



ARMY OF SURVIVORS

How Victim Impact Statements in the Larry Nassar Sentencing Promoted Justice

“Perhaps you have figured it out by now, but little girls don’t stay little forever. They grow into strong women that return to destroy your world.”

—Victim impact statement of Kyle Stephens

BY PAUL G. CASSELL AND EDNA EREZ

Over the past several decades, crime victims’ rights advocates have sought to amplify the victim’s voice in the criminal justice process. A key part of that effort has been giving crime victims the right to deliver a victim impact statement (a “VIS”) at sentencing before a sentence is imposed. In the United States today, the federal system and virtually all states allow VISs.

While VISs are firmly entrenched in the American criminal justice landscape, the wisdom of allowing such statements is sometimes disputed. Yet many arguments about VISs rest not on empirical data but rather on speculation about what those statements might look like, what victims’ motives are in delivering them, or what effects the statements might produce. This reliance on speculation stems from the fact that surprisingly little is known about VISs. To be sure, anecdotal examples of particular statements have been cited by scholars. But relatively little empirical scholarly work exists regarding VISs.

This dearth of empirical research is partially explained by the difficulty in studying a “typical” VIS. Different crimes perpetrated by different offenders in different ways cause different forms of victimization. And even when the victimization stems from the same crime, that crime may take varying forms or be perpetrated in different social contexts, with different offender–victim relationships producing variable harms. Because each crime—and each victim—is unique, it is hard to determine whether victims’ assertions in their

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VISs result from their unique circumstances. And that difficulty has left scholars wondering what factors might drive victim impact statements and their content generally.

Recently, a distinctive data set of VISs developed. In January 2018, Rosemarie Aquilina, a state court judge in Michigan, allowed 168 direct and indirect victims of former USA Gymnastics team doctor Larry Nassar all to deliver VISs. The nation was riveted as Nassar's victims explained, in broadcast hearings lasting days, the impacts of how Nassar had sexually abused them. The resulting set of VISs is rich in details about what kinds of assertions victims make in them.

Nassar committed similar crimes against each of his victims, allowing a robust research approach to answer questions about the content of, motivations for, and benefits of submitting VISs. Specifically, it is possible to explore whether (roughly) the same crimes produce (roughly) the same VISs. This data set also has the advantage of the lack of significant utilitarian motives for submitting the VISs, such as the desire to affect the sentence. When the victims delivered their VISs, they already knew that Nassar would spend essentially the rest of his life in prison. Thus, the opportunity to present the VIS itself drove victim participation. Further, the victims had complete freedom in what they discussed and to whom they addressed their statements; their statements were completed without any “guidelines or control” from criminal justice personnel, a difference from some other sentencing hearings.

To explore issues surrounding the content of VISs, we relied on a thematic content analysis of the VISs presented at Nassar's sentencing. The analysis generates both quantitative and qualitative information, focusing on such questions as why a victim chose to present a VIS, which audiences the victim was addressing, the types of harms the victim suffered, and the meaning of the opportunity to present a VIS. With those findings in hand, we return to the core question about VISs: Do they promote justice?

THE VICTIMS AT NASSAR'S SENTENCING

The data set here comprises 168 victim impact statements by direct and indirect sex abuse victims of Larry Nassar (or, in some cases, by their representatives). Our specific interest in the case is victim participation in the sentencing proceeding.

Some brief background about the case will provide helpful context. From 1996 through 2016,

Nassar served as the team doctor for the U.S. Women's National Gymnastics Team, and also as a physician at Michigan State University. These roles gave him access to hundreds of girls and young women—dozens of whom he sexually abused over many years. And yet, even though multiple reports of Nassar's abuse reached authorities, the reports were not taken seriously.

Eventually, on September 12, 2016, the *Indianapolis Star* published a bombshell article detailing Nassar's abuse of two athletes. The article was followed by numerous other complaints of Nassar's sexual abuse, triggering multiple investigations and legal proceedings. For example, Nassar was charged with federal child pornography crimes and received a federal sentence of 60 years in prison.

