

Transjudicial Spaces: The Circulation and Disruption of Judicial Features in Cases of Sexual and Gendered Violence

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Acknowledgments

Once, in a graduate seminar, a discussion about favorite parts of academic books emerged. We talked about the importance and elegance of a particularly well-written introduction and the impact of thoughtful conclusions. As a lover of books, this question should have been difficult for me to answer—there isn't really a portion of books that I distinctly dislike. However, I surprised myself by answering quickly and without hesitation that my favorite part of academic books is the acknowledgments section. In their acknowledgments, authors recognize the communities, conditions, and care that played a crucial role in cultivating their work and bringing their insights into being. For me, acknowledgments are a place of honoring the kind of care, support, and love necessary to sustain the energy necessary for long, scholarly research projects and the urgent work of contemplating complicated social, political, and cultural issues. My love of acknowledgment sections and sense of their importance makes this one of the most difficult pieces of writing that I've done to date.

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Abstract

Looking to the circulation of judicial procedures, technologies, and logics, such as standards of evidence, rules of decorum, and processes for truth seeking, beyond courtrooms and the disruption of these features within courtrooms in cases of sexual and gendered violence, this project expands the way that rhetorical studies has conceptualized the relationship between spoken word, material world, and institutional power. It also generates political and cultural insights about the possibilities for complicating common distinctions between judicial and extrajudicial spaces in order to attend to the permeable boundaries of retributive institutions and disrupt the ever-expanding reach of the U.S. criminal legal system and the U.S. prison industrial complex. The monograph argues that, in light of these insights, the circulation and disruption of judicial features in cases of sexual and gendered violence impact the rhetorical means available to and subsequent expressions of those impacted by such violence, constituting what I call *transjudicial spaces*.

Throughout this project, I conclude that transjudicial spaces emerge from three interlocking phenomena. First, residues of recognizably judicial structures, individuals' prior experiences with the criminal legal system, and histories of police and prosecutorial violence shape the materialization of judicial matterings and make racial, gender, class, and disability status differences matter in relation to these histories. Second, the formal judicial features characteristic of criminal legal courtrooms are named, performed, or disrupted in cases of sexual and gendered violence, catalyzing material-discursive intra-actions that make spaces outside of courtrooms feel like judicial spaces and judicial spaces feel like something else. Finally, the circulation of judicial procedure beyond courtrooms via mediated and physiological systems erect contact zones that (re)constitute legal subjects who encounter transjudicial emergencies.

Table of Contents

Chapter One

| | |
|------------------------------------------------------------|------|
| Toward a Conceptualization of Transjudicial Spaces..... | 1-68 |
|------------------------------------------------------------|------|

Chapter Two

| | |
|-------------------------------------------------------------------------------------|--------|
| Transjudicial Matters in Brett Kavanaugh’s Supreme Court Nomination Hearing..... | 69-123 |
|-------------------------------------------------------------------------------------|--------|

Chapter Three

| | |
|---------------------------------------------------------------------------------------------------|---------|
| Listening Matters: Arranging the Larry Nassar Sentencing Hearing as a Transjudicial Space..... | 124-178 |
|---------------------------------------------------------------------------------------------------|---------|

Chapter Four

| | |
|-----------------------------------------------------------------------------|---------|
| “This is a courtroom”: Transjudicial Matters in Zoom Court Hearings..... | 179-241 |
|-----------------------------------------------------------------------------|---------|

Chapter Five

| | |
|--------------------------------------------------|---------|
| Some Conclusions on Transjudicial Spaces..... | 242-267 |
|--------------------------------------------------|---------|

| | |
|-------------------|---------|
| Bibliography..... | 268-292 |
|-------------------|---------|

Chapter One

Toward a Conceptualization of Transjudicial Spaces

In February 2022, Harvard University faculty published an Open Letter in defense of Harvard Professor John Comaroff who was, following an investigation into multiple sexual harassment allegations, “place[d] on unpaid administrative leave for one semester and prohibited from teaching required courses in 2022-23, among other sanctions.”¹ The faculty who wrote this letter took issue with the nature of the complaint, as well as the University’s processes for investigating the allegations and decision to sanction him. Pointing to early investigations into Comaroff’s inappropriate conduct with students, 38 Harvard faculty members signed the letter, asserting, “We also seek to understand why the [Faculty of Arts and Sciences] did not accept the final results of its own Title IX investigation and opened a second investigation in the Fall of 2021 (*Chronicle of Higher Education*, January 20, 2022). What are the procedural grounds justifying this action? As faculty members we must know the rules and procedures to which we are subject.”² These questions about rules and procedures are important, but also answered by Harvard’s Faculty of Arts and Sciences Sexual and Gender-Based Harassment Policy and Professional Conduct Policy, both of which are cited in the letter. Thus, this question seems to suggest that the problem is not a lack of rules and procedures, but rather the inadequacy of these tools for determining whether a faculty member inflicted harm and, if so, what the University’s response ought to be. Some parties have posited answers to these questions. An article published by *The Harvard Crimson* quotes Comaroff’s lawyers who opposed Harvard’s decision to sanction the professor, writing “that ‘Harvard

¹ “Open Letter from Concerned Faculty,” *Harvard Faculty of Arts and Sciences*, 2022.

² *Ibid.*

opened a second, kangaroo court process’ ... that lacked ‘the most elemental aspects of due process and artificially limited to a defective record.’³ Reference to the process undergone by the University as a kangaroo court, defined by the Oxford English Dictionary as “an improperly constituted court having no legal standing”⁴ and due process provide a sense of what kinds of rules and procedures are being called for in this case. Rather than University and Title IX established rules and procedures, investigation and the finding of responsibility ought to be, the faculty and Comaroff’s lawyers suggest, garnered from a properly constituted court and elements of due process that seem, at least to me, based upon traditional criminal legal responses to allegations of sexual and gendered violence.

The call for allegations taken up in university Title IX offices to be handled using criminal legal procedures ought to give us pause, first and foremost, because university decisions are not bound by criminal legal standards. That criminal legal processes are involved in the Comaroff case is undeniable—three of the graduate students who brought allegations against Comaroff filed a federal complaint and demand for a jury trial. However, procedurally, university authorities and actions are not held to the same standard as the judge and jury who determine Comaroff’s guilt or innocence in the criminal legal process. Universities deploy institutional processes which are by no means

³ Isabella B. Cho and Ariel H. Kim, “38 Harvard Faculty Sign Open Letter Questioning Results of Misconduct Investigations into Prof. John Comaroff,” *The Harvard Crimson*, February 4, 2022, <https://www.thecrimson.com/article/2022/2/4/comaroff-sanctions-open-letter/>.

⁴ *Oxford English Dictionary*, Vol. 1, 2nd ed.

beyond critique, but “separate and apart from both criminal and civil litigation.”⁵ In her study of institutional responses to allegations of sexual and gendered violence, Alexandra Brodsky explains that these institutional processes and rules “may reflect some definitions drawn from the law.” However, she notes that “the policies will also usually encompass some behaviors that, on their own, would be unlikely to give rise to a successful criminal action or civil suit. The policies are there to define what is acceptable within the community, and some forms of misconduct—such as plagiarism or low-level harassment—may be legal but still not internally acceptable.”⁶ Simply put, university processes for investigating harm inflicted on campus and determining guilt and innocence are not criminal legal processes. Comaroff could be found innocent by a federal jury and still be held responsible at Harvard. Yet, the Harvard Faculty letter and other public responses to allegations of sexual violence often call for criminal legal processes to be enacted to ensure the accused’s right to due process. But, in such cases, it is not all elements of due process and criminal legal proceedings that are called upon. Rather, the elements imported often work to protect the accused, particularly if the accused is a white, heterosexual, cisgender, able-bodied, well-respected man.⁷

⁵ Alexandra Brodsky, *Sexual Violence: Supporting Victims, Ensuring Due Process, and Resisting the Conservative Backlash* (New York, NY: Metropolitan Books, 2021), 14.

⁶ *Ibid.*, 40.

⁷ Ching-In Chen, Jai Dulani, and Leah Lakshmi Piepzna-Samarasinha, eds., *The Revolution Starts at Home* (Chico, CA: AK Press, 2016); Rose Corrigan, *Up Against a Wall: Rape Reform and the Failure of Success* (New York, NY: New York University Press, 2013); Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (New York, NY: Oxford University Press, 2007); Katie L. Gibson, “A Rupture in the Courtroom: Collective Rhetoric, Survivor Speech, and the Subversive Limits of the Victim Impact Statement,” *Women’s Studies in Communication* 44, no. 1 (2021): 1-24; Leigh Gilmore, *Tainted*

In this dissertation project, I take interest in controversies, like the one that emerged around the Harvard letter, when the features that characterize criminal legal responses to sexual and gendered violence are evoked outside of courtrooms. This phenomenon is not new and, in recent years, has emerged prominently and in unique ways. Amidst the #MeToo Movement, as victims illuminated the sexual misconduct that

Witness: Why We Doubt What Women Say About Their Lives (New York, NY: Columbia University Press, 2016); Kate Lockwood Harris, *Beyond the Rapist: Title IX and Sexual Violence on US Campuses* (Oxford, UK: Oxford University Press, 2019); Stephanie R. Larson, “‘Everything inside me was silenced’: (Re)defining rape through visceral counterpublicity,” *Quarterly Journal of Speech* 104, no. 2 (2018): 123-144; Ashley Noel Mack and Bryan J. McCann, “Critiquing state and gendered violence in the age of #MeToo,” *Quarterly Journal of Speech* 104, no. 3 (2018): 329-344; Ashley Noel Mack and Tiara R. Na’puti, “‘Our Bodies Are Not *Terra Nullius*’: Building a Decolonial Feminist Resistance to Gendered Violence,” *Women’s Studies in Communication* 42, no. 3 (2019): 347-370; Sara L. McKinnon, “Citizenship and the Performance of Credibility: Audiencing Gender-based Asylum Seekers in the U.S. Immigration Courts,” *Text and Performance Quarterly* 29, no. 3 (2009): 205-221; Lena Palacios, “‘Ain’t No Justice... It’s Just Us’: Girls Organizing Against Sexual and Carceral Violence,” in *Girlhood and the Politics of Place*, eds. Claudia Mitchell and Carrie Rentschler (Oxford, NY: Berghahn Books, 2016), 279-295; Carrie A. Rentschler, *Second Wounds: Victims’ Rights and the Media in the U.S.* (Durham, NC: Duke University Press, 2011); Beth E. Richie, *Arrested Justice: Black Women, Violence, and America’s Prison Nation* (New York, NY: New York University Press, 2012); Andrea J. Ritchie, *Invisible No More: Police Violence Against Black Women and Women of Color* (Boston, MA: Beacon Press, 2017); Mary Schuster, *The Victim’s Voice in the Sexual Misconduct Crisis* (Lanham, MD: Lexington Books, 2019); Mary Lay Schuster and Amy D. Proppen, *Victim Advocacy in the Courtroom: Persuasive Practices in Domestic Violence and Child Protection Cases* (Boston, MA: Northeastern University Press, 2011); Aishah Shahidah Simmons, ed., *Love With Accountability: Digging Up the Roots of Child Sexual Abuse* (Chico, CA: AK Press, 2019); and Emily L. Thuma, *All Our Trials: Prisons, Policing, and the Feminist Fight to End Violence* (Urbana, IL: University of Illinois Press, 2019).

they suffered at the hands of powerful men, “custodians of rape culture,”⁸ social commentators,⁹ and scholars¹⁰ called for workplaces to import judicial standards to ensure that employment decisions were not made without the accused’s “right” to be found guilty by a court of law. To not investigate claims about sexual misconduct in the workplace using judicial procedures, they argued, posed serious threats to the rights guaranteed to all Americans. In Spring 2020, the call for judicial proceedings to emerge beyond courtrooms became more urgent when U.S. criminal courts began holding remote hearings in response to the COVID-19 pandemic.¹¹ The call for judicial features to emerge beyond courtrooms is worthy of rhetorical attention. In these cases, judicial features are called upon as useful, objective, and effective in determining the validity of claims about sexual and gendered violence. However, the evocation of these features in workplaces, which are not bound by the same due process considerations as criminal legal settings, raise questions about which features are called upon as necessary, how those features can be enacted outside of judicial spaces, and the consequences of being “found guilty” by an employer. Additionally, in the case of Zoom court hearings, judicial proceedings conducted beyond courtroom walls pose questions about how judicial

⁸ Annie Hill and Carol A. Stabile, “Rhetoric and Sexual Violence: A Conversation with Annie Hill and Carol A. Stabile,” *Rhetoric & Public Affairs* 24, no. 1-2 (2021): 155.

⁹ David French, “The Great Due-Process Revival,” *National Review*, February 25, 2019, <https://www.nationalreview.com/corner/due-process-protections-metoo-movement/>; and Margaret Potter, “Due Process in the #MeToo Era,” *Juris Magazine*, October 14, 2018, <https://sites.law.duq.edu/juris/2018/10/14/due-process-in-the-metoo-era/>.

¹⁰ Brodsky, *Sexual Justice*, 83.

¹¹ Eric Scigliano, “Zoom Court Is Changing How Justice Is Served,” *The Atlantic*, April 13, 2021, <https://www.theatlantic.com/magazine/archive/2021/05/can-justice-be-served-on-zoom/618392/>.

processes, decorum, and authority function when judges, attorneys, and justice-entangled individuals appear from their homes, cars, and workplaces, as well as the way that judicial proceedings stand to be disrupted by features of public or domestic life that find their way into court via this unique configuration. Considering these related examples that point to the circulation and disruption of legal procedures, specifically in cases of sexual and gendered violence, I set out to answer the following research questions: How are certain spaces and particular interactions made to *feel* like criminal court proceedings? How are criminal court proceedings made to *feel* like something else? What features of the criminal court system are evoked or disrupted in such spaces? How does the circulation and disruption of judicial features impact structural inequities embedded within the criminal legal system?

