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ENOUGH IS NOT ENOUGH:  
REFLECTION ON SEXUAL HARASSMENT  
IN THE FEDERAL JUDICIARY

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By late 2019, my husband and I decided that we were actually going to try to have a child in 2020. Not in the “we-both-want-kids” kind of way — a bland affirmation relayed off-handedly to friends six months into a new relationship. No. After almost seven years of operating on the assumption that we both wanted children, we had honest, long conversations about what it would actually mean to add another life to this broken, dying, occasionally beautiful planet: a life that we knew we could not control, a life that may feel great joy and great pain, a life that may also bring joy to or inflict pain upon others. We knew that we could not see the consequences of our choice, but we decided to face them together.

A few months later, on February 4, 2020, I received a message about an upcoming congressional hearing on a subject I was almost uniquely positioned to help lawmakers better understand: harassment within the federal judiciary.<sup>1</sup> This was not the first time Congress held hearings where my testimony might have been relevant, nor was it the first time I had considered speaking publicly about my clerkship for the late Judge Reinhardt. Testifying had been a possibility the summer of 2018, after my clerkship ended.<sup>2</sup> I got a text about a hearing while driving weepily through Kansas en route cross country to my second clerkship, crying both over the bed bug bites from our hotel room near the Grand Canyon

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<sup>1</sup> *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. (2020), <https://www.youtube.com/watch?v=3wu6ePBNFhI> [<https://perma.cc/83M8-RQJF>] [hereinafter *Hearing*]; *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. (2020) (testimony of Olivia Warren), <https://www.congress.gov/116/meeting/house/110505/witnesses/HHRG-116-JU03-Wstate-WarrenO-20200213-U2.pdf> [<https://perma.cc/L8VU-U3EU>] [hereinafter *Warren Testimony*].

<sup>2</sup> *Confronting Sexual Harassment and Other Workplace Misconduct in the Federal Judiciary: Hearing Before the S. Judiciary Comm.*, 115th Cong. (2018), <https://www.judiciary.senate.gov/meetings/confronting-sexual-harassment-and-other-workplace-misconduct-in-the-federal-judiciary> [<https://perma.cc/K54K-KM5U>].

and the ten months I had endured during my first experience in judicial chambers.<sup>3</sup> Another hearing happened while I was clerking in D.C. and still attempting to report internally through the federal judiciary.<sup>4</sup>

But by that Tuesday in February, things were different. I was no longer a law clerk, and I was four months into my dream job — also the first legal job I held without an expiration date. When I got word of that hearing, I closed my office door and called my husband. Then I walked into my boss’s office with all the confidence of an entry-level attorney just weeks out of the standard ninety-day probationary period, closed her door, and asked how my testimony might affect my clients, my employment, and our office. I lost the rest of that afternoon in a flurry of calls to mentors, trying to figure out whether and on what timeline I was willing to have any of these conversations without the doors closed.

Everyone I trusted told me to get a lawyer; no one I trusted could tell me what the consequences of testifying would be.

Deciding whether to tell Congress and the American public what Judge Reinhardt said about me and my body and my sex life was exactly the kind of choice I spent three years and some \$200,000 learning to avoid at all costs. When I entered Harvard Law School in August 2014, we were no longer given *The Paper Chase*-style “look to your left, look to your right, one of you will drop out” speech.<sup>5</sup> Instead, then-Dean Martha Minow encouraged us to look around the buttressed Memorial Hall and remember that everyone here would be a future colleague. Formally at least, times had changed: the academy removed the veneer of competition in favor of a full-throated emphasis on civility, on making nice. Countless faculty and administrators admonished my cohort to remember that anything we did or said in law school could affect our future professional lives.<sup>6</sup> At lunchtime panels, during office hours, and in career counseling sessions, I learned how to strategically map my life in the law — through informational interviews, carefully planned in-

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<sup>3</sup> Heidi Bond’s narrative of driving out of California after her clerkship with Alex Kozinski resonates. Heidi Bond, *Kozinski*, COURTNEY MILAN, <https://www.courtneymilan.com/metoo/kozinski.html> [<https://perma.cc/8P4C-6HSX>].

