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An Exploration of Fairness, Judicial Independence and Employee Protections

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Walden University
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Abstract

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MPP, Walden University, 2017

MPA, Rutgers University, 2009

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Dissertation Submitted in Partial Fulfillment

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Abstract

Sexual harassment is an issue that can plague any organization, especially ones that do not have a formal complaint process or is built on a system based on hierarchy. Most notably, some federal judges abused their power based on a system that did not have any checks and balances in place as preventative measure against harassment. The purpose of this qualitative study was to explore female federal judiciary employees' understanding of employee protection principles extended to staff of the judicial branch, and to assess whether female federal judiciary employees were aware of reporting mechanisms for acts of misconduct. The research questions used to guide the study were based on the perceptions of female federal judiciary employees regarding reporting misconduct and existing employee protection principles in the judicial branch of government. Narrative policy framework was the theoretical framework used for this study, which is centered upon the role of storytelling in the policy making process. A case study design, including secondary analysis of interviews with three employees, was used to elucidate experiences. The findings revealed female federal judiciary employees were hesitant and fearful to report acts of misconduct. In addition, other attributes such as power disparities, lack of accountability, and reporting challenges contributed to underreporting. By acknowledging employees' hesitancy to report misconduct, the implication for positive social change is the creation of procedures and policies to ensure victims of misconduct are heard and effective organizational responses are put in place to combat harassment in the workplace.

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Dedication

I would like to take this time to dedicate this study to Ashley (Peniston) Migliore. You were placed in my life as a coworker but then grew to be a dear friend. You helped me see the value in becoming a homeowner, taught me so much about fiscal responsibility and building my confidence. I am overjoyed God allowed me to meet someone so kind, generous, ambitious, hardworking, patient and loving. It breaks my heart every time I think about the fact I cannot pick up the phone and call you but I know you are smiling down from heaven. I hope I made you proud in my selection of this topic to honor your memory. Until we meet again, my dear friend. I love you! #JerseyGirls

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Chapter 1: Introduction to the Study

Sexual harassment is an issue that may plague all organizations especially ones that do not have a formal complaint process or is built on a system based on hierarchy. Most notably, it came to the forefront some federal judges abused their power based on a system that did not have any checks and balances in place to serve as a preventative measure. U.S. federal courts are led by Article III judges. Unlike state court judges, Article III judges are nominated by the president of the United States and confirmed by the Senate. Further, Article III judges are imparted with a lifetime appointment granting judicial independence that can only be terminated through the impeachment process. This results in a large array of issues for the federal judiciary.

A reputable story related to this study is that of Anita Hill. Hill is a former attorney advisor to the now Supreme Court Justice Clarence Thomas. Thomas and Hill both previously worked for the Equal Employment Opportunity Commission where Thomas supervised Hill. In 1991, Hill testified before the U.S. Senate Judiciary Committee alleging sexual harassment claims against Thomas (Hill, 2021). At the time of her testimony, Thomas was going through the confirmation process to become a United States Supreme Court Justice. Hill's allegations were diminished, and Thomas was ultimately confirmed in a 52-48 vote (Hill, 2021). Although Hill's testimony was heavily scrutinized, publicized, and not taken seriously before the committee that consisted of all men, Hill is known for the public exposure of sexual misconduct in the workplace.

In 1976, *Redbook,* a women's magazine, published a survey about sexual harassment in the workplace (Hill, 2021; Menza, 2016). The survey was titled "What

Men Do to Women on the Job," and revealed there were flagrant disparities that existed between both genders on what is considered sexual harassment (Hill, 2021; Menza, 2016). The *Rebook* survey was the first survey in history to initiate an inquiry about sexual harassment in the workplace and to provide statistics on the issue (Menza, 2016). The survey revealed:

> 90[%] of women had been subjected to receiving unwanted attention at work. [Ninety-two] percent of women said sexual harassment at work was a problem, with a majority of respondents saying, "it is a serious one". Nearly 9 out of 10 women reported that they had experienced one or more forms of unwanted attention on the job. Nearly 50[%] of respondents said that they (or a woman they know) had quit a job or have been fired because of the problem. One-third of the respondents said they pretended not to notice the signals of sexual harassment. Only 25[%] of respondents said they believed the man would be asked to stop if they reported it. [Thirty] percent of respondents said they have used their sexual attractiveness to gain some job advantage. One in three women said their appearance was as important as their other qualifications when it came to being hired. (Menza, 2016, para. 3)

Hill recently authored a book titled *Believing* in which she coined the term gender-based violence. According to Hill (2021), gender-based violence is "a conduit through which biases based on race, sexual orientation, and class get channeled and heaped on women and girls" (p. 9). It is a form of misogyny that places heavy emphasis on power dynamics and disparities often encountered in the workplace. Hill (2021) noted

often society responds or reacts to gender-based violence by overlooking the issue or pretending it doesn't exist. This is a form of denial which minimizes the problem and does not help resolve issues that are based on abuse of power (Hill, 2021).

In 2017, a "mandate" (loose translation) from Chief Justice John G. Roberts, coupled with pressure from Congress to review workplace conduct issues in the federal judiciary, was deployed (Duff, 2018). The Director of the Administrative Office of the United States Courts was tasked with this matter and has recommended several initiatives to assist and safeguard employees, especially chambers employees (e.g., temporary law clerks; Duff, 2018).

The focus of this qualitative study was to review the differences in employee protection principles as it pertains to federal judicial branch employees and to gain their perceptions of reporting mechanisms in place that support or follow a formal grievance process. Specifically, the study reviewed fairness in a judicial workspace, with the scope centered on workplace conduct and the impact of the judiciary's former plans or goals to counteract misconduct. Discussing how judicial independence has presented challenges when attempting to enforce employee protection policies and procedures in the federal judiciary is crucial to gaining clarity and empirical comprehension of the history and culture of the third branch, also known as the judicial branch. Also, briefly highlighting the rules afforded to executive branch employees that are not available to judicial branch employees demonstrate the significant disparity in employee relations as it pertains to existing protective measures afforded to judiciary employees. Altogether, the lack of empirical research substantiating the power and influence federal judges have over

employees demonstrate a need to hold lifetime appointees accountable to uphold the safety and welfare of judicial branch employees.

Positive social change implications are projected to come from this study. The results of the research may assist judiciary officials in forming policies and procedures that will safeguard employees. Further, a formal process based on anonymity can be implemented or enhanced to assist employees in reporting misconduct. In addition, the findings will allow policymakers to gain additional insights into how to effectively design systems that empower employees to report inappropriate acts.

In this chapter, I discuss the background of the problem, specifically why it is important to review perceptions of employee protections afforded to federal judiciary staff. The chapter also includes the problem statement, purpose of the study, research questions, theoretical framework, and nature of the study. A list of terms is defined to provide background for words or phrases commonly used that possessed a slightly different meaning in a judicial context. I also discuss assumptions, scope and delimitations, limitations, its social change implications.

Background

The MeToo movement and a host of public scandals presented an opportunity for individuals in leadership positions to act on workplace conduct issues. The MeToo movement was initiated in 2006 by activist Tarana Burke (Rister & McClure, 2019). At the time, Burke was a director of an organization that focused on the physical, psychological, social, and economic development of girls and women (Rister & McClure, 2019). The organization also focused on the context of gender equality (Rister &

McClure, 2019). The movement was born when a young girl at Burke's organization confessed to being sexually abused (Burke, 2013). Burke was emotionally overwhelmed by the young woman's story but could not bring herself to say, "Me Too" (Burke, 2013). As a result of this interaction, Burke wore an embroidered shirt with the words "Me Too" as she spoke at a Rape Culture convention in 2014 (Burke, 2013).

Unbeknownst to Burke, Alyssa Milano tweeted "Me Too" in October 2017 in support of protests and the outrage of sexual assault allegations against women (Rister & McClure, 2019). The two met via social media platforms and collaborated to form a social movement (Rister & McClure, 2019). Therefore, by definition, the MeToo movement is "a feminist movement seeking to frame the injustice of sexual violence, especially against women, and to raise awareness for social change" (Rister & McClure, 2019, p. 156). Additionally, the MeToo movement focuses on sharing stories of sexual violence and harassment to bring forth awareness and various power disparities that exists amongst gender in the workplace (Rister & McClure, 2019).

Around the same time, Chief Justice John G. Roberts, Jr., of the United States Supreme Court, asked the Director of the Administrative Office of the United States Courts to create a working group dedicated towards examining workplace conduct protocols currently in place for all judiciary employees. The issue of abuse of power pertaining to misconduct was highlighted in the Chief Justices' 2017 Year-End Report on the Federal Judiciary (Roberts, 2017). Roberts specifically notated the need to act and ensure the issue of sexual harassment that has plagued other sectors is not ignored in the judiciary (Roberts, 2017).

The working group was tasked with reviewing whether changes were needed to the judiciary's codes of conduct, guidance to employees of reporting mechanisms and confidentiality, educational programs, and rules for investigating and processing complaints (Duff, 2018). The working group was chaired by the director of the administrative office, and consisted of a mixture of judges, court administrators from various circuits, and executive level staff from the Administrative Office and Federal Judicial Center (Duff, 2018). The purpose of the working group was aligned with Chief Justice Roberts' goal which was "to ensure an exemplary workplace for every judge and every court employee" (Roberts, 2017, p.11).

Because the mission of the judicial branch of government is based on administering justice, this task was vital at ensuring accountability and maintaining civility to ensure public trust. Further, aligned with Chief Justice Roberts' goal, it is important to note the need for the judiciary to be viewed as having an inclusive and respectful work environment. As the exact opposite would be detrimental and contradict the mission of the third branch.

As a result, the working group reviewed existing literature on workplace misconduct. Specifically, the working group relied on a June 2016 study by a Select Task Force of the United States Equal Employment Opportunity Commission (EEOC). The EEOC study "analyzed harassment, employee response, risk factors, and steps that can be mitigated to prevent and remedy inappropriate conduct" (Duff, 2018, p. 2). Another factor to consider is the unique culture of the judiciary.

Although the judiciary shares many characteristics as other places of employment, it differs in that there are many factors that attribute to a hierarchical structure that is supported by the United States Constitution. For instance, Article III judges are appointed to the bench for life and are only subject to disciplinary measures under very strict and formal processes (Kobrick & Holt, 2018). Whereas, all other employees of the court, including executives, serve in an at-will capacity, or at the pleasure of the court (Kobrick & Holt, 2018). This creates a power disparity between judges and staff, notably chambers staff and staff that have direct interaction with judges, that is unmatched in any other sector.

It is important to highlight the differences in the workplace dynamics of the judicial branch as it pertains to at-will employment which may contribute to misconduct. A system that is established on little to no recourse, based on job title or elitism, is inadvertently designed to be a breeding ground for misconduct that will be ignored unless remedies are in place to counteract such. Duff's (2018) study has provided various recommendations that can be implemented to improve procedures, clarify, and revise the judicial officer code of conduct, and identify educational opportunities to create awareness and training opportunities. Further, leaders must strategize to implement standards in the workplace to address ethical conduct issues that affects employees (Robertson & Barling, 2017).

The findings of this research study measure the impact the working group initiative has had on judiciary employees and whether there is a need to implement additional steps. As a qualitative study, utilizing the narrative policy framework as the

theoretical foundation was most appropriate with the topic of the study. This is because the narrative policy framework is based on the power of a narrative used to shape public policy.

Problem Statement

The three branches of government—executive, legislative, and judicial—are not created equal regarding employee protections. The executive branch and legislative branch have their own set of principles and policies that are mutually exclusive, and not transferrable to the judicial branch of government. Based on Article III of the U.S. Constitution, the federal judiciary is subject to the judicial independence clause (Grove, 2018). The judicial independence clause states:

> The Judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office. (U.S. Const. art. III, § 1)

This clause was originally set to ensure a system of checks and balances, specifically, as it pertained to separation of powers (Grove, 2018). Judicial independence provides federal judges with several protections, such as the ability to make rulings based on discretion, lifetime appointments, and the inability to be removed from the bench unless impeached (Grove, 2018). Yet, it does not provide employees who serve the court with the same level of protections or recourse in the workplace. Consequently, the

problem is judicial independence leaves personnel of the judiciary vulnerable in terms of employee protections against workplace misconduct. This alters the perception of female federal judiciary employees regarding reporting acts of misconduct against federally appointed judges, as well as their awareness of employee protection principles afforded to judicial branch employees.

The "Code of Conduct for United States Judges" applies to U.S. circuit judges, district judges, international trade judges, federal claims judges, bankruptcy judges, and magistrate judges. It was adopted by the Judicial Conference of the United States on April 5, 1973 and has since been modified eight times to ensure standards of conduct are preserved, judicial officer compliance is upheld, and an ethical model to preserve the integrity and independence of the federal judiciary is maintained (Duff, 2018). Prior to June 2018, the federal judiciary's "Code of Conduct for United States Judges" did not supply workplace rules or mandates for Article III judges to abide by, nor were there any mechanisms in place to assess the quality of workplace environment (Duff, 2018). Therefore, there was a lack of educational programs or official guidance on this matter.

Furthermore, protected class principles held in Title VII of the Civil Rights Act of 1964 are obsolete in the federal judiciary, due to the U.S. Constitution's judicial independence clause. In other words, the federal judiciary does not recognize the five protected classes (i.e., race, color, religion, sex, national origin) identified in Title VII of the Civil Rights Act of 1964, as it pertains to discrimination. As such, the federal judiciary is not subject to the same laws as the other two branches of government, which is problematic and does a disservice to employees who may encounter workplace

misconduct and desire recourse (Grove, 2018). However, Duff (2018) discussed strategies that can be imposed to ensure employees are safeguarded. Further, Duff (2018) determined this issue is a barrier that discourages employees from reporting workplace misconduct and creates a culture where employees are unaware of options for recourse if subjected to inappropriate conduct.

Although research has been conducted on workplace misconduct in the judiciary, there is a gap in the literature surrounding knowledge of female federal judiciary staff perceptions of employee protection principles and reporting mechanisms for acts of misconduct. Thus, there was a need to review this issue from a leadership standpoint to ensure ethical principles are considered and invoked within judges' chambers. Lawton and Páez (2015) identified three interlocking principles as rationale for ethical leadership and MacLean (2016) analyzed various factors that have a detrimental impact in the workplace, such as bullying. The aforementioned scholarly sources provided clarity and direction on how to handle harmful behavior. Further, Duff (2018) provided a report on the federal judiciary's workplace conduct task force that recommended changes to the code of conduct for federal judges, the code of conduct for judicial employees, and the Judicial Conduct and Disability Act (JCD) rules. The results of the study fill the gap in the literature regarding knowledge of female federal judiciary staff perceptions of employee protection principles and reporting mechanisms for acts of misconduct, and can inform the creation of programs, procedures, and other safeguards to assist female federal judiciary employees with reporting mechanisms.

Purpose of the Study

The purpose of this qualitative study was to explore female federal judiciary employees understanding of employee protection principles extended to staff of the judicial branch, and whether female federal judiciary employees are aware of reporting mechanisms for acts of misconduct. It is also important to note how ethics played a role in workplace conduct and whether there was a need to precisely define ethical behavior and ethical terms using examples and/or establishing a set of rules or principles to be viewed as a guideline or adopted into policy. Further, assessing fairness in a judicial workspace was necessary to determine whether judicial independence is harmful or adds additional challenges to employee relations. Last, briefly comparing the rules afforded to executive branch employees that are not available to judicial branch employees may provide a baseline for why staff tend not to report or underreport misconduct.

Research Questions

The research questions that guided my study were:

Research Question 1: What are the perceptions of female federal judiciary employees regarding the report of acts of misconduct by federally appointed judges?

Research Question 2: What are the perceptions of female federal judiciary employees concerning current employee protection principles of the judicial branch of government extended to judiciary employees?

Theoretical Framework

The theoretical framework for this study was narrative policy framework. Narrative policy framework (NPF) is centered upon the role of narratives in the policy

making process (Jones & McBeth, 2010). According to Macbeth et al. (2014), narratives are identified as a key component in the policy process due to their alignment with the storytelling process. In other words, human interaction can be used to influence the policy process, frame policy problems, and shape policy beliefs (Jones & McBeth, 2010). This is based on the premise that essential stories play a vital role in the decision-making process that affects groups. Further, this basis can be used as a tool of engagement amongst groups of people to shape outcomes.

It is stated "narratives are the lifeblood of politics" (Weible & Sabatier, 2018, p. 173). NPF asserts there is power in policy narratives and worth understanding (Weible & Sabatier, 2018). Further, how a story is told is an important aspect to policy success and longevity regarding which actions are taken (Weible & Sabatier, 2018). Because policy developments are mainly implemented by both formal institutional venues (e.g., floor debates in Congress) or informal venues (e.g., media, blogs or websites), the narrative terrain can assist in shaping policy (Weible & Sabatier, 2018).

Therefore, NPF is a theory based on the importance of narratives in the policy process. Thus, there is a need to understand the role of narratives and view it as a vital aspect in the policy making process. NPF provided perspective on how victims of misconduct derived from judicial officers can assist in shaping policy. I will go into more detail in Chapter 2.

Nature of the Study

This study used qualitative methodology. Specifically, secondary data stemming from prerecorded investigative interviews conducted by the House Judiciary Committee

Subcommittee on Courts, Intellectual Property, and the Internet were reviewed and analyzed during the data collection process to acquire rich, in-depth knowledge concerning female federal judiciary employees' experiences with acts of misconduct in the workplace. The purpose of those interviews was to highlight the judiciary's procedures, or lack thereof, for reporting and correcting inappropriate behavior. Relying on secondary data, rather than primary data, was advantageous, as I was obligated to invoke critical thinking and review the data from a theoretical lens (Cowton, 1998). This process was greatly benefited from the development of themes to allow substantive issues presented within the study to be carefully analyzed (Cowton, 1998). This will also allow policymakers to gain additional insights into how to effectively design systems that empower employees to report inappropriate acts.

This case study design was used to elucidate experiences with the phenomenon of workplace misconduct held by females who currently work or formerly worked in the federal judiciary through use of purposive sampling. The sample size consisted of three interviews which represented the total amount of interviews conducted by the House Judiciary Committee, prior to 2019. Yin (2018) does not explicitly identify an exact number of participants who should be interviewed in a qualitative study, specifically noting sample size to be irrelevant. Instead, the focus should be on gathering different information or perspectives on the research phenomenon (Yin, 2018). As such, the three interviews allowed me to capture the essence of the problem.