Just as the phenomenon of judicial features being circulated outside of courtrooms is not new, neither is scholarly recognition of this phenomenon—scholars in a variety of disciplines have long called attention to the circulation of judicial features and forces that emerge outside of courtrooms in response to sexual and gendered violence. As Leigh Gilmore proclaims, victim testimony about such violence, “even when it does not press a legal claim, it can be made to seem to”¹² and, as a result, “a legal form assembl[es] around [the testimony].”¹³ The formation of legal boundaries around allegations of sexual and gendered violence has substantial consequences, as they assign judicial standards to public accusations which are used to determine the credibility of victim’s claims, quality

¹² Leigh Gilmore, “Frames of Witness: The Kavanaugh Hearings, Survivor Testimony, and #MeToo,” *Biography* 42, no. 3 (2019): 614.

¹³ *Ibid.*

of evidence, and validity of allegations through a criminal legal lens. The emergence of these judicial features makes “mainstream discourses mimic a legal quest to assign guilt and responsibility and, in the process, target certain bodies as blameworthy or make excuses for why the harms committed against others do not amount to that of assault or rape.”¹⁴ The permeable walls of judicial spaces that enable the circulation of judicial features beyond courtrooms also absorb features of the outside world that are disruptive to criminal legal proceedings. Scholars have long examined the moments in which the judicial features that work to diminish victim voices are cast aside in order to amplify their experiences with violence.¹⁵ In these cases, the traditional procedures, technologies, and logics that are characteristic of judicial spaces are disrupted in order “to persuade publics of the forms of violence and violated bodies worthy of public outcry,”¹⁶ allowances that are “rooted in hegemonic understandings of innocence and guilt, which are always, at least, raced, classed, and gendered.”¹⁷ The walls of judicial institutions do not only let judicial features seep out, but also allow in features of the outside world that disrupt the judicial features that are characteristic of criminal legal proceedings.

This project takes interest in moments when judicial features are circulated beyond judicial spaces and disrupted within them in response to cases of sexual and gendered violence. Throughout this essay, I illustrate how judicial procedures,

¹⁴ Stephanie R. Larson, *What It Feels Like: Visceral Rhetoric and the Politics of Rape Culture* (University Park, PA: Pennsylvania State University Press, 2021), 4

¹⁵ Gibson, “A Rupture in the Courtroom,” 1-24; Larson, *What It Feels Like*; Rentschler; and Schuster, *The Victim’s Voice*.

¹⁶ Larson, *What It Feels Like*, 9.

¹⁷ Gibson, “A Rupture in the Courtroom,” 2.

technologies, and logics serve as vehicles through which the violent judicial forces that silence, diminish, and co-opt communication about violent experiences travel, in order to establish the rhetorical relationship between prominent institutional features, violent institutional forces, and the legal boundaries that emerge to contain and co-opt victim testimony. Ultimately, I argue that this evocation, adaptation, circulation, and disruption of judicial features reconstitutes legal spaces and spaces beyond courtrooms, erecting what I conceptualize as *transjudicial spaces*. I begin theorizing transjudicial spaces by situating this study within feminist communication studies and critical legal studies, focusing primarily on rhetorics of space/place, theories of affect-emotion, and embodiment, to detail the violent judicial forces that contain, silence, diminish, and co-opt victim voices. Then, I turn my attention to the judicial procedures, technologies, and logics which serve as the vehicles upon which violent judicial forces travel. After detailing these judicial features and forces, I articulate my theoretical orientations and commitments and conceptualize transjudicial spaces by offering three tenets that can be used to identify, examine, and evaluate them. Finally, I offer an explanation of my research methods and chapter summaries.

Violent Judicial Forces: Diminishment and Cooptation of Victim Voices

Feminist scholars from a variety of disciplines have highlighted the fraught entanglements that institutionally and structurally tether anti-violence and victims' rights efforts to the U.S. criminal legal system. The Victims' Rights Movement emerged "on the cusp of the U.S. declaration of a war on crime in 1968 and in the midst of the race

riots of 1964 in New York City.”¹⁸ The movement “redefined the issue of criminal justice away from crime toward the control and incapacitation of whole populations in the United States deemed dangerous and criminal by white ruling elites.”¹⁹ The cooptation of victim voices to justify state violence was further entrenched by the passage of the 1994 Violence Against Women Act (VAWA) through which efforts “to crack down on individual perpetrators of violence against women became a critical lever of legitimacy for expanding the carceral state.”²⁰ The expansion of the carceral state, however, did little to protect victims from violence, instead increasing policing and criminalization of nonwhite, poor, disabled, immigrant, and queer communities while simultaneously jailing striking numbers of victims of domestic and sexual violence from these communities.²¹ Essentially, victim voices have, for many years, served as an effective tool for furthering racist state violence, all the while offering victims little protection. The victims’ rights movement’s problematic relationship with law-and-order politics must texture a discussion of the circulation and disruption of judicial procedures, logics, and technologies in response to gendered and sexual violence because of the way that these particular manifestations of interpersonal violence are used to justify carcerality. Anti-

¹⁸ Rentschler, *Second Wounds*, 4.

¹⁹ *Ibid.*, 34.

²⁰ Thuma, *All Our Trials*, 7. The VAWA resulted in “unprecedented federal funding for improving the prosecution of sexual and domestic violence as well as providing services for victims. ... [the allocation of] nearly 10 billion dollars for new prison construction, [the placement of] 100,000 more police officers on the street, [the application of] the three-strikes-and-you’re-out rule to a variety of federal crimes, and [the termination of] government funding for prisoners to pursue postsecondary education.”

²¹ Chen, Dulani, and Piepza-Samarasinha, eds., *The Revolution Starts at Home*; Corrigan, *Up Against a Wall*; and Thuma, *All Our Trials*, 4.

carceral activist, Victoria Law, details that “as accusations against celebrities like Harvey Weinstein and Bill Cosby mounted, calls for justice centered arrest and prison. ... [despite the fact that] harsher punishments and lengthier sentences have always fallen hardest upon—and devastated—people and communities of color, while providing little safety or prevention from gender violence.”²² The longstanding relationship between victims’ rights activism, anti-violence activism, and law-and-order politics produced the violent judicial forces that travel via the circulation and disruption of judicial features in cases of sexual and gendered violence. In this section, I detail how these violent forces function to diminish victim voices, criminalize marginalized communities, and further entangle interpersonal and state violence.

Rhetoricians have long attended to the diminishment of victim testimony justified by racist, sexist, heteronormative, classist, and ableist assumptions about victimhood and femininity.²³ Because victim testimony is feminized, regardless of the gender of the victim, it is perceived as excessive, emotional, and irrational. Thus, diminishing victim testimony is justified as a means of upholding the objectivity of the courtroom.²⁴

²² Victoria Law, “How Can We Reconcile Prison Abolition With #MeToo?” *Filter Magazine*, September 25, 2018, <https://filtermag.org/how-can-we-reconcile-prison-abolition-with-metoo/>.

²³ Carrie Crenshaw, “The normality of man and female otherness: (re)producing patriarchal lines of argument in the law and the news.” *Argumentation and Advocacy* 32, no. 4 (1996): 170-180; Selma Sevenhuijsen, *Citizenship and Ethics of Care: Feminist considerations on justice, morality and politics* (London, UK: Routledge, 1998); and Tami Spry, “In absence of word and body: hegemonic implications of ‘victim’ and ‘survivor’ in women’s narratives of sexual violence,” *Women and Language* 18, no. 2 (1995): 27-35.

²⁴ Schuster and Proppen, *Victim Advocacy in the Courtroom*, 38-39; and Sevenhuijsen, *Citizenship and Ethics of Care*, 49.

Diminishment works to exclude emotion from the courtroom by delegitimizing emotional testimony and regarding it “as conscious manipulation, evidence of lack of control, or as simply inappropriately personal.”²⁵ Recently, rhetorical scholars have acknowledged the likelihood of diminishment based on a victim’s race, class, sexuality, disability status, and citizenship status as it is related to the severe and previously un(der)explored racist and colonialist roots of sexual violence.²⁶ This project acknowledges that diminishment of victim voices is the enactment of racist, colonialist, heteronormative, transphobic, ableist state violence and tracks the circulation and disruption of judicial features that enable such diminishment beyond judicial institutions.

While some victim testimony is diminished in criminal legal settings, other victim voices—in particular, the voices of white, cisgender, heterosexual, able-bodied women—are amplified and co-opted as a means of justifying carceral interventions. Through the Victims’ Rights Movement, “some victims, white female victims in particular, [came] to

²⁵ Linda Alcoff and Laura Gray, “Survivor Discourse: Transgression or Recuperation?” *Signs* 18, no. 2 (1993): 283.

²⁶ Tommy J. Curry, “Expendables for Whom: Terry Crews and the Erasure of Black Male Victims of Sexual Assault and Rape,” *Women’s Studies in Communication* 42, no. 3 (2019): 302-303; Sarah Deer, *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (Minneapolis, MN: University of Minnesota Press, 2015); Cristy Dougherty and Bernadette M. Calafell, “Before and beyond #MeToo and #TimesUp: Rape as a colonial and racist project,” *Women and Language* 42, no. 1 (2019): 213-218; Rebecca Leung and Robert Williams, “#MeToo and Intersectionality: An Examination of the #MeToo Movement Through the R. Kelly Scandal,” *Journal of Communication Inquiry* 43, no. 4 (2019): 360-362; Mack and Na’puti, “Our Bodies Are Not Terra Nullius,” 350; and Ali Na, “#AzizAnsariToo?: Desi Masculinity in America and Performing Funny Cute,” *Women’s Studies in Communication* 42, no. 3 (2019): 308-332.

occupy central characters in the story of crime.”²⁷ This amplification is not victim-centered but serves to reinforce the power of the institution by calling attention to its ability to protect ideals of normative femininity. The co-optation of victim experience is of interest to rhetorical scholars who recognize the constitutive function of the law. To be legally recognizable as a victim affords those who have experienced violence particular options and resources, but that recognition also justifies state intervention. Rhetorical scholar, E. Cram, highlights how legislation that amplifies and prioritizes previously underserved victims “empowers the work of local advocacy groups ... [but] lacks the crucial resources needed for violence prevention, while amplifying the power of a growing prison-industrial complex.”²⁸ This project is simultaneously concerned with the diminishment of victim voices and the instances in which victim testimony and experience is amplified in service of the very judicial forces that silence victims, use their experiences out of context, and criminalize marginalized communities.

Finally, state violence circulates primarily as excessive force *and* sexual abuse, suggesting that critiques of policing, prosecution, and prison are crucial for scholars and activists committed to combatting gendered and sexual violence.²⁹ A 2010 Cato Institute review found that “sexual misconduct is the second-most-frequently reported form of

²⁷ Rentschler, *Second Wounds*, 7.

²⁸ E Cram, “‘Angie was Our Sister’: Witnessing the Trans-Formation of Disgust in the Citizenry of Photography,” *Quarterly Journal of Speech* 98, no. 4 (2012): 426.

²⁹ Richie, *Arrested Justice*; Andrea J. Ritchie, “How some cops use the badge to commit sex crimes,” *Washington Post*, January 12, 2018, https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html; and Thuma, *All Our Trials*.

police misconduct, after excessive force.”³⁰ Considering that state violence emerges both as excessive force and sexual violence perpetrated by police, I follow in the footsteps of other feminist scholars concerned with the circulation of state violence and “aim to denaturalize intimate and interpersonal violence and its state-supported structures by refusing any neat distinctions between personal and state forms of violence, proposing instead a more layered analysis of intersecting structures of oppression and privilege and the social relations they foster.”³¹ Violent judicial forces perpetuate both the state violence used to silence and diminish victim voices and that which is encountered by those that the U.S. legal system was designed to criminalize based on their race, class, sexuality, ability, and citizenship status and work to maintain a distinction between state-sanctioned violence and interpersonal violence, hindering responses that could address that entanglement. In cases of sexual and gendered violence, violent judicial forces function to diminish victim voices, criminalize marginalized communities, and, as Black feminist scholar activists have long observed, further entangle interpersonal and state violence.³² The judicial features evoked in response to such violence serve as the vehicles upon which these forces travel. In the following section, I attend to how, in cases of sexual and gendered violence, judicial procedure is evoked to render victim experience

³⁰ Ritchie, “How some cops use the badge,” https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html.

³¹ Palacios, “‘Ain’t No Justice... It’s Just Us,’” 281.

³² Richie, *Arrested Justice*; Ritchie, “How some cops use the badge,” https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html; and Thuma, *All Our Trials*.

irrelevant, judicial logics function to diminish and delegitimize affective and emotional expressions, and judicial technologies extract bodily, experiential, relational, and visceral knowledges.

Violence's Vehicles: The Function of Judicial Procedures, Logics, and Technologies

Judicial procedures are characteristic of legal placemaking and function to order legal proceedings and to maintain order within them with the expressed intention of ensuring a fair and just process for all parties. In her analysis of complaints regarding racist, gendered, colonialist, and ableist violence on university campuses, Sara Ahmed defines procedures as “how you learn what to do, where to go, in order to make a complaint. ... often represented as flowcharts, with lines and arrows that give the would-be complainer a clear route through,”³³ routes that serve as “institutional instructions ... telling you which way to go.”³⁴ Ahmed conceptualizes procedural instructions in order to illustrate why procedures so often fail those who voice their experiences with violence in institutions, asserting that these procedures “require[] using tools that are developed ‘in house.’ ... [and] could thus be understood as ‘the master’s tools,’ to evoke Audre Lorde’s (1984) terms. ... often used to keep that house in order.”³⁵ Like in university settings, procedures orchestrate the process of voicing violence in judicial spaces, determining who can speak, who listens, when, for how long, and with what purpose to keep order in the courts. When allegations of gendered violence are voiced, within or outside of

³³ Sara Ahmed, *Complaint!* (Durham, NC: Duke University Press, 2021), 31.

³⁴ *Ibid.*, 35.

³⁵ *Ibid.*, 50.

judicial spaces, they are often met with calls for due process which functions as a particular kind of procedure. However, “many people assume that due process always means a full criminal trial,” an expectation that does not align with the narrow doctrine of due process.³⁶ Guaranteed by the U.S. Constitution, due process is meaningful in that it provides guidance as we seek to answer “big, hard questions about how to treat everyone fairly in the wake of an accusation,”³⁷ but is a right guaranteed to individuals facing an accusation only “when the government is taking something away from a person, whether that be their freedom, money, or a job.”³⁸ In practice, “due process is not a single set of rules that applies in every circumstance,”³⁹ but rather “a set of flexible standards that applies differently to different kinds of proceedings.”⁴⁰ The call for judicial procedures in extrajudicial spaces ought to give us pause as these procedures, in their judicial configurations, often function to relegate victims and their experiences to the periphery and limit meaningful responses to victim experiences.

