

People v. Brock Allen Turner

Case # B1577162

# People's Sentencing Memorandum

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**FILED**

MAY 27 2016

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY [Signature] DEPUTY

6 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
7 **IN AND FOR THE COUNTY OF SANTA CLARA**

8 THE PEOPLE OF THE STATE OF CALIFORNIA,  
9 Plaintiff,

10 vs.

11 BROCK ALLEN TURNER,  
12

13 Defendant.

No. B1577162

PEOPLE'S SENTENCING  
MEMORANDUM

DATE: June 2, 2016

TIME: 9:00 p.m.

DEPT.: 89

14  
15  
16 **I. INTRODUCTION**

17 The Defendant, Brock Allen Turner, (hereinafter "Defendant") was convicted as charged of  
18 three felonies after a three week jury trial that concluded on March 30, 2016. The Defendant  
19 was found guilty of the following three felony violations: Penal Code section 220(a) [Assault  
20 with Intent to Commit Rape of an Intoxicated/Unconscious person]; Penal Code section 289(e)  
21 [Penetration of an Intoxicated Person]; Penal Code section 289(d) [Penetration of an  
22 Unconscious Person]. The California legislature classifies a violation of Penal Code section  
23 220 as a violent felony pursuant to Penal Code section 667.5(c) and a serious felony pursuant to  
24

1 Penal Code section 1192.7(c). All three charges are listed under Penal Code section 290(c)  
2 requiring the Defendant to register as a sex offender for life.

3 The Defendant is presumptively probation ineligible due to his conviction on Count One,  
4 Penal Code 220 and under Penal Code Section 1203.065(b). The Probation Department has  
5 made a recommendation regarding the sentence and it has recommended that the Court exercise  
6 discretion and make a finding of "unusual circumstances" in order for the Defendant to be  
7 sentenced to a county jail term. The People respectfully disagree with the Probation  
8 Department's assessment and recommendation in this case. The Probation Department's  
9 recommendation does not take into consideration the seriousness of this case, the fact that the  
10 Defendant was convicted of multiple sex acts, and the fact that he has not demonstrated  
11 genuine remorse or accountability for his actions.

12  
13 **II. STATEMENT OF FACTS**

14 In the evening of January 17, 2015, <sup>JANE DOE 1</sup> [REDACTED] Doe, a recent college graduate, hung out  
15 with her sister, <sup>JANE DOE 2</sup> [REDACTED], and several of <sup>JANE DOE 2</sup> [REDACTED]'s friends at their family home in Palo Alto.<sup>1</sup>  
16 <sup>JANE DOE 2</sup> [REDACTED] and her friends were [REDACTED] students and were home for the weekend. They had  
17 planned to meet their mutual friend, [REDACTED] who was a student and resident at  
18 Stanford University. They began drinking hard liquor and champagne at approximately 10:30  
19 p.m. <sup>JANE DOE 1</sup> [REDACTED] Doe had approximately four shots of whiskey before the girls' mother dropped  
20 them off on the Stanford campus between 11:00 to 11:15 p.m. They met up with [REDACTED] at a party  
21 on campus at the Kappa Alpha fraternity (hereinafter "KA".) They socialized and drank alcohol  
22 both inside and outside of the KA fraternity house. While at the party, <sup>JANE DOE 1</sup> [REDACTED] Doe had two  
23

24 <sup>1</sup> The following facts were adduced at trial or were reported to police during the investigation.

1 shots of vodka and some beer. Shortly after midnight, the girls were split up from one another.

2 JANE DOE 2 and [REDACTED] wanted to return to [REDACTED]'s dormitory so that their friend, [REDACTED]  
3 JANE DOE 2 who was not feeling well, could sleep. After [REDACTED], [REDACTED] and [REDACTED] left the party, [REDACTED] and  
4 JANE DOE 1 [REDACTED] Doe were split up.

5 JANE DOE 1 During this time, [REDACTED] Doe made some phone calls to her boyfriend, [REDACTED]  
6 who was living in Pennsylvania for graduate school. They had been dating since 2014 and had  
7 an exclusive relationship. On the night of January 17, 2015, he did not consume any alcohol  
8 and went to sleep early. Early in the morning on January 18, 2015, at approximately 2:54 a.m.

9 JANE DOE 1 Eastern Standard time (11:54 p.m. PST), he received a phone call from [REDACTED] Doe and  
10 answered it. The call lasted approximately three minutes. He was not able to understand what  
11 she was saying because her speech was unintelligible and she was rambling. At about 3:16 a.m.

12 JANE DOE 1 Eastern Standard time (12:16 a.m. PST), [REDACTED] Doe called [REDACTED] again, but he did not answer.

13 JANE DOE 1 [REDACTED] Doe left a voice mail on [REDACTED] phone. He listened to the voice mail and felt that while  
14 she was trying to make more sense when she was talking, she still sounded very intoxicated.

15 JANE DOE 1 [REDACTED] could understand parts of [REDACTED] Doe's message, but other parts were unintelligible. It

16 JANE DOE 1 was clear [REDACTED] Doe was extremely intoxicated. This voice mail was later provided to

17 Detective Kim and was played before the jury.

18 At approximately 3:18 a.m. Eastern Standard time (12:18 a.m. PST), [REDACTED] called

19 JANE DOE 1 [REDACTED] Doe and they had a 10 minute conversation. [REDACTED] could not make out what [REDACTED] JANE DOE 1

20 JANE DOE 1 Doe was saying. She was rambling unintelligibly. [REDACTED] wanted [REDACTED] Doe to find her sister,

21 because it was apparent she was unable to care for herself and she appeared to be alone. The

22 JANE DOE 1 phone call ended at 12:28 a.m. Immediately after the call with [REDACTED] [REDACTED] Doe called

23 JANE DOE 2 [REDACTED] and had a 35 second unintelligible conversation. [REDACTED] JANE DOE 2 could not hear or make out

24

1 what <sup>JANE DOE1</sup> Doe was saying, so she ended the call. <sup>JANE DOE1</sup> Doe then called [REDACTED] at 12:29 a.m.  
2 and she was unable to get ahold of [REDACTED]

3 At approximately 1:01 a.m., Deputies Taylor and Adams were dispatched to an area  
4 near the KA house to a report of a female who was unconscious, but breathing in a field.

