra* note 90.

141. See *supra* note 140.

142. See, e.g., CCD Staff, *supra* note 8.

143. See Interview with Law Student A, *supra* note 17; Zoom Interview with Law Student B, *supra* note 38; Zoom Interview with Law Clerk, *supra* note 40.

144. See, e.g., Clerkship Nuts & Bolts, Yale L. Sch. (Feb. 2, 2022), <https://law.yale.edu/yals-today/yale-law-school-events/clerkship-nuts-bolts-610pm-est> [<https://perma.cc/Q4B4-HSW2>] (advertising an event for Yale Law School students to learn the basics of the clerkship application process). Students also learn how to use OSCAR. See *supra* note 22.

145. See, e.g., SLS Alumni on Judicial Clerkships: What Does a Clerk Do and What's In It for You?, Stan. L. Sch., <https://law.stanford.edu/event/clerkship-alumni-panel/> [<https://perma.cc/8R5V-3KV4>] (last visited Feb. 17, 2022) (advertising an event for Stanford Law students to hear alumni talk about their clerkship experiences).

146. See Clerkships, WashULaw, *supra* note 37.

Many law schools also maintain lists of alumni who clerked; these may include contact information.¹⁴⁷ Some law schools closely guard alumni lists—students must provide their lists of potential judges to clerkship directors, who make introductions to alumni.¹⁴⁸

For schools with robust alumni networks, students are tasked with substantial outreach.¹⁴⁹ The clerkship application process is time-consuming, confusing, and burdensome—and students must balance full course loads, activities, and other job applications. Students cannot engage in multiple conversations with law clerk alumni before each interview—let alone before each application.¹⁵⁰ Furthermore, when mistreated law clerk alumni remove themselves from alumni lists, students do not benefit from their perspectives.¹⁵¹

A handful of law schools conduct post-clerkship surveys of their law clerk alumni, similar to the post-internship surveys that many students complete.¹⁵² The intent of the post-clerkship survey, however, is not to capture information about mistreatment.¹⁵³ Rather, it is to collect information that will help students secure clerkships.¹⁵⁴ Some schools make surveys accessible to students, either in searchable databases or in binders in the clerkships office.¹⁵⁵

147. See Telephone Interview with Law School Administrator A, *supra* note 14; Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law School Administrator C, *supra* note 41; Telephone Interview with Law School Administrator F, *supra* note 123.

148. The author was told that this is to prevent students from overwhelming law clerk alumni with outreach. Zoom Interview with Law School Administrator G (Summer 2022) (on file with author) (stating that the school does not make alumni contact information readily available to students but will connect them if appropriate).

149. Students and alumni indicated to the author that they sought information from multiple law clerks who clerked for the same judge as well as information from law clerks from neighboring chambers. The mechanisms they described to the author to track down clerks to speak with were incredibly burdensome, and students were not always able to speak with any clerks prior to interviewing. See Zoom Interview with Law Student B, *supra* note 38.

150. See *supra* note 149.

151. On the other hand, law students at schools without robust alumni networks are disadvantaged. They can either track down former clerks through some other mechanism or go without important information.

152. The author's article with the *Yale Law & Policy Review* includes a more robust explanation of law schools' post-clerkship surveys and internal databases. See Shatzman, *Law Schools Are Part of the Problem*, *supra* note 4.

153. See *id.* Several law school administrators explicitly told the author that they would not ask questions about mistreatment. See, e.g., Interview with Law School Administrator H (Fall 2022) (on file with author).

154. Interview with Law School Administrator H, *supra* note 153.

155. See Telephone Interview with Law School Administrator B, *supra* note 19; Zoom Interview with Law Clerk, *supra* note 40; Zoom Interview with Law School Administrator C, *supra* note 41; Zoom Interview with Law Student B, *supra* note 90; Telephone Interview with Law School Administrator F, *supra* note 123; Interview with Law School Administrator H,

However, these databases contain few negative reports about judges, for several reasons. First, the questions asked are not intended to elucidate information about mistreatment.¹⁵⁶ Some students and alumni have characterized the tone of the questions as, “You had a positive clerkship experience, right?”¹⁵⁷ In other surveys, law clerks are explicitly instructed to reach out to a dean or clerkship director *rather than* report mistreatment in the survey.¹⁵⁸ Troublingly, some administrators actively dissuade law clerks from writing negative reports, suggesting it could negatively affect their reputations.¹⁵⁹ In many instances, law clerks simply write, “Contact me.”¹⁶⁰ Students are expected to understand that this is a euphemism for mistreatment.¹⁶¹ Students deserve better from their law schools. Yet post-clerkship surveys accessible in searchable databases currently represent the gold standard for clerkship resources, and they are closely guarded by the few schools that maintain them.¹⁶²

Law schools generally understand that their surveys do not capture the scope of the problem.¹⁶³ The response rate for these surveys is sometimes low.¹⁶⁴ This is not because alumni are busy and over-surveyed, but because alumni distrust their alma maters.¹⁶⁵ Mistreated clerks, including those whose alma maters conduct post-clerkship surveys, often do not fill out their school’s survey.¹⁶⁶ They do not feel sufficiently anonymous—in

supra note 153. The schools that maintain surveys only in hard-copy binders engage an additional gatekeeping mechanism that precludes students from accessing information.

156. See supra note 155 (citing interviews about the nature and availability of post-clerkship survey data).

157. See Zoom Interview with Law Student B, supra note 38. The author has also been able to view post-clerkship survey questions, and administrators at numerous institutions shared the questions with the author.

158. See Telephone Interview with Law School Administrator B, supra note 19; Zoom Interview with Law Student B, supra note 38.