In judicial spaces, judicial procedures emerge to ensure due process by ordering the proceedings to protect the rights of the accused as the state’s case is brought upon them. Outside of the criminal legal system, interpersonal violence is conceptualized as a conflict between individuals. However, when the same violence is brought into a judicial space, formal procedures constrain victim testimony and relegate victims to the periphery because the criminal legal system does not adjudicate harm between individuals but

³⁶ Brodsky, *Sexual Justice*, 83

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

between the person who caused harm and the state.⁴¹ Subsequently, listening to victims is not a priority amidst judicial procedures, whether erected within or outside of judicial spaces, as they work to ensure that victims remain on the periphery. Thus, judicial procedure determines when a victim can voice the harm that they experienced at the hands of the accused and whether that harm is rendered meaningful by the court. During a criminal trial, the victim might be allowed to voice their experience in a very constrained way—only in response to questions posed by prosecuting and defense attorneys and, all the while, subject to objections that, although procedurally necessary for ensuring both sides’ right to appeal, work to fragment the violent experience and contain what the victim expresses.⁴² Often, however, victims are not called upon to testify during a criminal trial because “more than 90 percent of all felony criminal charges are settled by ... plea agreements.”⁴³ Yet, since the 1980s, victims have had another opportunity to convey their experiences amidst the criminal process in a Victim Impact Statement (VIS) offered during the sentencing hearing after a defendant is found or has pleaded guilty, during which the judge imposes their sentence. When first introduced, VISs “sparked a mixed reaction from feminist and legal scholars.”⁴⁴ Specifically, legal scholars and practitioners were concerned that VISs, because of their ability to evoke emotion and convey the felt impact of a crime to judicial decision makers, violated defendant’s Eighth Amendment right to not have excessive bail, fines, nor cruel and

⁴¹ Deer, *The Beginning and End of Rape*; and Simmons, ed., *Love WITH Accountability*.

⁴² Andrew E. Taslitz, *Rape and the Culture of the Courtroom* (New York, NY: New York University Press, 1999), 10.

⁴³ Schuster, *Victim’s Voice*, 65

⁴⁴ Gibson, “A Rupture in the Courtroom,” 4

unusual punishments inflicted by the courts. In 1991, the Supreme Court affirmed the use of VISs in all federal cases and, upon that decision, state courts followed suit.⁴⁵ From there, the VIS genre emerged as judges exercised their own right to “set reasonable limits on the time, length, and format of victim impact statements.”⁴⁶ From these exercises in judicial discretion emerged “strict parameters that discipline the style and the substance of the statements [and] encourage victims to exercise emotional restraint and to engage the VIS as a rhetorical act of closure.”⁴⁷ Judicial procedures, as they are enacted in courtrooms and called upon to meet allegations of sexual and gendered violence outside of them, make victim experience irrelevant, co-opt victim voices to support carceral goals, and deny victims the opportunity to speak their violence and have it made legible.

Judicial logics police affective-emotional expressions in judicial spaces, impacting whose voices are heard and how credibility is ascertained. In her extensive study of public discourse about sexual violence, Stephanie Larson defines logics as “structures ... [that assert] influence over public conversations [to] limit the options available for disclosure, curbing the available frameworks for understanding the scope of rape culture today and how it manifests ... [resulting in conversations about sexual violence that fail to] respect the experiences of victims and furthermore effectively scrutinize the problem and its rhetorical dimensions.”⁴⁸ The logics that structure public discourse and legal decision-making work to render particular judgements, understandings, and conclusions reasonable based on their conformity to normative social order, resulting in

⁴⁵ Schuster, *Victim's Voice*, 65

⁴⁶ *Ibid.*

⁴⁷ Gibson, “A Rupture in the Courtroom,” 4

⁴⁸ Larson, *What It Feels Like*, 3.

conceptualizations of social problems that are organized by white supremacy, patriarchy, heteronormativity, ableism, classism, and colonialism. Rhetorical and feminist scholars have long attended to the containment of victim voices,⁴⁹ noting that, in criminal courtrooms, victim testimony is diminished, captured, or silenced in order to maintain perceptions of “the legal system as being governed by reason and objectivity, a system in which decisionmakers strive to be free of emotion and to respond consistently to similar crimes.”⁵⁰ Court authorities operationalize these logics by stereotyping victims based on epistemological assumptions about their identities, experiences, and performances of victimhood.⁵¹ In many cases, such stereotyping works to exclude affective-emotional expression from the courtroom by delegitimizing emotional testimony. While it is important to understand whether and how individual expressions are permitted or contained amidst judicial logics, I argue that judicial logics renegotiate boundaries for talking about violence and harm insofar as they erect insurmountable barriers for expressing violent experience.

The logics that structure judicial matters function to constrain individual communicative options in ways that are often insurmountable regardless of individual rhetorical choices or skill. Patriarchal judicial logics call for victims’ even-handed expression of their experience with harm, so as to not threaten the perception that judicial spaces are dispassionate, unemotional, and objective. These expectations of appropriate expression are difficult, if not impossible, to meet for victims who are, as they speak

⁴⁹ Larson, *What It Feels Like*; Schuster, *Victim’s Voice*; and Schuster and Proven, *Victim Advocacy in the Courtroom*.

⁵⁰ Schuster and Proven, *Victim Advocacy in the Courtroom*, 38-39.

⁵¹ Fricker, *Epistemic Injustice*.

about their trauma, recounting and, potentially, reliving the violent sensations they describe. Considering the entanglement of VISs and trauma, it is unsurprising that affective-emotional, visceral, recalcitrant expressions emerge amidst the voicing of violent experience. These expressions threaten to render testimony of any victim hysterical, unreasonable, or illegible. Additionally, the containing functions of patriarchal judicial logics are compounded by the “racist logics of worthy victimhood [that] permeate our criminal justice system. ... promot[ing] the fetishization of white victimhood by racializing innocence and guilt and routinely expelling people of color from the protective boundaries of the law.”⁵² Ultimately, the criminal legal system is structured by judicial logics that determine whose experiences of violence are legible in the courtroom, how those experiences can be conveyed, and whether or not they will be heard. No matter how a victim approaches the moment in which they are permitted to voice their experience with violence, they have little to no control over how those logics will impact them. Rather, they are constructed and contained by logics that have determined who they are and what they will say long before their allegations ever reached the court.

The policing of affect-emotion that emerges from the enactment of judicial logics is not only figurative but works to reinforce a system that functions to diminish expressions of violent experiences and incarcerate nonwhite, queer, disabled, poor, and immigrant folks. In rhetorical scholarship concerned with affect-emotion, scholars are necessarily attuned to the material and discursive manifestations of affective and emotional expression, as well as the delegitimization of affective-emotional discourse that occurs

⁵² Gibson, “A Rupture in the Courtroom,” 7

along the lines of race, gender, sexuality, disability status, and citizenship status.⁵³ The language of policing and capture are often used in academic and popular coverage of the treatment of affect-emotion to highlight how logocentrism and epistemological injustices⁵⁴ limit available emotional expressions, particularly for marginalized rhetors.⁵⁵

⁵³ Heather Brook Adams, "Rhetorics of Unwed Motherhood and Shame," *Women's Studies in Communication* 40, no. 1 (2017): 91-110; Caitlin Bruce and Elise Homan, "Crossing Borders, Building Solidarity: Affective Labor in Shaping Coalitional Murals," *Women's Studies in Communication* 41, no. 3 (2018): 224-245; Jamie Landau and Bethany Keeley-Jonker, "Conductor of public feelings: An Affective-emotional rhetorical analysis of Obama's national eulogy in Tucson," *Quarterly Journal of Speech* 104, no. 2 (2018): 166-188; Lester C. Olson, "Anger Among Allies: Audre Lorde's 1981 Keynote Admonishing the National Women's Studies Association," *Quarterly Journal of Speech* 97, no. 3 (2011): 283-308; Erin J. Rand, "Bad Feelings in Public: Rhetoric, Affect, and Emotion," *Rhetoric and Public Affairs* 18, no. 1 (2015): 161-176; Sara C. VanderHaagen and Angela G. Ray, "A Pilgrim-Critic at Places of Public Memory: Anna Dickinson's Southern Tour of 1875," *Quarterly Journal of Speech* 100, no. 3 (2014): 348-374; Emily Winderman, "Anger's Volumes: Rhetorics of Amplification and Aggregation in #MeToo," *Women's Studies in Communication* 42, no. 3 (2019): 327-346; Emily Winderman, "S(anger) Goes Postal in The Woman Rebel: Angry Rhetoric as a Collectivizing Moral Emotion," *Rhetoric and Public Affairs* 17, no. 3 (2014): 381-420; Sharon Shui-yin Yam, "Affective Economies and Alienizing Discourse: Citizenship and Maternity Tourism in Hong Kong," *Rhetoric Society Quarterly* 46, no. 5 (2016): 410-433.

⁵⁴ Fricker, *Epistemic Injustice*; and Winderman, "Anger's Volumes," 330. Winderman defines epistemic injustice as "a form of harm inflicted on marginalized persons as knowers, ... tethered both to the credibility of one's testimony and one's expression of emotion." She notes that "epistemic injustice occurs through multiple rhetorical forms that intersect with voices deemed as non-ethos-bearing" and, thus, "anger is a notable way of both perpetuating and contesting epistemic injustices."

⁵⁵ Cram, "Angie was Our Sister," 411-438; Michael Lechuga, "Affective Boundaries in a landscape of shame: Writing HB 56," *Journal of Argumentation in Context* 3, no. 1 (2014): 83-101; and Bryan J. McCann, "'Chrysler Pulled the Trigger': The Affective Politics of

However, the relationship between affect/emotion and policing/prisons is not merely metaphorical—affect and emotion have long been criminalized and operationalized in contexts of policing, prosecution, and prisons.⁵⁶ Bryan McCann illuminates the legislation of affective-emotional containment as a vehicle for circulating violent judicial logics, writing,

one year after the Detroit uprising, Richard Nixon ascended to the Presidency with the promise of waging a robust war on crime. Responding to an increasingly anxious white constituency who felt black rage threatened to destroy the republic, Nixon offered criminalization as a way of stigmatizing black anger and helping launch more than three decades of policy initiatives that have led to the unparalleled warehousing of black bodies in U.S. prisons and jails.”⁵⁷

Affective-emotional policing in public and in courts circulates violent judicial forces to delegitimize and criminalize marginalized individuals resulting in their rhetorical and physical containment.

Judicial technologies extract bodily, experiential, relational, and visceral forms of meaning making necessary to contextualize sexual and gendered violence. Jordynn Jack defines technologies as “everyday rhetorics [that] are used in particular times and places, and alongside other tools and users”⁵⁸ in order to “enable[] new kinds of human perception ... enhancements of other human functions ... as well as the constitution of new gender subjectivities.”⁵⁹ Technologies, for rhetorical scholars, are used to enhance

Insanity and Black Rage at the Trial of James Johnson, Jr.,” *Rhetoric Society Quarterly* 46, no. 2 (2016): 149-150.

⁵⁶ McCann, “Chrysler Pulled the Trigger,” 149-150.

⁵⁷ *Ibid.*, 150

⁵⁸ Jordynn Jack, “Leviathan and the Breast Pump: Toward an Embodied Rhetoric of Wearable Technology,” *Rhetoric Society Quarterly* 46, no. 3 (2016): 209.

⁵⁹ *Ibid.*, 208.

particular senses, features, and characteristics, but may obscure other information in order to do so. Many judicial technologies have functions outside of their role in the criminal legal system but maintain a unique relationship to judicial matters. For example, “it is noteworthy that the name first given to the new technological device of the hand camera in the 1880s was the ‘detective camera’ ... [gesturing toward] a close historical association ... between the development of the photographic/cinematic apparatus” and the forensic search for truth.⁶⁰ Other judicial technologies, like DNA testing and rape kits, do not hold prominent social and cultural functions beyond the courtroom, but are valued as tools available for providing “certainty and transparency” about past events.⁶¹ However, “these technologies—technologies developed with good intentions when the crimes committed are cultural and bodily—are leveraged to assume certainty and transparency yet often fail to protect those actually victim to violence.”⁶² Because they are assumed to represent certainty and transparency, judicial technologies function to decenter victim experience and relational dynamics at the center of violent incidents.

Once brought before the court, judicial technologies decenter victim experiences and conceptualize sexual and gendered violence outside of contextual forces, power dynamics, and relational specificities. For the purposes of criminal legal proceedings, judicial technologies work to represent the violence alleged in the case. For instance, in a criminal trial, prosecutors might use pictures that represent the state of a residence when they arrived in response to a domestic violence call and images of victims’ injuries as

⁶⁰ Tanya Horeck, *Justice on Demand: True Crime in the Digital Streaming Era* (Detroit, MI: Wayne State University Press, 2019), 18.

⁶¹ Larson, *What It Feels Like*, 110.

⁶² *Ibid.*

evidence that an assault occurred. Yet, this use of judicial technologies “get[s] caught up in questions of representation ... [and] they miss some of the specific complexities around violence.”⁶³ Similarly, Stephanie R. Larson notes that rape exam kits are recommended to victims who raise allegations of sexual violence, whether they plan to pursue legal action or not.⁶⁴ Yet, these exams are often procedurally meaningless, as “an overwhelming majority of women—eight out of ten—know their perpetrators and give testimony to their knowledge.”⁶⁵ Thus, courts rely upon rape exam kits as a technology that can provide certainty about an alleged violent experience even in cases when the victim can say with certainty that they know who assaulted them—an infuriating use of judicial technology considering the trauma of undergoing a rape exam, “which can take up to six hours,” and the evocation of rape myths and stigmas that paint the victim as untrustworthy throughout the exam experience.⁶⁶ Judicial technologies, like the rape kit and the camera, are used to provide evidence, data, and certainty in cases of sexual and gendered violence. Yet, the focus on collecting scientific data that are imagined as being able to speak for itself renders imperceptible the dynamics at the center of sexual and gendered violence allegations. Rape kits cannot determine whether or not the victim gave consent prior to the alleged assault. Pictures of bruises cannot represent whether the accused was acting in self-defense and expectations that abuse victims have bruises that can be captured on camera renders some abuse illegible. These judicial technologies promise certainty, but in practice, they extract embodied experience, relational

⁶³ Harris, *Beyond the Rapist*, 57.

