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Are We Contradicting Ourselves?: How the Stanford Rape Case Illustrates the Conflict Between Mandatory Sentencing and Judicial Discretion

Kristine Ruhl

When 21-year-old Brock Turner (hereinafter “Turner”), a former Stanford University swimmer, was sentenced to a mere six months in jail after being convicted of raping an unconscious woman behind a dumpster, the nation was outraged and bewildered by America’s seemingly unfair criminal justice system.¹ California’s legislature responded to thousands of angry Americans by enacting a new law imposing mandatory sentences for convicted rapists.² The new law clashes with the recent federal petitions calling for fewer mandatory sentences and increased judicial discretion.³ Turner’s case illustrates the conflicts within our criminal justice system and begs the question of whether the American criminal justice system is the best mechanism to promote social justice.

BACKGROUND AND FACTS OF TURNER’S CASE

On January 18, 2015, Turner met a young woman at a fraternity party on Stanford’s campus, led her up a hill and behind a dumpster, and digitally penetrated her while she was unconscious.⁴ Eventually, two bystanders appeared at the scene and began to intervene, ultimately propelling Turner to flee.⁵ Although both Turner and his victim were heavily intoxicated, Turner’s victim remained unconscious for three hours after the paramedics began giving her treatment.⁶

¹ *Brock Turner Leaves Jail after Serving Half a 6-Month Sentence for Sex Assault*, CHI TRIB (Sept. 3, 2016), <http://www.chicagotribune.com/news/nationworld/ct-brock-turner-stanford-sex-assault-jail-release-20160902-story.html>.

² Niraj Chokshi, *As Brock Turner is Set to be Freed Friday, California Bill Aims for Harsher Penalties for Sexual Assault*, N.Y. TIMES (Aug. 31, 2016), <http://www.nytimes.com/2016/09/01/us/as-brock-turner-is-set-to-be-freed-friday-california-bill-aims-for-harsher-penalties-for-sexual-assault.html>.

³ *Holding Sentencing Reform Hostage*, N.Y. TIMES (Feb. 6, 2016), <http://www.nytimes.com/2016/02/07/opinion/sunday/holding-sentencing-reform-hostage.html>.

⁴ Thomas Fuller, *Court Papers give Insight into Stanford Sex Assault*, N.Y. TIMES (June 12, 2016), <http://www.nytimes.com/2016/06/13/us/brock-turner-stanford-rape.html>.

⁵ Id.

⁶ Id.

Turner was charged and convicted by a jury of three felony sexual assault counts.⁷ Although prosecutors argued that Turner should serve six years in prison, Santa Clara County Judge Aaron Persky sentenced Turner to only six months, citing “extraordinary circumstances” due to Turner’s youth and lack of prior criminal record.⁸ The light sentence sparked enormous outrage in citizens everywhere, and even led to a campaign to recall Judge Persky.⁹ Turner’s case also propelled many citizens and lawmakers to campaign for a new state law that would require all convicted rapists to serve jail time.¹⁰ Mandatory sentencing has historically been controversial, leading some critics to question whether creating new laws is the best method to combat injustice.¹¹

A BRIEF HISTORY OF MANDATORY SENTENCING

Mandatory sentencing laws initially gained popularity in the 1950s for the purpose of punishing drug offenders.¹² Over the following three decades, many critics scrutinized the effectiveness of mandatory sentences, as they appeared to have done little to deter drug use in America.¹³ In 1970, Congress voted to repeal the majority of mandatory minimum sentencing laws, stating that the laws “remove[d] a great deal of the court’s discretion.”¹⁴ However, with the introduction of crack cocaine in the 1980s came increased drug use and a re-implementation of mandatory minimum sentences for drug-users in hopes of deterring drug-related crime.¹⁵

⁷ *Brock Turner Leaves Jail*, *supra* note 1.

⁸ *Id.*

⁹ *Id.* (stating that Persky eventually voluntarily removed himself from hearing criminal cases).

¹⁰ *Id.*

¹¹ Katie Rose Guest Pryal, *Brock Turner Proves America’s Justice System is Broken—But Not How You Think*, QUARTZ (June 10, 2016), <http://qz.com/703489/brock-turner-proves-america-justice-system-is-broken-but-not-how-you-think/>.

¹² Maggie E. Harris, *The Cost of Mandatory Minimum Sentences*, 14 FLA. COASTAL L. REV. 419, 424 (2013).

