“Leave Your Pain Here”: An Illustration of Therapeutic Jurisprudence Through the Remarks of Judge Rosemarie Aquilina from the State of Michigan v. Larry Nassar

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ABSTRACT

Dr. Lawrence Nassar was the national medical coordinator of the United States of America Gymnastics (USAG), gymnastics team physician/assistant professor at Michigan State University, and the USAG artistic team physician who sexually abused many young women and children under the guise of medical treatments. In an unprecedented legal event, Judge Aquilina allowed anyone who had been impacted by Nassar's abuse to participate in the pre-sentencing phase by reading a victim impact statement. Judge Aquilina listened to 156 impacted speakers and responded with personalized messages. This paper will examine Judge Aquilina's responses to the victim impact statements through the lens of therapeutic jurisprudence with a focus on trauma-informed themes and messages of empowerment. Concrete examples of therapeutic jurisprudence will be provided as well as suggestions for how these behavioral and relational elements can be translated to inform judicial trainings.

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Dr. Lawrence Nassar was the national medical coordinator of the United States of America Gymnastics (USAG), gymnastics team physician/assistant professor at Michigan State University, and the USAG artistic team physician. He leveraged these high-profile roles to perpetrate scores of sexual abuse experiences with young women and child athletes under the guise of medical treatments (Mountjoy, 2019). While Nassar evaded complaints about his abuse for many years, he was ultimately charged, pled, and sentenced to 60 years on federal child pornography charges in December 2017 (Mountjoy, 2019). In January 2018, Nassar was sentenced to 40-175 years for first-degree criminal sexual conduct in the court of Judge Rosemarie Aquilina in Ingham County, Michigan (Dator, 2019). In February 2018, Nassar was sentenced to 40-125

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years in prison in Eaton County on three charges of criminal sexual misconduct. In an unprecedented legal event, Judge Aquilina allowed anyone who had been impacted by Nassar's abuse to participate in the pre-sentencing phase by reading a victim impact statement (Udowitch, 2020). This invitation resulted in 156 victim impact statements that were read by survivors or their representatives during an eight-day sentencing hearing prior to the January 2018 sentencing decision. Victim impact statements are either written or oral statements that describe the crime's psychological, physical, and financial impact on the victim and others, such as the victim's family members (Myers & Greene, 2004). Victim impact statements were designed to assist the judge in determining an appropriate sentence, rather than purporting that the victim is recommending or having control over the penalty or punishment (Wemmers & Cyr, 2004). Judge Aquilina responded to all of the 156 impacted speakers with personalized messages. We examined Judge Aquilina's responses to the victim impact statements through the lens of therapeutic jurisprudence with a focus on trauma-informed themes and messages of empowerment.

Therapeutic Jurisprudence

Therapeutic jurisprudence (TJ) is a legal philosophy framing how the operation of the law and its associated legal rules, procedures, roles, and institutions impact human well-being (Kawalek, 2020; Wexler, 2000). TJ explores the potential ways in which the judicial process can reduce the negative impact on emotional, psychological, physical, relational, economic, and social personhood (Stobbs, 2019) and considers that the process, itself, can have therapeutic and anti-therapeutic effects (Erez et al., 2011; Kawalek, 2020; Wemmers, 2008; Wexler & Winick, 1996). TJ is rooted in the idea that the legal system, particularly judges, has the power to act as a therapeutic agent (Kawalek, 2020).¹ TJ research suggests that for judges to act as therapeutic agents, they must follow certain judicial interactional and behavioral styles. While validated tools for empirical measurement of the therapeutic quality of behavioral and interactional styles are still under development (Kawalek, 2020), scholars have characterized TJ skills as a conveyance of: warmth, empathy, validation, compassion, respect, active listening, positive and/or future focus, non-coercion/volunteerism, and non-paternalism (Clark, 2001; Goldberg, 2011; Hopkins & Bartels, 2019; Warren, 2000; Winick, 2003). We propose the most effective TJ responses include trauma-informed and content process that are tailored to the individual and these themes were explored within Judge Aquilina's responses.

¹ TJ is a paradigm that is contested because it is "amorphous subjective, and evolving in nature," (Kawalek, 2020 p. 3), often regarded by scholars as a theory, or "implemented as a practice, set of principles, method, philosophy, etc." (Kawalek, 2020 p. 3).