⁶⁴ Larson, *What It Feels Like*, 89.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*, 90-91.

specificities, power dynamics, and contextual forces from judicial spaces, rendering the courts and their technologies incapable of responding to sexual and gendered violence in the ways that it actually emerges.

By extracting bodily, experiential, relational, and visceral forms of meaning making, judicial technologies reinforce traditional notions of agency upon which judicial decision making is structured, making agential cuts that impact who can communicate about violence and how violence itself communicates.⁶⁷ Because judicial technologies are constructed to carry rape myths and stigmas and project them upon victims, they not only impact how victims' bodies and experiences are perceived but constitute those who encounter them. Larson explains the constitutive function of judicial technologies, contending, "bodies are corralled by institutions, tinkered with by tools; judgement percolates under the surface; fear is felt."⁶⁸ Because of the powerful constitutive relationship between legal subjects and the law, attending to the way that state-sanctioned technologies function to record violence reveals "how the state participates in a body's capacity to be seen as human, foregrounding the process of racialization, debilitation, and gendering that so often shape a rhetor's ability to speak and be heard ... illuminat[ing] the biopolitical processes that deny certain bodies the subjectivity of hu/man."⁶⁹ This individualized notion of agency structures assumptions about who can commit violence and who can be violated, resulting in rape and gendered violence laws that imagine the relational dynamics of interpersonal violence as those that exist between "a man and a

⁶⁷ Harris, *Beyond the Rapist*.

⁶⁸ Larson, *What it Feels Like*, 14.

⁶⁹ *Ibid.*, 18.

woman,”⁷⁰ center the body of the imagined violent man when “determin[ing] how to catalog, measure, and account for violation,”⁷¹ and “represent a quintessential ‘victim’: a heterosexual, college-aged, cis, white, able-bodied, US American, middle-class, educated woman in need of protection from a male body and male gaze.”⁷² This way of conceptualizing the relationship between agency and violence both constitutes feminine subjects as “the inert and the inactive ... [which] cannot commit violence”⁷³ and people of color “as actively violent yet inarticulate,”⁷⁴ working, through process of racialization, debilitation, and gendering enabled and reinforced by judicial technologies, to “preserve the whiteness and masculinity of [human-ness’s] prerequisites.”⁷⁵ Judicial technologies extract bodily, experiential, relational, and visceral forms of meaning making necessary to contextualize sexual and gendered violence and, in doing so, attribute agency and humanity to those with privilege and strategically deny agency, humanity, meaning making power to those who are most likely to experience and be accused of violence.

Bodies, Institutions, and Humanness: Feminist New Materialist Orientations

Because of the complex relationship between violent judicial forces and the judicial procedures, logics, and technologies upon which they travel, this project takes interest in moments when these judicial features are unexpectedly called upon or disrupted in

⁷⁰ Ibid., 13.

⁷¹ Ibid.

⁷² Ibid., 58.

⁷³ Harris, *Beyond the Rapist*, 113.

⁷⁴ Ibid.

⁷⁵ Ibid.

response to sexual and gendered violence in ways that change the communicative possibilities and constraints in judicial spaces and beyond them. In recent years, scholars within a variety of disciplines have considered how judicial features are enacted to simultaneously silence victim testimony to protect abusers with racial, gender, and class privilege and amplify allegations to facilitate the criminalization of non-white, queer, disabled, poor, and immigrant communities.⁷⁶ While most rhetorical scholarship engages close textual analysis to center the individual rhetorical strategies that render a victim's voice (il)legible; that is, how the content, tone, and emotional register of their testimony

⁷⁶ Chen, Dulani, and Piepzna-Samarasinha, eds., *The Revolution Starts at Home*; Corrigan, *Up Against a Wall*; Deer, *The Beginning and End of Rape*; Fricker, *Epistemic Injustice*; Gibson, "A Rupture in the Courtroom," 1-24; Gilmore, *Tainted Witness*; Harris, *Beyond the Rapist*; V. Jo Hsu, "(Trans)forming #MeToo: Toward a Networked Response to Gender Violence," *Women's Studies in Communication* 42, no. 3 (2019): 269-286; Stephanie R. Larson, "'Everything inside me was silenced': (Re)defining rape through visceral counterpublicity," *Quarterly Journal of Speech* 104, no. 2 (2018): 123-144; Mack and McCann, "Critiquing state and gendered violence," 329-344; Ashley Noel Mack and Bryan J. McCann, "'Harvey Weinstein, monster': antiblackness and the myth of the monstrous rapist," *Communication and Critical/Cultural Studies* 18, no. 2 (2021): 103-120; Ashley Noel Mack and Bryan J. McCann, "Recalling Persky: White Rage and Intimate Publicity After Brock Turner," *Journal of Communication Inquiry* 43, no. 4 (2019): 372-393; Mack and Na'puti, "'Our Bodies Are Not Terra Nullius,'" 347-370; McKinnon, "Citizenship and the Performance of Credibility," 205-221; Palacios, "'Ain't No Justice... It's Just Us,'" 279-295; James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Response* (Lebanon, NH: Northeastern University Press, 1999); Rentschler, *Second Wounds*; Richie, *Arrested Justice*; Ritchie, *Invisible No More*; Schuster, *The Victim's Voice*; Schuster and Proppen, *Victim Advocacy in the Courtroom*; Simmons, ed., *Love With Accountability*; and Thuma, *All Our Trials*.

impacts their credibility and legal decision making,⁷⁷ answering my research questions requires attentiveness to the judicial features that silence and co-opt victim voices. My project offers an important contribution to rhetorical studies as it urges scholars to examine how institutional features function to constrain individual communicative options in ways that are often insurmountable regardless of individual rhetorical choices or skill. In order to do so, my project is oriented by feminist public address scholarship, critical legal scholarship, and materialist rhetoric. However, alongside these influences, feminist new materialist theory shapes my priorities in this project because of the way that it enables me to attend to the permeability and emergence of boundaries, distributed notions of agency, and legal (de)humanization. In this section, I will detail these scholarly traditions to articulate my own theoretical orientations and commitments.

Rhetorical scholars have long been concerned with the relationship between discourse and the material world. Early theoretical debates centered around the question of rhetoric's relationship with the situation within and from which it emerged.⁷⁸ In the late twentieth century, this conversation shifted to decenter the individual speaking

⁷⁷ Larson, "Everything inside me was silenced," 123-144; Larson, *What It Feels Like*; McKinnon, "Citizenship and the Performance," 205-221; Schuster, *The Victim's Voice*; Schuster and Proppen, *Victim Advocacy in the Courtroom*; Gibson, "A Rupture in the Courtroom," 1-24; Mack and McCann, "Critiquing state and gendered violence," 329-344; Mack and Na'puti, "Our Bodies Are Not *Terra Nullius*," 347-370; and Rentschler, *Second Wounds*.

⁷⁸ Lloyd Bitzer, "The Rhetorical Situation," *Philosophy and Rhetoric* 1, no. 1 (1968): 1-14; and Richard Vatz, "The Myth of the Rhetorical Situation," *Philosophy and Rhetoric* 6 (1973): 154-161.

subject and reject the idealist theorizing that this focus encouraged.⁷⁹ From the understanding that rhetoric does not stand apart from the physical world emerged the possibility of defining rhetoric from a materialist perspective and acknowledging that “rhetoric is not merely representational, but material in that it does things in the world.”⁸⁰ Early considerations of rhetorical context, materiality, and circulation primed rhetorical scholars to attend to the “forces [that] made it possible for a particular speaking subject to emerge.”⁸¹ Between the early 1990s and the early 2000s, materialist rhetorical scholars engaged post-structuralist theory to challenge conceptualizations of rhetoric as something that can be simply characterized by the strategic persuasive choices of autonomous, rational subjects,⁸² nonhuman bodies as entities that do not have rhetorical agency or capacities,⁸³ and contexts as fixed and unmoving.⁸⁴ The material turn in rhetorical studies

⁷⁹ Celeste M. Condit, “Race and Genetics from a Modal Materialist Perspective,” *Quarterly Journal of Speech* 94, no. 4 (2008), 384.

⁸⁰ Marita Gronnvoll, “Review Essay: Material Rhetorics Meet Material Feminisms,” *Quarterly Journal of Speech* 99, no. 1 (2013): 100.

⁸¹ Bonnie J. Dow, “Feminism and Public Address Research: Television News and the Constitution of Women’s Liberation,” in *The Handbook of Rhetoric and Public Address*, eds. Shawn J. Parry-Giles and J. Michael Hogan (Hoboken, NJ: Blackwell Publishing, 2010): 351.

⁸² Barbara A. Biesecker, “Rethinking the Rhetorical Situation from within the Thematic of *Différance*,” *Philosophy and Rhetoric* 22 (1989): 110-30; and Ronald Walter Greene, “Another Materialist Rhetoric,” *Critical Studies in Mass Communication* 15, no. 1 (1998): 21-40.

⁸³ Carole Blair, “Contemporary U.S. Memorial Sites as Exemplars of Rhetoric’s Materiality,” in *Rhetorical Bodies*, eds. Jack Selzer and Sharon Crowley (Madison, WI: University of Wisconsin Press, 1999).

⁸⁴ Jenny Edbauer, “Unframing Models of Public Distribution: From Rhetorical Situation to Rhetorical Ecologies,” *Rhetoric Society Quarterly* 35, no. 4 (2005): 5-24.

has been lauded as important by scholars who focus on marginalized rhetors. Sarah Hallenbeck, a feminist rhetorician, explained how rhetorical materialism provided her with a resolution for her dissatisfaction with rhetorical studies' tendency to recover feminist rhetoric within "tragic and heroic narratives of women's rhetorical action [that] tended to place the woman rhetor against her world rather than within it."⁸⁵ In many cases, such dissatisfaction "urge[d] consideration of the material, cultural, and historical factors beyond the rhetor-text-audience triangle."⁸⁶ Although there are many avenues that rhetorical scholars can take to talk about materialism, material approaches share an important commitment: "to posit discourse and matter as part of intra-active phenomena ... [as a means of] dissolv[ing] static dichotomies."⁸⁷ The move to materialist analysis in rhetorical studies has been undeniably generative, enabling scholars to examine the relationship between rhetorical subjects and their physical context,⁸⁸ physiological

⁸⁵ Sarah Hallenbeck, "Toward a Posthuman Perspective: Feminist Rhetorical Methodologies and Everyday Practices," *Advances in the History of Rhetoric* 15, no. 1 (2012): 12.

⁸⁶ Erin L. Branch, "'Taste Analytically,': Julia Child's Rhetoric of Cultivation," *Rhetoric Society Quarterly* 45, no. 2 (2015): 168.

⁸⁷ Gronnvoll, "Review Essay," 112.

⁸⁸ Rosa Applegarth, "Genre, Location, and Mary Austin's Ethos," *Rhetoric Society Quarterly* 41, no. 1 (2011): 41-63; Jason Barrett-Fox, "Posthuman Feminism and the Rhetoric of Silent Cinema: Distributed Agency, Ontic Media, and the Possibility of a Networked Historiography," *Quarterly Journal of Speech* 102, no. 3 (2016): 245-263; Heather Lee Branstetter, "'A Mining Town Needs Brothels': Gossip and the Rhetoric of Sex Work in a Wild West Mining Community," *Rhetoric Society Quarterly* 46, no. 5 (2016): 381-409; Bruce and Homan, "Crossing Borders, Building Solidarity," 224-245; Tamika Carey, "A Tightrope of Perfection: The Rhetoric and Risk of Black Women's Intellectualism on Display in Television and Social Media," *Rhetoric Society Quarterly* 48, no. 2 (2018): 139-160; Danielle Endres and Samantha Senda-Cook, "Location matters: The rhetoric of place

in protest," *Quarterly Journal of Speech* 97, no. 3 (2011): 257-282; Adriana Cordali Gradea, "Embroidered Feminist Rhetoric in Andrea Dezsó's Lesson's from My Mother," *Rhetoric Review* 33, no. 3 (2014): 219-243; Leslie J. Harris, "Rhetorical mobilities and the city: The white slavery controversy and racialized protection of women in the U.S.," *Quarterly Journal of Speech* 104, no. 1 (2018): 22-46; Gesa E. Kirsch, "Sex, Labor, and Bodies: The Regulatory Power of Rhetoric," *Rhetoric Society Quarterly* 46, no. 5 (2016): 450-464; Sarah Kornfield, "Fixating on the Stasis of Fact: Debating 'Having It All' in U.S. Media," *Rhetoric & Public Affairs* 20, no. 2 (2017): 253-290; Tiffany Lewis, "Municipal Housekeeping in the American West: Bertha Knight Landes's Entrance into Politics," *Rhetoric & Public Affairs* 14, no. 3 (2011): 465-492; Tiffany Lewis, "The Mountaineering and Wilderness Rhetorics of Washington Woman Suffragists," *Rhetoric & Public Affairs* 21, no. 2 (2018): 279-316; Chelsea Redeker Milbourne and Sarah Hallenbeck, "Gender, Material Chronotypes, and the Emergence of the Eighteenth-Century Microscope," *Rhetoric Society Quarterly* 43, no. 5 (2013): 401-424; Alyssa A. Samek, "Mobility, Citizenship, and 'American women on the move' in the 1977 International Women's Year Torch Relay," *Quarterly Journal of Speech* 103, no. 3 (2017): 207-229; and VanderHaagen and Ray, "A Pilgrim-Critic" 348-374.

bodies,⁸⁹ and governing technologies that work to make visible, disappear, enliven, or objectify rhetorical subjects.⁹⁰

⁸⁹ Jeffrey A. Bennett, "Containing Sotomayor: Rhetorics of personal restraint, judicial prudence, and diabetes management," *Quarterly Journal of Speech* 104, no. 3 (2018): 257-278; Suzanne Bordelon, "Embodied Ethos and Rhetorical Accretion: Genevieve Stebbins and the Delsarte System of Expression," *Rhetoric Society Quarterly* 46, no. 2 (2016): 105-130; Lewis, "The Mountaineering and Wilderness Rhetorics," 279-316; Roseann M. Mandziuk, "'Grotesque and Ludicrous, but Yet Inspiring': Depictions of Sojourner Truth and Rhetorics of Domination," *Quarterly Journal of Speech* 100, no. 4 (2014): 467-487; Catherine H. Palczewski, "The 1919 Prison Special: Constituting white women's citizenship," *Quarterly Journal of Speech* 102, no. 2 (2016): 107-132; Samek, "Mobility, citizenship," 207-229; VanderHaagen and Ray, "A Pilgrim-Critic," 348-374; Karrin Vasby Anderson, "Deflowering the voting virgin: Piety, political advertising, and the pleasure prerogative," *Quarterly Journal of Speech* 103, no. 1-2 (2017): 160-181; Karrin Vasby Anderson, "'Rhymes with Blunt': Pornification and U.S. Political Culture," *Rhetoric & Public Affairs* 14, no. 2 (2011): 327-368; and Greta Wendelin, "A Rhetoric of Pornography: Private Style and Public Policy in 'The Maiden Tribute of Modern Babylon,'" *Rhetoric Society Quarterly* 42, no. 4 (2012): 375-396.