<sup>4</sup> *Public Hearing on Proposed Changes to Code of Conduct for U.S. Judges and Judicial Conduct and Disability Rules, Comm. on Codes of Conduct, Comm. on Judicial Conduct & Disability*, U.S. Courts (2018), <https://www.youtube.com/watch?v=xqzk1k13SeA> [<https://perma.cc/T7AM-S47M>].

<sup>5</sup> *THE PAPER CHASE* (Twentieth Century Fox Film 1973).

<sup>6</sup> For example, student recording of classes is not allowed. HARV. L. SCH., *HANDBOOK OF ACADEMIC POLICIES* 103–05 (2020). Faculty explained this policy’s purpose to promote free exchange of ideas, but I always understood that the fear lurking in that reasoning was that someone could use something we said against us in the future.

ternships, and key extracurriculars and clinics. I believed that if I behaved in this civil, collegial, and vigilant fashion<sup>7</sup> and if I picked up enough and the right kind of chips, at some point I might be able to cash them in for a job that would give me bonus chips to wager for another, more prestigious job.

The way law school taught me to operate in the law mirrored the way it taught me to understand the law itself.<sup>8</sup> Sure, there was some debate about whether the law was an abstract permanence that could be found or uncovered, or was instead simply an abstraction itself created over time. But this is what we in this profession call “a distinction without a difference.” Whichever existential abstraction theory you endorsed, the directive on how best to work within the law was the same: study it relentlessly, and then take slow, calculated steps to shape it in the direction you aspire to ever-so-politely and gently push it. I learned to defer to the path of the law in the same way I learned to defer to the people in this profession: the purported power of precedent is drawn from the same well as the command for collegiality. In last-day-of-semester lectures, professors often referenced the arc of the moral universe as forever bending toward justice. Even in their most powerful PowerPoint calls to action, they emphasized the linear shape of our profession. The law went in one direction: it was capable of being bent slightly, but certainly not broken, abandoned, reshaped, reimagined. I have, in short, never been so effectively trained — albeit with such expansive and lofty rhetoric — to think and be so small.<sup>9</sup>

I was good at law school, largely because I am someone who likes absurdly detailed plans, predictability, and being polite; I am from Wisconsin, after all. But my careful plotting of my future fell apart on my first day in Judge Reinhardt’s chambers. The graph of boobs<sup>10</sup> over my computer made it immediately apparent that this would not be the most valuable learning experience I could have as a lawyer.<sup>11</sup> I knew that day that it would be a harmful year, although I could not yet see how bad it would get.<sup>12</sup> As the legal culture requires, I put on a smile and pretended I was still on course while interacting with our interns

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<sup>7</sup> See Leah M. Litman & Deeva Shah, Essay, *On Sexual Harassment in the Judiciary*, 115 NW. U. L. REV. 599, 602–04 (2020).

<sup>8</sup> Others have written about this before me and better than me. See, e.g., Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 605 (1982) (explaining that legal education reproduces existing inequality rather than promoting equity or justice).

<sup>9</sup> I do not say this lightly. I majored in dance in college, a period in my life during which I was explicitly told to be smaller because the actual amount of space my body occupied was too much.

<sup>10</sup> On file with author. I have since learned that I am not the only Reinhardt clerk with one of his obscene sketches as a sad souvenir.

<sup>11</sup> *Warren Testimony*, *supra* note 1, at 5–6.

<sup>12</sup> *Id.* at 7–11.

and reporting to friends, and then hyperventilated alone in the bathroom. The gold stars I was led to believe would light my way were useless. I was off the map, so far outside the realm of the imagined clerkship experience that I barely had my own language to name what was happening to me.

A number of male law school classmates sent me supportive messages after my testimony that illustrate how seemingly unprecedented and unimaginable my clerkship was: they understood, theoretically, that sexual harassment happened, but not in judicial chambers, and not in *those* chambers, and not to someone as outspoken as myself. One confessed that my testimony “scared” him, because he thought I was “the last person on Earth [he] would expect to be targeted,”<sup>13</sup> which meant that anyone could be a target and no one was safe.

