

“The Magic of the Robe”: The Performance of Judge Rosemarie Aquilina in the ‘Social Drama’ of the Larry Nassar Sentencing Hearing

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ABSTRACT:

In this paper, I analyze the role of Judge Rosemarie Aquilina in the Larry Nassar Sentencing Hearing of January 2018, and her rapid ascendance to the national stage as a feminist icon and a symbol for the #MeToo movement. I argue that the Nassar Sentencing Hearing can be expressed by Victor Turner's account of "Social Drama," which consists of four stages: breach, crisis, redressive action, and resolution. In this drama, Judge Rosemarie Aquilina plays the role of the "star-grouper" who Turner describes as the protagonist who pursues mechanisms of redress. Through an analysis of YouTube video recordings of the sentencing hearing from *Law and Crime Network*, I argue that Judge Aquilina plays four "roles" in the courtroom: a therapeutic figure, a victim advocate/activist, impartial Lady Justice, and retributive Lady Justice. By drawing on Role Theory, Bourdieu's "Force of Law," and Feminist Legal Theory, I dissect why Aquilina's performance was generally viewed as a success in the eyes of the American public, but criticized by many in the field she represented, the field of law. Following Turner's argument that rituals of social drama simultaneously draw from pre-existing cultural scripts and create new scripts, I argue that Aquilina (mostly) works within the bounds of the law while also promoting a feminist critique of judicial norms through her own example. Doing so made her into a cultural icon and a national feminist symbol of power and hope for the #MeToo movement.

Keywords:

Larry Nassar sentencing hearing, Larry Nassar case, Judge Rosemarie Aquilina, Sociology of Law, social drama, performance, performativity, theater, law, courtroom

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List of Abbreviations:

MSU: Michigan State University

USAG: USA Gymnastics

USOC: US Olympic Committee

MI: Michigan

Content/Trigger Warning: This paper is based on a story involving sexual abuse.

Introduction:

“Judge Rosemarie Aquilina is thoroughly disgusted and out of giveable fucks. Her reading of the letter Larry Nassar wrote to the media is Tony-worthy” read a tweet from @goldengateblond.

(Reinstein 2018.) On January 24, 2018, Twitter, Facebook, and other social media platforms were abuzz. A sentence had just been handed down to Larry Nassar, a world-renowned gymnastics doctor who had pleaded guilty to sexually abusing minors under the guise of medical treatment.

After a seven-day sentencing hearing in which 156 victim-survivors¹ of Nassar’s abuse came forward to give impact statements, Judge Rosemarie Aquilina sentenced Nassar to up to 175 years in prison. And the world seemed to be thrilled, not only with Nassar’s lengthy sentence, but with the judge who had handed down that sentence. She was praised for her willingness to listen empathetically to stories of sexual abuse and her no-nonsense attitude toward Nassar.

Seemingly overnight, Judge Rosemarie Aquilina had become a national sensation, a feminist icon, and a symbol for the #MeToo movement.

I watched these events unfold from Budapest, Hungary, where I was living at the time. As a graduate of Michigan State University (MSU), one of the major institutions which was responsible for enabling Nassar’s abuse, I was riveted and horrified by the hearing. So were many of my friends from MSU, who plastered my social media feeds with stories from the sentencing hearing. Over seven days, we collectively held our breath as we watched what seemed like a never-ending lineup of victim-survivors make impact statements. My own horror was magnified when I realized I personally knew one of the victim-survivors, who was the daughter of a family friend.

¹ Debates exist in the scholarly community in regard to the best term to use when referring to individuals who have experienced sexual assault or abuse. I have chosen to use the term “victim-survivor” because throughout the Nassar Sentencing Hearing, the women and girls giving impact statements expressed experiences of both victimization and survival.

For many of us, the hearing was devastating and infuriating. Yet, there was also reason for hope, and for many, the source of that hope came not only from the strength and courage of the victim-survivors, but from the judge who seemingly cheered them on. Judge Aquilina had given a voice to the victim-survivors in the case, and she had believed them. Many of my friends on social media seemed entranced. I saw posts like, “I want Aquilina to be my mom,” and “WHAT A BOSS QUEEN!” Despite all the bad in the world, these posts seemed to indicate, there was still a bit of good in it, and sometimes it came in the form of an unorthodox Midwest mom who wore cowboy boots.

Yet, Judge Aquilina also received criticism. Many lawyers and judges believed she had gone too far, saying that she had made a mockery of justice by creating a media circus. Some even accused her of self-promotion. How could such polarized reactions be explained? This question led me to more questions, and ultimately, framed this research.

In this paper, I ask four main questions: First, how do Aquilina’s performances in the “social drama” of the Nassar Sentencing Hearing serve to carve out new possibilities for victim-survivor healing experiences? Second, how does Judge Aquilina’s performance as a judge in the Nassar sentencing hearing both legitimize her expertise and authority in the court but also pose a challenge to the established *habitus* of law? Third, what made Aquilina’s performance in the “social drama” so effective that she became a cultural icon and national symbol of hope for the #MeToo movement? And ultimately, how can analyzing the actions and words of Judge Rosemarie Aquilina in the Nassar Sentencing Hearing through the lens of performance help us understand her role in “making culture” and “affecting power”?

This paper looks into a previously neglected topic in scholarship on the Larry Nassar Case: the controversial role of Judge Rosemarie Aquilina in Nassar’s Sentencing Hearing. It also contributes to the growing body of research on the intersections between performance, theater, and law. In this paper, I argue that Judge Aquilina draws on existing cultural repertoires to exert

her own authority, give voice to the victim-survivors, and sentence Nassar. While she engages in “positioning work” to establish herself as an unbiased judge who works within legal norms, she simultaneously pushes the accepted boundaries of law by using retributive language, which risks the legitimacy of the hearing in the eyes of the law. However, Aquilina’s actions in the courtroom can also be viewed as a feminist critique of patriarchal American courtroom norms, as her approach and rhetoric worked to create a transformative process of communal healing to the victim-survivors. Although Aquilina’s actions and words may have threatened both legal norms and the symbolic capital of the juridical field, they also may serve to influence a vision for a feminist courtroom of the future.

This paper is divided into three main chapters. In the first chapter, a summary of the Larry Nassar’s sexual abuse is given, and institutional failures which enabled it for three decades are discussed. Then I discuss previous literature written on the Nassar case, and discuss how the Nassar Sentencing Hearing can be seen as embedded within the #MeToo movement. In the second chapter, theoretical frameworks which will inform this analysis are explicated, including Victor Turner’s “Social Drama,” Role Theory, Pierre Bourdieu’s “Force of Law,” and Feminist Legal Theory. And in the third chapter, I analyze the four different “roles” which Aquilina plays in the sentencing hearing: a therapeutic figure, a victim advocate, impartial “Lady Justice,” and retributive “Lady Justice.” While the first two roles exemplify Aquilina’s engagement as a feminist judge, in the third and fourth roles, Aquilina performs two ‘sides’ of “Lady Justice.”

Chapter 1. Framing the Nassar Sentencing Hearing:

1.1 The Nassar Case:

Before his arrest in 2016, Larry Nassar was a giant in the medical and gymnastics worlds, working for and with multiple institutions and organizations. In 1996, he was named the chief medial coordinator for USA Gymnastics (USAG) and also became the team doctor. Although Nassar had started as a trainer with the Olympic gymnastics team, he eventually rose to become one of its top doctors. He also became a professor of osteopathic medicine at Michigan State University (MSU), where he worked treating patients at MSU's sports medicine clinic, and as a team doctor to several MSU athletic teams. Nassar was trusted, charismatic, and friendly—everyone loved him. Instead of “Dr. Nassar,” almost everyone—patients, coaches, gymnasts, and other athletes—called him by his first name, “Larry” (“The Good Guy” 2018).



Figure 1: Nassar helps Olympian Kerri Strug off the floor after her successful vault on a sprained ankle at the 1996 Olympics, which guaranteed the U.S. the gold medal
(Source: Getty Images)

However, as Nassar's reputation grew within the sports medicine and gymnastics worlds, a darker side to his professional life remained hidden to the public eye. As early as 1990, Nassar started performing what became known as “the treatment.” The “treatment” involved Nassar vaginally and anally penetrating his patients with his fingers, which he told his patients would “relieve the pain” and help him work on muscles he could not access from the outside of the

body.² In performing the “treatment,” Nassar violated multiple standard medical protocols.

Nassar digitally penetrated his patients without lubricant or gloves. Most of the time, when the “procedure” was performed, there were no other medical professionals in the room. Nassar often did not explain what the “treatment” entailed ahead of time, and never had his patients sign a consent form, despite the fact that many of them were minors under Michigan law. In addition to the “treatment,” Nassar also fondled other parts of his patients’ bodies, including their breasts. One of the most shocking aspects of Nassar’s abuse is that he often performed the “procedure” while parents were in the room without them knowing.³

Because of Nassar’s involvement in multiple institutions and organizations, he was a doctor to many athletes. Nassar sexually abused mostly young girls and women,⁴ most of whom were MSU college athletes, local mid-Michigan athletes, or USAG gymnasts who came from all parts of the country. Many were famous Olympic gymnasts. According to victim impact statements made during the sentence hearing, some of his patients were as young as six years old when he started performing the “treatment.”

Starting in the 1990s, multiple alarm bells were rung regarding Nassar’s “treatments,” but reports were mishandled. An investigation by the *Detroit Free Press* found that prior to Nassar’s arrest, eight women had reported his misconduct to MSU, and at least fourteen of the university’s employees knew of these reports (Kozlowski 2018b). In these cases, young women who came forward with stories of Nassar’s inappropriate treatments were either not believed, discouraged

² Nassar claimed he was performing pelvic floor physical therapy, which *is* a legitimate medical procedure. However, this procedure is primarily done to treat medical problems such as pelvic pain, bowel and bladder problems, and painful intercourse. As it is a highly specialized treatment, it is often only performed by experts who are certified in the procedure, who are mostly women. And it is only performed on minors in extreme cases, as a “last resort.” Nassar was not certified to treat the pelvic floor (Rabin 2018; “How He Got Caught” 2018).

³ Nassar was calculated with his positioning and movements: he made sure to drape a towel over the patient’s pelvic area or buttocks and position himself between the parent and the child so the parent’s line of vision was obstructed and they could not see what he was doing with his hands.

⁴ To the best of my knowledge, only one man, Jacob Moore, has publicly come forward as a victim-survivor of Nassar’s abuse. It is possible that Moore was not the only male patient who was abused by Nassar, but that is beyond the scope of this research (“Jacob Moore” 2018).

from reporting to police, or told that they had misunderstood Nassar's legitimate medical "treatment" as sexual abuse.⁵ Investigations have shown that other institutions such as USAG and USOC also knew of Nassar's abuse well before his arrest and deliberately worked to keep the story quiet (Wells 2018).⁶

After nearly three decades of abuse, Nassar was finally arrested in December of 2016, after former gymnast Rachael Denhollander made a report to the MSU Police about his abuse and authorities subsequently found thousands of child pornographic pictures and videos on Nassar's hard drives. Initially, Nassar denied the accusations of sexual abuse, and planned to go to trial. However, on November 22, 2017, he pleaded guilty to seven felony counts of criminal sexual conduct in the first degree in Michigan's Ingham County, which meant he would have a sentence hearing⁷ instead (Bitely and Hawthorne 2017). In the course of three months, Nassar went to three different courts for sentencing. However, for the purpose of this research, I will focus solely on the Sentencing Hearing in the Ingham County District Court, as this was the most widely publicized of the three court proceedings.