⁹⁰ Allison L. Rowland, "Zoetropes: Turning Fetuses into Humans at the National Memorial for the Unborn," *Rhetoric Society Quarterly* 47, no. 1 (2017): 45. Also, see: Bennett, "Containing Sotomayor," 257-278; Tasha N. Dubriwny and Vandhana Ramadurai, "Framing Birth: Postfeminism in the Delivery Room," *Women's Studies in Communication* 36, no. 3 (2013): 243-266; Amanda Nell Edgar, "The rhetoric of auscultation: Corporeal sounds, mediated bodies, and abortion rights," *Quarterly Journal of Speech* 103, no. 4 (2017): 350-371; Amanda M. Friz, "Technologies of the State: Transvaginal Ultrasounds and the Abortion Debate," *Rhetoric and Public Affairs* 21, no. 4 (2018): 639-672; Annie Hill, "Breast cancer's rhetoricity: bodily border crisis and bridge to corporeal solidarity," *Review of Communication* 16, no. 4 (2016): 281-298; Jensen, "From Barren to Sterile," 25-46; Robin E. Jensen, "Improving Upon Nature: The Rhetorical Ecology of Chemical Language, Reproductive Endocrinology, and the Medicalization of Infertility," *Quarterly Journal of Speech* 101, no. 2 (2015): 329-353; Zornitsa Keremidchieva, "The Congressional Debate on the 19th Amendment: Jurisdictional Rhetoric and the Assemblage of the US Body

Scholars in disciplines on the periphery of rhetorical studies, such as sociology, anthropology, architecture, and critical legal studies also offer equipment for interrogating the complex relationship between communication about violence and judicial institutions, as well as the features that common characterize them. Some of these scholars have interrogated how violent judicial forces are built into judicial institutions by turning their attention to the physical arrangement of legal spaces, physiological bodies, and emergent technologies that work to activate such violence.⁹¹ Scholars concerned with

Politic,” *Quarterly Journal of Speech* 99, no. 1 (2013): 51-73; Claire Sisco King and Joshua Gunn, “On a Violence Unseen: The Womanly Object and Sacrificed Man,” *Quarterly Journal of Speech* 99, no. 2 (2013): 200-208; Larson, *What It Feels Like*; and McKinnon, “Citizenship and the Performance of Credibility,” 205-221.

⁹¹ Nicolas Fischer, “Justice for Immigrants: The Work of Magistrates in Deportation Proceedings,” in *At the Heart of the State: The Moral World of Institutions*, ed. Didier Fassin, et al. (London: Pluto Press, 2015): 49-51; Andreas Philippopoulos-Mihalopoulos, “Spatial Justice: law and the geography of withdrawal,” *International Journal of Law in Context* 6, no. 3 (2010): 209; and Eyal Weizman, ed., *Forensis: The Architecture of Public Truth* (Berlin, Germany: Sternberg Press, 2014), 19. For example, sociologists who spend time studying particular courtrooms have observed that the proximity and familiarity between legal authorities dictated, in large part, by the physical arrangement of the courtroom, determined whether intense emotions that were otherwise unprecedented in legal spaces emerged in legal proceedings. Similarly, architectural scholars have turned their attention to the structuring of legal spaces as “an analytic and probative mode for inquiring into the present through its spatial materialization.”⁹¹ These architectural scholars call their investigation into the material structures and components of legal proceedings “forensic architecture” and aim to “bring new material and aesthetic sensibilities to bear upon the legal and political implications of state violence, armed conflict, and climate change. ... [and] to investigat[e] the actions of states and corporations.” Scholars of the law are also engaged in their own spatial/material turn. Andrew Philippopoulos-Mihalopoulos contends that this turn has radical possibilities for legal studies because “space forces law to question its ethics (Stramignoni, 2004). ... Space is not just the question ‘how would this

the spatiality and materiality of legal spaces, procedures, and decisions come from different disciplines, use different approaches, and examine different cases, but they all agree on one thing: attention to the materiality, physicality, and spatiality of the law has analytical and transformative potential. In addition to engaging a materialist approach to understanding state violence, scholars in other disciplines are engaging the affective turn to consider the role of affective-emotional expression and recognition in judicial processes, as well as their potential to dismantle categories of victim and perpetrator that individualize and depoliticize violence.⁹² For these materialist and affect-emotion attuned

judgement/legal text/legal act be formed over there?', but significantly, 'why is the judgement/legal text/legal act expected to be formed in this way here?' ... Space is law's mirror on which the irresolvable paradox between its universality and particularity is thrown into relief. Spatiality is an ethical position."

⁹² Kamari Maxine Clarke, *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (Durham, NC: Duke University Press, 2019), xxi-xxvii; and Esther A. Armah, "Colliding Traumas," in *Love WITH Accountability: Digging Up the Roots of Child Sexual Abuse*, edited by Aishah Shahidah Simmons (Chico, CA: AK Press, 2019), 170. Kamari Maxine Clarke theorizes affective justice as a means of examining "how justice discourses are brought into being by technocratic knowledge, affects, and emotional regimes." She argues that emotion and affect are crucial components of analyzing justice proceedings because "justice is not just the visible application of law at all costs, but also negotiated assemblages of feelings about inequality and power" that "shape[] how justice is materialized, made legible, institutionalized, disentangled, and made anew." Similarly, Esther A. Armah theorizes emotional justice which she defines as a "process and practice to articulate, deal with, and heal from the legacies of untreated trauma created by our global history, in which sexual violence is prominent." She asserts that even scholars and activists who claim that they are committed to hearing and amplifying victim testimony are engaged in "emotional patriarchy" that dictates the emotionality of victim testimony, particularly for women of color voicing their experience with sexual violence. Armah illuminates the costs of emotional patriarchy, writing, "Policing emotionality creates struggle; it means having

scholars, the relationship between speech and physicality is crucial for understanding criminal legal proceedings and the affiliative ties that form between these institutional and legal subjects. Architectural scholar, Eyal Weizman, highlights the importance of this relationship in legal proceedings, asserting that legal standards “establish[] a relation between the animation of material objects and the gathering of political collectives ... [that] resembles what the Roman rhetorician Quintillian called *prosopoeia*—the mediated speech of inanimate objects.”⁹³ Victim testimony is one of the apparatuses through which material objects and past violence are animated and, as such, the legal features that amplify and diminish testimony control what is made to matter in legal processes. Additionally, Kamari Maxine Clarke notes that “public speech making is critical to how affects are institutionalized in ... rule of law assemblages and how political publics are produced in that process.”⁹⁴ Alongside the materialist rhetorical work that illuminates the co-constitutive relationship between institutional contexts and rhetorical expression, the work in peripheral disciplines emphasizes the material and

internal fights with how you feel in order to negotiate society’s resistance and rejection of humanity. In this world, emotionality became the graveyard for untreated wounds due to injustice.” To put an end to these costs, Armah calls for “creating a process and practice of emotional justice.” She imagines emotional justice as a healing table around which “survivors are heard first. They do not simply speak first, they are heard first” and space is made for “traveling through a gamut of emotions to get [to healing].” These projects have their differences—Clarke is an anthropologist focused on international justice proceedings, while Armah is a playwright and activist who serves as the Executive Director of The Armah Institute of Emotional Justice and focuses, mainly, on processes and practices of healing for Black survivors of sexual violence in the United States.

⁹³ Weizman, *Forensis*, 10.

⁹⁴ Clarke, *Affective Justice*, 97.

affective-emotional features of judicial institutions upon which violent judicial forces circulate.

The work of materialist rhetoricians and scholars on the periphery of rhetorical studies to examine the relationship between speech, space/place, bodies, and institutions significantly influences my work because it provides the necessary theoretical equipment for identifying how institutional forces emerge in and through rhetorical expression. The equipment necessary to account for how institutional contexts, forces, and features make their way into and modulate verbal expressions is often kept separate from the equipment for considering how these material components communicate outside of verbal expression through “the spatial practices these environments encode, enable, and constrain.”⁹⁵ The force of material context has long been accounted for by those who are interested in the rhetoricity of place or how places and materiality can be “taken as rhetorical texts”⁹⁶ and read for understandings about how they “construct[] communal space, prescribe[] pathways, and summon[] attention, acting on the whole person of the audience.”⁹⁷ For these scholars, physical spaces and places speak for themselves in ways that are rhetorically meaningful. However, other rhetorical scholars examine space and place not only for its rhetoricity, but for the way that space and place emerge in rhetorical expressions, as words that recognize the spatiality of the present location,⁹⁸ pointing to the way that space/place can be conceptualized “not simply as a geographical location or

⁹⁵ Greg Dickinson, “Space, Place, and the Textures of Rhetorical Criticism,” *Western Journal of Communication* 84, no. 3 (2020): 302.

⁹⁶ Blair, “Contemporary U.S. Memorial Sites,” 30.

⁹⁷ *Ibid.*, 49-50.

⁹⁸ Endres and Senda-Cook, “Location Matters,” 166-193.

physical marker, but also as a symbolic construct that can operate as a means of invention (rhetoric in place).”⁹⁹ These scholars provide rhetorical equipment for identifying and analyzing “invocations of place” in speech, as well as how rhetorical expressions “construct and reconstruct places.”¹⁰⁰ For scholars interested in the rhetoricity of place, or how the materiality of place itself is rhetorical, there is a tendency to emphasize the primacy of materiality. In contrast, scholars interested in evocations of space/place in rhetorical expression and the material consequences of rhetorical expressions on the spaces/places in which they are spoken remain focused on speech and the humans who use speech to make meaning. Each of these approaches to interrogating the relationship between rhetorical expression and material context have contributed generously to rhetorical studies, providing theoretical tools for understanding “how the material, symbolic, and purposeful dimensions of rhetoric may interact, interfere, or intersect with one another.”¹⁰¹ It is these interactions, interferences, and intersections that I am most interested in throughout this project.

Recent work in rhetorical studies suggests that attending to these interactions, interferences, and intersections is made difficult by what seems like a forced choice in materialist rhetorical work between prioritizing materiality or human rhetoric. Some seem to assert that this binary is a false choice, one that forecloses opportunities for addressing the complexity of the relationship between rhetoric, material context, and the urgent social issues that call for rhetorical attention in the contemporary moment. In her

⁹⁹ Allison M. Prash, “Toward a rhetorical theory of deixis,” *Quarterly Journal of Speech* 102, no. 2 (2016): 171.

¹⁰⁰ Endres and Senda-Cook, “Location Matters,” 258.

¹⁰¹ Blair, “Contemporary U.S. Memorial Sites,” 50.

recent book about the homelessness crisis in the United States, Mary Schuster advocates for an approach to this complex social issue that can account for the ways that physical places communicate in order to displace homeless individuals, such as the “physical barriers ... created to dislodge homeless bodies and exclude them from particular space,” as well as the rhetorical expressions of “the tropes that essentialize and marginalize them” and the local legislation that invokes space in order to “exclude these bodies from public spaces.”¹⁰² The idea that addressing how physical context can organize rhetorical expression and, at the same time, how rhetorical expression can organize physical bodies is important particularly important in rhetorical work about communication involving violent details. In her recent book about discrimination and harassment complaints in university settings, Ahmed addresses the complexity of place. She writes,

I think back to that room where I first heard from the students. ... I would keep entering that room, the same room in which we had that meeting. It was my department’s meeting room, a much used room. We would have other meetings in that room, academic meetings, paper shuffling, papers and persons being re-arranged. It was the same room, but it might as well have been a different room; perhaps it was a different room. It was filled with memories, occupied by a history that felt as tangible as the walls. What you hear in the room comes to fill the room. I could not just turn up at the same old meetings, doing the same old things.¹⁰³

The physical contexts that we occupy organize our thoughts, actions, and rhetorical possibilities. The words spoken in those physical contexts also organize us, particularly when they are unexpected, moving, and not part of normal operations in those physical contexts. For the purposes of this project, I need theoretical equipment that can attend to

¹⁰² Mary Schuster, *Homeless Voices: Stigma, Space, and Social Media* (Washington D.C.: Lexington Books, 2022), 19.

¹⁰³ Ahmed, *Complaint!*, 7-8.

the rhetorical expressions of space/place and the rhetorical expressions in space/place to address the complexity of communication about violence amidst features characteristic of a particular institutional context that, when they emerge, have observable material consequences. This theoretical need orients my study and my commitment to feminist new materialism as my central theoretical approach.