I did not mean to frighten or inconvenience people by being sexually harassed, and these sentiments made me feel like I had done something wrong, something uncivil. Some of the reactions to my testimony, including messages from Reinhardt clerks hypothesizing about why they were able to avoid this treatment, made me fall into the age-old trope of believing that I had somehow asked for it. It took a long time to remind myself that this was not true, that despite me being notoriously outspoken, none of the ways I spoke up in chambers could have protected me. I should not have had to protect myself. I did nothing to invite this behavior, nor did anyone else who endured it over the years.

These sentiments also frustrated me, because they reveal the collective lack of vision — or willful blindness — that perpetuates harmful systems and leaves victims without voice, much less recourse. Lots of people are harassed in chambers, in lots of different ways: we keep learning this,<sup>14</sup> but in the face of repeated revelations, we refuse to imagine that there might be a bigger problem that we can’t see.

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<sup>13</sup> Text message on file with author.

<sup>14</sup> See, e.g., Matt Zaposky, *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](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) [https://perma.cc/2GRX-GWZZ]; Mihir Zaveri, *Federal Judge in Kansas Resigns After Reprimand for Sexual Harassment*, N.Y. TIMES (Feb. 19, 2020), <https://www.nytimes.com/2020/02/19/us/judge-carlos-murguia-sexual-harassment.html> [https://perma.cc/YW6M-Q8DY]; Debra Cassens Weiss, *California Appeals Judge Is Removed from Bench for Sexual Harassment and Unwanted Touching*, ABA J. (June 3, 2020, 12:29 PM), <https://www.abajournal.com/news/article/california-appeals-judge-is-removed-from-bench-for-sexual-harassment-and-unwanted-touching> [https://perma.cc/58EJ-QGD2]; John Seasly, *Cook County Judge Resigns, Avoiding Discipline for Alleged Sexual Harassment*, INJUSTICE-WATCH (Sept. 29, 2020, 5:08 PM), <https://www.injusticewatch.org/news/judicial-conduct/2020/state-court-commission-to-discipline-cook-county-judge-accused-of-sexual-harassment> [https://perma.cc/4399-HU5X]; Michael Gordon & Jim Morrill, *NC Judge Receives Rare Censure for Allowing Harassment and Threats in His Office*, THE CHARLOTTE OBSERVER (Dec. 20, 2020, 1:27 PM), <https://www.charlotteobserver.com/news/politics-government/>

The beginning of my choice to testify took place one day in chambers when I articulated a piece of the unforeseeable for myself. On a real Tuesday of a Tuesday, Judge Reinhardt was screaming at me in his office about a case. He was furious, so angry that I was covered in flecks of spittle, an experience that the clerks before me had cautioned was a consequence of his “rage drooling.” I was tired, we had been going in circles for over an hour, and I stopped engaging. When he was done, he stared at me, breathing heavily after laboring with such assumed righteousness. Without thinking, I quietly responded: “Is this what it feels like to scream into the face of a future that you will have no part in?” I got thrown out of his office for the afternoon, a blessed occurrence that allowed me to actually work on his cases. But I walked out in the knowledge that my question contained a fact that I hadn’t realized until it came out of my mouth — that I would have a future that was not defined by him, that I could live my life without the burden of service to his legacy.<sup>15</sup>

Although I did not know it at the time, I solidified my choice to speak up at the same place from which I opened this Essay, with my decision to try to become a parent. In that choice, too, there was no way to meaningfully predict what would happen. Doing it nevertheless made me realize that the rest of my life could not be charted in the manner I had been meticulously trained to plot my legal career or outline my briefs. It gave me a rare sense of fearlessness that was still lingering in February of 2020.