By October of 2018, the number of individuals who had accused Nassar of abuse was around 500 (Shaffer 2018). However, some have estimated that the number of his victims is much higher. The results of the Nassar case affected top leadership positions in many of the

⁵ Take the example of Larissa Boyce, who is believed to be the first woman to report Nassar's abuse to MSU in 1997. When she and another young gymnast told MSU gymnastics coach Kathie Klages what happened at appointments with Nassar, Klages was shocked, but told the young women, "I can file this, but there are going to be serious consequences for you and Nassar." The young women were intimidated, and Klages never filed a report (Kozlowski 2018a). Another story is that of Brianne Randall-Gay who reported Nassar to police in 2004. After the officer in charge of her case received a PowerPoint presentation from Nassar explaining his "medical technique," the officer dismissed the case ("How He Got Away" 2018).

⁶ In 2015, Nassar abruptly 'retired' as a USAG doctor. Behind doors, USAG had forced his retirement due to complaints about his conduct. A 233-page investigation conducted in 2018 gave damning evidence that both organizations knew about Nassar's abuse in 2015 but did not alert authorities, tell parents, or inform MSU or other organizations which still employed him (Wells 2018).

⁷ In Michigan law, a sentencing hearing is conducted in order to a sentence to a defendant. A sentencing hearing may only take a few minutes if the judge simply must approve a mutually-agreed upon sentence which was established during the plea bargaining. However, the hearing can also take much longer if the sentence involves extended incarceration. In these cases, a judge might hear arguments from multiple individuals regarding the defendant's sentence. These individuals include the prosecutor, defense attorney, and victims of the defendant (Riley 2019). This is precisely what occurred in Nassar's sentencing hearing.

institutions involved in the Nassar scandal, with multiple leaders resigning from their positions.⁸

Criminal charges have been brought against three MSU employees, including former MSU president, Lou Anna K. Simon.

Nassar's Sentencing Hearing at Michigan's Ingham County District Court:

Nassar's sentencing hearing occurred in the Ingham County District Court under the jurisdiction of the Honorable Judge Rosemarie Aquilina. Michigan's Assistant Attorney General Angela Povilaitis, who led the prosecution, drafted Nassar's plea agreement. The agreement stipulated that all victims or their parents/representatives could give victim impact statements at Nassar's sentencing hearing (State of Michigan 2017). Although in the beginning, only 90 victim-survivors intended to speak in court, as the Sentencing Hearing went on, more and more victim-survivors came forward, explaining that they had been encouraged by the momentum of the voices before them (Takas 2019).

As more and more victim-survivors came forward to speak, the sentencing hearing was extended. In the end, 156 women and girls gave victim impact statements over a period of seven days about Nassar's abuse. An additional thirteen impact statements were made by some of the victim-survivors' family members or friends. These testimonies were filmed by local, state, and national news outlets/corporations. Many were posted online and were shared widely. The scandal and sentencing hearing not only instigated a flurry of traditional news attention, but also led to mass outcry on social media.

1.2 Previous Scholarly Literature on the Nassar Case:

Scholars from various fields of study have begun to write about the Larry Nassar Case/Scandal. Thus far, research on the case has focused on institutional cultures which allowed Nassar's abuse

⁸ These individuals include: MSU President Lou Anna K. Simon, MSU athletic director Mark Hollis, USOC chief executive Scott Blackmun, and all 18 members of the USAG board of directors (Hillstrom 2019, 63).

to thrive, such as the culture of competition and athlete abuse in Olympic gymnastics and MSU's failure to take action after multiple complaints about Nassar's conduct which started in the 1990s (Doyle 2019; Novkov 2019), social media responses in the wake of the sentencing hearing (Frederick, Pegoraro, and Smith 2019; Zhang Meadows and Meadows 2019) and media framings of the Nassar case (Smith and Pegoraro 2020).

To the best of my knowledge, only two pieces have analyzed the Sentencing Hearing. Eiler, Al-Kire, Doyle, and Wayment (2019) found that compared to #MeToo disclosures on Twitter, victim impact statements in the Nassar Sentencing Hearing emphasized themes of power and trust. Mary Schuster, in a chapter of her book, *The Victim's Voice in the Sexual Misconduct Crisis: Identity, Credibility, and Proof* (2019), analyzes common themes in the impact statements of victim-survivors at the Nassar Sentencing Hearing. She also briefly addresses how Judge Rosemarie Aquilina widens the parameters of the victim impact statement in order to give voice to the survivors. Beyond this small analysis on the role of Rosemarie Aquilina, little attention has been paid to the judge. This research intends to fill that gap.

1.3 Contextual Background: The #MeToo Movement and Related Activism:

It is important to view the Nassar Sentencing Hearing as temporally embedded within a much larger national debate over sexual assault and harassment. On October 15, 2017, the #MeToo movement exploded in the public arena when actor and activist Alyssa Milano penned a tweet which encouraged people to respond with "me too" if they had ever been sexually harassed or assaulted. The response was breathtaking. The hashtag was used 12 million times in the first 24 hours of Milano's post. In the U.S., many famous men in the media and entertainment industries were implicated in the #MeToo movement (Fileborn & Loney-Howes 2019, 1-11), and it also affected broader society, with one study finding that it had affected over 400 high-power men (and some women) across a vast array of industries in the U.S. alone (Green 2018). In other words, the movement was not simply an outcry on social media; through raising awareness and

encouraging survivors to speak up, it mobilized individual and group action and had tangible effects on American society. Around the time the #MeToo movement started, organizations such as the Women’s March and Time’s Up were founded, and national Title IX organizing efforts were in full swing (Swanson and Szymanski 2020, 3).

Although the #MeToo movement gained massive prominence in the public media sphere in 2017 with Alyssa Milano’s tweet, the term was initially coined much earlier by a Black American activist, Tarana Burke. Burke first used the hashtag in 2006 on MySpace in an attempt to bring to light abuse, harassment, and assault experienced by Women of Color in the United States. (Ryan 2019, 117). So what took so long? Why did the #MeToo movement gain massive public momentum in 2017, eleven years after Burke first used the hashtag? Many point to the fact that the movement only gained worldwide attention when a privileged, wealthy, white woman used the hashtag.⁹ Additionally, some argue that 2017 was, in many ways, the point at which sexual assault, abuse, and harassment had reached a “moment of reckoning” in American society (Fileborn and Loney-Howes 3). Although the movement against sexual violence has a long history in the U.S., Gibson et al. give seven “ingredients” which explain the timing of the rise of the #MeToo movement in 2017: Grassroots movements against sexual misconduct, celebrity attention, the “safe space” of social media, the 2016 election of Donald Trump, the investigative journalism of women at major newspapers, Barack Obama’s enhancement of the enforcement of Title IX laws, and the Bill Cosby mistrial (2019, 219-222).

As Gibson et al. explain, debate over Title IX was highly influential in the #MeToo movement, and it’s particularly relevant in the Nassar case. Title IX is a 1972 amendment to the Higher Education Act which stipulates that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under

⁹ Indeed, at the beginning of the #MeToo movement, Burke’s role as the original founder of the movement was ignored. #MeToo, though it may be liberating for some, must be viewed as a movement which functions within an American society which consistently privileges the voices of white women over black women (Ryan 2019, 117).

any education program or activity receiving Federal financial assistance” (Title IX). One of the effects of the amendment has been an increase in women’s sports in the U.S. But more recently, Title IX has also brought to the forefront sexual assault and sexual harassment as components of sex discrimination in education (Doyle 2019, 158). In 2011, the Obama administration strengthened Title IX regulations, requiring tertiary institutions to investigate and act on allegations of sexual misconduct. As a result of these new regulations, many scandals surfaced at major universities across the U.S. (Gibson et al. 2019, 221), including at MSU.

Media scholar Douglas Kellner argues that “megaspaces” such as the O.J. Simpson trials in the 1990s “define entire periods of culture and politics” (2003, 93). In many ways, we can view the Nassar Sentencing Hearing as a megaspaces which defined the #MeToo movement and symbolized the national debate around sexual assault and harassment.

1.4 Research Methodology:

In order to analyze Judge Rosemarie Aquilina’s performance in the Larry Nassar Sentencing Hearing, I conducted both qualitative discourse analysis and interpretive analysis on the hearing through using YouTube videos of the hearing published by *Law and Crime Network*. Through discourse analysis (Gee; Phillips and Hardy 2002), I tracked the major themes of Aquilina’s verbal communication, and through my interpretive analysis (Knoblauch and Tuma 2011), I interpret deeper meanings behind words and other forms of communication.

In my research, I watched or listened to the entirety of the seven days of Nassar’s sentencing hearing. I used videos recorded by *Law and Crime Network*, a reputable source which tapes high-profile cases in the courtroom. At the time of my research, *Law and Crime Network* had twenty-four videos of the hearing posted in a YouTube playlist (“Playlist: Larry Nassar Sentencing Hearing” 2018). By using this playlist, I follow Eiler et al. (2019), who use this playlist to

compare victim impact statements from the Nassar Sentencing Hearing to #MeToo disclosures on Twitter.

Law and Crime Network edited videos from the sentencing hearing only minimally. However, it is important to note that these videos are framed in a particular manner. For example, the *Law and Crime Network* YouTube playlist does not represent the totality of the 169 impact statements made in Aquilina's courtroom. Some victim-survivors chose not to be publicly identified, and therefore, cameras were turned off when these individuals spoke. Additionally, in using these videos, I do not have a birds' eye view of the courtroom. My research has been "framed" by the video camera's lens, which usually only focused its lens on one person at a time. Therefore, this research cannot be said to represent the entire performance of the sentencing hearing, but rather, the sentencing hearing as captured by the *Law and Crime Network* cameras.

While analyzing videos from the hearing, I made transcripts of every single response Aquilina gave to victim-survivors and their family members after they gave impact statements. I also made transcripts of other significant addresses she made to the court and to defendant Nassar, including but not limited to her response to Nassar's submitted letter on Day 3 and the final sentence she handed down to Nassar on Day 7 of the hearing. I also created transcripts of approximately one third of the victim impact statements and statements made by Assistant Attorney General Angela Povilaitis, the prosecutor in the case.

While creating my transcripts, I followed Ramey et al. (2016) who argue that the researcher "must consider the possibility of meaning in modality other than talk," including gestures, body language, tone and inflection and facial expressions. In my transcripts, I made detailed notes on camera angles, metacommunication, intonation, and verbal and physical communication between individuals in the courtroom. In doing so, I gained a deeper understanding of the entirety of the "performance" of the sentencing hearing and engaged in interpretive analysis on what these interactions signified, particularly in relation to the emotions experienced by certain individuals,

as well as their interactions with family member. I also took notes on clothing and other aesthetic wardrobe elements while creating the transcripts.

Initially, while transcribing and doing/undertaking thematic analysis, I divided Aquilina's performance into three categories: 1) Her communication with victim-survivors, their families, and other support persons, 2) Her response to Nassar's submitted letter of complaint to the court on Day 3, and 3) Her final sentencing of Nassar on Day 7. In each of the three sections described above, I kept track of various smaller themes which came up frequently in Aquilina's verbal performances. These themes included (but were not limited to): "Victims' Voices Being Heard," "Retribution Narratives," "Awareness of Media Recording and Disseminating," "References to God/Faith," "Adherence to Norms in Law," and "References to/Framing of Personal Background." As I continued my transcription and analysis, I highlighted the most important quotes from these sections to use in my analysis.