¹³ *Id.*

¹⁴ *Id.* at 425.

¹⁵ *Id.*; see also Christopher Mascharka, *Mandatory Minimum Sentences: Exemplifying the Law of Unintended Consequences*, 28 FLA. COASTAL L. REV. 935, 941 (2001) (stating that the reasoning behind the reversion back to mandatory minimums was to avoid lenient sentences for serious crimes by implementing a system where “similar offenders, committing similar offenses, would be sentenced in a similar fashion.”)

Mandatory sentencing provisions have been implemented at both the state and federal levels concerning various offenses.¹⁶ Although federal and state mandatory sentencing provisions differ in complexity, they both have the same objective of imposing inflexible prison sentences for specific crimes, with hopes that the harsh sentences will result in crime deterrence.¹⁷ Mandatory sentences strip judges' abilities to consider surrounding facts, such as the offender's background or likelihood of rehabilitation.¹⁸ As a result, harsh mandatory sentences partially explain why the United States has the highest incarceration rate in the world today.¹⁹

ASSEMBLY BILL 2888

On September 30, 2016, California Governor Jerry Brown signed Assembly Bill 2888 into law (hereinafter "the law").²⁰ Brown remarked that although he "opposed adding more mandatory sentences," he decided to sign the bill because "it brings a measure of parity to sentencing for criminal acts that are substantially similar."²¹ While the previous law only required violent offenders to serve prison time, the new law imposed a mandatory three-year minimum incarceration penalty for anyone convicted of penetrating an unconscious person or a person who was too intoxicated to provide consent.²² Thus, the law equalized the punishments for violent and non-violent offenders who assault conscious or unconscious persons.²³ Mandating prison time for these

¹⁶ Harris, *supra* note 12, at 426; *see also* Mascharka, *supra* note 15, at 940 (stating because state procedures and statutes differ between jurisdictions, the stringency of the mandatory sentencing guidelines, as well as the types of crimes that impose mandatory sentences, vary between states).

¹⁷ FAMILIES AGAINST MANDATORY MINIMUMS, FAMM PRIMER ON MANDATORY SENTENCES 2, available at <http://www.prisonpolicy.org/scans/famm/Primer.pdf> (last visited Nov. 12, 2016).

¹⁸ *Id.* at 3.

¹⁹ Harris, *supra* note 12, at 420 (at 422 stating mandatory sentences often lead to forced incarceration of nonviolent offenders or those who could more reasonably be punished through lighter or treatment-based punishments); *See also* FAMILIES AGAINST MANDATORY MINIMUMS, *supra* note 17 at 3 (noting California's "three strikes law," and stating that it "forces judges to send non-violent criminals and drug addicts to prison for decades even if cheaper and more effective options like substance abuse treatment are needed").

²⁰ Tracey Kaplan & Jessica Calefati, *Governor Signs Mandatory Prison Bill for Brock Turner-Type Assault*, THE MERCURY NEWS, (Oct. 1, 2016), <http://www.mercurynews.com/2016/09/30/governor-signs-mandatory-prison-bill-for-brock-turner-type-sex-assault/>.

²¹ *Id.*

²² Sarah Larimer, *In Aftermath of Brock Turner Case, California's Governor Signs Sex Crime Bill*, WASH. POST (Sept. 30, 2016),

²³ *Id.*

offenders removed judicial discretion, which many advocates saw as a vindication for Judge Persky's lenient sentence in Turner's case.²⁴ Other advocates argued that the law would encourage more victims to come forward because they would have assurance that their assaulters would receive appropriate punishments.²⁵

Although the law provided some relief to the countless angry citizens who demanded legislative action, many critics have expressed their concerns that the mandatory sentencing provision may ultimately do more harm than good.²⁶ Some of these concerns include possible discrimination against minority defendants and increased prosecutorial discretion.²⁷ These concerns are hardly new ones, and have contributed to the federal government's current petitions to reduce mandatory sentencing requirements.²⁸ This national and state conflict between limiting and expanding judicial discretion has led to much confusion and concern over the proper way to punish criminals of all types.²⁹