159. See Zoom Interview with Law School Administrator C, supra note 41.

160. See Telephone Interview with Law School Administrator B, supra note 19; Zoom Interview with Law School Administrator C, supra note 41; Zoom Interview with Law Student B, supra note 38.

161. See Telephone Interview with Law School Administrator B, supra note 19; Zoom Interview with Law Student B, supra note 38.

162. See Shatzman, *Law Schools Are Part of the Problem*, supra note 4.

163. See Zoom Interview with Law Clerk, supra note 40; Telephone Interview with Law School Administrator F, supra note 123.

164. See Telephone Interview with Law School Administrator A, supra note 14; Telephone Interview with Law School Administrator B, supra note 19; Zoom Interview with Law School Administrator C, supra note 41; Zoom Interview with Law School Administrator D, supra note 43; Telephone Interview with Law School Administrator F, supra note 123; Interview with Law School Administrator H, supra note 153.

165. See Interview with Law Student A, supra note 17; Zoom Interview with Law Student B, supra note 38; Zoom Interview with Law Clerk, supra note 40.

166. See Zoom Interview with Law Student B, supra note 38; Zoom Interview with Law Clerk, supra note 40.

fact, some schools do not allow anonymous reporting.¹⁶⁷ Many schools are small enough that anonymous reporters can be identified.¹⁶⁸ Mistreated clerks fear reputational harm in the legal community, retaliation by judges, and judgment from law school officials.¹⁶⁹ Clerks want to warn the next generation of attorneys but do not want to report back to their law schools, necessitating additional, independent reporting mechanisms.¹⁷⁰

IV. HARASSMENT IS PERVASIVE AND UNADDRESSED IN BOTH THE FEDERAL AND STATE COURTS

Gender discrimination, harassment, bullying, and retaliation are pervasive problems in both federal and state courts. This is due to structural aspects of clerking,¹⁷¹ the lack of workplace protections,¹⁷² and aspects of judiciary—and legal community—culture that encourage silence.¹⁷³ Unfortunately, the dearth of data makes it difficult to quantify the scope of the problem, which is the first step toward crafting effective solutions.¹⁷⁴ This Part highlights a few particularly egregious examples of judicial misconduct.¹⁷⁵ While each law clerk's experience is unique,¹⁷⁶ common themes include (1) how the enormous power disparity between judge and clerk makes these employees vulnerable and may silence them in the face of outrageous mistreatment and (2) the challenges clerks

167. See Zoom Interview with Law Student B, *supra* note 38; Zoom Interview with Law Clerk, *supra* note 40.

168. See Zoom Interview with Law Clerk, *supra* note 40 (indicating anonymity is a primary concern about informally reporting to law schools because for a judge with only a few clerks, a clerk might be identifiable to students and alumni reading the survey).

169. See *id.*

170. See Zoom Interview with Law School Administrator C, *supra* note 41; Zoom Interview with Law Clerk, *supra* note 40.

171. See *supra* sections I.A–D.

172. See *supra* notes 59–68 and accompanying text.

173. See *supra* Part II.

174. See *supra* note 59 and accompanying text.

175. See, e.g., Marimow, *Judges Accused of Sex Discrimination*, *supra* note 60 (highlighting “instances of gender discrimination, bullying and racial insensitivity” as reported “in a confidential workplace survey conducted for federal trial and appeals courts in the nation’s capital”). The only statements describing former clerks’ experiences discussed herein are those that are publicly available. Former clerks who faced mistreatment have numerous reasons for coming forward or not coming forward, sharing certain aspects of their experience or keeping others private, and continuing to engage in the public dialogue on these issues or choosing to move on. All of these former clerks’ testimony are worth reading and watching in full.

176. Since the author began speaking about her experience with harassment and retaliation, she has found that current and former clerks, attorneys at all stages of their careers, and even those outside the profession reach out to confide in her about their own experiences with workplace mistreatment. These experiences resonate with many people, which is why it is so important to share them.

face in seeking justice for themselves and accountability for their harassers.¹⁷⁷

Beginning in 2017, several former judiciary employees blew the whistle on devastating mistreatment in the Ninth Circuit, much of which had been an open secret for decades.¹⁷⁸ These stories are important to share because mistreated employees draw strength from hearing about similar experiences, and they may subsequently feel empowered to come forward themselves. These experiences, while not rare, are rarely shared publicly.¹⁷⁹

A. *2017: Former Ninth Circuit Judge Alex Kozinski*

In 2017, several of then-Judge Kozinski's former clerks, including Heidi Bond,¹⁸⁰ as well as other individuals who came in contact with Kozinski on the Ninth Circuit,¹⁸¹ alleged that the judge had "subjected

177. This Piece does not comment on either (1) the extent to which the law schools of these former clerks knew about the prior misconduct of their judges when the clerks accepted their clerkships or (2) the responses of their law schools to the clerks' public statements. When allegations of misconduct came to light in the Ninth Circuit in 2017, so too did allegations that many in the legal community—including professors and administrators—were aware of judges' problematic behaviors and yet continued to encourage students to clerk for high-profile judges.

178. See Zapotosky, *Judge Accused of Sexual Misconduct*, supra note 39 (reporting on allegations against former chief judge of the U.S. Court of Appeals for the Ninth Circuit Alex Kozinski, including claims of sexual harassment and misconduct). Senator Dianne Feinstein, from California, where the Ninth Circuit sits, claimed that she as a California politician and attorney herself had long been aware of Kozinski's reputation for misconduct. See *Confronting Sexual Harassment Hearing Video*, supra note 47, at 45:58. Additionally, as Ms. Warren noted, "some of the profane aspects of life in [Judge Reinhardt's] chambers were fairly well-known." H. Judiciary Subcomm. on Cts., *Intell. Prop. & the Internet, Protecting Federal Judiciary Employees from Sexual Harassment, Discrimination, and Other Workplace Misconduct*, YouTube, at 41:30 (Feb. 13, 2020), https://www.youtube.com/watch?v=3wu6ePBNFhI&t=3779s&ab_channel=HouseCommitteeontheJudiciary (on file with the *Columbia Law Review*) [hereinafter *Olivia Warren House Judiciary Video*] (statement of Olivia Warren).

