

May 24, 2016

The Hon. Aaron Persky
Santa Clara County Superior Court
Palo Alto Courthouse

Re: Sentencing of Brock Turner

Dear Judge Persky:

I write regarding the sentencing of Brock Turner in connection with his convictions for felony sex crimes committed in January 2015 on the Stanford campus. As a professor at Stanford Law School for the past 15 years, I have been deeply involved in efforts to improve Stanford's prevention and response to sexual assault on campus. From 2011-13 I was the faculty co-chair of the Board on Judicial Affairs, in which capacity I helped lead a process to reform Stanford's sexual assault policies. I also teach a class on campus sexual assault at Stanford, and have continued to work on the issue.

The victim in this case has been a close friend of my daughter since middle school and I know her well. A lenient sentence of probation or a few months in jail is simply not commensurate with the severity of the harm Brock Turner inflicted on her, nor will it deter future similar assaults at Stanford.

Having known the victim in this case extremely well for more than 10 years, my family and I are crushed and heartbroken at her victimization. She and my daughter were inseparable friends in middle and high school. They slept over at each other's homes frequently, and she joined our family on a backpacking trip to Yosemite. We stayed in touch over the years as she attended college and when she returned to the area we were delighted to see her again.

She is a lovely, warm, talented, funny girl from a close, loving, involved family. She was always a brilliant and diligent student, and to our knowledge she never got in any trouble. She was extremely trustworthy. I never worried when my daughter was going to hang out with her in high school because I knew that she would look out for my daughter. Her high school classmates voted her "best personality" because she is such a caring and compassionate person. This is a young woman who has countless friends and who was admired by all the parents of the girls in their high school social set.

The California Penal Code prescribes a statutory sentencing range with minimum sentences of two to three years of incarceration for the crimes for which Turner was convicted.¹ It is my understanding that the conviction for assault with intent to commit rape means that Turner can only receive probation or a lesser sentence if the court makes a finding that the defendant's case is an "unusual case where the interests of justice

¹ Cal. Penal Code Section 220 provides for a sentence of 2, 4, or 6 years; Cal. Penal Code Section 289(d) and 289(e) both provide for a sentence of 3, 6, or 8 years.

would best be served” by a downward departure.² The determination as to whether the case is “unusual” is made in light of the factors in Rule 4.413 of the 2016 California Rules of Court, including whether the crime is “substantially less serious than the circumstances typically present in other cases,” and the defendant’s youth or lack of criminal record.³ For the reasons described below, I do not believe that such a finding is appropriate in this case. I urge the court to sentence Turner in accordance with the statutory guidelines.

First, the facts in this case are very serious. Turner and the victim were strangers. He took advantage of her extreme intoxication, her momentary isolation from her sister and friend, and her defenselessness after she lost consciousness. He degraded and humiliated her by assaulting her in public, forcing his fingers into her vagina in a dirty and pine-needle strewn area, and then left her half naked with her dress pushed up over her head and with her vagina exposed in the dirt next to a dumpster. He was on top of her thrusting against her vagina with his body weight while she was exposed and helpless to resist. She was completely unconscious. Passers-by could observe the assault, and observe her in that utterly defiled condition. Had Good Samaritans not intervened, she likely would have been raped in public. The victim is suffering the effects of this assault and is likely to continue to suffer greatly for many years as a result of the defendant’s actions.

These facts are not “substantially less serious” than other cases. The opposite is true. The facts here are in some ways especially egregious when compared with many other assaults on campus. The fact that this sexual assault occurred in public and that the victim was observed being penetrated and assaulted while her genitals were exposed to view is more serious and more traumatizing than many other cases. Witnesses described the condition of the victim and the assault as very upsetting. This attack simply cannot reasonably be characterized as “substantially less serious” than other such assaults. Probation or a short stay in the county jail would not reflect its severity.

Second, the fact that Turner is young or that he has no prior convictions should not be a basis for finding that the case is “unusual.” Campus assault cases almost always involve youthful offenders like Turner who lack prior criminal records, and who have supportive families, teachers, mentors and coaches. Particularly at Stanford, offenders typically have done well in school, and have participated in athletics and community service as well as church or scouting. They have been the captains of their debate teams, volunteered for non-profits, and tutored underprivileged children. Like Turner, perpetrators of campus assault often meet their victims at parties and target girls who are very drunk; usually they have had a few drinks themselves. A finding that these sorts of facts make a case “unusual” could well apply to virtually every campus rape case at Stanford, as well as at many other colleges throughout California. These facts make it hard to sustain the idea that this assault is “unusual” in any meaningful sense.

² Cal. Penal Code Section 1203.065(b).

³ 2016 Cal. Rules of Court, Rule 4.413. Even if the court determines that the case is “unusual” pursuant to Rule 413, it is not required to grant probation. The statute also requires that “the interests of justice would be best served” by probation. The granting or denial of probation is a discretionary exercise, taking into account the criteria in Rule 4.414.

