

**To: Judicial Ethics Advisory Committee**  
**From: Alu Axelman**  
**Date: 6/15/2023**  
**Subject: Discretionary Actions of Judge Aaron Persky**

I am the public representative of Emily Doe and her family. I am writing to express concern regarding the discretionary decisions and actions made by the judge in the recent conviction of the defendant in Miss Doe's case:

As per [California](#) Penal Code Chapter 1:26 (a) (1) (A) *“Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.”*

At the trial, the prosecution presented evidence that Brock Turner sexual assaulted Ms. Doe while she was unconscious, and the jury convicted Turner of assault with intent to rape ([Pen. Code § 220, subd. \(a\)\(1\)](#); count 1); sexual penetration of an intoxicated person ([§ 289, subd. \(e\)](#); count 2); and sexual penetration of an unconscious person ([§ 289, subd. \(d\)](#); count 3). Per California law, the defendant must be sentenced to three, six, or eight years in prison.

*“In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition*

*provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence...”*

Further, the conflict of interest presented by the judge graduating from the same elite college as the defendant makes it inappropriate that he presided over the case and did not recuse himself - especially considering that in retrospect, his relationship with the defendant very likely affected his capability to impartially preside. A judge with high ethical standards would not allow the appearance of nepotism to enter into the minds of the typical observer of the case.

As you are all very well aware, these transgressions by Judge Persky violate numerous sections of the [California Code of Judicial Ethics](#). The following discretionary decisions by the judge had a negative impact on Ms. Doe and other potential victims of sexual assault by demonstrating extreme leniency toward rapists:

- Judge Persky failed to recuse himself despite a fairly clear and powerful conflict of interest
- Judge Persky used his discretion to give far greater weight to the potential negative impact a prison sentence may have on Turner than he gave to the victim's impact statement, Ms. Doe.
- Judge Persky went to the limit of his legally allowable discretion - and possibly beyond - to impose a recklessly soft sentence on the convicted rapist.
- Judge Persky failed to deter other potential rapists by allowing the defendant to receive an inappropriately light punishment.

Judge Aaron Persky specifically violated the impartiality and conflict of interest sections of the California Code of Judicial Ethics:

*“Administrative Responsibilities (1) A judge shall diligently discharge the judge’s administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.”*

In making a decision, judges should gather all of the evidence, determine the most important issues that must be dealt with, identify and evaluate all possible options, refers to the statutes, charge the jury, and (if convicted) impose a sentence in line with statutory sentencing guidelines, the probation/parole department’s pre-sentencing report, and memoranda from the defendant and victim, and the prosecutor’s recommendation. He should also take into account the effect of the sentence on the public in regard to safety of the community and specific and general deterrence. In this case, Judge Persky made multiple critical errors, each of which represented an opportunity to avert this critically weak punishment.

- 1) Persky failed to recognize and/or act on the conflict of interest presented by his sharing of a college with the defendant.

- 2) Persky disregarded the sentencing guidelines, indicating that he did not fulfill the critically important step of 'gathering all relevant information' before making a decision.
- 3) Persky disregarded the prosecution's sentencing recommendation.
- 4) Persky disregarded the victim's impact statement.
- 5) Persky imposed a sentence that falls short of the common understanding of specific and general deterrence; a concept that a toddler could comprehend.
- 6) Persky imposed a sentence that falls short of fulfilling his obligation to promote public safety by protecting community members from violent and dangerous people, such as rapists.
- 7) The character witness letters demonstrate the unremarkable notion that Turner's friends considered him to be a good person who would not sexual assault incapacitated women. Such letters should hold little to no weight in a judge's sentencing decision.