179. See *Legal Industry Harassment Is Not Rare, but Rarely Shared*, With Aliza Shatzman, *Jabot* (Dec. 2, 2022), <https://atthejabot.libsyn.com/legle-industry-harassment-is-not-rare-but-rarely-shared-with-aliza-shatzman-episode-135> (on file with the *Columbia Law Review*).

180. See Letter from Heidi S. Bond, supra note 39. In her letter, Ms. Bond identifies five "red flags" that should have triggered an investigation into then-Judge Kozinski's misconduct sooner. *Id.* at 2–7. For example, she describes how clerks were expected to remain in chambers "until 1:30 AM every day, whether there was work to be done or not. Kozinski would regularly call close to the time to check to make sure we were present." *Id.* at 2. Kozinski also forbade his clerks from interacting with clerks from other chambers. *Id.* at 2–3. Ms. Bond also flagged that "Kozinski had an unusually large number of clerks leave partway through their term because the work environment was unbearable," and she argued that the judiciary should be required to keep track of and report data on judges who have a notably high number of clerks leave partway through their clerkships. *Id.* at 4.

181. See *Dahlia Lithwick, He Made Us All Victims and Accomplices*, *Slate* (Dec. 13, 2017), <https://slate.com/news-and-politics/2017/12/judge-alex-kozinski>

them to a range of inappropriate sexual conduct or comments.”¹⁸² Ms. Bond described instances in which Kozinski showed her and another clerk pornography, “asking if . . . it aroused her sexually.”¹⁸³ Another Ninth Circuit clerk described an incident in which Kozinski approached her and began asking her about exercising while naked.¹⁸⁴ Clerks did not file complaints because they understood that not leaving with good references could destroy their careers.¹⁸⁵ They also indicated that they were not sure where to go to report the misconduct.¹⁸⁶ Additionally, Kozinski told clerks that their law clerk oaths of confidentiality prevented them from reporting misconduct.¹⁸⁷ Kozinski has since retired.¹⁸⁸ Yet he has recently attempted to reenter public life.¹⁸⁹

made-us-all-victims-and-accomplices.html [https://perma.cc/2GMZ-4RE6] (describing the relationship between judge and law clerk as one of “worshipful silence”).

182. See Zapotosky, Judge Accused of Sexual Misconduct, *supra* note 39.

183. *Id.*

184. *Id.*

185. *Id.*

186. One former clerk stated, “I was afraid . . . I mean, who would I tell? Who do you even tell? Who do you go to?” *Id.*

187. See Alison Frankel, Breaking the Law Clerks’ Code of Silence: The Sexual Misconduct Claims Against Judge Kozinski, *Reuters* (Dec. 13, 2017), <https://www.reuters.com/article/us-otc-kozinski-idUSKBN1E72YX> [https://perma.cc/555D-AC22]; see also Letter from Heidi S. Bond, *supra* note 39, at 4–5.

188. See Matt Zapotosky, Federal Appeals Judge Announces Immediate Retirement Amid Probe of Sexual Misconduct Allegations, *Wash. Post* (Dec. 18, 2017), https://www.washingtonpost.com/world/national-security/federal-appeals-judge-announces-immediate-retirement-amid-investigation-prompted-by-accusations-of-sexual-misconduct/2017/12/18/6e38ada4-e3fd-11e7-a65d-1ac0fd7f097e_story.html (on file with the *Columbia Law Review*). Due to a loophole and distinction between judicial “retirement” and “resignation,” former judge Kozinski continues to collect a lifetime pension—consuming taxpayer dollars after committing misconduct. If a judge retires, he can continue to collect his lifetime pension; if he resigns, he relinquishes his pension. See 28 U.S.C. §§ 371–374 (2018) (defining judicial retirement and resignation); see also Stephen B. Burbank, S. Jay Plager & Gregory Ablavsky, Leaving the Bench, 1970–2009: The Choices Federal Judges Make, What Influences Those Choices, and Their Consequences, 161 *U. Pa. L. Rev.* 1, 4–5 (2012); Retiring to Avoid Consequences: Judges Exploit a Loophole to Maintain Pensions in Spite of Misconduct, *Fix the Ct.* (Oct. 1, 2021), <https://fixthecourt.com/2021/10/retiring-to-avoid-consequences-judges-exploit-a-loophole-to-maintain-pensions-in-spite-of-misconduct> [https://perma.cc/EP3Y-ZP7V] [hereinafter Retiring to Avoid Consequences].

189. See Matt Zapotosky, Judge Who Quit Over Harassment Allegations Reemerges, Dismaying Those Who Accused Him, *Wash. Post* (July 24, 2018), https://www.washingtonpost.com/world/national-security/judge-who-quit-over-harassment-allegations-reemerges-dismaying-those-who-accused-him/2018/07/23/750a02f2-89db-11e8-a345-a1bf7847b375_story.html (on file with the *Columbia Law Review*). As evidence that Kozinski does not take judicial misconduct seriously, see Robin Pogrebin & Kate Kelly, The Education of Brett Kavanaugh: An Investigation 83 (2019) (“The closeness between Kavanaugh and Kozinski was evident in 2015 . . . Sitting next to each other onstage at the Mayflower Hotel, . . . Kavanaugh also laughed heartily when Kozinski joked that ‘being a judge means never having to say you’re sorry.’”).

