FULL VERSION (5) with photos

Putting It in Perspective

There is a critical need for a dialog about campus sex and allegations of sexual assault, including when exacerbated by alcohol. But that dialog needs to include a more careful examination of the issues for everyone involved. For third parties to so viciously wage the type of disinformation campaign that has happened in the Brock Turner case works against such a dialog, and we would urge everyone who is part of the Stanford and Bay Area communities and elsewhere to examine what actually happened, who has been waging this campaign of disinformation and what that should teach all of us going forward.

This summary is a composite of efforts by a number of alumni and other volunteers who had no preconceived notions about the case when we first heard about it. We do not represent Turner or his family or speak on their behalf. We were, however, startled by what seemed to be a concerted and even malicious campaign against Turner as well as the judge in the case, Judge Aaron Persky. That led to our obtaining all fifteen volumes of the trial transcript, many of the trial exhibits and other related materials. The records we obtained are available in the public record and could have been reviewed by media outlets in advance of their publishing the articles that raised our initial concerns. We also made inquiries of people on various sides of the issues concerning campus drinking, Title IX, allegations of sexual assault and proper media practices.

Based on our review and as discussed more fully below, we have concluded that the facts do not support a finding of guilty, and Turner is actually innocent as a matter of law. He should never have been prosecuted for let alone convicted of the crimes he was charged with.

The Turner case also is showing a process that is similar to what occurred in the Duke/Lacrosse, University of Virginia/Rolling Stone and Stanford/Joe Lonsdale matters. In the Turner case, the false narrative is being orchestrated by third parties who have done this before, and where their prior campaigns likewise have often proved to be false. Here, the campaign apparently was started before and during the trial and has continued ever since, including against Judge Persky as well as against Turner.

The Public Record

As shown in the public record, Doe was a 22-year-old who had already graduated from college elsewhere. Turner was a 19-year-old Stanford freshman. Doe drank heavily at home and then drank more at the party at the Kappa Alpha fraternity house at Stanford. She was seen with Turner both inside and outside the fraternity house for an hour or more before she left the party consensually with Turner to go to his dorm. Within a 15- to 30-second walk from the fraternity outdoor patio, Doe slipped on a dirt path and they started making out on the ground. From the perspective of people on this and other paths, the outdoor patio and another couple making out nearby, Doe and Turner were in full view of everyone – NOT behind a dumpster per the false narrative third parties have carefully tried to create (see photos, below).

Turner admitted he had fingered Doe (but with no one clarifying what he thought that term meant) and also testified it was with Doe's consent. Turner never opened his pants or other clothing and his DNA was not on Doe's underwear or on her. Doe claims she doesn't remember anything, and in fact she told police she has similarly "blacked out" at least four or five times when she was in college (and possibly more often), but when she says blacked out, she doesn't mean she is unconscious but rather that she doesn't remember. Given Doe's movements and other medically confirmed actions, she was not unconscious at any time.

Which raises a core legal issue, which is whether Turner knew Doe was or was not capable of giving consent. At the beginning of the trial, Judge Persky explicitly told the jury that Turner was to be found innocent if Turner believed Doe was capable of consent even if Turner was mistaken in that belief.

Here is but one of several of those instructions, quoted verbatim:

> ***"The defendant is not guilty of this crime if he actually and reasonably believed that the person was capable of consenting to the act, even if the defendant's belief was wrong. The People have the burden of proving beyond a reasonable doubt that the defendant actually and reasonably believed that the woman was incapable of consenting. If the People have not met this burden, you must find the defendant not guilty."*** *(See trial transcript, vol. 3, pages 42 and 43; boldface added.)*

Somehow the issue of what Turner reasonably believed got lost during and at the end of the trial, including the court's ruling that the jury could not hear evidence about Turner's honesty for these and related issues. A significant error similarly occurred when the jury, during their deliberations, was given an incomplete and even wrong answer about belief and intent.

Misrepresentations; Defects Before and During the Trial

Third parties have painted a narrative that Doe was so brutalized by Turner that she was covered in blood and bandages when taken to the hospital. In fact, as shown in the public record, the only bruises and bandages on Doe were from several attempts by paramedics to insert an IV and where they had trouble finding a vein.

When Doe woke up at the hospital, she had no sense anything was wrong and did not complain about any pain or discomfort. She simply asked if she could go to the bathroom. Even after using the bathroom, she had no sense anything was wrong but was told by police she had probably been sexually assaulted. When she woke up again, she was told to fill out a form that said at the top "rape victim."

There were numerous errors and inappropriate actions both before and during the trial.

Among other things, witnesses appear to have been coached and their testimony continually changed to favor the prosecution. Some of the changes are so significant that the witnesses may even have lied. This includes when police inappropriately took two key witnesses to the scene,

TOGETHER, prior to the preliminary hearing and tried to coach them to change their testimony to eliminate prior discrepancies.

This includes Doe, her sister and others regularly changing their testimony about their plans for the night, their levels of drinking and other actions and observations.