I followed Engle et al. (2007) by slowly refining my hypothesis as I continued watching videos and creating transcripts. As I continued, I began to see larger "themes" emerge. After hours upon hours of video analysis, I began to see Judge Aquilina as not just a judge, but rather, a judge who played many different roles all at once. Therefore, in writing this paper, I divided Aquilina's performance into four different "roles" she played in the courtroom, and chose to emphasize the most important themes within each of these roles. While writing, I worked to use examples which were representative of Aquilina's entire performance in the courtroom.

Chapter 2. Theoretical Frameworks:

In this chapter, I provide an overview of theoretical literature which informs my analysis of the four different “roles” which Aquilina plays in the courtroom. In this paper, I will be using four main frames to center my research: Victor Turner’s “Social Drama,” Role Theory, Bourdieu’s “Force of Law,” and Feminist Legal Theory. In what follows, I will not provide an exhaustive account of each theoretical framework. Rather, I will focus on the aspects of these frameworks which are most pertinent to my research questions.

2.1. Performance and Theatricality in Law and Victor Turner’s “Social Drama”:

Numerous scholars have analyzed the connections between the genres of law, performance, and theater (Arjomand 2018; Freidman 2000; Rogers 2008). As Sarah Kozinn explains, “the courtroom is a judicial theater, a theater of law, a site where performance strategies are employed to persuade juries and jurists, to win cases, to enforce laws and to question them.” However, there is tension between what law purports itself to be and what law actually is. Although law stakes its claims to authority on its purported rationality and ‘distance’ from society, in reality, performance is inherent to courtroom procedure (Kozinn 2015, 69-70).

It is difficult to nail down a definition for “performance” because of the word’s many different uses and connotations. In this piece, I use the definition of Madison and Hamera, who define performance as “how human beings fundamentally make culture, affect power, and reinvent their ways of being in the world” (2006, xii). Indeed, using the word “performance” to frame the Nassar Sentencing Hearing is not to say the hearing is a “show” or a “sham.” To the contrary, through using a lens of “performance,” the Nassar sentencing hearing can be viewed as a weighty cultural event which points to larger societal processes.

This brings us to the next point. I argue that the Nassar Sentencing Hearing functioned as a “Social Drama,” as defined by Victor Turner. In the social drama, a break occurs in societal harmony. Turner explains that the “ritual” of social drama has four phases: “breach, crisis, redress, and resolution (either reintegration or recognition of a schism) (1982, 69).¹⁰ I argue that in the Nassar case, the “breach” was Nassar’s abuse, the “crisis” occurred when Nassar’s abuse became public, the “redressive action” was Nassar’s sentencing hearing, and the “resolution” was Nassar’s sentence to a life in prison.

Turner’s analysis of the social drama has a few key points which are relevant to the Nassar Sentencing Hearing. Turner notes that in the “redress” phase, certain individuals in the community come forward to lead. Turner calls these individuals the “star-groupers,” and he describes them as the main protagonists of the story who work to bring about “justice” after the social breach, often punishing the offenders. They are highly skilled in rhetoric and persuasion, and work to legitimize their actions. (Turner 1982, 72). Judge Aquilina, as the representative of the law, and the one to ultimately sentence Nassar, fits perfectly into this category.

Turner also considers the social drama to be a ritual, and he describes rituals as always transformative: “For there is undoubtable transformative capacity in a well-performed ritual” (1982, 80). Aquilina was likely so well-loved because of her capacity to “transform” those in the courtroom.

2.2. Role Theory & Multiple Roles:

In sociology, Role Theory works to explain why people behave the way they do. It assumes that people act according to their place and identity in society, and that actions are context-specific and based on cultural expectations. Although the definition of the word “role” has often been

¹⁰ The “breach” is a breach of social norms in society, the “crisis” is the struggle within the group, the “redress” is when a mechanism is brought forward in order to solve the crisis, and the resolution either results in reintegration or the recognition of a schism in the society (Turner 1982, 69).

contested (Biddle 1986; 68-70),¹¹ in general, a role is understood as “a social position behavior associated with a social position, or a typical behavior” (Hindin 2007, 3959). This is the definition I will adopt.

In this paper, I look at how Aquilina plays multiple “roles” in the Nassar sentencing hearing. In sociology, the idea of one individual playing multiple roles is not new. George Herbert Mead, in his concept of the self, describes the second stage of child development as the “game,” in which children learn to successfully play multiple roles at once. At this stage, children also learn to predict the behaviors of other people around them (Mead 1934).

Goffman also argues that individuals play a variety of roles in everyday life. In *The Presentation of the Self in Everyday Life* (1959), he uses theatrical metaphors to explain human interactions.

Goffman argues that individuals play different “roles” depending on the people present around them. Essentially, people engage in “impression management” when they are around others. He calls this “front stage” acting.

However, when a person performs many roles at once, this can lead to “role conflict,” which is generally defined as “the concurrent appearance of two or more incompatible expectations for the behavior of a person” (Biddle 1986; 82). A growing field of research in role theory looks at individuals who play multiple roles simultaneously, and whether the benefits of performing multiple roles outweigh the difficulties. For example, much work in recent years has analyzed role conflict in women, who are often doubly pressured to perform to cultural expectations in the workplace and in the household (Oluyemi et al 2018; Slotkin 2008).

¹¹ The four main founders of the theory, George Simmel, George Herbert Mead, Ralph Linton, and Jacob Moreno, defined “role” quite differently, which has led to fractures in attempts at theorizing of Role Theory. While some argue that a role is an expectation about how someone should behave, or how an individual actually behaves in a certain position, others say that a role is a “part” to be played or a script for social conduct (Biddle 1986; 68-70).

As Treviño writes, there are various roles in the legal profession, which each have their own patterns of behaviors and expectations, including lawyers, judges, and legislators (2008, 2). As a judge, Rosemarie Aquilina is subject to these behavioral expectations set by the law. However, as an individual functioning in society, Aquilina also faces cultural expectations beyond law, and exercises her own agency as she engages in “impression management.” Therefore, I argue that she both fulfills the expectations of law and resists them through her performance in the courtroom, as she moves through and between different tasks she performs in the courtroom. Aquilina performs according to four main “roles” which are reflective of specific cultural scripts in society, which leads to “role conflict” within her person.

2.3 Bourdieu’s “Force of Law”:

In this paper I will utilize Bourdieu’s “Force of Law” (1987) in order to explicate Aquilina’s explicit self-positioning as a judge who works within the norms of law. Here, I will draw from Bourdieu’s understanding of the *habitus*¹² of the social field¹³ of law. Bourdieu’s “social field” of Law can also be called the “Juridical Field” or more simply, “Legal Culture.” Bourdieu argues that the juridical field has its own body of internal protocols, assumptions, behaviors and values. In other words, there is an “internal politics of the profession” in law.

The Supposed Autonomy, Neutrality, and Universality of the Law:

One of Bourdieu’s main points in “The Force of Law” is that the law claims to be autonomous, neutral, universal, and based on coherent rules and rationalization.¹⁴ However, Bourdieu believes

¹² As Bourdieu explains, “The conditionings associated with a particular class of conditions of existence produce *habitus*, systems of durable, transposable dispositions” (Bourdieu 1990, 53). Put in simpler terms, *habitus* is the way individuals act in the world and understand it based on their involvement in multiple “social fields.”

¹³ Bourdieu defines a “field” as “a field of forces within which the agents occupy positions that statistically determine the positions they take with respect to the field, these position-takings being aimed either at conserving or transforming the structure of relations of forces that is constitutive of the field” (Bourdieu 2005, 30). More simply, a field is a social group united by patterned activity. The field acts as a magnet, it exists a force on everyone around it, but individuals are not always aware of where that “pull” comes from. The field is invisible, but also has a strong influence on patterns of behavior. In the field of law, the field is based on a discipline and a profession.

¹⁴ Bourdieu states: “Far from being a simple ideological mask, such a rhetoric of autonomy, neutrality, and universality, which may be the basis of a real autonomy of thought and practice, is the expression of the whole

that these ideals of law cannot be taken at face value. He asserts that the field of law is highly influenced by and connected to other social realms and practices, as well as other nodes of power in society, such as the state. He states: “As the ‘legal realists’ have demonstrated, it is impossible to develop a perfectly rational juridical methodology: in reality, the application of a rule of law to a particular case is a confrontation of antagonistic rights between which a court must choose” (Bourdieu 1987, 826).

Power Struggles in Law:

Bourdieu views the juridical field as highly influenced by power dynamics. Not only do individuals struggle for control within the legal field, but they also work to maintain their own field’s ascendancy as it is positioned in relation to the rest of society. Bourdieu points out that judges are almost always part of the “dominant class” in society. “When combined with the specific effects of professional training, such a background helps to explain that the magistracy’s declared neutrality and its haughty independence from politics by no means exclude a commitment to the established order” (843). Because the field of law is seen as an “elite” field, its members are incentivized to protect and defend its symbolic capital. Bourdieu argues that this is done through many mechanisms of the law, but particularly through its claim to the values of neutrality and rationalization. Therefore, when a representative of the law violates the juridical norm of “disengagement” by getting too involved in finance or politics, the members of the juridical field are quick to admonish them (830). In the Nassar case, when Judge Aquilina was believed to violate the norm of “disengagement, she was criticized by many of her own co-workers.

operation of the juridical field and, in particular, of the work of rationalization to which the system of juridical norms is continually subordinated. This has been true for centuries. Indeed, what we could call the “juridical sense” or the “juridical faculty” consists precisely in such a universalizing attitude.... This fundamental attitude claims to produce a specific form of judgment, completely distinct from the often wavering intuitions of the ordinary sense of fairness because it is based upon rigorous deduction from a body of internally coherent rules” (1987, 820).

Judges in Law:

Bourdieu views judges as integral to the survival of the system of law. Significantly, Bourdieu contrasts judges, who he sees as “practitioners” of the law, with “theorists” of the law, who are responsible for development of doctrine and teaching rules based on law’s norms. In other words, the judge actively participates in the *construction* of the judicial field by interpreting law in individual cases. Bourdieu views law as a constantly changing field, influenced not only by what is going on outside the field, but also by the actors within it. He says:

Judges, who directly participate in the administration of conflicts and who confront a ceaselessly renewed juridical exigency, preside over the adaptation to reality of a system which would risk closing itself into rigid rationalism if it were left to theorists alone. Through the more or less extensive freedom of interpretation granted to them in the application of rules, judges introduce the changes and innovations which are indispensable for the survival of the system (1987, 824).

In other words, Bourdieu sees judges as the practitioners of the law, individuals who must work beyond theory to administer justice. The role of judges shows that the law is not, as some claim, a field defined by autonomy, neutrality, and universality. Rather, law is highly influenced by judges themselves when they decide on cases or make rulings. In the case of Rosemarie Aquilina, these elements are highly applicable. As Mary Schuster argues, in not putting a limit on victim impact statements, Aquilina was able to work within the norms of the law but simultaneously expand the boundaries of that law due to the extreme nature of the case (2019, 65). Additionally, through her words to the victims, Aquilina took healing authority into her own hands. It is possible that other judges, after having seen Aquilina’s performance in the courtroom, may start to approach their own courts differently. Based on Bourdieu’s understanding of judges, Aquilina can be viewed as a potential innovator in the field of law.

