

# Safety and Freedom: Let's Get It Together

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## I. Introduction

### A. *Getting Safety and Freedom Together*

The dual topics of this conference, sexual assault and academic freedom, each separately and together raise such an important, daunting set of issues. Given the troubling election news cycle and release of the Access Hollywood tapes directly preceding the conference, the choice of topic was both prescient and profound. Bringing these dual concerns within the scope of a single conference deserves dedicated national attention. These are divisive times, and we need to take advantage of the moment to understand what drives and motivates sexual assault if we are going to make a difference.

We reflect with responsibility for addressing conflicts within one of the comparative, microlegal systems we now run on our college campuses. We are eager to share perspectives that emerge from the *inside out*, to learn from the insights of others, to absorb these challenges, and imagine and implement effective remedies.

In our society, in our politics, on our campuses, sexual assault is devastating. Devastating to survivors and for all those directly involved. Devastating for our communities. Devastating to our underlying security of person and mind; we each need to be healthy, practice empathy, exercise our freedoms, realize our fullest potential, strengthen our resolve and courage to learn and to lead and follow others. Each breach is a reflection on all of us.

Violations of freedom result in profound insecurity. Just as repressive police states are not really safe, violations of freedom undermine security. This is

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true of higher education and academic freedom, too. Threats to freedom of expression undermine the psychological security we need to teach and learn about challenging issues, search for truth, ask hard questions, reject outdated postulates, disrupt conventions, or innovate new methodologies and theories.

The perceived (or actual) collision (or mutual exclusivity) of freedom and safety, especially when based on extreme or poorly tailored policies and practices, further complicates our challenge. Yes, whether in airports or classrooms, strong safety measures may compromise freedom, and unaccountable freedoms (those that interfere with the freedoms of others) create insecurity.

However, if we are to maximize the values of both safety and freedom, we need to develop a more generative, creative view. We need to elaborate a more responsive, transformative working thesis. Freedom and safety are interdependent, mutually reinforcing, complementary. Research indicates that psychological security or safety is a necessary precondition for free expression, taking risks, sharing new ideas. Psychological trust in a classroom is a necessary condition for opening up, speaking out, challenging one another, stepping out of a comfort zone. As faculty, students, or staff, we cannot get outside a comfort zone we don't already have. And if we are confined (or confine ourselves) to retreating into zones of comfort, we may lose confidence in ourselves and our ability to take on the challenges we must face.

The balance, interdependence, or cycle of safety and freedom may become either a vicious or virtuous one. It is up to us to shape that positive relationship.

To do so, we need to face our challenges, raise our thinking to a strategic level, and do it on a collaborative basis. Together. Thus, we've titled this essay *Safety and Freedom: Let's Get It Together*.

We mean getting *safety and freedom* together. Safety is not a counterbalance to freedom, but an integral condition for it. We mean *getting our act* together. This requires hard, dedicated work. We mean *together*. Ultimately, we have to get out of our own campuses and the confines of our own texts to collaborate on a national vision. In particular, we seek to build a dynamic theory and cycle of behaviors around the dual commitments of safety and freedom.

Vice President Joe Biden challenged all college campuses as part of the White House Task Force *It's On Us* campaign to embrace the burden that each individual has the obligation to stop sexual assault. Through our personal and social responsibility initiative (launched in 2013), we express a similar idea here. It's about us, all of us: not only the insights that we each need to generate from our own point of view at lower levels of specificity, but the need for us, together, to collect, engage, and strategize at a higher level.

We cannot emerge from the weeds entirely. We have to mow them down, cut through them to see the horizon; but let's not rest there. We need strategy. We need to envision what a safer, freer learning environment would look like, and what role all of us (as students, faculty, staff, local, state, federal authorities)

should have in realizing those values or that vision, what special capacities of communication, capabilities of empathy, courage, creativity we need to grow.

We should be wary of any pretense of uniformity or a national monolith of best practices. After all, any *best* practice that can be improved is not really ever *best*. Nonetheless, we must recognize that the fragmentation of these discussions, the isolation of specific campus activities, uncoordinated and inconsistent state legislative and judicial interventions, shifts in burdensome federal government guidelines and regulations that deeply confuse and frustrate our shared purpose. We must recognize our own failures of compassion and empathy for all involved, sufficient courage to step up and summon the creativity to innovate and move the behavioral and attitudinal dial.