Additionally, using a case study design provided rationale for ethical strategies and concepts that set a basis for future research. The codes and coding technique required

a data analysis strategy. The process involved creating codes from the data and identifying labels to address the research questions. Utilizing this data analysis technique presented opportunities to quickly identify themes.

Operating Definition of Terms

Workplace conduct: A term devoted to creating policies and procedures to set standards and expectations in the workplace. In the federal judiciary, this term is solely based on harassment or sexual harassment and does not include misconduct terms such as retaliation, wrongful termination, or discrimination. In other words, as it relates to the federal judiciary, the term is extremely limited and does cover all employee protection protections afforded under federal legislation.

Inappropriate workplace conduct: A term that covers any act prohibited by an employer or acts subjected to legal remedy pursuant to federal legislation; or, "a term used to describe a variety of claim types covered by employment practices liability insurance policies that do not include "standard" perils such as discrimination, harassment, wrongful termination, or retaliation" (IRMI, 2021, para1).

Employee protection principles: Individuals employed by an organization in the United States that are afforded legal protections under Federal legislation which constitutes the ability to receive fair treatment. "Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences— (A) a violation of any law, rule, or regulation, or (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety" 5 U.S. Code § 2301.

Title VII or protected class principles: Title VII of the Civil Rights Act of 1964 is a federal law enacted to protect employees from discrimination. This means employers or businesses cannot discriminate against employees on the basis of five classifications or principles: race, color, religion, sex, or national origin (Civil Rights Act, 1964).

Judicial independence: A concept that courts should be free of influence or control of the other branches of government or private entities and possess the ability to operate independently.

Retaliation: When an employer, manager, or judicial officer intentionally or unintentionally punishes an employee for seeking remedy, legal, or otherwise, if subjected to workplace conduct or inappropriate workplace conduct. In the context of the federal judiciary, a judge may choose not to issue a recommendation letter to an employee disregarding the employee's competence or commitment to the job. Letters of recommendation by federal judges are often needed by term (temporary) law clerks to obtain a position in a law firm. Often, substantial monetary compensation in the form of a bonus is attached to receipt of a letter of recommendation by a federal judge. Other examples include setting expectations or demands that the employee works on weekends, is on call 24 hours a day, or works more than a 40-hour work week when not contracted to do so.

MeToo Movement: "A feminist movement seeking to frame the injustice of sexual violence, especially against women, and to raise awareness for social change" (Rister & McClure, 2019, p. 156).

At-will employment: An employment agreement between and employer and employee that states employment may be terminated at any time or any reason. However, that does not mean the termination is exempt from being classified as wrongful. “Under the employment-at-will clause, an employer may also change the terms of employment with no notice or legally binding consequences. Examples include a change to benefits, altering wages or reducing time off” (National Conference of State Legislatures, 2008, para 4). All individuals who work for the federal judiciary are considered at-will employees. If the employee works in a federal courthouse, the individual serves at the pleasure of the court, and again, may be dismissed from employment when no longer needed.

Wrongful termination: A term that describes an individual terminated from employment based on an illegal act or “a fired employee's claim that the firing breached an employment contract or some public law” (Legal Information Institute, 2021, para 1).

The court: A term used to describe any person or body that has the authority to hear and resolve disputes in civil or criminal cases. The term can be confused with the singular term “court” (or courthouse) which references a building or place where justice is administered.

Assumptions

There were several assumptions in this study regarding the population of the study. The first assumption was several factors can influence participants—namely, their perceptions, personal experiences, and experiences of others who are close or share similar qualities. Second, a most prominent assumption I made about the population was

they perceived misconduct rendered by an Article III judge to be out of the employees' control. Another assumption was individuals who serve in federal judgeships are untouchable or invincible due to having a lifetime appointment. Therefore, the employee has no other choice but to accept and/or be subjected to deplorable treatment. Last, an additional assumption was the perception employees have of public service officials with high-ranking authority and/or life appointments. In other words, I assumed employees hold these high-ranking officials to a high standard that is unreasonable and/or unrealistic.

I made the previously mentioned assumptions about the participants of the study. Therefore, I assumed most employees of the federal judiciary possessed these characteristics or thoughts about the role of an Article III judge, which provided a false narrative regarding being on the receiving end of harsh treatment by high-ranking public officials. The overall assumption was misconduct should not be tolerated in the workplace but was acceptable based on the individuals' position of authority. This assumption was necessary in the context of the study because it was directly correlated to the research questions by highlighting what the perceptions are of employee protections afforded to judiciary branch employees, demonstrating why acts of misconduct are not always reported and why reporting mechanisms are limited in the federal judiciary.

Scope and Delimitations

The scope of this study was centered upon a limited number of women who were previously employed by the federal judiciary. The study was delimited by the narrow focus on gender; employment-based affiliation, namely the federal judiciary; and

purposive sampling based on the targeted population of individuals who had experienced acts of misconduct rendered by an Article III judge. Both the scope and delimitations were set as a control barrier to identify boundaries.

An additional delimitation was the use of secondary qualitative datasets. Although qualitative findings are rarely free from researcher perspective, a potential bias may exist "with the interpretative methods used to analyze data" (Beck, 2019, p. 13). Further, as a secondary analyst, the ability to form a relationship with participants was lacking, which is a fundamental principle in qualitative research (see Beck, 2019). I was also not privy to the participants experience as there is a form of detachment that existed as a secondary analyst (see Beck, 2019). Additionally, because the study is based on a sensitive topic, there was a possibility I may have had a strong emotional reaction to reading interview transcripts or viewing video footage, which may not have been anticipated (Beck, 2019; Hinds et al., 1997).

The bounds of the study were based on formulated policies and procedures that impact judiciary employees regarding reporting channels for workplace conduct issues. Studies regarding judicial employee protection principles are nonexistent. Therefore, the findings of the research contribute to the development of policies or procedures that assist employees when faced with inappropriate treatment. The study may also help policymakers evaluate current principles to assess effectiveness and efficiency. Transferability was likely to be achieved from the results of the research based on the notion that conduct issues exist amongst all work sectors; however, generalizability was

unlikely to be achieved because the sample size does not represent the entire population and the scope is narrowly defined to solely focus on the federal judiciary.

Limitations

This section addresses the limitations of the study, including methodology, research design, and population. According to Merriam and Tisdell (2016), a concern about case study research stems from "unusual problems of ethics" (p. 264) or selection bias. There is a possibility the researcher may only select data that could be manipulated or illustrated in a favorable manner (Merriam & Tisdell, 2016). An additional limitation involves a lack of representativeness. The sample size lacked representation of employees from other court types, as the acquired data was primarily obtained from U.S. district courts, which would exclude other federal courts with judges who have lifetime appointments, such as the United States Supreme Court, United States Courts of Appeals, and the United States Court of International Trade. Last, qualitative methodology and case study design limited the ability to generalize conclusions based upon the findings, due to the specificity of characteristics being studied.

Additionally, a barrier that arose surrounds the subjectivity and nonprobability-based nature of the unit selection (O'Sullivan et al., 2017). In qualitative studies, data collection and analysis are limited because the researcher must rely on their own instincts and abilities (Merriam & Tisdell, 2016). Utilizing interview data from an external entity provided a challenge, in that there was no ability to probe or gain clarification of the information presented did not exist. With this limitation, I also did not possess a sense of context outside of what was written and recorded by the initial researcher.

Significance

The study was significant because it may assist executives employed with the federal judiciary, by identifying effective strategies to counteract misconduct amongst lifetime appointees of the federal judiciary. The findings may also improve ethical conduct of leaders and serve as a training mechanism. The application of ethical strategies and bringing forth awareness of unethical conduct can clarify boundaries and increase ethical performance, which can in turn create a healthier work environment. Additionally, the findings may contribute to positive social change by demonstrating the need to change policies and procedures to safeguard a vulnerable population. Further, the study indirectly provides scholarly rationale in support of social movements that create social change on topics pertaining to harassment and misconduct.

Summary

The lack of federal judiciary employee protection principles, similarly aligned to those afforded to executive branch employees, posed significant issues for the judicial branch of government. However, these issues are a direct effect of the judicial independence clause, which allows the judiciary to be free of certain laws to protect Article III judges. The theoretical framework, NPF, provided a basis for the research design and data analysis strategies by highlighting the need for stakeholder opinions in the policy making process. This chapter provided the background for the study, the problem statement, the purpose of the study, the research questions and theoretical foundation, the nature of the study, definition of terms used within the study, assumptions, the scope and delimitations of the study, and limitations and significance of

the study. Chapter 2 will provide the literature search strategy, further discuss the theoretical foundation, and a review of existing literature.

Chapter 2: Literature Review

The issue of abuse of power related to misconduct in the workplace has plagued several employment sectors, including the judicial branch of government. Judicial independence is a concept created by the framers of the U.S. Constitution that established separation of power between the three branches of government. The problem is judicial independence has left personnel of the federal judiciary vulnerable in terms of employee protections against workplace misconduct, thereby causing female federal judiciary employees to not report acts of misconduct against federally appointed judges. The purpose of this qualitative study was to explore female federal judiciary employees understanding of basic human resources principles as it pertains to their rights as employees of the judicial branch, and why they do or do not report acts of misconduct.

Although research has been conducted on workplace misconduct in the federal judiciary, there is a gap in the literature surrounding knowledge of why female federal judiciary employees are reluctant to report acts of misconduct. This suggests assessing fairness in a judicial workspace is necessary to determine whether judicial independence is harmful or adds additional challenges to employee relations. Further, comparing the rules afforded to executive branch employees that are not available to judicial branch employees may provide a baseline for why staff tend not to report or underreport misconduct.

This chapter provides a review of the literature surrounding workplace conduct efforts that have been implemented or are ongoing within the federal judiciary, my literature search strategy, and key concepts applicable to variables in the judiciary.

Factors such as a review of the structure of the federal judiciary, a comprehensive breakdown of judicial independence, the distinction between competitive and excepted service employment, the identification of protected class principles not afforded to judicial branch employees, and a brief overview of related studies are discussed herein.

Literature Search Strategy

The Walden University Library databases and search engines were primarily used to acquire information on this topic. ProQuest Dissertations and Theses Global, ProQuest Central, SAGE Premiere, Thoreau Multi-Database Search, Academic Search Complete also known as EBSCO Discovery Service, ABI/INFORM Collection, ERIC, Political Science Complete & Business Source Complete Combined Search, and Google Scholar were the primary databases used to collect information. Further, additional searches on the JNET, an internal database for judiciary employees, USCourts.gov, FJC.gov, and LexisNexis were used to locate information not readily accessible to the public or information that is legal in nature that would not be stored in a regular scholarly research database.

A variety of terms and phrases were also used to location information. The terms used in the reference databases and search engines include terms and phases such as: *federal judiciary, at-will employment, excepted service, competitive service, third branch of government, judicial branch of government, executive branch of government, judicial administration, article III judges, employment dispute resolution, workplace misconduct, workplace conduct, grievance procedures, human resources, harassment, retaliation, recourse, sexual harassment, inappropriate conduct, MeToo movement, employee*

protections, protected class principles, judicial conduct rules, constitutional origins of the federal judiciary, judicial officers and *judiciary transparency*.

The data search of scholarly resources was strictly limited to peer-reviewed journals that spanned from 2015-2020. The search also consisted of legal clauses or cases that were not subjected to the 5-year publication guidelines as such clauses provide context for the history of the creation of the judicial branch of government. My search range was narrowed to solely focus on concepts that were applicable to the federal judiciary. Further, the search yielded few dissertations on this topic. However, a study directly relevant to this topic was being assessed and used to demonstrate a gap in the literature.

Theoretical Foundation

The theoretical foundation for this research study relied on the narrative policy framework (NPF). NPF is a policy process framework that examines the role of policy narratives in the policy process (Shanahan et al., 2018). In other words, the theory provides perspective on how victims of misconduct derived from judicial officers can assist in shaping policy. The following section will provide a detailed description of the theory and demonstrate how NPF aligns with the topic of this research study.

Narrative Policy Framework

Jones and McBeth (2010) first developed the NPF. It is stated "narratives are the lifeblood of politics" (p. 173). Further, how a story is told is an important aspect to policy success and longevity regarding which actions are taken (Weible & Sabatier, 2018). Therefore, NPF is a theory based on the importance of narratives in the policy process.

Thus, there is a need to understand the role of narratives and view it as a vital aspect in the policy making process.

NPF is not the first theory to conceptualize the importance of narrative; however, there is a limitation on the systematic approaches geared towards the understanding of the role of policy narratives in the public policy process (Weible & Sabatier, 2018). Further, NPF was developed to create a framework that serves as a conduit "between divergent policy process approaches by holding that narratives both socially construct reality and can be measure empirically" (Shanahan et al., 2013, p. 455). NPF is used in several settings to improve the understanding of the policy making process (Weible & Sabatier, 2018).

The rationale for selecting this theory was to demonstrate how NPF affords people affected by policies the ability to share stories of their experience. Further, NPF can be used to understand public policies within government contexts (Weible & Sabatier, 2018). This may allow policy researchers the opportunity to advance discoveries surrounding the phenomenon of interest related to this study (Weible & Sabatier, 2018). In other words, NPF may provide perspective on how victims of misconduct derived from judicial officers can assist in shaping policy.

Form and Content of Policy Narratives

In the framework of a narrative, form refers to structure and content refers to the policy context and subject matter (Weible & Sabatier, 2018). The NPF is not aligned with post positivism, where form, content and all narrative principles are unique (Weible & Sabatier, 2018). In contrast, NPF embraces a structuralist interpretation of narrative

(Weible & Sabatier, 2018). Jones et al. (2014) equated policy narratives to have precise elements (form) that can be generalized across different policy contexts.

Defining a policy narrative consists of form and content (Jones et al., 2014). The core elements of form are setting, characters, plot and moral of the story (Jones et al., 2014). In setting, policy narratives are always directly related to policy problems that are situated within a specific context (Jones et al., 2014). There also must be at least one character which identifies victims affected by the policy, villains initiating the harm or heroes who provide relief to the problem (Jones et al., 2014). The plot is centered around the characters and the timing or setting of the issue (Jones et al., 2014). Finally, moral is based on normative actions incarnate (Jones et al., 2014). It provides purpose to the characters' actions and motives.

In a policy narrative, content is based on the interpretation of the narrator's story. As indicated in Weible and Sabatier (2018), "the variation in narrative content can be studied through narrative strategies and the belief systems invoked within different policy narratives" (p. 177). Narrative strategies are important as influence has a bearing on whether the story will shape public policy. This provides researchers with the ability to examine policy contexts in a unique setting while aspiring towards generalizable findings (Weible & Sabatier, 2018). Therefore, NPF has a significant impact on policy development as it is assumed policy narratives operate simultaneously at three levels of analysis (Weible & Sabatier, 2018).

NPF divides policy narratives into three categories: micro-level, meso-level, and macro-level for the purposes of analysis (Weible & Sabatier, 2018). These distinctions

are based on determining scope and direction related to the interest of the researcher (Weible & Sabatier, 2018). Shanahan et al. (2013) also noted the demarcation can also be viewed as a way to organize thinking pertaining to narrative data. Micro-level NPF is concerned with the individual level; specifically, how policy narratives shape individual perspective (Shanahan et al., 2013). Meso-level NPF is concerned with policy narratives from policy actors (e.g., groups, coalitions, organizations) within the policy subsystem (Shanahan et al., 2013). Macro-level NPF is based on existing policy narratives embedded in organizational culture shape public policy (Shanahan et al., 2013). In all three levels of analysis, the focus of the researcher is different even though policy narratives serve as the main element for data retrieval (Weible & Sabatier, 2018). This study will only focus on the micro-level hypothesis since the unit of analysis, individual, is aligned with the scope.

Jones and McBeth (2010) outline various hypotheses at the micro-level. If the hypothesis is based on breach, congruence or incongruence narrative persuasiveness can be assessed based on expectations, preferences, or beliefs (Jones & McBeth, 2010). Shanahan et al. (2011) identified congruent policy narratives to greatly strengthen policy preferences and beliefs. In the alternative, Ertas (2015) found "breaching policy narratives" to significantly influence opinion (p. 183). McBeth et al. (2014) discovered through a survey methodology that individuals preferred stories that were congruent with their beliefs. Likewise, through micro hypothesis, narrator trust can change perspective on the preferred policy when congruence is present (Ertas, 2015). All these studies

support Jones and McBeth's (2010) hypotheses in that an individual is more likely to be persuaded as perception of congruence increases.

Literature Review Related to Key Concepts

This section will discuss various concepts that are mutually exclusive to the federal judiciary. Briefly highlighting the history of federal courts and identifying terms that impact the implementation of accountability principles for federal judges provide a framework for understanding the structure of the federal judiciary. Further, this section offers background information to existing challenges regarding misconduct in the federal judiciary workforce.

The Structure of the Federal Judiciary

The establishment of federal courts stemmed from the Judiciary Act of 1789 (Ragsdale, 2013). A plan for the federal government, consisting of three branches, was created by the framers at the Constitutional Convention in Philadelphia, Pennsylvania (Ragsdale, 2013). The rationale focused on whether the judiciary needed a hierarchy of courts, meaning one leading court and subsequent courts that were not on the same level, judges' term of office length, judges' salary information, the amount of power or authority federal judges had over state and federal laws and other related information (Ragsdale, 2013). The Act permitted Congress the ability to have complete oversight and fill in necessary gaps (Ragsdale, 2013).

In that regard, after New Hampshire ratified the Constitution, Article III was put into effect. Article III authorized Congress to create the federal judicial system. Congress initiated a 3-part tiered judiciary (Ragsdale, 2013). This consists of the U.S. Supreme

Court, U.S. Circuit Courts of Appeals, and the U.S. District Courts. In ranking order, the U.S. Supreme Court is considered the highest court of the land, followed by the additional courts. This tiered system has been in place since 1912 (Ragsdale, 2013). Over the course of several years, courts were reorganized into circuits (Ragsdale, 2013). There are now eleven circuits within the federal courts.

The reorganization of circuits had a direct influence on Supreme Court nominations and other judicial officer factors (Ragsdale, 2013). The Circuit Judges Act of 1869 created a provision to allow federal judges to retire while continuing to receive their salaries (Ragsdale, 2013). The Judicial Conference of the United States is the national policy making body for the federal courts. 28 U.S. Code § 331 outlines the judicial conference statue which describes the role of the judicial conference.

The judicial conference is tasked with analyzing and refining the operations of federal courts. The Chief Justice of the U.S. Supreme Court is the presiding officer of the judicial conference and the Director of the Administrative Office is the judicial conference secretary (Ragsdale, 20130. The conference consists of a committee structure which includes chief judges from each circuit and a district judge from each regional judicial circuit (Ragsdale, 2013).