B. *2020: Ninth Circuit Judge Stephen Reinhardt*

In February 2020, Olivia Warren, former Ninth Circuit law clerk to the late Judge Stephen R. Reinhardt, testified before the House Judiciary Committee about her harrowing experience of sexual harassment in chambers.¹⁹⁰ Ms. Warren described how, on her first day, she noticed a sine curve drawing taped above her computer with dots added to resemble breasts.¹⁹¹ The judge asked Ms. Warren if the drawing was “accurate,” meaning whether it resembled her own breasts.¹⁹² Judge Reinhardt also graded clerks based on their attractiveness.¹⁹³ Apparently Judge Reinhardt was enraged by the #MeToo movement, telling Ms. Warren that “the allegations of sexual harassment that came out against people like Louis C.K. and Harvey Weinstein were made by women who had initially ‘wanted it,’ and then changed their minds.”¹⁹⁴ The judge became further enraged by sexual harassment allegations against his friend Kozinski: He told Ms. Warren that he would never again hire female clerks because “women could not be trusted.”¹⁹⁵ Reflecting on harassment’s implications for pipelines in the legal profession, particularly for historically marginalized groups, Ms. Warren explained: “[O]thers who have similarly experienced harassment are leaving the profession or changing their goals in ways that deprive all of us of the valuable contributions they could have provided to the law had they not been harassed.”¹⁹⁶

C. *2021–2022: Judiciary Accountability Act*

190. Olivia Warren’s compelling testimony is worth reading and watching in full. Olivia Warren House Judiciary Testimony, *supra* note 39; Olivia Warren House Judiciary Video, *supra* note 178.

191. Olivia Warren House Judiciary Testimony, *supra* note 39, at 5.

192. *Id.* at 5–6. Following her clerkship, Ms. Warren tried to report the harassment to the Ninth Circuit, but she could not receive assurances about confidentiality. She also reached out to her alma mater, Harvard Law School, but she was disappointed by their response. It took her several weeks to get a meeting with the administration. Warren believes that Harvard Law School still has not implemented processes that would protect future clerks from sexual harassment and violence. When she spoke with the administration, she “emphasized that students rarely hear about negative clerkship experiences for many of the systemic reasons that [she had] explained, and described how misled [she] felt by the institutional push to clerk.” *Id.* at 14–15.

193. *Id.* at 6–7. Furthermore, “At times he used homophobic slurs: for example, a gay female clerk was repeatedly referred to by the judge as a ‘dykester,’ which he found funny.” *Id.* at 7. Judge Reinhardt also reserved a shelf in his office for pictures with his “pretty clerks.” *Id.* at 6.

194. *Id.* at 8.

195. See *id.* at 8–9. At a 2018 Senate Judiciary hearing, then-Senator Kamala Harris questioned AO Director James Duff about whether he was aware that other male judges were threatening to avoid sexual harassment complaints by no longer hiring female law clerks. See *Confronting Sexual Harassment Hearing Video*, *supra* note 47, at 0:59:15–1:06:05. Mr. Duff furnished evasive answers. *Id.*

196. Olivia Warren House Judiciary Testimony, *supra* note 39, at 17–18.

In July 2021, responding to several years' worth of public allegations of judicial misconduct and federal judiciary leadership's insufficient steps to address it,¹⁹⁷ the House and Senate Judiciary Committees introduced the Judiciary Accountability Act (JAA).¹⁹⁸ The JAA would finally extend Title VII protections to judiciary employees—including law clerks and federal public defenders¹⁹⁹—enabling them to sue their harassers and seek damages²⁰⁰ for harm done to their careers, reputations, and future earning potential.²⁰¹ Additionally, the JAA would revise the definition of “judicial misconduct” in Title 28 of the U.S. Code to include discrimination and retaliation.²⁰² It would also clarify that misconduct investigations can continue even if the judge who faces allegations retires, resigns, or dies.²⁰³ Furthermore, the JAA would create

197. 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 [<https://perma.cc/B7AB-QRFL>]; see also Working Group Status Report, *supra* note 47.

198. See Press Release, Chairman Jerrold Nadler, House Comm. on the Judiciary, Nadler & Johnson Introduce Bipartisan, Bicameral Legislation to Hold Judiciary Accountable to Workers (July 29, 2021), <https://democrats-judiciary.house.gov/news/documentsingle.aspx?DocumentID=4685> [<https://perma.cc/735K-C5D2>]; see also Press Release, Congresswoman Jackie Speier, U.S. House of Representatives, Rep. Speier Joins Rep. Johnson in Introduction of Bipartisan, Bicameral Legislation to Hold Judiciary Accountable to Workers (July 29, 2021), <https://speier.house.gov/press-releases?id=40231C86-7099-4FE4-8F1D-2946AA8F8335> [<https://perma.cc/FEW9-YAQQ>].

199. See Judiciary Accountability Act of 2021, H.R. 4827, 117th Cong. § 10(2); see also Workplace Protection Hearings, *supra* note 59 (testimony of Caryn Devins Strickland) [hereinafter Strickland House Hearing Testimony].

200. See H.R. 4827 § 2(a) (proposing amendment to 28 U.S.C. to add § 964(b)).

201. See Ariane Hegewisch, Jessica Roden & Eve Mefferd, *Paying Today and Tomorrow* 42 (2021), https://iwpr.org/wp-content/uploads/2021/07/Paying-Today-and-Tomorrow_Charting-the-Financial-Costs-of-Workplace-Sexual-Harassment_FINAL.pdf [<https://perma.cc/C5R5-YJ3A>] (describing the financial damage that harassment causes).