THE SENTENCING REFORM AND CORRECTIONS ACT

The Sentencing Reform and Corrections Act (hereinafter "the Act") is a bipartisan bill introduced in the U.S. Senate on October 1, 2015.³⁰ The Act addresses criminal justice reform by reducing mandatory minimum sentences for certain federal drug violations, as well as promoting re-entry into society for criminals nearing the end of their sentences.³¹ The Act also contains a "safety valve" exception, allowing non-violent drug offenders with non-violent criminal histories to avoid mandatory minimums.³² In addition to limiting

²⁴ Sonam Sheth, *California Bill Closes Major Sexual-Assault Loophole Days before Brock Turner's Release*, BUS. INSIDER (Aug. 31, 2016), <http://www.businessinsider.com/california-bill-closes-major-sexual-assault-loophole-before-brock-turners-release-2016-8>.

²⁵ Ryan Lasker, *If This New California Bill Were Law, Brock Turner Would Still Be In Jail*, USA TODAY, (Sep. 2, 2016), <http://college.usatoday.com/2016/09/02/if-this-new-california-bill-were-law-brock-turner-would-still-be-in-jail/>.

²⁶ Pryal, *supra* note 11.

²⁷ Alexandra Brodsky & Claire Simonich, *Helping Rape Victims after the Brock Turner Case*, N.Y. TIMES, <http://www.nytimes.com/2016/08/11/opinion/rape-victims-deserve-better-mandatory-minimums-wont-help.html>.

²⁸ Nathaniel Baptiste, *Lawmakers Push for Sentencing Reform Ahead of Elections*, A.P., <http://prospect.org/article/lawmakers-push-sentencing-reform-ahead-elections>

²⁹ Brodsky & Simonich, *supra* note 27.

³⁰ Sentencing Reform and Corrections Act of 2015 114th Cong. (2015).

³¹ Baptiste, *supra* note 28 (stating that the Act developed as a response to the mandatory minimums that arose from the "War on Drugs" in the 1980s).

³² Nicky Woolf,

mandatory sentences, the Act also imposes two more mandatory sentences for those committing interstate domestic violence resulting in death and those criminals who provide weapons to terrorists.³³

The Act has been met with both praise from those supporting judicial discretion, and hostility by some conservative politicians who fear that it is too lenient.³⁴ Republican Senator Tom Cotton expressed his concerns over the Act's potential to increase crime rates, stating "you cannot decrease the severity and certainty of sentences without increasing crime."³⁵ Proponents of the Act argue that it would restore federal judges' discretion to impose sentences that are more tailored to the individual.³⁶ The lobby for imprisoned criminals, "Families Against Mandatory Minimums," favors greater judicial discretion because judges, as opposed to legislatures, have a more detailed understanding of the circumstances surrounding each individual case.³⁷ Additionally, U.S. District Judge Joyce Hens Green, stated, "[Y]ou cannot dispense equal justice by playing a numbers game. Judgment and discretion and common sense are essential."³⁸

WAS A MANDATORY SENTENCING LAW THE RIGHT RESPONSE TO THE TURNER CASE?

Although Judge Persky's decision was met with extreme hostility, his sentencing ruling was a model for what the Act's proponents suggest.³⁹ The reasoning behind judicial discretion is that judges have an "intimate and impartial understanding of each case, and have the authority to weigh all the evidence presented in imparting sentences."⁴⁰ Judge Persky weighed all the surrounding factors of Turner's case, evaluated if incarceration was really a remedy for Turner specifically, and ultimately found agreed with the probation office's recom-

³³ Id.

³⁴ Seung Min Kim, *Cotton Leads Effort to Sink Sentencing Overhaul*, POLITICO (Jan. 25, 2016), <http://www.politico.com/story/2016/01/criminal-justice-tom-cotton-218121>

³⁵ Julia Manchester, *Senator: 'We have an Under-Incarceration Problem,'* CNN (May 20, 2016), <http://www.cnn.com/2016/05/20/politics/tom-cotton-under-incarceration-problem-prison-reform/>.

³⁶ Thomas R. Ascik, *Stanford Case Shows Danger of Judicial Discretion*, REAL CLEAR POLICY (Sept. 1, 2016), http://www.realclearpolicy.com/blog/2016/09/01/stanford_case_shows_danger_of_judicial_discretion_1705.html.

³⁷ Id.

³⁸ FAMILIES AGAINST MANDATORY MINIMUMS, *supra* note 17, at 5.

³⁹ Ascik, *supra* note 36.