Judicial Independence

The federal judiciary is separate from the executive and legislative branches. Alexander Hamilton in The Federalist papers felt the judiciary's responsibility is to enforce the will of the people based on the laws of the land and free from political pressure (Ragsdale, 2006). Specifically, Hamilton argued "the complete independence of

the courts of justice is peculiarly essential in a limited Constitution" (Ragsdale, 2006, p. 2). Therefore, rendering permanent tenure as an appropriate mechanism to separate and distinguish power by the executive and legislature.

Judicial Independence ensures judges that serve during good behavior, this being a key component to maintaining the benefits and perks that come along with a lifetime judicial appointment, would be protected from political pressure and free to create separation from the executive and legislative branches (Ragsdale, 2006). It also provides protection from reduced salaries and removal from office absent the impeachment process by the President of the United States (Ragsdale, 2006).

Although some countries allow the removal of judges to occur via vote by legislature, that is not the case in the United States. Judges can only be removed if they are convicted of a crime (Ragsdale, 2006). This has created a question of whether proper checks and balances are in place within the judiciary and if so whether the judiciary has adequate tools readily at its disposal to remedy issues fairly and efficiently (Ragsdale, 2006).

An antifederalist critic discussed the importance of judicial independence; yet also acknowledged the need for accountability (Ragsdale, 2006). Brutus, the Anti-Federalist critic, stated setting such a precedence would mean federal judges are "independent of the people, the legislature and of every power under heaven" (Ragsdale, 2006, p. 2). He also warned that judges may end up being part of the political system that they were supposed to be removed from (Ragsdale, 2006). This would defeat the purpose of the creation of

the Judicial Independence Clause which maintained a separation between the judiciary and the other two branches.

Despite Brutus' warnings, Hamilton and other framers thought it was the responsibility of courts to determine the constitutionality of laws; therefore, judges should be extended extraordinary protections of judicial independence (Ragsdale, 2006). There were no concerns regarding Brutus' initial claim regarding unchecked judicial power. This oversight led to the creation of the problem addressed within this study as a system with no checks and balances almost always equates to a system of no or lax rules and regulations.

Judicial Discipline

There have been many attempts to combat the issue of judicial officer removal outside of the Congressional Impeachment process. In 1930, a University of Michigan Law School Professor, Burke Shartel, suggested impeachment should not be the sole method for removal of unfit judges (Kobrick & Holt, 2018). He described the impeachment process as cumbersome and narrow stating the standard in place did not appeal to all scenarios that may be possible when assessing good behavior (Kobrick & Holt, 2018). It was at that point others started to acknowledge this issue and chose to bring attention to it.

Hatton Sumner, chair of the House Judiciary Committee, agreed with Shartel and proposed "a trial of good behavior" to determine a judge's right to remain in office following a complaint of misconduct (Kobrick & Holt, 2018, p. 299). Between 1937 and 1942, Sumner sponsored several bills that brought into question a judge's ability to

maintain good behavior (Kobrick & Holt, 2018). Unfortunately, none of Sumner's bills were enacted in law despite gaining traction in the U.S. House of Representatives (Kobrick & Holt, 2018).

In the 1960s, the debate on this topic reemerged (Kobrick & Holt, 2018). A book titled *The Corrupt Judg*e, written by attorney Joseph Borkin in 1962, was published detailing financial impropriety by several federal judges (Kobrick & Holt, 2018). This resulted in the resignation of every judge identified in the book (Kobrick & Holt, 2018). Subsequently, for reasons unknown, a judge in the tenth circuit was ordered not to hear cases (Kobrick & Holt, 2018). This judge filed a lawsuit against the Judicial Council of the Tenth Circuit alleging such a decision resulted in his indirect removal of office which is a violation of the Constitution (Kobrick & Holt, 2018).

Given the public exposure of judges engaging in financial misconduct as well as the high-profile lawsuit regarding improper removal of office, lawmakers realized there was a need to revisit legislation (Kobrick & Holt, 2018). A clear procedure dealing with allegations of improper judicial behavior falling short of the standard for impeachment needed to be proposed, implemented, and adopted (Kobrick & Holt, 2018). As a result, the Judicial Conduct and Disability Act was passed in 1980 (Kobrick & Holt, 2018).

Judicial Conduct and Disability Act

The Judicial Conduct and Disability Act was passed on October 15, 1980, after a fifty-year debate over whether an alternative method to impeachment was necessary and constitutionally permissible (Kobrick & Holt, 2018). The Act provided a means for the

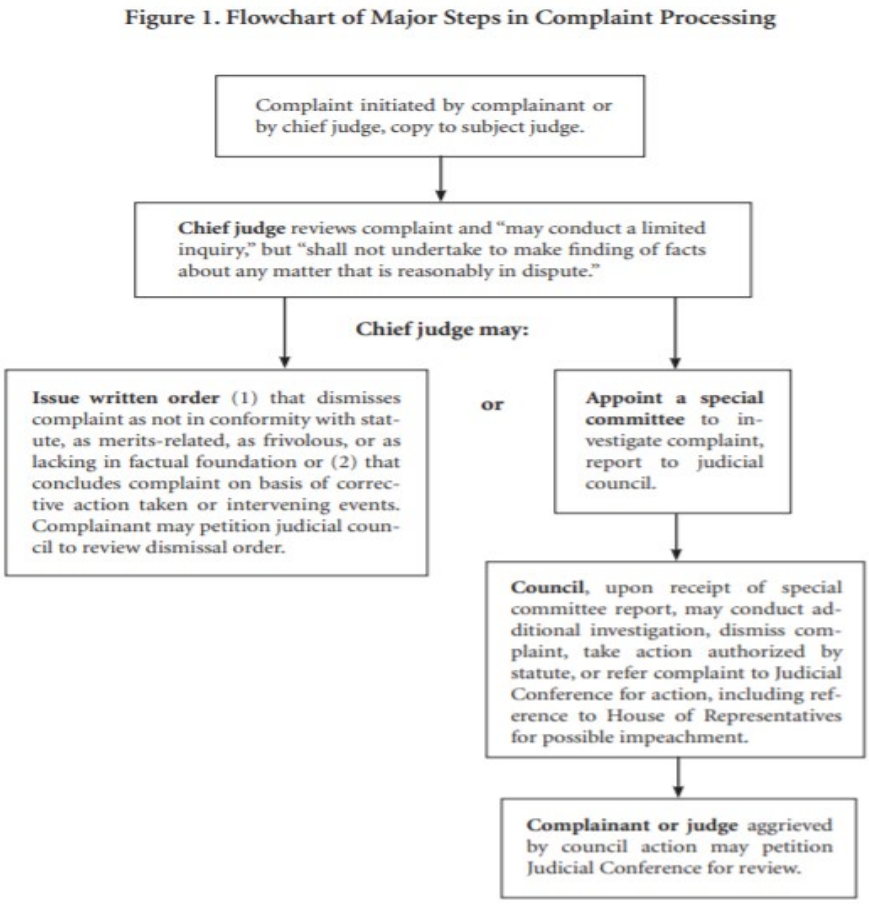
judicial branch to receive or initiate complaints relating to judicial conduct and disability (Kobrick & Holt, 2018). The Judicial Conduct and Disability Act (1980) is defined as:

> conduct prejudicial to the effective and expeditious administration of the business of the courts" or has become, by reason of a mental or physical disability, "unable to discharge all the duties" of the judicial office. (pp. 351–364)

The Act also established a centralized system that gave judicial councils of a circuit more responsibility of investigating and resolving complaints (Kobrick & Holt, 2018). Complaints can be filed by anyone who alleges misconduct by a federal judge (Kobrick & Holt, 2018). Moreover, complaints can only be filed in the applicable circuit for which the judge sits. Complaints are filed with the clerk of court for the court of appeals in the respective jurisdiction and transmitted to the chief judge of the circuit for review (Kobrick & Holt, 2018). Each circuit has different rules governing the complaint process based on the provisions in Rule 7 of the Rules for Judicial Conduct and Judicial Disability Proceedings (Kobrick & Holt, 2018). However, the chief judge, a colleague of the accused, is tasked with reviewing the complaint and for the adjudication process. Annual statistics about issues and actions taken to address complaints are published (Kobrick & Holt, 2018). The statutory provisions governing the act are notated in 28 U.S. Code § 351-364. A flowchart of the complaint process is outlined below.

Figure 1

Flowchart of Major Steps in Complaint Processing



Note. Presents an overview of the act's process for presenting and dealing with complaints of judicial misconduct and disability. From "*Implementation of the Judicial Conduct and Disability Act of 1980*," by S. Breyer, S. E. Barker, P. M. Bowman, D. B. Hornby, S. M. Rider, and J. H. Wilkinson III, 2006, United States Supreme Court, p. 15, (https://www.supremecourt.gov/publicinfo/breyercommitteereport.pdf).

Distinguishing Employee Protections

This section will distinguish the differences in employee protections that are extended to executive branch employees that are not offered to judicial branch employees. There are federal government hiring authority concepts that apply to executive branch agencies but do not apply to judicial branch entities. Likewise, specific Acts, that are standardized across the labor force, regardless of private or public sector and afforded to the working class, are not applicable to federal judiciary employees. Further elaboration is forthcoming.

Excepted Versus Competitive Service

Federal government hiring, recruitment and retention is the underlying basis of this study as it pertains to employee protections offered to the executive branch of government that is not extended to the judicial branch. Hiring employees with the right characteristics and skillset ensures increased productivity and a successful organization. At the core of federal government hiring principles are hiring authority concepts (Office of Personnel Management [OPM], 2018).

All court employees, including federal probation officers, are categorized under the excepted service hiring authority. This means the judiciary has its own hiring system and has established its own criteria to attract, recruit and retain candidates into positions (OPM, 2018). This contrasts with executive branch agencies. However, the excepted service provides more flexibility to hiring practices and is not subjected to the same examining practices as the competitive service (OPM, 2018).

> The excepted service, as defined in section 2103 of title 5, U.S. Code, consists of all positions that are specifically excepted from the competitive service either by statute, the President, or by OPM, and that are not in the Senior Executive Service. The excepted service enables agencies to fill positions for which it is "impracticable to examine" (these positions are placed by OPM in a category called "Schedule A") or "not practicable to hold a *competitive* examination" ("Schedule B"). The excepted service also encompasses hiring authorities created because the competitive service requirements "make impracticable the adequate recruitment of sufficient numbers. (OPM, 2018, p. 1)

In contrast, employees of executive branch agencies are typically in the competitive service (OPM, 2018). Rare instances occur where positions within executive branch agencies are advertised as excepted service but that is not the normal practice (OPM, 2018). Title 5 of the United States Code generally defines the competitive service as consisting of all civil service positions in the executive branch, and "civil service positions not in the executive branch which are specifically included in the competitive service by statute." 5 U.S.C. §2101.

> The competitive service consists of all civil service positions in the Executive Branch of the Federal Government with some exceptions, which are defined in section 2102 of title 5, U.S. Code. Individuals must go through a competitive examining process open to all applicants. This process should consist of a determination of minimum qualifications through an evaluation of experience

> and/or education and one or more assessments of the competencies (knowledge, skills, and abilities) necessary for successful job performance. (OPM, 2018, p. 1)

The OPM, the federal government's premier hiring authority, provides guidance on human resources principles and policies to all federal agencies regardless of branch of government. The judiciary follows OPM's qualification and classification standards; however, based on statutory authority, it has its own unique metrics that is followed. One distinction is that all employees of the judiciary are considered "at will".

Court employees have no contractual or statutory grant of tenure; they are terminable at will and generally are not legally entitled to any due process procedures in connection with removal or other disciplinary actions. In *Williams v. McClellan,* 569 F.2d 1031 (8th Cir. 1978), the Eighth Circuit affirmed the removal of a deputy clerk in a district court. The case held that court employees are outside the competitive service, that they are not covered under any merit or civil service system, and, thus, that they have no property interest in their employment that is protected by due process under the United States Constitution. *Williams v. McClellan*, 569 F.2d 1031 (8th Cir. 1978). This set a precedent for the lack of basic human resources principles that are afforded to employees in other fields.

Title VII of the 1964 Civil Rights Act

The Civil Rights Act of 1964 provided an opportunity to bring about equality in employment rights. Specifically, Title VII of the Civil Rights Act affords individuals the opportunity to pursue the work of their choice and advance accordingly based on consideration of individual qualifications, skills, and abilities (Civil Rights Act, 1964).

This coincides with the elements measured in the competitive service application process—where candidates are selected based on merit.

Furthermore, Title VII identifies protected class principles: race, color, national origin, sex and religion, that prohibit employers from discriminating against employees with those protected characteristics (Civil Rights Act, 1964). While Title VII is enforced by private sector companies and executive branch agencies, it is not applicable to the federal judiciary.

The Age Discrimination in Employment Act

Congress passed the Age Discrimination in Employment Act (ADEA) in 1967 to prohibit discrimination in employment based on age. This provision applies when age is a determining factor in hiring matters, job retention, compensation, other employment terms and conditions or privileges of employment (ADEA, 1967). The ADEA provides an equity standard based on fairness and individual capabilities to perform the duties and functions required of the job.

The exception to this rule is in a position where age is shown to be a "bona fide occupational qualification [BFOQ] reasonably necessary to normal operation of the particular business" (ADEA, 1967, para. 5). A maximum age requirement can also exempt a position from this provision if the BFOQ basis is determined. An example where this exception applies is in federal law enforcement positions where there is a maximum entry age. However, the ADEA is not applicable to the federal courts.

The Americans with Disabilities Act and The Rehabilitation Act

In 1990, the Americans with Disabilities Act was approved by Congress. The Rehabilitation Act, which the ADA is modeled after, was passed in 1973. Both acts are similar legislation that were intended to help end discrimination in the workplace against individuals with disabilities.

Further, discrimination in all employment practices, including job application procedures, hiring, firing, promotion, compensation, training, and other terms, conditions, and privileges of employment are prohibited by both Acts. The provision also applies to recruitment, advertising, layoff benefits, and all other employment related activities. In other words, employers are required to consider the hiring, placement, and advancement of mentally and disabled people that are qualified. Furthermore, employers have an obligation to provide a reasonable accommodation to the known physical or mental limitations of an applicant or employee classified as a qualified individual with disabilities (Rehabilitation Act, 1973).

The primary goal of the Rehabilitation Act and the ADA are to ensure that qualified disabled individuals have equal access to employment and enjoy equal treatment in the workplace (Americans With Disabilities Act, 1990). They aim to achieve a fundamental public policy to guarantee that employers offer individuals with disabilities a reasonable opportunity to "achieve the same level of performance or enjoy employment benefits and privileges equal to those of an average similarly-situated [nondisabled] person" (Americans With Disabilities Act, 1990, para. 1). The Acts' two

complementary legislative purposes establish a disabled individual's right to equal access in the federal sector, that does not apply to the judicial branch.

Related Studies

Although numerous studies exist concerning human resources principles as it pertains to employee relations, sexual harassment and issues that affect women in the workplace, none are solely focused on the structure of the federal judiciary. McCord et al. (2018), conducted a meta-analysis of workplace mistreatment utilizing two distinct characteristics: gender and race.

McCord et al. (2018) is aligned with the research in that it measures expectations on workplace mistreatment based on gender. It goes further to discuss subgroups that are based on different races. Little is known about the degree to which certain groups perceive mistreatment in comparison to others (McCord et al., 2018). Therefore, there is an expectation that women and individuals of color are, generally, on the receiving end of higher counts of workplace mistreatment.

Characteristics such as harassment, discrimination, bullying, and incivility were factored into the meta-analysis on perceived workplace mistreatment (McCord et al., 2018). The results of the study revealed sex-based mistreatment is perceived more by women than men (McCord et al., 2018). The metrics were also significant in comparison to nonsexually based mistreatment as "non-sex-based mistreatment exhibited near-zero differences" (McCord et al., 2018, p. 147).

Every form of mistreatment revealed there were gender differences that equaled "more favorable treatment of men" than women (McCord et al., 2018, p. 147). Further,

the results suggest women are more hesitant to report sex-based mistreatment and frown upon being referred to as a victim (McCord et al., 2018). Since there is a negative connotation associated with labeling oneself as a victim, women are less likely to self-report acts of misconduct. The McCord et al. study is aligned with the research in measuring perceptions of the gender-based characteristic in question. However, the analysis is based on those sole factors and is not correlated to employment within the federal judiciary; therefore, indicating a gap in the literature.

Newman et al. (2003) discussed the efficacy of sexual harassment training programs in the federal workforce. In a 1995 Merit Protections System Board survey, 15% of all respondents reported experiencing sexual harassment in the workplace. In more recent studies, incidents of reported harassment have not decreased (Newman et al., 2003). Further, there appears to be a persistence of unwanted sexual attention in the Federal workplace (Newman et al., 2003). The fact this issue remains prevalent implies training programs need to be reexamined.

There is a standardization of harassment training programs in the federal workforce (Newman et al., 2003). However, despite these programs being in existence, the programs do not guarantee positive change. This is most notably attributed to the structure of the training program as well as existing harassment policies. Factors such as power, aggression, perception, and gender hierarchy must be examined in training programs (Newman et al., 2003).

Establishing a clear definition of what is harassment and what is and is not acceptable in the workplace should be addressed in the training program (Newman et al.,

2003). According to Biviano (1997) “developing an understanding of the definition of sexual harassment and the roles of employers, supervisors, and employees in its prevention” are key components at eradicating the issue (Newman et al., 2003, p. 473). Moreover, Newman et al. (2003) suggested a concise definition will enhance communication and behavior by promoting the development of an organizational consensus on what constitutes harassing behaviors.

Training content must be revised if there is no difference in prevention of harassing behaviors (Newman et al., 2003). Programs that are generic in nature or too broad are generally ineffective at stopping harassment (Newman et al., 2003). The key to a successful training program is to deter harassment in lieu of heightening awareness (Newman et al., 2003). This variable also plays a role in assessing underreported acts of misconduct in the workplace as employee perception as to whether training is helpful is factor in decreasing occurrences.

Further, there are minimal studies that discuss the breakdown of the judiciary; and attribute its structure to the Framer’s original creation and implementation of judicial independence or being independent of the other branches of government. Grove (2018) discusses the origins of judicial independence and presents scholarly thought on whether certain protections in place for federal judges are taken for granted.

The position of protecting judicial tenure has transformed over time. At one point, it was acceptable to discuss the termination of federal judges outside of the impeachment process (Grove, 2018). In 1803, the Supreme Court abolished sixteen federal judgeships; however, this history has been overlooked when discussing current elimination processes.