We can get it together if we follow three core commitments in the move to a more collaborative, strategic discussion. We should repeat them daily as guides to the actions (small and large) we must take in the face of any serious conflict we confront.

*Let's get real* (through acknowledgment of the challenges).

*Let's get the facts* (and think hard about the informing, working theories).

*Let's get better* (in a targeted and strategic way at a collaborative, national level).

With the phrase *get real*, we mean caring and candid *acknowledgment* on a personal, institutional, or national policy level: recognition of the emotional pain, political dysfunction, procedural unfairness, policy ineffectiveness, capacity gaps or infirmities. We must acknowledge that policy alone may not be effective in preventing harmful social interactions. Getting real means mastering the *courage* to ask ourselves some critical questions.

By *get the facts*, we mean the facts in specific cases, the empirics, the data, questions about the data, and more. We mean a deeper understanding of the nature of the problem, what is driving it, what we know and don't know about those forces, how our working theories shape the facts or that presumed understanding. We must accept that the facts are often limited to or shaped by opposing views of individuals with limited perspectives and life experiences. Getting the facts means finding the *empathy* to get into the minds of others, the actors in patterns of violence, those with whom we disagree.

By *get better*, we mean responsive improvements, not the futile search for perfection as the enemy of good, or interventions that only make us feel better because we are doing *something* without any clue (or any clue as to how to get a clue) whether it will work or not. We must improve our ability to learn the full story, and understand the needs and limitations of an accurate and fair college administrative process.

In this case, and other cases in higher education, getting better means elevating to a strategic level and deploying our imagination and *creativity*, sharpening better tools of collaboration, committing to transparency that builds trust within and between our institutions, and aspiring to conduct that process at higher levels of national conversation and governmental authority.

## II. Let's Get Real: Pressing Questions of Sexual Assault Adjudication

We may think of our college and university campuses as microlegal systems, with responsibility for setting and implementing policy, adjudicating claims, issuing sanctions. Upon first introduction to a campus legal system, we can quickly observe a singular combination of extremely high standards (some favoring claimants that conflict with others that favor respondents), a diversity of roles for single individuals (some that confuse others), and underresourced commitments (that are hard to afford). It is hard to envision other legal systems (small or large) with such a demanding set of heightened standards. Can we live up to them?

To do so requires us to identify the special challenges we face, especially on densely populated residential campuses. This is a nonexhaustive *baker's dozen* of pressing questions and issues that campuses face in designing and implementing campus legal systems.

### A. Adjudication Without Adjudicators

Putting the important work of prevention aside for a moment, the burdens of resolving claims are daunting. Universities must resolve serious claims (some the equivalent of felony offenses in our criminal law), with no judge, no lawyers with direct procedural roles on either side, in frequently community-based hearings, with no full-time investigator, no power to compel evidence, no application of the rules of evidence, and in many, but not all, cases with limited witness testimony or physical evidence. This leaves us with legal systems without many of the key elements we would typically expect.

### B. How to Be Quick, Without Hurrying

At the same time, universities must commit to impartial, speedy, and thorough fact-finding and adjudication of responsibility. Hard to live up to Coach Wooden's advice in this context. It is rare to see an adjudication system that is quick *and* does not also hurry. The good systems are often slower, more thorough. The fast ones tend to hurry, prejudge. Both parties want a thorough investigation that includes their desired witnesses *and* an expedited, confidential resolution in their favor.

### C. Impartiality with Care and Support

Further, while maintaining impartiality, staff are expected and committed to provide care and support to both claimant and respondent, to avoid prejudging the preliminary claims, to keep as much continuity as possible in their

academic programs, to decide when to issue interim suspensions of privileges short of suspension of academic pursuits, and to maintain separation between complainant and respondent, often in a very close campus community setting. Is it possible for one person to do all of this at once or in one specific role? Acknowledgment is one of the most important communication skills when taking care of someone in distress. Can we maintain impartiality in acknowledgment? If impartiality necessitates a cold, emotional wall, trust in the relationship is likely to fracture, potentially resulting in further harm.