5 Deputy Taylor arrived on scene at approximately 1:05 a.m. and located the female, later

6 identified as <sup>JANE DOE1</sup> Doe. She was on the ground lying in a fetal position behind a garbage  
7 dumpster. She was breathing, but she was completely unresponsive. Her dress was pulled up to  
8 her waist exposing her vagina and buttocks. Her underwear was on the ground next to her. The  
9 back of her hair was disheveled, knotted and completely covered in pine needles. She was  
10 wearing a grey sweatshirt that was removed from one arm only.<sup>2</sup> (Exhibit One: photos of victim  
11 at the scene [court copy filed under seal].)

12 The deputies were alerted to two males who had pinned down and restrained a subject  
13 (later identified as Brock Allen Turner, herein after the "Defendant") about 25 yards north.

14 Deputy Adams and Deputy Shaw ran towards the men, while Deputy Taylor stayed with

15 <sup>JANE DOE1</sup> Doe who remained unconscious. Peter Jonsson was straddling the Defendant while  
16 holding both of the Defendant's arms down. Carl-Fredrik Arndt was sitting on the Defendant's  
17 legs. Deputy Shaw asked the men what was going on and Mr. Jonsson replied, "We found him  
18 on top of the girl!" He then pointed back towards where <sup>JANE DOE1</sup> Doe was lying on the ground.

19 The Defendant remained silent. Deputy Shaw placed handcuffs on the Defendant. While doing  
20 so, he noticed a strong odor of alcohol coming from the Defendant, his crotch area appeared  
21 disheveled, and he had what appeared to be a cylindrical bulge consistent with an erect penis  
22 underneath his pants.

23  
24 <sup>2</sup> Photos of victim's state on 1/18/15, previously admitted into evidence.

1 When Deputy Taylor stayed with JANE DOE Doe, who was lying on the ground, he  
2 checked for a pulse and heard her snore. In a very loud voice he asked several times, "Can you  
3 hear me?" JANE DOE Doe did not respond to any verbal or physical attempts to wake her. Shortly  
4 thereafter, paramedics arrived and began treating JANE DOE Doe. They attempted to get a response  
5 from her by applying various techniques including a "shake and shout" and applying a physical  
6 pain stimulant, but none were successful. During their assessment at the scene, she vomited  
7 once, but did not regain consciousness.

8 Deputy Taylor accompanied the victim as she was transported to Valley Medical Center  
9 (hereinafter "VMC") at 1:30 a.m. Inside the ambulance, Deputy Taylor again attempted to  
10 wake JANE DOE Doe every 15 minutes. Deputy Taylor observed EMT technicians place an I.V. in  
11 her arm and she still did not regain consciousness. Deputy Taylor reported that JANE DOE Doe  
12 remained unconscious throughout the ambulance ride and the check in process at the hospital  
13 when she arrived at VMC at 2:00 a.m. She finally regained consciousness at approximately  
14 4:15 a.m. JANE DOE Doe was medically cleared at 4:30 a.m. and taken to undergo a SART exam.  
15 Her blood was drawn at 7:15 a.m. and at that time, her blood alcohol concentration (Hereinafter  
16 "BAC") was 0.12%. A back extrapolation of JANE DOE Doe's BAC at the time of the assault  
17 placed her intoxication level at approximately 0.22% BAC, almost three times the legal limit.  
18 According to Santa Clara County criminalist Alice King, this does not account for the dilution  
19 of her blood alcohol content due to the Saline I.V. that was given to her. Thus, her blood  
20 alcohol content was likely much higher, but it is impossible to know how high.

21 Deputy Shaw interviewed Mr. Jonsson and he indicated that at approximately 12:55  
22 a.m., he and Mr. Arndt were riding their bikes to go to the party at the KA house when he  
23 noticed a male and female lying on the ground near the dumpster and it appeared that they were  
24

1 having sex. He and Mr. Arndt at first thought it was a mutual interaction, but as he got closer,  
2 he got a bad feeling. Mr. Jonsson described that the woman was lying on her back, motionless,  
3 and it looked like she was asleep or passed out while the man was on top of her aggressively  
4 thrusting his hips into her. As they got closer, he could tell the woman was not moving at all,  
5 her eyes were closed, and her head was tilted to the side, so he yelled to get the Defendant's  
6 attention. He yelled words to the effect of, "Hey, she's fucking unconscious!" The Defendant  
7 looked up, slowly got off of <sup>JANÉ DOE</sup> Doe, and began running rapidly away from her. Mr.  
8 Jonsson and Mr. Arndt briefly checked on the girl and noticed she continued to appear  
9 unconscious and did not respond to them asking her if she was okay. Mr. Jonsson then gave  
10 chase after the Defendant and caught up to him about 35 yards away. He told the Defendant to  
11 stop many times, but the Defendant continued to run. Mr. Jonsson caught up to the Defendant  
12 and did a leg sweep to trip him, which caused the Defendant to fall. According to Mr. Jonsson,  
13 it looked like the Defendant was going to run away again, so Mr. Jonsson tackled him to the  
14 ground and held his arms down as Mr. Arndt caught up to them and held the Defendant's legs  
15 down until help arrived.

16 Deputy Adams transported the Defendant to the police station where his blood was  
17 drawn by a phlebotomist at approximately 3:15 a.m. His blood alcohol content was back  
18 extrapolated to be at 0.16% BAC. After a SART exam was performed on him, the Defendant  
19 was interviewed. This interview was played for the jury after the Defendant testified.

20 The following day, Detective Kim interviewed <sup>JANÉ DOE</sup> Doe and <sup>JANÉ DOE</sup> Doe  
21 did not know what happened to her. She remembered being at the party and waking up in the  
22 hospital. She did not remember being alone with any males. She was in a relationship with  
23 [REDACTED] and did not intend on "hooking up" with anyone. She indicated that everyone at  
24

1 the party was much younger than her, and she really was being silly and joking around about  
2 the fact that she was at a college fraternity party. She did not remember making the calls to her  
3 boyfriend [REDACTED]. The next morning, she checked her phone call log and saw that she attempted  
4 to call her sister and [REDACTED] at 12:30 a.m. She also did not remember making any of these calls.