Stuart v. Laird. Presently, such practices are disfavored and are typically rejected by what Grove (2018) termed as "conventions of judicial independence" (p. 468).

Conventions of judicial independence are politically driven. They are defined as "unwritten rules of political behavior that constrain the discretion of government officials" (Grove, 2018, p. 468). These are rules that must be followed which do not consider what is fundamentally or morally wrong due to bipartisan norms (Grove, 2018). For this reason, suggesting court-curbing measures or measures that identify illegitimate practices are often condemned. This presents a challenge to altering the culture of the federal judiciary and implementing change that is needed to move forward with suggestions for eliminating workplace misconduct.

Duff (2018) is the only study similar to the research; yet does not provide information on perceptions of women employed by the federal judiciary. Duff (2018) discussed the history of the federal judiciary as it relates to misconduct and utilized a working group to determine appropriate mechanisms to maintain workplace civility. The working group consisted of several highly ranked executives and judges employed with the federal judiciary. The purpose of the study was to review current employee protection measures and produce a report containing a series of recommendations for improvement that would be submitted to the Judicial Conference, or the policy making body of the federal judiciary for consideration (Duff, 2018).

Similarly aligned with the characteristics of the research, Duff's (2018) study focused on workplace harassment, including inappropriate sexual, or otherwise, behavior. Duff (2018) examined a 2016 report rendered by the Equal Employment Opportunity

Commission that discussed harassment within various workforces. The EEOC reported between 25% and 85% of women employed in private sector or the federal workforce experienced sexual harassment (Duff, 2018). Further, there were various elements identified by the EEOC throughout the study.

Workplace culture and leadership were examined by the EEOC (Duff, 2018). Duff (2018) noted these characteristics as critical components in ensuring wrongful behavior is corrected. The working group concluded inappropriate conduct was prevalent within the judiciary and it was underreported (Duff, 2018). Further, the study revealed a need to create a climate that promotes accountability and demonstrate zero tolerance for inappropriate conduct (Duff, 2018).

Another point to note is how the MeToo movement played a prominent role in the creation of the Duff (2018) study. Social media has been pivotal in exposing celebrities and high-power executives that have been accused of sexual assault, harassment, and other acts of vulgarity as it pertains to women. According to McKinney (2019), Actress Alyssa Milano encouraged women to write “Me Too” as a reply to other victims that decided to publicly share their story. This sparked a grassroots movement that led to exposure and accountability practices as over 1 million stories were shared, and the New York Times and the New Yorker published articles documenting decades of sexual harassment (McKinney, 2019).

The MeToo movement has been at the forefront for counteracting harassment, in every form against women, within the last decade (McKinney, 2019). Specifically, the movement broached the topic of how to confront the problem and how to access legal

safeguards (McKinney, 2019). Simone de Beauvoir is a feminist thinker who discusses gender-based oppression, sexual coercion and "a way to understand embodied responsibility for freedom" (McKinney, 2019, p. 76). According to McKinney (2019), Beauvoir describes "the objectification of an individual in their reduction to their sex is a unifying characteristic of many of the stories that MeToo has made public" (p. 80). Undoubtably, this points to the gender hierarchy between men and women because men are more likely to be in positions of authority or power than women (McKinney, 2019).

According to McKinney (2019), when victims of the MeToo movement share their stories they're challenging gender by confronting social norms denoted by sex. Further, the MeToo movement represents the public emergence of the grassroots work that has taken decades to uncover and combat (McKinney, 2019). Simply put, MeToo mandated accountability and plagued every work sector, including the federal judiciary.

As an indirect result of political pressure from Congress by way of the chief justice, Duff (2018) reviewed various existing policies geared towards encouraging reporting improper behavior in the federal judiciary. The study also created a series of recommendations dedicated towards five areas to deter harassment: demonstrated, committed, and engaged leadership; consistent and demonstrated accountability; strong and comprehensive policies; trusted and accessible complaint procedures; and regular, interactive training tailored to the organization. Although, the recommendations within the Duff (2018) study highlighted the research problem within the federal judiciary; it does not discuss employee perception based on gender. Therefore, there is a need for further exploration.

Summary and Transition

Although legal concepts are put in place to protect individuals in the workplace, they are sometimes violated. Further, there is no one size fits all approach geared towards employee protection principles. This is evident in this chapter explaining how such principles are nonexistent or defined differently within certain sectors; specifically, the federal judiciary.

This literature review explored studies that were aligned to the current study. The commonality being women employee perceptions regarding acts of misconduct in the workplace; and current protection principles in place within the federal judiciary. Moreover, this literature review discussed various concepts that are solely applicable to the judicial branch of government to provide a basis for historical context and organizational culture of the judiciary.

As exhibited in the literature, little is known surrounding misconduct in the federal judiciary conducted by Article III judges. The literature also revealed although misconduct is prevalent by highly ranked officials, there are limitations regarding employee perceptions of how to counteract judicial misconduct. This demonstrates a gap in the literature and supports the need for the current study. The current research will set a foundation for a narrowly defined evaluation of employee protection principles, or the lack thereof; and the perceptions of staff on judicial officer misconduct currently or previously employed by the federal judiciary.

Accordingly, a general qualitative study was used to explore perceptions of female federal judiciary employees regarding reporting acts of misconduct by federally

appointed judges; as well as the perception of employee protection principles that currently exist within the judicial branch of government. The narrative policy framework will provide the opportunity to give a voice to individuals affected, directly or indirectly, by this issue. Their narrative summarization and participation may provide social and policy change. Accordingly, the basis for the methodology used to form this study will be discussed in Chapter 3.

Chapter 3: Research Method

The purpose of this qualitative study was to explore female federal judiciary employees understanding of basic human resources principles as it pertains to their rights as employees of the judicial branch, and why they do or do not report acts of misconduct. Reviewing existing data that demonstrates misconduct issues are prevalent within the federal judiciary is necessary in addressing the purpose of the study. Further, assessing fairness in a judicial workspace is necessary to determine whether judicial independence is harmful or adds additional challenges to employee relations.

In this chapter, I discuss the research design that was used to conduct the study and the rationale surrounding why the design was selected. I also address the role of the researcher, provide an analysis of the chosen methodology, and identify the participant selection process. The data collection process, data analysis plan, issues of trustworthiness, and ethical considerations are also covered. I conclude the chapter with a brief summary, and preview of Chapter 4.

Research Design and Rationale

This study is qualitative in nature. According to Creswell and Poth (2018), "qualitative research begins with assumptions and the use of interpretive or theoretical frameworks that inform the study of research problems addressing the meaning individuals or groups ascribe to a social or human problem" (p. 42). Therefore, a qualitative approach must be used to study the problem and in the data collection process to report and record the voices of participants.

A case study is a type of qualitative research design involving in-depth contextual study of a person, people, issue, and place, within a predetermined scope of the study (Bhattacharya, 2017). For this study, the predetermined scope of the study was bound by current or former female employee perceptions about acts of misconduct rendered by federal judges. Merriam (1998) stated, "a case may involve studying a person, program, policy or any other phenomenon that is intrinsically bounded by the interest of the researcher" (Bhattacharya, 2017, p. 13). Case studies can also be targeted at information rich sources that can be used to inform policies or to "uncover contributing reasons for cause-and-effect relationships" (Bhattacharya, 2017, p. 109). Therefore, the research design used in this study was a case study design.

A case study design was used to elucidate experiences with the phenomenon of workplace misconduct held by females who currently work or formerly worked in the federal judiciary through use of purposive sampling. This method provided analysis on implementing strategies to resolve conduct issues and aid in evaluating empirical evidence while improving continuity in the federal judiciary. Further, case study designs assist in making inferences and drawing conclusions that may contribute to an in-depth understanding of the research topic (Yin, 2017). Thus, a case study design was most appropriate as it can be used as an intervention strategy to assist in finding a resolution to critical situations (Punch, 2013). Case studies can also assist in discovering new relationships, concepts, and understandings that can be concluded using inductive reasoning (Bhattacharya, 2017).

Research Questions

The research questions that guided my study are:

Research Question 1: What are the perceptions of female federal judiciary employees regarding the report of acts of misconduct by federally appointed judges?

Research Question 2: What are the perceptions of female federal judiciary employees concerning current employee protection principles of the judicial branch of government extended to judiciary employees?

Role of the Researcher

My role, as researcher, was to remain objective and unbiased while going through the data collection, interpretation, and analysis process. Although I have not personally experienced misconduct by a federal judge, I am currently employed by the federal judiciary and my defined gender is classified as female, which is the same population that was studied. I do not and will not have any personal interactions or relationships with the participants as secondary qualitative data analysis is the collection method of choice. However, researcher bias still must be managed to ensure the integrity of the study.

According to O'Sullivan et al. (2017), researcher bias is a known critique of purposive sampling that must be eradicated. Thus, judgments in the selection and sampling process must be carefully considered and based on clear criteria such as a theoretical framework (O'Sullivan et al., 2017). Further, using a theoretical, analytical, or logical generalization will counteract bias (O'Sullivan et al., 2017). In other words, if the results and any generalizations would have been the same, regardless of the unit of selection, the researcher can prove bias was not a factor during the sampling process.

This rationale was used as a prevention mechanism to ensure bias was not present or a consideration within the data collection process.

As a researcher who conducted research directly correlated to her work environment, I am grossly familiar with the federal judiciary and possess first-hand knowledge of organizational practices. However, I was cognizant of any beliefs that could have influenced me, as researcher (Chan et al., 2013). According to Chan et al. (2013), this ensures the notion of reflexivity is employed to mitigate researcher bias. Further, I confirmed preferential treatment or any other conscious biases were managed by communicating with my committee chair to ensure otherwise.

Methodology

Participation Selection Logic

Purposive sampling ensures data credibility and supports the use of semi-structured interviews in qualitative research (O'Sullivan et al., 2017). The sample size was limited; yet drawn from individuals who currently or previously worked for the federal judiciary. Data was collected through interviews stemming from existing secondary data analysis.

According to Beck (2019), secondary analysis of qualitative data "allows researchers to continue research on topics related to a specific population without recruiting additional participants" (p. 12). It also serves to facilitate more research for marginalized or vulnerable populations where it may be difficult to recruit for purposes of participating in a research study (Beck, 2019). Researchers should be cognizant of

burdens that may be placed upon participants and come up with mechanisms for mitigation.

Further, there are many advantages to accessing an existing qualitative dataset to answer questions relevant to the phenomenon of study (Beck, 2019). Secondary qualitative analysis can extend the context of research results which can promote generalizability of research findings (Beck, 2019). It also saves time for the researcher during the data collection phase, as conducting multiple face-to-face interviews requires dedication towards coordination and is a significant time commitment (Beck, 2019). Most importantly, secondary analysis of qualitative data can contribute to policy formulation as most policy makers are not researchers and cannot conduct extensive research on their own that will aid in policymaking. As stated in the NPF theory for this study, this can allow participant experiences to inform policy decision making (Beck, 2019).

A homogeneous purposive sampling technique was used to ensure all participants shared the same set of characteristics and meet the selection criteria. The variables identified were gender and employment affiliation, current or former, with the federal judiciary. The use of homogeneous purposive sampling also captured critical and useful information from the research participants (Creswell & Poth, 2018). Individuals who have no current or prior affiliation with the federal judiciary have not been included in the published qualitative dataset. Participants were identified based on the established criterion and their public acknowledgement of experiencing misconduct by a federal judge, which is aligned with the purpose of the study.

Instrumentation

Yin (2017) referred to multiple forms of instruments that can be used during the data collection process for case study research. Accordingly, interviews and direct observation were the instruments used to conduct this qualitative study using secondary data analysis. Utilizing multiple methods strengthened reliability and improved the quality of data obtained (Castillo-Montoya, 2016). The interview and direct observation protocol allowed the researcher to draw inferences and explore interactions, reactions and or experiences pertaining to misconduct in the federal judiciary (Castillo-Montoya, 2016).

The source for the interview data collection instruction stemmed from published data produced by the United States Congress House Judiciary Committee. According to Cowton (1998), "governments are important publishers of data" (p. 424). The interview questions were already created, published on a public government website, and transcribed. "Published legal judgments are a rich source of insight into many issues, not just in terms of what the actual decision was, but also the circumstances and reasoning that led to the particular decision" (Cowton, 1998, p. 424). By assessing a published proceeding that had assisted in setting legal precedence for the third branch, these interviews were a key source of case study research especially since human affairs are at the heart of the study. Further, the interviews were in audio and video format, which afforded the researcher the ability to view the interviews in-person and identify other relevant sources of information (Yin, 2017).

Accordingly, the source for the direct observation protocol is researcher produced. Yin (2017) stated social or environment conditions that are available for observation serve as a source of evidence in conducting case study research. To reiterate, the researcher was able to assess certain types of behavior during the periods of the recorded interview. Observational evidence can yield invaluable data to complement interviews and add new dimensions for understanding perceptions about why female federal judiciary employees do not report acts of misconduct (Yin, 2017). Due to utilizing a secondary dataset, I did not have to worry about human participants or compensating for any alternative methods in case the identified instrumentation could not be deployed based on a natural disaster or other means.

For Published Data Collection Instruments

The interview instrument was developed by members of the United States Congress. Specifically, the Subcommittee on Courts, Intellectual Property, and the Internet was responsible for holding the hearing and publishing the qualitative dataset in 2019, 2020, and 2021. This interview instrumentation protocol is typically used whenever members of Congress hold public or private hearings on a delicate matter pertaining to government affairs. The instrument was very appropriate for the nature of this study, as the topic and questions were directly aligned and provided the researcher with the opportunity to address the research questions. The stream of questions in the interviews were very fluid and resembled a guided conversational approach (Yin, 2017). According to Yin (2017), this mechanism is consistent with the line of inquiry conducted in case study interviews.

Onwuegbuzie (2000) offered threats to validity should be examined for all research designs. Further, case-effect relationships must be established to deem validity. Content validity was previously established by members of the U.S. Congress based on the research issue plaguing the third branch of government. Maturation and selection/sampling were the threats to content validity that could have impacted the research (Onwuegbuzie, 2000). However, these threats were mitigated by ensuring incidents that are discussed in the findings are not outside of time parameters placed on the study and by carefully assessing whether inadvertent bias is present within the participants testimony. There is no context or culturally specific issues related to the participant pool.

Data Analysis Plan

The data analysis interpretation process was guided by the study objectives and interpretations of raw data (Costa et al., 2016). This was important to ensure the data is summarized and reviewed to address the research or identify rationale about the research issue. Further, there was a need to understand, describe, and interpret experiences and perceptions to uncover meaning in actual circumstances and contexts (Costa et al., 2016).

A thematic analysis combined with an inductive analysis was used to identify and report patterns. A thematic analysis provided flexibility during the analysis phase because it was not tied to an epistemological or theoretical perspective (Maguire & Delahunt, 2017). An inductive analysis allowed the researcher to work up from the data without any preconceived hypothesis (Bhattacharya, 2017). The ability to look at raw data, chunk the

data into small analytical units, group, label similar units, and identify patterns were easily deployed to uncover themes (Bhattacharya, 2017).

Moreover, case studies provide the opportunity to use coding as a mechanism to identify themes within the design. Coding by hand was used to define the data being analyzed and find relationships between emerging patterns (Creswell & Poth, 2018; Yin, 2017). Thereafter, categories were produced from the narrative data and patterns were identified across datasets to address the research questions (Yin, 2017). A journal was maintained to reflect on researcher reflections.

Issues of Trustworthiness

Establishing trustworthiness in qualitative research is important because it measures attributes that may be unmeasurable in quantitative research (Devault, 2019). This allows trends to be identified that can be assessed for trustworthiness and credibility. Triangulation is a method used to assess trustworthiness. It asks the same research questions of different study participants and collects data from different sources through different methods to answer the same questions (Devault, 2019). To ensure credibility, I did not alter any of the published datasets or misinterpret any verbiage that is transcribed. Remaining consistent with instrument protocols and continuously observing the field for new developments also speaks to credibility. Implementing these steps will allow individuals who review this study to verify statements and fill in any gaps. Further, this process ensured trust is bestowed upon researcher.

Another method to ensure trustworthiness is transferability, which generalizes study findings and attempts to apply them to other situations and contexts (Devault,

2019). “Researchers cannot prove definitively that outcomes based on the interpretation of the data are transferable, but they can establish that it is likely” (Devault, 2019, para. 5). Nonprobability or purposive sampling can be used to expand upon explicit data comparative with the setting in which it was gathered (Devault, 2019). It is done by considering the sample subjects’ characteristics, which are directly related to the research questions.

Dependability relates to data consistency (Lincoln & Guba, 1985). Specifically, whether the findings or inferences made from data analysis would remain the same if repeated (Lincoln & Guba, 1985). It is important for researchers to be able to replicate their results to ensure the results are based on independent research exempt from bias (Devault, 2019). Confirmability is another method of trustworthiness based on neutrality (Lincoln & Guba, 1985). This means research is usually subjective, instead of objective. Ensuring proper documentation and consistency will ensure dependability and confirmability are achieved. Further, triangulation can also be used as a technique to mitigate confirmability.

Ethical Procedures

As a researcher, it is imperative to follow ethical guidelines during the data collection process. To ensure guidelines are adhered to, the study must be ethically acceptable prior to the research phase. Because the data is published and accessible in the U.S. House of Representatives Committee Repository, special permission to obtain access was not necessary. Attributes such as salary demographics, race and/or specific

work locations were protected and not disclosed in the findings. The only two variables that will be discussed is gender and employment affiliation.

Further, the institutional review board (IRB) must approve each phase of the data collection process, especially regarding the ability to conduct research closely correlated to my workplace. Although I have not worked with the participants, it should be noted we do work in the same industry. For the purposes of this study, the researcher did not have direct access to human participants. Therefore, IRB permissions related to human participation, recruitment, informed consent, and related ethical concerns were not relevant.

Although the data was not anonymous or confidential, it was collected from the committee repository database, and will be stored in password encrypted files for 5 years following the conclusion of the study. All participants were over 18 years of age. Further, data dissemination is not anticipated. It was important to follow all ethical standards, maintain consistency with the research requirements and IRB standards, and ensure the results of the study were not compromised.

Summary

This chapter reviewed the methodology for the study. It discussed the proposed research process, design, rationale, participation selection process, instrumentation, data analysis plan, issues of trustworthiness and ethical considerations. The chapter also provided rationale for utilizing secondary qualitative datasets for the data collection process. Chapter 4 will include analysis of the results based on the protocols mentioned in this chapter.

