

**Report of the External Review Committee to  
Review Sexual Harassment at  
Harvard University**

**January 2021**

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## **TABLE OF CONTENTS**

- I. CHARGE TO THE COMMITTEE**
- II. BACKGROUND FACTS**
- III. THE COMMITTEE'S PROCESS**
- IV. WHAT CHARACTERISTICS OF ORGANIZATION OR CULTURE MIGHT HAVE INHIBITED THOSE WHO HAD SUFFERED (OR WERE AWARE OF) MISCONDUCT FROM REPORTING IT?**
  - A. Pronounced Power Disparities**
  - B. Inadequate Reporting Processes**
  - C. Faculty Gender Imbalance**
- V. WHEN MISCONDUCT WAS REPORTED, WERE THERE CHARACTERISTICS OF ORGANIZATION OR CULTURE THAT INHIBITED AN EFFECTIVE RESPONSE?**
  - A. A Practice of Keeping Sanctions Confidential**
  - B. A Failure to Monitor Employees with Past Infractions**
  - C. A Failure to Hold the Department Accountable**
  - D. An Absence of an Adequate Process to Receive and Respond to Disclosures**
- VI. HOW DO WE VET CANDIDATES FOR LEADERSHIP POSITIONS TO ASSURE THAT WE ARE AWARE OF ANY ALLEGATIONS OF MISCONDUCT, INCLUDING SEXUAL HARASSMENT, AND HOW MIGHT WE DO THIS?**
  - A. The University Lacks Standardized Vetting Processes for Leadership Candidates**
  - B. The University Does Not Have a Centralized Repository for Personnel Files**
- VII. ACCELERATE PROGRESS TOWARD A CULTURE INTOLERANT OF SEXUAL AND GENDER-BASED HARASSMENT**

## VIII. CONCLUSION

- A. **Summary of Recommendations**
  - 1. **Foster Greater Psychological Safety**
  - 2. **Better Communicate Processes for Reporting Misconduct**
  - 3. **Achieve Greater Faculty Gender Balance**
  - 4. **Improve Transparency Around Investigations and Sanctions**
  - 5. **Monitor Employees with Past Infractions**
  - 6. **Hold University Units Accountable**
  - 7. **Communicate Structures to Address Disclosures**
  - 8. **Establish Standardized Processes for Vetting Candidates**
  - 9. **Establish a Centralized Personnel Database**
  - 10. **Accelerate Progress Toward a Culture Intolerant of Sexual and Gender-Based Harassment**
- B. **Upholding Academic Freedom and Due Process Rights**
- C. **A Note of Gratitude**

### I. CHARGE TO THE COMMITTEE

In a September 6, 2019 letter to Professor Steven Levitsky, Chair of the Government Department’s Committee on Climate Change, Harvard President Lawrence Bacow announced the formation of a Committee “to conduct an external review into factors that may inhibit Harvard’s ability” to assure “a working and teaching environment free from harassment and discrimination for all members of our community.”<sup>1</sup> He identified the members of the Committee: Susan Hockfield, Professor of Neuroscience and President Emerita at the Massachusetts Institute of Technology (Chair); Vicki Magley, Professor of Psychological Sciences at the University of Connecticut; and Kenji Yoshino, Professor of Law at New York University.

The impetus for the review was the case of Government Department Professor Jorge Domínguez, who engaged in decades of sexual harassment. Domínguez was a pre-eminent Government Department scholar in Latin American Studies and a high-ranking administrator.

President Bacow charged the Committee to explore three questions:

- 1. What characteristics of organization or culture might have inhibited those who had suffered (or were aware of) misconduct from reporting it?
- 2. When misconduct was reported, were there characteristics of our organization or culture that inhibited an effective response?

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<sup>1</sup> Lawrence Bacow to Steven Levitsky, 6 September 2019, Letter from President Bacow to Government Department Climate Change Committee, <https://gov.harvard.edu/letter-bacow-government-department-climate-change-committee>. Throughout this report, we rely on a range of sources. Some are easily discoverable, some are confidential, and some are neither. We append citations only to the last category of sources.

3. How do we vet candidates for leadership positions to assure that we are aware of any allegations of misconduct, including sexual harassment, and how might we do this?

## II. BACKGROUND FACTS

On August 2, 1983, Henry Rosovsky, the Dean of Harvard's Faculty of Arts and Sciences (FAS), completed an investigation of a complaint filed by Professor Terry Karl, a junior tenure-track faculty member in the Government Department. Professor Karl's complaint alleged that Domínguez had sexually harassed her on multiple occasions over two years.

Dean Rosovsky sent a letter detailing his findings and sanctions to Professor Domínguez and placed a copy of the letter in Domínguez's personnel file. Rosovsky deemed Domínguez's behavior toward Karl to constitute serious sexual harassment and abuse of authority. Rosovsky wrote that any repetition of the offense would lead to a recommendation to the Corporation that Domínguez be terminated. Among other sanctions, Rosovsky directed the Department Chair to relieve Domínguez of administrative duties for a minimum of three years. Rosovsky also placed limitations on Domínguez's interactions with Karl, such as forbidding Domínguez from participating in her promotion review or in any decision relating to her career at the University.

According to its practice at the time, the University maintained the confidentiality of Rosovsky's investigation and consequent sanctions. Nevertheless, news that the University had found Domínguez guilty of sexual harassment spread quickly. Domínguez took a sabbatical leave in 1984. Karl departed for a faculty position at Stanford University the next year, noting the challenges of interacting with Domínguez in the Harvard community even after the harassment stopped.

During the same time period, the University addressed two other cases of alleged sexual misconduct in the Government Department. In 1979, Rosovsky reprimanded a different Government professor for sexual harassment. In 1985, yet another Government professor resigned his position in the wake of a complaint of harassment.

Between 1983 and 2018, the University received no additional formal complaints against Domínguez. However, Domínguez's personnel file shows that two individuals made disclosures<sup>2</sup> about him with FAS officials. In 1983, an Assistant Dean reported inappropriate conduct by Domínguez toward an undergraduate student in the late 1970s. This Assistant Dean also corresponded separately with Rosovsky, who admonished Domínguez for this conduct in his 1983 letter. In 1989, an additional undergraduate student disclosed issues concerning Domínguez to a different Assistant Dean. That Assistant Dean communicated this event to the Dean of the College and also to University Counsel. The Committee found no

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<sup>2</sup> Harvard uses the term "disclosure" to describe a report made by an impacted party that does not in itself result in an investigation. Other institutions often refer to such a report as an "informal complaint." While we follow Harvard's terminology throughout the report, we take "disclosure" and "informal complaint" to be interchangeable terms.

record of any subsequent response to this complaint, other than support provided to the student.

In the decades following the 1983 Rosovsky letter and its sanctions, Domínguez rebuilt his career at Harvard. In 1985, Domínguez served as Chair of the Special Appointments Committee in the Government Department. In the same year, Domínguez chaired the FAS Foreign Cultures subcommittee of the Core Curriculum. From 1995 to 2006, he served as the Director of the Weatherhead Center for International Affairs. From 2004 to 2018, he served as the Chair of the Harvard Academy for International and Area Studies. Finally, from 2006 to 2015, he served as the inaugural Vice Provost for International Affairs.