Discovery in this case included key elements of the crime that contradict the Persky's purported justifications for his mitigating factors:

- Character references: We do not dispute that strong character references in favor of Turner could theoretically be mitigating, though we do not believe that a few positive remarks from close personal friends should make a substantial difference in the eyes of a reasonable judge in a case involving a unanimous conviction by a jury for heinous crimes such as rape.
- Peter J., the witness who testified at trial to seeing turner raping the unconscious victim and then chasing down and detaining him, said under oath that Turner was not slurring

his words, indicating that he may not have been severely intoxicated. The fact that Turner had the mental and physical capacity to comprehend being caught in the act and to run away also demonstrates that he had little to no alcohol impairment during the actual rape; severely intoxicated people cannot sprint effectively. While the BAC report indicated that he had more alcohol in his blood than the legal driving limit, the superstar athlete certainly could have had a high alcohol tolerance due to frequent drinking. Judge Persky stated in his sentencing memorandum that Turner was intoxicated and made a drunken mistake while not in his right mind, which is one of the reasons he imposed a light sentence: *“So I think there is – some weight should be given to the fact that a defendant who is, albeit voluntarily, intoxicated versus a defendant who commits an assault with intent to commit rape, a completely sober defendant, there is less moral culpability attached to the defendant who is legally intoxicated. That’s as a comparative measure. But I don’t attach very much weight to that.”*

- Turner was barely a legal adult and had no criminal convictions. Judge Persky equates these facts to Turner being a lifelong saint, which is a mitigating factor. The evidence found in discovery and at trial contradict this notion, though. Even moments prior to raping Ms. Doe, Turner committed what is technically a sexual assault against a different person by kissing a non-consenting woman and attempting to kiss her again later that night and being rejected, according to testimony: *“Jane 2 testified that she spoke with someone named Tommy on the patio. Tommy was standing with two friends, including defendant, but Jane 2 did not recall having a conversation with defendant. At some point, defendant came up to Jane 2 and kissed her “out of nowhere.” Jane 2 laughed, because she was confused and felt awkward, and as a result their teeth hit. She found it “extremely*

*weird" that defendant kissed her; she walked away. Colleen confirmed that defendant kissed Jane 2 "out of the blue" while the group was on the patio. Jane 2 testified that defendant approached her again later and tried to kiss her, but she walked away."* This would lead the reasonable observer to conclude that Turner was not a saint and that the sexual assault was not the first transgression in his short life. Yet, Judge Persky made the opposite point in his sentencing memorandum: *"And, finally, factor number eight is the likelihood that if not imprisoned, the defendant will be a danger to others. I think that he will not be a danger to others. I think he has a good chance of complying with the conditions of probation. The character letters suggest that up to this point he complied with social and legal norms sort of above and beyond what normal law-abiding people do."*

- According to Judge Persky, the defendant accepted responsibility for his crime and was genuinely remorseful. This is considered a minor mitigating factor in sentencing.

However, it was apparent that Turner did not accept responsibility for his crime of sexual assault based on Mr. Turner's own testimony. Turner recounted the sexual assault as an uncontroversial sexual encounter between intoxicated but alert and consenting adults at a party. Turner made it clear that in his mind, he absolutely *did not* sexually assault the victim in any sense. This testimony flies in the face of the notion that he "accepted responsibility for his crime." One could argue that he had little or no remorse for the sexual assault, because his testimony described a woman who was a willing participant in a sexual encounter who was not harmed by the consensual sexual intimacy she shared with a man she was lusting after. He did not paint a picture of a victim of sexual assault. Somewhat related is the idea that Turner has a negligible chance of reoffending. A

reasonable person could argue that any predator who could sexually assault an unconscious woman and then deny that he did anything wrong is precisely the type of predator who is likely to reoffend, especially if he does not suffer severe consequences for the instant rape.

- Perhaps the most ironic issue with Judge Persy's insinuations that Turner was a saint who would never commit any crime AND that he was so heavily intoxicated from alcohol that he admitted to drinking that he had substantially diminished capacity over his decisions at the time of the sexual assault is the confluence of those two elements; by virtue of drinking to excess while under the legal drinking age, Tuner was unequivocally committing a crime. Further, evidence at trial included "*communications involving recreational drug use, even a video showing recreational drug use.*" One could argue that a jurist with such feeble critical thinking skills has no place on the bench.

I look forward to your response, and I am happy to answer any questions. Thank you very much.

Sincerely,

Alu Axelman

## References

- California Legislative Information. (2013). Penal Code Section 261. PART 2 OF CRIMINAL PROCEDURE - TITLE 7. OF PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT [1065 - 1188] CHAPTER 4.5. Trial Court Sentencing [1170 - 1172.75] [leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=1170](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=1170)
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