Chapter 4: Results

The purpose of this qualitative study was to explore female federal judiciary employees understanding of employee protection principles extended to staff of the judicial branch, and whether female federal judiciary employees are aware of reporting mechanisms for acts of misconduct. Reviewing existing data that demonstrates misconduct issues are prevalent within the federal judiciary is necessary in addressing the purpose of the study. The theoretical framework used for the study was NPF, which is based on the notion that narratives are identified as a key component in the policy process due to their alignment with the storytelling process (Macbeth et al., 2014).

Existing interviews conducted by members of a committee within the United States Congress were analyzed to assess participant experiences. Interviews were held with three women who previously worked for the federal judiciary that had experienced workplace misconduct directly or indirectly. The interviews provided information that was used in the data analysis process to address both research questions: What are the perceptions of female federal judiciary employees regarding the report of acts of misconduct by federally appointed judges? What are the perceptions of female federal judiciary employees concerning current employee protection principles of the judicial branch of government extended to judiciary employees? I used official public records of the U.S. government to assess the impact workplace misconduct had on female employees of the judiciary. Themes were identified based on participants' responses that revealed patterns correlated to the research questions.

The data collected is described and interpreted in this chapter. Additionally, organizational conditions, participant demographics, data collection and analysis strategy, and evidence of trustworthiness are addressed. This chapter concludes with my findings and a summary.

Setting

The setting for the data collection was through the analysis of secondary documentation that included in-depth interviews and sworn written testimony. All interviewees and participants who submitted written testimony were mandated to swear under oath verbally or through written affidavit that the submitted testimony was truthful. Some interviews were conducted in-person before a committee where participants spoke directly to members of Congress. All participants were selected based on various characteristics, notably women previously or currently employed by the federal judiciary who had experienced misconduct of any type. For those on video, I was able to observe their body language, tone, and eye contact to assess the perceived impact of their experiences with misconduct. Although all the participants within this study were not anonymous, I labeled them numerically, Participant 001 through Participant 003, for the remainder of the study. Direct quotes were used to demonstrate alignment of the experiences of participants to the research questions (Creswell & Creswell, 2017). The participants were not influenced by organizational or personal conditions that may have influenced interpretation of the results.

Demographics

The analysis of secondary documentation that included in-depth interviews and sworn written testimony of three women previously employed by the federal judiciary were analyzed for this study. Each participant testified before a subcommittee of the House of Representatives. All witnesses that testified before the subcommittee were asked to complete a truth in testimony disclosure form that lists witness name, position, witness type, whether the individual is representing themselves or an organization, and the name of the hearing the witness is participating in. Further, the form requires the witness to certify they will not provide false statements or material to the subcommittee or be subjected to a violation of 18 U.S.C. § 1001 – False Statements, Concealment – which is a crime and punishable offense. Each participant was able to testify based on their individual experience with misconduct in the federal judiciary. Table 1 outlines the relevant demographics of each participant.

Table 1

Demographic Results

Participants	Gender	Race	Education	Judiciary affiliation	Experience with misconduct
001	Female	White	Professional doctorate	Former employee	Direct
002	Female	White	Professional doctorate	Former employee	Direct
003	Female	Black	Professional doctorate	Former employee	Indirect

Data Collection

After obtaining IRB approval, approval number is 01-05-22-0192009, from Walden University, I gathered and analyzed the existing secondary datasets that I planned to use for this study. I utilized the entire dataset and did not omit any secondary data from the source. A case study design was used to elucidate experiences with the phenomenon of workplace misconduct held by females who formerly worked in the federal judiciary through use of purposive sampling. A homogeneous purposive sampling technique was used to ensure all participants shared the same set of characteristics and met the selection criteria. The variables identified are gender and employment affiliation, current or former, with the federal judiciary. Additionally, experience with misconduct, whether direct or indirect, was a factor relevant to the purpose of the study.

Chapter 3 discussed the data collection plan which was to review 3 interviews of individuals that fit within the set criteria relevant to the study. The source for the interview data collection instruction stemmed from published data produced by the United States Congress, House of Representatives. Specifically, the House Judiciary Committee Subcommittee on Courts, Intellectual Property, and the Internet. The interviews took place in the chambers of the relevant subcommittee. One interview occurred in 2020 and two occurred in 2022. The interviews were not based on the usual structured question answer style. Instead, the interviews were semi structured and allowed the participant to fully share their experience in a free-flowing manner. All three participants were recorded, and transcripts were provided of the record. It appears a court reporter was present in each hearing which is how the record was transcribed. In addition,

all participants submitted their testimony in written format. Further, the hearings and transcripts are stored in the archives section of the applicable committee which is accessible to anyone with internet access.

There were no major variations in the data collection plan initially described in Chapter 3. The one deviation was to include the interview of Participant 003 who was a former employee that experienced discrimination in the judiciary but was not a direct victim of judiciary misconduct in the nature this study addresses. Yet, Participant 003's testimony was based on her experience as former Equal Employment Officer of the judiciary. This information provided an altered but aligned perspective with the other two participants on judiciary reporting mechanisms through the lens of a change agent of the organization. This was the only pleasantly unusual circumstance that derived through the data collection process.

Data Analysis

The audio from the video recordings were already transcribed. Therefore, I did not have to use a transcription service. I carefully read each interview to ensure coding was completed accurately. Further, I reviewed each video recording to utilize the direct observation protocol. This allowed me to draw inferences and explore interactions, reactions and or experiences pertaining to misconduct in the federal judiciary. I also conducted a side-by-side analysis of the transcription against the video recording to ensure the transcripts were accurate and there was no missing information.

I was able to fully absorb the data by analyzing the written text. This helped me identify keywords and trends that were shared amongst the interviewees. I was also able

to explore differences that resulted from these perceptions. This data analysis strategy also aided in my understanding of the experiences of the interviewees to document factors that were relevant to the challenges of reporting misconduct in the judiciary. These steps were vital in developing inductive and deductive codes.

Inductive codes were taken from participants responses. The deductive codes stemming from the research questions were judiciary employee affiliation, harassment, fear and hesitation, reporting challenges, and accountability. These codes were produced throughout the duration of the interviews based on themes aligned with the research questions. This classification method assisted in developing themes and patterns that will be discussed in the results section.

Evidence of Trustworthiness

Trustworthiness was utilized throughout this study. Because questions were not asked of each participant, the ability to alter questions based on participant was nonexistent. This demonstrated triangulation was established and maintained.

As discussed in Chapter 3, triangulation is a method that was used to establish trustworthiness. Triangulation collects data from various sources through different methods to answer the same research questions (Devault, 2019). The three areas of triangulation used for this study were peer reviewed literature, secondary data interviews and existing policy regarding the excepted service hiring authority.

Chapter 2 demonstrated there are several concepts that are mutually exclusive to the federal judiciary. These concepts impact hiring practices as it pertains to the exclusion of employee protections in the judicial branch of government. Most notably, the judicial

independence clause provides federal judges with several protections, such as the ability to make rulings based on discretion, lifetime appointments, and the inability to be removed from the bench unless impeached (Grove, 2018). Yet, it does not provide employees who serve the court with the same level of protections or recourse in the workplace. Consequently, the problem is judicial independence leaves personnel of the judiciary vulnerable in terms of employee protections against workplace misconduct. Further, the Judicial Conduct and Disability (JCD) Act, which was implemented in 1980, provides an avenue for judges to escape accountability. This Act permits judges to resign from their positions after an allegation is filed. A resignation automatically dismisses an investigation of the allegation which is problematic as the Act can be viewed as an alternative mechanism that stops claims from moving forward. Further, the code of conduct states the only way to discipline an unfit judge is by impeachment. This is a lengthy process that takes congressional action to implement.

The secondary data interviews were in sync with the literature in that the results revealed there is a lack of effective remedies when working in the federal judiciary. Most notably, laws that were designed to protect employees from harassment, discrimination, retaliation and other workplace misconduct are not recognized in the federal judiciary. This is also evident when the literature addressed the lack of equality in the judiciary recognizing the Civil Rights Act of 1964, an act that identifies protected class principles: race, color, national origin, sex and religion; and prohibits employers from discriminating against employees with those protected characteristics.

The excepted service hiring authority plays a vital role in hiring practiced within the federal judiciary as it pertains to employee protections. As indicated in Chapter 2, judiciary employees are considered "at will". Court employees have no contractual or statutory grant of tenure; they are terminable at will and generally are not legally entitled to any due process procedures in connection with removal or other disciplinary actions. Therefore, judiciary employees are not covered under any merit or civil service system, and, thus, have no property interest in their employment that is protected by due process under the United States Constitution.

The table below provides a summary of the areas of triangulation and highlights key findings retrieved during the data collection process.

Table 2

Triangulation Table

Source 1 Peer-reviewed literature	Source 2 Secondary data interviews	Source 3 Existing policy regarding the excepted service hiring authority
• The existing structure of the federal judiciary makes it so accountability for judicial officer's that engage in misconduct is almost nonexistent. • Concepts such as the judicial independence clause, the JCD Act and rules governing judicial discipline make it challenging to hold lifetime appointees accountable for wrongdoing.	• There is a lack of effective remedies for employees that experience harassment or misconduct in the federal judiciary. • Employees are not entitled to basic human resources protections in the federal judiciary.	• The differences between the competitive and excepted service. • Laws that are designed to protect employees and are afforded to other federal government employees are not applicable in the federal judiciary.

To ensure credibility, I did not alter any of the published datasets or misinterpret any verbiage that was transcribed. Truth in research findings is a method to maintain credibility (Devault, 2019). Transferability was established by generalizing the findings and applying them to other situations and contexts (Devault, 2019). It was established by providing details of the study's purpose, the data collection, and data analysis plan. Dependability occurred by reviewing the data consistency. Assessing the data using inductive and deductive coding established dependability. Further, confirmability was established by ensuring the research was subjective and neutrality existed. Codification in systematic order was the technique used to ensure dependability and confirmability (Saldana, 2016). The use of applying and reapplying codes to qualitative data is called codifying (Saldana, 2016). This allows the data to be divided, grouped, reorganized, and linked to consolidate meaning and develop explanation (Grbich, 2013).

Results

The former female employees of the federal judiciary were permitted to testify in a semi-structured interview setting. Although multiple participants shared their involvements dealing with misconduct in a direct or indirect nature, only three experiences rose to the level of significance and alignment with the research questions to be used in this study. The storytelling process by these women were persuasive and correlated to the deductive themes related to judiciary employee affiliation, harassment, fear and hesitation, reporting challenges, and lack of accountability. The findings of this case study include a summary of perceptions of former female employees of the federal judiciary experiences with acts of misconduct.

The interviews were used to gather participant perceptions and identify factors related to accountability, under-reporting, fear, retaliation, and psychological effects. Data collection practices were consistent with the identified techniques described in Chapter 3. Further, the method in which the data was analyzed aligned with the narrative policy framework discussed in Chapter 2. The setup of the engagement was designed to elicit personal experiences.

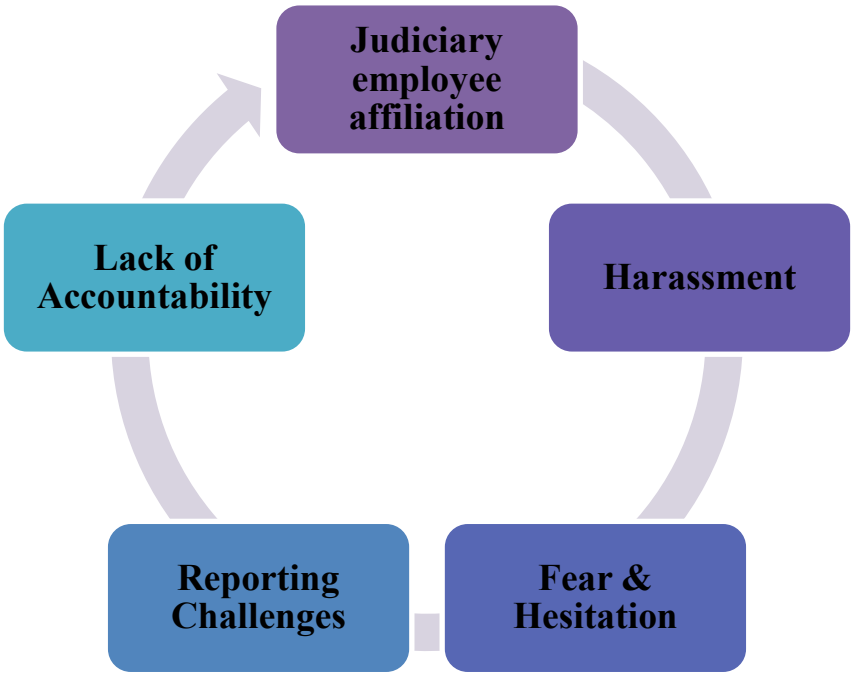
I used the inductive and deductive approach to coding. I began identifying deductive codes that were obtained from the research question governing perceptions and reporting acts of misconduct. I then analyzed the data from the interviews to create codes and themes. According to Saldana (2016), "codes are essence-capturing and essential elements of the research story that when clustered together according to similarity and pattern actively facilitate the development of categories and thus analysis of their connections" (p. 9). The themes were expanded upon to create more cohesion. Lastly, the research questions were used as a guide to organize the themes.

Deductive Coding

The deductive codes for this study were predetermined at the onset of this study through the formulation of Chapter 2. The codes stemmed from the research questions. The codes also demonstrate the structure of the data. Figure 2 highlights the themes.

Figure 2

Deductive Themes



Judiciary Employee Affiliation

All the participants were affiliated to the judiciary. Each participant expressed their appreciation for the nature of the work they perform and the opportunity to share their story. However, it was also understood there is a systematic issue and organizational culture might play a role in adversely affecting progression.

Harassment

Different types of harassment were described. There was an emphasis to ensure harassment of all types were viewed as equally as the most egregious cases.

Fear and Hesitation

All participants identified fear as a prominent factor in reporting misconduct. Specifically, participants expressed the possibility of being subjected to harsh scrutiny or blacklisted in the legal and court community profession.

Reporting Challenges

All participants identified barriers that hinder victims from reporting misconduct. Additionally, participants expressed their frustration with the process specifically outlining bureaucratic practices and additional procedures that place severe limitations on victims.

Lack of Accountability

Participants discussed several factors that demonstrate a lack of accountability for existing issues. Stemming from judges, executive level judiciary leadership officials, peers and managers that simply turn a blind eye to misconduct.

Inductive Themes

This process consisted of searching for patterns in the data that help explain why the patterns exist (Bernard, 2011). The codes were then grouped and organized into themes. The deductive themes were broadened into 17 themes that provided an in-depth understanding of participant perception of workplace misconduct in the judiciary.

Theme 1: Fear–Adverse Effects to Career Advancement

All participants noted the likelihood of individuals that report misconduct being adversely affected career wise is high. Participant 001 stated:

> For a law clerk, at the precipice of his or her legal career, alienating a federal judge can spell doom for their life in the law. And it is not only the judge him or herself from whom retribution is feared. Judges have networks of former law clerks to whom the judge's reputation is inextricably intertwined with their own: these former clerks have made their name, in part, by reference to the reputation of the judge for whom they clerked. This group therefore has reasons both devoted and selfish to want to protect the judge's reputation at all costs.

Participant 002 stated:

> I then had [30] days to decide whether to submit a formal complaint. I was afraid that filing a complaint would ruin my career, but I did not want to regret not standing up for myself, and I feared that the damage to my career was already done. I suspected that Judge Royal had already given me a bad reference amongst his colleagues in the courthouse, effectively "black-balling" me from obtaining other employment in the Middle District of Georgia. The Clerk of Court suggested as much when I consulted with him regarding my options for getting my clerkship back. He told me that he doubted anyone else in the courthouse would be willing to hire me again.

Participant 003 also notated how staff are discouraged from speaking out for "fear of losing out on opportunities". The direct statement is from this participant is listed in the code labeled retaliation.

Theme 2: Fear–Lack of Employee Protection Principles

Participant 002's recount of being terminated for simply announcing a pregnancy and her inability to seek a resolution through the judiciary's employment dispute resolution process demonstrates the lack of statutory protections within the judicial branch of government.

> I firmly believe that if I had not gotten pregnant, I would still have my job. And if I were any other federal employee—if I worked for Congress, if I worked for an executive agency—I would have the right to sue under federal civil rights laws. But because I worked in the federal judiciary, I had no right to fight back.
>
> My despair over losing my job [10] days before giving birth was made worse because I had no recourse to challenge my wrongful termination. Judicial employees do not have the same anti-discrimination rights and remedies afforded to private sector and government employees, and whistleblowers are not protected from retaliation. Although the judiciary has professed that its internal employment dispute resolution procedures are sufficient, they are not. Employees who face discrimination in the judiciary do not stand a chance against the deeply engrained, systemic barriers that prohibit judicial employees from obtaining justice.

Participant 003 identified how the judiciary lacks proper employee protections and demonstrated the importance of implementing measures that safeguard employees.

> I want to address the importance—as well as the limitations—of statutory protections for employees of the federal judiciary. To be honest, I felt that the lack of any external oversight or accountability made cultural change highly unlikely,

> if not impossible, during my time working for the judiciary. In contrast, the Judiciary Accountability Act provides many necessary protections to these employees, protections that apply to most other employees in the United States and do not depend on internal oversight alone to effect change. These basic workplace protections will hopefully serve three functions. First, I hope that they will provide employees of the federal judiciary with more concrete enforcement mechanisms than the current procedures, which lack clarity, impartiality, and any discernable remedy. Second, I hope this legislation will help chip away at the judicial exceptionalism that unfortunately shrouds any discussion of the judiciary as an employer. And third, I hope these workplace protections will jumpstart a cultural change within the judiciary, one where accountability is the norm—not just in the courtroom but in chambers and in our administrative offices.

Theme 3: Retaliation

Retaliation is a theme that was demonstrated from Participant 001, 002 and 003. This is noted as an additional limitation placed on the reporting structure and discusses why victims do not report acts of misconduct which can be attributed to under-reporting. Participant 001 stated:

> The Reinhardt clerks are legal luminaries in the field of public interest law whose accomplishments befit having clerked for a liberal lion: law school faculty, politicians, and prominent members of the civil rights and criminal defense bars. I was terrified of offending them; I still am. I draw attention to this fact because it is yet another barrier to reporting harassment for law clerks—the possibility of

immediate retaliation by the judge is supplemented by the possibility of long-term retaliation by those devoted to protecting his reputation and remaining in his good graces.

Participant 002 stated:

My pregnancy was blatantly treated as a burden and an inconvenience, and I felt belittled because of it. I believe that I was ultimately terminated because of my pregnancy.