In the nine days between learning about the hearing and my actual testimony, I relentlessly assessed the potential personal and professional consequences while pro bono counsel considered the legal consequences. I knew that I would not be able to see or measure any benefits of my testimony. My singular goal was to make a public record so that people in similar situations could access it and feel less isolated: this is the gift other women’s words had given me.<sup>16</sup> I wanted to speak publicly — I refused to entertain any possibility of closed-door testimony — because I wanted everyone to have equal information about the potential perils of being fed into the machinery of clerking.<sup>17</sup> I also wanted to demonstrate that I was a real human being capable of interacting with systems in a professional manner, not someone who could be dismissed as a wild

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article247949735.html [https://perma.cc/REL5-QAQV]; see also Marina Angel, *Sexual Harassment by Judges*, 45 U. MIA. L. REV. 817, 817–18 (1991) (describing this problem thirty years ago).

<sup>15</sup> But see Eve Brensike Primus, *Some Thoughts from a Former Reinhardt Clerk*, [https://docs.google.com/document/d/1wJlyzAuuR6ClXJMCa41mxhBKKnoxXMYQI1\\_64D-rtI/edit](https://docs.google.com/document/d/1wJlyzAuuR6ClXJMCa41mxhBKKnoxXMYQI1_64D-rtI/edit) [https://perma.cc/UK3Z-AJ6D]; Michael C. Dorf, *Reassessing Judge Reinhardt*, DORF ON LAW (Feb. 14, 2020), <http://www.dorfonlaw.org/2020/02/reassessing-judge-reinhardt.html> [https://perma.cc/4QEP-RJB4].

<sup>16</sup> *Hearing*, *supra* note 1, at 1:14:10–1:14:30.

<sup>17</sup> *Id.* at 1:04:15–1:04:52.

woman with an agenda or a grudge. I hoped that my competence and civility as I acted within the institutions available to me would lend credibility to my message, at least amplifying the chorus of calls for reform.

I also understood that I would not be able to see or measure the negative consequences of my testimony. I expected some fallout from the network of former Reinhardt clerks<sup>18</sup> and from the Ninth Circuit.<sup>19</sup> I expected that some professional doors might close for me, and that there would be some doors I should not walk through anymore: it would be a disservice to a client for me to be on a brief in the Ninth Circuit for the foreseeable future.

I even anticipated the stasis that would ensue. On an intellectual level, I probably always knew that no one would actually do anything to fix this problem. I reassured the handful of mentors I consulted before testifying that I would not be devastated by inaction, and I convinced myself that I expected it.

I am writing this piece nearly a year after my testimony, in moments stolen between my newborn child's two- to three-hour cycle of feeding and sleeping. As was the case with my testimony in 2020, I'm writing to make a record, for those who might be weighing whether to come forward at a time in their career when we are told to stay the planned

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<sup>18</sup> Only a small amount of this fallout has been public. Kimberly Strawbridge Robinson, Melissa Heelan Stanzione & Madison Alder, *Former Clerk Accuses Late Judge Reinhardt of Sex Harassment* (4), BLOOMBERG L. (Feb. 13, 2020, 4:01 PM), <https://news.bloomberglaw.com/us-law-week/late-judge-reinhardt-accused-of-sex-harassment-by-former-clerk> [<https://perma.cc/64HS-YN9Y>] (comments by Heather Mac Donald); Marc Mayerson, Comment to *Watch Olivia Warren's Testimony at the House Committee on the Judiciary Subcommittee Hearing on "Protecting Federal Judiciary Employees from Sexual Harassment & Discrimination,"* FACEBOOK (Feb. 13, 2020), <https://www.facebook.com/HouseJudDems/videos/183925012960114> [<https://perma.cc/LN73-3TBG>]. Some comments have also been made on a semi-private listserv of former clerks to Judge Reinhardt. For more on these listservs, see Robert Barnes, *Ginni Thomas Apologizes to Husband's Supreme Court Clerks After Capitol Riot Fallout*, WASH. POST (Feb. 2, 2021, 11:22 AM), [https://www.washingtonpost.com/politics/courts\\_law/ginni-thomas-apology-clarence-thomas-clerks-trump-rally/2021/02/02/a9818cce-6496-11eb-8c64-9595888ca15\\_story.html](https://www.washingtonpost.com/politics/courts_law/ginni-thomas-apology-clarence-thomas-clerks-trump-rally/2021/02/02/a9818cce-6496-11eb-8c64-9595888ca15_story.html) [<https://perma.cc/F2VV-Z3LK>]. Some of this fallout has been directed at people who supported me. And much of it I just won't really know about. 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> [<https://perma.cc/B5YN-TVKA>] (As Leah Litman explained: "Even though a lot of people on Twitter will express support for you . . . , a lot of people — including very powerful and admired people — will be angry with you . . . . They will demean you and undermine you in ways you can see and ways you cannot.").