On February 27, 2018, *The Chronicle of Higher Education* published an article containing allegations that Domínguez had sexually harassed at least ten women over the prior decades. On March 2, Provost Alan Garber referred to the article in a communication to the University community. “It was heartbreaking,” he wrote, “to read the accounts of former students and faculty who report having suffered inappropriate and unwelcome behavior.” A University spokesperson issued a statement on the same day encouraging members of the Harvard community who had experienced harassment to contact the Title IX Officer, the Title IX Office, or the Office for Dispute Resolution (ODR).

On March 4, 2018, a follow-up article in the *Chronicle* reported more allegations. Together, the articles described harassment of at least eighteen women by Domínguez over the period from 1979 to 2015. The women had held a broad array of positions at Harvard, including as faculty, graduate students, undergraduate students, and staff.

On the day the *Chronicle* published its follow-up article, Harvard took action against Domínguez. FAS Dean Michael Smith sent an email to the Harvard community stating that Domínguez had been placed on leave effective immediately pending a “full and fair review of the facts.” The next day, a Title IX coordinator for the FAS filed a complaint against Domínguez with the ODR. On March 6, 2018, Domínguez announced his resignation, which he characterized as a retirement.

Subsequently, University affiliates began calling for an external review conducted by an independent body. On the one-year anniversary of the first *Chronicle* article, students rallied in protest outside of Massachusetts Hall, calling again for an external review. President Bacow responded that he would wait until the ODR had filed its Report before opening such an inquiry.

In March 2018, Government Department Chair Jennifer Hochschild launched and chaired a “Committee on Climate Change.” Chaired by Professor Levitsky, this Committee engaged in a self-study to ascertain how to create a safer and more inclusive environment in the Department. The Committee submitted its 52-page Report on April 30, 2019, which recommended an external review and set forth a proposed charge for it.

In March 2019, the ODR concluded its investigation and forwarded its full Report, including findings of fact and determinations, to FAS Dean Claudine Gay. On May 9, 2019, Gay

announced the conclusion of the investigation in an email to the FAS community. She conveyed the finding of the ODR investigation that Domínguez had “engaged in unwelcome sexual conduct toward several individuals, on multiple occasions over a period spanning nearly four decades.” In a departure from custom, Dean Gay described the sanctions the University was imposing on Domínguez, which included the revocation of his emeritus status, along with revocation of all rights and privileges ordinarily available to retired faculty.

On the same day as Dean Gay’s announcement, President Bacow confirmed that the University would initiate a review by a three-member external committee. As discussed above, he wrote to Professor Levitsky on September 6, 2019, setting forth the membership of the Committee and its charge.

### **III. THE COMMITTEE’S PROCESS**

The Committee began its deliberations in September 2019. The University granted it full access to all relevant materials, including confidential files and reports, as well as to all personnel it sought to interview. The Committee started by reviewing salient public background information, including the *Chronicle* articles, the Report by the Department of Government’s Committee on Climate Change, and other discussions of the Domínguez matter in the public domain. The Committee also examined non-public information, ranging from the 1983 Rosovsky letter to the 2019 ODR final Report.

In early November, the Committee met in person in New York City to discuss these materials and to set an agenda for the investigative portion of its work. It visited the Harvard campus on December 11, 2019, for a full day of meetings. The Committee returned to Harvard for another full day of meetings on February 3, 2020. During these meetings, the Committee spoke with the following individuals:

- Students in the Government Department;
- Faculty in the Government Department;
- Members of the Government Department’s Committee on Climate Change;
- Current and former University administrators;
- Representatives from the Harvard Title IX Office and ODR;
- Individual members of Harvard’s faculty who have done significant work in areas relating to Title IX and organizational culture;
- Four women who reported sexual harassment by Domínguez to the *Chronicle*, and who requested an in-person group meeting with the Committee, accompanied by their legal counsel.

The Committee supplemented these in-person conversations with other forms of outreach. Prior to the Committee’s first visit to Harvard, it informed members of the Government Department that a dedicated email address had been set up for the Committee. It invited individuals to send comments pertaining to the Committee’s charge to that address. In a further effort to protect anonymity, the Committee created a process through which

individuals could submit hard copy letters to the Department’s Title IX liaison to be hand delivered to the Committee.

To understand the evolution of the Department and its culture, the Committee reviewed the Reports of the Visiting Committees to the Department from the date of Domínguez’s arrival at Harvard in 1972 to 2019. Composed of colleagues at peer institutions, the Visiting Committees assess the strengths and weaknesses of Harvard units at regular intervals. The Committee examined the Government Department Visiting Committee reports filed in 1973, 1976, 1980, 1983, 1985, 1988, 1991, 1994, 1997, 2003, 2007, 2010, 2013, 2016, and 2019.

In early 2020, the COVID-19 pandemic made further in-person meetings impracticable. Starting in March 2020, the Committee held follow-up meetings on Zoom and telephone calls. These discussions included conversations with University counsel (principally to clarify the University’s confidentiality practices) and with other University officials.

In charging the Committee with three questions, President Bacow noted that the Committee should “use the Domínguez case as an example through which these questions can be explored.” At the same time, he emphasized that the review would not constitute “a re-investigation of the allegations, nor a review of the investigation of those allegations.” In this report, we hew closely to these instructions. We use the Domínguez case to inform a path forward for the University, not to construct a comprehensive picture of its past.

We recognize that any attempt to evaluate actions taken in the past relating to sexual harassment must take into account dramatic changes in mores on this topic. Evidence indicates that Harvard has had a permissive culture regarding sexual harassment, as have many organizations over the time period in question here. We seek neither to condone past misconduct because of the time in which it occurred, nor to condemn it according to the standards we would apply today. Instead, we assess the University’s responses in the context of the times in which they were made and then consider current practices.

In our analysis, we provide concrete, actionable steps that Harvard might take. We found particularly relevant two reports on sexual harassment remediation—a 2016 Report by the U.S. Equal Employment Opportunity Commission<sup>3</sup> and a 2018 Report by the National Academies of Science, Engineering, and Medicine (NASEM).<sup>4</sup> Both Reports point to the critical importance of correcting a culture permissive of sexual harassment, albeit in abstract terms. Many of the Committee’s recommendations are anchored in these Reports, but seek to adapt the Reports’ general recommendations to the specific context of Harvard and the Government Department.

Finally, President Bacow directed our attention both to the Domínguez case, on the one hand, and to the greater “University community” on the other. In keeping with that instruction,

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<sup>3</sup> Chai R. Feldblum and Victoria A. Lipnic, *Report of the Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace* (Washington: U.S. Equal Employment Opportunity Commission, 2016).

<sup>4</sup> National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (Washington: The National Academies Press, 2018). We note that Professor Magley is a co-author of this Report.

some portions of our report will address the Government Department, while others will address the University as a whole. We trust that the unit of analysis discussed will be clear from its context.

The report is organized around the individual questions of the Committee's charge, with responses to each of the charge's questions followed by specific recommendations.

#### **IV. WHAT CHARACTERISTICS OF ORGANIZATION OR CULTURE MIGHT HAVE INHIBITED THOSE WHO HAD SUFFERED (OR WERE AWARE OF) MISCONDUCT FROM REPORTING IT?**

According to several sources, long before the *Chronicle* story broke, Domínguez's harassment was a matter of common knowledge among some members of the Government Department. However, many who suffered from or knew of Domínguez's misconduct did not report it. The Committee found three characteristics of the Department that inhibited those who had suffered or observed misconduct from reporting it: (1) pronounced power disparities; (2) inadequate reporting mechanisms; and (3) a disproportionately low number of women on the Department's faculty.