5 JANE DOE2 [REDACTED] indicated that at 11:00 p.m., their mother dropped the group off at Stanford  
6 University. They walked across campus to meet up with [REDACTED] at the KA house and they were  
7 inside the party for approximately 45 minutes. At approximately 11:50 p.m., they all went  
8 outside to "pee" in the bushes. They did not go back inside the party and instead, they talked to  
9 some guys who were outside. One of the guys, [REDACTED], had a sibling who went to [REDACTED]  
10 [REDACTED] and she and [REDACTED] talked about this connection. At some point when she was outside, the  
11 Defendant suddenly grabbed her and kissed her. JANE DOE2 [REDACTED] turned and pushed him away. She  
12 thought this was odd, because they had not talked much and there was no flirtation, but she did  
13 not really think much of this incident. Later on that night, the Defendant came back and tried  
14 to kiss her a second time while she was trying to talk to her friend. This time, he put his hands  
15 on her waist and she had to move away from him. At approximately 12:16 a.m., one of the girls  
16 in the group was very intoxicated and felt sick, so JANE DOE2 [REDACTED] and [REDACTED] decided to take her back  
17 to [REDACTED] room to sleep. JANE DOE2 [REDACTED] was gone for about an hour and when she came back, she saw  
18 the police and assumed they were there to break up the party. She looked for JANE DOE1 [REDACTED] and she  
19 could not find her sister. She assumed that her sister took an Uber home.

#### 20 Other Female Interactions

21 On June, 25, 2015, Detective Kim received information about two females who had an  
22 encounter with the Defendant the weekend before the assault on JANE DOE1 [REDACTED] Doe. Detective Kim  
23 interviewed both [REDACTED] and [REDACTED]. Ms. [REDACTED] indicated that she came to the  
24

1 Stanford campus the weekend of January 9 through January 12, 2015, to visit Ms. [REDACTED]  
2 who was a Stanford student. While on campus, they attended a party at the KA fraternity where  
3 Ms. [REDACTED] was introduced to the Defendant. She described the Defendant as living in the same  
4 dormitory as Ms. [REDACTED] and that they had mutual friends, but were not close. She stated that  
5 during the party, she and Ms. [REDACTED] were dancing on a table and the Defendant followed  
6 them onto the table. She described the Defendant as being flirtatious with her. He put his hat  
7 on her and she took it off. He then started to dance behind her and tried to turn her around to  
8 face him. She felt uncomfortable and tried to turn her body away so that he would not be  
9 directly "behind" her. He became really "touchy" and put his hands on her waist and stomach.  
10 He even put his hands on her upper thighs. She felt more exceedingly uncomfortable and got  
11 down off of the table. She said the Defendant "creeped" her out because of his persistence. (See  
12 Exhibit Two: portion of police report referencing this incident.)

13 **Prior Arrest and Pending Case B1576943**

14 On November 15, 2014, at approximately 3:10 p.m., the Defendant and a group of  
15 males were walking on campus drinking beers. Deputy Shaw first saw them holding what  
16 appeared to be beer cans so he stopped his patrol car and exited it. As soon as he walked  
17 toward the group of males, they began to briskly walk away from his direction. Deputy Shaw  
18 walked faster to contact them in order to determine if they were of legal drinking age. The  
19 group immediately began running away from him. Deputy Shaw yelled, "Stop! Police," but the  
20 group looked back at him and continued running. Deputy Shaw broadcasted on his radio that he  
21 was in a foot pursuit. He chased them through the Knight Management complex and continued  
22 to yell "Stop! Police!" several times. He lost sight of the subjects as they passed the south end  
23 of the complex. He then heard Deputy Devlugt yell, "Stop get on the ground!" in a loud voice  
24

1 at a subject she had detained. Deputy Shaw located a discarded black backpack with Coors  
2 Light beer cans in it. The subject who was detained identified the Defendant as one of his swim  
3 teammates whom he was drinking with when Deputy Shaw first saw them.

4 Deputy Shaw then called the Defendant on the phone and asked him to return to the  
5 scene. He returned wearing a bright orange tuxedo and Deputy Shaw smelled the odor of  
6 alcohol on him. The Defendant stated that he was headed to the Stanford football game with his  
7 swim teammates. He noticed the Sheriff's vehicle pull up next to them. He had a black  
8 backpack on with Coors Light beers inside, as well as a beer in his hand. He admitted trying to  
9 hide the beer and knew he was not supposed to have it because he was not 21 years old. He  
10 stated that when he saw Deputy Shaw approach, he made the decision to run. While running, he  
11 heard the verbal commands to stop, but continued evading. He said it was a split-second  
12 decision and he regretted making it. He admitted the backpack that Deputy Shaw found with  
13 beers inside of it belonged to him. The Defendant also was in possession of a fake driver's  
14 license. (See Exhibit Three: police report 14-319-0270U.)

#### 15 Cell Phone Extraction

16 Shortly after the Defendant's arrest in the early morning hours of January 18, 2015,  
17 Detectives noticed a text message in the "Group Me" application that appeared on the  
18 Defendant's screen. It stated, "Who's tits are those?" (See Exhibit Four: photos of screenshot.)  
19 A search warrant for the Defendant's phone was obtained and his phone was searched by the  
20 Santa Clara County Crime lab. Detectives were unable to locate the text from the "Group me"  
21 application or any photos related to that text. However, they learned that when there is a third  
22 party application, the images are not stored on the phone and can be deleted by a third party  
23 member in the group.

1 More importantly, the search of the Defendant's cell phone shed some light onto the  
2 Defendant's behavior and character during the time period in question and the year prior to  
3 attending Stanford. There were many items of evidence indicating the Defendant was engaging  
4 in excessive drinking and using drugs: (1) Photo of the Defendant smoking from a pipe (See  
5 Exhibit Five: photo); (2) Close up photo of a bong and another photo of a Stanford swimmer  
6 and Defendant's teammate with a bong in his hand. (Exhibit Six: two photos); (3) Video  
7 depicting the Defendant smoking from a bong and drinking out of a bottle of liquor  
8 immediately after taking a "bong hit," which was captured on the Defendant's phone on  
9 December 27, 2014. (See Exhibit Seven: video DVD.)