<sup>19</sup> Cathy A. Catterson, Opinion, *Letters to the Editor: In Defense of the Late 9th Circuit "Liberal Lion" Judge Stephen Reinhardt*, L.A. TIMES (Feb. 26, 2020, 3:00 AM), <https://www.latimes.com/opinion/story/2020-02-26/9th-circuit-liberal-lion-judge-stephen-reinhardt> [<https://perma.cc/64TM-RLLM>].

course.<sup>20</sup> I'm writing to document the consequences I could not anticipate and calculate, in the event it helps others anticipate and calculate for themselves.

Perhaps the biggest surprise has been a renewed sense of confidence. I did not go into chambers a shrinking violet. I walked in with an ego burnished by many brass rings, the accolades from my law school graduation a mere seventy-two hours beforehand assuring me that I was en route to being a very serious lawyer doing very serious things. But as much as I fought to keep Judge Reinhardt's words from staining my psyche, the refrain of "stupid little girl" and the constant attacks on who I was and who cared about me and who I would become inevitably slipped in to undermine my sense of self.<sup>21</sup> For all of that harm and doubt, there is now new, competing evidence of my own capacity. Watching my testimony reminded me that I am a capable attorney because I lawyered my own case, largely alone and in secret, for two and a half years: making a contemporaneous record; gathering available evidence; reporting to neutral third parties; learning complex, overlapping procedural systems and trying to act within them; and finally thinking strategically about other ways to bring light to a wrong.

Testifying also gave me a sense of freedom to tell my own story without fear of unpredictable or unexplained professional repercussions. One of the reasons I did not feel safe reporting to the judiciary is that no one could confirm how far my information would go, and thus, if someone with allegiance to Judge Reinhardt retaliated against me, neither I nor anyone else would ever know if it was connected to my disclosure. After testifying publicly, I no longer need to rehearse how I will talk about my clerkship, or try to extrapolate the network of the person I am talking to in case I inadvertently let something slip. I don't have to panic when law students ask me about my clerkships, or retreat to my office to shake after an unexpected question. There is a record I can direct people to, a record from which I can speak, a record that helped me reclaim my candor.

But what I reclaimed myself pales against the staggering scale of institutional inaction and indifference. As much as I testified with the intangible goal of helping people in ways I would not see, I held close

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<sup>20</sup> Irin Carmon & Amelia Schonbek, *Is It Still? Will It Ever Be? The Women (and Men) Who Came Forward About Sexual Assault and Harassment Tell About Everything That Came After*, THE CUT (Sept. 30, 2019), <https://www.thecut.com/2019/09/coming-forward-about-sexual-assault-and-what-comes-after.html> [<https://perma.cc/SG3C-V586>].

<sup>21</sup> I declined to detail the full extent of the harm I experienced, and I will not do more here. I have bled out enough. See Alexandra Petri, Opinion, *It Is Very Difficult to Get the Train to Stop*, WASH. POST (Sept. 28, 2018, 4:09 PM), <https://www.washingtonpost.com/news/opinions/wp/2018/09/28/it-is-very-difficult-to-get-the-train-to-stop> [<https://perma.cc/ZVR5-MY76>]. I asked that others use their imagination to think about this harm, and I continue to make that ask. *Warren Testimony*, *supra* note 1, at 17.

to my chest this tiny flame of Midwestern hope that someone, somewhere in our legal institutions would light a torch and do something. Despite what I promised my mentors and promised myself, the inaction hurts more than I could have ever anticipated.