On August 18, 2020, [10] days before my daughter Eileen was born, Judge Royal terminated me. He called me into his office, and told me that I could take twelve weeks of paid maternity leave—but afterwards, I would not be welcomed back to his chambers. He also instructed me to clear out my office for the male clerk replacing me.

Participant 002 also discussed an incident where she did not receive an offer of employment and attributed the denial to her prior affiliation with the judge she filed a complaint against.

The legal community in Macon, Georgia is incredibly close knit, and I knew that word of my termination would spread beyond the courthouse if it had not already. Shortly before Judge Land issued his report denying my requested relief in the Assisted Resolution process, I had interviewed for a position in the civil division of the Air Force Materiel Command. Out of over forty applicants, I was one of five selected for an interview, and I believed my chances of getting the position were high. However, my hopes were dashed when I arrived at the interview and

> learned that one of my interviewers knew Judge Royal personally. Unsurprisingly, on January 27, 2021, I was notified that I did not get the position.

Participant 003 noticed a pattern that could only be attributed to bias in the complaint process.

> Over the years, I observed a cycle that discouraged people from speaking 5 out for fear of retaliation or losing out on opportunities. At every step of the way, I saw the institution circle the wagons—a myopic focus on protecting the institution instead of making it better.

Participant 002 described an atmosphere where retaliation and immoral conduct occurred resulting in termination of employment. This incident is viewed as being unjust and based on the judge's career clerk's perception that Participant 002's pregnancy announcement would hinder her ability to perform vital work functions.

> Despite my efforts, I was not able to save my job. On June 23, 2020, I met with Judge Royal to discuss my upcoming maternity leave. During our meeting, I asked for eight to twelve weeks of unpaid leave and told the judge that I would come back as early as needed. He agreed that I could take twelve weeks of unpaid leave. He also told me that he had hired an additional two-year law clerk to begin in September 2020. At the time, I understood this clerk would be a third term clerk, and that I would work alongside him after I returned from maternity leave. I later learned that this clerk was actually hired to replace me—Judge Royal started to search for a replacement clerk the day after I told him about the statements that

> his career clerk made about my pregnancy. He interviewed and hired the (male) replacement clerk within the same week.
>
> During that same meeting, immediately after we discussed my maternity leave, the judge informed me that he was rescinding the extended two-year clerkship offer that he had made to me in November 2019. This meant my clerkship would end in September 2021, instead of September 2023. He pointed to the quality of my work, and told me that I was not keeping up with the workload. But when I asked him for specifics—for any reoccurring issues, or ways that I could improve—he could not provide a single example. All of my writing went through his career clerk; she edited every order before he read it. I do not believe that Judge Royal ever reviewed my work product for himself, as he could not point to any specific issue with my writing. He seemed to be merely repeating the false complaints of his career clerk—and she wanted me gone.

Theme 4: Psychological Affects

As a result of experiencing sexual harassment, Participants 001 and 002 reported mental health ailments that affected their psyche. Participant 001 said:

> My clerkship for Judge Reinhardt ended abruptly with his death on March 29, 2018. It is too painful to fully describe my emotions that day. I have never cried as hard I did at the judge's memorial service. The juxtaposition of my anger and my sadness and my shame was impossible to bear.
>
> I will note that experiencing and worrying about the harassment consumed countless hours during my clerkship for Judge Reinhardt during which I could

> have been learning and working. After my clerkship, while I was trying to figure out if and how I could report the sexual harassment and what the consequences of reporting it would be, my efforts often consumed many hours a week…
>
> Participant 002 stated:
>
> After I left Judge Royal's home, I was devastated and extremely anxious. I felt that my job was in danger, but I did not know where to turn. The career clerk's unrelenting criticism had taken hold, and by then, I had completely lost confidence in my ability to write.

Theme 5: Harassment

Several participants reported experiencing misconduct prior to the onset of their employment. Participant 001 recounted:

> Before starting my clerkship, I received guidance, including from former Reinhardt clerks, that signaled the upcoming year would be challenging. For instance, I was told that the clerkship would be an "intense" year, and one former Reinhardt clerk cautioned me to brace myself for "your grandfather's sexism." Even while preparing for my interview, I had heard that the judge preferred women to wear skirts.

Further, Participant 001 recounted a profound instance that occurred on the first morning of the clerkship:

> On the first morning, I met with the outgoing clerk to be briefed on Judge Reinhardt's current caseload. During this meeting, I found it difficult to focus because there was a peculiar drawing taped over the computer, something I had

> not seen since middle school algebra classes. The drawing depicted a sine chart, which resembles two hills drawn on an x-axis. However, in this sine chart, someone had added two round dots to the top of the curves such that the chart resembled a woman's breasts. The clerk noticed me staring at the drawing and explained that he had sketched the sine chart to explain a concept to Judge Reinhardt, and the judge himself had added the nipples. Two days later, Judge Reinhardt referenced the drawing when he came to my office to check in on me after my first official day as a law clerk. As he was leaving my office, he asked me if I had noticed the drawing and whether I liked it. In addition to emphasizing how proud he was of the nipples he had drawn on the chart and confirming that he and the clerk had made it, he asked me a question about whether or not it was 6 "accurate." Based on his tone and demeanor, I understood his question to be asking whether or not the drawing looked like my breasts.

Most participants reported multiple instances of misconduct. For example, Participant 001 stated:

> I quickly learned how often the judge commented in detail on the appearance of women. During my first few weeks at the clerkship, Judge Reinhardt's chambers was in the midst of hiring new clerks for future terms. The judge brought to my office photos that had been printed from the social media accounts of two female applicants who were scheduled to come to chambers for interviews. Judge Reinhardt instructed me to look at the photos and asked me to assess which

> candidate was more attractive and which candidate had nicer or longer legs. He then asked me which would add more "value" to chambers based on the photos.

Participant 001 also recounted:

> Early in my clerkship, I also learned about a shelf in the judge's office where he kept pictures of some of his female "pretty" clerks, many of which included Judge Reinhardt in the photo as well. Judge Reinhardt made it clear that photographs of male law clerks would not be placed on the shelf and that the shelf was special. Judge Reinhardt discussed the appearance of women directly, but he also had a regular euphemism: he used "short" and "tall" as code for "unattractive" and "attractive," respectively, when referring to different women—including describing women of the same height, standing next to one another, as short and tall. Sometimes these comments were used to describe people outside of chambers, and sometimes they were used to describe us, his current and former law clerks. Judge Reinhardt only contemplated the 7 attractiveness of women through the male gaze, and 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.

Participant 002 stated:

> …during the call, as I sought clarity about a motion I was drafting, she became irate and started yelling at me. I recall her saying, "it's infuriating to me. I mean, you're pregnant." I distinctly remember that word "infuriating." She told me that she was frustrated that I got pregnant so soon after starting my clerkship, that it

> was unfair that she would be responsible for my work during my maternity leave, and that she would be expected to travel more in my place. She suggested that my new baby was going to ruin her ability to enjoy her son's senior year of high school. I was reduced to tears. I realized that this was what had been building ever since I shared the news of my pregnancy. This was why she treated me differently; this was why she sabotaged my work. My pregnancy inconvenienced her. She wanted me gone so that Judge Royal could hire someone in my place. Gradually, she got her way.

Participant 003 stated:

> In one case, our investigation verified that a supervisor had racially discriminated against an employee multiple times; there were witnesses for many of the incidents, and the complainant had taken copious notes about each statement the supervisor had made. Nevertheless, the narrative in management became that the complainant was a "problem employee." Although I recommended termination of the supervisor, my recommendation was ignored until the next EEO officer—months later—reviewed the complaint, was horrified by the result of the investigation, and also recommended termination. Discouraged by these events, I frequently began hoping that a complainant would have a perfect record, because otherwise, it was too easy for management to simply blame the problem on the employee. Even that thought was frustrating, however, because it underscored the difficulty of ever succeeding on the merits and highlighted how unfair the system truly was.

Theme 6: Harassment–Disparaging Remarks

Two participants repeatedly stated there were instances of disparaging remarks made about them, to them, or in front of them. Participant 001 recounts:

> Judge Reinhardt routinely and frequently made disparaging statements about my physical appearance, my views about feminism and women's rights, and my relationship with my husband (including our sexual relationship). Often, these remarks included expressing surprise that I even had a husband because I was not a woman who any man would be attracted to. In that vein, Judge Reinhardt often speculated that my husband must be a "wimp," or possibly gay. Judge Reinhardt would use both words and gestures to suggest that my "wimp" husband must either lack a penis, or not be able to get an erection in my presence. He implied that my marriage had not been consummated. I was subjected on a weekly, and sometimes daily, basis to these types of comments about my husband, our relationship, and my being a woman who no man would marry—which he attributed both to my being a feminist and to my physical appearance, including my "short" stature. Judge Reinhardt made these comments to me when we were alone, and also in front of other members of chambers at times.

Participant 001 also discussed how she was met with belittling remarks after attempting to pushback on the judge's perspective regarding victims of sexual harassment. She stated:

> On one occasion, I told the judge that I was disappointed that someone with his intellect and imagination could not grasp the pervasive and harmful nature of

sexual harassment. He 10 screamed at me that I was not as smart as I thought I was—that I was "just a stupid little girl."

Participant 002 described an incident she encountered in which a judge made direct insults.

In early April 2020, a few weeks after I transitioned to telework due to the pandemic, Judge Royal called me to his home for a discussion. He had never done this before, and I could tell that he was angry when I arrived. He told me that I was moving too slowly, and when I tried to explain, I recall that he suggested that I was either "too stupid or just didn't care" about my clerkship. He insulted my work ethic, and told me that I lacked the "drive and intensity" that his career clerk had for her work. And then he brought up my pregnancy. I remember him saying something along the lines of: "While clerking may be a good 'mommy job,' work still has to be done."

Theme 7: Harassment–Manipulative Behavior

Participants referred to behavioral patterns that were manipulative in nature. Participant 001 stated:

The atmosphere in chambers worsened in late 2017 with the start of the MeToo movement, which became Judge Reinhardt's favorite topic of conversation. He frequently discussed and always cast doubt upon credible allegations of sexual harassment. The doubts he expressed were sometimes based on his assessment of the attractiveness of the accuser, and sometimes based on his general incredulity that men could be harassing women. For example, Judge Reinhardt told me that

> the allegations of sexual harassment that came out against people like Louis CK and Harvey Weinstein were made by women who had initially "wanted it," and then changed their minds.

Theme 8: Harassment–Encounters by Individuals Other Than Judicial Officers

Participant 002 discussed the treatment she received by a judicial officer's staff that ultimately resulted in the demise of her relationship with the judicial officer.

> I told Judge Royal and his staff that I was pregnant with my second child on January 23, 2020. Judge Royal and his court deputy responded with congratulations, and I expected the judge's career clerk, who also has children, albeit teenagers, to respond in the same way. But when I told her, her reaction was strange and inappropriate. She told Judge Royal's court deputy that I would "never get work done now." Judge Royal's court deputy, who was in the room with us, later confronted the career clerk about her negative reaction and rude comments. It was obvious to everyone that the career clerk was upset that I was pregnant. The atmosphere in chambers worsened over the next few weeks, and Judge Royal's career clerk began to treat me differently. Where she was once friendly and supportive, she was now snappy, rude, and caustic.

Theme 9: Lack of Accountability–Internal Circles Blatantly Ignoring Misconduct

Participant 001 confided in a former colleague who also clerked with the same judge about the misconduct she experienced, and the clerk denied knowledge of any misconduct.

> I called him on the day the allegations about Judge Kozinski broke. I confided my fear that similar stories could be published about Judge Reinhardt. He denied knowledge about any misconduct by Judge Reinhardt, and asked whether the judge had ever done anything to me. I told him that Judge Reinhardt had said some "horrible" things to me, but that I was okay. Although we continued communications, this person never discussed the call with me again, nor did he ever follow up to inquire what horrible things Judge Reinhardt had said to me

Participant 002 discussed her inability to get outside help with her claim. She cites an example that described how individuals within the legal community turn a blind eye and are hesitant to get involved in acts of misconduct that involve a judge.

> I searched for someone to help me navigate the EDR [employee dispute resolution] process. I reached out to my former law professors, law school classmates, and local advocacy groups, but no one could help me. Judges wield an immense amount of power and influence, especially in a small town, and I quickly realized that engaging in this process would make me a pariah within the legal community.

Theme 10: Lack of Accountability–Abuse of Power and Heightened Sense of Superiority

Participant 001 recounted an incident that revealed the judicial officer lacked accountability and displayed a heightened sense of superiority in discussing another sexual harassment incident that was publicly revealed about a colleague:

> In the aftermath of the initial press reports about Judge Kozinski, reading news about the allegations and disparaging Judge Kozinski's accusers became a regular focal point of our lunches and broader discussions with the judge, which often tended towards the graphic and profane. For example, immediately after Dahlia Lithwick published her piece describing her own experience with Judge Kozinski, Judge Reinhardt made us all read it. When it was clear that he was done reading the piece, he began the conversation by saying, "No one has ever ogled Dahlia Lithwick." Judge Reinhardt also repeatedly told me that he intended to publicly confront one of the women who accused Judge Kozinski at an event at UC-Irvine, with the intention of humiliating or silencing her. I later learned that when he met the woman at the event, he pointedly and publicly insulted her intellect.

The prolonged process Participant 002 endured seeking resolution to a termination demonstrates there is a perception that a heightened sense of superiority exists within the legal profession and federal judiciary.

> The legal profession venerates judges, especially those with life-tenure, as powerful, untouchable authorities. They belong to an elite club whose members know each other, understand each other, and protect each other. Although our judiciary was created to protect the rights of all people, when it comes to protecting its own employees, it functions only to protect itself.

Theme 11: Lack of Accountability –Equating Sexual Harassment to Attraction

Participant 001 recounted a series of incidents where attraction was the basis for the existence of sexual harassment:

> Regarding Louis CK, he repeatedly asked me to explain to him why a man would want to show a woman his penis or masturbate in front of her. When I could not satisfy these kinds of questions about the alleged choices of men, Judge Reinhardt often responded by telling me that women were liars who could not be trusted. Sometimes, he read me emails that he exchanged with his friends about the MeToo movement that cast doubt on women raising sexual harassment and misconduct allegations. When I engaged in these discussions with him and would try to explain that sexual harassment was indeed a pervasive problem, he regularly replied with the same playbook I described above—that I did not understand sexual harassment because I was not attractive, that I did not understand men because I was a feminist, and that my husband was not a real man.

In an attempt to demonstrate the widespread pervasiveness of sexual harassment, Participant 001 described personal encounters she had experienced, outside of the judiciary, in hopes the judge would empathize and understand the effects of sexual harassment. Instead, Participant 001 was met with disdain:

> I explained to the judge that I had not reported these incidents, but that they had still hurt and frightened me, and affected the way I moved through the world. Judge Reinhardt became enraged. He yelled at me to stop speaking and said that none of what I had just said was true. He explained to me that I had never been sexually harassed because no one had ever been sexually attracted to me. He said that to the extent that I believed I was sexually harassed, it was because men

> wanted to silence me and used harassment to do so—which, he added, was within their rights to free speech.

Participant 003 notated an incident that described physicality as a basis for the perceived lack of interest in sexually harassing a victim.

> The lack of knowledge, training, and awareness was also glaring. Even well-meaning individuals would immediately question the veracity of any allegation, instead asking whether the complainant was actually competent at their job or about other unrelated issues. For example, even when presented with a textbook case of sexual harassment, I heard someone in management opine that there was nothing particularly attractive about the complainant, an assessment intended to diminish the misconduct that had occurred.

Theme 12: Lack of Accountability–Perception That the Problem Does Not Exist

It was demonstrated that the judge Participant 001 worked for was oblivious and in disbelief that sexual harassment existed in the judiciary.

> Close to midnight on one of the nights that I was working with the judge from his home, and after we had completed our substantive work, he read aloud portions of an email from the Ninth Circuit about the working group it had created on workplace conduct, which included some proposed reforms and protections for law clerks. I remember the judge reading through each reform and explaining to me why it was unnecessary. In this discussion, he also said that he was the one who should be afraid of being alone in his home with me.

Participant 002 discussed an incident that demonstrated the accused judge did not perceive the allegation to be a problem.

> After the pleadings in the appeal had closed, Judge Royal wrote an ex parte letter to the Circuit Executive, describing my EDR claim as false character attacks. Although any communication between a party and the presiding body without the opposing party is highly improper in an ongoing suit, Judge Royal felt entitled to this personal communication.

Participant 003 described incidents that demonstrated rationale other than what might be plausible was labeled as the cause for the problem.

> Complaints were frequently chalked up to "bad management" instead of discrimination or harassment, minimizing the individual concerns about that specific case and allowing everyone to ignore any patterns—either in reports of misconduct or in how the AO chose to address them.
>
> But my work on these issues is why I firmly believe that no internal tweaks or changes can comprehensively address the pervasive problems of misconduct and harassment within the federal judiciary. As someone who tried for years to push for change from inside the system, I learned the significant limitations of asking for accountability from the very people that I had to work with every day. Although self-policing may be effective in other industries and professions, it requires awareness, full and fair processes, and a cultural commitment to address these issues. But as I saw for 23 years—and from what I can see today and what

we all have heard—the judiciary's insistence on self-policing only serves its interest in self-protection.

Theme 13: Lack of Accountability–The Reality That Peer Policing Does Not Exist

Participant 002 described her encounter with the formal complaint process in which she did not experience impartiality and realized peer policing is nonexistent.

> On February 11, 2021, [6] months after giving birth to my daughter, I filed a twenty-three page formal complaint (the "Complaint") against the Middle District of Georgia, alleging unlawful harassment, retaliation, and discrimination, resulting in a demotion and termination of my employment based on my pregnancy. I wrote the Complaint myself, because I was still unable to find counsel willing to represent me. Fortunately, after filing the Complaint, I was referred to a lawyer who agreed to represent me pro bono.
>
> Judge Randal Hall, the Chief Judge of the Southern District of Georgia, was eventually appointed to act on behalf of the Eleventh Circuit Judicial Council in adjudicating my complaint. Like Judge Land, Judge Hall has a professional history with 13 Judge Royal. Judge Hall and Judge Royal are peers with nearly identical backgrounds. Both are from Augusta, Georgia. Both graduated from the University of Georgia School of Law. And since 2008, they both have served as federal district court judges in Georgia. These judges are colleagues, and they have no incentive to police each other, especially when it comes to managing their clerks and running their chambers. Judges think they are above the law, because they are. It was clear to me I did not stand a chance in this forum either.

Participant 003 discussed how judges do not hold each other accountable.

