Victim impact statements in the light of the Stanford rape case

The impact statement read to the court at sentencing by the victim in what has become known as the 'Stanford case' (**People of the State of California v. Brock Allen Turner** (2015)) has been reported and published around the world. In the statement the victim eloquently articulated the devastating impact not only of the offence itself but also as to how various aspects of the criminal justice system and trial process combined to amplify the harm. The text is well worth reading in full (link here) by all those working in criminal law and is more powerful than any commentary about it could ever be.

This article looks at the background to the statement and how it is underpinned by rights guaranteed under Californian law, then considers how this compares to UK criminal law. Would and should such a statement be allowed here?

The background to the impact statement

The case of **People of the State of California v. Brock Allen Turner (2015)** concerned a former Stanford University swimmer who sexually assaulted an unconscious woman, a former student, in January 2015. Two Stanford University graduate students biking across campus spotted Turner thrusting his body on top of the unconscious, half-naked victim behind a dumpster. Turner was subsequently found guilty by a California jury of three counts of sexual assault. He faced a maximum of 14 years in state prison but was ultimately sentenced to six months in jail and probation. There has subsequently been wide-scale condemnation of the leniency of the sentence.

As part of the sentencing process, the victim (whose name rightly remained anonymous) read her statement in court directly to the defendant detailing the impact of the offence on her; from the immediate aftermath of learning that she had been assaulted whilst unconscious, to the trial itself, in which the defence lawyers argued that she had consented.

This statement has become a central part of a campaign to have the sentence re-evaluated and for another judge to be assigned to the case in place of **Santa Clara County Superior Court Judge Aaron Persky** who conducted the trial and passed sentence. Indeed, a petition to have him replaced now has over 1 million signatures.

This impact statement itself is having a cultural impact over and above the immediate case. CNN news anchor **Ashleigh Banfield**, a journalist and host of the CNN show Legal View, read the entire statement on air. Other commentators have written articles such as Mel Robbins' 'Show rape victim's letter to your sons' (link here) suggesting that it should be read by men as a way of educating them about the prolonged and shattering effects of sexual offences on their victims. The statement can also be viewed as a powerful means of empowering young women by letting them know that they can overcome the ardours of the criminal justice system and that they will be supported if they do report sexual offences.

The impact statement

The statement is addressed to the defendant Turner directly and begins with the devastating:

> "You don't know me, but you've been inside me, and that's why we're here today.

After describing an ordinary evening at home prior to the offence and the decision to attend a party, the statement recounted the horror and confusion in the immediate aftermath of the attack;

> "The next thing I remember I was in a gurney in a hallway. I had dried blood and bandages on the backs of my hands and elbow. I thought maybe I had fallen and was in an admin office on campus. I was very calm and

> wondering where my sister was. A deputy explained I had been assaulted. I still remained calm, assured he was speaking to the wrong person…"

The statement then described with chilling detail the experience of being processed by police as a rape victim:

> "I was asked to sign papers that said "Rape Victim" and I thought something has really happened. My clothes were confiscated and I stood naked while the nurses held a ruler to various abrasions on my body and photographed them…After a few hours of this, they let me shower. I stood there examining my body beneath the stream of water and decided, I don't want my body anymore. I was terrified of it, I didn't know what had been in it, if it had been contaminated, who had touched it. I wanted to take off my body like a jacket and leave it at the hospital with everything else."

The victim recounted the difficulty in telling family members and friends about what had happened:

> "I was not ready to tell my boyfriend or parents that actually, I may have been raped behind a dumpster, but I don't know by who or when or how. If I told them, I would see the fear on their faces, and mine would multiply by tenfold, so instead I pretended the whole thing wasn't real.

The statement then recalled the experience of becoming aware that the attack was now in the public domain, and that her attacker was denying the offence:

> "One day, I was at work, scrolling through the news on my phone, and came across an article… This was how I learned what happened to me, sitting at my desk reading the news at work. I learned what happened to me the same time everyone else in the world learned what happened to me…

> …I kept reading. In the next paragraph, I read something that I will never forgive I read that according to him, I liked it. I liked it. Again, I do not have words for these feelings".

The next part described how hard it was to disclose what had happened to family members:

> "The night the news came out I sat my parents down and told them that I had been assaulted, to not look at the news because it's upsetting, just know that I'm okay, I'm right here, and I'm okay. But halfway through telling them, my mom had to hold me because I could no longer stand up".

The next section concerned how the victim came to be aware that Turner had hired lawyers, expert witnesses and private investigators to probe her personal life to find evidence to use against her at trial:

> "I was not only told that I was assaulted, I was told that because I couldn't remember, I technically could not prove it was unwanted. And that distorted me, damaged me, almost broke me. It is the saddest type of confusion to be told I was assaulted and nearly raped, blatantly out in the open, but we don't know if it counts as assault yet. I had to fight for an entire year to make it clear that there was something wrong with this situation."