Of particular interest here, Nassar was also charged with state law sex abuse crimes in Ingham County, Michigan. Ultimately, in November 2017, Nassar pleaded guilty to seven counts of sexual misconduct, meaning that no criminal trial would be held and the victims did not have to testify at any trial. Following his guilty pleas, in January 2018, Judge Rosemarie Aquilina held a sentencing hearing. The minimum sentence was 25 to 40 years in prison. Under Michigan law, the victims were entitled to present VISs. Judge Aquilina decided to allow every Nassar victim who chose to do so to present a VIS.

Initially, it was expected that about 80 individuals would speak. Other victims joined after the first victims began delivering their statements—which were nationally televised. Eventually, 168 victims came forward to provide VISs, either in person or through other means, including two victims who were overseas and sent video VISs. To provide all those who wanted to speak an opportunity to be heard, Judge Aquilina set special sessions. Ultimately, over seven days, 106 primary victims, 23 indirect victims (e.g., parents, siblings, partners), and 39 representatives of victims (e.g., victim advocates and family members speaking for the victims) submitted statements conveying the harms the victims suffered.

About a quarter (24 percent) of the women who presented VISs stated that they had reported suspected sexual abuse to USA Gymnastics or Michigan State. But their complaints were not taken seriously. In a few cases, the victims complained to their parents, but the parents also did not believe them. The VISs thus included descriptions of harm inflicted not only by Nassar but also by his enablers and those who questioned the victims' reports of abuse.

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QUANTITATIVE AND QUALITATIVE ANALYSIS OF THE STATEMENTS

Let's turn to the results of our content analysis, examining several areas of interest about VISs.

REASONS FOR SUBMITTING A VIS AND DISCLOSING IDENTITY

One of the primary purposes for allowing victim impact statements is to allow victims to speak and be heard about the harm they suffered from a defendant. Judge Aquilina consistently confirmed these VIS purposes—to speak and be heard—in her comments to the victims, both before and after they delivered their VISs.

We found that the majority (80 percent) of the women who presented VISs decided to participate in Nassar's sentencing when they first learned about this opportunity. Others (20 percent of the presenters) initially did not plan to participate but changed their minds as the hearings unfolded.

Victims disclosed the reasons that prompted them to come forward and deliver a VIS (or the reasons that initially prevented them from doing so). Some victims spoke because they thought it would be healing for them. For these victims, speaking was important because it would help them regain agency by preventing the abuser from controlling them. For others, the decision whether to speak depended on how doing so would affect them or their personal or professional lives. Still others mentioned that they needed to deliver a VIS to speak on behalf of other women whom Nassar abused but who, for various reasons, chose not to speak.

Kyle Stephens was the first victim to speak at the sentencing. She said that “[t]his process has been horrific, but surprisingly therapeutic. I am addressing you [the judge] publicly today as a final step and statement to myself that I have nothing to be ashamed of.” The next victim who spoke (a 17-year-old who was assaulted at the age of 9) thanked the judge for the opportunity “to tell you how Larry Nassar has hurt me and the effect that this has had on my life.”

The victims who changed their minds in favor of presenting a VIS most often listed their reasons as being inspired by other victims, wishing to support other victims, or overcoming the shame of being a victim. Some women observed Judge Aquilina, either in court or on livestream, and decided to come forward based on the empowering atmosphere created by the judge and their “sister survivors.”

More than two-thirds (69 percent) of the presenters used their real name when delivering (or requesting to deliver) a VIS, while almost a quarter (23 percent) used a pseudonym. The remainder (8 percent) used either initials, an alphabetical letter, a number, or other pseudonymous forms of identification. Yet, when it came time to deliver the VIS, one-fifth (20 percent) of those who had initially wished to remain anonymous decided to use their real name—feeling empowered by the positive atmosphere.

Some victims, however, decided to remain anonymous for reasons such as preserving a favorable image, a desire not to be known as a Nassar victim, or avoiding possible detrimental effects on their lives. For others, the fear of being stigmatized and having the victimization interfere with their reputation or professional standing made them reluctant to reveal their identities.