For rhetoricians concerned with the relationship between material and discursive constraints who resist the false choice offered in renderings of materialist rhetoric that suggest inquiry must grant primacy to physical entities or human speech, feminist new materialist theory offers an analytical tool: material-discursive intra-action. This tool productively complicates the rhetorical tendency to consider the relationship between a rhetor and their context as a kind of interaction between a discrete context and a bounded subject. In many cases, the impact of the material context on the rhetorical strategies available to a particular speaker cannot be fully captured by approaching this relationship as an interaction—a conceptualization that imagines the human speaker and the physical context as “separate individual agencies.”¹⁰⁴ The feminist new materialist analytical tool of material-discursive intra-action attunes scholars to the way that entities, which appear individual and distinct, only emerge and appear bounded as a result of the intra-acting forces in a particular moment.¹⁰⁵ For feminist new materialist scholar, Karen Barad, material-discursive intra-action provides an opportunity to pursue a question that speaks to many of the concerns of materialist rhetoricians, “is it possible that the very accounting

¹⁰⁴ Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham, NC: Duke University Press, 2007), 33.

¹⁰⁵ Ibid.

of discursive constraints may require revision once material constraints are brought into the analysis, that is, once there is a reworking of what is here excluded?”¹⁰⁶ Feminist new materialism is a theoretical orientation that enables a fuller understanding of the ways that physical, physiological, psychological, biological, social, and rhetorical forces engage and shape one another.

As a rhetorical scholar, a feminist new materialist orientation provides me with the tools that I need to examine circulating forces, institutional power, and affected bodies in pursuit of my research questions. In line with scholars of feminist public address, affect-emotion, and embodiment, I define rhetoric as “a feeling of bodily change,”¹⁰⁷ a definition which emphasizes that rhetoric is how bodies leave impressions upon the world and how the world leaves impressions upon bodies. Feminist new materialist theory, alongside feminist public address scholarship and materialist rhetoric scholarship, allow me to point to the rhetorically significant impressions left upon the bodies that are entangled with violence, criminal legal proceedings, and the violent judicial forces that often meet allegations of sexual and gendered misconduct. Feminist new materialist theory and the conceptualization of the relationship between bodies, speech, space/place, forces, violence, and trauma as material-discursive intra-actions from which particular boundaries emerge enables me to point to the moments when judicial procedures, technologies, and logics are evoked or cast aside and to attend to the impressions that these features leave on the bodies in a particular spacetime. As I will

¹⁰⁶ Ibid., 193.

¹⁰⁷ Sara Ahmed, *The Cultural Politics of Emotion* (New York, NY: Routledge, 2015), 5; and Larson, *What It Feels Like*, 20.

show in each of my case studies, often, these circulating or disrupted features, which can be identified by attending to their naming or dismissal, carry violent judicial forces that intra-act with the physical context and, as a result, erect boundaries that shape the rhetorical means available in particular spacetimes, a phenomenon that is observable in the rhetorical expressions that emerge amidst these unique material-discursive intra-actions. My study of these circulating and disrupting forces is oriented by the theoretical and ethical objectives of feminist new materialist theory, Black feminist new materialist theory, and new materialist theory from Indigenous Studies traditions.¹⁰⁸ I want to explicitly acknowledge that the story of the intellectual lineage of feminist new materialist theory that I will tell throughout the rest of this chapter was significantly influenced by Kate Lockwood Harris and Karen Lee Ashcraft's work to "listen[] more closely to the chorus" of theoretical traditions and voices from which feminist new materialism arises.¹⁰⁹ These theoretical traditions equip me with tools necessary for apprehending the permeability of boundaries, distributed notions of agency, and

¹⁰⁸ André Carrington, "Mike Brown's Body: New Materialism and Black Form," *ASAP/Journal* 2, no. 2 (2017): 276-283; Sari Irni, "The politics of materiality: Affective encounters in a transdisciplinary debate," *European Journal of Women's Studies* 20, no. 4 (2013): 347-360; Alfred J. López, "Contesting the Material Turn; or, The Persistence of Agency," *Cambridge Journal of Postcolonial Literary Inquiry* 5, no. 3 (2018): 371-386; Armond R. Towns, "Black 'Matter' Lives," *Women's Studies in Communication* 41, no. 1 (2018): 349-358; and Vanessa Watts, "Indigenous place-thought & agency amongst humans and non-humans (First Woman and Sky Woman go on a European world tour!)," *Decolonization: Indigeneity, Education & Society* 2, no. 1 (2013): 20-34.

¹⁰⁹ Kate Lockwood Harris and Karen Lee Ashcraft, "Deferring Difference No More: An (Im)modest Relational Plea From/Through Karen Barad," 2019, European Group for Organizational Studies Colloquium, Edinburgh, Scotland.

dehumanizing consequences of the circulation of judicial features and forces beyond courtroom walls. They also inform my ethical priorities and guide my engagement with rhetorical accounts of sexual and gendered violence, as well as the systems and processes of criminalization that are commonly called upon in response to them.

In legal responses to and public discussions of sexual and gendered violence, an understanding of bodily boundaries as permeable is necessary because of how such topics impress upon an audience, get under their skin, and physiologically impact those who encounter them. Larson theorizes these bodily impacts as visceral rhetorics, “account[ing] for how bodies and their residue of feeling—residue layered with historical, material, and cultural notions of violence—can serve to generate a bodily intensity in audiences ... [and] foreground how judgement is a process that forms deep within our gut.”¹¹⁰ In communication about violence and trauma, according to Larson, the “bone-deep, felt sense of communication that transpires from a position of flesh and wound” permeates bodily boundaries and accounting for such permeation necessitates theoretical equipment that conceptualizes such boundaries as unfixed. This understanding of boundaries is also necessary when examining individuals’ interactions with institutions because, like accounts of violence and trauma, institutional features impress upon bodies. Rhetorical and feminist scholars have used feminist new materialist theory to understand how institutions impact the health and psychological wellbeing of those who encounter them, as well as how these impacts follow institutionally-entangled individuals into their

¹¹⁰ Larson, *What It Feels Like*, 5.

homes, interpersonal relationships, and the entertainment that they consume.¹¹¹ For the purposes of this project, feminist new materialist theory enables an understanding of how institutions leave physiological, psychological, and physical impressions upon individuals, as well as how features of those institutions circulate beyond the physical walls that demarcate the institution, providing crucial theoretical equipment for understanding how judicial features are circulated beyond and disrupted within courtroom walls.

Feminist new materialist theory takes seriously that matter, like discourse, has historicity and agential potential, requiring that those of us thinking about material-discursive intra-action consider the communicative potential of both human and nonhuman bodies and the dynamism of the matter that makes up these bodies. For Gavin Johnson, a rhetorical scholar whose work is oriented by feminist new materialist theory, this understanding posits that “agency is not individually created or owned but instead generated through the entanglement of matter, meaning, and bodies in spacetime. ... [and] the emergence of agency occurs in a middle space where the entanglement of matter and meaning invent reality.”¹¹² The recognition of nonhuman agency, for feminist new materialist scholars, is an important move to overcome the essentialist arguments that work to ascribe agency to “male, white, heterosexual, Christian, property-owning,

¹¹¹ Hillevi Lenz Taguchi and Anna Palmer, “A more ‘livable’ school? A diffractive analysis of the performative enactments of girls’ ill-/well-being with(in) school environments,” *Gender and Education* 25, no. 6 (2013): 671-687.

¹¹² Gavin Johnson, “From Rhetorical Eavesdropping to Rhetorical Foreplay: Orientations, Spacetimes, and the Emergence of a Queer Embodied Tactic,” *Pre/Text* 24, no. 1-4 (2018): 125.

standard-language-speaking citizens.”¹¹³ Work to attribute agentic action, which also tends to be action that we label human action, often grants agency to the privileged, universal subject. In scholarly conversations about violence, the feminist new materialist complication of individual agency is important because it disrupts the common understanding of violent actors as agents overpowering passive un-agentic non-actors, a notion that dehumanizes victims of violence, protects the status of those who commit violence, and forecloses analysis of institutional and state enactments of violence.¹¹⁴

In relation to the feminist new materialist understanding of institutional boundaries described above, it is important to articulate how a complicated notion of agency enables a fuller understanding of the way that institutions affect, alter, and render unavailable the means for rhetorical expression that, outside of the institution, an individual might use to convey their experience with violence, as well as the conditions from which such violence emerges. Harris troubles the notion of agency in generative ways, using the term “to reference the process via which the world comes into being through continuous material-discursive intra-actions.”¹¹⁵ Feminist new materialist understandings of agency are important in this project because of the way that discourse and materiality emerge in indistinguishable ways in communication about violence. Because victim testimony often contains residues of the physical, physiological, and psychological impacts of trauma, it is often difficult and, I argue, unproductive to

¹¹³ Rosi Bradotti, “The politics of ‘life itself’ and new ways of dying,” in *New materialisms: Ontology, agency, and politics*, eds. Diana Coole and Samatha Frost (Durham, NC: Duke University Press, 2010), 208.

¹¹⁴ Harris, *Beyond the Rapist*, 121.

¹¹⁵ *Ibid*, 37.

differentiate between discursive and material expressions. Additionally, feminist new materialist notions of agency also recognize how common attributions of agency carry with them power dynamics that contribute to the conditions from which violence emerges and themselves inflict violence. Indigenous sociologist Vanessa Watts names the violence inflicted by the common attributions of agency in Western literature, articulating that, “human thought and action are therefore derived from a literal expression of particular places and historical events in Haudenosaunee and Anishnaabe cosmologies. ... [but] colonization has disrupted our ability to communicate with place and has endangered agency amongst Indigenous peoples.”¹¹⁶ Western imposition of an understanding of agency, decision-making, and action that does not recognize the agential power of nonhuman entities inflicts colonial violence and, according to Watts, threatens Indigenous communities’ “ability to think, act, and govern ... because this relationship [with the land] is continuously corrupted with foreign impositions of how agency is organized.”¹¹⁷ In her advocacy for embracing notions of agency that recognize the power of nonhuman agents, Watts warns that when these notions are embraced by Western scholars, “the controversial element of agency is often redesigned when applied to non-humans,” a move that keeps the epistemological-ontological divide intact” and “creates spaces for colonial practices to occur.”¹¹⁸ For scholars engaging distributed notions of agency to account for the agential power of natural, technological, or institutional nonhuman entities, heeding this warning is crucial.

¹¹⁶ Watts, “Indigenous place-thought & agency,” 23.

¹¹⁷ Ibid.

¹¹⁸ Ibid., 28.

Complicating notions of agency is also important in a project committed to articulating the complexity of sexual and gendered violence. In fact, many feminist new materialist scholars state the necessity of distributed agency to account for the complexity of such violence.¹¹⁹ For many feminist new materialist scholars, distributed notions of agency made it possible to account for the “deceptiveness of rhetorical choice, and ... negotiate a way of considering (and arguing) how the absence of a woman’s ‘no’ should not be the last word in justifying the acceptability of coerced unwanted sex.”¹²⁰ Additionally, feminist new materialist notions of agency enabled scholars to account the entanglement of sexual and gendered violence with racist and colonialist violence. For Watts, the violence committed against Indigenous lands and Indigenous women are “essentially tied to one another ... used by settlers as strategies to govern Indigenous people (Stoler, 2002).”¹²¹ She argues that the disruption of Western notions of agency is necessary to disrupt the violence against Indigenous lands and Indigenous women, violences that are related because of the way that they operationalize colonialism “through dismantling the essential categories” of Indigenous communities by “disabling communication with Place-Thought, and implementing a bounded agency where women are sub-human/non-human.”¹²² Armond Towns makes a similar claim about sexual violence inflicted upon Black women, asking, “Wherein lies the “humanity” of the Black

¹¹⁹ Nicola Gavey, “Feminist Poststructuralism and Discourse Analysis Revisited,” *Psychology of Women Quarterly* 35, no.1 (2011): 183-188; Harris, *Beyond the Rapist*; Towns, “Black ‘Matter’ Lives,” 349-358; and Watts, “Indigenous place-thought & agency.”

¹²⁰ Gavey, “Feminist Poststructuralism,” 185.

¹²¹ Watts, “Indigenous place-thought & agency,” 31.

¹²² Ibid.

female slave[?] ... [and] wherein lies the Black female slave's materiality (matter)?"¹²³ For Towns, complicating notions of agency is crucial for accounting for the roots of sexual violence against Black women in conditions of slavery where the Black female slave was rendered matter and "that materiality was made legible by the Western construct of man."¹²⁴ Feminist new materialism equips scholars with tools necessary to account for the complicated and entangled relationships between sexual violence, U.S. slavery, colonialism, and criminal legal institutions. Harris explains that the power of "a feminist new materialist account of agency [is that it] refuses to minimize the complexity of sexual violence, it requires careful consideration of the parts of the world that people commonly exclude from their understandings of this problem."¹²⁵ My work which, like the work of many of the scholars that I named here, "points to the material-discursive processes via which boundaries around sexual violence come into being,"¹²⁶ is oriented by the insights and priorities of feminist new materialist theory which enables me to account for how the evocation, adaptation, and disruption of judicial features in response to allegations of sexual and gendered violence are rooted in and enactments of racist and colonialist state violence.

In scholarly conversations about violence, judicial institutions, and criminality, the feminist new materialist complication of individual agency and recognition of the permeability and unfixed nature of boundaries is important because it disrupts common understandings of those who experience violence as passive un-agentic non-actors, as

¹²³ Towns, "Black 'Matter' Lives," 355.

¹²⁴ Ibid.

¹²⁵ Harris, *Beyond the Rapist*, 39.

¹²⁶ Ibid.

well as criminal legal logics of exclusion and disposability, both of which render marginalized populations most likely to be implicated in criminal legal responses to violence as nonhuman. Feminist new materialism moves beyond “a representationalist approach to communication, one in which words merely transport information about the world from place to place,”¹²⁷ to an agential realist understanding of communication which “decenter[s] the human by approaching action as phenomena, not as the realized intent of a sovereign will.”¹²⁸ Connected to the distributed notions of agency described above, feminist new materialism decenters the human, enabling recognition of the agency of nonhuman entities and challenging the boundaries that emerge to attribute (non)humanness, approaching the distinctions between human and nonhuman as boundaries that are “constituted through material and symbolic relations.”¹²⁹ My commitment to feminist new materialist theory is motivated by this disruption of the boundaries erected around human and nonhuman entities. Throughout this project, I argue that such disruption is crucial—particularly for scholars engaged in work about violence, criminality, and trauma—because of the way that attributions of categories of matter, nature, and nonhuman have worked to deny humanness to nonwhite, queer, and disabled populations. Towns clarifies the importance of questioning these boundaries, writing, “blackness, as a construct, shares a consistency with the Western construct of matter. The overlap between matter and blackness exists because, like Western conceptions of matter, Black bodies—as chattel, or the Negro (those ontological,

¹²⁷ Harris, *Beyond the Rapist*, 34.