202. The bill establishes discrimination and retaliation as judicial misconduct by amending 28 U.S.C. § 358 (“Judiciary and Judicial Procedure”). Specifically, Section 8 of the JAA states that the following shall be added:

IN GENERAL.—Each judicial council and the Judicial Conference shall prescribe rules for the conduct of proceedings under this chapter, including the processing of petitions for review that—(1) ensure the independence, integrity, impartiality, and competence of proceedings under this chapter; (2) ensure the greatest possible public confidence in proceedings under this chapter and maintain public confidence in the Federal judiciary; (3) reflect that the judicial office is a position of public trust; and (4) effectuate sections 453 and the provisions of the Judiciary Accountability Act of 2021.

H.R. 4827 § 8(a)(1). Furthermore, the JAA also adds the following language to the Judiciary and Judicial Procedure part of the U.S. Code: “[W]orkplace misconduct (as defined in the Judiciary Accountability Act of 2021) constitutes a violation of this chapter, including conduct prohibited under sections 964 and 965 of this title.” *Id.* § 8(2)(c).

203. *Id.* § 8(d) (amending 28 U.S.C. § 352). Judges exploit the current regime by retiring to avoid misconduct investigations. See Burbank et al., *supra* note 188, at 4–5; Retiring to Avoid Consequences, *supra* note 188.

a Commission on Judicial Integrity²⁰⁴ that would oversee several important initiatives, including standardizing Employee Dispute Resolution Plans,²⁰⁵ creating a confidential reporting system,²⁰⁶ crafting a workplace misconduct prevention policy,²⁰⁷ and administering workplace culture assessments.²⁰⁸ The JAA would also require the judiciary to collect and report data on workplace culture,²⁰⁹ the outcomes of judicial complaints,²¹⁰ and diversity in hiring.²¹¹ The lack of data in these areas has enabled some judges to get away with misconduct for far too long.

In March 2022, the House Judiciary Subcommittee on the Courts, Intellectual Property, and the Internet held a hearing on the JAA.²¹² Former law clerk Caitlyn Clark²¹³ and former public defender Caryn Strickland²¹⁴ testified, and I submitted written testimony.²¹⁵

Ms. Clark was excelling in her clerkship with Judge C. Ashley Royal, a senior judge in the U.S. District Court for the Middle District of Georgia, when she became pregnant with her second child.²¹⁶ Her pregnancy angered Judge Royal, who told her that she “lacked . . . drive and intensity” and that while clerking “may be a ‘good mommy job,’ work still has to get done.”²¹⁷ Judge Royal ultimately ended Ms. Clark’s clerkship

204. Membership on the sixteen-member Commission on Judicial Integrity would include two recent clerks, who clerked within four years of their selection, as well as experts and judges. H.R. 4827 § 4(b).

205. *Id.* § 4(g)(4)(C).

206. *Id.* § 4(f)(2).

207. *Id.* § 4(f).

208. *Id.* § 4(g)(6)(B).

209. *Id.*

210. See *id.* § 4(f)(7).

211. *Id.* § 4(f)(8). Furthermore, the JAA would create an Office of Employee Advocacy (OEA) to provide legal advice and assistance to judiciary employees seeking judicial accountability. See *id.* § 7. Specifically, “the relationship between the OEA and an employee to whom the OEA provides legal assistance, consultation, and representation under this section shall be the relationship between an attorney and client.” *Id.* § (c)(3).

212. See Ann E. Marimow, *Former Judiciary Workers Urge Congress to Protect Court Employees From Discrimination and Harassment*, Wash. Post (Mar. 17, 2022), <https://www.washingtonpost.com/politics/2022/03/17/court-workers-harassment-discrimination/> (on file with the *Columbia Law Review*) [hereinafter Marimow, *Former Judiciary Workers*] (noting that “law clerks and other federal judiciary employees shared highly personal stories of workplace harassment and discrimination”).

213. See *Workplace Protection Hearings*, supra note 59 (testimony of Caitlyn Clark) [hereinafter *Clark House Hearing Testimony*] (noting that Caitlyn Clark is “a former law clerk to Judge C. Ashley Royal, a Senior U.S. District Judge on the U.S. District Court for the Middle District of Georgia”).

214. See *Strickland House Hearing Testimony*, supra note 199.

215. A congressional statement for the record summarized the author’s clerkship experience. See *Workplace Protection Hearings*, supra note 59 (statement of Aliza Shatzman) [hereinafter *Shatzman House Hearing Testimony*].

216. See *Clark House Hearing Testimony*, supra note 213, at 1.

217. *Id.* at 5.

early—in 2021 rather than 2023.²¹⁸ Ms. Clark attempted to engage in Employee Dispute Resolution (EDR), which she discovered is not impartial since the judge’s colleagues were tasked with investigating and potentially disciplining him.²¹⁹ When EDR was unsuccessful, Ms. Clark filed a formal judicial complaint under the Judicial Conduct and Disability Act, on which she had yet to receive an update “in the over six months since” receiving receipt acknowledgment.²²⁰ Ms. Clark detailed the struggles she faced while engaging in EDR.²²¹ She discovered that she had no recourse when she was mistreated by one of the most powerful members of the legal community.²²² Ms. Clark’s experiences with EDR and the formal judicial complaint process are not unique.

Caryn Devins Strickland²²³ had just embarked on a promising career as an assistant federal public defender in North Carolina when she began to experience gender discrimination, harassment,²²⁴ and ultimately retaliation by the male First Assistant²²⁵ and male Federal Defender in her office.²²⁶ The First Assistant singled out Ms. Strickland for mistreatment and stalked her.²²⁷ She attempted to engage in EDR but, like Ms. Clark, discovered that EDR was neither impartial nor confidential because federal defender leadership was tasked with investigating the First Assistant.²²⁸ She described how she was “stonewalled at every turn”²²⁹ as she sought redress.