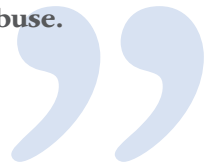
THE LENGTH, STRUCTURE, AND MANNER OF PRESENTING THE VISs

The primary and indirect victims (and their representatives) presented their victim impact statements orally, commonly by reading a prepared written statement. Most presented in person, while a few presented via video. The VISs varied in length, ranging between 137 and 6,365 words, with a mean of 1,227 and a median of 969 words. As a result, the VIS did not take long to present. For example, if we assume that the victims spoke at a standard speed of about 130 words per minute, then the median time for presenting a VIS was around eight minutes.

Three-quarters (75 percent) of the presenters were accompanied by a support person, either a parent, sibling, intimate partner, or friend. In 14 percent of the cases, the direct victims were unable or unwilling to present the VIS in open court because it was too painful or difficult, leading to someone else's presenting the VIS in their name. In a few cases, the victim stood by the presenting representative's side.

Almost two-thirds (64 percent) of the primary victims and a third (32 percent) of the indirect victims began their presentations by showing their (or the direct victim's) picture at the time they were victimized. Many employed more than one visual aid to allow the court and the audience to appreciate the young age at which they suffered sexual abuse. The victims (or their representatives) then went on to compare their lives before and after the abuse. They described how they met Nassar, their interactions with him, his sexual abuse, its impact on them, and

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(in some cases) their views about what punishment Nassar deserved. Several primary and indirect victims also expressed their anger toward the institutions that had enabled Nassar's sexual abuse.

THE CRIMES AND THEIR HARMFUL EFFECTS

The overwhelming majority of the direct victims (89 percent) described different harms from Nassar's crimes, both short- and long-term, to them and (often) to their families. The VISs commonly depicted young, happy, and engaged girls who were trying their best to make it in the world of elite sports or gymnastics before they met Nassar. Regardless of whether they described themselves as confident in their athletic ability or insecure about reaching the top, their VISs explained how meeting Nassar harmed them.

One victim described the first time Nassar sexually assaulted her: "It is not something easily forgotten, the intense sense of terror, anxiety, and disbelief [that] came washing over me. I lay there in pain unable to speak, staring blankly at the wall, desperately searching for a way to escape." Another victim explained, "Treatment after treatment with Nassar, I closed my eyes tight, I held my breath, and I wanted to puke. My stomach pierced me with pain."

Nassar's abuse led to tears, stress, anxiety, panic attacks, sleepless nights, guilt, and, for some, self-harm. Victims described the harm they sustained at Nassar's hands in various ways, such as damage that "diminished my self-esteem, increased feelings of shame, humiliation, embarrassment, powerlessness, guilt," including "guilt that I didn't prevent all the other girls who followed me from being abused by you" and anger that is still felt today. Another talked

about Nassar's "treatment" as a "moment of terror and confusion."

Many victims described Nassar's grooming tactics that preceded the sexual abuse. The tactics included feigning friendship, cultivating trust, and offering gifts. Victims detailed Nassar showing personal interest in them, taking an interest in their lives and daily activities, and sending messages with compliments on social media.

An important component of the harm the victims suffered was a strong sense of betrayal by Nassar. But the victims also felt betrayed by institutions that were supposed to protect them—a much deeper sense of betrayal.

THE AUDIENCE FOR THE VIS

The sentencing hearings provided the victims, indirect victims, and victim representatives an opportunity to speak. But to whom were they speaking?

Addressing the Defendant

In delivering their VISs, the majority of the victims—three-quarters (76 percent) of the primary victims and about two-thirds (65 percent) of the indirect victims—chose to address Nassar directly. In some cases, the victims asked for and received permission from the judge to address him directly. In other cases, the victim simply began speaking to Nassar.

So far as can be determined from the transcripts, the reasons the victims chose to address Nassar varied. Most wanted to convey to him their feelings about the abuse, frustration over the long time it took to bring him to justice, and relief that he was finally being held accountable for his crimes. The victims appeared to be proud of the individual and collective efforts they



made to expose his abuse and obtain his conviction. They wanted to address him directly and bring to light what was previously hidden.

