

A letter in support of Judge Aaron Persky and Judicial Discretion

June 15, 2016

To the California Commission on Judicial Performance:

The judiciary plays a critical role in upholding the rule of law in our society and constitutional system. Judges have a duty to apply the law to the facts and evidence before them, regardless of public opinion or political pressure. In that role, judges provide an important check against other political forces. If judges had to fear direct, personal repercussions as a result of their decisions in individual cases, the rule of law would suffer. These principles date back to the founding of our nation and are a bedrock of the United States and California Constitutions.

In this case, Santa Clara County Judge Aaron Persky sentenced Brock Turner to a grant of felony probation with six months county jail after a jury convicted Mr. Turner of three sexual assault crimes. In response to the sentence, there have been several petitions and demands to remove Judge Persky from the bench. We, the undersigned, stand in support of Judge Persky and the exercise of judicial discretion.

After a jury found Mr. Turner guilty, the Santa Clara County Probation Department submitted a probation report along with a recommendation about an appropriate sentence to the Judge. This report included a summary of the offense, an interview with the victim, an interview and analysis of the offender and then a breakdown of statutory aggravating and mitigating factors and sentencing criteria. The probation department recommended, based on all of the circumstances and factors of the case, that Mr. Turner receive a county jail sentence along with probation supervision. Judge Persky applied the applicable laws, reviewed the right circumstances and factors that he was required to review, did not abuse his legal authority and utilized the discretion afforded to him to render a reasonable, fair sentence within the confines of the law and in line with the probation recommendation.

In view of the importance of judicial discretion, we oppose the present attempts to remove Judge Persky from the bench based on his sentence in the Brock Turner case. We have seen no credible assertions that in issuing the sentence, Judge Persky violated the law or his ethical obligations or acted in bad faith. Nor are we aware of any other complaints or allegations of impropriety against Judge Persky during his 13 years on the bench. Seeking to punish a judge under these circumstances presents a threat to judicial independence.

Moreover, the efforts to remove Judge Persky may have unintended, unfortunate consequences. Rather than using a robotic, one size fits all punishment scheme, we want judges, like Judge Persky, to engage in thoughtful, case by case, individualized determinations of the appropriate sentence for a particular crime and particular offender. We want the humanity of all people, regardless of background, to be recognized in

sentencing. However, when we as a community reprimand or condemn a judge for engaging in such a holistic analysis and for exercising discretion, such efforts can have a chilling effect on judicial courage and compassion. The punishment or removal of Judge Persky in response to his exercise of discretion could lead to policies that limit that discretion, will deter other judges from extending mercy and instead encourage them to issue unfairly harsh sentences for fear of reprisal. We fear that this shift will disproportionately impact the underprivileged and minorities in our communities and perpetuate mass incarceration.

For these reasons, we stand in support of Judge Persky and the exercise of judicial discretion.

Sincerely,

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