Victim Impact Statements

An essential tenet of TJ participation focuses on giving the victim² a voice in the legal and judicial proceedings (Griffith, 2015; Goldberg, 2011). The Crime Victims' Rights Act as part of the Justice for All Act (2004), allows victims the right to be present at all court hearings related to the offense, to be reasonably heard at sentencing, to be notified of the terms of any plea agreement, and to be treated fairly by emphasizing dignity and privacy (Roy, 2019). Currently, all 50 states allow victim impact statements to be included in some form during the sentencing phase (Roy, 2019; Talbert, 1988).

Victims within the criminal justice system have primarily been dissatisfied with a lack of role in the court proceedings (Pemberton & Reynaers, 2011; Shapland, 1985). According to procedural justice theory, fairness is an important concept as it communicates that victims are valued and respected in the criminal justice system (Van de Bos et al., 2001). Speaking at sentencing allows the victim to have a role in holding the perpetrator accountable as well as preventing harm from being inflicted on future victims (Roy, 2019). Victims reported that when legal actors showed an interest in them as individuals, they were given the opportunity to speak, and their message was taken into consideration victims were more likely to feel they were treated fairly (Wemmers, 1996). Victims who share their impact statements have reported increased confidence and satisfaction with the criminal justice system (Erez & Rogers, 1999). When participants have a role in the court proceedings, it also enhances the victim's acceptance of the outcome (Wemmers, 1996) and leads to a greater sense of procedural justice (Pemberton & Reynaers, 2011). Moreover, victims report improved mental health when given the opportunity to speak without interruption or skepticism and are listened to non-judgmentally and validated (Goldberg, 2011; Griffith, 2015; Roy, 2019). Perhaps most importantly, when crime victims feel they have been treated fairly through the criminal justice process, it aids in their recovery and healing (Tyler & Lind, 1992; Wemmers, 2008, Wemmers & Cry, 2005).

This study examined presiding Judge Rosemarie Aquilina's responses to a majority of the publicly available victim impact statements (n=156) read during the January 2018 pre-sentencing phase following the pleading of Nassar to charges of criminal sexual conduct. Our goal was to explore the tenets of therapeutic jurisprudence by examining themes within the victim impact statements. Specifically, the aims were to:

- 1) Identify comments from Judge Aquilina's responses to victim impact statements that

² We recognize that the term victim can connote a negative personal meaning for the identity of those affected by crime who may prefer the term survivor. We use the term victim throughout this paper to be consistent with the phrasing within the title of victim impact statements.

may reflect the process of TJ; 2) Classify themes based on the core constructs of TJ with a focus on identifying trauma-informed and individually tailored responses.

Methods

Prior to each victim reading their statement, the prosecution reported whether the survivor had consented to be publicly identified and if so, their statement was recorded. Since court proceedings were unsealed, these recorded victim impact statements as well as the judge's comments were considered public record and were accessed from a variety of online sites (e.g., Youtube.com—Law & Crime Network). Of the judge's responses, 135 were located, downloaded, and transcribed. We excluded statements from individuals who were not direct victims of sexual assault (e.g., parents of victims, coaches, fellow physicians). The final sample included a qualitative analysis of 1,733 statements or utterances from Judge Aquilina from the Ingham County Circuit Court.

In terms of processes for transcribing, the audio was transcribed verbatim with the aid of closed captioning. Transcripts were reviewed for accuracy prior to analysis. Transcript data was entered into Dedoose (2020) a cross platform web application for managing and analyzing qualitative methods research. A detailed codebook for textual analysis was created with codes that reflected elements of TJ (see Table 1). TJ-related codes included constructs of gratitude, acknowledgment of the impact of abuse, control/empowerment/strength, being part of a collective group, closure, destigmatization, validation/acknowledgment of experience, pride, placement of blame, and making a difference through the victim impact statement. There were two primary coders and two secondary coders. Reliability checks were conducted, and coders collaborated to resolve areas of disagreement. Twenty percent of each code was tested for inter-rater reliability revealing $\kappa=.87$.

Results

Gratitude

The most common theme amongst Judge Aquilina's comments following the reading of victim impact statements was an expression of gratitude for their engagement in this process. Her responses expressed recognition and appreciation to the victims for their attendance, participation, their statements, time, and bravery. The Judge also thanked individuals who stood with the speaker for support or those who spoke on behalf of others who could not attend. The Judge expressed her appreciation to each speaker at least once and gratitude was often expressed multiple times during and following each

statement. Gratitude was coded 248 times and represented 14.31% (n=248/1733) of all the Judge's coded responses.