Many of those who asked to speak to Nassar raised the issue of forgiveness, emphasizing that the decision to forgive was theirs to make from an empowered position. Addressing Nassar was also an opportunity for victims to strengthen their own position while lowering his—a phenomenon that has been observed in other cases.

Addressing the Enablers

Nassar's victims also addressed their VISs to the institutions that enabled Nassar's crimes, criticizing their failure to respond to reports of abuse. The first victim who provided her VIS criticized Michigan State University (MSU): "[The Michigan State Police Department] handled it beautifully, but MSU officials were a different story, because their response from Dean William Strampel was to send an e-mail to [Nassar] that day [that] told him, quote, 'Good luck, I am on your side.'"

Some victims considered the entire chain of command in the organizations to be responsible. Other victims also addressed specific agents within these organizations, particularly trainers who failed to protect them. Victims expressed their anger, dismay, and frustration at the organizations that appeared to stay silent regarding their responsibility for enabling the abuse.

Addressing the Judge

More than three-quarters of the direct victims (78 percent) addressed the judge in their VIS, compared to 52 percent of the indirect victims and 58 percent of the representatives. Only a few victims addressed the judge concerning the sentence—an unsurprising fact, as Nassar had already been effectively sentenced to life in prison. Almost half of the victims (44 percent) expressed appreciation to the judge for the way she handled the hearing and her empowering words.

Most of the victims (92 percent) also essentially acknowledged that the sisterhood they experienced with fellow victims helped them in delivering their VIS. Several victims also referred to "an army of survivors," who helped to take down Nassar.

THE VIS AS AN EMPOWERING AND THERAPEUTIC TOOL

Both direct and indirect victims felt that making a statement—together with the judge's response—was empowering and provided them some healing. Compared to past complaints to authorities, which

had been ignored, this time the experience was different. The victims highly appreciated the opportunity to be heard and felt that they finally had a voice.

Identifying and demanding accountability for Nassar's enablers were also part of the healing process. Almost half of the victims (42 percent) specifically mentioned the therapeutic or healing value of delivering the VIS. For example, one victim thanked the court "for allowing me an opportunity to speak my thoughts and heal my heart." Another victim said "[w]hile I came to the stand as a victim, I leave as a victor because you do not have the authority anymore and because I am one of the many women who are helping to put you behind bars for the countless crimes that you've committed."

To sum up, the VISs contained repeated references to the healing power of the opportunity to deliver a statement.

THE DESIRABILITY OF VICTIM IMPACT STATEMENTS

Having set out our findings about victim impact statements in a real-world criminal case, we can now turn to what these findings tell us about the desirability of VISs more broadly. Our findings support the arguments conventionally made in support of VISs.

PROVIDING INFORMATION TO THE SENTENCER

One of the important rationales for allowing VISs is to provide information to the sentencer, typically (as in the Nassar case) to a judge. This has often been described as the "informational rationale" for VISs.

Our analysis of the Nassar VISs supports the informational rationale. As discussed, most of the VISs described Nassar's sexual abuse, his grooming of the victims, and the manipulative tactics Nassar employed to hide his abuse. Almost all of the victims (89 percent) described how Nassar had harmed them. Many of the victims discussed his sophisticated approach to concealing his crimes. Many others discussed the sense of betrayal that Nassar caused. Still others discussed the "secondary victimization" that they suffered from being caught up in the criminal justice process.

This information would be helpful to a sentencer, as it described the harm from Nassar's crime—a relevant factor at sentencing. This information also showed Nassar's premeditation and sophistication

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in perpetrating and concealing his crimes. And it revealed how Nassar abused his position of trust and took advantage of vulnerable victims, as well as unsuspecting fellow physicians. Here again, these facts are all relevant to sentencing.

Sometimes critics of the VIS argue that the statements divert attention away from a defendant's culpability. But even if the critics were correct that a defendant's culpability is the only valid basis for punishment, that premise would still not justify excluding VISs. As the Nassar impact statements make clear, VISs do not solely relate to the after-the-fact impact of crimes on victims. Instead, in describing how the crime was committed (e.g., whether the crime was sophisticated and involved deliberate concealment), the VISs shed light on a defendant's blameworthiness.