¹²⁸ Hill, “Breast cancer’s rhetoricity,” 285.

¹²⁹ *Ibid.*

epistemological, and biological constructs fabricated for us by the West)—have been situated as things, absent of self-determination.”¹³⁰ Disrupting the boundary between human and nonhuman is necessary because it has been erected and policed to deny the humanity of marginalized populations and, as Towns highlights, is a distinction used to justify “the disproportionate police killings faced by Black people.”¹³¹ The Western construct of the human and the boundaries erected around it “is overrepresented as White and male. ... [and] this human presumes racialized forms of violence against those things that lack self-determination, historically matter and Blacks, as a vehicle toward whiteness.”¹³² Throughout each of my case studies, I demonstrate how feminist new materialist theory, with its understandings of unfixed boundaries and distributed notions of agency, enables the recognition of boundaries erected around individuals, violence, and institutions, all of which work to render some individuals as worthy of response and resources and others deserving of exclusion and disposal. Feminist new materialist theory encourages scholars to identify and examine these boundaries using the method of diffraction, the “process, method, and metaphor”¹³³ for illuminating where difference emerges by identifying the effects of such difference. In this project, I will demonstrate how the evocation and disruption of judicial features in response to allegations of sexual and gendered violence erect boundaries that make racial, gender, sexuality, class, disability status, and citizenship status differences matter in order to police the

¹³⁰ Towns, “Black ‘Matter’ Lives,” 353.

¹³¹ *Ibid.*, 351.

¹³² *Ibid.*, 353.

¹³³ Harris, *Beyond the Rapist*, 52.

distinctions between human and nonhuman to justify the deployment of dehumanizing judicial forces.

My commitment to feminist new materialist theoretical offerings is motivated by my research questions which I think will be most thoroughly answered with tools that question the fixedness of bodily and institutional boundaries, conceptualizations of agency as autonomous action, and distinctions between human and nonhuman.

Undeniably, these theoretical commitments shape my analytical priorities and will enable my examination of some phenomena, while simultaneously limiting my engagement with others, as “every study has to be restricted to a particular focus, and in this sense, every study is by definition ‘limited’ in some ways.”¹³⁴ For example, my effort to prioritize the complexity of violence and the way that such complexity impacts rhetorical expressions in communication about violence in my rendering of transjudicial spaces means that my project will have less to say about individual strategies and how they render a victim’s expressions (in)effective or (il)legible. Feminist new materialist theory, also, has limitations that have been thoroughly articulated by Black and Indigenous new materialists who account for the assumed whiteness at the center of feminist new materialist theorizing, as well as the maintenance of a dehumanizing ontological-epistemological divide in feminist new materialist thought.¹³⁵ André Carrington highlights that the feminist new materialist impetus to “render too sharp a distinction between ‘us’ and nonhuman objects ... interpellate[s] a narrow ‘us’ for whom the

¹³⁴ Irni, “The politics of materiality,” 352.

¹³⁵ Carrington, “Mike Brown’s Body,” 276-283; Irni, “The politics of materiality,” 353; López, “Contesting the Material Turn,” 371-386; Towns, “Black ‘Matter’ Lives,” 353; and Watts, “Indigenous place-though & agency.”

dissolution of nature/culture is novel.”¹³⁶ However, for Carrington this impetus fails to acknowledge that humanity was long denied to Black individuals and communities and feels like an ignorant enactment of “persistent whiteness ... that enjoins [Black scholars] to let go of the human before [they] are done with it.”¹³⁷ Alfred J. López also names the persistent whiteness of new materialist theory, noting that “new materialism’s general ‘neglect of race’ ... will only generate another metaphor—‘materiality’—as the latest in that line of center-for-center substitutions. ... that only collaterally, instrumentally rubs up against a real Other, even then still mistaking it for a thing.”¹³⁸ These limitations are significant and demand address in new materialist scholarship, a call that Black and Indigenous new materialist scholars make amidst their generative contributions to the new materialist tradition. My priorities are shaped by these calls for thorough engagement with race to resist the “colonized interpretation of both place and thought, where land is simply dirt and thought is only possessed by humans,”¹³⁹ “to replace ‘man’ with a more expansive, inclusive vision of the human condition,”¹⁴⁰ to conceptualize “a ‘the enfleshed body as a raced subject,’”¹⁴¹ and, in Communication Studies, to trouble “the human in human communication studies” which, as it is currently “structured along the lines of recognition and self-determination, ... may be inapplicable to the Black bodies onto which it is forced.”¹⁴² I am committed to feminist new materialist theory,

¹³⁶ Carrington, “Mike Brown’s Body,” 281.

¹³⁷ Ibid.

¹³⁸ López, “Contesting the Material Turn,” 379-380.

¹³⁹ Watts, “Indigenous place-thought & agency,” 32.

¹⁴⁰ López, “Contesting the Material Turn,” 379-380.

¹⁴¹ López, “Contesting the Material Turn,” 379.

¹⁴² Towns, “Black ‘Matter’ Lives,” 356.

particularly as it is challenged and critiqued by Black and Indigenous new materialists because of the way that it guides the analytical and ethical stakes of an analysis of the function of judicial procedures, technologies, and logics and the violent judicial forces which circulate upon them to diminish victim voices and render criminalized individuals disposable and nonhuman.

Toward a Conceptualization of Transjudicial Spaces

Transjudicial spaces are at odds with common conceptualizations of judicial spaces as bounded, distinct, and emplaced.¹⁴³ Anti-carceral activists and scholars theorize the state structures where authorities enact prosecution and imprisonment as places that are geographically identifiable and governed by formal procedures and expectations imposed by court authorities that heavily influence what is spoken and silenced within.¹⁴⁴ Judicial spaces are considered separate and distinct from extrajudicial spaces, which, despite various colloquial uses of the term, denotes that which “[i]es] *outside* the proceedings in court; forming no part of the case before the court.”¹⁴⁵ Many features render judicial spaces recognizable and distinct from extrajudicial spaces, but these differences are

¹⁴³ Judith Resnik and Dennis Curtis, *Representing Justice* (New Haven, CT: Yale University Press, 2011); and Richard Susskind, *Online Courts and the Future of Justice* (Oxford, UK: Oxford University Press, 2019).

¹⁴⁴ Anke Allsop, “Landscapes of (neo-)liberal control: the transcarceral spaces of federally sentenced women in Canada,” *Gender, Place & Culture* 17, no. 6 (2010): 705-723; Angela Davis, *Are prisons obsolete?* (New York, NY: Seven Stories Press, 2003); and Ruth Wilson Gilmore, *Golden gulag: Prisons, surplus, crisis, and opposition in globalizing California* (Berkeley, CA: University of California Press, 2007).

¹⁴⁵ *Oxford English Dictionary*, Vol. 1, 2nd ed.

striking in sexual and gendered violence cases because the criminal legal system does not adjudicate harm between individuals but between the person who caused harm and the state.¹⁴⁶ In cases of sexual and gendered violence, distinctions between judicial and extrajudicial spaces are meaningful because they impact whether and how victim testimony is rendered legible.

Although the distinction between judicial and extrajudicial spaces points to important boundaries that often emerge in response to violence, this conceptualization fails to account for the ways that these boundaries have been made increasingly permeable, particularly in response to sexual and gendered violence over the last 40 years. Anti-racist and feminist scholars attuned to the ever-expanding reach of the U.S. prison industrial complex have extensively examined the permeable boundaries surrounding state institutions. Anke Allspach explains the permeability of carceral institutions, theorizing transcerceral spaces, a concept which enables scholars to map “the transportation of ‘the carceral’ beyond the prison [that] operates through risk discourses that trigger a variety of practices of surveillance spanning spaces, socio-economic fields, and various actors.”¹⁴⁷ I began thinking about the circulation of carceral and judicial features beyond their institutional boundaries when I read Lena Palacios’ rendering of transcerceral spaces in *Fall of 2020*.¹⁴⁸ Palacios’ and other anti-carceral scholars’

¹⁴⁶ Aya Gruber, *The Feminist War on Crime: The Unexpected Role of Women’s Liberation in Mass Incarceration* (Berkeley, CA: University of California Press, 2020); Simmons, ed., *Love WITH Accountability*; and Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, PA: Herald Press, 2005).

¹⁴⁷ Allspach, “Landscapes of (neo-)liberal control,” 718.

¹⁴⁸ Palacios, “‘Ain’t No Justice... It’s Just Us,’” 279-295.

renderings of transcarceral spaces inform my disruption of the judicial/extrajudicial binary and conceptualization of *transjudicial spaces*. This project aligns with feminist renderings of transcarceral spaces and embodiments that circulate carceral logics, structures, and mechanisms to surveil and contain non-white, queer, disabled, and immigrant communities outside prison walls.¹⁴⁹ By rendering transjudicial spaces alongside transcarceral spaces, I do not mean to suggest that these spaces are distinct and impermeable, but rather to theorize the circulation of judicial processes, technologies, and logics that function and feel different from transcarceral circulations. Specifically, while transcarceral circulations maintain the feelings of containment, restriction, and surveillance characteristic of carceral institutions beyond prison walls,¹⁵⁰ transjudicial circulations mobilize the standards of evidence, rules of decorum, and mechanisms for truth seeking beyond courtrooms. Transjudicial spaces, as a result, emerge to render a judgement about accounts of violence even if they are not voiced as part of a legal or retributive claim.

My rendering of the spaces constituted by the circulation and disruption of judicial features and the violent judicial forces that they carry with them is intentional, as the prefixal trans- accounts for movement, permeability, and potential emergence in ways that are productive for my project. Of course, in most scholarly and social conversations,

¹⁴⁹ Allspach, "Landscapes of (neo-)liberal control," 705-723; Dominique Moran, "Leaving behind the 'total institution'? Teeth, transcarceral spaces and (re)inscription of the formerly incarcerated body," *Gender, Place & Culture* 21, no. 1 (2014): 35-51; and Palacios, "'Ain't No Justice... It's Just Us,'" 279-295.

¹⁵⁰ Ibid.

the prefixal trans- often references gender as “a primary analytical category.”¹⁵¹ Commonly, transgender, trans, trans-, and trans* serve as the acknowledgement and naming of “forms of gender variance,”¹⁵² a naming that Jack Halberstam asserts references “expansive forms of difference, haptic relations to knowing, uncertain modes of being, and the disaggregation of identity politics predicated upon the separating out of many kinds of experience that actually blend together, intersect, and mix.”¹⁵³ Highlighting a tendency to assume that the prefixal trans refers only to gender variance, Queer Studies scholars Susan Stryker, Paisley Currah, and Lisa Jean Moore warn against “identify[ing], consolidat[ing], or stabiliz[ing] a category or class of people, things, or phenomena that could be denominated ‘trans,’ as if certain concrete somethings could be characterized as ‘crossers,’ while everything else could be characterized by boundedness and fixity,”¹⁵⁴ arguing instead that the lines implied by the very concept of ‘trans- are moving targets, simultaneously composed of multiple determinants.”¹⁵⁵ Rather than pointing to one bounded whole, the prefixal trans “signal[s] the relational movement of forces ... [and] mudd[ies] the linear teleologies of movement,”¹⁵⁶ thereby attuning scholars and readers to the permeability of spaces, bodies, and structures, disrupting the

¹⁵¹ Susan Stryker, Paisley Currah, and Lisa Jean Moore, “Introduction: Trans-, Trans, or Transgender?” *Women’s Studies Quarterly* 36, no. 3/4 (2008): 11.

¹⁵² Jack Halberstam, *Trans: A Quick and Quirky Account of Gender Variability* (Berkeley, CA: University of California Press, 2017), 4.

¹⁵³ *Ibid.*, 5.

¹⁵⁴ Stryker, Currah, and Moore. “Trans-, Trans, or Transgender?” 11.

¹⁵⁵ *Ibid.*, 13.

¹⁵⁶ Hill, “Breast cancer’s rhetoricity,” 288-289.

common conceptualizations of them as bounded and fixed that often work to maintain normative social order and foreclose difference.

Many scholars in various disciplines have found the prefixal trans- useful for conceptualizing movement, nonhuman agency, and complex emergences, particularly in regard to environmental, health, and education issues. An early use of the prefixal trans- emerged in *Communication Studies* in Richard A. Rogers' 1998 article in which he undertook a "reconstructive project" to account for the relationship between humans and nature, calling for "a different relationship to the environment in which we live [which] requires radically alternative conceptions of humans, nature, material conditions, and discourse" that he named "a transhuman, materialist communication theory."¹⁵⁷ Nearly a decade later, Stacy Alaimo coined the term trans-corporeality for a similar purpose—to refer to "a place where corporeal theories and environmental theories meet and mingle in productive ways" and a necessary rethinking of feminist theories about bodies and embodiment that could account for "the movement across human corporeality and nonhuman nature [which] necessitates rich, complex modes of analysis that travel through the entangled territories of material and discursive, natural and cultural, biological and textual."¹⁵⁸ Annie Hill uses trans-corporeality alongside transmateriality in her article about breast cancer to "signal the relational movement of forces across and

¹⁵⁷ Richard A. Rogers, "Overcoming the objectification of nature in constitutive theories: Toward a transhuman, materialist theory of communication," *Western Journal of Communication* 62, no. 3 (1998): 268.