The statement then described the difficulty of dealing with expectations concerning the criminal case:

> "When I was told to be prepared in case we didn't win, I said, I can't prepare for that…Worst of all, I was warned, because he now knows you don't remember, he is going to get to write the script. He can say whatever he wants and no one can contest it. I had no power, I had no voice, I was defenceless… I was made to believe that perhaps, I am not enough to win this…. That helplessness was traumatizing".

The statement then considered the approach taken at trial by Turner's lawyers, and the harm caused by their strategy. Despite this the consistent emphasis was that it is the defendant himself who has the ultimate responsibility for the approach taken by his lawyer at trial:

> "…Instead of his attorney saying, Did you notice any abrasions? He said, You didn't notice any abrasions, right? This was a game of strategy, as if I could be tricked out of my own worth. The sexual assault had been so clear, but instead, here I was at the trial, answering questions like:
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> *How old are you? How much do you weigh? What did you eat that day? Well what did you have for dinner? Who made dinner? Did you drink with dinner? No, not even water? When did you drink? How much did you drink? What container did you drink out of? Who gave you the drink? How much do you usually drink? Who dropped you off at this party? At what time? But where exactly? What were you wearing? Why were you going to this party? What' d you do when you got there? Are you sure you did that? But what time did you do that? What does this text mean? Who were you texting? When did you urinate? Where did you urinate? With whom did you urinate outside? Was your phone on silent when your sister called? Do you remember silencing it? Really because on page 53 I'd like to point out that you said it was set to ring. Did you drink in college? You said you were a party animal? How many times did you black out? Did you party at frats? Are you serious with your boyfriend? Are you sexually active with him? When did you start dating? Would you ever cheat? Do you have a history of cheating? What do you mean when you said you wanted to reward him? Do you remember what time you woke up? Were you wearing your cardigan? What color was your cardigan? Do you remember any more from that night? No? Okay, well, we'll let Brock fill it in.*
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> I was pummelled with narrowed, pointed questions that dissected my personal life, love life, past life, family life, inane questions, accumulating trivial details…After a physical assault, I was assaulted with questions

> designed to attack me, to say see, her facts don't line up, she's out of her mind, she's practically an alcoholic…"

The next part described the effect of Turner asserting consent when giving evidence as part of the defence case:

> "And then it came time for him to testify and I learned what it meant to be revictimized…To sit under oath and inform all of us, that yes I wanted it, yes I permitted it, and that you are the true victim attacked by Swedes for reasons unknown to you is appalling, is demented, is selfish, is damaging. It is enough to be suffering. It is another thing to have someone ruthlessly working to diminish the gravity of validity of this suffering".
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> "…To listen to your attorney attempt to paint a picture of me, the face of girls gone wild, as if somehow that would make it so that I had this coming for me… To point out that in the voicemail, I said I would reward my boyfriend and we all know what I was thinking. I assure you my rewards program is non-transferable, especially to any nameless man that approaches me."
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> "He has done irreversible damage to me and my family during the trial and we have sat silently, listening to him shape the evening".

The victim then responded to the letter of mitigation presented by Turner as part of the sentencing process, and provided a scathing evaluation of his various attempts to minimise the offences;

> "…Regretting drinking is not the same as regretting sexual assault. We were both drunk, the difference is I did not take off your pants and underwear, touch you inappropriately, and run away. That's the difference".

> "Again, you were not wrong for drinking. Everyone around you was not sexually assaulting me. You were wrong for doing what nobody else was doing, which was pushing your erect dick in your pants against my naked, defenseless body…Why am I still explaining this?
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> Your attorney is not your scapegoat, he represents you...
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> **Lastly you said, I want to show people that one night of drinking can ruin a life** (a reference to Turner's letter).
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> A life, one life, yours, you forgot about mine. Let me rephrase for you, I want to show people that one night of drinking can ruin two lives. You and me. You are the cause, I am the effect…Your damage was concrete; stripped of titles, degrees, enrolment. My damage was internal, unseen, I carry it with me. You took away my worth, my privacy, my energy, my time, my safety, my intimacy, my confidence, my own voice, until today".

The victim then described the difficulty of seeking to re-establish her identity outside of the shackles of victimhood

> "You made me a victim. In newspapers my name was "unconscious intoxicated woman", ten syllables, and nothing more than that. For a while, I believed that that was all I was. I had to force myself to relearn my real name, my identity. To relearn that this is not all that I am….
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> My independence, natural joy, gentleness, and steady lifestyle I had been enjoying became distorted beyond recognition. I became closed off, angry, self-depreciating, tired, irritable, empty. The isolation at times was unbearable….
>
> You have no idea how hard I have worked to rebuild parts of me that are still weak…."