But in any event, the critics' starting premise—that culpability is generally the be-all and end-all of punishment—is incorrect. The argument assumes that a criminal sentence must rest entirely on retributive grounds linked to culpability. In fact, it is well settled that a criminal sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation. Punishment based on these justifications does not always turn on a defendant's culpability. For example, a state might decide to increase penalties for gun crimes, not because defendants have suddenly become more culpable but rather because the harms from such crimes have become more apparent, necessitating harsher sentences for deterrence. And, as Professor Tyrone Kirchengast has noted, "courts are increasingly using VIS . . . as evidence of general harm to victims and the community in order to determine the extent to which general and specific deterrence and denunciation ought to inform the determination of offence seriousness and formulation of a proportionate sentence."

CREATING THERAPEUTIC BENEFITS FOR THE VICTIM

Another key rationale for allowing victim impact statements is that they serve expressive and communicative functions that can produce therapeutic benefits for victims. The argument supporting this conclusion is straightforward. As one of us (Erez) has explained at length, "[p]roviding input for VIS also helps victims to cope with the victimization and the criminal justice experience. Many victims who filled out a VIS claimed that they felt relieved or satisfied after providing the information." Interestingly, while much of the debate

about VISs has swirled around their instrumental usefulness (as discussed in the previous section), victims more frequently cite expressive and communicative reasons for wanting to deliver a VIS.

A well-developed theory underlies the therapeutic rationale for VISs. Therapeutic jurisprudence—or "TJ"—is based on the idea that participation in criminal cases can, if structured properly, have therapeutic benefits. Under this conception, as Professors Tali Gal and Ruthy Lowenstein Lazar have explained, TJ "highlights the need and desire of victims and their remaining relatives to be heard, respected, and acknowledged—even when the eventual outcome is not influenced by their statement." The basic insight, as explained by Professor Jayne Barnard, is that VISs can empower victims by helping them "regain a sense of dignity and respect rather than feeling powerless and ashamed."

Our findings support this therapeutic rationale for a VIS—many of the Nassar victims referred to the healing qualities of delivering a VIS. One interesting feature we found in the Nassar VISs was several examples of guardians for minors requesting that the judge allow their children to deliver a VIS—and the judge finding it was in the "best interests" of the child victims to speak. This provides further support for the conclusion that delivering a VIS—for those who choose to do so—can have therapeutic qualities.

These victim acknowledgments about the healing effects of delivering a VIS came during the sentencing hearing itself. Did the victims' perceptions change afterward, when they had more time to reflect? In preparing this article, we did not seek to interview Nassar's victims. But we have attempted to find accounts from other sources about what the victims ultimately thought about the process. The accounts we have located paint a uniformly positive picture about having the opportunity to speak. Victims reported that the process was therapeutic and even cathartic (although, obviously, many victims were critical of Nassar's enablers and found preparing for the process difficult).

In deciding whether the Nassar sentencing hearing was therapeutic, it is also noteworthy that about 80 of Nassar's victims originally planned to deliver an in-court victim impact statement. But then, as the highly publicized process moved forward, more victims saw exactly what was involved and decided to participate.

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Finally, looking back on the hearings, Judge Aquilina concluded that, as the victims spoke, “I literally watched them grow to ten feet, and they got their power back. And it was so transformational even for me. . . . They know they mattered, and then when they spoke[,] [t]hey were just transformed into butterflies.”

One concern sometimes raised about VISs—even by those who concede their therapeutic qualities—is the administrative burdens associated with allowing victims to speak. Our study suggests that these burdens are insignificant. The average time for a Nassar victim to deliver a VIS was very short—about 10 minutes or less per victim.

To be sure, in the Nassar case, an unusually large number of victims spoke. But even in such a mass victim case, the victims could all be heard within one week, and Judge Aquilina’s docket did not appear to be overwhelmed.

EXPLAINING THE CRIME’S HARM TO THE DEFENDANT

Victim impact statements are also justified on the grounds that they can help explain the crime’s harm to the defendant, which might be an important starting point for the defendant’s rehabilitation. This argument is unrelated to the ultimate prison (or other) sentence a judge imposes but rather (as the U.S. Court of Appeals for the Ninth Circuit has explained) rests on the consequences of a victim’s looking the “defendant in the eye and let[ting] him know the suffering his misconduct has caused.” Thus, if a VIS helps a defendant understand and gain empathy for the victim, it may serve as the first step toward his effective rehabilitation.