#### *D. Stress of Compliance*

Many universities experience worries about compliance with new federal guidelines, the risk of an audit, the reputational and financial impact of being put on a list of schools under investigation. The audits are incredibly time-consuming, and schools have lost control over changes in their own policy. List membership is really hard to shake, even after the work and settlement are completed. The focus on compliance can easily distract leadership from the more important objective of doing what is right. Addition to the list is triggered by the decision to audit and not upon proof of an actual violation. Moreover, there is no current path to removal from the list, even upon a demonstration of compliance.

#### *E. Hierarchical vs. Coordinate Ideals of Authority*

In redesigning an adjudication process, should we be guided (in Damaška's famous distinction) by *hierarchical* or *coordinate* ideals of authority (continental or Anglo-American models of dispute resolution), with its emphasis on lay decision-making, cross-examination, the role of lawyers, rules of evidence? How do we blend our needs for efficiency, finality, and strong investigative findings with the ability to challenge evidence, correct misstatements, provide full testimony, and triangulate it for purposes of proof?

#### *F. The Challenges of Privacy on a Residential Campus*

Many legal experts who have never worked or led in an undergraduate, residential campus may not fully appreciate the additional challenges. Special privacy commitments (under the Family Educational Rights and Privacy Act (FERPA) and guidelines to protect claimants and respondents) may frustrate transparency and publicity goals. How can the sanction of expulsion serve as a deterrent if we can't disclose that information? How can we respond to a public complaint about our process in a specific case when we can't discuss the facts that are protected by privacy considerations? How do we effectuate a no-contact order or initiate an interim suspension of privileges (before a finding of responsibility) when students are in such close touch with one another on a small residential campus?

### *G. Imperfect Analogies with the Public Legal System*

Compounding the lack of appreciation for the unique social context of a college campus and the obligatory protections of all students, we have an additional conceptual and rhetorical challenge. We are prone to create a conceptual equivalence or analogy of the campus administrative framework system with the public state criminal and civil justice system. The privilege to attend a specific college is conditional. The loss of that privilege is no doubt significant, but how does it compare to incarceration, punitive damages, compensatory damages, or specific performance? In other words, how should we determine what process is *due* to the accused in cases of sexual assault on college campuses? Should we continue to resist these analogies as inapposite or embrace the concepts and just calibrate them to our special circumstances?

### *H. Transsubstantive Consistency on Removal Sanctions*

If we impose high standards of rigorous process for removal or suspension in cases of sexual assault, do we have to take a hard look at our other bases for removal? It is very common for schools to expel or at least suspend in cases of academic dishonesty, with far less process, fact-finding, and confrontation of the evidence than we have in the sexual assault context. Is that right? Or is that a problem? And which way does the concern cut? Do we need more process in other cases of discipline or, alternatively, especially against appreciation of the devastating harms in sexual assault cases, should we equate the procedural rights of respondents in sexual assault cases with those in other disciplinary areas?

### *I. Confronting the Evidence*

Confrontation of evidence is another challenging topic. Cross-examination by skilled lawyers is generally not an accepted practice in university sexual assault cases. How can we create room for innovating processes that allow both sides to challenge, confront, even correct evidence in the record? How do we do that outside of a continuous, live proceeding, but instead sequentially facilitated, in writing?

### *J. Burden of Proof: Which Mistake Do We Want to Make?*

Choosing a burden of proof reflects an underlying view about the nature of the sanction. Burdens of proof help us manage our ethical judgments about the comparison of two types of errors or mistakes. If we ask ourselves which mistake we would rather make, we can locate our burden of proof accordingly. In the criminal system, we use a higher standard (beyond a reasonable doubt) because as a society we have weighed type I errors (setting a guilty person free) against type II errors (sending an innocent person to prison). We have decided that type II errors are far worse. If we had to choose, we'd prefer to make the first mistake, so we set the burden of proof higher to make sure we avoid the second mistake. (It's also true that if we send an innocent person to prison, the guilty one is also still at large.) In our context, is the expulsion

of a student who is not responsible worse than not expelling a student who is responsible for sexual assault?