Table 1: Codebook for Textual Analysis

Code	Description	Examples
Control/ empowerment/ strength	Any comment about victim taking back power or control; any reference to strength	"He no longer has control over you, you have the power now."
Collective group	Any reference to survivor being part of a group	"He has made you stronger, more vicious." "You and the army of sister survivors ..."
Destigmatization	Any comments to remove associations of shame or disgrace stemming from abuse; any reference to defining the survivor as more than the abuse	"You are beautiful on the inside." "This does not define you."
Validation and acknowledgment of experience	Any reference to the judge hearing, understanding, or believing the survivor	"I've heard you; your words have been heard." "You are not silent. I have heard your voice."
Closure	Any reference to moving forward/future; healing; forgiveness for self, parents, coaches, etc.	"Leave your scars here, we have cleaning people." "Start healing."
Gratitude	Any reference to gratitude for attending, sharing experience, supporting others, etc.	"It is my honor to know you."
Pride	Any reference to being proud of the speaker	"I'm proud of you."
Acknowledging the impact of the abuse	Any reference to suicide, depression, fear, nightmares, strong emotions, etc. as a result of the abuse	"Suicide is not the answer." "So many survivors have talked about the anxiety and you certainly have that, but you are poised."
Meting out blame to the defendant	Any reference to the defendant; being clear about the defendant's guilt	"He's the one who needs to be ashamed." "The defendant is ill."
Institutional betrayal	Any reference to the system/institution not being protective	"The system failed you." "You should have been in a safe environment."
Victim impact statement has made a difference	Any comment referring to the effect that sharing the victim impact statement has had on other people/events/etc.; any reference to helping other victims; any reference that the victim impact statement will or has led to changes	"Your strong voice is making changes." "Your voice is going to heal countless others."

Judge Aquilina also expressed appreciation for victims' willingness to speak out about their abuse as illustrated by the following,

Thank you so much because I am very lucky that you came to court and publicly made your statement. Thank you.

I'm so honored that you came to tell your story here today. Thank you.

She also acknowledged the time and emotional effort it took to write the victim impact statements. As exemplified by the following quotes,

I appreciate the thoughtfulness, the details, and the depth of your words. They were very heartfelt and powerful.

I am so honored that all of you have been here to speak and thank you for your words and the time that you spent agonizing over your words. It was time well spent. Thank you.

Throughout the sentencing phase, Judge Aquilina praised the speakers for their strength. She expressed gratitude for the survivor's bravery or courage and thanked them for displaying those qualities as illustrated in the following quotes,

I want to thank you for being brave enough to be here.

I thank you for being brave enough to speak out.

Thank you so much for being here showing us that strength you have.

Thank you for being such a strong role model with such an epic voice.

Not only did she thank the speakers, Judge Aquilina also expressed gratitude for support persons and family members who stood with the speaker during the reading of the victim impact statements. Occasionally, family members or court personnel read the victim impact statement on behalf of the survivors who were unable to attend. In these circumstances, the Judge thanked the reader and the survivor who was not in the courtroom. Her appreciation for others reading the statement on behalf of the victim was demonstrated by the following quotes,

I want to thank you for your loud voice on behalf of your daughter, your family, and all of the survivors. Thank you so much for being here.

Ma'am thank you so much for being here. You have honored your daughter with your words. And thank you for standing in place of your daughter and supporting her.

Thank you, mom, for being here as her support person.

Victim's Control/Empowerment/Strength

Many survivors made reference to the sexual abuse having a negative impact on their life and future. Judge Aquilina noted the survivors' strength empowering them to reclaim control. Themes of control, empowerment, and strength were grouped together and were coded 242 times, accounting for 14% (n=242/1733) of the Judge's comments.

In terms of framing her statements of empowerment, the judge listened intently to every speaker and often used their own words when responding to them.

You may have those episodes where you break down but I want you to think about the strength you have here and pull yourself right up, because man you've got it.

And you and your sister survivors together are gonna keep getting stronger.

Today your words, your strong stance and voice, your absolute eye contact with your predator puts you in control. He is not in control anymore.

He hasn't changed you for the worst, he's made you stronger. Stronger, more vicious, fighter, a voice for all.

Judge Aquilina leveraged the victim impact statements as empowering survivors in reclaiming control from the abuser. As exemplified by this quote, "Because of what you've said you've taken your power back." She also referenced empowerment when speaking about the survivors getting their lives back by participating in the court process as exemplified by the following quotes,

Taking back your control, your power, your strength.

It's very clear that you have found your voice, and that you've taken back control and your power.