2.4. Feminist Legal Theory:

Feminism and law are deeply intertwined, as many feminist goals must be achieved through law. As Levit and Verchick explain, “to be a student of feminism is to be a student of law too.”

(2015, 2). But like Bourdieu, feminists are wary of law's claims to neutrality. Feminist Legal Theory views the field of law as a patriarchal construct. In other words, according to this theory, the rules, structures, and norms of law have largely been created and upheld by (white) men. Feminists also see law's norms of antagonism as problematic as they are embedded in masculine norms of competition, which leave little room for the expression of women's experiences. For example, in trials, lawyers are incentivized to question witnesses aggressively, making women uncomfortable and hindering their ability to tell traumatic stories. In sum, Feminist Legal Theory argues that through law's claims to objectivity and neutrality, law has in fact, veiled its entrenched bias against women (Fletcher 2002, 135-145).

Particularly important to this paper are two branches of Feminist Legal Theory, as expressed by Levit and Verchick. Cultural Feminism and Pragmatic Feminism both provide helpful frames through which we can view Judge Aquilina's performances in the courtroom. Cultural Feminism sees laws which claim to be gender-neutral as subversive to women's equality, because they do not acknowledge differences between women and men. Influential in this field is educational psychologist Carol Gilligan, who argued that boys and girls are raised differently: in general, while girls are raised on values of empathy, compassion, and a sense of community, boys are taught to value abstract principles such as rights, autonomy, and individualism (1982). Many adherents to feminist legal theory have argued that "feminine" approaches have been omitted from law, and use Gilligan's theory to challenge masculine norms. (Levit & Verchick 2016, 15-18). Those who adhere to "Pragmatic Feminism" believe that in legal cases, decisions should be made based on context rather than abstract legal theories. Essentially, they believe cases must be judged individually, and based on the realities of women's lived experiences (Levit & Verchick 2016, 33-35).

In recent years, scholars have begun to critique so-called "carceral feminism." Elizabeth Bernstein, who coined this term, defines it as "the commitment of abolitionist feminist activities

to a law and order agenda” (2007, 143). Essentially, this is an approach to law which emphasizes punitive measures to crimes over solutions which tackle structural inequities, such as the welfare state. Through analyzing the high-profile sexual assault case of *People v. Turner*, Guy Hamilton-Smith (2019) argues that populist public outrage over a “moral crisis” such as a sexual assault leads to carceral politics. But this outrage quiets when a sentence is handed down. “Perhaps we care less about preventing harm than we say we do,” Hamilton-Smith says (2019, 29). Alex Press agrees, arguing that carceral politics does not combat societal inequality, but fuels it. She argues that in a country where People of Color are disproportionately incarcerated, carceral feminism cannot be depended on to fight sexism or any other form of structural inequality (2020). In the Nassar case, both the victim-survivors and Aquilina engage in elements of carceral feminism.

Within legal feminism, there is the question of feminist judges. Rosemary Hunter, in “Can *feminist* judges make a difference?” (2008) outlined what a feminist judge might look like. Hunter argues that feminist judges can and should “make a difference” at the bench. Because law is dominated by patriarchal norms, she reasons, feminist judging is fairer judging¹⁵, and she asserts that feminist approaches can be used by judges within legal boundaries. Indeed, judges have ample room for expressing feminist principles throughout the court process, in making judicial decisions, and establishing rationale for decisions. It is especially common for judges to exercise feminist judging when a judge is exercising a discretion (Hunter 2008). However, not everyone agrees that feminist judging can function within law. Sandra Berns believes feminist judging is an “oxymoron.” She sees feminism’s “gendered” dimension as a threat to norms of impartiality in the courtroom. (1999, 204-206). But Berns seems to miss the point—the fact that the courtroom favors male norms in the first place. Therefore, in this paper, feminist judging is viewed as valid, and I argue that Judge Aquilina engages in it.

¹⁵ This sentiment is echoed by Katie Gibson, who asserts that Supreme Court Justice Ruth Bader Ginsberg, through “speaking differently” in her dissenting opinions, has led the United States to a fairer legal system (14).

Chapter 3: The Performance of Judge Rosemarie Aquilina in the Nassar Sentencing Hearing:

3.1. A Brief Introduction to Judge Rosemarie Aquilina:

3.1.1. "Barracuda Aquilina": The Judge's Professional and Personal History:

“Author of Fiction, Mother, Law Professor, Circuit Judge, Motivational Speaker, Troublemaker.” At the time of my writing, these words were in the description section of Judge Rosemarie Aquilina’s personal Facebook page. In both her personal life and in the Nassar Sentencing Hearing, Aquilina takes on a vast array of roles. The diverse accomplishments she’s achieved in her sixty-two years demonstrate she’s nothing short of prolific.

In 1958, Aquilina was born in Munich to a Maltese father and a German mother. The family moved to Detroit when “Rosie,” was a toddler, and she became a U.S. citizen at age 12 (Brock 2018; Brody 2018). Aquilina graduated from MSU, and then went on to pursue a law degree from Cooley Law School. Before becoming a judge, she worked in the Michigan legislature and established her own law practice. According to Washtenaw County Legal News, Aquilina decided to run for judge because “there were so many times in private practice when she wanted to tell people what to do--rather than allow them to make their own decision.”¹⁶ So in 2004, Aquilina ran for judge of 55th District Court, and won the election. Four years later, she was elected to the 30th Circuit Court in Ingham county in 2008, and has sat on the bench in that court ever since. (Mathis 2014).

Prior to the Nassar Sentencing Hearing, Aquilina’s judicial decisions were not without controversy. In 2013 she ruled that Detroit’s bankruptcy filing violated the Michigan Constitution and state law. She raised eyebrows when she sent a copy of her ruling directly to

¹⁶ A *Glamour* article marks one experience in particular as a turning point for Aquilina. Aquilina was given a court-appointed client who had beaten her daughter with a belt buckle, leaving dark, swollen bruises. This client told Aquilina that beating her daughter was the way she controlled her. “I literally had to sit on my hands because I wanted to lean over and choke her,” Aquilina recalled. “I thought right then I need to be able to say, ‘You’re going to prison and here’s the treatment, here’s how to fix this’” (Brody 2018).

President Obama himself, and was accused of attempting to gain political favor with the president. She denied this accusation, explaining that she was simply notifying Obama that the federal government would likely need to “cough up” federal funds to aid the city (Mathis 2014).

In addition to her work as a judge, Aquilina is a law professor at both MSU and Cooley Law School, and has received awards for teaching excellence at both institutions. In her spare time, she writes crime novels, which she says are directly inspired by individuals she meets in her courtroom.¹⁷ (Putnam 2018b). For twenty years, she was part of the Michigan Army National Guard, where she gained the nickname “Barracuda Aquilina.” She made history in its ranks when she became the first woman Judge Advocate General (JAG) in Michigan (Ford 2019; Mathis 2014).



Figure 2: Aquilina with her second novel, *Triple Cross Killer*

(Source: Nick King/Lansing State Journal)

Aquilina’s rich professional career becomes even more remarkable when one learns that she is a divorced mother of five children, and a grandmother to two. She also takes care of her parents, who live with her. She gave birth to her first two children while she was still in law school, and later had her third child when she was 42. After a separation from a long-term partner, Aquilina

¹⁷ So far, Aquilina has published *Feel No Evil* (2003) and *Triple Cross Killer* (2017), and as this chapter was being written, she published her third crime novel, *All Rise* (2020). The plot of *Triple Cross Killer* revolves around a man who uses letters from Santa to hunt down and kill child sexual abusers.

was faced with the notion of being an “empty nester,” and hated the thought. So, she visited the local sperm bank, choosing a donor with a national background similar to herself. At age 52, she gave birth to twins. In an NBC interview, she proudly claims, “I worked until my water broke” (“Her Take” 2018; Mathis 2014).

3.1.2. “Every Day is a Wedding Hairspray Day”: Aquilina's Physical Appearance and Presence in the Courtroom:

If analyzing the Ingham County Circuit courtroom from the perspectives of theater and performance/performativity, it is necessary to address Aquilina's physical appearance and her physical presence in the courtroom. In her aesthetic performance, she embodies judicial authority but also resists being totally confined by those norms.

Many of the *Law and Crime Network* tapes which I used for analysis start with Aquilina entering the courtroom. As she does so, the bailiff gives a directive to the courtroom with the phrase, “All Rise!” This is part of standard protocol in the American courtroom, and as Christine A. Corcos explains, it is a ritual which both affirms the judge's power and authority, and also “confirms the majesty of law and order” (2011, 133). But Aquilina is not fussy about this formality. Before she takes even reaches her seat herself, she sends another directive to the individuals in the courtroom: “You may be seated.” Aquilina's figure is slight; she is both short and thin, but she walks with confidence. Aquilina takes a seat at the elevated bench, which is spatially symbolic. As Leslie Moran explains, in the space of the courtroom, the judge is in a “privileged position” from which she can surveil all in the courtroom and assert her symbolic power: “The judge is centre stage in this theatre of justice... on display, visible to all” (2016, 160).

Aquilina has a commanding presence, which is influenced not only by her seat at the bench, but also by her wardrobe and other physical attributes. While Aquilina maintains both a physical appearance which fits within the margins of legally sanctioned judicial robing practices, she also

seems to carve out a space for her own unique style choices, maintaining a physical presence in line with a certain ‘feminine’ aesthetic. This combination of factors seems to communicate two things to the audience: Aquilina is a professional, but also someone who refuses to be tied down by convention.

Aquilina's bodily aesthetic is occupied by two main colors. The more professional, austere, and somewhat intimidating color of black, and the more typically “feminine” shades of dark pink.¹⁸

One article, drawing on this color scheme, described Aquilina as embodying the physical characteristics of a “good witch” (Freeman 2018).

Aquilina's wardrobe is delimited by aesthetic norms and requirements of judges in the American courtroom: it is pitch black and plain, which serves to mask the “individuality” of a judge.

Additionally, as Kessler (1962) has described, the judicial robe has a “psychological effect” on the audience in the courtroom. On one hand, the robe has the potential to cause fear and guilt in those who appear before the judge, but on the other hand, it can have a positive effect on them, ensuring evenhanded jurisprudence. Kessler argues that the robe is a “shorthand symbol for the institution of justice as a whole” (1962, 59). However, it is important to note that Aquilina's outfit has a sort of “feminine” twist to it: she wears a white lace collar around her neck, attached to her robe.¹⁹ And underneath her robe, she is frequently known to wear one of her 14 pairs of cowboy boots—also somewhat of a wardrobe rarity in Michigan. (Brody 2018).

¹⁸ See Kaiser and Flury, who have traced developments which led to the color pink to become the symbol of “unambiguous, white femininity” (2005).

¹⁹ In a picture of the Ingham County Circuit Judges, she is the only one of the 6 women (out of 9 judges total) to wear a robe with this embellished element.