Beyond students, how should we think about faculty? Is removal of a professor from a tenured position more serious than expulsion of a student? If so, should we be supportive of a lower burden of proof (preponderance) for claims against faculty in general, but a higher burden (compelling evidence) for sanctions of removal or loss of tenure? Further, how do sanctions and burdens *implicitly* relate to one another? If we have a finding of responsibility but it is really a very close call on the evidence, are we more likely to recommend a lighter sanction? If we have an automatic expulsion in our policy, are we more likely to heighten the *de facto* burden because we worry about a harsh penalty in an ambiguous case?

#### *K. Consent in Unequal Social Conditions*

How should we think about neutral principles (consent, freedom of speech) in social settings of inequality, unequal bargaining positions, vulnerability to coercive power? Many theories of consent in legal application are based on certain assumptions of rationality and relatively equal social, economic, or political power. How should we think about sexual assault in this context? What are our assumptions about consent and the ability to express it?

#### *L. Plural, Inconsistent Regulatory Authority*

To confound these questions of process and burdens, how should we navigate pendulum shifts in federal guidelines, anticipated best practices, and state court interventions? In October, the U.S. Department of Education's Office for Civil Rights criticized a university for issuing an interim suspension without allowing the accused to argue the suspension. The state courts show signs of using state administrative law protections to extend due-process protections to provide a second look into university decisions. Judges who are not as acquainted with university settings and processes may not feel comfortable with procedural systems that are more hierarchical, administrative, and carried out without lawyers, cross-examination, community-based hearings, and so on. How should we navigate through the shifts and competing sources of authority?

#### *M. Polarizing Politics*

How should we manage the polarizing politics of sexual assault? Activists gained attention with egregious examples of callous dismissal and underenforcement, and counteractivists cited cases of overzealous rushes to judgment in the news, in local prosecutors' offices, and college discipline processes. Is it possible to balance on a hot equator when the polar forces are so strong? Some carry video copies of *The Hunting Ground*. Others carry a copy of Fox News documentary—"the truth about sex and college." Controversies about trigger warnings, safe spaces, and freedom of speech, reflected in many of the other papers today, are more complicated to address given the

polarized, projected reactions to the terms themselves. In many cases, the political fights in the press and elsewhere external to higher education project the most negative views of what's happening on the inside. Is it possible that universities and colleges are *simultaneously* too zealous in their impulse to find responsibility and too weak on enforcement to expel a perpetrator of sexual assault?

#### *N. Is Academic Freedom Inconsistent with Regulating Sexual Assault?*

How should we reconcile policy and procedure on sexual assault with core values of academic freedom? Strong commitments to academic freedom pose an important, protective shield against intrusion and regulation by administrators. The American Association of University Professionals (AAUP) defines academic freedom as the indispensable requisite for unfettered teaching and research in institutions of higher education.<sup>1</sup> Which responsibilities come with these rights? Where does free speech become harassment or hostile (in ways that undercut academic freedom for those in the classroom)? And given the strong value of academic freedom through tenure, which burden of proof should apply to claims against faculty? Finally, how should we think about trigger warnings? If they are either forbidden or required, does either administrative intervention violate academic freedom (by requiring faculty either to give or refuse to provide such a warning)?<sup>2</sup>

### III. Let's Get the Facts: Causes and Empirics

These questions and the pressures of adjudication, compliance, and politics can distract us from getting the facts in specific cases and more broadly. These preoccupations also may remove focus and resources from prevention, training, and other critical and equally challenging concerns. If we respond only *downstream* to the cases we see, we may never get *upstream* to prevent sexual assault from occurring. To prevent sexual assault, we need to have a working understanding of the drivers and how to disrupt them effectively without putting the blame on those who are assaulted. As in the previous section, we

1. The AAUP 1940 Statement of Principles on Academic Freedom and Tenure provides:

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

AAUP, STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE 14, <https://www.aaup.org/file/1940%20Statement.pdf> (last visited June 19, 2017).

2. See Robby Soave, *Claremont McKenna College: 'We Do Not Mandate Trigger Warnings.'* *Period.* REASON, (Sept. 2, 2016) at <http://reason.com/blog/2016/09/02/claremont-mckenna-we-do-not-mandate-trig>.



need to advance a working and nonexhaustive list of driving factors in need of further explication and research. Therefore, with the intention of getting further upstream in our prevention strategies, how should we understand each alone and in combination?