The Committee also found that the University's failure to publicize the sanctions against Domínguez in 1983 led to underreporting of his subsequent misconduct. We defer this discussion to Part V.A. of this Report, where we discuss the harms arising from the failure to publicize sanctions more broadly.

##### **A. Pronounced Power Disparities**

High power distance cultures in organizations increase the risk of harassment<sup>5</sup> and decrease the likelihood that harassment will be reported.<sup>6</sup> Such cultures are characterized by pronounced power disparities between individuals of higher and lower status. Individuals with lower status are less likely to voice concerns about the organization, including concerns relating to sexual harassment and other ethical issues.<sup>7</sup> Many sources, including multiple interviewees and Visiting Committee Reports, described the Government Department as a high power distance culture. The pronounced power hierarchy inhibited reporting in the Domínguez case.

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<sup>5</sup> Feldman and Lipnic, *Report of the Co-Chairs*, 28. For a review of scholarship on the role of power differentials in harassment particularly related to gender and its incidence in the academy, see Ann E. Tenbrunsel, McKenzie R. Rees, and Kristina A. Diekmann, "Sexual Harassment in Academia: Ethical Climates and Bounded Ethicality," *Annual Review of Psychology*, 70 (2019): 245-70.

<sup>6</sup> Geert Hofstede, *Culture's Consequences: International Differences in Work-Related Values* (Beverly Hills, CA: Sage Publication, 1980). Michael A. Daniels and Gary J. Greguras, "Exploring the nature of power distance: Implications for micro- and macro-level theories, processes, and outcomes," *Journal of Management* 40 no. 5 (2014): 1202-1229.

<sup>7</sup> Adam B. Malamut and Lynn R. Offermann, "Coping with sexual harassment: Personal, environmental, and cognitive determinants," *Journal of Applied Psychology* 86 no. 6 (2001): 1152-1166.



Interviewees reported the sense that the senior Government Department faculty were highly collegial among themselves and protective of each other. The close ties among the senior faculty left students—and even junior faculty—feeling uncertain of their status and rights. Students told the Committee that the Department’s senior faculty held the highest status and enjoyed privileges not afforded to other members of the Department. The Visiting Committee Reports as well as the Committee’s investigation corroborated that these power disparities were reflected and reinforced by severe inequities across a broad swath of Departmental activities. For instance, we found that a disproportionate share of teaching, advising and citizenship responsibilities routinely fell on junior faculty and graduate students.

In this culture, junior members feared their careers could be derailed or destroyed if they triggered the displeasure of a senior member. Even in the absence of direct retaliation, students worried about being branded as “troublemakers” by powerful members of the community. Students did not distinguish Domínguez from other faculty members in reporting their concerns about the power hierarchy in the Department.

The Visiting Committee Reports between 1972 and 2019 make repeated reference to such power differentials, underscoring that this issue had been a perennial one for the Department. The Reports note various forms of progress that have moderated these power differentials, such as the implementation of a real tenure track. Nevertheless, the Reports consistently refer to the unusually hierarchical nature of the Department, characterizing the power disparities in the Government Department as more pronounced than those present at peer institutions.

Community members specifically attributed the underreporting of Domínguez’s misconduct to concerns related to power disparities. One individual stated that she was reluctant to bring her harassment complaint about Domínguez to her faculty mentor because that mentor was untenured. She believed that asking him to take her side (as she believed he would) could jeopardize his career. Another student described a Departmental forum, convened in the wake of the *Chronicle* articles, at which a senior faculty member began the proceedings by describing Domínguez as a “friend,” which inhibited students from speaking openly about him. Still another initially brought her complaint about Domínguez to an FAS sexual harassment counselor without naming him or the Department. The counselor told her that if the student identified the Department, the counselor could guess the faculty member. The student interpreted this comment to mean that the University knew about misconduct by several high-ranking faculty members but had done nothing to correct it. Consequently, she decided not to file a formal complaint. Staff who experienced sexual harassment by Domínguez similarly stated that they did not report him because they feared running afoul of a powerful administrator.

### **Recommendation 1: Foster Greater Psychological Safety**

Hierarchies are necessary structural features of effective organizations, allowing groups to have greater impact and efficiency. However, abuse of a hierarchical position that takes advantage of lower status individuals can irrevocably damage the career and life of those abused. Such abuse squanders talent and defeats those who otherwise might contribute to the

shared enterprises of education and research. Moreover, such abuse corrodes the community by undermining confidence in shared values.

Harvard, like every organization, must manage its hierarchies to limit their potential for abuse. We make no effort to treat that vast topic comprehensively here. Yet in the spirit of catalyzing a conversation on this topic in the Harvard community, the Committee notes that it found the concept of “psychological safety,” as elaborated by Professor Amy Edmondson of the Harvard Business School, to be instructive—particularly after interviewing her and considering her published work.<sup>8</sup> Edmondson argues that organizations work best when they are unhindered by interpersonal fear, including the fear created by organizational hierarchy. To surmount that fear, she encourages organizations to foster cultures of psychological safety, which she defines as “a climate in which people are comfortable expressing and being themselves.”<sup>9</sup> In such a culture, individuals “are confident that they can speak up and won’t be humiliated, ignored, or blamed.”<sup>10</sup>

The Committee recommends applying the concept of psychological safety to this context. Many interviewees described the overwhelming fear created by power hierarchies in the Government Department. As Edmondson notes, however, organizations need not accept such fear as an inevitable byproduct of hierarchy. She outlines strategies that leaders can use to promote psychological safety, such as creating and communicating shared expectations, inviting participation by welcoming all perspectives, and adopting an attitude of continuous learning across organizational as well as academic domains.<sup>11</sup>

## **B. Inadequate Reporting Processes**

Several individuals stated that they did not report harassment by Domínguez because they lacked confidence in the existing reporting procedures. One interviewee said that she did not file a complaint in 2012 because “many other victims and I were very concerned about safeguards in the process and confidentiality and fear of reprisal.” Another individual did not pursue a formal complaint in 2015 because she deemed the process for filing a formal complaint to be “clunky” and “intimidating.” Although they describe steady improvement in reporting procedures over time, the Visiting Committee Reports similarly identified gaps in those procedures.

Institutions of higher education—including Harvard—have greatly improved the processes for reporting harassment over the past several years. In 2015, reforms to Title IX required institutions to monitor experiences of campus members more closely. In the immediate wake of the 2015 reforms, Harvard’s Title IX Office both gathered disclosures about alleged experiences and conducted formal investigations. In 2017, Harvard improved its procedures by creating separate paths for disclosures (which preserve anonymity) and for formal complaints (which require identification). Currently, the Title IX Office processes disclosures

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<sup>8</sup> Amy C. Edmondson, *The Fearless Organization: Creating Psychological Safety in the Workplace for Learning, Innovation, and Growth* (Hoboken, N.J.: John Wiley & Sons, 2019).

<sup>9</sup> *Ibid.*, xvi.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, 153-86.

and the ODR conducts investigations initiated by formal complaints. This separation helps ensure that disclosures do not turn into investigations without the full consent of impacted parties. Having a conduit for anonymous disclosures helps address the widespread concern that making a formal complaint will adversely affect a complainant's safety, reputation, or career opportunities. In particular, disclosures may be filed anonymously, whereas formal complaints require identification of the impacted party to an individual against whom a complaint is made. In line with due process requirements, disciplinary actions can only result from formal investigations. Even so, the Title IX Office endeavors to provide supportive measures for all impacted parties. Supportive measures center on an impacted party's well-being (for example, the reassignment of an impacted individual who has complained about a supervisor). While disclosures are recorded in the Title IX Office, they cannot be accessed for personnel decision-making.

