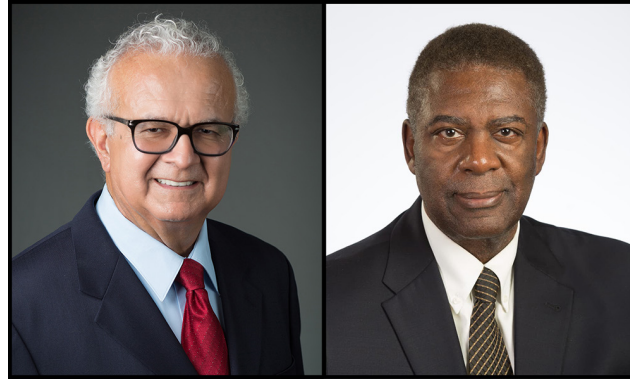


THE CHRONICLE

of Higher Education®



Shining the Spotlight on Higher Education and the Need for Neutrality

Two experts weigh in on the mounting problems facing higher education

Reports of harassment and discrimination in higher education have exploded in the last few years. Two JAMS neutrals draw from their experiences working with colleges and universities to describe the sources of these troubling incidents and recommend best practices for investigating and remedying them. Hon. Carlos R. Moreno (Ret.) spent 25 years on the judiciary, including 10 years on the California Supreme Court, and most recently served as United States Ambassador to Belize prior to joining JAMS. Hon. R. Malcolm Graham (Ret.) has more than 30 years of judicial experience, including a decade as a justice on the Massachusetts Appeals Court.

Have instances of harassment and discrimination at colleges and universities increased in recent years?

MORENO: The #MeToo movement, for example, has made it possible for victims to feel comfortable coming forward about institutional problems, and universities are now more apt to admit that they need outside help to investigate and remedy allegations that are found to have merit.

GRAHAM: Complaints citing harassment and discrimination have increased at colleges and universities in recent years. It is unclear whether there have been increases in the number of actual incidents or whether complainants are more comfortable reporting the incidents. What is clear is that for too many years academic institutions gave low priority to tackling harassment and discrimination. Today, colleges and universities recognize that there are both moral and economic imperatives to try to eliminate incidents of harassment and discrimination. The most forward-thinking institutions are moving aggressively to ensure that messaging is in place to notify all members of the academic community that harassment and discrimination violate the university's code of conduct, that they will not be tolerated and that the university will take immediate and decisive action to investigate, adjudicate and punish persons engaged in such behavior.

What have you observed in working with schools on these issues?

GRAHAM: Colleges and universities have a tendency to be reactive rather than

proactive; generally, they are inclined to assume that issues at their institutions are no worse than they are at other universities, and that causes them to be relatively comfortable in failing to take proactive steps at combating issues of harassment and discrimination. However, as we have seen from the growing list of cases reported in the media, inaction in addressing such issues can be very costly to colleges and universities in terms of both the institution's finances and its reputation.

MORENO: I investigated racial incidents, minority faculty concerns and procedural complaints at a major state university. I interviewed more than 30 faculty members and held a town hall meeting. Problems involved everything from tenure decisions to racial insults. The existing whistleblower process was byzantine and slow; it took forever to get to the bottom of a complaint. My conclusion was that incidents did occur and there was disparity in how the minority faculty were treated. It was a systemic problem. After issuing my report, the university created a Title IX and diversity office, as well as a vice chancellor position, to expedite concerns.

How deep are these problems, and what can colleges and universities do to protect their institutions, faculty, administration and students?

GRAHAM: The roots of the problems of harassment and discrimination run deep, in large measure because they are cultural problems, and problems of harassment and discrimination in colleges and universities may look different in different academic settings. To combat the problem, colleges and universities must have policies and procedures that embody the institutional values of diversity, inclusion and respect. I am currently working as a co-investigator with a university that includes diversity and social justice as part of its core fundamentals.

Universities and colleges must also improve transparency and accountability, and make their communities aware of the consequences harassers and discriminators will face and that the institution will investigate and hold its people accountable.

Finally, the colleges and universities should complete a thorough review of the training that it provides on harassment and discrimination to faculty, students, staff and others, and thereafter provide state-of-the-art mandatory training to the entire academic community at least annually.

What advice do you have for universities and colleges in working with investigators?

MORENO: There are a growing number of scandals where universities could use the assistance of a neutral, third-party investigator. My advice to anyone doing this type of investigation is to learn the rules that control the faculty and students. Get up to speed on university policies and identify the players. The biggest challenge for an investigator is finding the right people to interview and getting those individuals to be forthcoming. Discovery can be very intense: One investigation can have a half million documents. A lot of people lawyer up, so it's expensive. There's a lot of paperwork and a lot of case management.

GRAHAM: The college or university must be clear in the scope of the investi-

gation. By doing so, the time and focus of the investigator will be used most efficiently and effectively. The college or university should also provide the investigator with sufficient time, resources and information. The college or university should also inform the appropriate community that an investigator has been selected. Finally, a top administrator should inform the community of the importance of the investigation and encourage all potential interviewees to be cooperative and forthcoming.

Why did you start handling these types of cases?

GRAHAM: Many of my friends and associates are current or former college or university presidents, administrators, staff members and professors. As a former college and professional athlete, I have had a continuing interest in many issues that have been the focus of so much media attention. In addition, as a former trial judge and appellate justice, I have been involved in the resolution of various issues over the years related to issues of alleged harassment and discrimination at colleges and universities.

MORENO: My experience with these types of cases comes from my time on the district court and the California Supreme Court. More recently, I've consulted with the California Legislature on sexual harassment issues among its staff. In addition, I served on a governor's task force examining the issue of sexual misconduct and student disciplinary hearings at the university and college levels.

How can an experienced neutral entity help?

GRAHAM: Today, colleges and universities are keenly aware of the need to manage, resolve and prevent conflicts relative to issues of harassment and discrimination, and a neutral entity that is well qualified may provide a comprehensive range of effective solutions for problems facing students, faculty and administration. An external, neutral entity brings objectivity to disputes affecting organizations such as colleges and universities, which may rely on the neutral for fairness and independence and to build confidence within the institution. Finally, an experienced JAMS

neutral can uncover festering problems: male versus female, black versus white. Schools will suffer bad press if they don't deal with smaller issues before they grow. Money spent now will save a much larger sum in the future, which is why hiring a neutral investigative entity to uncover simmering issues is so key.

MORENO: Fortunately, universities are more interested in resolving these issues than they used to be, largely because of pressure from the press, the public and their boards. That pressure has similarly forced universities to look beyond their existing law firms to resolve these issues because of conflicts and perceived influence. The need for this type of neutrality and separation is what makes organizations like JAMS such a good fit for university investigations. Impartiality is essential when dealing with such sensitive issues.

JAMS Solutions for Higher Education resulted from a crucial need for neutral third parties to help address sensitive issues that are a reality on campuses throughout the nation. The program is focused on providing neutral services unique to higher education, including Title IX adjudications and appeals, faculty and administration dispute prevention and resolution, and investigation services, as well as other solutions to problems affecting colleges and universities.

JAMS Solutions can be adopted in whole or in part, independent from or in conjunction with pre-established institutional policies and procedures. Schools are assigned a dedicated administrative contact to ensure that requests are accommodated efficiently.

To engage JAMS Solutions, please contact us at Solutions@jamsadr.com



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