### *A. Driving Factors in Sexual Assault*

#### 1. Attitudes of Objectification, Entitlement, and Power

How should we best understand and respond to persistent attitudes of objectification and entitlement? Some students report being pressured into sexual contact they don't want based on coercive social pressure born from a sense of entitlement and their own internalization of being powerless (or less powerful) in that relationship.

#### 2. Hookup Culture

So-called hookup culture, which encourages brief sexual encounters absent any emotional attachment or relationship, adds to these troubling conditions. The lack of any relationship before a sexual encounter is more likely to lead to a complete lack of communication: the very communication that consent principles, especially affirmative consent, require.

#### 3. High-Risk Drinking and Drug Abuse

High-risk drinking and drug abuse are never excuses or defenses for sexual misconduct, and should never be used to discredit or blame victims or survivors. However, it is a common, if not universal, social factor we see in our data (on both sides of an assault). Predators may use alcohol or other drugs as a weapon of incapacitation. In less premeditated cases, alcohol is a factor that compromises judgment and makes it more difficult to give and interpret consent.

#### 4. Communication Skills

Our emerging legal standards on affirmative consent presume the ability to communicate that consent effectively. Is that a safe assumption to make? Nearly every student entering college today has had sex education; yet, infrequently do those sex education classes contain any practical, applied skills training in how to have open, consent-based conversations. Learning about biology and physiology or even what's acceptable or not does not necessarily provide students the means to develop a healthy sexual relationship or even engage in a healthy sexual encounter. In some ways, the number of apps that have emerged to do this for college students (instead of speaking) tells us something about the underlying communication challenge.

### 5. Social Stigma, Fear, Distrust

We still have the challenge of fear of publicity, social stigma, and distrust of the process and authority more generally. This is particularly severe, including for members of the LGBTQ community, where rates of sexual assault are equally troubling. This is also true for men who have been sexually assaulted.

### 6. Behavioral Intervention: Bystanders

We believe from our experience that some sexual assaults are encouraged or enabled or ignored by friends, peers, or idle bystanders. The failure to intervene (whether based on unhealthy attitudes or fear of reprisal) is a key factor in some social situations that lead to assault. How do we know what pushes a bystander across the threshold to intervene? Or what holds a person back?

### 7. Lack of Experience

Our student populations have limited experience with intimacy and even less experience and capability in communicating clearly about it. Many are still trying to find their own voice in setting boundaries and expressing what experiences are permitted and desired. Short of the necessary skill-building, how should we assess situations in which students did not enthusiastically or clearly express consent?

## *B. Empirics*

In addition to understanding the drivers of sexual assault, why it occurs, the patterns and potentially effective capacities or interventions, we also have a challenge of getting our hands on the empirics: the nature of the harm, the extent and frequency of sexual assaults, and the interpretation of the available data.

### 1. Survey and Other Data

Sexual assault is a broad category of offenses, and clarity of definition and language is critically important. The number of direct reports and claims is far less than the number of assaults reflected in the survey data.

We have made some important progress in developing survey data. Notwithstanding relatively low response rates, data from the Association of American Universities (AAU) and the Higher Education Data Sharing Consortium (HEDS) gave some very useful information on the disturbing extent of sexual assault. We do have to understand more about the propensities of self-reporting surveys, but even taking that into account in interpreting the percentages, we see far more survey disclosures than direct reports or claims. We also see an increase in reports over the past couple of years and have observed that more students are willing to come forward (because they feel greater empowerment or trust the process more, or both).

Survey data carry another comparative advantage in that they are not troubled by the privacy concerns of reporting actual cases.

However, there are challenges here as well.

The stats tend to flatten our emotional reaction to the individual harms. We know that legislators respond to charismatic examples more than to quantitative data. As I said to our community in the publication of the HEDS survey results:

As we absorb [the] data, we must keep in mind that behind each percentage, each *n* of response, is a cherished member of our community—a son, a daughter, a friend. Each sexual assault, each that goes unreported, each expression of doubt about the willingness of others to intervene or distrust in our administration’s responsiveness is profoundly distressing and unacceptable.