Figure 3: 30th Judicial Court Circuit Judges, 2018

(Source: Ingham County Circuit Court)

Aquilina's has dark features: her eyes are brown, and her hair is pitch-black in color, but it is streaked with ruby--something which is also uncommon to see in the hair of a Michigan woman in her 60s. Every day, she wears her hair in a glamorous pompadour, and she is not one to shy away from makeup. On her cheeks, she wears rouge which gives her high cheekbones a rosy hue. Her eyelashes are covered with dark mascara, and her eyebrows appear to be perfectly penciled. She wears maroon lipstick, and her nails are also painted an even darker shade of the same color. Aquilina is known for her love of makeup. In an interview with *Glamour* magazine, Aquilina describes her personal motto as, "Every day is a wedding hairspray day" (Brody 2018).²⁰

In creating a 'feminine' aesthetic through her makeup use, Aquilina is following "a stylized repetition of acts." In other words, she is performing gender (Butler 1989, 519). But her personal styling habits may not (only) revolve around her evident love for aesthetics. Dellinger and Williams (1997) found that although many women profess to enjoy wearing makeup, most use it because women's makeup is correlated with assumptions about wellness, heterosexuality, and

²⁰ Perhaps nothing better reveals Aquilina's love for aesthetic appeal than the plot of her upcoming book: a judge who quits her job after a quarrel with the chief judge to open a local beauty parlor (Putnam 2018b).

credibility in the workplace. Therefore, it is possible Aquilina wears makeup as a strategic attempt to assert authority and gain respect as a woman in a field dominated by men.

Aquilina herself has expressed the connection between her own career and style choices: “When I put my hair up, it’s my little independence. As a judge, we have to be so straight and narrow. Well, I’m not—in my life or in the courtroom. I don’t want to be put in a box.” (Brody 2018). Essentially, on one hand, Aquilina establishes her own authority through participating in courtroom norms which heighten the position of the judge. However, by adhering to her own bold feminine aesthetics, she demonstrates that she will not allow her individuality to be “flattened” by the aesthetic norms of law.

3.1.3. Setting the Stage: Aquilina’s Daily Routine in the Sentencing Hearing:

Before getting started in discussing the various performative dimensions of Aquilina’s role as a judge, it’s necessary to look at what Aquilina’s day in court looked like on an average day in the Sentencing Hearing. As described earlier, the day in court starts when Aquilina enters the courtroom. She goes and proceeds to start business by going through formal court procedure. Aquilina asks for each defense lawyer and prosecuting attorney to give their names to establish their presence in the courtroom “for the record.”

After finishing official business, Aquilina sometimes makes a general announcement to the courtroom, and after that, the victim impact statements begin. One by one, victim-survivors come to the podium to give statements. They are called forward by Assistant Attorney General Angela Povilaitis, who gives the name of the victim-survivor and sometimes gives extra details about her story. Victim impact statements ranged from a few minutes long to over 35 minutes. After a victim-survivor gives a statement, Aquilina always thanks her again for coming forward, and then proceeds launches into a response to the victim-survivor. When Aquilina is done, she then calls for the next victim-survivor to come forward, by saying with a loud and resolute voice, “Next!”



Figure 4: Victim-survivors make impact statements at the Nassar Sentencing Hearing

(Source: Emma Winowiecki/Jodi Westrick/Michigan Radio)

Some days of the sentencing hearing, there are events which diverge from the normal course of events. For example, on Day 3 of the sentencing hearing, Aquilina takes time to address what she considers to be an audacious and impudent letter she had received from Nassar the previous day.²¹ On Day 7, the last day of the hearing, Aquilina officially sentences Nassar. However, generally, the sequence of events is fairly consistent, following the structure I have outlined above.

²¹ In this letter, Nassar claims that he is being treated “unfairly” and that his mental and physical health are at risk because he has to listen to so many victim impact statements. He also accuses Aquilina of creating a “media circus,” claiming that she has strategically placed him next to her in the witness stand so she will have as many media cameras focused on her as possible.” Directly contradicting what he said in his plea agreement, Nassar claims, “What I did in the state cases was medical, not sexual.” He also claims that he was “manipulated” by the Attorney General of Michigan and Aquilina, and that he made the plea deal to “minimize stress to everyone.”



Figure 5: Defendant Larry Nassar listening to a victim impact statement

(Source: Scott Olson/Getty)

3.2 Aquilina's Performance of Roles in the Courtroom:

The most visible and audible actor throughout the Larry Nassar Sentencing Hearing is the Honorable Judge Rosemarie Aquilina. As someone who sits perched on the judge's bench, she serves as both the director and main character in the "performance" at the Ingham County District courtroom. I argue that throughout the Sentencing Hearing, Aquilina performs four different and often seemingly contradictory "roles": a therapeutic figure, a victim advocate/activist, an impartial "Lady Justice," and a retributive "Lady Justice." While in the first two roles, Aquilina engages in feminist judging, in the latter two roles, Aquilina reifies judicial norms, but also sometimes violates the boundaries of that law.

Throughout the Sentencing Hearing, Aquilina deftly "code-switches" in her language, tone, and metacommunication as she moves across and between the four different roles she performs in the courtroom. Aquilina performs different roles when addressing specific individuals or performing certain tasks, engaging in what Goffman calls, "impression management" (132-151).

For example, while she performs the role of “therapist” when she speaks to victim-survivors, she often performs as figure of retribution when she speaks directly to defendant Nassar.

This is not to say that these four roles can be cleanly demarcated and easily separated into distinct categories. Indeed, Aquilina often performs multiple roles simultaneously, or sometimes she shifts seamlessly from one role to another. At other times, these roles seem to bump into each other quite dramatically, with the effect of Aquilina appearing to be a mercurial figure.

Because she performs four different roles which often contradict each other, Aquilina’s character experiences “role conflict” (Biddle 1986; 82).

In my analysis, I will draw on two main aspects of Aquilina’s performance in the courtroom: her responses to the victim-survivors’ impact statements and her communication with defendant Nassar himself.

Through analyzing the four different roles Aquilina plays in the courtroom, we can gain deeper insight into how Aquilina was a figure of controversy both during the Nassar Sentencing Hearing and after it concluded. We can also understand how Aquilina utilizes specific cultural frames and appeals to make her meaning clear and significant to the victim-survivors, the audience in her courtroom, and the audience watching worldwide. And we can see how Aquilina both works within the law and pushes its boundaries to the point of endangering her own position as a judge, and her own decision on Nassar’s sentence.

3.2.1. Aquilina as a Feminist Judge:

I argue that in Aquilina’s performance of a therapeutic figure and a victim advocate/activist, she works as a feminist judge. She demonstrates Cultural Feminism (Levit & Verchick 2016, 15-18) by bringing traditionally feminine norms of care into the courtroom, and demonstrates Pragmatic Feminism (Levit & Verchick 2016, 33-35) in her responses to victim-survivors by focusing on the reality of women’s lived experiences. It is important to recognize that under

different circumstances, Aquilina would not have had the “wobble room” to engage in such strong feminist judging. In large part, what allowed her to do so was the fact that Nassar did not go to trial, but rather, pleaded guilty, and had a sentence hearing. Compared to trials, procedural rules for sentencing hearings are much more lax, giving judges significant discretion in their court conduct and decision-making (Allenbaugh 2011; Ting 2016). As Hunter explains, feminist judging approaches can manifest themselves more fully when judges exercise discretion (2008, 21). Therefore, I argue that Aquilina utilized a feminist approach while simultaneously working within the bounds of the law.

3.2.1.1. Aquilina’s Performance as a Therapeutic Figure:

While speaking to victim-survivors and other individuals who give impact statements during Nassar’s Sentencing Hearing, Aquilina frequently performs the role of a “therapeutic” figure. She listens intently, gives encouraging advice, hails the victim-survivors for their strength, tells them that their voices matter, and encourages them to leave Nassar’s actions behind them. I argue that through acting as a therapeutic figure, Aquilina engages in feminist judging. In responding with care and compassion to the victim-survivors, she implements the traditionally feminine “ethic of care” (Gilligan 1982) in a courtroom which is generally dominated by masculine values.

In this role, I argue that Aquilina’s position (and self-positioning) as both a woman and a mother *matters*. Not only does it affect the way she performs; it is likely that the women and girls giving victim impact statements are performing *to* someone they understand to be a woman and a mother. If another judge had been in Aquilina’s seat (especially a man), the performance of the sentencing hearing could have been quite different.

Multiple media outlets were quick to call Aquilina a “therapist” (Cacciola 2018; “Her Take” 2019, 5:35; Putnam 2018). In one article, psychiatrist Jessica A. Gold maintains that Aquilina’s sentencing hearing procedures mirrored the three “stages of recovery” which psychiatrists use

when working with survivors.²² Gold heaps praise on Aquilina, arguing that her willingness to stand in solidarity with the survivors ultimately restores their power (2018). When responding to the victim-survivors, Aquilina addresses the specific details of their stories, encouraging healing. While more traditional understandings of therapy believed the ideal therapist should be neutral and unexpressive in sessions with clients, in the more recently developed relational/cultural model of therapy, it is believed that the best results occur when mutual empathy is established between therapist and client, and the therapist participates authentically (Jordan 2000). Other theories on therapy, such as Solution-Focused Brief Therapy and Adlerian therapy, strongly emphasize positive encouragement (Watts and Pietrzak 2000). As a “straight-talker” with encouraging messages, Aquilina does exactly these things.

The ironic part about all of this is that Aquilina emphatically rejected the “therapist” label. On the third day of the sentencing hearing, she says to the crowd and to Nassar, “Contrary to CNN’s headline, I am not a therapist.” Indeed, as discussed above, it’s important for judges to maintain the image of the unbiased, neutral force which upholds the law without personal biases. So even though Aquilina acted in modes similar to those of a therapist, she firmly rejected that label.

One of the main reasons people might have associated Aquilina’s actions as “therapeutic” is the fact that during victim impact statements, she listened intently to what the women had to say.²³ Aquilina allowed all victim-survivors to come forward and speak openly for as long as they wanted to, akin to the approach of many American therapists (Gold 2018).

²² These stages of recovery are: 1) Establishment of safety, environment, and relationship to others, 2) Remembrance and Mourning, and 3) Reconnection. In the first stage, therapists aim to promote self-empowerment and a sense of control for victims, in the second stage, they “bear witness” to the stories of survivors, and in the third stage, they work to reintegrate the individual into the community.

²³ In the *Law and Crime Network* footage I analyzed, when victim-survivors are making statements, the camera is almost always focused exclusively on them (and their support persons). Therefore, I could not view Aquilina’s facial expressions or body language while the impact statements were being made. However, according to the news reports from journalists in the courtroom, she listened attentively as the victim-survivors were speaking.

Many of the impact statements given by victim-survivors focus on their “brokenness” and “pain,” but also emphasize resilience, strength, and healing (Schuster 2019). In her responses to the victim-survivors, Aquilina focuses less on the former themes and more on the latter. Indeed, the words Aquilina offers to each and every victim-survivor are overwhelmingly hopeful, encouraging, and fortifying to each and every victim-survivor. She uses words such as “strong,” “brave,” and “powerful” to describe the individuals who have come forward to give statements, and frequently emphasizes that they “have a voice.” In general, her tone is resolute and hopeful. While she recognizes and appreciates the trauma that each individual has experienced, she emphatically stresses that they are already on a path of healing. Aquilina also assures most victim-survivors that their words matter, and that she will take what they have said into consideration when she sentences Nassar. And like a good therapist, Aquilina emphasizes that what happened to the victim-survivors was not their fault, and reminds emotionally distressed victim-survivors that suicide is “never the answer.”

For example, to KJ²⁴, Aquilina says, "You are very brave, you're not in darkness anymore, you're in lightness. You have just opened doors, along with your sister survivors for others to speak out, and that's really important...you're a tower of strength." Similarly, she says to AB, "I'm really proud of you for refusing to let him take anything else from you. That tells me that you have started to heal. And you're right, it will take a long time, but that healing started really today when you publicly came forward...I'm not sure the outcome of this, but I do know that you have done your part and done it well, and been a champion at doing it. Thank you so much for being here."