As discussed above, about three-quarters (76 percent) of the primary victims and about two-thirds (65 percent) of the indirect victims

addressed Nassar. These are large percentages—a clear majority of the VISs in our study—and suggest that the potential positive effects of a victim’s addressing a defendant are an important area for future research.

While we are skeptical of relying on what Nassar himself said about the experience, it is interesting that he acknowledged the effect of hearing from victims. In a statement to the court, Nassar said that “[t]he words expressed by everyone that has spoken, including the parents, have impacted me to . . . my innermost core.”

SERVING A PUBLIC EDUCATIVE FUNCTION

Beyond educating defendants about the harm their crime inflicted, victim impact statements can also serve to educate the public. The Nassar sentencing hearing serves as a quintessential example of the VIS’s public educative function. The hearing spotlighted the crime of sexual assault and the role of those who enabled Nassar’s assaults. As CNN recounted shortly after the Nassar hearing, the “stunning victim impact statements from the ‘army of survivors’ have focused sharply critical attention on the systems of power that protected Nassar for so long.”

One of the most positive effects of the Nassar VISs is that the statements encouraged other sex abuse victims harmed by other abusers to come forward. Several months after the sentencing hearing, Judge Aquilina recounted that “[w]omen have contacted me and said I feel like those girls were telling my story verbatim, and when you spoke to them and you believed them, your words are healing me.” Judge Aquilina said that women had told her that they recorded her remarks, “and when they need a boost they listen to my words, which I’m grateful for.”

Nassar's sentencing also spotlighted the role of those who enabled Nassar's long-running sexual abuse. As the hearing concluded, CNN reported that "[t]hrough the sentencing marks the end of Nassar's time in the public eye, it has focused critical attention on USA Gymnastics, the US Olympic Committee and Michigan State University, the institutions that employed Nassar for about two decades." Indeed, during the first week of the sentencing hearing, USA Gymnastics cut ties with the training facility where Nassar abused some of his victims, and three leaders of the board resigned under intense public pressure. The cause-and-effect seems clear: "As one brave, young gymnast after another took the podium to lambaste serial molester and former gymnastic physician Larry Nassar, the national governing body for the sport announced . . . that its top executives were stepping down."

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In addition, shortly after the start of Nassar's victims' testimony, two top MSU officials—President Lou Anna Simon and Athletic Director Mark Hollis—decided to leave their posts. And amazingly, one Nassar victim said during her statement that MSU was still billing her mother for the medical appointments where Nassar sexually assaulted her. "Are you listening, MSU? I can't hear you. Are you listening?" she pointedly asked. Apparently MSU was listening because shortly after that the school announced that Nassar's patients with outstanding bills would not be billed, and the university was reviewing whether to offer refunds.

Similarly, as the victims spoke, related congressional legislation suddenly started to move toward approval. The bill—the Protect Young Victims from Sexual Abuse and Safe Sport Authorization Act—was first proposed in March 2017 and passed the Senate in November 2017. But it was while the Nassar victims' testimony was wrapping up in Michigan that a companion bill overwhelmingly passed the House on January 29, 2018, and the next day, the Senate approved the final version unanimously by voice vote. On February 14, 2018—about two weeks after the Nassar sentencing hearing concluded—President Donald Trump signed the bill into law.

All of this fallout from the Nassar VISs suggests that the hearing played an important public educative function.

IMPROVING THE PERCEIVED FAIRNESS OF SENTENCING

Another justification for victim impact statements is that they help to improve the fairness of the

process—as perceived both by the public and by victims. Given the structure of contemporary criminal justice systems, fairness requires victim participation. And, as one court has explained, recent victims' rights enactments "recogniz[e] that the sentencing process cannot be reduced to a two-dimensional, prosecution-versus-defendant contest. Instead, [these laws treat] sentencing as involving a third dimension—fairness to victims—requiring that they be 'reasonably heard' at sentencing." As Professor Douglas Beloof has explicated, it is no longer appropriate to evaluate criminal justice issues solely in terms of the venerable "due process" or "crime control" models. Instead, numerous state constitutional amendments, as well as federal and state statutes, now recognize that crime victims should be given the opportunity to participate in criminal proceedings, including sentencing proceedings.