10 Furthermore, there are many text messages that are indicative of drug use, both during the  
11 Defendant's time at Stanford and during his time in Ohio when he was still in high school. On  
12 December 18, 2014, he sent a message to friend [REDACTED] that stated, "Do you think I  
13 could buy some wax so we could do some dabs?" (See Exhibit Eight: text messages.) Dabs are  
14 a highly concentrated potent form of marijuana that is a THC (tetrahydrocannabinol)  
15 concentrated mass. They are most similar in appearance to either honey or butter, which is why  
16 it is referred to or known on the street as "honey oil" or "budder." Dabs are an increasing  
17 problem on campus and with teens as an alternative way to ingest marijuana.<sup>3</sup> There is another  
18 group message about pulling money together to buy 30 tabs on January 13, 2015. (See Exhibit  
19 Nine: text messages.)

20  
21 <sup>3</sup> <http://www.dea.gov/pr/multimedia-library/publications/marijuana-concentrates.pdf>

22 A disturbing aspect of this emerging threat is the ingestion of concentrates via electronic cigarettes (also known as  
23 e-cigarettes) or vaporizers. Many abusers of marijuana concentrates prefer the e-cigarette/vaporizer because it's  
24 smokeless, odorless and easy to hide or conceal. The user takes a small amount of marijuana concentrate, referred  
to as a "dab," then heats the substance using the e-cigarette/vaporizer producing vapors that ensures an instant  
"high" effect upon the user. Using an e-cigarette/vaporizer to ingest marijuana concentrates is commonly referred  
to as "dabbing" or "vaping."

1 There were many references to smoking, buying, and sharing "weed" from as early as April  
2 1, 2014, when the Defendant was in Ohio, throughout the Defendant's short time at Stanford.  
3 (See Exhibit Ten: various text messages.) The text messages also referenced doing acid or  
4 trying to find a "hook up" to purchase acid both in high school and while at Stanford. On  
5 December 24, 2014, [REDACTED] sent a message to the Defendant stating, "I've got a  
6 hankerin for a good acid trip when we get back." The Defendant responded, "I'm down for  
7 sure." (See exhibit Eleven: text exchange.) On July 25, 2014, while still in Ohio, the Defendant  
8 sent a text message to [REDACTED] saying, "Oh dude I did acid with [REDACTED] last week."  
9 [REDACTED] then bragged about "candyflippin" the prior week, which he explained was  
10 taking LSD and MDMA together. The Defendant responded, "I gotta fucking try that. I heard  
11 it's awesome." (See Exhibit Twelve: text messages.)

12 Finally, there is a text message exchange between the Defendant and his sister [REDACTED]  
13 from June 3, 2014. She asked him, "Did you rage last night?" He responded, "Yeah kind of. It  
14 was hard to find a place to drink. But when we finally did could only drink for like an hour and  
15 a half." She responded, "Haha enjoy it while it lasts, the finniest (sic) thing to look back on  
16 high school is having beer but no place to drink it. That will go away in college." (See Exhibit  
17 Thirteen: text messages.)

### 18 19 III. LEGAL ARGUMENT

20 Penal Code section 1170(a)(1) defines the purpose of sentencing someone to prison:  
21 "The Legislature finds and declares that the purpose of imprisonment for crime is *punishment*.  
22 This purpose if best served by terms proportionate to the *seriousness of the offense* with the  
23  
24

1 provision for *uniformity* in the sentences of offenders committing the same offense under  
2 similar circumstances.” (Cal Pen Code 1170(a)(1). (emphasis added.))

3 Moreover, the general objectives of sentencing are outlined by the California Rule of  
4 Court 4.410 to include (1) protecting society (2) punishing the defendant, (3) encouraging the  
5 defendant to lead a law-abiding life in the future and deterring him or her from future offenses,  
6 (4) deterring others from criminal conduct by demonstrating its consequences, (5) preventing  
7 the defendant from committing new crimes by isolating him or her for the period of  
8 incarceration, (6) securing restitution for the victims of crime, and (7) achieving uniformity in  
9 sentencing.

10 The Probation Department’s recommendation that the Defendant be sentenced to a  
11 moderate term in the County Jail, which is generally four to six months, does not adequately  
12 take into account the seriousness of the Defendant’s crimes. The recommendation does not  
13 encompass the totality of circumstances surrounding a pattern of behavior by the Defendant.  
14 Therefore, it will not effectively punish the Defendant and ensure he will not be a danger to the  
15 community. Lastly, it does not reflect the impact the case has had on the victim or the  
16 community, where the problem of campus sexual assaults is an epidemic. Thus it will not serve  
17 the very important purpose, which every sentence should strive to attain, to deter future crimes  
18 and in this case, sexual assaults on college campuses.

19 **A. Probation Ineligible Pursuant to Penal Code Section 1203.065(b)**

20 Pursuant to Penal Code section 1203.065(b), the Defendant, because he was convicted  
21 of a violation of Penal Code section 220, is statutorily ineligible for probation. “Except in  
22 unusual cases where the interests of justice would best be served if the person is granted  
23 probation, probation shall not be granted to any person who is convicted of violating paragraph  
24

1 (7) of subdivision (a) of section 261, subdivision (k) of Section 286, subdivision (k) of Section  
2 288a, subdivision (g) of Section 289, or **Section 220 for assault with intent to commit a**  
3 **specified sexual offense.**" (Cal Pen Code § 1203.065(b)(1). (emphasis added.))

4 The Statute further clarifies that: "When probation is granted, the court shall specify on  
5 the record and shall enter on the minutes the circumstances indicating that the interests of  
6 justice would best be served by the disposition." (Cal Pen Code § 1203.065(b)(2)) Furthermore,  
7 prior to granting probation the court must go through the factors listed in California Rule of  
8 Court 4.413(b) in evaluating whether the interests of justice would be served. (Id.)

9  
10 **1. 4.413(b) & (c) Probation Eligibility When Probation is Limited Probation**

11 If the defendant comes under a statutory provision prohibiting probation "except in  
12 unusual cases where the interests of justice would best be served," or a substantially equivalent  
13 provision, the court should apply the criteria in (c) to evaluate whether the statutory limitation  
14 on probation is overcome; and if it is, the court should then apply the criteria in rule or court  
15 4.414 to decide whether to grant probation.