Sometimes, Aquilina addresses the women’s narratives of pain and suffering caused by the abuse, validating their experiences. She references the specifics of the victim-survivors’ pain, Nassar’s character, or the failure of institutions to protect athletes. However, in general, Aquilina keeps

²⁴ Rather than use the full names of victim-survivors, I have chosen to use their initials for purposes of anonymity.

her responses focused on the power of the victims. Indeed, in interviews and public statements, she has emphasized that she sees the power of the victim's voice as central to the healing process: "As they spoke, I literally watched them grow to 10 feet. They got their power back." (Kim 2018).

Like a therapist, Aquilina also gives advice or directives to the victim-survivors from time to time, using phrases such as "you should" or "you need to." Often these pieces of advice revolve around how to move forward after the abuse. To AC, a woman who is then pregnant and who talks about how she lost her passion for writing music as a result of Larry's abuse, Aquilina says, "Seems to me, after this, you can finish writing. You found your voice, it's a strong, effective, brave voice, and you have a child coming. Maybe what you need to do is start and finish a lullaby and go from there, because you are now part of the voices of survivors." To MI, who gives a detailed account of her own depression and anxiety, which she says stemmed from Nassar's "treatments," Aquilina says, "You need to shove that depression aside, and say, 'Here I am world, I'm ready to fight!' Because today you did fight on behalf of yourself and all others who feel they don't have a voice. You're an example."

Aquilina also draws on cultural repertoires of motherhood by referencing her own position as a mother during the hearing. Aquilina makes it clear that when she hears the voices of the victim-survivors in her courtroom, she thinks of her own children. In response to LS, who asks during her victim impact statement, "How much is a young girl's quality of life worth?", Aquilina responds with the following: "I don't know how to answer, 'How much is a young girl's life worth?' But I have children of my own and there's not enough gold in the planet that would satisfy... that question. And I think all of you victims are gold, you're valuable, I'm so very sorry this happened." Here, Aquilina conveys to the victim-survivors that she has a more meaningful understanding of a child's 'worth' due to her identity as a mother. Additionally, some survivors,

such as EAM, appeal to Aquilina's motherhood when asking her to impose the maximum sentence possible on Nassar.

The judge frequently directs the victim-survivors to not let the abuse they experienced at the hands of Nassar define or haunt them. In other words, she no longer wants them to view themselves as victims, but rather, as survivors. To MA, Aquilina says, "Above the 'Me Too,' I want you to put, 'Survivor.' Because those words tell me that you're healing, you're speaking up now, and your statement takes your power back." In this sense, Aquilina encourages the victim-survivors to cast off the term "victim" from their identity, which, as Lauren Germain says, "seems to imply helplessness and powerlessness" (2016, 97). Additionally, Aquilina consistently reminds the victim-survivors that what happened to them was not their fault. And to the women who detail thoughts of self-harm or suicide, Aquilina emphasizes that the only person to benefit if they died of suicide would be Nassar. "Don't let him win," she tells JD.

At some points, Aquilina's words mobilize Christian notions of healing and rebirth. On Day 2 of the hearing, MJ gives an impact statement in which she discusses her feeling of disgust after leaving Nassar's appointments, and how she always immediately showered afterward but never felt 'clean.' She also describes in graphic detail her own suicide attempt due to Nassar's abuse. In her response to MJ1, Aquilina no longer serves as a secular therapist, but seemingly embodies the role of the "religious healer":

[T]here's immeasurable people who also support you and want us to *stay with us here*. I am certain that your family has told you that, but sometimes the magic of the robe works, so I want you to know that *I think* that you're valuable, and I want you to be here, and suicide's not the answer. I also want you to know—'cause you're not the only victim who's mentioned about how dirty you feel and how showers are not sufficient—if there was an order that I could put in place for all of you victims, survivors, I would order you to be reborn and clean. It's not your fault. And so if it helps any, as I'm sitting here in this robe, I *am ordering* that you feel clean, that you feel renewed...put the past in back of you.

Here, in ordering that MJ1 be "reborn and clean," Aquilina echoes Christian notions of renewal and rebirth through baptism. As Victor Turner describes, "Some genres... serve as paradigms

which inform the action of important political leaders... giving them style, direction and sometimes compelling them subliminally to follow in major public crisis a certain course of action” (1982, 72-73). Here, Aquilina draws on the Christian ‘paradigm’ of Christ himself, through whom all individuals have the potential to be cleansed and reborn (Macaskill 2014). Judge Aquilina applies this symbolism to her own position as a judge, presenting herself as an individual who has the power to transform through her “magic of the robe.”

Essentially, it seems that Aquilina attempts to establish the sentencing hearing as a communal and judicial process through which Nassar's abuse can definitively be left behind. Aquilina directs many of the victims to leave their pain in the courtroom, and tells them to go on to accomplish great things and live great lives. Before they leave the courtroom, Aquilina says to MJ2 and KJ, sisters who were both abused by Nassar:

He will be rotting behind bars, and *that* should make you feel safer, and you should leave the grief and sadness and unworthiness here in this courtroom, we'll sweep it away, we'll take him away...Live happy lives. Thank you *so* much for being here.

3.2.1.2. Aquilina as a Victim Advocate/Activist:

Closely related to Aquilina's performance as a “therapeutic” figure is her performance as a “victim advocate/activist.” In this role, she addresses societal issues of child abuse and sexual assault more broadly. Judge Aquilina asserts that the public statements of the victim-survivors in the Nassar Sentencing Hearing will create a “rippling effect,” or a “tidal wave” which will help to instigate change in broader society. She emphasizes that because victim-survivors have come forward, they have been a voice for others who have experienced sexual violence, inspired others to speak out, and made a difference in preventing such acts from happening again. In this sense, Aquilina again embodies the approach of a “feminist judge,” who, as Boyle argues, should be deeply concerned by the issue of sexual violence, as it disproportionately affects women (1985).

Yet, although Aquilina addresses societal issues and the victim-survivors' power to effect change, she refrains from castigating the specific institutions which enabled Nassar's sexual misconduct.

Aquilina consistently describes sexual abuse as a societal problem, something she has seen time and time again in her courtroom. On Day 7 of the sentencing hearing, before Aquilina hands down Nassar's sentence, she takes time to address sexual abuse in American society, listing off some alarming statistics:

The National Crime Victimization Survey that's done by the Justice Department annually reports that 310 out of every 1000 assaults are reported to police, which means that two out of three go unreported... But that statistic does not include children twelve and under. One in ten children will be sexually abused by their eighteenth birthday... It stops *now*. Speak out like these survivors, become part of the army.

Aquilina makes her position clear: Sexual abuse is a massive problem in American society which often goes ignored. She sees the victim-survivors in her courtroom speaking up as a path in the right direction, and encourages all victim-survivors of sexual abuse to come forward.

In addressing the victim-survivors in the case, Aquilina also emphasizes the need for people to believe individuals who come forward with claims of sexual abuse or assault. On Day 3 of the Sentencing Hearing, JD, a former Olympian, describes to the court how she was mocked on social media and called a whore and a liar when she came forward with her story of Nassar's sexual abuse. Aquilina responds to JD's statement with the following:

[T]his is hopefully a start in eroding the silence, which we need to do...I'm really saddened each time I hear that people didn't believe you--whether you reported it to someone, or whether it's your own friend or family member. People need to learn, and your message has been heard by me. I'm hoping that the public hears it that children need to be believed and supported by everybody around them.

Similarly, in response to OV's impact statement, Aquilina says, "I have heard you, I believe you, we all believe you." Here, Aquilina echoes the rhetoric of #MeToo activists such as Tarana Burke (Democracy Now! 2018; Stojadinovic 2003) by rejecting rape myths and underlining the need for individuals to believe survivors of sexual abuse and assault. Interestingly, the approach

she uses here sharply contrasts with the approach of the law, which emphasizes the need to prove someone guilty “beyond a reasonable doubt” before holding them accountable for sexual assault (Fletcher 2002, 137). By challenging this patriarchal construction of the law, Aquilina demonstrates feminist judging. As Martin, Reynolds, and Keith found, women judges reject rape myths and generally take accusations of sexual assault and abuse more seriously in the court than male judges (2002).

Aquilina also argues that through their impact statements, the victim-survivors in the Nassar case are not only they speaking out against other sexual abusers, but also giving strength to other victim-survivors. To VW she says, “You are not just dealing with this defendant, but with all of those who want to harm children. There... are strong voices, and you’re part of that. So be proud.” Similarly, she heaps praise on 15-year-old KZ, saying, “And you are, with your young voice, helping countless other young people who are in the same situation who you don’t know about, giving them the strength to them to come forward to their parent, to their coach, to somebody and say ‘no.’”

When applauding the victim-survivors for coming forward, Aquilina asserts that their impact statements have the potential to initiate change in law. To AC, Aquilina says that hopefully, their statements will usher in a new era in which the legislative changes which victim-survivors are asking for will be accomplished. But Aquilina envisions that effects of the victim impact statements to be far-reaching, beyond U.S. borders. She frequently reminds the victim-survivors that the “world is watching” and that Nassar's Sentencing Hearing is meant to be a “global resolution.” Aquilina says to JC, “So I applaud you being here today, making the decision to go public, it *makes a difference*. It's that rippling effect that will go on, not just in America, but I think... in every country. So *thank you* for your bravery.”

Once again, in her role as an activist, Aquilina works to present her jurisdiction in court as one which has the power to transform society. Let’s remind ourselves of what she said about sexual

abuse right before sentencing Nassar: “It stops *now*.” As Victor Turner explains, “ritual... is a transformative self-immolation of order as presently constituted...[o]nly in this way, through destruction and reconstruction that is transformation may an authentic reordering come about” (1982, 83-84). Aquilina, through her words, works to affirm her place on the bench as someone who has the potential to burn down past societal inequities and initiate the process of rebuilding from the ground up.

Yet, there are limits to Aquilina’s activism. While she emphasizes that the actions of the victim-survivors will bring about positive change, her message is vague, failing to explicate precisely *how* their words will bring about definitive change, or how they can effectively mobilize against sexual violence after they leave the courtroom. Additionally, Aquilina very rarely discusses the need for institutional reform within the organizations which allowed Nassar’s behavior to flourish. When she does, she often uses nebulous language which fails to call out the institutions by name.

Take Aquilina's statement to AT, who was a 24-year-old graduate student at MSU when she was sexually assaulted by Nassar in 2014. AT’s statement gives a scathing account of MSU's failure to properly address her official complaint of Nassar's sexual assault. A university lawyer, after doing an in-house investigation, told AT that she had not understood the difference between sexual assault and a medical procedure (Doyle 2019).

After AT’s statement, Aquilina addresses her. Rather than speaking to the most prominent points of Thomashow's narrative, which focus on lack of accountability at a public university, Aquilina sticks to her standard routine: she focuses on AT’s healing, AT’s role in stopping sexual abuse in society, and the fact that Nassar will never be allowed to hurt his patients again. She only hints at institutional problems, saying to AT, “I’m sorry the system failed you.” Here, Aquilina appears to use the word “system” as a euphemism for MSU itself, rather than calling out the university by its name. Aquilina's response to AT’s impact statement is not an anomaly;

she reacts similarly to other victim-survivors who provide damning accounts of institutional inaction within USAG, USOC, Tristars Gymnastics Club, and others.