Importantly, these processes provide a conduit for disclosures to be filed anonymously, while also protecting the due process rights of the respondents (the individuals against whom complaints are made). When a respondent is named more than once, anonymous disclosures are brought to the attention of the Title IX Coordinator. In this way, someone who has been named more than one time can initially be addressed with informal interventions by the Title IX Office. Such interventions notify individuals engaging in potential misconduct that their behavior has been perceived as inappropriate. By engaging in an early intervention, the Title IX Office notifications can prevent further inappropriate behavior. In addition to providing an avenue for anonymous reporting, this structure opens the possibility for a graduated plan of intervention that can match consequences to the nature and intensity of the alleged behavior.

To guide individuals through what can be perceived as a complicated process, Harvard has developed a broad network of over fifty Title IX Resource Coordinators across the University. These Resource Coordinators are available to explain an impacted individual's options to resolve their concerns. These Coordinators are distributed across the University's Departments and Schools, and are likely to be known through their other roles at Harvard. These features of the network are designed to enhance the comfort of impacted parties in making a disclosure.

The Committee finds that the University had inadequate reporting mechanisms in the past. However, having now dramatically improved these processes, the University is much better equipped to deal with instances of harassment today.

A remaining challenge with regard to these mechanisms is communicating them effectively to the Harvard community. The Committee found widespread confusion about even the most fundamental aspects of the reporting system. Multiple individuals, for instance, did not know the difference between the Title IX Office and the ODR, or the difference between a disclosure and a formal complaint. In addition, individuals expressed confusion about when formal disciplinary actions can and cannot be taken, as well as how these procedures can or cannot affect future personnel decision-making.

## **Recommendation 2: Better Communicate Processes for Reporting Misconduct**

Harvard should initiate a widespread educational effort to help ensure that the processes for reporting sexual harassment are broadly understood. In doing so, it should pay particular attention to providing reassurance about how both impacted parties and individuals engaging in possible misconduct are protected in these processes. We offer four examples of how Harvard could more effectively assuage the concerns of individuals who fear losing control of the process.

First, Harvard could clarify the anonymity offered by the process. We repeatedly encountered individuals who feared that they would be named and thereby opened to retaliation. We find that Harvard now has thoughtful anonymous procedures that balance protections for all parties involved. Communicating this balanced approach would be extremely useful.

Second, Harvard could clarify its practice of offering a calibrated, graduated response to alleged misconduct. Several individuals stated that they did not complain about Domínguez because they worried that a resulting sanction would be unduly severe. As one said, “I didn’t want him to be fired, I just wanted the behavior to stop.” In Domínguez’s case, of course, the cumulative effect of these complaints would have appropriately led (and eventually did lead) to a serious consequence: revocation of his emeritus status and his access to the University. However, in other circumstances, Harvard has the capacity to impose penalties for a respondent along a continuum. This ability to escalate responses is commendable, but is not well known within the broader Harvard community.

Third, Harvard could better clarify the distinction between two kinds of reports by individuals who have experienced harassment. Disclosures are made without the intent to activate a formal investigation; their intent is simply to convey information about an individual to the Title IX Office. Formal reports are made as official complaints, with the possibility of triggering a full investigation by the ODR. The Harvard Title IX Office is sensitive to the semantic and substantive distinctions between “disclosures” and “complaints.” Yet because many community members are not familiar with this terminology, they might not appreciate its intent to facilitate individuals’ reporting of misconduct.

Finally, Harvard should develop online resources that explain its procedures in easy-to-access locations and in clear terms. MIT recently established such a website.<sup>12</sup> Due to its greater decentralization, Harvard’s analogous, central online resource page is more sparsely populated. That page’s utility is further limited by the absence of weblinks to the policies of the Schools and Programs. An authoritative, shared website for all such materials would greatly increase access to, and understanding of, Harvard’s policies and procedures, along with providing regular reminders of how to access help and support for those who have experienced sexual harassment or other misconduct.

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<sup>12</sup> “Complaint Resolution.” Relations and Responsibilities Within the MIT Community, <https://policies.mit.edu/policies-procedures/90-relations-and-responsibilities-within-mit-community/98-complaint-resolution> (retrieved December 8, 2020).

We offer these suggestions not as comprehensive solutions, but only to give some definition to our sense that Harvard’s reporting process today suffers less from deficits in the substance of the policies and procedures than in the communication of them. Harvard has put in place a sophisticated and orderly process, the success of which is demonstrated by annually increasing numbers of disclosures and complaints filed over the past 5 years.<sup>13</sup> Even the best procedures, however, will not result in adequate reporting if their existence is not well known or if they are perceived to be unduly risky or cumbersome.

### **C. Faculty Gender Imbalance**

The incidence of sexual harassment is higher in male-dominated workplaces than in gender-balanced ones.<sup>14</sup> Noting this point, the Government Department’s Climate Change Committee expressed concern about the underrepresentation of women on its faculty.

Visiting Committee Reports also consistently articulated concerns about the Government Department’s insufficient recruitment, retention, and advancement of female scholars. The Department has made steady progress in achieving better gender balance on the faculty, from 9.0% women faculty in 1980, to 24.7% in 2000, to 31.3% in 2019. The Climate Change Committee observed that the 2019 percentage roughly matched the average among eleven peer institutions.

Several sources suggested that the dearth of female faculty members led to underreporting. One Visiting Committee Report expressed the view that women were more likely to disclose harassment to women faculty members. One female student likewise stated, to broad assent in the room, that she would find it easier to discuss sexual harassment with a female faculty member than with a male one.

### **Recommendation 3: Achieve Greater Faculty Gender Balance**

The Government Department should continue to make efforts to increase the number of women faculty in the Department. Such an increase could potentially diminish sexual harassment and, of course, would have many other benefits.

At the same time, the Committee cautions against relying too heavily on faculty hiring to combat sexual harassment. Changing the gender composition of the faculty is a long-term effort, and the Department needs solutions more urgently. Furthermore, scholarly literature emphasizes that changes in gender composition do not, by themselves, mitigate sexual

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<sup>13</sup> Harvard University Office for Dispute Resolution and Title IX Office, *FY 19 Annual Report*, 2019, Cambridge, MA: Harvard University, [https://titleix.harvard.edu/files/titleix/files/harvard\\_title\\_ix\\_odr\\_2019\\_annual\\_report.pdf](https://titleix.harvard.edu/files/titleix/files/harvard_title_ix_odr_2019_annual_report.pdf).

<sup>14</sup> Tenbrunsel, “Harassment in Academia,” 251 (“Research shows . . . that male-dominated organizations . . . are associated with increased sexual harassment of women, particularly gender harassment.”); Paula McDonald, “Workplace Sexual Harassment 30 Years on: A Review of the Literature,” *International Journal of Management Reviews* 14 no.1 (2012): 1-17, p. 9; Dana Kabat-Farr and Lilia M. Cortina, “Sex-based harassment in employment: New insights into gender and context,” *Law and Human Behavior* 38 no. 1 (2014): 58-72.

harassment.<sup>15</sup> The increasing number of women on the faculty over the time of Domínguez’s career in the Department did not appear to affect his behavior.