Like Ms. Strickland, I had recently embarked on a promising career—as a prosecutor in Washington, D.C.—when gender discrimination, harassment, and retaliation derailed my legal career. I clerked in the

218. *Id.* at 7.

219. *Id.* at 10–13. Specifically, “[i]n each of the available avenues for dispute resolution under the EDR Plan, complaints against sitting judges are adjudicated by the judges’ peers, leaving the fox guarding the henhouse.” *Id.* at 10.

220. *Id.* at 15.

221. *Id.* at 15–16.

222. *Id.* at 8.

223. Ms. Strickland is currently engaged in litigation in the Fourth Circuit. Her attorneys have raised Fifth Amendment Due Process and Equal Protection claims. See *Strickland v. United States*, 32 F.4th 311, 320 (4th Cir. 2022).

224. See *Strickland House Hearing Testimony*, *supra* note 199, at 5–6. This included quid pro quo harassment, in which one of Strickland’s supervisors implied, in an email entitled “mas dinero,” that he would help her advance in the office in exchange for sexual favors. *Id.* at 6.

225. The First Assistant is a supervisor within the Federal Defender’s Office that controls operations and has supervisory authority over trial units. *Id.* at 4.

226. Federal public defenders are considered part of the judicial branch, and they are similarly exempt from Title VII. The JAA would also correct this injustice. Judiciary Accountability Act, H.R. 4827, 117th Cong. (2021).

227. See *Strickland House Hearing Testimony*, *supra* note 199, at 6.

228. *Id.* at 10, 12. After Ms. Strickland departed the office, her former coworkers circulated rumors about poor performance and characterized her EDR complaint as if she had “lost.” *Id.* at 14–15.

229. *Id.* at 18.

Superior Court of the District of Columbia (D.C. Superior Court) during the 2019–2020 term because I aspired to be a homicide prosecutor in the D.C. U.S. Attorney’s Office (USAO) and knew that D.C. Assistant U.S. Attorneys (AUSAs) appeared before Superior Court judges.²³⁰ My law school instructed me to apply broadly—across the country and across the political spectrum—and to accept the first clerkship I was offered. So I did.

I wish that I had not accepted the clerkship. Beginning just weeks in, the judge for whom I clerked began to harass me and discriminate against me because of my gender. He would kick me out of the courtroom, telling me that I made him “uncomfortable” and that he “just felt more comfortable” with my male co-clerk.²³¹ He told me I was “aggressive,” “nasty,” and that I had “personality issues.”²³² The day I learned I passed the Bar Exam—a big day in my life—he called me into his chambers and told me, “You’re bossy. And I know bossy because my wife is bossy!”²³³

I was devastated. I cried in the courthouse bathroom every day and cried myself to sleep each night. I wanted to be reassigned to a different judge for the remainder of the clerkship. My workplace, however, did not have an EDR Plan in place that might have enabled me to be reassigned—it was created one year after my clerkship ended.²³⁴ I confided in some attorney mentors who advised me to stick it out, so I tried. After all, I needed a full year of work experience to be eligible to apply for my dream job at the D.C. USAO—the reason I accepted the clerkship in the first place.

Beginning in March 2020, I moved back to Philadelphia to stay with my parents and work remotely during the COVID-19 pandemic. The judge ignored me for six weeks—my calls, texts, and emails went unanswered—and he resorted to communicating with me through my male co-clerk. Eventually, in late April 2020, the judge called me and told me he was ending my clerkship early because I made him “uncomfortable” and “lacked respect for” him, but he “didn’t want to get into it.”²³⁵

I called D.C. Courts Human Resources (HR), but they told me there was nothing they could do because “HR doesn’t regulate judges” and

230. A congressional statement for the record summarized the author’s clerkship experience. See Shatzman House Hearing Testimony, *supra* note 215. For background on the entire hearing, see generally Workplace Protection Hearings, *supra* note 59.

231. Shatzman House Hearing Testimony, *supra* note 215, at 2.

232. *Id.*

233. *Id.*

234. See Press Release, D.C. Cts., District of Columbia Courts Announce New Employment Dispute Resolution Plan (May 20, 2021), <https://newsroom.dccourts.gov/press-releases/district-of-columbia-courts-announce-new-employment-dispute-resolution-plan> [<https://perma.cc/Q32K-V4GW>]; see also Employee Dispute Resolution Plan and Commitment to a Fair and Respectful Workplace, D.C. Cts., <https://www.dccourts.gov/about/learn-more/employee-dispute-resolution-plan> [<https://perma.cc/QY3F-6ZKP>] (last visited Mar. 13, 2022).

235. Shatzman House Hearing Testimony, *supra* note 215, at 2.

“judges and law clerks have a unique relationship.”²³⁶ Then they asked me whether I knew I was an “at-will employee.”²³⁷

I reached out to my law school for support and assistance. I learned that the judge had a history of harassing his clerks and that several law school administrators—including multiple professors and the clerkships director—knew this at the time I accepted the clerkship. They chose to withhold this information from me—probably because they wanted to improve their clerkship placement statistics.²³⁸

I connected with some D.C. judges, who directed me to the local judicial conduct commission. I drafted a judicial complaint but decided to wait to file it until I had secured a new job. I worried the judge would retaliate against me.

It took me a year to get back on my feet before I finally secured my dream job in the D.C. USAO. I moved back to Washington, D.C., in summer 2021, intending to put my negative clerkship experience behind me and launch my career as a prosecutor. I was two weeks into training when I received devastating news that altered the course of my life. I was told the judge had made negative statements about me during my background investigation, that I “would not be able to obtain a security clearance,”²³⁹ and that my job offer was therefore revoked.²⁴⁰ I cried on the phone with several individuals from USAO leadership as I explained that the judge had previously agreed to provide a neutral reference if contacted. They would not tell me what the judge had said about me, afforded me no opportunity to respond, and told me the decision was final. Several days later, the USAO extended an offer to interview for a different job with the office. They revoked that offer, too, based on the judge’s same negative reference.