In Nassar's final sentencing, Aquilina does briefly intimate the need for law to look into institutional lack of oversight or corruption which allowed Nassar's abuse. She says, "There has to be a massive investigation as to why there was inaction, why there was silence. Justice requires more than what I can do on this bench." Once again, here, one can see Aquilina hinting at the need for the law to address institutional abuse, but she does so subtly without explicitly listing the names of the various institutions involved. In the last sentence of the quote above, Aquilina seems to be suggesting that addressing institutional failures is beyond the scope of her power in this case.²⁵

In summary, Aquilina, in her responses to victim-survivors, acts as an advocate for those who have experienced sexual abuse, not just in the Nassar case, but throughout the world. She praises the victim-survivors for coming forward, but reminds the audience that there is still much more work to be done in fighting sexual violence in society. However, for the most part, Aquilina gives little information on how the victim-survivors can effectively mobilize, and she stops short of speaking out against the multiple institutions which enabled Nassar's abuse, which reveals limitations to her advocacy on behalf of the victim-survivors, potentially due to her constraints as a judge.

3.2.2. Aquilina as "Lady Justice":

In Aquilina's third and fourth "roles," I argue she plays two different aspects of "Lady Justice," also known as "Justitia" or "Iustitia." "Lady Justice" draws her origins from the Roman goddess

²⁵ Why would Aquilina fail to address institutional abuses and lack of oversight when so many victim impact statements included these themes? Due to the limitations on this research, I do not propose to have a definitive answer to this question. However, I would like to point the reader's attention to the fact that Aquilina is a law professor at MSU. Additionally, Aquilina's daughter, Jennifer Davis, is MSU's Director of Public Relations (Ford 2019). Is it possible that Aquilina may have refrained from addressing institutional accountability for Nassar's abuse due to her own embeddedness in MSU, one of the major institutions which enabled Nassar's abuse?

Iustitia, and is commonly viewed as the personification of justice within the Anglo-American legal tradition. She is often dressed in flowing robes and a blindfold, depicted holding scales, a book, and a sword. Typically, the scales which Lady Justice holds are seen to represent just decision-making, symbolically “weighing the evidence.” Similarly, the blindfold over Justitia’s eyes is meant to represent equality for all under the law, regardless of any distinguishing identity markers, such as race, class, religion, gender, or sexuality. The sword, on the other hand, generally represents the power of a ruler to punish offenders and protect innocent members of society (West Publishing Company 1983).

I argue that Aquilina plays both the part of the scales-bearing Lady Justice and the part of the sword-bearing Lady Justice. While on one hand, she positions herself as an impartial judge, and on the other hand, she works as a retributive figure. In these two roles, Aquilina embodies judicial authority, and her actions and rhetoric in these roles diverge sharply with those she mobilizes while enacting her “therapeutic” and “victim advocate” roles.



Figure 6: Lady Justice in the Michigan Supreme Court Learning Center, Lansing, MI

(Source: Michigan Supreme Court Learning Center)

3.2.2.1: Aquilina as "Lady Justice": A Fair and Unbiased Figure of Judicial Authority:

Through performing her role as judge, Aquilina engages in “positioning work” to justify her authority and expertise as an impartial judge, even going so far as to describe herself as “Lady Justice.” While she performs some of this positioning work while addressing victim-survivors, she mostly plays this role while speaking to Nassar, and later, sentencing him. She validates her own judicial power in many different ways. She references her many years of experience in law, underscores her commitment to judicial impartiality, positions herself as a believer in the American system, explicitly grounds her decisions in Michigan case law (legal decisions made in the past), and cites the American Constitution. In doing so, she not only legitimizes her own authority, but also sanctions and upholds the primacy of the American legal system.

Elements from Bourdieu’s “Force of Law” are applicable when analyzing Aquilina’s role as the evenhanded “Lady Justice.” Throughout the sentencing hearing, Aquilina positions herself as a judge who is neutral and bases her decisions on rational thought. In doing so, she participates in what Bourdieu calls the “struggle” which professionals in the field of law are consistently engaged in: the work to prove their field’s importance within broader society, and therefore, maintain the power which the field’s actors exert over the rest of society. As Bourdieu explains, “the specific symbolic effects of the representations, which are produced according to schémas adapted to the structures of the world which produce them, is to confirm the established order” (1987, 839). Essentially, the “positioning work” Aquilina engages in upholds the symbolic capital of the field of law.

But Aquilina’s position is not simply about maintaining the dominance of the field of law. She positions herself as someone who is passionate about carrying out justice. As Turner explains,

[T]he political aspect of social dramas is dominated by those I have called ‘star-groupers.’ They are the main protagonists, the leaders of factions, the defenders of the faith, the revolutionary vanguard, the arch-reformers. These are the ones who develop to an art the rhetoric of persuasion and influence, who know how and when to apply pressure and force, and are most sensitive to the factors of legitimacy (1982, 72).

In performing her role as the unbiased Lady Justice endowed with authority, Aquilina puts on an effective performance which reveals her aptitude for persuading the public that her decisions are valid within the law, and ultimately, the sentence she hands down to Nassar is just.

Aquilina does multiple things to establish herself as someone who is trustworthy and believes in the American system of government. She makes references to her personal and professional history to ground her authority. For example, when she addresses the second victim-survivor to give an impact statement, JT, she says, “This isn’t my first rodeo, with this kind of situation, so to speak. But the vastness of it is very different.” Here, Aquilina reminds the courtroom of her extensive experience in law regarding child sexual abuse, but warns them of the extreme nature of the case.

When Aquilina sentences Nassar, she incorporates her personal background into her final statement. By drawing on popular narratives of American exceptionalism, she establishes herself as not only a firm believer in the American legal system, but also, seems to position herself as an American patriot:

I came to this country stateless. I’m naturalized; my father’s Maltese, my mother’s German, and I was raised on old country values. And my grandmother always told me, and my parents always told me, my grandfather too, that America is the greatest country. I believe that. So I served in the military. ... I follow the constitution, and I believe our system works. I also believe these survivors.

Here, Aquilina draws on certain cultural repertoires to establish herself as someone who is trustworthy, hardworking, and believes in the American system. Here, she seems to subtly draw on the myth of the “American Dream,” which can be achieved by immigrants if they work hard and “pull themselves up by their bootstraps.” Aquilina, even if unconsciously, paints herself as someone who, despite the odds, achieved this dream, gaining high status by becoming a judge. (Cullen 2003; Miller 1964). She also draws on the myth of American exceptionalism, the notion that the U.S. is “unique among all other nations in its devotion to democracy, liberty, and self-government” (Ruth 2020). By referencing these commonly accepted American myths, Aquilina

makes a rhetorical appeal to the audience: she believes in the United States and in its legal system, and she can be trusted to protect it.

Throughout the hearing, Aquilina makes it clear that she is an impartial judge and has done everything she can to ensure a fair sentencing hearing for Nassar. She especially does this when she addresses Nassar's letter of complaint on Day 3 and when she sentences him on Day 7.

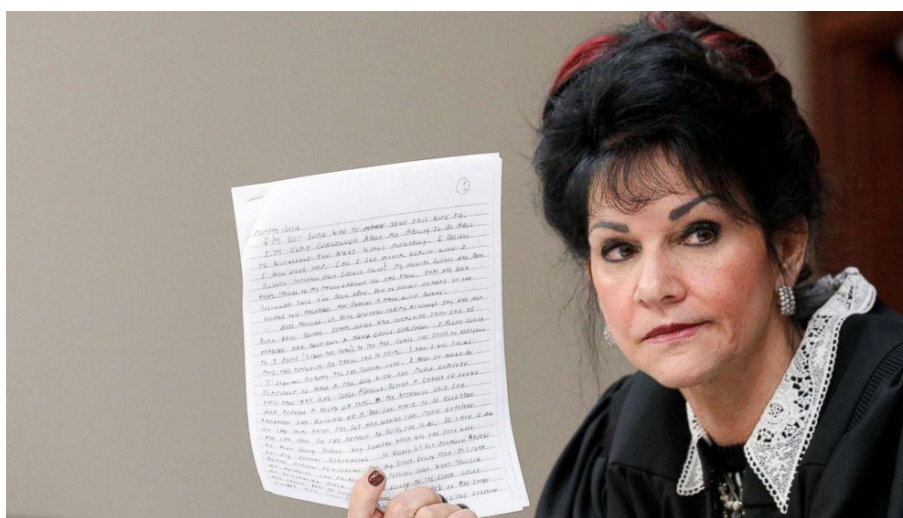


Figure 7: Judge Aquilina holds up Nassar's handwritten letter as she rebukes him

(Source: Brendan McDermid/Reuters)

On Day 3, Aquilina establishes herself as an unbiased, impartial judge by laying out precisely how she had prepared for Nassar's trial before he eventually plead guilty. She explains that she had no idea who he was, had no time for watching gymnastics or the Olympics because of her busy schedule, and she did everything she could to stay away from news and local gossip about the case so she could fulfill her duty to work as an unbiased judge. However, about halfway through her response to Nassar, she explains that because they are already two days into the sentencing hearing, she can no longer be "unbiased": "So now in terms of fair and impartial, how can I be fair and impartial now, completely a blank slate, when I have a presentence investigation report, I have your plea, I have all of these beautiful victims who've come forward. All of this has to be considered at sentencing." As she says this, she dramatically "counts off" all the evidence against

Nassar by using her fingers, and she squints her eyes at Nassar, subjecting him to her punishing gaze.

On Day 7, in her final statement, Aquilina once again reminds Nassar and the audience about her impartiality. She explains that when Nassar was still planning to go to trial, she believed there very well may have been a legitimate defense for medical treatment. She explains that her court had already sent out 200 juror requests and she was preparing for trial. But when Nassar made the plea deal, she could no longer be unbiased. She describes this shift in her opinion by referencing *Justitia* herself: “When I look at myself as Lady Justice, my arms are like *this*, they are balanced. Prosecution, defense are balanced. It only starts to tip after there's a plea and after I take into consideration everything that's happened.” Once again, through referencing a cultural symbol most Americans are familiar with, Aquilina makes her message palatable and clear: she is an impartial judge.

At the very end of the sentencing hearing, Aquilina also performs her role as the unbiased Lady Justice by praising both the prosecution and Nassar’s defense council for their cooperation and hard work: “You all have done fine work. You've made me proud of our legal system. We all work together for the betterment of our community... It's the only way our system works.”

Aquilina also reminds the courtroom that vigilante crime against the defense council is intolerable, citing the sixth amendment, which guarantees defendants the right to council.

The judge meticulously grounds her judicial actions and decisions in law and precedent, referencing judicial procedure, the specifics of Nassar’s plea agreement, Michigan case law, and the American constitution. For example, after Nassar’s letter accuses Aquilina of creating a “media circus” by letting all survivors come forward to speak, she cites a previous case in Michigan law, saying:

So I want everyone to understand, I've also done my homework. I always do. *People vs. Waclawski*... it is spelled W-A-C-L-A-W-S-K-I. 286 Michiak, 634. It's a 2009 case. And in it, and I want you to clearly understand, it says, "Plainly, the law does not limit victims' impact statements to direct victims." It doesn't say—and I have found nowhere—that limits me from having you hear *all* of your victims.

Additionally, Aquilina defends her decision to allow cameras in the courtroom by referencing a part of the American Constitution: "I respect all of the media outlets, you've done just a *fabulous* job here. There hasn't been any commotion or upset by this, and I do believe in the First Amendment, so I thank you all for being here, because it's an important story for the survivors."