## **V. WHEN MISCONDUCT WAS REPORTED, WERE THERE CHARACTERISTICS OF ORGANIZATION OR CULTURE THAT INHIBITED AN EFFECTIVE RESPONSE?**

In considering the characteristics that may have inhibited an effective response to complaints, we distinguish among three sets of responses: the University’s 1983 response to a formal complaint; its 2018-19 response to a formal complaint; and its responses or non-responses to a series of disclosures over the decades. We briefly describe these responses before setting forth the characteristics that may have impeded some from being fully effective.

For its time, the University’s 1983 response to Karl’s formal complaint was appropriate and admirable in many ways. After finding that Domínguez had harassed Karl, FAS Dean Rosovsky meted out sanctions against Domínguez in clear terms. He also issued a warning that any repetition of the offense would lead to a termination recommendation to the Corporation. However, conforming to the policies and practices of that time, Rosovsky did not publicize these sanctions. In part for this reason, his sanctions were not adequately enforced. Much has changed both in the University and the national culture since 1983. If the University confronted the same situation today, it has the processes and structures in place to handle it differently.

Indeed, the University’s treatment of the formal complaint filed against Domínguez in 2018 may reflect how the University has evolved in the past decades. The complaint resulted in an investigation by the ODR that culminated in a confidential formal Report. The Committee reviewed the ODR Report and found it comprehensive, balanced, and sound. In her response to the ODR Report, FAS Dean Gay made her 2019 sanctions public, so that all could know that the University had stripped Domínguez of emeritus status and banned him from Harvard activities.

Finally, individuals made several disclosures of Domínguez’s sexual harassment over the years to University officials. Several of these complaints were recorded in two separate locations; some were, apparently, not recorded in any official file. Domínguez’s faculty personnel file contains two such disclosures. One, from 1983, detailed events that took place in the late 1970s. The other, dated 1989, described events that took place in that year. Title IX files in Central Administration contain a separate set of disclosures made in 2015, when three women in the Harvard Development Office reported to their supervisor and the Title IX Officer that Domínguez had made them uncomfortable. After the Title IX Office made arrangements to limit their interactions with Domínguez, they elected not to file a formal complaint. The disclosures in Domínguez’s faculty personnel file do not appear in the Central Administration Title IX files, and the disclosures in the Central Administration files

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<sup>15</sup> Anita Raj, Nicole E. Johns, and Rupa Jose, “Gender Parity at Work and Its Association with Workplace Sexual Harassment,” *Workplace Health & Safety* 68 (2020): 279 (“Gender parity at work is not sufficient on its own to address workplace sexual harassment; normative changes are needed.”).

do not appear in Domínguez's faculty personnel file. None of these complaints activated the consequence set forth in Dean Rosovsky's letter. Furthermore, we know from our interviews and from the *Chronicle* coverage that some individuals made disclosures to University officials that were not recorded in either official personnel file.

The Committee finds that four characteristics of the University inhibited a fully effective response to these reports: (1) a practice of keeping sanctions confidential; (2) a failure to monitor employees with past infractions; (3) a failure to hold the Government Department accountable for its culture and the behavior of its faculty; and (4) the absence of processes to handle disclosures.

### **A. A Practice of Keeping Sanctions Confidential**

Research on sexual harassment underscores the importance of making sanctions public when possible.<sup>16</sup> The Committee finds that in the case of Domínguez, the failure to make the sanctions imposed by Rosovsky public significantly impeded the effectiveness of his sanctions. Rosovsky's letter, which set forth these sanctions, was confidentially submitted to Domínguez and entered into his faculty personnel file. Due to the Corporation's rules regarding personnel records, they have remained confidential ever since. The Committee understands the general importance of maintaining the privacy of employee records. However, in this case, the failure to make the sanctions public had three negative consequences.

First, the failure to publicize sanctions led to confusion and consternation across generations about whether Domínguez had been punished at all. Even at the time of the initial sanctions in 1983, students expressed concern about the lack of transparency surrounding the sanctions. More than three decades later, the individuals we interviewed remained uncertain about what action the University had taken. A significant number believed that no action had been taken against Domínguez.

Second, the failure to publicize the sanctions led to failures of enforcement. Rosovsky's letter stated that Domínguez would not have any administrative responsibilities for three years in the Government Department. Nevertheless, two years later, in 1985, the Government Department assigned Domínguez as Chair of its Special Appointments Committee. Also in 1985, the FAS appointed Domínguez to serve on the Foreign Cultures subcommittee of the Core Curriculum. The Government Department appointment violated the explicit terms of Rosovsky's sanctions. The FAS appointment arguably violated the spirit of those sanctions. Publicizing the sanctions to the community might have increased the probability of their enforcement.

Finally, the failure to discuss the 1983 sanctions in a transparent way within the Government Department led to under-reporting of Domínguez's ongoing misconduct. In the first *Chronicle* article, one alumna said that she did not file a formal complaint because she knew Domínguez had been involved in a harassment incident in the past, and she believed he had not been punished. Even individuals who knew that Domínguez had been punished noted that

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<sup>16</sup> NASEM, *Sexual Harassment of Women*, 145; Feldblum and Lipnic, *Report of the Co-Chairs*, 86.

the absence of public acknowledgement inhibited them from speaking out about his misconduct. One student stated to the Committee that “[t]he fact that I only learned about Domínguez’s past through secret whisper networks and no one with a formal title addressed it sent the implicit message that faculty and staff knew, didn’t care, and that [reporting] would only strain my relationships with potential advisors.”

#### **Recommendation 4: Improve Transparency Around Investigations and Sanctions**

Had broader awareness existed of Rosovsky’s 1983 sanctions, Domínguez’s continued misconduct might have been reported and addressed sooner. Dean Gay’s recent decision to make sanctions public represents a critically important advance. While in less severe cases sanctions may not need to be broadly publicized, the misconduct here was persistent, broad, and severe. In such cases, to the extent possible, an effective response may require greater awareness of the infraction and sanction, at least within the relevant unit.

As one example, we note that Yale University has adopted strategies for making sanctions more public. The University publishes a semi-annual “Report of Complaints of Sexual Misconduct” that includes the nature of sexual harassment complaints at a level of generality that preserves anonymity and, notably, includes descriptions of the resolution of these complaints.<sup>17</sup> Such transparency enhances the psychological safety of future impacted parties by demonstrating that their reports will be taken seriously, will not entail risk to them, and will result in concrete action.

Publicizing sanctions can also enlist a broader set of individuals in their enforcement. To be sure, accountability ultimately requires a designated line of authority, particularly within a decentralized institution like Harvard. Nonetheless, public awareness of cases and their sanctions can encourage those who experience or observe misconduct to report it. A general understanding of what had transpired in the Domínguez case would have diminished reliance on a “whisper network” as the primary source of knowledge. A broader knowledge would also have diminished reliance on leaders like Department heads, which is particularly relevant when Department heads serve relatively short terms. (In the Government Department, for instance, most heads over recent decades served for four to five years.) Instead, the collective memory of the Department would be held by all its members.

#### **B. A Failure to Monitor Employees with Past Infractions**

We found no evidence that the University or FAS monitored Domínguez’s behavior after the University sanctioned him in 1983. Indeed, a scholar of institutions in the Government Department wrote a memorandum to the Department observing that the Domínguez case illuminated that “there have never been adequate mechanisms for long-term monitoring of employees retained after adjudicated infractions.”

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<sup>17</sup> Yale University Title IX Office, *Report of Complaints of Sexual Misconduct Brought Forward July 1, 2019 through December 31, 2019*, 2019, New Haven, CT: Yale University, pp. 10-12, <https://provost.yale.edu/sites/default/files/files/Yale-Semi-Annual-Report%20July-Dec%202019.pdf>.