The argument here is not that, merely because the defendant gets to allocute at sentencing, the victim should do so as well. Such a claim might be subject to the rejoinder that the criminal justice system sometimes gives some rights to defendants alone. Rather, the point is that the defendant speaks at sentencing because this opportunity is critical to the proceeding's legitimacy. We allow defendants to allocute at sentencing, explains Professor Mary Giannini, to "assure the appearance of justice and to provide a ceremonial ritual at which society pronounces its judgment." By the same token, allowing victims the same opportunity helps assure perceived fairness. In other words, victim impact evidence is appropriate not merely because defendants have that opportunity; rather, it is appropriate for the *same reason* that defendants have the opportunity.

Of course, determining what procedures contribute to "fairness" is arguably a subjective exercise. But allowing the victims to speak is a recognized part of federal and state criminal justice systems all across this country and is also expanding to be part of criminal procedures in many other countries around the world. A point often overlooked by critics is that VISs are not some kind of American exceptionalism. In fact, many countries have criminal procedures that allow victims to make victim impact statements or that provide a functionally equivalent opportunity to participate. And an expanding role for victims appears to be a common, contemporary feature of other international tribunals.



To be sure, to some degree, our argument here is circular: We are justifying the use of victim impact statements in a Michigan court proceeding because the Michigan court procedures allowed them—just as many other states and countries would allow them. But this argument is circular only to a degree. Through democratic legislative processes, in 1985 Michigan passed a crime victims’ rights act, extending victims the right to deliver a VIS. Then, three years later, Michigan voters overwhelmingly amended the Michigan Constitution, enshrining victims’ rights in Michigan’s organic law and specifically protecting a victim’s right “to make a statement to the court at sentencing.” To be perceived as a fair process, a criminal justice system must align with the public’s views as to what is a fair process. To our knowledge, in Michigan there has never been an organized effort to change those enactments. Now, more than three decades later, surely the burden of demonstrating that Michigan’s VIS provision fails to improve the perceived fairness in the process rests on its critics, not its proponents.

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Scholars have debated the value of victim impact statements for victims and the criminal justice system, examining the ways VISs give voice to victims at sentencing. Our study reviews a data set of 168 VISs delivered by victims (and indirect victims) of crimes of sexual abuse by Larry Nassar. Capitalizing on the fact that these VISs were all delivered by victims of roughly the same crime committed by the same defendant, this article explores and confirms what has aptly been described as the “heterogeneity” of victim impact statements.

Consistent with earlier research, we find that the VISs delivered by Nassar’s victims were varied, reflecting the individualization of the victims, the individualized harms Nassar inflicted, and the different ways in which the victims suffered throughout their ordeals. Despite this heterogeneity, however, many commonalities stood out. Among other results, we found that VISs were relatively short in length (typically under 10 minutes long). Even so, the VISs commonly provided substantial information about the direct harm that Nassar’s victims suffered, as well as harms suffered indirectly by those connected to his victims by family or other ties.

Our study’s findings generally support allowing victims the opportunity to present VISs at sentencing. While the Nassar VISs varied in detail, they commonly contained valuable information relevant to sentencing, which was properly provided to a sentencing judge. The VISs also contained significant evidence of therapeutic value to the victims in having the option of presenting a VIS. Substantial grounds also exist for believing that a VIS might have educative benefits. A VIS might help a defendant’s efforts toward rehabilitation. And a VIS might perform broader educative functions, such as informing the public about the harms of sexual abuse and the culpability of institutions that enable it.

VISs are currently permitted not only in Michigan but also in the 49 other states and the federal system, as well as in an expanding number of countries around the world. This widespread use of VISs reflects the importance of victims’ voices being heard for multiple purposes in criminal justice. Our study provides grounds for policy makers to continue supporting the use of the VIS. ■