> The irony is that while judges are responsible for holding many of us accountable, they do not hold each other accountable. The judiciary is far more interested in protecting the status quo than addressing the real problems their employees face.

Theme 14: Reporting Challenges–Perception, Discovering the Reality of No Recourse

A plaguing factor existing amongst all three participants was that victims feel they cannot act on reporting misconduct due to having no recourse. Participant 001 stated,

> …The harassment that I experienced shaped my view of both the judiciary and the law more generally. The harm and pain that sexual harassment causes, and the aggravation of that harm when victims have no recourse and feel they cannot say or do anything about it, has long-term costs to the profession. I hope that my testimony today will result in law clerks (both current and former) and judiciary employees feeling less silenced and more capable of seeking accountability and redress for any harassment or other misconduct they may have suffered.

Participant 002 discusses a time when she was directly told there was no remedy for the situation she endured.

> I consulted with the human resources specialist for chambers and the Clerk of Court regarding the circumstances surrounding my termination and my ability to get my clerkship back. I was told that I had no recourse because chambers employees serve at the will of the Court. Days later, though, the Middle District of Georgia partially adopted the model EDR plan, which allowed claims to be

> filed by chambers staff and interns. However, I quickly learned that this process would not provide the impartial forum I needed to remedy the unfair treatment I had endured.
>
> The EDR Plan purports to prohibit retaliation against an employee based on the employee's exercise of rights under the plan, but judicial employees have no right to sue if they are retaliated against for reporting misconduct in the judiciary. I felt helpless, and the EDR process was my only hope.

Participant 003 described where she was forthcoming about the complaint process and informed employees of the harsh reality that results would be inadequate.

> I told employees that if they chose to report, I would help them in whatever way I could. But I also made sure they knew how hard it would be to report and what they should expect. I warned them that the process favored management. I reminded them that, although the system appeared to be designed to protect employees, in practice that was not the case. In practice, the reporting process did not protect the employee as much as it protected the institution, a truth that would permeate every step of their attempt to report. And I also explained that the remedies available to employees—even if a complaint was successful—were highly limited and unlikely to lead to a fulfilling result.

Theme 15: Reporting Challenges–Inadequacy of Procedures

All participants stated the current reporting structure in place is insufficient. Participant 001 recounted:

…I might have chosen to keep private the pain I endured as a result of Judge Reinhardt's sexual harassment, but I could not justify keeping silent about the inadequacy of the procedures available to law clerks today to redress such sexual harassment if they experience it. Although I attempted to report the harassment after my clerkship had ended and the harassment had thus ceased, my experiences in attempting to report Judge Reinhardt's conduct highlight the challenges that clerks and judiciary employees still face today if they want to report harassment or other judicial misconduct.

Participant 002 stated:

To seek justice, I attempted to utilize the Middle District of Georgia's current Employment Dispute Resolution procedures. As I will explain, despite recent reform efforts, this process remains fraught with inherent procedural flaws and systemic obstacles. The process completely failed me. Because I do not want it to fail other women—for any woman to experience similar treatment in chambers and face what has often felt like insurmountable obstacles in seeking justice—I decided to testify today.

The Assisted Resolution process consisted of Judge Land interviewing me, Judge Royal, Judge Royal's career clerk, and the Clerk of Court. There was no written discovery and no opportunity to submit evidence. Judge Land's final report, which was less than two pages, concluded that I genuinely believed I was treated unfairly, while Judge Royal and his career clerk believed that they did not

> engage in wrongful conduct. The report stated that my claims could not be resolved to my satisfaction and a resolution could not be reached.
>
> My case confirms that the federal judiciary's EDR process is severely flawed. I was denied basic procedural protection and the independent evaluation that anyone employed by virtually any other employer would have received. Any "normal" litigant would have had the opportunity to conduct discovery, cross-examine witnesses, and resolve factual disputes through a full and fair hearing before an impartial arbiter. I did not. The EDR process continues to leave the judiciary in charge of policing its own personnel disputes, allowing judges' conscious or unconscious biases to affect their 17 discretion over both the process itself and their ultimate decisions. Judges are kings in the castle of their chambers, and they have no incentive to police how their friends and colleagues manage clerks or run their respective chambers. Judge Royal said in his interview that he laughed at the suggestion in my Complaint that he should have talked to Human Resources because "it would never cross [his] mind to talk to [Human Resources] about a problem with a law clerk."

Participant 003 discussed her extensive work history with the judiciary and knowledge of the judiciary's responses to workplace misconduct as the equal employment opportunity officer of the Administrative Office of the U.S. Courts.

> During my tenure at the AO, I continuously served as the AO's Equal Employment Opportunity Officer, a position which allowed (and indeed required) me to become 3 intimately familiar with the agency and the judiciary's struggles

to deal with discrimination and harassment issues. I was responsible for running the AO's reporting procedures; this included assisting AO employees who considered formally reporting misconduct and advising AO leadership on how best to address those complaints. This was a volunteer position that I held separately from my day job, and for which I was not separately compensated. I asked to remain in this role for most of my tenure—even when I changed roles or was promoted within the agency—because I thought I could make a difference. Nevertheless, after 16 years as the agency's EEO officer (with a few small gaps in between), I resigned from that position in 2013 due to my frustrations with the process. I felt that I could not effectively impact the way that the agency and the judiciary handled complaints of discrimination and harassment and that my concerns were not being taken seriously.

I worked for the federal judiciary for over two decades because I truly believe in the judiciary as an institution. But like any other employer, the judiciary must confront the realities of workplace misconduct. Despite numerous opportunities to do so for many years—through working groups, committees, and frank internal discussions— the judiciary has failed to adequately step up to this challenge.

As the agency EEO officer, I had oversight over harassment and discrimination cases that came into the FEPS office. Although the FEPS program director handled the day-to-day management of complaints, I focused on the overall process and discussions with management.

> I told them that the existing procedural mechanisms deterred reporting and that I did not think actual remedies were available for those who reported. I also noted how frequently I saw employees leave the judiciary after facing misconduct or attempting to report it. In almost every case, the employees were worse off because of their experiences—they were more hurt, more cynical, and more worn down.
>
> Although the media has focused on the most extreme, egregious instances of harassment and discrimination, I urge this committee to understand the pervasive nature of misconduct and not ignore the many instances of harassment, discrimination, and abusive conduct that go unreported. Moreover, Ms. Clark and Ms. Strickland also shared the difficulties they faced in attempting to report through the EDR process. Many of these flaws are not accidents or one-off issues with how the process was applied; the problems were the logical outcome and intended consequences of the reporting procedure's design.

Theme 16: Reporting Challenges–Lack of Impartiality and Confidentiality and Potential for Bias

All participants voiced concerns regarding the ability to report misconduct confidentiality and stated there is a lack of impartiality in the process. Participant 001 stated:

> I spent extensive time reading and conferring with different lawyers about the implications of new reporting policies and rules that were implemented in 2019 following recommendations from the Federal Judiciary Workplace Conduct

> Working Group. But these rules did not appear to provide a truly confidential option to report harassment or misconduct and it was unclear to me what would happen if I proceeded with reporting through any of the avenues offered. At the time, I knew that I did not want to report Judge Reinhardt's harassment to the judges or other judiciary officials on the Ninth Circuit because it was very clear how beloved Judge Reinhardt was and I could not trust that they would receive the information confidentially or with an open mind. I considered reporting the harassment to judges who I thought might be sensitive to such concerns and the need for confidentiality, and who I had heard had been helpful to others going through this process. However, I could not find a way to do so confidentially.

Participant 002 described an issue with the reporting process that demonstrated impartiality and bias is an issue that exists.

> The formal complaint is not filed against the judge but against the district or circuit court, which is the complainant's employing office. In some cases, including my own, the judge who oversaw the assisted resolution process now becomes the respondent to the complaint and replies on behalf of the court. The chief circuit judge selects a fellow district or circuit court judge to act as the presiding judicial officer, who oversees the complaint proceeding. Again, the presiding judicial officer has enormous discretion to direct the proceeding, which may include investigation and discovery, settlement discussions, the filing of written submissions by the parties, and/or a hearing, but only to the extent deemed necessary by the presiding judicial officer.

> There is no appearance of impartiality to this process. In 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. The inherent bias of this process is most evident in cases like my own, where a judge serves as the neutral arbiter or mediator in the assisted resolution process and then turns around and defends the alleged conduct in response to a formal complaint. The judges overseeing the EDR process are then given enormous discretion to direct the proceedings in ways that intentionally favor their colleagues. As I discovered through my own personal experience, meaningful investigation and fair procedure, including the opportunity for discovery and cross examination, are not guaranteed.

Participant 002 also described her experience with the formal complaint process that demonstrates bias in the process. This is due to the presiding judge of the complaint being friends or having an extensive relationship with the accused judge.

> Judge Land, who previously served as the "independent" investigator in the Assisted Resolution process, represented the Middle District of Georgia in the EDR proceeding and filed a one-page response to my Complaint, categorically denying the allegations. Judge Hall then interviewed me, Judge Royal, Judge Royal's career clerk, the courtroom deputy, and the Clerk of Court over a 2-day period.
>
> The interview itself felt like a deposition. I was seated alone in the courtroom at one counsel table, and Judge Hall was seated at the other counsel

table with two of his female law clerks. The testimony transcripts reveal how biased the process was. While I was subjected to a cross examination, Judge Hall interviewed the other witnesses as if he was counsel for the Middle District, guiding their testimony. For example, after Judge Royal stated that the law clerk who started in September "replaced" me, Judge Hall interrupted Judge Royal to question whether Judge Royal meant to say "succeed" instead 14 of "replace." Meanwhile, when Judge Hall asked me about the law clerk who started in September, he phrased the questions in an argumentative way. He asked, "[the clerk who started in September] was the third clerk hired; right? He was not replacing you; correct? Wasn't he hired to actually follow [a part time clerk] in [a] third position that the Eleventh Circuit had approved?" In addition to asking leading and softball "questions" to Judge Royal, Judge Hall allowed Judge Royal to give a monologue through most of the 53-page interview, much of which was irrelevant.

As an overseer of the process, Participant 003 identified bias.

My advice was not based on a few isolated incidents or issues, but what I saw as a pattern in almost every case. When employees formally chose to report misconduct, oftentimes investigations were biased against the individual filing the report and conducted in a way that favored the interests of those with greater power and influence.

Participant 003 discussed incidents exhibiting the lack of impartiality, hiring bias and discrimination.

> Although my goal was to serve as an impartial resource for both agency leadership and employees, management did not always seem to have the same goal. While I worked for the AO, there was a tendency to hire friends of management into the agency, a pattern that was known to most employees. Not only did that lead to hiring individuals who were not always the most qualified for the job, it also meant that the agency hired supervisors who were not always the most qualified to manage. This practice ultimately affected the reporting process and the likelihood that an employee would report, because employees did not feel comfortable reporting a supervisor that they knew had connections to agency management.

Theme 17: Reporting Challenges–Systematic Obstacles

All participants noted the systematic barriers in place that prevent victims from reporting. Participant 001 stated:

> I provided, through the advocate, several hypotheticals and asked for an opinion as to what would happen, based on the detailed hypothetical scenarios, if I reported these facts. The letter response that I received from Ms. Langley explained that she could not provide any specific answers to the hypothetical questions that were posed. She also suggested that I contact the "appropriate circuit representative on the Codes of Conduct Committee" if I wanted to raise a specific concern. Given this response, and the lack of any meaningful guidance on what confidentiality would apply should I decide to disclose the misconduct, I did not contact the Ninth Circuit representative.

Participant 002 recounts how the hearing process intentionally has obstacles that does not permit the complainant a fair opportunity to defend their case.

> After the interviews, I was denied the opportunity to conduct any discovery, cross-examine any witnesses, or participate in a hearing. I had no access to my Middle District e-mail or the documents saved on my work computer. Without cross examination, I had no opportunity to address substantially damaging and untrue statements made against me in the interviews. I was not allowed to submit interrogatories or ask follow-up questions. The EDR plan gave the presiding judicial officer, Judge Hall, extraordinary discretion to "provide for such discovery to the parties as is necessary and appropriate."

Participant 003 identified a long withstanding issue that systematic in nature resulting in unfair practices garnered toward employees.

> I did my best to address these comments and issues on a one-off basis; however, I was at a loss on how to address them at a systemic level. During my time as the EEO officer, I pushed for appeals to be heard outside of the agency. I told management that employees would be highly unlikely to report if the final decision rests with the AO Director, a procedure that rendered the reporting system meaningless. At no point during my tenure was I successful in creating that process, although a version of that process is available now, over a decade later. I also encouraged management to be more transparent about the reporting process and about underlying issues related to a lack of diversity; for example, I recommended sharing statistics within the agency about the makeup of our

workforce and the resolution of FEPS complaints. I was told that was not possible. On multiple occasions, I also told management that the FEPS process was too complicated and burdensome for employees. Employees had to make decisions that would require a lot of thought, even for those well-versed in the process. In any other context, these types of decisions would usually benefit from guidance from a lawyer. Instead, we asked our employees to navigate the system with little guidance and the hope that they knew the right people to talk to and the right questions to ask.

In my opinion, the lack of effective reporting practices and procedures is merely a symptom of the larger problem: the root cause of the judiciary's inability to effectively address misconduct is its culture, a culture that no amount of self-policing can fix. Based on my 23 years of experience in the judiciary, the culture of the judiciary makes it incapable of holding people accountable for discrimination and harassment.

Summary

Chapter 4 went over the data collection and analysis process stemming from three interviews with women previously employed by the federal judiciary who experienced harassment and obstacles with the current structure regarding reporting misconduct. Chapter 4 also included the vantage point from one participant who was not a direct victim of misconduct but assisted in reform unsuccessfully. The information used in this chapter was obtained through secondary data sources. The interviews explored the

perceptions, experiences and understanding of females previously employed by the federal judiciary.

The participants testified before the House Judiciary Committee Subcommittee on Courts, Intellectual Property, and the Internet. The participants completed a truth in testimony disclosure form and provided a biography. The participants also had to certify their statements were true or be subjected to a violation of 18 U.S.C. § 1001. The testimony obtained by each participant was written, spoken orally to the committee, and made part of the hearing record. From these interviews, I was afforded the ability to identify codes and themes.

The interviews were already transcribed. Therefore, a transcription software was not necessary. Deductive and inductive coding was used to analyze the study. The deductive codes that emerged from the participants experiences were judiciary employee affiliation, harassment, fear and hesitation, reporting challenges, and accountability. The deductive codes were expounded upon into 17 inductive codes to create an in-depth understanding of the problem and purpose of the study. Chapter 5 will present interpretation of the findings, limitations to the study, recommendations for future research and the social change implications.

Chapter 5: Discussion, Conclusions, and Recommendations

The purpose of this qualitative study was to explore female federal judiciary employees understanding of employee protection principles extended to staff of the judicial branch, and whether female federal judiciary employees are aware of reporting mechanisms for acts of misconduct. A case study design was used to elucidate experiences with the phenomenon of workplace misconduct held by females who formerly worked in the federal judiciary through use of purposive sampling.

Secondary data was analyzed using existing interviews conducted by members of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet. Interviews were held with three women who previously worked for the federal judiciary and had experienced workplace misconduct directly or indirectly. The interviews provided information that was used in the data analysis process to address both research questions. The interviews were also used to evaluate the participants experiences related to reporting challenges, harassment, fear and hesitation, and accountability. The data were coded and categorized after the data collection process.

Chapter 5 focuses on the results of the study. The results indicate there is a need to make additional changes to the federal judiciary's reporting structure for harassment claims. This confirms the theoretical framework which stresses the importance of the storytelling process in shaping policy. In addition, the chapter discusses recommendations that will assist the judiciary in implementing an iron clad reporting structure that safeguards judiciary employees from retaliation. This aspect of the findings

addresses social change implications while encouraging reporting to create an environment that is exemplary and free of workplace misconduct.

Interpretation of the Findings

After reviewing participant responses, it was clear the work environment of judicial chambers and working within the federal judiciary are unique. The prestige that comes with directly supporting a federal judge is unmatched as judges have an incredible amount of power and possess the ability to shape and grow careers. However, it was also evident that the same power disparity discouraged employees from reporting misconduct. The findings confirm the peer-reviewed literature; secondary data interviews and existing policy on the excepted service hiring authority discussed in Chapter 2 present barriers in reporting misconduct in a judicial workspace.

The research was structured around the following research questions: What are the perceptions of female federal judiciary employees regarding the report of acts of misconduct by federally appointed judges? What are the perceptions of female federal judiciary employees concerning current employee protection principles of the judicial branch of government extended to judiciary employees? The findings revealed female federal judiciary employees were hesitant and fearful to report acts of misconduct. Fear was a reoccurring theme throughout participant responses as it suggests employees working under a judge's direction ignored misconduct in order to escape being in opposition with a federal judge which was known as career suicide.

Moreover, the process revealed there are major flaws with the judiciary's EDR process. The process is filled with opaque processes and procedures that are difficult to

navigate. The first step for a victim is the attempt at obtaining legal representation. As indicated in Participant 002's interview, it is almost impossible to get a practicing attorney to go against a Court or a presiding judge with whom they may have a professional relationship. Again, it can be considered career suicide in the legal profession. Further, the rules of evidence that would normally apply in a civil procedure do not in the federal judiciary's EDR process. The presiding judicial officer has discretion as to what he or she will permit. The judge can or cannot allow certain documents into the record that may counteract the victims claim. The judge can also request documents from the accused judicial officer without permitting cross examination of the evidence that was permitted. The judge can also not permit the victims attorney to submit their own discovery requests or access internal records to substantiate their claims. These are all hurdles that are designed to favor the accused over the victim.

The other theme that existed was retaliation. This theme was also mentioned amongst all three participants. In Participant 002's case, the accused judge made disparaging remarks to the victim and others. The participant discussed a time where the clerk of court told her it was likely she would not get hired by any other judge in the court due to filing a complaint against the judge. The judge also referred to the victim's complaint as "devious" and "corrupt". Retaliation is a real concern amongst victims as they fear being blackballed in the profession.

Further, retaliation can be expounded upon as witnesses, also in the profession, are hesitant to come forward for the same reason. It was noted in the data collection process that individuals within the same circle turned a blind eye to misconduct. They

may see what is going on but intentionally choose not to say anything. Additionally, attorneys who practice before the court may also fear retaliation which explains why victims have difficulty obtaining legal representation.

There is also a lack of impartiality in the overseeing process. Complaints filed in one district are referred to a judge in another district in the same circuit. More often than not judges have a close-knit relationship with each other across districts. Yet, this strategy does not ensure bias is free from the process.