We do not conclude that the University has the responsibility to remove every individual who has been found guilty of sexual harassment. The purpose of the University's graduated policies of responses for findings of misconduct is that some individuals should be permitted to remain in the community. However, the University has the responsibility to monitor individuals who have been found to have committed misconduct so that any subsequent infraction can be detected and addressed.

### **Recommendation 5: Monitor Employees with Past Infractions**

We suggest that the University develop appropriately scaled processes to monitor employees who have been found to have committed sexual harassment (or other misconduct). Such a monitoring system should have the following features. First, when an individual is found to have engaged in misconduct, the sanctions should include the notification that the individual will be monitored, and that even disclosures against them will be escalated to top levels of authority. Second, the relevant University units receiving complaints—including but not limited to the Title IX Office—should have the ability to check each new complaint against a reliable database of past offenders. If a new complaint names an individual already included in such a database, the complaint should trigger a formal investigation, with the possibility of further, more serious sanctions.

#### **C. A Failure to Hold the Department Accountable**

The Committee noted two instances of the Government Department failing to take action on known sexual harassment. While acknowledging that these instances are different in nature, the Committee finds both troubling.

First, around the time of the Karl complaint, the Government Department had two additional reported incidents of sexual harassment. Even though these incidents, along with the Domínguez incident involving Terry Karl, involved three different Government Department faculty, the Department did not initiate a systematic review. While the Faculty Council met to discuss sexual harassment, it did not specifically address the sexual harassment findings in the Department, at least not in a manner that prevented further sexual harassment by Domínguez.

Second, among the most unsettling circumstances of the Domínguez episode is the reported knowledge of his perpetration of sexual harassment among members of the Government Department, and the lack of any apparent effort by senior faculty to protect other members of the community from his abusive behavior. A whisper network clearly held knowledge of Domínguez's misconduct, which suggests that at least some senior faculty had some level of awareness about his behavior. Nonetheless, no one stepped forward to arrest it.

## **Recommendation 6: Hold University Units Accountable**

These two instances of Departmental failure call for different responses. The first, involving three discrete incidents, is somewhat easier to address. A history of multiple episodes of sexual harassment, committed not just by a single individual but by several members of a department, warranted a review of the Department at the decanal level, if not higher. Such a review should have led to policy changes, personnel actions, or cultural reforms that could have prevented further misconduct.

The Department's passivity with regard to Domínguez's ongoing harassment presents a more challenging issue, in part because only some of the faculty apparently knew about his behavior. In both instances, however, accountability must rest with the Department. To that end, we recommend the institution of a regular cycle of internal reviews, overseen by the relevant Dean and the Provost to examine issues of sexual and gender-based harassment. Because of the short duration of an undergraduate education and the exigency of this issue, we underscore that these reviews should be conducted at least once every three years. These reviews must include a confidential avenue for gathering information on these and other issues from students, junior and senior faculty, and staff. Oversight by the cognizant Dean and the Provost is required to ensure the rigor and integrity of such reviews.

In addition to such self-studies, Harvard's robust external visitation process could play a role in raising awareness of these issues and setting explicit goals to achieve better practices. Under Harvard's system of visitation, external experts in the field review the strengths and weaknesses of most Harvard units on a regular basis. Our Committee reviewed fifteen full and interim Reports of the Government Department's Visiting Committees and found that the Committees corroborated many of our concerns about the Department's culture. Several of the Reports addressed issues relating to sexual and gender-based harassment, perennial power disparities, and gender imbalance in the Department.

The University could leverage the visitation process to provide ongoing accountability for sexual and gender-based harassment. We do not prescribe a particular agenda for the Visiting Committees, but we recommend that the Departments (and the Deans and Provost) review Visiting Committee Reports with an eye to these issues and, when found, document plans to address the issues and follow up to ensure that they have been remedied.

### **D. An Absence of an Adequate Process to Receive and Respond to Disclosures**

The Committee finds that the University lacked adequate processes to deal with disclosures, at least at the time the complaints discussed here were made. We see three areas for improvement.

First, subsequent disclosures concerning Domínguez did not trigger the consequences set forth in the 1983 sanctions. Domínguez's faculty personnel file contains two disclosures. Dean Rosovsky addressed the misconduct underlying the 1983 complaint in his letter to Domínguez. However, the Committee could find no record of any consequences for Domínguez resulting from the 1989 letter. This inaction is troubling, as the activity described

in the 1989 letter, if true, could have triggered a dismissal recommendation to the Corporation under the terms of the Rosovsky sanctions.

Second, we know that several disclosures were made to FAS or University officials that were not entered into either Domínguez's faculty personnel file or the records held by the Title IX Office. The University should establish practices that ensure all complaints are recorded in readily accessible files.

Third, disclosures were filed in at least two different locations. The 2015 reports made by development staff are not part of Domínguez's faculty personnel file, but are in files held by the Title IX Office. Conversely, the 1983 and 1989 letters in Domínguez's faculty personnel file are not part of the Title IX files. The multiple locations of records of complaints make it difficult for even a well-intentioned reviewer to locate records of past misconduct with confidence.

### **Recommendation 7: Communicate Structures to Address Disclosures**

Historically, Harvard has not had strong mechanisms to handle disclosures effectively. Over the past decade, those reporting mechanisms have dramatically improved. However, work remains to be done on the three fronts discussed above.

First, the FAS recorded the 1989 complaint in Domínguez's faculty personnel file, but did not take further action on it. As the Committee understands it, the University felt constrained at the time because the impacted party declined to file a formal complaint. Changes in University policy and practice now allow for a more effective response to such disclosures. Nevertheless, the existence of this letter in the file is a stark reminder of how much harm could have been avoided had more robust processes been in place. If made today against someone with a previous history of sanctions, such a disclosure should trigger a full and fair investigation with the Title IX Resource Coordinator as the complainant.

Second, Harvard should ensure that disclosures made to School or University officials are handled correctly. Again, we realize that significant improvements have been made in this area. However, we recommend that Harvard continue to increase the capacity of all members of the community to address such reports of harassment. In particular, the Committee recommends amplified training for individuals assuming leadership roles.

Finally, Harvard must ensure that it records the disclosures it receives in a centralized location. This would require the creation of a centralized repository, which we discuss below in Part VI.B.

**VI. HOW DO WE VET CANDIDATES FOR LEADERSHIP POSITIONS TO ASSURE THAT WE ARE AWARE OF ANY ALLEGATIONS OF MISCONDUCT, INCLUDING SEXUAL HARASSMENT, AND HOW MIGHT WE DO THIS?**

The University not only permitted Domínguez to remain at Harvard but also promoted him to increasingly higher positions of authority. The Committee reviewed Domínguez’s three Harvard appointments subsequent to Rosovsky’s 1983 letter and sanctions. We determined that Harvard leaders made the appointments as follows:

	<b>Position</b>		
	<i>Chair, Weatherhead Center for International Affairs</i>	<i>Chair, Harvard Academy</i>	<i>Vice Provost for International Affairs</i>
<b>Dates Held</b>	1995-2006	2004-18	2006-15
<b>FAS Dean at time of initial appointment</b>	Jeremy Knowles (1991-2002)	William Kirby (2002-06)	William Kirby (2002-06)
<b>Provost at time of initial appointment</b>	Albert Carnesale (1994-97)	Steven Hyman (2001-11)	Steven Hyman (2001-11)
<b>President at time of initial appointment</b>	Neil Rudenstine (1991-2001)	Lawrence Summers (2001-06)	Lawrence Summers (2001-06); Derek Bok (acting President 2006-07)

With the exception of Jeremy Knowles, who is deceased, the Committee interviewed all these University leaders. We briefly summarize our findings about these appointments processes before discussing how Harvard might improve them.