Solely by way of example, Doe was asked whether she was shot gunning beers and she replied at the trial under oath: “I can't. Q - Why can't you? A - Because it's hard." Yet this is what her sister said at the preliminary hearing, also under oath: "Did you observe [your sister} to shot gun a beer?" A - "Yes, because she was making jokes about it."

None of these and numerous other discrepancies and even lies were challenged during the trial.

On several critical matters, evidence was improperly delayed or withheld by the prosecution, including when the prosecutor delayed giving to Turner’s lawyer the critically important EMT report until he and the prosecutor were walking into the first day of trial. That report was done a year earlier. Various other required disclosures to Turner’s lawyer also were late or never made.

It also appears that important evidence in possession of the police on the night of the incident went missing months before the trial.

For example, the police took down the license plate numbers of all the cars in the fraternity parking lot, apparently to do followup interviews with witnesses. They actually confirmed that they had done this in their initial report which was then made a part of the official criminal complaint filed in Santa Clara County Superior Court (see page 18):

> *"Dep. ADAMS transported (601) TURNER to the SUDPS [Stanford University Department of Public Safety] Annex in vehicle 1445. Sgt. BARRIES notified the on-call detective,* ***Det. KIM and he was enroute to the scene.***
>
> ***"Sgt. ARRIES [sic] and Dep. EDWARDS logged vehicle license plates that were found in the parking lot of 664 Lomita Ct. (Kappa Alpha.)"*** (Boldface added.)

The implication is that the police, including Detective Kim, intended to locate and interview more witnesses based on the license plates of the cars in the parking lot, and it appears that Detective Kim was on site and supervising the case when the license plates were being taken down by his fellow officers.

A month later, however, when Turner's lawyer requested in writing the log of license plates as well as the results of the license plate investigation, the Santa Clara County District Attorney's office responded in writing: ***"Det. Kim . . . is not aware of any license plate check done.”***

The District Attorney’s office and Detective Kim also claimed in writing they didn’t have access to the results of investigations at Stanford even though Detective Kim is part of Stanford’s police department. They likewise told Turner’s lawyer they had no phone records even though phone records were used throughout the investigation and the trial. Also, Doe, her sister and their friends took photos and videos that night and which they confirmed in their testimony. Those

photos and video were important evidence about timelines and activities and yet the police and the prosecutor said without explanation that they didn't preserve them.

Turner's DNA was not on Doe's underwear nor anywhere on Doe's body, although another person's DNA was found on Doe's underwear (and which, by the way, was explicitly found not to be Turner's).

Turner's lawyer agreed prior to the trial that he wouldn't raise issues about the fact that DNA evidence from swabs taken from Turner himself had been tainted at the lab. That, in turn, allowed the prosecutor to introduce evidence that was important for her case but was seriously defective, and where she knew in advance that the tainted evidence would not be subject to objection or the introduction of contrary evidence.

Turner waived his Miranda rights while still too drunk to give a knowing waiver. Worse, separate warrants or consents were needed for searching his body and taking body fluids. That didn't happen, yet no objection was made to exclude the improperly seized evidence.

No objection was made when Doe was regularly referred to as "the victim" contrary to an explicit agreement between Turner's lawyer and the prosecutor prior to the trial.

No objection was made about the constant references to "behind the dumpster" when in fact everything was readily seen by all passersby and, from the perspective of people on the outdoor patio and nearby paths, "in front of" the dumpster.

No photos were taken of the scene on behalf of the defense and thus nothing was ever introduced at the trial showing the jury the obvious fact that everything indeed had occurred "in front of" the dumpster and in plain sight.

No objections were made or evidence introduced regarding the false description of Doe's bandages, all of which were solely from the paramedics trying to find a vein. Likewise, other incorrect medical testimony was never contradicted.

No one was retained to investigate key facts, notwithstanding several requests from the family that this be done.

Only one expert witness was retained for the defense notwithstanding the fact that there were numerous medical and other errors in what the prosecution was presenting.

The only expert who was retained on behalf of Turner testified about the essential differences between sleeping versus blacking out versus being unconscious. People following the case say that the expert's testimony was highly effective but was seriously undercut when the prosecutor then read (some who were present at the trial say screamed) to the jury a series of emails between Turner's lawyer and the expert. Many legal observers believe the emails were privileged (yet no claim was made) but failing that, they can't understand why these emails were knowingly sent in the first place. The emails, by the way, were solely informal banter and including about prior cases.

Doe told police that she has "blacked out" numerous times in the past (at least four or five times at her undergraduate campus alone) but that when she says "blacked out," she doesn't mean she is unconscious but rather that she can't remember. That important fact was never highlighted during the trial.

When the prosecutor finished presenting her case, she had failed to prove essential elements of the alleged offenses. Yet there was no request for a directed verdict. Rather, Turner's lawyer put Turner on the stand to testify as to the items the prosecutor had failed to present.