Finally, Aquilina justifies her decision on Nassar's sentence by referencing Nassar's plea agreement. She reminds him that he signed the plea agreement, and that she intends to uphold and honor that agreement. When she hands down his final sentence, she reminds him of each of the counts of his case, listing each of the numbers somewhat dramatically:

Now I am *honoring* the agreement. I'm also *honoring* what's been requested of me... It is my privilege... on counts 1... 2... 5... 8... 10... and 18... and 24 ... to sentence you to... 175 years.

To sum up, Aquilina, in sentencing Nassar, justified her own authority and performed the role of "Lady Justice" in multiple ways. She uses case law to defend her decisions, references specifics in the American legal system, underlines her neutrality, and references her own extensive experience in law. Why did Aquilina engage in this conscious positioning? On a practical level, she likely did this to counter the criticism she received from lawyers, media outlets, and individuals on social media about her conduct in the courtroom being "biased" toward the victims. On a more abstract level, Aquilina is reifying the symbolic capital of the juridical field. She is also performing her role as a "star-grouper" in the "social drama" by paying strict attention to issues of legitimacy, and using culturally-attuned rhetorical strategies to persuade her audience that her conduct and decisions in the court are just (Turner 1982).

3.2.2.2: Aquilina as Lady Justice: A Figure of Retribution:

Although Aquilina positions herself as the levelheaded and impartial “Lady Justice,” she also acts as the sword-bearing “Lady Justice” through punishing Nassar for his crimes. However, while playing this role, she sometimes pushes the boundaries of what is acceptable in the law when she uses retributive and sometimes even violent or disturbing language. Aquilina emphasizes that while the victims will heal from the pain Nassar caused them and go on to accomplish great things, Nassar will be destroyed by the voices of the women and girls have testified against him. She declares that he will never live outside a prison again. In analyzing Aquilina's retributive language, I will draw from her responses to the victim-survivors, statements to the courtroom, and words from Nassar's final sentencing. In performing the role of the sword-bearing “Lady Justice,” Aquilina simultaneously channels and quenches the communal thirst for vengeance, and for this, she finds favor with the general public. However, by many members of the juridical field, her actions were seen as violating judicial boundaries, and therefore, endangering the symbolic capital of the field.

When addressing the victim-survivors, Aquilina consistently emphasizes that as they continue to heal and go on to live happy lives, Nassar will pay for his crimes as he “breaks,” “withers,” and “rots” in prison. On the very first day of the sentencing hearing, Aquilina engages in retributive rhetoric. Invoking a popular metaphor from *The Wizard of Oz*, she assures AE that Nassar will never be allowed out of jail:

The monster who took advantage of you is going to wither, much like the scene in the *Wizard of Oz* where the water gets poured on the witch, and the witch withers away. That's what's going to happen to him. Because as you get stronger, as you overcome—because you *will*—he gets weaker, and he *will* wither away. Prison is no place for a human being to live. Rehabilitation here is not in the cards.

At times, Aquilina's narrative of retribution verges on dehumanization of Nassar. Aquilina, using a term frequently used by the victim-survivors, also calls Nassar a “monster” who is unfit for life

in general society. For example, Aquilina encourages JM to forget Nassar's name entirely, symbolizing his erasure society:

You, your voice, the voice of all of the victim-survivors, will break him... Maybe not now, but eventually as he shrivels in prison. He will die there... And I know everybody's referred to him as Larry, not doctor, but to me, he is a defendant, like all the other criminals, someone without a name who's done so wrong, he doesn't deserve to be called by his first name or by his former title. I hate even using his last name now after hearing from all of you. He is "defendant" to me. And at some point, I hope that he becomes simply "defendant" to you.

Aquilina, echoing the Christian cultural repertoires invoked by many of the victim-survivors, ultimately leaves Nassar's fate in the hands of the almighty. To AT, she says, "He will never be free. The next judge he faces will be God."

While Judge Aquilina engages in retributive rhetoric during her responses to the victim-survivors' impact statements, she directs her harsh invective toward Nassar himself when she hands down his final sentence on the final day of the sentencing hearing. At times, Aquilina seems to taunt Nassar, metaphorically "dragging" him through all of the crimes that he will now pay for. Therefore, she will ensure he dies in jail. When she finally hands down his sentence, she says:

I want you to know... I need to send a message to the parole board in the event somehow God is gracious—and I know he is—and you survive the 60 years of federal court first, and then you start on my 40 years... you've gone off the page here as to what I'm doing. My page only goes to 100 years. Sir, I'm giving you 175 years which is 2100 months. I've just signed your death warrant.

As she delivers Nassar's mammoth sentence, she seems to gloat over him, demonstrating that he is utterly irredeemable in human society and no match for her judicial power.

But perhaps the most extreme example of Aquilina's dehumanizing rhetoric was a statement she made on Day 1 of the sentencing hearing. Aquilina concludes her first day of listening to multiple victim impact statements in a row by saying:

How much is a young girl's life worth? Our constitution does not allow for cruel and unusual punishment. If it did, I have to say, I might allow what he did to all of these beautiful souls, these *young* women in their childhood, I would allow someone, or many

people, to do to him what he did to others. Our country does not have an eye for an eye. And Michigan doesn't have the death penalty. So I don't know how to answer, "How much is a young girl's life worth?"

Here, Aquilina seems to indicate that if she were not restrained by the limitations of the American legal system, she would advocate for sexual assault against Nassar himself. This statement was seen by many (although not all)²⁶ in the legal community as violating Aquilina's judicial boundaries. For example, Brenda Smith, a law professor and an expert on prison rape, was shocked by Aquilina's words. She said: "She's saying that sexual assault is wrong...except as retribution. The reality is that nobody deserves to be victimized." Many in the legal field viewed Aquilina's behaviors as highly problematic, if not grounds for punishment. One of Aquilina's colleagues, Ingham County Circuit Judge William Collette, called Nassar's sentencing hearing "the most violative" hearing he could remember (Kaufman and Guillen 2018). This is perhaps because Aquilina's words of vengeance threatened the very values law purports to stand on: neutrality and disengagement.

But interestingly, through looking at social media responses, we can see that the general public expressed praise for Aquilina (with a few notable exceptions) (Gabbara 2018; Holter 2018; "The Larry Nassar Verdict" 2018). In their study on Twitter responses to the Nassar Case, Zhang Meadows and Meadows found that of the 860 tweets which exhibited the emotion of joy in regard to the Nassar sentencing hearing, 51.28% of the tweets expressed joy over Aquilina's conduct. Other tweets expressed happiness over Nassar's sentence, echoing Aquilina's tones of retribution. One said, "I'm glad to see he gets what he deserves. Justice is served" (2019, 202). In the performance of the Nassar sentencing hearing, Aquilina's status as a "star-grouper" was seemingly sanctioned by the general public. Victor Turner states, "Gods and goddesses of

²⁶ Some legal experts saw her as expressing "the conscience of the community on behalf of the victim," which the judge has the discretion to do in sentencing hearings (Jeltsen 2018).

destruction are adored primarily because they personify an essential phase in an irreversible transformative process” (1982, 72). Perhaps Aquilina was hailed for similar reasons.

Aquilina’s performance of both impartial “Lady Justice” and retributive “Lady Justice” seem to contradict one another, revealing great tension in her character, a “role conflict.” It is crucial to note that Aquilina starts employing vindictive messages and telling victim-survivors that Nassar will spend the rest of his life in jail on the very first day of the sentencing hearing. Aquilina’s punitive messages belie her claim to represent the impartial “Lady Justice,” who comes to a decision on sentencing only *after* she has seen and heard all the evidence. It is almost as if Nassar’s fate had already been decided when he made his plea deal. In this sense, Nassar’s seven-day Sentencing Hearing with 169 victim impact statements seems almost ludicrous.²⁷ However, many viewed the sentencing hearing as an attempt to “hold predatory men to account,” and give the victim-survivors of Nassar’s abuse a voice, and thus, necessary (Cacciola and Hauser 2018).

²⁷ It’s also important to remember that at the time of the hearing in 2018, Nassar was 55 years old. Before stepping into the Ingham County Circuit court which Aquilina presided over, Nassar had already been sentenced to 60 years in prison in a federal court due to child pornography charges. In this sense, Nassar’s sentencing by Aquilina, up to 175 years in prison, appears beside the point (Cacciola and Hauer 2018).

Conclusion:

Less than two weeks after the Nassar Sentencing Hearing concluded, actress Natalie Portman, a founder of the “Time’s Up” movement²⁸, wore a plain white t-shirt with “JUDGE AQUILINA” emblazoned in bold black lettering across it as she hosted *Saturday Night Live*. It seemed as if Aquilina’s ascendance to pop media and culture had been formally sanctioned. She was featured as one of *Glamour*’s 2018 Women of the Year, along with the victim-survivors in the Nassar case. She has become somewhat of a local celebrity in mid-Michigan, and now has her own food column in the Detroit magazine SEEN. Clearly, Aquilina affected individuals beyond the Ingham County District Courtroom. But what were the reasons for her success?



Figure 8: Aquilina and the victim-survivors as Glamour’s Women of the Year, 2018

(Source: Jason Schmidt/Glamour)

On one hand, Aquilina “performed well” (Turner 1982, 80) as a figure of justice. Gibson, Lodge, and Woodson (2014) explain that “when citizens pay attention to courts, they are influenced by

²⁸ Time’s Up was officially launched on January 1, 2018 by celebrities in Hollywood as a response to revelations about producer Harvey Weinstein’s sexual abuse and the #MeToo movement. The movement has raised millions of dollars for its legal defense fund, created to support low-income women and people of color seeking justice in cases of sexual harassment and assault in the workplace. (Time’s Up Now 2020).

the pageantry of judicial symbols, and that this, too, contributes to acquiescence and attitude change” (838). Through performing four roles which draw on existing cultural scripts in American society and explicitly grounding her power in the norms of law, Aquilina used rhetorical persuasion to effectively exert her power as a representative of the law and convince her audience of the righteousness of her own authority. In doing so, she reinforced the symbolic capital of the juridical field.

However, through acting as a feminist judge, Aquilina also challenged the patriarchal construct of the law and its claim to autonomy, neutrality, and universality (Bourdieu 1987) by creating a space in her courtroom where victim-survivors can share their stories in an environment of communal healing. In this sense, Aquilina’s performance was potentially transformative. In describing the social drama as a ritual, Victor Turner says:

I like to think of ritual essentially as performance, enactment not primarily as rules or rubrics. The rules frame the ritual process, but the ritual process transcends its frame... to perform is thus to bring something about ...but in the “carrying out,” I hold, something new may be generated. The performance transforms itself. True, as I said, the rules may “frame” the performance, but the “flow” of action and interaction within that frame may conduce to hitherto unprecedented insights and even generate new symbols and meanings, which may be incorporated into subsequent performances (1982, 79).

In the Nassar Sentencing Hearing, as a “star-grouper,” Judge Rosemarie Aquilina worked to position herself as a figure who can transform not only the individuals around her, but the social processes around her as well. Precedent is important in law. Aquilina engaged in feminist judging in a hearing which was widely consumed by the American public. Bourdieu sees judges as “practitioners,” the ones who “introduce the changes and innovations which are indispensable for the survival of the system” (1987, 824). It is possible that Aquilina, through her unorthodox judicial approach in a sentencing hearing which was widely consumed by the American public, has opened up new possibilities for judging in the future. On a broader societal level, her example may have been influenced by and contributed to larger feminist movements which encourage people to believe survivors and work toward a society free of sexual abuse and assault.

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