Data on frequency and type tell us nothing about the psychological devastation of sexual assault (for survivors) and those who are close to them. I can say here only that our commitments to equality, to the full realization of human potential, and to the freedom to learn, speak, associate, and strive are undermined by the direct and indirect harms of sexual assault.

We need more data, yes, and we need to interpolate into the data our understanding of the harms to get a real understanding of the problem and its impact.

## 2. Program Effectiveness

For all of the awareness we have built, we still do not know whether it is having a positive effect on prevention. Our HEDS survey data indicated that students had a strong understanding of the policies to prevent sexual assault and how to report but did not explain why fewer sexual assaults were reported to administration than actually occurred. Moreover, survey data suggested students looked favorably upon bystander intervention programs. Bystander training is extremely important, but we must continue to develop strong tools to determine how to measure bystander behavior and to know whether bystander training programs translate into more effective intervention.

Prevention programs, such as White House-inspired and student-led *It’s On Us* campaign, and many college training programs focused on affirmative consent and bystander intervention, have become a justified focus of resources and attention. However, we still know far too little about their effectiveness. This relates to a broader empirical challenge, but it is vital that we begin to develop valid scientific studies of the outcomes of prevention programs.

## IV. Let’s Get Better: Some Key Institutional Steps

With the foregoing questions and concerns, how do we get better at an institutional and national level? How do we reinforce safety and freedom

through our programs and interventions? And how do we know whether they are effective?

First, we want to offer several of the focused yet incomplete efforts that we believe are important to get better on an institutional level. Second, we suggest some additional ways we need to collaborate and get better together. Here again, this is not an exhaustive list; instead, this is for others to subtract from or add to in their own judgment and experience. Sharing these strategies may allow us to reach the most effective approaches to prevention, investigation, and response.

#### *A. Iterative Policy Improvement*

Effective policies are hard to predict in advance of real-world application. Thus, it is vital to reflect critically and frequently on the ways in which policy is working and to iterate continual improvements.

#### *B. Investing in Investigation*

Many of the highly controversial cases of under- and overenforcement (in courts, the press, or universities) share a common element. When claimants (victims, survivors) are denied a generous ear, a hearing, a result, and when the accused are subject to conclusory, prejudicial findings, the most likely common condition was the failure of the investigative process, the ability to get a truer sense of what occurred. So one of the key steps we took to develop a better process was to professionalize and internalize a sophisticated investigative function. Rather than leave that to an untrained lay panel in a live hearing, we recommend rigorous investigation, with strong interviewing, record and summary drafting, checks and balances against the testimony and reports, and the ability to question the evidence further, all in rapid sequence; these key procedures can get to the truth without creating a dehumanizing experience for either the claimant or the respondent. A strong factual account, with good human judgment on credibility against triangulated interview techniques, provides a foundation for moral clarity about the results that follow: both findings of responsibility, or not, and the sanctions that followed, or didn't. This allows institutions to discharge the responsibility of impartiality to proof and exoneration.

#### *C. Broadening the Civil Rights Framework and Responsibilities*

When we conceive of a Title IX grievance process, we need to place it within in a broader civil rights and disciplinary context. Should a Title IX grievance process related to sexual harassment be any different from a Title VI process related to harassment based on race, color, or national origin? Thus, when looking to structure and fill the role of Title IX coordinator, one broader approach is to designate a chief civil rights officer *and* Title IX coordinator. This model consolidates independence and responsibility for all civil rights and anti-discrimination programs, including sexual assault, diversity and inclusion, and other critical areas. Thinking through and developing capacity

for all civil rights can be very productive: the upstream drivers, the challenging training to address them, the process of response, care and support, academic freedom, and so on. We may find that other types of claims are taken more seriously, as Katharine Baker points out in her provocative paper, with far less process, and that causes us to ask why and take efforts to correct for unjustified inconsistency. Creating a broader frame of reference can help us share effective training, care and support, and empirical methods across these different areas of concern. The institutional response to sexual assault requires dedicated expertise, to be sure; however, situating Title IX within a broader framework carries strong benefits.