16 **a. Criteria in 4.413(c)(1)(A) Facts Showing Unusual Case Related to Basis**  
17 **for Limitation on Probation.**

18 The following facts may indicate the existence of an unusual case in which probation  
19 may be granted if otherwise appropriate: a fact or circumstance indicating that the basis for the  
20 statutory limitation on probation, although technically present, is not fully applicable to the  
21 case, including:

22 The fact or circumstance giving rise to the limitation on probation is, in this case,  
23 *substantially less serious than the circumstances typically present in other cases*  
24 *involving the same probation limitation*, and the defendant has no recent record of

1 committing similar crimes or crimes of violence; (Cal Rule of Ct. 4.413(c)(1)(A)  
2 (emphasis added.))

3 Contrary to the Probation Department's assessment classifying this crime as "neutral"  
4 in the criteria for Rule 4.414(a)(1), this case is not substantially less serious than the  
5 circumstances typically present in other cases involving the same probation limitation. In fact,  
6 unlike most violations of Penal Code section 220, Assault with Attempt to Commit Rape, the  
7 Defendant here was successful in completing a sex act, and found guilty of violating both Penal  
8 Code Sections 289(d) and 289(e). After completing those sex acts, he then continued to assault  
9 the vulnerable victim with the intention of raping her behind a dumpster in the dark.

10 Notably, campus sexual assaults have been rampant across the country, however, the  
11 circumstances of this case are exceptionally more serious than those that typically occur. The  
12 fact that two independent bystanders had to intervene to prevent the Defendant from  
13 completing the rape, makes this case more egregious than other cases of assault with intent to  
14 commit rape. The Defendant's attempt to flee, and his physical attempts to continue to get  
15 away from the Good Samaritans who caught and restrained him, further illustrate the threat and  
16 menace the Defendant posed to the victim and the community at large.

17 The seriousness of this case is apparent in the facts that were presented at trial. It is  
18 abundantly clear that on the night in question, the Defendant was on the prowl and attempted to  
19 "hook up" with women who were strangers to him, and who were clearly not interested in his  
20 sexual advances. Additionally, this assault occurred a week after he was similarly aggressive  
21 with another female, at a different fraternity party, at the same location. That female came  
22 forward and described the Defendant as making her feel uncomfortable.

JANE DOE1  
1 Before committing the assault on [REDACTED] Doe, he unsuccessfully went after her sister  
JANE DOE2 JANE DOE2 JANE DOE2  
2 [REDACTED] without any sort of invitation or interest from [REDACTED]. In fact, [REDACTED] was actually  
3 talking to the Defendant's friend, [REDACTED], and she did not even have a conversation or  
4 interaction with the Defendant. Despite his lies that there was some sort of "flirtation" between  
JANE DOE2  
5 himself and [REDACTED], both at trial and in his statement to probation; it was abundantly clear from  
JANE DOE2  
6 [REDACTED]'s testimony that she was completely caught off guard by his multiple attempts to kiss  
7 her that night. She even had to get away from him after he grabbed her waist, and she alerted  
8 her friend, [REDACTED] to his behavior. She and [REDACTED] later picked out the Defendant in a line-  
9 up, and described him as the "aggressive" guy at the party, well before any publicity of this  
10 case arose.

11 There has been an attempt by the Defendant, and others in support of him, to minimize  
12 his conduct in this case, as conduct that is typical at parties on college campuses. However, the  
13 fact that "some people" are "promiscuous" at college parties does not absolve the Defendant of  
JANE DOE1 JANE DOE2  
14 his conduct and the manner that he violated both [REDACTED] Doe and her sister [REDACTED]. Even  
JANE DOE2 JANE DOE1  
15 though he was twice rejected by [REDACTED] he felt it was acceptable to pursue her sister, [REDACTED]  
16 Doe, later that night when she was alone and inebriated. He purposefully took her to an  
17 isolated area, away from all of the party goers, to an area that was dimly lit, and assaulted her  
18 on the ground behind a dumpster. He deliberately took advantage of the fact that she was so  
19 intoxicated that she could not form a sentence, let alone keep her eyes open or stand. This  
20 behavior is not typical assaultive behavior that you find on campus, but it is more akin to a  
21 predator who is searching for prey. The prey in this case was a young woman who drank too  
22 much and was unable to protect herself.

1 After physically removing her underwear and digitally penetrating her for some time,  
2 causing lacerations to her genital area, he continued to assault her and attempted to rape her  
3 until he was interrupted and stopped by the other students. Once confronted, he did not make  
4 any attempt to help her up, or to help her get her clothes on, or to make sure she was physically  
5 fine. Rather he ran away and left her there half-naked and completely unconscious and  
6 incoherent. But for the intervention of the two Good Samaritans, the Defendant would have  
7 completed the penile penetration of <sup>JANE DOE</sup> Doe. Ultimately, the fact that the Defendant preyed  
8 upon an intoxicated stranger on a college campus should not be viewed as a *less* serious crime,  
9 than if he were to assault a stranger in Downtown Palo Alto.

10 The recommendation by Probation does not take into account the global ramifications  
11 the Defendant's conduct has had on not only <sup>JANE DOE</sup> Doe and her family, but also the greater  
12 community and students on Stanford's campus. This case did not just attract public headlines  
13 because a star athlete, yet again, was accused of committing a sexual assault. This case touched  
14 on the nerve of the community because of the audacious and callous manner that the Defendant  
15 assaulted a completely unconscious female in public. This case appealed to the pulse of the  
16 community because the Defendant ran and tried to get away, and unlike many other cases, he  
17 was only apprehended by two brave students who chased him down and ensured he would  
18 answer to the authorities for what they observed. They reported what they saw and stopped it  
19 because it so clearly shocked their conscience, as it would shock the conscience of any ordinary  
20 law abiding citizen.

21 Even though the Probation Department does not see this as a more serious case, <sup>JANE DOE</sup>  
22 Doe and her family do, and equally important the students on Stanford's campus do not take  
23 this case lightly. The Founders of the Stanford Association of Students for Sexual Assault  
24

1 Prevention (ASAP) wrote a letter and circulated a petition depicting the “profound impact the  
2 sentencing of Brock Turner will have on the entire Stanford community.” The attached letter  
3 describes how the Defendant’s actions “raised serious concerns about campus safety,” and that  
4 many students feared walking alone at night because “anyone can become a victim of sexual  
5 violence, as evident by Mr. Turner’s actions.” The students also raised concerns that “a light  
6 sentence, such as probation or a few months in jail, would send the incorrect message that this  
7 was not a serious crime. This would undermine the trust in the legal system at large, diminish  
8 reporting and possibly make the Stanford community a more dangerous place for all.”