It hurts the most because there was a twenty-four-hour news cycle in which people within and beyond our profession were appropriately shocked by what I experienced. I testified about such a small part of my ten-month saga,<sup>22</sup> and had experienced and internalized so much gaslighting, that a part of me worried that my testimony would not be enough for anyone to even view what I experienced as harassment. Given how many of the gory details I left out, I was myself shocked that people found the little I shared so shocking. I thought for a moment — before the rationalization and minimization followed by the deafening silence — that maybe I had done enough.

It is clear to me now that I could never do enough. This brief cycle of expressing surprise and horror is neither a salve to me personally nor a solution for those who come after me; it's a distraction from the inevitable inaction. In the past year, I am not aware of anyone taking any steps, much less the "bold steps" over half of Reinhardt's clerks called for<sup>23</sup> — not the Ninth Circuit, not the federal judiciary, not Congress, not Harvard Law School, not any of the Reinhardt clerks themselves. To my knowledge, there have been no public conversations about or reflections upon individual actions and inactions that might have contributed to the problem.<sup>24</sup> There continue to be some 30,000 employees of the federal judiciary subject to harassment and discrimination without many basic employment protections.<sup>25</sup>

My male former classmate is right: none of us are safe in this system.<sup>26</sup> We are not safe when there continue to be no consequences for

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<sup>22</sup> *Warren Testimony*, *supra* note 1, at 11, 19.

<sup>23</sup> Press Release, Former Clerks to Judge Stephen Reinhardt (Feb. 20, 2020), <https://docs.google.com/document/d/1d6Xvp2FuRAaSI-W7c2nX-qfIppB5N38xzSoHWlmd15g/edit> [<https://perma.cc/FT6D-QQCY>].

<sup>24</sup> The only people who have publicly interrogated their role at all are the student editors of the Harvard Law Review. Harv. L. Rev., *Recent Event: House Judiciary Committee Hearing on Harassment and the Judiciary*, HARV. L. REV. BLOG (Mar. 25, 2020), <https://blog.harvardlawreview.org/recent-event-house-judiciary-committee-hearing-on-harassment-and-the-judiciary> [<https://perma.cc/833F-XTV4>]; Litman & Shah, *supra* note 7, at 621.

<sup>25</sup> See, e.g., Andrew Kragie, *Ex-defender Sues Fed. Judiciary Over Harassment Handling*, LAW360 (Mar. 30, 2020, 9:29 PM), <https://www.law360.com/articles/1256952/ex-defender-sues-fed-judiciary-over-harassment-handling> [<https://perma.cc/B5VQ-37MU>]; *Roe v. United States*, No. 20-cv-00066-WGY, 2020 WL 7866317, at \*1 (W.D.N.C. Dec. 30, 2020).

<sup>26</sup> Nor are we all equally unsafe. As I testified, I have enormous privilege that gave me the choice to testify to Congress, gave me access to lawyers, and gave me the opportunity to publish this piece, in this publication. See *Hearing*, *supra* note 1, at 44:18–44:53. I know well that what happened to me is nowhere close to the worst of harms. But that this harm is at least a bug, if not a feature, of the legal system calls into question the system's ability to adjudicate any level of harm.



the people who determine the consequences for everyone else.<sup>27</sup> We are not safe when we live in a world where harm and consequence are articulated by such limited minds. When someone with the personal views of women that Judge Reinhardt expressed to me is heralded for writing the opinions endorsing the most expansive vision of women's rights and roles in the world, imagine what the law would look like if written by someone who actually believed women.<sup>28</sup> Imagine a system that did not deny the unimaginable, but instead named it, found a way to rectify it, found a way to move on.<sup>29</sup>

And imagine a system where we could expect more from each other. Imagine a definition of civility and collegiality that meant more than perfunctory politeness and blind deference, and instead required curiosity about and compassion for the experiences of those around us — especially those who follow us.