I was only two years into my legal career. This judge seemed to have limitless power to ruin my reputation and destroy my career. I filed a formal judicial complaint,²⁴¹ hired attorneys, and participated in the investigation into the now-former judge. Partway through the investigation, I learned the judge was on administrative leave, pending an

236. *Id.* at 3.

237. *Id.*

238. Several professors with whom the author has spoken characterized this as a “betrayal” by the law school. See, e.g., Shatzman on Judicial Accountability, *supra* note 101, at 13:25. This is a unique betrayal by an entity professing to have students’ best interests at heart.

239. In summer 2021, the author filed a FOIA/Privacy Act request seeking a copy of the negative reference. That request was denied in full. Documentation on file with the author.

240. *Id.*

241. The D.C. Commission on Judicial Disabilities and Tenure, the same commission tasked with considering Senate-confirmed judges for reappointment, reviews complaints against D.C. Courts judges. See About CJDT, Comm’n on Jud. Disabilities & Tenure, <https://cjdt.dc.gov/page/about-cjdt> [<https://perma.cc/AX72-Y8PT>] (last visited Jan. 29, 2023).

investigation into other misconduct, at the time he filed the negative reference. The USAO was never alerted of those circumstances.

In January 2022, pursuant to the terms of a private settlement agreement—separate from anything the judiciary could or would do for a former clerk—the former judge issued a “clarifying statement” to the USAO, addressing some but not all of his outrageous claims about me. But the damage had been done. I was blackballed from what I thought was my dream job.

Since I first publicly shared my experience with the Subcommittee in March 2022,²⁴² I have spoken about my ordeal numerous times, including more than twenty law school campuses during the 2022–2023 academic year. My negative experience is not rare. Yet it is one that is rarely shared publicly due to the legal community’s culture of silence and fear—one of deifying judges and disbelieving law clerks. In my current role, I aim to foster honest dialogue on law school campuses and in legal circles about the full range of clerkship experiences.²⁴³ I also seek to empower students to demand safer workplaces and to inspire current and former clerks who have faced mistreatment to speak openly about their experiences.

V. HOW TO FIX OUR CLERKSHIP SYSTEM

In the face of this broken system, LAP offers concrete solutions to address insidious challenges. This is the resource I wish had existed when I was a law student applying for clerkships, a law clerk experiencing harassment and unsure where to turn for help, and a former clerk engaging in the formal judicial complaint process. I launched the nonprofit to address deficiencies in the clerkship application process that I personally experienced.

A. *Centralized Clerkships Database*

LAP’s Centralized Clerkships Database democratizes information about judges and ensures that law students and alumni have as much information about as many judges as possible before making important career decisions.²⁴⁴ Law clerk alumni can create accounts and write about their judge and clerkship—good, bad, or somewhere in between—

242. See Marimow, *Federal Judiciary Workers*, supra note 212; see also *Workplace Protection Hearings*, supra note 59.

243. Workplace mistreatment was not part of the conversation on law school campuses when the author was applying for clerkships between 2017 and 2018.

244. See Aliza Shatzman, *Protecting Law Clerks From Harassment Is Everyone’s Responsibility*, Member Bulletin (Nat’l Ass’n for L. Placement (NALP), Washington, D.C.), Nov. 2022, at 14, https://issuu.com/legalaccountabilityproject.org/docs/nalp_bulletin_november_2022_aliza_shatzman_guest_e [<https://perma.cc/7WBA-L3CD>].

anonymously if they choose.²⁴⁵ In contrast to law schools' post-clerkship surveys, LAP's survey asks questions about mistreatment. The survey gathers other important information: how judges provide feedback, whether clerks get writing and courtroom experience, what hours clerks work, and whether clerks can take vacation.²⁴⁶ The Database also includes aggregate ratings about judges as managers and overall clerkship experiences.²⁴⁷ This resource is better than any law school's internal database because students can read all the reports from all the alumni at all the participating schools—not just their school's alumni surveys. The Database will bolster schools' clerkship programs by empowering more historically marginalized students²⁴⁸—including female, non-white, LGBTQ+, and first-generation students—to clerk and arming them with the information they need before applying.²⁴⁹

The Database uses a whitelisting system to ensure security.²⁵⁰ Contributions will be limited to verified former law clerk alumni with preapproved email addresses, who obtain write-only access. Only students and recent alumni²⁵¹ from the participating institutions gain read-only access, using their preapproved email addresses. The Database is not a public access website: Neither judges nor reporters will view it. These mechanisms ensure anonymity for clerks submitting surveys in the Database so they can safely share their experiences.

My experiences—applying for clerkships; clerking; advocating for the JAA; launching LAP; and engaging in numerous conversations with law

245. Law clerk alumni have the option to provide their name to students considering the clerkship. The author suspects that many clerks who have experienced mistreatment will report anonymously based on numerous conversations with current and former clerks. See *supra* note 40.

246. Documentation on file with the author.

247. See *id.*

248. The Database will also help diversify clerkship applicant pools. This aligns with recent research suggesting that judges want to hire historically marginalized applicants, recognize that those students face unique considerations when deciding whether and where to clerk, and understand that such students may be disadvantaged throughout the process due to lack of access to information. See Jeremy Fogel, Mary Hoopes & Goodwin Liu, *Law Clerk Selection and Diversity: Insights From Fifty Sitting Judges of the Federal Courts of Appeals*, *Harv. L. Rev.* (forthcoming 2023), <https://ssrn.com/abstract=4290102> [<https://perma.cc/SX5C-V7RM>].