Last, federal government employees typically have recourse against wrongful conduct and harassment in the workplace. This is not the case in the federal judiciary. Title VII and other laws that are applicable in the executive and legislative branches do not apply to the federal judiciary. Therefore, employees are less likely to get backpay, job reinstatement, or compensatory damages should they file a complaint. Although this is all based on judicial independence it can be viewed as a punitive action and discourage reporting.

There were slight variations of the themes based on the demographic data, but they were all aligned. Therefore, there was no real difference in the themes. For example, all participants referenced retaliation, fear and hesitation, inadequate reporting channels, power disparities and intentionally opaque processes. These were the reoccurring themes that existed amongst all participants. Further, all these characteristics contributed to hindering victims from reporting misconduct which is directly related to the research questions.

Although each participant recounted a different avenue to arrive at the aforementioned characteristics, they all encountered the same challenges. Therefore, I was not surprised by any of the findings. Further, what also contributed to my lack of shock is the information presented in the literature review that addressed the judicial independence clause which grants federal judges lifetime tenure. This small fact implies there would be power disparities that exist within the structure of the federal judiciary. Thus, it is only logical to conclude fear, retaliation and hesitancy would be a contributing factor to the lack of reporting.

In addition, the literature also revealed the hiring differences in the judicial branch of government versus the executive branch of government. The peer reviewed literature notably stated various laws and employee protection principles are nonexistent in the federal judiciary. Therefore, one could only conclude there would be opaque processes and inadequate reporting channels as the federal judiciary was not initially meant to have those practices in place. However, I do believe the federal judiciary is making grave attempts to counteract these issues.

The only thing I would do differently is not limit the demographic data. This study currently limits the data based on gender. It would be interesting and impactful to discover whether this issue plagues men that work in the federal judiciary. It would also be interesting to learn in what capacity does the issue affect men, if at all. Therefore, I would expand the demographic pool to include both genders.

Theoretical Framework

The theoretical framework used for the study was narrative policy framework, which is based on the notion that narratives are identified as a key component in the policy process due to their alignment with the storytelling process (Macbeth et al., 2014). NPF is centered upon the role of narratives in the policy making process (Jones & McBeth, 2010). According to Macbeth et al. (2014), narratives are identified as a key component in the policy process due to their alignment with the storytelling process.

The findings related to the theoretical framework by providing narratives. The narratives told by the participants in this study assisted in shaping policy. Without former employees speaking out and discussing the process, it would be difficult for policy makers in the judiciary to implement change. Further, policy makers would not be aware of the many hurdles victims encounter such as the lack of clear policies and procedures for reporting, lack of accountability and transparency in the process, and harassing behavioral patterns that exist within certain judiciary work environments. Change cannot occur if the individuals with the ability to invoke change are unaware of inefficient processes that create insurmountable challenges. Based on the ongoing hearings Congress holds regarding workplace conduct in the federal judiciary, it appears the storytelling process will be successful in being a change agent for reform of the lack of employee protection principles in the federal judiciary. NPF ensures the victims have a voice and are able to influence policymakers.

Limitations of the Study

As indicated in Chapter 1, an existing limitation involved a lack of representativeness. The sample size was small and only represented former employees based on one gender. The sample did not include individuals who are currently employed by the federal judiciary. Although, due to the various challenges identified through the deductive coding process the likelihood of being able to collect data from an individual currently employed is low. This can be attributed to the themes fear, hesitancy, retaliation, and the power disparity that plagues the federal judiciary. These themes are all intertwined and greatly contribute to why a current employee would be less likely to report misconduct.

Further, the data was primarily collected from participants that worked in one court type, U.S. District Courts. Although one participant represented all unit types, that may not be viewed as substantive. Lastly, qualitative methodology and case study design will limit the ability to generalize conclusions based upon the findings, due to the specificity of characteristics being studied.

An additional limitation stems from the fact secondary data was used in the interview process. I did not structure the interviews. Therefore, I did not have the ability to ask questions or probe the participants in order to gain an in depth understanding of their experiences. Further, there is a possibility the participants could have omitted pertinent details due to a significant time lapse being a factor when the incident occurred based on when the victim testified. The participants may have also not provided an accurate depiction of their experiences.

According to Merriam and Tisdell (2016), a concern about case study research stems from "unusual problems of ethics" (p. 264) or selection bias. There is an additional possibility that the opinions of the participants used in this study are not the opinions of the many other judiciary employees.

Utilizing interview data from an external entity will provide a challenge, in that there will be no ability to probe or gain clarification of the information presented. This limitation would also mean I may not possess a sense of context outside of what is written and recorded by the initial researcher.

Recommendations

Future research could benefit from surveying a larger sample size and expanding the demographic to include all genders, nonbinary individuals, and judiciary employees at all levels. The sample size can also be expanded to include the court types that were excluded from this study. Additionally, attention can be drawn to judiciary employees who experience all forms of misconduct from the most to least egregious of cases. This would assist in understanding why existing reporting channels are not sufficient, establish a better baseline to measure progress and how to revise current procedures so that they are free from bias and unnecessary hurdles. Given the federal judiciary's current hierarchical structure that is filled with power disparities, replicating the study will be difficult if reporting channels continue to be opaque. This is because victims will not report misconduct if they cannot navigate the complaint process, fear retaliation, an adverse career stigma in the legal profession or any other outcome that may impact them negatively.

The deductive themes identified in Chapter 4 (Judiciary Employee Affiliation, Lack of Accountability, Harassment, Reporting Challenges, Fear & Hesitation) demonstrate there is a need to review these factors in order to implement a system that will be progressive and successful. Future research can specifically hone into these factors to identify a plan that will address existing issues within the judiciary's current reporting structure.

The current reporting structure does not safeguard employees from retaliation or other adverse action. This is a prominent barrier that prevents victims from reporting act of misconduct. Future researchers can take an in-depth dive into this factor to make recommendations on what new policies can be invoked or former policies can be revised to protect victims. Currently, the judiciary has not taken significant action to address concern of retaliation or exclude retaliatory tactics. Simply updating the Codes of Conduct and the Model EDR plans to classify retaliation as a form of misconduct is not sufficient. The judiciary needs to determine how to identify retaliation after a claim has been alleged and note what the remedy will be after determining retaliation has occurred. The judiciary can also cite examples and specify the types of acts that constitute misconduct.

Another factor that can be examined through future research is the oversight procedures of the complaint process that leave room for lack of impartiality, bias, and lack of accountability. This study demonstrated how power disparities and relationships plague the judiciary and attribute to the lack of reporting. As indicated in Chapter 2, the JCD Act provided an avenue for judges to escape accountability. Often, judges resign

after an allegation is filed which automatically dismisses an investigation after the allegation. Further, as indicated in the data collection process, there is a perception amongst judges that harassment does not exist within the judiciary. A future researcher can review the JCD Act, assess its limitations, and set an inquiry throughout the court community to determine whether a requirement should be in place to mandate investigations of all allegations regardless of a judges' ability to resign or retire. As it currently stands, the JCD Act serves as a scapegoat for wrongdoing and absolves judges from accountability.

Future researchers can also follow the judiciary's working group to gain insight on how the internal process will develop over time. It should be noted that the judiciary is following a self-corrective practice in lieu of getting an external entity involved. While this practice is commendable it might not be the best strategy. The future researcher can assess whether there is a need to create an external task force or have an external agency oversee the internal committee's progress. The external task force or agency can focus on results by tracking metrics. This will assist in measuring the success or lack thereof of the judiciary's reporting structure.

Implications

The impact of this study demonstrates positive social change in a branch of government. The perceptions of the female victims explored in this study will serve as a change agent. The results of the research may assist judiciary officials in forming policies and procedures that will safeguard employees. In addition, the findings will allow policymakers to gain additional insights into how to effectively design systems that

empower employees to report inappropriate acts. The study also benefits positive social change by identifying effective strategies to counteract misconduct amongst lifetime appointees. There is a positive social change implication in how individuals perceive reporting challenges. Identifying the issue and being transparent to discuss it publicly encourages reform. The recommendation would be to review the current reporting structure and remove barriers that hinder or discourage reporting.

An additional social change implication demonstrated in this study comes from the participants willingness to share their story and testify before a congressional committee. This is a major milestone that displays there is power in bringing an issue to the forefront that is typically shielded. In addition, this step also demonstrates there is a need to safeguard a vulnerable population. Further, the study will indirectly provide scholarly rationale in support of social movements that create social change on topics pertaining to harassment and misconduct.

Conclusion

This qualitative study explored female federal judiciary employees understanding of employee protection principles extended to staff of the judicial branch, and whether female federal judiciary employees were aware of reporting mechanisms for acts of misconduct. The participants in the study identified several challenges that existed in the federal judiciary that discouraged reporting. Further, the participants highlighted relevant factors that contributed to inefficient practices that creates barriers in the oversight process.

The recommendation is to continue to review the current reporting structure and remove barriers that hinder or discourage reporting. Creating a process that will create accountability will build public trust and ensure an exemplary work environment, which is the vision of Chief Justice Roberts for all federal courts. The implication to social change is to ensure victims of misconduct are heard and effective organizational responses are put in place.

References

Alexander, L., & Moore, M. (2016). Deontological ethics. *The Stanford encyclopedia of philosophy.* https://plato.stanford.edu/archives/win2016/entries/ethics-deontological

Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, 81 Stat. 602 (1967). https://www.govinfo.gov/content/pkg/STATUTE-81/pdf/STATUTE-81-Pg602.pdf

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990). https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg327.pdf

Beck, C. T. (2019). *Secondary qualitative data analysis in the health and social sciences.* Routledge.

Bernard, H. R. (2011). *Research methods in anthropology: Qualitative and quantitative approaches* (5th ed.). AltaMira Press.

Bhattacharya, K. (2017). *Fundamentals of qualitative research: A practical guide.* Routledge.

Brady, F. (1985). A Janus-headed model of ethical theory: Looking two ways at business/society issues. *The Academy of Management Review, 10*, 568–576. https://doi.org/10.2307/258137

Burke, T. (2013). *The inception*. http://justbeinc.wixsite.com/justbeinc/the-me-too-movement-cmml

Castillo-Montoya, M. (2016). Preparing for interview research: The interview protocol refinement framework. *Qualitative Report*, *21*(5), 811–831.

Chief Justice Roberts Issues 2017 Year-End Report. (2017, December). *Supreme Court of the United States*. https://www.supremecourt.gov/publicinfo/year-end/year-endreports.aspx

Chan, Z. C., Fung, Y., & Chien, W. (2013). Bracketing in phenomenology: Only undertaken in the data collection and analysis process. *The Qualitative Report*, *18*(30), 1–9.

Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964). https://www.govinfo.gov/content/pkg/COMPS-342/pdf/COMPS-342.pdf

Costa, C., Breda, Z., Pinho, I., Bakas, F., & Durão, M. (2016). Performing a thematic analysis: An exploratory study about managers' perceptions on gender equality. *The Qualitative Report*, *21*(13), 34-47. https://doi.org/10.46743/2160-3715/2016.2609

Cowton, C. J. (1998). The use of secondary data in business ethics research. *Journal of Business Ethics*, *17*(4), 423–434.

Creswell, J. W., & Creswell, J. D. (2017). *Research design: Qualitative, quantitative, and mixed methods approaches*. SAGE publications.

Creswell, J.W. & Poth, C. N. (2018). *Qualitative inquiry & research design: Choosing among five approaches.* SAGE Publications.

Devault, G. (2019). *Establishing trustworthiness in qualitative research*. https://www.thebalancesmb.com/establishing-trustworthiness-in-qualitative-research-2297042

Cowton, C. J. (1998). The use of secondary data in business ethics research. *Journal of Business Ethics*, *17*(4), 423–434. https://doi.org/10.1023/A:1005730825103

Duff, J. C. (2018). The federal judiciary workplace conduct working group. *Judges' Journal*, *57*(4), 8–12. https://www.americanbar.org/groups/judicial/publications/judges_journal/2018/fall/the-federal-judiciary-workplace-conduct-working-group/

Ertas, N. (2015). Policy narratives and public opinion concerning charter schools. *Politics & Policy*, *43*(3), 426–451. https://doi.org/10.1111/polp.12120

Grbich, C. (2013). *Qualitative data analysis: An introduction*. SAGE Publications.

Grove, T. L. (2018). The origins (and fragility) of judicial independence. *Vanderbilt Law Review*, *71*(2), 465–545. https://vanderbiltlawreview.org/lawreview/2018/03/the-origins-and-fragility-of-judicial-independence/

Hill, A. (2021). *Believing*. Kirkus Reviews.

Hinds, P. S., Vogel, R. J., & Clarke-Steffen, L. (1997). The possibilities and pitfalls of doing a secondary analysis of a qualitative data set. *Qualitative Health Research*, *7*(3), 408–424. https://doi.org/10.1177/104973239700700306

International Risk Management Institute. (2021). *Inappropriate workplace conduct*. https://www.irmi.com/term/insurance-definitions/inappropriate-workplace-conduct

Jones, M. D., & McBeth, M. K. (2010). A narrative policy framework: Clear enough to be wrong? *Policy Studies Journal*, *38*(2), 329–353. https://doi.org/10.1111/j.1541-0072.2010.00364.x

Jones, M. D., McBeth, M. K., & Shanahan, E. A. (2014). Introducing the narrative policy framework. In M. D. Jones, M. K. McBeth, & E. A. Shanahan (Eds.), *The science of stories: Applications of the narrative policy framework* (pp. 1–2). Palgrave Macmillan.

Judicial Conduct and Disability Act of 1980, Pub. L. No. 96-458, 94 Stat. 2035 (1979). https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg2035.pdf

Kobrick, J., & Holt, D.S. (2018). *Debates on the federal judiciary: A documentary history, Volume III: 1939–2005.* Federal Judicial Center, Federal Judicial History.

Lawton, A., & Páez, I. (2015). Developing a framework for ethical leadership. *Journal of Business Ethics*, *130*, 639–649. https://doi.org/10.1007/s10551-014-2244-2

Legal Information Institute. (2021). *Wrongful termination*. Cornell Law School. https://www.law.cornell.edu/wex/wrongful_termination

Lincoln, Y., & Guba, E. (1985). *Naturalistic inquiry*. SAGE Publications.

MacLean, L. (2016). Unprofessional workplace conduct...defining and defusing it. *Nursing Management*, *47*(9), 30–34. https://doi.org/10.1097/01.NUMA.0000491126.68354.be

Maguire, M., & Delahunt, B. (2017). Doing a thematic analysis: A practical, step-by-step guide for learning and teaching scholars. *AISHE-J: The All Ireland Journal of Teaching & Learning in Higher Education*, *9*(3), 3351–33514.

Martin, C. (2019). *Module 5 assignment: Research proposal* [Unpublished manuscript]. Walden University.

McBeth, M. K., Lybecker, D. L., & Husmann, M. (2014). The narrative policy framework and the practitioner: Communicating recycling policy. In M. D. Jones, M. K. McBeth, & E. A. Shanahan (Eds.), *The science of stories: Applications of the narrative policy framework* (pp. 45–68). Palgrave Macmillan.

McCord, M. A., Joseph, D. L., Dhanani, L. Y., & Beus, J. M. (2018). A meta-analysis of sex and race differences in perceived workplace mistreatment. *Journal of Applied Psychology*, *103*, 137–163. https://doi.org/10.1037/apl0000250

McKinney, C. (2019). Sexual coercion, gender construction, and responsibility for freedom: A beauvoirian account of Me Too. *Journal of Women, Politics & Policy*, *40*(1), 75–96. https://doi.org/10.1080/1554477X.2019.1563415

Menza, K. (2016). *Shocking 1976 sexual harassment survey*. Redbook. https://www.redbookmag.com/life/a47313/1976-sexual-harassment-survey/

Merriam, S. B. (1998). *Qualitative research and case study applications in education* (2nd ed.). Jossey-Bass Publishers.

Merriam, S., & Tisdell, E., (2015). *Qualitative research: A guide to design and implementation*. John Wiley & Sons.

National Conference of State Legislators. (2008). *At-will employment overview*. https://www.ncsl.org/research/labor-and-employment/at-will-employment-overview.aspx

Newman, M. A., Jackson, R. A., & Baker, D. D. (2003). Sexual harassment in the federal workplace. *Public Administration Review*, *63*(4), 472–483.

Onwuegbuzie, A. J. (2000). *Expanding the framework of internal and external validity in quantitative research* (ED448205). ERIC. https://eric.ed.gov/?id=ED448205

O'Sullivan, E., Rassel, G. R., Berner, M., & Taliaferro, J. D. (2017). *Research methods for public administrators* (6th ed.). Routledge.

Punch, K. F. (2013). *Introduction to social research: Quantitative and qualitative approaches.* SAGE Publications.

Ragsdale, B. A. (2013). *Debates on the federal judiciary: A documentary history, Volume I: 1787–1875.* Federal Judicial Center, Federal Judicial History.

Rehabilitation Act of 1973, Pub. L. No. 93-1120. 87 Stat. 355 (1973). https://www.govinfo.gov/app/details/STATUTE-87/STATUTE-87-Pg355

Rister, A., & McClure, C. I. (2019). The Me Too movement: A qualitative content analysis of news featuring #MeToo. *Northwest Journal of Communication*, *47*(1), 153–185.

Robertson, J. L., & Barling, J. (2017). Toward a new measure of organizational environmental citizenship behavior. *Journal of Business Research*, *75*, 57–66

Saldana, J. M. (2016). *The coding manual for qualitative researchers* (3rd ed.). SAGE Publications.

Select Task Force on the Study of Harassment in the Workplace. (2018, July 1). *The Journal of Employee Assistance*, *48*(3), 34.

Shanahan, E. A., Jones, M. D., & McBeth, M. K. (2018). How to conduct a narrative policy framework study. *The Social Science Journal*, *55*(3), 332–345. https://doi.org/10.1016/j.soscij.2017.12.002

Shanahan, E. A., McBeth, M. K., & Hathaway, P. L. (2011). Narrative policy framework: The influence of media policy narratives on public opinion. *Politics & Policy*, *39*(3), 373–400. https://doi.org/10.1111/j.1747-1345.2011.00295.x

Smith, K. J., & Colvin, L. (2016). Creating and implementing codes of ethical conduct. *Employment Relations Today (Wiley)*, *43*(1), 95–101. https://doi.org/10.1002/ert.21555

U.S. Const. art. IV, § 1

Weible, C. M., & Sabatier, P.A. (2018). *Theories of the policy process* (4th ed.). Routledge.

Yin, R. K. (2017). *Case study research and applications: Design and methods*. SAGE Publications.