#### *D. Supporting Student-Centric Initiatives and Empowerment*

To create policy, programs, and trainings, we need to involve the community most at risk. For students, this means committees and programs that they can drive and own. Peer-to-peer regulation is the first line of prevention and response. A sense of ownership and leadership in driving the norms and solving sensitive problems can bolster the internalization of personal and social responsibility.

Most critically, efforts and resources should be committed to prevention and education initiatives to support a campus community in which any instance of sexual misconduct is unacceptable and ultimately does not occur. The 2014 White House initiative *It's On Us* has invigorated and complemented these institutional efforts as students across the country have embraced their personal and collective responsibilities to stand against all forms of sexual misconduct.

#### *E. Improving Care and Support*

Institutions may also devote resources to setting up centers to provide care and support for students affected by sexual violence, dating violence or domestic violence, and stalking. Institutions may also partner with outside organizations to provide training to resident assistants and other student leaders.

#### *F. Experiential Training and Enriched Programming*

We need much more effective behavioral training: empathy training for staff, on how to be caring and impartial, and for faculty, on how to conduct the most inclusive pedagogy and understanding the boundaries of academic freedom. Staff and faculty are often the first to learn of incidents of sexual misconduct as students turn to them for support. All must understand their obligations as employees of the college, and should have deep familiarity with options for reporting and resources that students can access when they are victims of sexual assault. It is critical that people understand the institution's adjudication process as distinct from a legal process, and that they recognize their rights within that process.

Finally, awareness is not the only route to combat this issue. We have also added self-defense and self-esteem classes. These courses teach not only how to respond in physically aggressive situations but also how to create better boundaries through verbal expression. The goal is to avoid compromising situations by communicating clearly and effectively what behavior is acceptable and what behavior is unwanted.

#### *G. Transparency Commitments*

Transparency is key. Release of the AAU and HEDs surveys and safety reports that provide more qualitative analysis of patterns, environmental factors, and effects are all extremely important to grow awareness and motivate commitments to prevent violations.

#### *H. Academic Freedom Workshops*

Academic freedom workshops are vital. Clarifying the scope of academic freedom, the key legal exceptions, the discretionary use of trigger warnings, and other paths for building trust and inclusion in the classroom are all extremely important.

#### *I. Communication Capability: Dialogue and Other Skills*

We also need stronger dialogue training and communication skill building to help students meet the standards of affirmative consent and build healthy relationships. We have initiated healthy masculinity initiatives to help men understand their role in preventing sexual assault.

#### *J. Depolarizing Concepts of Safety and Freedom*

We also need to develop the working social science on the relationship between psychological safety and freedom of expression.

#### *K. Impressive (over Repressive) Strategies*

We need to develop *impressive* strategies to complement the more *repressive* measures of discipline. For example, the development of empathy and courage may be profoundly effective at reducing sexual assault and increasing bystander intervention.

#### *L. Integrating Research to Determine Effectiveness*

For all these and other programs, we need to build outcome research into our investments. This is the only way to know whether we are having any impact and whether the cost-benefit is worthwhile for different types of programs and interventions.

### **V. Conclusion: Let's Get Better Together**

As we compare notes on what works and what does not, we are left with a pressing question: What would a national strategy for preventing sexual assault

look like? How can we knit together the contributions in this conference with others and weave together a positive vision for preventing and responding to sexual assault and reinforcing academic freedom? How can we use our convening power to get more people around the table: students, government officials, judges, parents, social innovators, behavioral scientists, and many others?

We need to find a path, a road that gives us the inspiration to walk together, as a society, as a nation. Lu Xun, who wrote during the Chinese republican period of Japanese occupation (between the two world wars), put it this way: Hope cannot be said to exist or not exist. It is like a road on the earth. At first, there were no roads, but when many people walked in a single direction, a road was made.

Can we walk that road? Can we take all of our assessments and analyses and convert them into a positive vision? Can we think (in the Buddhist sense) from the beginning off of a blank sheet of paper? As if we did not have a Tower of Babel of challenges and interventions and opinions that are missing or colliding with one another? Can we reinforce our cherished values and align our behaviors with them? Can we pull ourselves back up? Can we get it together?

We believe we must. We must believe we can.