You've taken your power. He had taken it. But now you've taken your power back. It's a superpower.

She made reference to strength in the form of survivors being powerful and fierce, "You are a fierce survivor, your voice and strength are a gift not only to you but to everyone and your sister survivors." The Judge complimented the survivors' mental toughness and acknowledged the courage it took to speak in front of others in the courtroom, "Look how strong you are. There are not very many people that can stand up in a court like this with all this around and do what you just did."

Judge Aquilina lauded the survivors' collective strength as they stood together united in their voices. She regularly referred to the power the army of sister survivors had by banding together and speaking out about the abuse, "With your sister survivors you stand, stand stronger and stronger and this power of strength is getting larger, wider, deeper, taller."

Judge Aquilina regularly used words of strength (e.g., armor and steel), power, and courage to describe the survivors, such as warrior, fighter, super-hero, hero, and heroine, "You are warriors who stand and fight, let me just tell you that you and the rest of your sister warriors have the strongest DNA, made of super-woman steel." As exemplified by the following quote, "The military has not yet come up with fiber as strong as you." Moreover, she used metaphors about weapons to articulate the magnitude of the victim impact statements, "Your words are as strong as any gun, taser, or Billy club." She also used powerful language when referring to Nassar as the beast and how their strength and victim impact statements were the weapons used to slay the abuser, "You have killed the beast that you are afraid of with your strength and with your words and you and the other survivors have exposed the beast."

Closure

The third most common theme within Judge Aquilina's responses was closure, which was coded 205 times accounting for 11.83% (n=205/1733) of her coded responses. Framing the victim impact statement process as closure encompassed themes of healing, relief, forgiveness, release of pain, finding peace, and looking towards the future.

Judge Aquilina encouraged survivors to use this victim impact statement process to move them towards closure by healing, mending, and moving past the abusive experiences. Her positive words reinforced the message that survivors are deserving of closure as a path towards recovery. In addition to healing, the Judge urged survivors and family members to forgive themselves of any blame they may have been harboring. She repeatedly told survivors to lift the weight that they had been carrying and leave their pain/guilt/nightmares in the courtroom, framing the victim impact statements as a way of unloading and leaving their emotional burdens. She also encouraged the victims to leave

their pain in her hands and the hands of the court for remedy and as a response to the perpetrator. She foreshadowed the sentencing outcome as one of finality. As exemplified by the following quotes,

I need you to leave your nightmares here with him between the federal court, this court, and Judge Cunningham. He's not getting out.

I hope you heal and leave all that junk here. I've said it before, we've got good cleaning people. See how much they've already cleaned away. Leave it all here and go out and be happy because that's what you want and that's what you deserve.

Seriously ma'am, when you turn around and go to your seat, and you leave the courthouse, we have people who clean the courthouse. Leave the scars here. Drop them. See you're already happier. I can see, I can see you just uplifted.

As a side effect of releasing the guilt and pain through these victim impact statements, Judge Aquilina encouraged the victims to release their emotional weight and encouraged them to let go and find peace, happiness, and bright futures.

Discussion

Victims' experience with the judicial process may be as or even more important than sentencing outcomes in terms of determining their satisfaction and affecting their willingness to use the court in the future (Bell et al., 2011; Bennett et al., 2010). TJ is rooted in the idea that the legal system, generally, and judges, particularly, have the power to act as a therapeutic agent (Kawalek, 2020). Consistent with the TJ perspective, Erez (1999) found that victim's satisfaction with their criminal justice experience is connected to judicial behavior, specifically noting the importance of the time in which judges include victim's input or phrases within the sentencing statement. This qualitative analysis of the judge's comments following the reading of the victim impact statements provides an excellent opportunity to articulate themes of TJ, by putting words to a theoretical framework, with potential for translational recommendations for therapeutic judicial responses.

Elements of TJ

One of the elements of TJ focuses on the process of delivering judicial feedback, including the behavioral style, tone of warmth, empathy, compassion, respect, and non-paternalism. In the realm of psychotherapy, these elements are embedded in the quality

of the relational exchange and are called the nonspecific effects of psychotherapy (Huibers & Cuijpers, 2014). The responses of Judge Aquilina embodied all of these process-related elements with her individually tailored reflections of validation, acknowledgment of the survivors' pain as well as their strength, compassion for their experience of abuse, survivor-focused approach, including allowing time for the statements to unfold, and a general culture of respect for the victims as people and for the process and role of the impact statements. Judge Aquilina was also able to sit with the range of the emotions brought by the survivors and was transparent in her own emotional responses. These behavioral and relational elements are exemplars of TJ in action.