As I testified, when I was interviewing for the clerkship, a Harvard faculty mentor, Andrew Crespo, directed me to a woman who had clerked for Judge Reinhardt before he did to help me prepare for the clerkship interview.<sup>30</sup> It was only through her that I learned anything at all about the sexism in chambers. At 12:48 pm on February 13, 2020, just after I left the Hill, she sent me an email thanking me for putting the truth on the record. And then she said this:

Every single Reinhardt clerk knows that everything you said (and much, much more) is true and nevertheless, we have all given him a pass because we believe in the rest of what he did (and, let's face it, that clerkship is really good for our careers).

I'm sorry for the role I played in convincing you to take the job and glossing over/justifying/compartmentalizing the mistreatment that I knew you would face because every woman in that Chambers (and many men) face it.

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<sup>27</sup> See Mark Sherman, *Federal Judges Have a Way to Make Investigations Disappear*, ABC NEWS (May 10, 2019, 6:03 AM), <https://abcnews.go.com/Politics/wireStory/federal-judges-find-retirement-offers-easy-probes-62952609> [<https://perma.cc/648S-PPT2>]; Nina Totenberg, *Federal Panel of Judges Dismisses All 83 Ethics Complaints Against Brett Kavanaugh*, NPR (Dec. 18, 2018, 6:28 PM), <https://www.npr.org/2018/12/18/678004085/federal-panel-of-judges-dismiss-all-83-ethics-complaints-against-brett-kavanaugh> [<https://perma.cc/VV9Q-VWSA>].

<sup>28</sup> Some people may paint these comments, his other conduct, and even many of his unpublished opinions as an aberration in light of his liberal legacy. But at some point we have to believe that people say what they mean. Cf. ALBERT W. ALSCHULER, *LAW WITHOUT VALUES: THE LIFE, WORK, AND LEGACY OF JUSTICE HOLMES* 28, 65, 67 (2000) (documenting Justice Holmes's personal delight in and agreement with his now-derided opinion endorsing eugenic sterilization in *Buck v. Bell*).

<sup>29</sup> I mean this on a theoretical level, but also on a practical level. There are systems in place in many workplaces that effectively deter harassment and discrimination, and confront and correct it when it occurs. These include basic employment protections that have been around for over half a century and best practices for human resources departments. I am not an expert, see *Hearing, supra* note 1, at 1:20:54–1:21:20, but there are many people with expertise who could help us use these tools to begin to correct this system, almost immediately.

<sup>30</sup> See *Warren Testimony, supra* note 1, at 4.

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I regret that I was not better able to see if [sic] for what it was and stand up for myself and for you and for the rest of the clerks to stop it.<sup>31</sup>

But this private apology is not enough. It's not enough because I testified to Congress about what an Article III jurist said about my husband's penis. That is public, and it is in the congressional record. This private apology is not enough to change the judiciary, because the language of our shared profession requires a public finding of liability in order to remediate harm. And it is not enough for me personally. It is not enough to recognize your complacency or complicity without changing your conduct or facing any consequences.

I don't know how to make enough out of this public silence. I don't have the answers to fix this problem: I am not an expert in building harassment-free workplaces, and thus I cannot, should not, and will not be prescriptive — despite this Essay's publication in a law review. Instead, I intend for my experience to be an invitation and an invocation for those who have not spent all of their chips through congressional testimony in their first year of legal practice to consider the power still in their hands. This work includes evaluating their enormous power in legal, political, and educational institutions that could rectify, or at least ameliorate, this problem quite swiftly, if there was the will to do so. Equally important, this work requires the examination of their power in daily interactions with the people around them, including people who have been harassed and people who have harassed others.

My days now are filled with a baby screaming into a world they literally cannot see, and I try to stay present with and not impose onto their future. As I sit in my own present, I do not regret my testimony and I would do it again. But sometimes on hard days, I find myself back in the office with Judge Reinhardt, wondering if it is me instead of him screaming into the face of a future in this profession that does not want or welcome people like me. I used to tell myself there was virtue in screaming into the void just for the sake of it, but the last year as an American citizen has really beaten any notion of inherent virtue out of me. Now I tell myself there is virtue in screaming into the face of deafening indifference, if only because the sound of my voice reminds me that I have not yet succumbed to it.

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<sup>31</sup> Email on file with author.