249. Historically marginalized groups may have more reason to fear mistreatment during clerkships. These students either decide not to apply for clerkships or apply less ambitiously because they lack the information they need before applying. These students regularly express to the author that they would clerk if they had access to information. See, e.g., ABA Section of Civil Rights and Social Justice, *supra* note 9.

250. See Legal Accountability Project, *Data Privacy and Whitelisting—UVA*, 10/6/22, YouTube, at 00:40 (Oct. 17, 2022) https://www.youtube.com/watch?v=HU_897mDzws (on file with the *Columbia Law Review*).

251. Recent alumni include those with up to five years of post-graduate experience, with expanded access to less recent alums considering clerkships on a case-by-case basis. This ensures that alumni do not become judges and retain read-only access to the Database.

students, current and former clerks, and law school administrators—make me confident that the Database is the best way to ensure positive clerkship experiences. This does not foreclose clerk-to-student information-sharing; rather, it combats inadequacies and inequities that emerge when relying only on that informal system. The Database also precludes problematic silo effects whereby some law schools hoard information about judges who mistreat their clerks.²⁵² They may or may not share this information with their own students; they do not share it with peer institutions.²⁵³ Nor does the Database preclude necessary legislative fixes, like the JAA or reforms to the Judicial Conduct and Disability Act. The Database is a front-end solution to prevent workplace issues before they arise. Preventing mistreatment is particularly important in the judiciary, since workplace protections and judicial accountability mechanisms are ineffective or nonexistent.²⁵⁴

B. *The Response So Far*

Law students and recent alumni, including current and former clerks, support LAP's Clerkships Database.²⁵⁵ This includes students whose law schools conduct post-clerkship surveys saved in searchable databases.²⁵⁶ Students understand that there are few negative reports about judges in their schools' internal databases and that LAP's Database ensures anonymity and fosters more candid, robust reporting.²⁵⁷ Law schools concede there are gaps in knowledge: No school knows about all the judges.

Data sharing and transparency—for the limited purpose of protecting law clerks against workplace mistreatment—benefits everyone. There is no perfect system. Law clerks reporting into the Database understand that LAP takes reasonable precautions to maintain their anonymity. Clerks will share as much information as they feel comfortable sharing.

Law schools do not maintain robust and accurate information about judges who mistreat their clerks, nor are they able to. Law clerks do not want to report mistreatment by judges to their law schools.²⁵⁸ Even well-meaning professors and administrators face pressure to varnish law clerks' negative experiences²⁵⁹ and to err on the side of maintaining positive

252. See Shatzman, *Law Schools Are Part of the Problem*, supra note 4.

253. See *id.*

254. See supra sections I.B–.D.

255. See Interview with Law Student A, supra note 17; Zoom Interview with Law Clerk, supra note 40.

256. See Zoom Interview with Law Clerk, supra note 40.

257. *Id.*

258. *Id.*

259. Dara E. Purvis, *Opinion, When Judges Prey on Clerks*, N.Y. Times (Dec. 12, 2017), <https://www.nytimes.com/2017/12/12/opinion/law-schools-alex-kozinski.html> (on file with the *Columbia Law Review*) (noting the “strong incentive to continue sending graduates” to the chambers of prominent judges).

relationships with judges over robust information-sharing.²⁶⁰ LAP is well-positioned to collaborate with law schools, share unvarnished information with students, and maintain positive relationships with the judiciary.²⁶¹

CONCLUSION

It is time for law schools to make necessary fixes to protect law clerks from workplace mistreatment. Law students can lay the groundwork for transformational change on their campuses this year. Law schools have historically received a free pass in the conversation about judicial accountability.²⁶² They should be the first to step forward and ensure that the next generation of attorneys can bring their full selves to work every day and pursue careers they love in safe workplaces. Law schools continue to perpetuate the clerkship whisper network because no one has offered alternatives. Now, they should be vectors for change. Law students demanding change will power this movement toward accountability and transparency. Reform is headed to law schools, the legal community, and the judiciary.

260. See, e.g., Telephone Interview with State Court Judge B (Winter 2022) (on file with author) (indicating that transparency benefits everyone—law students, law schools, law clerks, and the judiciary).

261. LAP speaks often with both state and federal judges who support the Database. LAP regularly fields inquiries from judges asking when the Database will go live so their law clerks can report into it. See Legal Accountability Project, The Legal Accountability Project—The Judiciary’s Response to LAP, Harvard 10/20/2022, YouTube, at 00:01 (Nov. 30, 2022), https://www.youtube.com/watch?v=YuPCDJx_92g (on file with the *Columbia Law Review*).

262. When high-profile allegations surfaced about former Judge Alex Kozinski and the late Judge Stephen Reinhardt in 2017, it was apparent that law schools had not taken steps to identify and warn students about these problematic behaviors. See Catie Edmondson, Former Clerk Alleges Sexual Harassment by Appellate Judge, N.Y. Times (Feb. 13, 2020), <https://www.nytimes.com/2020/02/13/us/politics/judge-reinhardt-sexual-harassment.html> (on file with the *Columbia Law Review*) (detailing Olivia Warren’s harassment by Judge Reinhardt and noting Warren “inform[ed] members of the Harvard Law School administration, including the dean, about her experience” but “could not find a confidential way to formally lodge a complaint”); Purvis, *supra* note 259 (noting the author did not recall any warnings about harassment in the Yale Law School database of former clerk surveys but arguing “[l]aw schools must do more for their students” and “encourage recent clerks to be candid about their experiences”); Zapotosky, *Judge Accused of Sexual Misconduct*, *supra* note 39.