⁴⁰ Id.

mendations for a six month prison sentence.⁴¹ Although many disagreed with Judge Persky's reasoning, he was operating under the judicial discretion logic which proponents of the Act advocate.⁴²

Without the benefit of judicial discretion, the mandatory sentencing law may perpetuate disproportionate sentencing for underprivileged defendants despite its goal of disparity reduction.⁴³ By shifting authority from judges to prosecutors, mandatory sentencing laws facilitate prosecutors' charge-selection, leading to greater pressure on defendants to accept plea deals.⁴⁴ Because minorities are more likely to be arrested, they are more likely to be convicted of crimes holding mandatory minimums without the advantage of judicial discretion and consideration of circumstantial evidence.⁴⁵ As a result, proponents of mandatory minimums may in fact perpetuate the very phenomenon they seek to halt.⁴⁶

While the potential danger of discrimination against defendants in the criminal justice system is a very real concern, some victim advocates have expressed fears that eliminating mandatory sentencing for the purpose of alleviating potential discrimination will result in greater harm to the victims.⁴⁷ Sarah Layden, the Director of Advocacy Services at Rape Victims Advocates in Chicago, has concerns over the consequences of letting perpetrators off too easy for serious crimes such as rape.⁴⁸ Layden compared a system with no mandatory minimums for rape to the phenomenon that the Illinois criminal justice system has experienced in the domestic violence sphere.⁴⁹ Layden stated that because the Illinois laws against domestic violence are more lax, charging a defendant

⁴¹ Sam Levin, *Stanford Sexual Assault: Read the Full Text of The Judge's Controversial Decision*, GUARDIAN (June 14, 2016), <https://www.theguardian.com/us-news/2016/jun/14/stanford-sexual-assault-read-sentence-judge-aaron-persky> (stating that Judge Persky reviewed the 39 letters that Turner's supporters wrote, both Turner and the victim provided a statement, and the California probation office submitted recommendations for a sentence of six months in prison based on the state's sentencing guidelines. Persky also took into account factors such as the defendant's age, lack of prior criminal record, and intoxication level at the time of the assault).

⁴² Ascik, *supra* note 36.

⁴³ Brodsky & Simonich, *supra* note 27.

⁴⁴ *Id.* See also Rachel Marshall, *Get Angry About Brock Turner's Crime. But Don't Use It As a Reason to Pass Bad Laws*, VOX (Sept. 9, 2016), <http://www.vox.com/2016/9/9/12854930/brock-turner-jacob-wetterling>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Telephone interview with Sarah Layden, Director of Advocacy Services, Rape Victim Advocates (Oct. 26, 2016).

⁴⁸ *Id.*

⁴⁹ *Id.*

with felony domestic violence requires that the defendant must have “almost committed attempted murder against someone” in some cases.⁵⁰ Layden further noted that the debate surrounding mandatory sentences is difficult, and sometimes inconsistent, because “you want the system to respond effectively, but you also want people to be held accountable in a just way.”⁵¹ However, as an advocate for rape victims, Layden fears situations such as Turner’s where convicted rapists receive light punishments because the injustice falls on the victims’ shoulders.⁵²

In the wake of cases with strong public reactions such as Turner’s, it is often easy to believe that swift legislative action is the proper remedy to a mismanagement of justice. However, it is necessary to look past the impassioned public outcry for legislative action and evaluate whether mandatory minimums are the best way to provide both justice to victims, as well as fairness to the accused. In the current climate of the American judicial system, depending on the criminal justice system for justice is not the answer.⁵³ While many believe mandatory minimums remove judicial bias, they do not remove the inherent bias in the criminal justice system itself.⁵⁴ Creating over-broad policies only perpetuates discrimination and does little in the way of deterring crime.⁵⁵ Perhaps the most effective method of helping victims of sexual violence is for governmental leaders to aim their targets outside the criminal justice system, and work to provide responses that address victims’ needs with more than a strictly retributivist mindset.⁵⁶ While mandatory minimums appear to be an adequate quick fix to the criminal justice system’s shortcomings, state governments should take time to evaluate the dangers of mandatory minimum statutes, and should look to recent federal bills, such as the Sentencing Reform and Corrections Act, for guidance.⁵⁷

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Brodsky & Simonich, *supra* note 27.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Sentencing Reform and Corrections Act of 2015 114th Cong. (2015).