The death of Jeremy Knowles, reportedly the sole decision maker in Domínguez’s appointment as Chair of the Weatherhead Center, prohibits a complete understanding of that appointment process. However, the Committee’s interviews with the other two individuals in leadership roles at the time suggested that neither had prior knowledge of Domínguez’s sexual misconduct or of Rosovsky’s sanctions.

In 2004 and 2006, a different set of three University leaders were involved in the appointment of Domínguez to the positions of Chair of the Harvard Academy and of Vice Provost for International Affairs. We therefore consider these two appointments together. In contrast to the appointment to chair the Weatherhead Center, the administrators making these appointments acknowledged awareness of the 1983 investigation and sanctions. They did not, however, know of any subsequent misconduct, including the misconduct described in the

1989 disclosure in Domínguez’s faculty personnel file. They reported efforts to determine whether Domínguez had engaged in further misconduct, and they recalled finding none. They further discussed with the leadership of the FAS, the University and of the Government Department whether the findings in the 1983 Rosovsky letter should preclude Domínguez from consideration for leadership roles. These conversations settled on the view that Domínguez had reformed his ways, and that he should not be further punished for past misbehavior.

By the time the Committee conducted its interviews, University leaders understood that Domínguez had continued to engage in harassment. These individuals expressed profound distress and regret that they had not uncovered evidence of Domínguez’s ongoing harassment. They stated that had they known about this additional misconduct, they would not have considered Domínguez for these positions.

Based on these findings, we find two critical gaps: (1) a failure to establish a standardized vetting process; and (2) the lack of a central repository for personnel files.

#### **A. The University Lacks Standardized Vetting Processes for Leadership Candidates**

Like many organizations, Harvard appears to have made the Domínguez appointments in a relatively *ad hoc* manner. As far as the Committee could determine, University officials were not aware of the 1983 Rosovsky letter when they made the Weatherhead appointment. For the two subsequent leadership appointments, administrators knew of the 1983 Rosovsky letter, but not of the 1989 disclosure. As the Rosovsky letter and the 1989 disclosure were both in Domínguez’s faculty personnel file, an examination of that file would have brought them to light and the appointments would likely not have been made.

#### **Recommendation 8: Establish Standardized Processes for Vetting Candidates**

The University should establish a consistent, required process for vetting all candidates for appointments—including but not limited to leadership appointments. This process would have at least the following three features.

First, the vetting process should require a thorough examination of the faculty personnel file. While we discuss below how recordkeeping could be centralized, we note that even the most complete file will be of little use if it is not consulted. Prior to an appointment to any position of leadership, a potential candidate’s history of sexual (or other) misconduct, along with any resulting sanctions, must be known and considered.

Second, the vetting process should apply to all appointments throughout the University. Even if an individual is not in a leadership position, they should still be held to a baseline level of good conduct. Moreover, these vetting processes should be standardized across all units of the University.

Finally, the vetting process should apply both to those arriving at Harvard and to those departing from it. As all universities both send and receive personnel to and from other institutions, Harvard’s obligation to vet candidates extends beyond the University. When Harvard hires a professor from another institution, Harvard should—to the extent possible—review that professor’s record with regard to issues of harassment and other misconduct. Similarly, to the extent practicable, Harvard should ensure that the institutions to which professors and staff depart are provided with the relevant personnel information. Several universities are beginning to experiment with strategies to avoid “passing the harasser” that include informing “other colleges about employees’ past misconduct.”<sup>18</sup> Harvard should consider whether it wishes to join their ranks.

### **B. The University Does Not Have a Centralized Repository for Personnel Files**

Like many universities, Harvard is extremely decentralized. The University has central HR systems and files for compensation and benefits. However, it does not have a single repository for personnel files for University employees. The creation of an authoritative repository of personnel files would make the vetting process of individuals for leadership roles much more effective.

In the Domínguez case, the lack of a centralized repository could have impeded the University’s efforts to vet him for the positions he held. It would certainly have impeded an attempt to vet him had any such review occurred after 2015, when disclosures were lodged with the Title IX Office but not in his personnel file.

### **Recommendation 9: Establish a Centralized Personnel Database**

The University should establish a centralized, searchable system to maintain authoritative personnel records. We recognize that creating such a repository would be no small task. The University would have to work through the practicalities of where to locate such records, which entity to task with setting up and maintaining such a system, what information to include, and to whom to grant access. Nevertheless, we deem these efforts important. A centralized, comprehensive, searchable personnel record would have considerable utility in vetting candidates for leadership roles. It would also allow the University to monitor individuals with past sanctions more effectively.

## **VII. ACCELERATE PROGRESS TOWARD A CULTURE INTOLERANT OF SEXUAL AND GENDER-BASED HARASSMENT**

With few exceptions, the recommendations offered above are relatively easy to administer as matters of policy. This is by design: the Committee scaled the recommendations according to

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<sup>18</sup> Sarah Brown and Katherine Mangan, “‘Pass the Harasser’ Is Higher Ed’s Worst-Kept Secret. How Can Colleges Stop Doing It?,” *Chronicle of Higher Education*, June 27, 2019, <https://www.chronicle.com/article/pass-the-harasser-is-higher-eds-worst-kept-secret-how-can-colleges-stop-doing-it/>.

the questions posed in the charge, which were admirably concrete. Nevertheless, we predict that none of these reforms will be effective without a much broader and more ambitious cultural change. We close with some remarks on this point, which we present as a final, tenth, recommendation.

A culture permissive of sexual harassment is the strongest predictor of the occurrence of such harassment.<sup>19</sup> Cultures that are permissive of sexual harassment are characterized by members feeling that it would be too risky to report their experience of sexual harassment, that their complaint would not be taken seriously, and that no corrective action would be taken in response to their complaint. It is clear that the Government Department, and, to some extent, the University as a whole, has had such a permissive culture. No real progress can be expected without altering that culture.

A culture permissive of sexual and gender-based harassment can be recognized in each part of our preceding analysis. With regard to the underreporting of harassment, we reiterate that many individuals did not report harassment because they were concerned that the University was being deliberately inattentive to it. With regard to the relatively ineffective responses to harassment in this case, the University's failure to publicize sanctions, monitor past offenders, hold Departments accountable, or appropriately process disclosures could all be viewed as symptoms of a permissive culture. And, with regard to vetting candidates for leadership roles, the apparent failure to consult available materials before making high-level appointments could be viewed as a symptom of that culture as well.

While the Domínguez incident illuminates certain aspects of this culture, it obscures others. Because Domínguez's case raises such stark issues of sexual harassment, it may distract the University from the broader issue of gender-based harassment. Gender-based harassment is any conduct (sexual or otherwise) that conveys hostility, objectification, exclusion, or second-class status about members of one gender (as reflected in comments like "women aren't cut out to be surgeons" or "girls don't belong in engineering"). Gender-based harassment also refers to degrading images and words in the ambient environment.