It is important to note that this approach of judicial emotional transparency is not without controversy within the judicial culture. Judges discuss the tension that they must balance between the emotional appeal embedded within the victim impact statements and their mandate to follow sentencing guidelines from a stance of neutrality (Schuster & Proppen, 2010). In fact, in the current case, Nassar's attorneys sought an appeal of his lengthy sentence, alleging judicial bias (Kozlowski, 2020). While a three-judge panel denied the initial appeal, a 22-page opinion admonished some of Aquilina's statements as 'wholly inappropriate' and asserted that due process rests upon a foundation of judicial disinterest and impartiality. Implications from this sequence of events suggest that TJ must be balanced with an awareness of the constraints of the judicial procedures. Translational implications suggest elements of TJ could still be implemented without compromising judicial neutrality. For example, TJ elements of emotional validation, acknowledgment, and compassion in response to victim impact statements can still be survivor-centered without including an admonishment of the defendant. Research on counseling responses has found that empathic verbal responses of reflection and validation have different, yet positive effects on the participants' experience with both responses increasing a sense of belonging and validation, specifically increasing self-esteem and lowering negative mood and aggression toward those who excluded individuals within a social exclusion game (Kim & Kim, 2013). Clearly, criminal justice contexts as well as the events that bring survivors to those contexts are vastly different in magnitude from the experimental design in Kim and Kim (2013). Nevertheless, research on the impact of therapeutic responses within the counseling or therapy context may inform strategic and effective TJ responses. In terms of language, due process concerns may center on the potentially inflammatory nature of word choice, such as Judge Aquilina's words referring to the defendant as "predator" or "beast." It may be possible for TJ to coexist with judicial neutrality via careful consideration of word choice, particularly those phrases that are used to refer to the defendant.

On the topic of closure, one of the elements of TJ focuses on a positive, future focus and this theme was evident in many of the Judge's responses, collectively coded as closure. Judge Aquilina referred to the victim impact statements as opportunities for the survivors to unburden themselves of their pain and suffering, to leave their pain in the courtroom, and forecasted futures filled with hope, positivity, and opportunity. In terms of the process of closure, specifically, the expectation that judicial responses, generally, or TJ, specifically, will result in closure, which is defined as the end of survivor suffering, may be unrealistic. A qualitative interview with 36 homicide survivor experts (community, academic, and criminal justice) assessed their perspectives on the judicial process and closure (Saco & Dirks, 2018). The majority opinion was that the term of closure was misleading and instead of the finality of closure survivors identified their grief as a process that ebbs and flows and that a more appropriate term may be acceptance of the experience. Additionally, participants noted that the legal process, itself, is not 'done' as there are always appeals which can be reactivating. These reflections suggest that effective TJ could balance a focus on a more positive, future focus while acknowledging the complexity of the healing journey.

Limitations

This qualitative study aimed to use judicial responses to victim impact statements in order to provide concrete examples of TJ. Limitations of this study include the fact that there was no opportunity to explore survivors' reactions to Judge Aquilina's comments. Therefore, we cannot say that they were experienced as therapeutic, per se, but can only assert the ways in which they did or did not align with the theoretical tenets of TJ. Limitations also include the fact that this case was highly publicized and generally open to the media livestream. Therefore, it is unclear how the scope and breadth of this coverage may have impacted the judicial comments and how representative this opportunity for judicial response may be for cases that are tried in less public contexts. These judicial and victim impact statement responses are also contextualized by the type of crime, serial sexual abuse of children and young adults within the context of medical treatment.

Conclusion and Future Directions

Qualitative analysis of the comments of Judge Aquilina following the victim impact statements in the sentencing of Lawrence Nassar revealed convergence with the TJ domains of validation, compassion, respect of survivor pain, empathy, and positive future focus. These exemplars, though illustrated within a case with unique features, have translational implications for crafting exemplars of judicial TJ responses. Judge Aquilina demonstrated TJ in action which was widely publicized. We hope this will be a catalyst

for TJ's behavioral and relational elements to be translated to inform judicial trainings. Future research would benefit from examining victims' responses to judicial empathic messages in an effort to greater understand how it may aid in trauma processing. Limitations of TJ, particularly for aims of survivor closure, as well as the importance of balancing judicial neutrality were also apparent in these responses. Drawing from the extant counseling literature which has examined the impact of the therapy process on participants' emotional experience, may serve as a guide to strategizing effective TJ responses.

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