The statement recounted the effect on her of the trial process:

> "At the end of the hearing, the trial, I was too tired to speak. I would leave drained, silent. I would go home turn off my phone and for days I would not speak. You bought me a ticket to a planet where I lived by myself. Every time a new article come out, I lived with the paranoia that my entire hometown would find out and know me as the girl who got assaulted. I didn't want anyone's pity and am still learning to accept victim as part of my identity."

The last part of the statement included observations about the sentencing itself and a response to the probation officer's report, presenting a sharp critique of inadequacies in the report and including comments on the ultimate sentence recommended in the report:

> "When I read the probation officer's report, I was in disbelief, consumed by anger which eventually quieted down to profound sadness. My statements have been slimmed down to distortion and taken out of context. I fought hard during this trial and will not have the outcome minimized by a probation officer who attempted to evaluate my current state and my wishes in a fifteen minute conversation, the majority of which was spent answering questions I had about the legal system. The context is also important. Brock had yet to issue a statement, and I had not read his remarks".
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> I told the probation officer I do not want Brock to rot away in prison. I did not say he does not deserve to be behind bars. The probation officer's recommendation of a year or less in county jail is a soft timeout, a mockery of the seriousness of his assaults, an insult to me and all women. It gives the message that a stranger can be inside you without proper consent and he will receive less than what has been defined as the minimum sentence…

> The probation officer factored in that the defendant is youthful and has no prior convictions. In my opinion, he is old enough to know what he did was wrong. When you are eighteen in this country you can go to war. When you are nineteen, you are old enough to pay the consequences for attempting to rape someone. He is young, but he is old enough to know better…
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> The Probation Officer has stated that this case, when compared to other crimes of similar nature, may be considered less serious due to the defendant's level of intoxication. It felt serious. That's all I'm going to say.
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> He is a lifetime sex registrant. That doesn't expire. Just like what he did to me doesn't expire, doesn't just go away after a set number of years. It stays with me, it's part of my identity, it has forever changed the way I carry myself, the way I live the rest of my life."

The address then turned to a deeply moving thank you to some of the people who had helped or who had made the process endurable, including the two men who were cycling on the campus and who rescued her at the time of the attack, some of the police officers, and the prosecution lawyers;

> "Most importantly, thank you to the two men who saved me, who I have yet to meet. I sleep with two bicycles that I drew taped above my bed to remind myself there are heroes in this story. That we are looking out for one another. To have known all of these people, to have felt their protection and love, is something I will never forget.

The statement ended with a powerful invocation to other women who may be in similar situations:

> "And finally, to girls everywhere, I am with you. On nights when you feel alone, I am with you. When people doubt you or dismiss you, I am with you. I fought everyday for you. So never stop fighting, I believe you. As the

author Anne Lamott once wrote, "Lighthouses don't go running all over an island looking for boats to save they just stand there shining." Although I can't save every boat, I hope that by speaking today, you absorbed a small amount of light, a small knowing that you can't be silenced, a small satisfaction that justice was served, a small assurance that we are getting somewhere, and a big, big knowing that you are important, unquestionably, you are untouchable, you are beautiful, you are to be valued, respected, undeniably, every minute of every day, you are powerful and nobody can take that away from you. To girls everywhere, I am with you. Thank you."

The legal background to the statement

Under the law of California victims have the right to be heard in proceedings, as enshrined in what is known as '**Marsy's Law'**. This came into effect in 2008 and significantly expanded the rights of victims in California. Under Marsy's Law, the **California Constitution Article 1 Section 28**, section (b) now provides victims with the rights including;

1. To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

2. To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

3. To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

It is therefore clear that the victim in the Stanford case had the right to be heard at various stages of the criminal justice process, and indeed exercised that right at the

sentencing hearing. Equally, she had access to and was able to comment on the findings and recommendation as to sentence of the probation report, and to meet the probation officer.

It is also clear that, notwithstanding those positive rights, other applicable provisions of the trial process meant that it was still a very arduous ordeal for the victim. The impact statement makes that all too clear.

Victim impact statements within United Kingdom law

Statements from victims about the impact of the offences are not unusual in UK criminal jurisprudence, although there are significant differences to the US approach.

The starting point is the **Code of Practice for Victims of Crime** published by the Ministry of Justice which is was brought about pursuant to section 33 of the **Domestic Violence, Crime and Victims Act 2004** and which sets out basic expectations for how victims should be treated. Statements are referred to as Victim Personal Statements and are referred to at paragraph 1.12:

> "A Victim Personal Statement (VPS) gives you an opportunity to explain in your own words how a crime has affected you, whether physically, emotionally, financially or in any other way…
>
> The VPS gives you a voice in the criminal justice process.
>
> However you may not express your opinion on the sentence or punishment the suspect should receive as this is for the court to decide".