In addressing its culture, Harvard should look not only to sexual harassment but also to gender-based harassment for at least two reasons. First, gender-based harassment figures prominently in most individuals' experiences of sexual harassment. The NASEM report states: "When an environment is pervaded by gender harassment, unwanted sexual attention and sexual coercion become more likely to occur—in part because [they] are almost never experienced by women without simultaneously experiencing gender harassment."<sup>20</sup> Second, as scholarship has long noted, many forms of harassment that are not sexual in nature are still forms of gender-based harassment.<sup>21</sup> Depicted by an iceberg analogy, gender-based

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<sup>19</sup> Louise F. Fitzgerald, Fritz Drasgow, Charles L. Hulin, Michele J. Gelfand, and Vicki J. Magley, "The antecedents and consequences of sexual harassment in organizations: A test of an integrated model," *Journal of Applied Psychology* 82 (1997): 578-589. Chelsea R. Willness, Piers Steel, and Kibeom Lee, "A meta-analysis of the antecedents and consequences of workplace sexual harassment," *Personnel Psychology* 60.1 (2007): 127-162.

<sup>20</sup> NASEM, *Sexual Harassment of Women*, 49.

<sup>21</sup> Vicki Schultz, "Reconceptualizing Sexual Harassment," *Yale Law Journal* 107 (1998): 1683-1805.

harassment lies beneath the water line of public consciousness, but is actually the more pervasive form of harassment.<sup>22</sup> Harvard should not squander the opportunity presented here to address gender-based harassment just because the Domínguez case largely centered on sexual harassment.

To be clear, we do not view Harvard as unique in permitting the perpetuation of such a culture permissive of sexual harassment. This culture can be observed, unfortunately, as endemic to many universities (and other organizations) around the nation and the world. Harvard has demonstrated a commitment to changing that culture by, among other initiatives, improving its policies and procedures and by requesting the present review, with the intent to continue a “work in progress.” It is in the same constructive spirit that we offer our final recommendation.

### **Recommendation 10: Accelerate Progress Toward a Culture Intolerant of Sexual and Gender-Based Harassment**

Developing effective strategies to change deeply embedded features of a university’s culture is as daunting as it is necessary. The Committee does not purport to provide definitive solutions, but rather offers some avenues to pursue.

First, we encourage Harvard to leverage the focus the Domínguez case has brought to sexual and gender-based harassment within its community to seize this as a “moment that matters” to catalyze change. An acknowledgement by University leadership of Harvard’s permissive culture and the magnitude of the harm it has caused would be a critical start. While we leave the details to University leadership, we recommend, in the strongest terms, a transparent, credible “turning of the page,” with an admission of the problems of the past and a commitment to a different future.

Second, we recommend embedding expectations of ethical and professional conduct more deeply into Harvard’s culture and practice. One consistent theme in the NASEM Report is that sexual harassment should be treated as an ethical breach akin to research misconduct,<sup>23</sup> and that, conversely, ethical behavior should be rewarded alongside excellent research or teaching.<sup>24</sup> Implicit in the Report is the idea that ethics and professionalism should take their place alongside the three traditional metrics for faculty evaluation—research, teaching, and service. Harvard may wish to add this “fourth pillar” to signal the expectation of the same level of excellence in ethical and professional conduct as is expected in the traditional three domains. Whatever approach Harvard decides to take to instantiate a higher expectation for ethical and professional conduct—with respect to harassment as well as misconduct more broadly—it should be articulated and embraced as a core value of the University.

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<sup>22</sup> NASEM, *Sexual Harassment of Women*, 32.

<sup>23</sup> NASEM, *Sexual Harassment of Women*, 114-18 (describing parallels between sexual harassment and research misconduct as forms of unethical behavior), 114-118 (noting that academic institutions should consider sexual harassment to be a breach of academic norms akin to research misconduct);

<sup>24</sup> *Ibid.*, 129-30, 180 (noting that institutions should evaluate faculty and staff on the basis of professionalism), 163-64 (noting importance of rewarding collegial behavior alongside teaching and research).



As a core value, all members of the University community share the responsibility for developing and upholding conditions that support it, including the commitment of Harvard's leaders to a culture of anti-harassment. The President, Provost, Deans, and Governing Boards should make a clear statement of strategies to combat sexual and gender-based harassment. At the same time, it will clearly not be enough to simply have the "top of the house" swear fealty to these ideals. Department heads, individual faculty, administrators, students, and, indeed, all members of the community must participate in securing such a culture for each other.

Finally, precisely because we acknowledge the scale of the problem, we urge Harvard to mobilize its vast intelligence and ingenuity to solving the problem of sexual harassment not only for itself, but as an example for all institutions of higher education.

## **VIII. CONCLUSION**

The Domínguez incident provides a call to action for Harvard University around the issues of sexual and gender-based harassment. We conclude by summarizing our recommendations, emphasizing two ways in which our report should not be misconstrued, and extending our thanks to all participants in this process.

### **A. Summary of Recommendations**

We have made nine recommendations in three categories, and a tenth recommendation that cuts across them all.

#### **Encouraging Reports of Misconduct**

- (1) Foster Greater Psychological Safety
- (2) Better Communicate Processes for Reporting Misconduct
- (3) Achieve Greater Faculty Gender Balance

#### **Ensuring More Effective Responses When Misconduct Is Reported**

- (4) Improve Transparency Around Investigations and Sanctions
- (5) Monitor Employees with Past Infractions
- (6) Hold University Units Accountable
- (7) Communicate Structures to Address Disclosures

#### **Vetting Candidates for Leadership Positions**

- (8) Establish Standardized Processes for Vetting Candidates
- (9) Establish a Centralized Personnel Database

#### **Creating an Anti-Harassment Culture**

- (10) Accelerate Progress Toward a Culture Intolerant of Sexual and Gender-based Harassment

## **B. Upholding Academic Freedom and Due Process Rights**

We now turn to what these recommendations do *not* purport to do. Nothing in our Report undermines Harvard's bedrock commitments to academic freedom and to the due process rights of respondents.

With regard to academic freedom, several individuals expressed concerns about the unintended effects an anti-harassment culture might visit on the robust exchange of ideas. Reliable research contributions that advance understanding and pioneer new fields require the sometimes uncomfortable rigors of testing ideas to determine their integrity. Such rigorous testing should be expected of all of a community's members, including its more junior (and often more vulnerable) members. We urge all members of the community to make what seems—at least in the abstract—an obvious distinction between the discomfort of being victimized by sexual or gender-based harassment and the discomfort of having one's ideas subjected to rigorous intellectual challenge.

With regard to due process, the Committee similarly heard interviewees express concern that an anti-harassment culture might grant more latitude to complainants and trample on the rights of respondents. Here, too, we understand—and encourage—the University to hold steadfast in guaranteeing such due process rights. All of the innovations that the University has piloted over the years have sought to balance carefully the rights of the complainants against the rights of the respondents. When individuals or even units within the University have believed that this balance unduly favors respondents, appropriate adjustments have been made. Voices advocating for the rights of respondents are a critical part of any process to reform the University's policies.

## **C. A Note of Gratitude**

We end with a note of thanks. In its work, the Committee benefited enormously from the candor and generosity of many members of the greater University community. While the scope, complexity, and sensitivity of the issues in this charge can never be completely addressed, our goal is to help advance an appreciation of viable strategies for addressing the underlying issues.

We particularly thank the many individuals for whom returning to the topics of this Report recalled events that caused them significant—and in some cases immeasurable—suffering. These individuals were willing to revisit the past to improve conditions for those who will follow them. Their time, honesty, and intelligence were invaluable resources.

To all of the participants in this review, we are infinitely grateful.

Respectfully submitted,

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