9 The students also describe that every member of the class of 2018, which the Defendant  
10 was a part of at the time of the offense, “was required to listen to hours of speeches on the  
11 importance of acquiring consent and not engaging in sexual activities when alcohol is involved  
12 or the other person is unconscious and unable to give consent.” (See Exhibit Fourteen: letter  
13 Founders of the Stanford Association for Sexual Assault Prevention.) As of the filing of this  
14 memorandum, 255 students signed this letter and petition in support of sentencing the  
15 Defendant to prison. The impact of this case on the Stanford community is significant. (See  
16 Exhibit Fifteen: Letter from Michelle Landis Dauber.) Given the magnitude of the case, which  
17 was solely caused by the Defendant’s actions, this Court should not find that this case is a less  
18 serious crime warranting a finding of unusual circumstances; it is in fact more serious than  
19 other similar cases demanding a considerable punishment that is commensurate to the global  
20 effects of the Defendant’s actions.

21  
22 **b. Rule 4.413(c)(2)(A) Facts Limiting the Defendant’s Culpability: There**  
23 **Was no “Great Provocation, Coercion, or Duress.”**  
24

1 A fact or circumstance not amounting to a defense, but reducing the defendant's  
2 culpability for the offense, includes:

3 The defendant participated in the crime under circumstances of *great provocation,*  
4 *coercion, or duress not amounting to a defense,* and the defendant has no recent record  
of committing crimes of violence;

5 (Cal Rule of Court 4.413(c)(2)(A))

6 The probation report listed this factor for the crime as "neutral" in the criteria for Rule  
7 4.414(a)(7) and listed in the comments section that it was "unknown" whether the crime was  
8 committed because of an unusual circumstance such as great provocation, which is unlikely to  
9 recur. This is a misstatement of the facts that were presented in the police report and at trial.

10 First, there is not one shred of credible evidence that the Defendant assaulted <sup>JANE DOE</sup> Doe out  
11 of any provocation, coercion or duress from anyone. Second, the Court has received  
12 information that the Defendant made another girl feel physically uncomfortable with his sexual  
13 advances a week prior to this assault at another party; clearly demonstrating that the  
14 Defendant's behavior was recurring. Third, the evidence is clear that on the night <sup>JANE DOE</sup> Doe  
15 was assaulted, he unsuccessfully tried to assault <sup>JANE DOE</sup> more than once without any  
16 provocation. Hence, the Defendant's past conduct at fraternity parties demonstrates a pattern  
17 of behavior, and not that he was provoked, or coerced to commit these crimes. Fourth, the  
18 Defendant's repeated attempts to claim <sup>JANE DOE</sup> Doe was awake and a willing participant were  
19 in direct contrast to the testimony of both Mr. Jonsson' and Mr. Arndt. It is impossible for  
20 someone who is unconscious and physically unresponsive to provoke, coerce or participate in  
21 any way in the acts the Defendant was observed doing. Mr. Jonsson's and Mr. Arndt's  
22 observations were corroborated by the fact that <sup>JANE DOE</sup> Doe was unconscious from the moment  
23 they saw her to minutes later when the first responders arrived, until well over three hours later.  
24

1 The Defendant's repeated claims to the contrary, both at trial and in his statement to probation,  
2 are not supported by the evidence, and demonstrate the depths of his denial and the great  
3 lengths he will go to avoid responsibility for his actions. The lack of ownership for his actions  
4 is not the character of someone who warrants a finding of "unusual circumstance." Thus, based  
5 on the above, it is unclear why the probation report does not list this factor in rule 4.414(a)(7)  
6 as unfavorable, as that is the only reasonable assessment based on the evidence. The Court  
7 should make a finding that the facts of this case do not support a finding of unusual  
8 circumstances of great provocation, coercion or duress not amounting to a defense pursuant to  
9 both 4.413(c)(2)(A) and 4.414(a)(7).

10  
11 **c. Defendant is youthful or aged, and has no significant record of prior  
criminal offenses. 4.413(c)(2)(C).**

12 The Defendant clearly is youthful and committed this crime while in his first year in  
13 college. It is also true that the Defendant had no prior criminal convictions. However, this  
14 Court should not rely on the Defendant's youth as a factor in finding "unusual circumstances,"  
15 because that would mean that any circumstance where someone is facing a probation  
16 ineligibility clause and they are youthful, they would be treated differently than others  
17 committing similar offenses. The reality of campus sexual assaults is that most of the people  
18 who commit these types of sexual assaults are typically in college and by definition "youthful."  
19 Therefore, in order to achieve the sentencing goal listed in 1170(a) as deterring others from  
20 committing the crime, the Court should not give a benefit to the Defendant for his youth. To do  
21 so would be sending the message that campus sexual assault defendants deserve special  
22 treatment, while campus sexual assault victims do not deserve the full protection of the law.

1           Rather the Court should rely on the totality of circumstances surrounding the  
2 Defendant's history to determine that he, unlike a typical high school student, competed  
3 competitively as a swimmer and therefore was more disciplined and had the ability to engage in  
4 goal oriented activities. He was able to get into Stanford's competitive swimming program and  
5 was succeeding in school. The same advantages that he was privileged to have should not be  
6 used to give him the benefit of a light sentence. Furthermore, while the Defendant did not have  
7 a significant record of prior criminal offenses, his pending criminal case when he committed  
8 this offense, which also involved drinking, should not be overlooked. Thus this is not a  
9 situation where the Defendant's youthful history only shows law abiding behavior.

10           Indeed, the consideration of Defendant's youthfulness and criminal history is  
11 appropriately applied in determining the appropriate prison term. As discussed below, it is  
12 after taking into account Defendant's age and criminal history that the People are seeking the  
13 midterm, as opposed to the aggravated, prison sentence.