Even if the court determines that the fact of Turner's youth and lack of a criminal record makes this an "unusual case," that does not mean that the interests of justice would best be served by a grant of probation or a sentence shorter than the statutory minimum. Any grant of probation is discretionary and considered in light of the criteria in Rule 414 of the California Rules of Court. Many of those factors strongly argue against probation in this case, including the nature, seriousness and circumstances of the crime compared to other such crimes; the vulnerability of the victim; the infliction of physical or emotional injury on the victim; and the lack of any provocation that caused the defendant to commit the crime. In particular, the court is also urged to consider the need to deter similar crimes from occurring in the future.

With respect to the specific deterrence of Turner, in my view it would be a mistake to make an exception for him. As an elite college athlete, Turner is someone who has benefitted from many advantages in his life. He has a loving and supportive family; it is of course upsetting to see the pain that he has caused them by committing this crime. But these are not advantages that justify leniency. If anything, they suggest that he is entitled to less latitude than someone who was born into poverty, gangs, and drugs and had little choice but to participate in crime in order to survive. Turner had every advantage in life and he squandered it, which only adds insult to society's injury and the injury of his victim. A grant of probation will likely serve to reinforce the message that the ordinary rules do not apply. If the court wishes to deter Mr. Turner from future sex crimes, it may well be that the best way to do so is to adhere to the statutory sentencing guideline.

With respect to general deterrence, the argument against probation or a downward departure from the statutory minimum is even stronger. At Stanford, assaults that are very similar to this case are unfortunately all too frequent. Stanford recently surveyed the student body regarding sexual assault and found that 43.3% of senior female undergraduate students experienced nonconsensual sexual assault or misconduct during their four years at Stanford. Of those students reporting assault or misconduct involving penetration or oral sex, more than two-thirds indicated that the act was accomplished by taking advantage of the victim while that person was drunk or high.⁴ In 84.9% of cases, the alleged perpetrator was another Stanford student. Forty percent of victims reported having no prior relationship with the alleged perpetrator.⁵

Despite these high rates of victimization, reporting remains very low, particularly reporting to law enforcement. Only 2.7% of students who experienced any kind of nonconsensual sexual contact reported it to the university, including only 12.5% of those who were sexually assaulted.⁶ One possible reason for these low rates of reporting is found in the survey data showing that fewer than half of women students believe that it is very likely that Stanford would take reports of assault seriously; only a third of women believe it is very likely that Stanford would help them to contact the police. Even more

⁴ Stanford University Campus Climate Survey Report (2015), at 24-25, available at: https://provost.stanford.edu/sites/default/files/2015_stanford_campus_climate_survey_report-2.pdf

⁵ Id. at 26.

⁶ Id. at 26.

disturbingly, fewer than half of undergraduate *men* (and only 28% of women) believe it is very likely that Stanford will hold a student who was found responsible for sexual assault accountable.

As these data make clear, the most “unusual” circumstance in this case is that it happened in public where there were eyewitnesses. As a result, Turner was apprehended, charged, and convicted. This case has a wide audience at Stanford. Students will pay close attention to the court’s sentencing determination. A sentence that adheres to the statutory guidelines would communicate that there is no privilege to violate others because one is a star athlete at Stanford, but rather that the seriousness of the offense is understood. This would likely help to deter future sexual assaults. Conversely, a sentence of probation based on “unusual” circumstances could well send the message that assaults committed at parties on Stanford campus, especially by elite athletes, are not taken as seriously by the law. This would be particularly troubling in light of the fact, discussed above, that the circumstances of this assault are in some ways worse than in many other campus assaults. It is hard to see how the “interests of justice” support a lenient result. Indeed, they require the opposite. I hope the court will consider the potential deterrent impact of its sentencing determination on the Stanford community.

Like deterrence, rehabilitation is also an important purpose of punishment. I sincerely hope that Mr. Turner is able to turn his life around in the future. No one should be defined by his worst mistake. In this regard, I note that the minimum ranges for his crimes are two to three years, which would amount to a relatively short prison sentence. If the court adheres to the statutory minimums, Turner will be out of prison by the time he is 22. He will have plenty of opportunity to finish his education, put this behind him, and have a second chance at his life. But he will do that having first learned that the penalties for sexual assault are serious and no special exceptions will be made for him. This important lesson will ultimately aid in Turner’s rehabilitation because it will help him take responsibility for what he did and to avoid the consequences of reoffending.

I urge the court not to sentence Turner to probation or to a term of incarceration less than the statutory guidelines for his offenses.

This letter is submitted in my private and personal capacity, and not as a representative of Stanford University.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michele Landis Dauber', with a long, sweeping underline.

Michele Landis Dauber