Turner's lawyer failed to tell Turner and the Turner family about possible conflicts. These conflicts included interactions Turner's lawyer had with the people who were waging the media and legal campaigns against Turner and Turner's family. He even failed to tell the Turners that he had previously represented the people who were waging these media and legal campaigns against the Turners and that he had spoken at classes being led by these people, at their invitation, while he was preparing for the trial and then again after the trial.

A progressive reform in California and most other states years ago is that sentencing recommendations be made by independent professionals. Accordingly, Turner, Doe and others were interviewed by the Santa Clara County Probation department. Doe was explicitly quoted in the department's report as saying: "I don't want him to feel like his life is over and I don't want him to rot in jail; **he doesn't need to be behind bars**." (Boldface added.) Apparently that upset third parties when they heard about it, so after being coached, Doe said something totally different in the highly publicized statement she read at the sentencing hearing.

No challenges were raised about the numerous other contradictions, misstatements and lies that were contained in Doe's widely publicized statement. Also, virtually everyone who has been following the case believes this statement was written by people other than Doe. Among other things, it uses language that is very different from Doe's normal vocabulary and style. It is highly legalistic and uses phrases and sentences that are nearly verbatim language of the prosecutor. Interestingly, the third parties involved in the ongoing campaign against Turner and Judge Persky seem to always say "read by Doe," not "written by Doe."

There also are serious questions about who wrote the letter to Glamour Magazine that third parties similarly disseminated as part of their media campaign.

There also are serious questions as to why the top Google search in Arizona in 2016 was the sentencing of Brock Turner. What was going on inside or outside of Google to lead to such a result?

Persky Recall; the Dolphin Group

The orchestrated attack has not only been against Turner but also against Judge Persky for his so-called light sentencing of Turner. Again, this is contrary to the facts. Judges in California are expected to follow the sentencing recommendations of probation department officials, which is what Judge Persky did.

And yet the same third parties who were attacking Turner also were waging a relentless campaign against Judge Persky, never mind the importance of an independent judiciary and the fact that Judge Persky acted as the law expects him to do.

From the outset, the Recall Persky campaign had listed Becky Warren as their head of communication. Ms. Warren had been a partner in The Dolphin Group https://www.facebook.com/DolphinGroupLA/posts/538983572940635, an entity described as "the Dark Messenger" in this article from The Huffington Post: https://www.huffingtonpost.com/2012/10/02/california-prop-32_n_1934213.html.

The Recall Campaign seems to have been using the Dolphin Group's notorious Willie Horton playbook in the campaign against both Turner and Judge Persky.

One voice of reason came from a previous graduating class from Stanford Law School, many of whom had been involved in clinics and other criminal defense activities and knew the damage the recall campaign was causing. A third of the graduating class challenged the recall campaign, and we think rightly so.

Need to Set the Record Straight

There is a critical need for an independent judiciary; that we uphold the principles for a fair trial; and that there be an open and honest dialog about campus sex and allegations of sexual assault, including when exacerbated by alcohol. Anyone waging a vicious disinformation campaign like the one that has been waged against Turner and Judge Persky, however, is standing in the way of progress in all of these areas.

It's time to set the record straight. It's also time we stopped accepting news that is not based on the facts as well as malicious media campaigns.

Too many people are being irrevocably hurt here, including not just Turner but the others who were involved.

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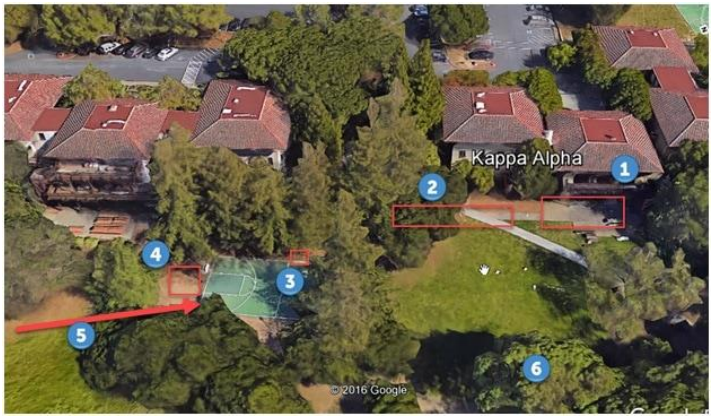
Numerous alumni and other volunteers contributed to this summary. None of us represent or speak on behalf of Turner or his family.

A Picture Is Worth a Thousand Words

The view the two Swedish graduate students had of Doe and Turner . . . in full view of all passersby, IN FRONT of the dumpster and a 15- to 30-second walk from the fraternity outdoor patio.



Kappa Alpha fraternity house on right, Jerry House on left

1. KA patio
2. Path where Turner and Doe walked from the KA patio
3. Where Turner and Doe were making out
4. Where graduate students tackled Turner
5. Path the graduate students came in on bikes
6. Area in bushes where Doe, Doe's sister, and their friend went to urinate an hour earlier