14           **B. Circumstances in Aggravation Warranting a Prison Sentence**

15           **a. Rule 4.421(a)(3): The Victim was particularly vulnerable.**

16           In committing these crimes, the Defendant took advantage of a victim who was  
17 particularly vulnerable and could not protect herself. Adult sexual assault crimes are often  
18 committed against women who are highly intoxicated and unable to fend off the offender. In  
19 this way, alcohol is almost used a weapon, because the offender does not need to use force or  
20 fear to effectuate the sexual assault. In this case, <sup>JANE DOE1</sup> [REDACTED] Doe was extremely intoxicated, more  
21 than three times the legal limit, and she also was unconscious during the time the Defendant  
22 was on top of her sexually assaulting her. While this is technically an element of the crime, the  
23 fact that the victim was so severely intoxicated and unconscious for several hours after the  
24

1 assault was stopped, should be taken into consideration and treated as an aggravating factor  
2  **JANE DOE** Doe's level of intoxication was so grossly  
3 disproportionate to those cases that are typical for Penal Code 289(e) & PC 289(d) violations,  
4 that this Court should evaluate this case as more egregious that justifies a stiffer punishment.

5 **b. Rule 4.423: Defendant's prior conduct**

6 As mentioned above, the Defendant has no prior criminal convictions, but the probation  
7 report does not adequately depict the Defendant's prior criminal history. Though he does not  
8 have an extensive criminal history, he does have a prior arrest for drinking. In that case he was  
9 confronted by campus police who were investigating underage drinking in public, and he ran  
10 from them ignoring numerous police orders to stop. He willfully ran away and discarded  
11 evidence of the crime he was committing. His actions caused a police foot chase which  
12 involved at least two officers. When he was ultimately apprehended he also was in possession  
13 of a fake identification card. That case is pending in docket B1576943. This prior offense is  
14 not typically treated very seriously. However the nature of the offense as a drinking violation,  
15 coupled with the fact that the underlying facts support a violation of Penal Code section  
16 148(a)(1), are directly relevant to the Defendant's later conduct with respect to the sexual  
17 offenses in this case, as it shows the Defendant knows the nature of his actions, even when he  
18 has been drinking. Moreover, the fact that the Defendant had this pending case during the time  
19 of the current offense shows the Defendant's blatant disregard for problems associated with his  
20 drinking and decisions made while under the influence. Thus, the Court should take it into  
21 consideration in assessing the risk the Defendant poses to the community and the type of  
22 behavior the Defendant was engaged in. This prior arrest, coupled with the current case,  
23 demonstrate that in his short stint in the adult world, he is a continued threat to the community.  
24

1           C. Other Factors to Consider

- 2           a. Defendant has not taken responsibility for his actions or expressed true  
3           remorse for his conduct. He lied in the probation report and while  
4           testifying.

5           The Defendant testified at trial and claimed that he was engaged in consensual mutual  
6           behavior with  Jane Doe. He claimed that she "orgasmed" after a minute of digitally  
7           penetrating her, and that he checked with her to see if she liked it. He also claimed that he only  
8           stopped "hooking up" with her to throw up and he told her that he was going to throw up,  
9           despite never throwing up. He made other various claims about gaining permission from  
10          Jane Doe prior to engaging in sexual conduct with her body, which he had not previously  
11          reported to law enforcement. He claimed the only reason he ran was because Mr. Jonsson had  
12          grabbed him and became violent toward him, despite the fact that he previously told Detective  
13          Kim he did not run during this incident. He claims that when he left  Jane Doe she was fine and  
14          alert. After the Defendant testified at trial, the jurors heard his prior recorded statement with  
15          Detective Kim in its entirety. The jurors also heard from Mr. Jonsson, who again affirmed he  
16          only touched the Defendant after catching up to him and tripping him. If the jurors found the  
17          Defendant credible, they would not have convicted him as charged. They did not believe his  
18          story, because his story was outrageous and was not supported by the plethora of evidence  
19          against him. They did not believe him, because his story was a lie.

20          After the Defendant was convicted, he was given the opportunity to give a statement to the  
21          Probation Department. He gave the same story to the probation officer, that he testified to  
22          during trial; the same story that was not believed by the jurors. Astonishingly, he still maintains  
23          that this was a consensual encounter. He still insists that he only ran after Mr. Jonsson  
24          aggressively grabbed him, notwithstanding the fact that Mr. Jonsson and Mr. Ardnt both

1 testified more than once, that the Defendant ran away well before anyone made physical  
2 contact with him. He still maintains that ~~\_\_\_\_\_~~ <sup>JANE DOE</sup> Doe was a willing and capable participant,  
3 even though every piece of evidence points to the contrary. At the same time, the Probation  
4 Report inaccurately opines that the Defendant "expressed sincere remorse and empathy for the  
5 victim." It is baffling that the report does not reflect the disingenuousness of the Defendant's  
6 "expression" of remorse, while at the same time continuing to maintain his innocence.

7 The fact that the Defendant is continuing to perpetuate this lie is telling about his character.  
8 He is still in denial about his criminal culpability. He is still in denial about violating ~~\_\_\_\_\_~~ <sup>JANE DOE</sup>  
9 Doe's body and her right to choose with whom she engages in sexual activity. He is still in  
10 denial about the deliberate choices he made, which caused him to be in the situation he finds  
11 himself. In his statement to probation he seems to regret his choice, not because of how it  
12 resulted in a young woman to be sexually assaulted, but because it has so greatly affected his  
13 life as though he is the "victim" of "peer pressure." No one pressured him into sexually  
14 assaulting an unconscious female. He feigns remorse and claims to "feel bad" about ~~\_\_\_\_\_~~ <sup>JANE DOE</sup>  
15 Doe, but how does one feel bad about something they have yet to take full responsibility for?