It is clear from this that the comments expressed by the victim in the Stanford case about the inadequacy of the sentence suggested in the probation report would not be allowable in the UK.

In terms of how the VPS is presented, paragraph 1.13 states:

> "You are entitled to be offered the opportunity to make a VPS at the same time as giving a witness statement about what happened to the police about a crime. When making your VPS, you are entitled to say whether or not you would like to have your VPS read aloud or played (where recorded), in court if a suspect is found guilty. You are also entitled to say whether you would like to read your VPS aloud yourself or to have it read aloud by someone else (for example, a family member or the CPS advocate)".

A victim therefore *may* be entitled to read their own statement. The only right as such, however, is to say whether or not you would like to read the VPS.

The final say about how the VPS is delivered is left as a decision for the court not the victim:

> "The decision as to who reads out the VPS is ultimately for the court, but it will always take into account your preferences, and follow them unless there is good reason not to do so."

So it is possible that, had the Stanford case been in the UK, the sentencing judge could have refused to allow a victim to read their own VPS. Equally, a judge here may be able to refuse to allow certain parts to be read out.

Further, unlike the US model, there is no right for a victim in the UK to see a Probation Pre-Sentence Report prior to sentencing. Thus victims may be denied the opportunity to see what it is a defendant is saying about them or the offence

itself, and making the kind of points in response that the Stanford victim did so eloquently and to such powerful effect.

The Criminal Practise Directions 2013 set further rules as to how victim impact material should be used in court, as follows:

> "**F.1** Victims of crime are invited to make a statement, known as a Victim Personal Statement ('VPS'). The statement gives victims a formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection...
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> **F.2** When a police officer takes a statement from a victim, the victim should be told about the scheme and given the chance to make a VPS. The decision about whether or not to make a VPS is entirely a matter for the victim; no pressure should be brought to bear on their decision, and no conclusion should be drawn if they choose not to make such a statement. A VPS or an updated VPS may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not normally be appropriate for a VPS to be made after the disposal of the case; there may be rare occasions between sentence and appeal when an update to the VPS may be necessary, for example, when the victim was injured and the final prognosis was not available at the date of sentence. However, VPS after disposal should be confined to presenting up to date factual material, such as medical information, and should be used sparingly.
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> **F.3** If the court is presented with a VPS the following approach, subject to the further guidance given by the Court of Appeal in **R v Perkins; Bennett; Hall [2013] EWCA Crim 323, [2013] Crim L.R. 533,** should be adopted:

a) The VPS and any evidence in support should be considered and taken into account by the court, prior to passing sentence.

b) Evidence of the effects of an offence on the victim contained in the VPS or other statement, must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he is not represented. Except where inferences can properly be drawn from the nature of circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim.

c) In all cases it will be appropriate for a VPS to be referred to in the course of the sentencing hearing and/or in the sentencing remarks. Subject to the court's discretion, the contents of the VPS may be summarised and in an appropriate case even read out in open court.

d) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequences of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them".

It is clear from all these directions that the participation of victims at sentencing is delineated by the sentencing judge. Prosecution and defence advocates too will able to have a say in how the judge should approach VPS material in conjunction

with the Directions, and may seek to limit or extend its ambit according to their respective interests.

The sentencing judge will decide whether "the VPS may be summarised and in an appropriate case *even* read out in open court".

A too restrictive approach?

It could be said that the UK provisions are too constrained; victims don't get the final say on whether they get the final say, or in fact any say at all.

Also of concern are the number of cases that go to sentence without a proper or adequate victim statement being obtained. Often the VPS is relegated to only a short paragraph at the end of the initial statement. While it is useful to have the initial feelings of the victim noted down, this fails to identify any long-term effects that may have resulted from the offence.

Just as often, particularly in less serious cases, there is no victim personal statement at all, meaning cases are resolved with there being no voice heard from the victim at all on the consequences of the offence.

In the UK context the victim may never have had the same opportunity as the articulate young woman in the Stanford case did to find closure and strength through themselves speaking about the effect that a crime has had on them.

Perhaps this, in part, reflects the traditional concern in UK criminal jurisprudence to ensure that judges can come to rational decisions about cases without being too 'swayed' by emotional testimony. This may be too protective of judges though; shouldn't we trust them enough to hear what a victim has to say then coolly evaluate it one way or another?

Furthermore, restricting the right of victims to speak out as to the effect of crimes may prevent us all from hearing the brilliant strong voices that can teach us all about the devastating effect of crime on victims and those around them.