16 ~~\_\_\_\_\_~~ <sup>JANE DOE</sup> Doe spoke to the probation officer and was clear and articulate about the impact this  
17 case had on her life, but at times empathetic towards rehabilitation. That empathy does not  
18 mean that she wants the Defendant to not spend a day in prison. When she spoke to the  
19 Probation Department, it is not clear that she understood her expressions of empathy would be  
20 used against her, and essentially would be providing a recommendation that the Defendant  
21 should get a "slap on the wrist." When the report was ultimately completed, a copy was  
22 forwarded to her, as is mandated by *Marsy's Law*, and she became upset that her words were  
23 used in a way to assume she did not want the Defendant to be punished for his actions. She  
24

1 further was shocked and outraged that the Defendant appears to be in complete denial about  
2 violating her. His words, reiterating the lies he told, re-victimized her and made her feel as  
3 though the Defendant truly does not appreciate the ramifications of his actions and what he did  
4 to her. In making its recommendation for a moderate county jail sentence, the Probation  
5 Report ironically states that, "Perhaps, just as importantly, but sometimes overlooked, are the  
6 victim's wishes as to the potential outcome." When <sup>JANE DOE1</sup> Doe spoke to the Probation  
7 Department, she had no idea that they were going to make a four to six month recommendation.  
8 That recommendation does not reflect her feelings on the outcome of this case, nor does it  
9 encapsulate the true impact the Defendant's actions have had on her and her family. (See  
10 Exhibit Sixteen: letters from <sup>JANE DOE1 JANE DOE2</sup> Doe, [REDACTED], [REDACTED]  
11 [REDACTED])

12 Additionally, the Defendant attempts to persuade the Court to allow him to remain on  
13 probation so that he can teach others from his actions. In his letter he states, "I know I can  
14 impact and change people's attitudes towards the culture surrounded by binge drinking and  
15 sexual promiscuity that protrudes through what people think are at the core of being a college  
16 student." He later states, "My poor decision making and excessive drinking hurt someone that  
17 night and I wish I could just talk it all back." How can someone help others, when they never  
18 acknowledge sexually assaulting a victim? How can someone help others when they blame  
19 drinking, peer pressure, and college culture on their actions, which were predatory and  
20 repulsive?

21 Finally, the Defendant in his statement to probation lied about ever using illicit drugs.  
22 He appears to make it seem as though his first time drinking was when he first went to Stanford  
23 University at a swim team party. He states, "Coming from a small town in Ohio, I had never  
24

1 really experienced celebrating or partying that involved alcohol.”<sup>4</sup> He further claims, he was an  
2 “inexperienced drinker and party goer.” (*Id.*) Not only did the evidence from his cell phone  
3 records, referenced above, clearly show he was already an experienced drinker in high school  
4 who regularly partied, he also testified that he was not so drunk that he did not know what he  
5 was doing and had the ability to choose to run when people caught him. The Defendant's words  
6 and actions contradict each other. Moreover, the cell phone evidence also showed that he had  
7 routinely engaged in smoking marijuana and experimenting with other drugs, specifically acid.  
8 Thus, he was not truthful with the probation department or this Court about his experience with  
9 drinking and partying, much like he was not truthful about taking advantage of ~~the~~ <sup>JANE DOE</sup> much  
10 like he was not truthful with the aftermath of being caught by the Good Samaritans.

#### 11 12 **IV. SENTENCING RECOMMENDATION**

13 The Defendant's maximum exposure is fourteen years, calculated as the maximum of  
14 eight years on Count Two, consecutive to the maximum of six years on Count One pursuant to  
15 California Penal Code section 667.6(c)<sup>5</sup>, for a total term of fourteen years. The maximum  
16 exposure is calculated by applying Count Three as PC 654 to Count Two. The People  
17 respectfully recommend the Defendant be sentenced to the midterm of Count Two, which is six  
18 years in prison, with the midterm of the remaining counts to be run concurrently to Count Two.

19  
20 <sup>4</sup> Quote taken from Defendant's letter attached to Presentence Probation Report.

21 <sup>5</sup> (c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each  
22 violation of an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion. A  
23 term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense  
24 specified in subdivision (e). If the term is imposed consecutively pursuant to this subdivision, it shall be served  
consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would  
have been released from imprisonment. The term shall not be included in any determination pursuant to Section  
1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the  
time the person otherwise would have been released from prison. 667.6(c)

1 This sentence is more reflective of the seriousness of the case, the procedural posture of the  
2 case, conviction post-trial and not an early plea, and it is more uniform with similar sexual  
3 assault cases in our County that result in convictions after trial.

4 The Probation recommendation of four to six months appears to be based on a one-  
5 sided consideration of solely the Defendant's interests. It reeks of the stigma that campus  
6 sexual assaults often receive by a small portion of the community. That stigma needs to be  
7 changed, so that defendants who perpetrate crimes on college students should not be treated  
8 specially, just because their victims were also drinking. The Probation recommendation treats  
9 this case as though defendants in campus sexual assault cases should receive a discount for  
10 their crimes merely because in the past, people would often turn a blind eye to these types of  
11 crimes or resort to victim bashing to justify their behavior. Many simple felonies that are not  
12 sexual assault cases receive a similar recommendation of four to six months as a benefit for an  
13 early plea. The Probation recommendation of four to six months in this case falls so short of the  
14 seriousness of this case that it should not even be objectively considered. Justice in this case  
15 means sending the Defendant to prison and holding him accountable for this very serious  
16 crime. By sentencing the Defendant to a substantial prison term, this Court will send a message  
17 to him, ~~██████~~ <sup>JANE DOE1</sup> Doe, and the greater community that sexually violating a woman is never  
18 acceptable, especially when she is intoxicated.

19 //

20 //

21 //

22 //

23 //

Count 1 PC 220: Assault with Intent to Commit Rape of an Intoxicated Person	2 - 4 - 6	4 years (midterm concurrent to Count 2)
Count 2 PC 289(e) Penetration of an Intoxicated Person	3 - 6 - 8	6 years (midterm)
Count 3 PC 289(d) Penetration of an Unconscious Person	3 - 6 - 8	6 years ( midterm concurrent and PC 654 to Count 2)
		<b>Total Term 6 years</b>

## V. CONCLUSION

In sentencing the Defendant the Court must be mindful of the purposes of sentencing. A sentence, among other things, should encourage the defendant to live a law abiding life and prevent him from committing future offenses. It should strive to protect the community and it should seek to deter others from committing similar acts. Many of the objectives of sentencing will not be served unless the Defendant is sentenced to a significant prison term beyond the mandatory minimum required by law, and definitely beyond that recommended by probation. This Court should sentence the Defendant to a midterm of six years in order to protect society, to punish the Defendant for his multiple sex crimes, to encourage him to lead a law abiding life in the future and to deter him and others from committing new and similar crimes.

1 Dated: May 27, 2016

2  
3 Respectfully submitted,

4 JEFFREY F. ROSEN

5 DISTRICT ATTORNEY

6  
7  
8 By 

9 ALALEH KIANERCI

10 Deputy District Attorney