¹⁵⁸ Stacy Alaimo, "Trans-corporeal Feminisms and the Ethical Space of Nature," in *Material Feminisms*, eds. Stacy Alaimo and Susan Hekman (Bloomington, IN: Indiana University Press, 2007): 238.

through bodies” and argues that using the prefixal trans- to account for such movement “merges well with intersectional theory: a black feminist framework that tracks manifold identities and systems of oppression ... urg[ing] us to approach oppressions more broadly, interrogating human exceptionalism with regard to the nonhuman and less-than-human.”¹⁵⁹ Additionally, scholars in a number of disciplines have utilized the prefixal trans- in the conceptualization of transdisciplinarity, a concept that references the scholarly movement across “artificially drawn and contingent [disciplinary] boundaries”¹⁶⁰ to approach questions about a particular issue or problem, a move that Debra Hawhee names as “especially useful when a particular framework gets stuck in the mud of its own binaries.”¹⁶¹ In a generative rendering that recognizes the movement of forces across bodily, spatial, and disciplinary boundaries, LaMonda Horton-Stallings used transaesthetics in her rendering of funk studies to resist the colonization of senses by “configur[ing] a sensorium for a new humanity whose knowledge system would not require privileging one human sense over others”¹⁶² in studies of “bodies in motion and texts that can adapt to such motion.”¹⁶³ Stallings contends that studies of movement, forces, bodies, and senses require that scholars think beyond Western conceptualizations

¹⁵⁹ Hill, “Breast cancer’s rhetoric,” 288.

¹⁶⁰ Irene Dolling and Sabine Hark, “She Who Speaks Shadow Speaks Truth: Transdisciplinarity in Women’s and Gender Studies,” *Signs* 25, no. 4 (2000): 1197. For further discussion of the trans- of transdisciplinarity, also see Barad, *Meeting the Universe Halfway*, 93.

¹⁶¹ Debra Hawhee, *Moving Bodies: Kenneth Burke at the Edges of Language* (Columbia, SC: University of South Carolina Press, 2012), 3.

¹⁶² LaMonda Horton-Stallings, *Funk the Erotic: Transaesthetics and Black Sexual Cultures* (Champaign, IL: University of Illinois Press, 2015), 12.

¹⁶³ *Ibid.*, 13.

of the five senses to account for “touch, hue, tenor, tone, performance, and emotion,”¹⁶⁴ as well as “nociception, proprioception, temporal perception, interoception, and other extrasensory perceptions,”¹⁶⁵ requiring scholarly orientations that that can overcome the “science/art, politics/art, and art/ culture divide still held in place by methods and ethics.”¹⁶⁶ Like these scholars, I use the prefixal trans- to reference movement, potential, permeation, puncture, sensation, and emergence. In this dissertation project, the prefixal trans- in transjudicial spaces references the relational movement of violent judicial forces beyond courtrooms and the extrajudicial forces that permeate courtroom walls to disrupt them to account for that which emerges from the circulation, adaptation, and disruption of judicial features in these spaces.

Additionally, in terms of vocabulary, I do not render the concept of transjudicial spaces as a substitution for extrajudicial spaces; rather, I intend for my conceptualization to be additive and to provide conceptual precision for scholars, activists, and practitioners who are working in the spaces where the criminal legal system bumps up against public and private matters. Throughout history, some extrajudicial spaces have been legally established and maintained as beyond the scope of the criminal legal system. Specifically, communication between patients and medical or mental health professionals are often marked as extrajudicial, except in cases where the patient discloses information that indicates that they are a significant danger to themselves and/or others or if the professional is working as a court appointed psychologist. Thus, the maintenance of

¹⁶⁴ Ibid., 12.

¹⁶⁵ Ibid., 14.

¹⁶⁶ Ibid., 13.

boundaries around extrajudicial institutional spaces are somewhat guaranteed, but also procedurally limited. Similarly, domestic spaces have long been legally demarcated as extrajudicial spaces where “the rhetoric of privacy has worked in our legal history to justify nonintervention in the home.”¹⁶⁷ Until the 1970s, “the closest traditional nexus between crime and the home exist[ed] in the common law crime of burglary,” defined as “the breaking and entering of a dwelling ... [with] the intent to commit a felony beyond the trespass.”¹⁶⁸ Although this seems like a law that expands the reach of judicial features into domestic spaces, it actual emerged to maintain the extrajudicial boundaries around the home, “construct[ing] the home as a space that should be especially free not only from intrusion but from crime.”¹⁶⁹ Intervention into burglary remained the primary relationship between the criminal legal system and domestic spaces until about 50 years ago, when, amidst the ever-expanding reach of the criminal legal system, domestic violence offered a “key entry point for criminal law control in [domestic] space.”¹⁷⁰ In her book about this specific entry point, Jeannie Suk examines how “criminal courts, which have always had the power to set conditions of pretrial release, have increasingly come to issue protection orders as part of the courts’ criminal law duties in [domestic violence] cases.”¹⁷¹ These orders, requested by prosecutors and issued by judges, dictate that the defendant in a domestic violence case cannot have contact with the alleged victim

¹⁶⁷ Jeannie Suk, *At Home in the Law: How the Domestic Violence Revolution is Transforming Privacy* (New Haven, CT: Yale University Press, 2009), 11.

¹⁶⁸ *Ibid.*, 19.

¹⁶⁹ *Ibid.*, 20.

¹⁷⁰ *Ibid.*, 11.

¹⁷¹ *Ibid.*, 16.

in the case, rendering contact between the parties criminal and threatening the defendant with an additional criminal charge if they do not abide by the order. Upon the imposition of this order, the relationship between the parties and the defendant's present in their own home, if that home is shared with the alleged victim, are now criminal offenses for which the defendant could be prosecuted. The issuance of protective orders, sometimes against the wishes of the alleged victim, works to classify the "defendant's entry into the home of his wife or girlfriend [as] burglary,"¹⁷² "transforms a person's legal status in his home to that of a stranger and his presence at home into a stranger's intrusion,"¹⁷³ and grants "criminal law, through its coercive power and its claim to public interest, ... an unmatched capacity to reorganize private interests."¹⁷⁴ I mention this example, as well as the other institutional contexts where judicial features sometimes emerge despite their classification as extrajudicial spaces, to clarify how I conceptualize these distinctions. I do not mean to suggest, by conceptualizing transjudicial spaces, that the concept of extrajudicial spaces is no longer functional or meaningful. Rather, I think of all extrajudicial spaces as spaces that have the potential to be constituted, upon the emergence of judicial features carrying violent judicial forces, into transjudicial spaces. Similarly, I do not mean to suggest that all judicial spaces are transjudicial spaces—most of them are not, but I conceptualize transjudicial spaces to account for the potential that, amidst circulating extrajudicial features that have permeated judicial walls, they could be transjudicially constituted. In my rendering of transjudicial spaces, I mean to suggest that

¹⁷² Ibid., 21.

¹⁷³ Ibid., 26.

¹⁷⁴ Ibid., 25.

in order for judicial and extrajudicial spaces to be meaningful concepts amidst the ever-expanding reach of the criminal legal system, there needs to be a word for describing the permeation of judicial features into extrajudicial spaces, as well as the extrajudicial features that have the potential to permeate courtroom walls and disrupt the emergence and function of judicial features and violent judicial forces. I offer transjudicial spaces as that concept to contribute conceptual precision for describing this phenomenon. In the remainder of this section, I identify three tenets of transjudicial spaces that can be used to identify, examine, and evaluate their emergence.

First, residues of judicial history, individual experiences with the criminal legal system, and police and prosecutorial violence shape the materialization of judicial matters amidst the constitution of transjudicial spaces. Judicial histories are built into the judicial procedures that organize criminal legal proceedings and carry residues of past criminal legal decision-making through time to promote objective decision-making on behalf of the court—to ensure that similar cases are treated similarly. The criminal legal system makes histories and difference matter in unique ways. Institutional history is collected as stenographic records of court proceedings. Legal decision-making is governed by precedent. Individual criminal history is used to determine bail amounts and sentencing decisions. However, because U.S. law was crafted to criminalize nonwhite, queer, disabled, poor, and immigrant communities, these histories impact members of these communities in significantly and observably different ways. Identifying the emergence of transjudicial spaces is a rhetorical project because the evocation and disruption of judicial features must be mapped alongside and through the historical residues and contemporary configurations of the spaces and places that are evoked and

constituted. Imported and disrupted judicial matters materialize in relation to speakers and audience members who are marked and positioned by larger discourses to see, hear, sense, and experience spaces, judicial features, and violent forces differently.¹⁷⁵ A diffractive reading of these moments enables analysis of these different experiences and the effects of their emergence when judicial features and the histories they carry with them emerge in extrajudicial spaces which hold their own histories to allow violent judicial forces to operate outside of courtrooms. Similarly, a diffractive reading also enables analyses of how the institutional histories built into criminal legal procedure and the individual histories of those involved impact the extent to which criminal legal features and the violent judicial forces that travel upon them can be disrupted in judicial spaces. Transjudicial spaces rely on historical enactments of agency, exclusion, and constraint that can be observed by attending how particular bodies are differently affected by the circulation and disruption of judicial features.

Second, transjudicial spaces emerge from the entanglement of spoken word and material world in particular spacetimes that modulate how violence can be communicated about and responded to in judicial and extrajudicial spaces. Identifying, examining, and evaluating transjudicial spaces requires an attentiveness to the moments when judicial features are named, performed, or cast aside and their impact on the expressions of participants. For rhetorical scholars, the naming and performance of features that are characteristic of a particular place can be analyzed as deictic indicators or those indexicals which “direct the audience to the ‘persons, objects, events, processes and

¹⁷⁵ Prasch, “Toward a rhetorical theory of deixis,” 172.

activities being talked about, or referred to, in relation to the spatiotemporal context.”¹⁷⁶

Deictic indicators do not only point to the spatiotemporal factors that are present in a particular rhetorical situation but import other spatiotemporal factors from the past or the future by pointing to distant spaces and times, “often sparking mental images (phantasmata) in the mind’s eye.”¹⁷⁷ In an extrajudicial space, transjudicial constitution may involve deictic indicators that reference specific elements of court decorum, such as appropriate attire for participation, adherence to rules of conduct, or processes of swearing in participants. In a judicial space, the casting aside of particular judicial features may also emerge as deictic indicators, as court authorities and court participants often name the judicial boundaries that they expect to encounter in the courtroom, particularly in the moments when they do not emerge. When judicial features are named, performed, or cast aside in cases of sexual and gendered violence, their circulation and disruption often impact the rhetorical expressions of participants who, in the presence of judicial features, find their expressions contained and, in their absence, may find themselves able to express the affective-emotional and visceral aspects of their violent experiences. Attending to the evocation or disruption of judicial features and the rhetorical expressions that emerge amongst them enables an analysis that attends to the impact of judicial procedures, technologies, and logics on rhetorical expressions and the constitution of transjudicial spaces.

¹⁷⁶ Ibid., 167.

¹⁷⁷ Allison M. Prash, “Obama in Selma: Deixis, rhetorical vision, and the ‘true meaning of America,’” *Quarterly Journal of Speech* 105, no. 1 (2019): 46.

Finally, the third tenet of transjudicial spaces highlights how the circulation and disruption of judicial procedure erects contact zones that necessarily (re)constitute legal subjects who encounter them. Contact zones are rhetorical—they are the spaces “in which others impress upon us,” that are “shaped by past histories of contact,” and form “the distinction between inside and outside.”¹⁷⁸ The constitution of a feeling public in relation to circulating and disrupted judicial features works to redraw boundaries around legal subjects, reforming relationships amongst members of the public, violent experiences, and institutions. When we encounter judicial matters outside of courtrooms, we are influenced by our prior experiences with and popular portrayals of the criminal legal system.¹⁷⁹ Since the emergence of the true-crime documentary genre in the late 1980s, a phenomenon resonant with transjudicial encounters has become commonplace via primetime television and streaming services.¹⁸⁰ Although my project is concerned with the constitution of transjudicial spaces in cases that are not so heavily dramatized, the cultivation of affective and emotional experiences that characterize the true crime genre are certainly relevant to the constitution of transjudicial spaces. The constitution of transjudicial spaces in cases of sexual and gendered violence resembles and resonates with the “emotional appeal of true crime images and the ways in which they position the listener or viewer, working to construct a notion of a collective ‘feeling public’ (Peterson

¹⁷⁸ Ahmed, *Cultural Politics of Emotion*, 194.

¹⁷⁹ Denise L. Bissler and Joan L. Connors, “Inequalities in CSI: *Crime Scene Investigation*: Stereotypes in the *CSI* Investigators,” in *The Harms of Crime Media: Essays on the Perpetuation of Racism, Sexism, and Class Stereotypes*, eds. Denise L. Bissler and Joan L. Connors (Jefferson, NC: McFarland & Company, 2012): 127-150.

¹⁸⁰ Horeck, *Justice on Demand*, 18.

2011, 29).”¹⁸¹ In cinematic portrayals of judicial spaces, the constitution of a feeling public works to engage audiences and make them feel invested in the outcome of the dramatized proceeding. In judicial and transjudicial spaces, the feeling public is constituted in pursuit of the truth regarding incidents of violence. To constitute feeling publics in both dramatized media and transjudicial settings, legal speech must have “presence effects”¹⁸² that bring the past experience with violence before the eyes of an audience. Making the past present is particularly important because the speech must convey the experience to “an audience that was not present at the event and yet must make some kind of judgment about it.”¹⁸³ The presence effects circulated via mediated and physiological circulatory systems are both individual and collective because the individual experience of witnessing descriptions of violence constitutes legal subjects to create affiliative ties between individuals, collectivities, and legal institutions.

Research Methods and Chapter Summaries

The constitution of transjudicial spaces and their impact on court participants’ voices must be examined with approach that can account for the material-discursive intra-actions that circulate judicial features and violent judicial forces to diminish or permit the voicing of violent experiences, an approach made possible by my commitment to the theoretical orientations of feminist public address scholarship, materialist rhetoric, and feminist new materialist theory. My project archives include mediated circulations of

¹⁸¹ Ibid, 25-26.

¹⁸² Joshua Gunn, “On Speech and Public Release,” *Rhetoric & Public Affairs* 13, no. 2 (2010): 28.

¹⁸³ John Durham Peters, “Witnessing,” *Media Culture* 23 (2001): 722.

testimony in high profile transjudicial spaces and fieldnotes from my own observation of transjudicial spaces. Admittedly, these case studies have significant differences. However, whether examining the video recordings of victim testimony or reviewing my fieldnotes, I use a consistent methodology. I look for the moments in which judicial features are named, performed, or cast aside. The modulation of judicial features is observable by attending to the procedures and logics spoken in a testimonial moment, as well as the physical arrangement of testimonial spaces.¹⁸⁴ As I map these material-discursive features of the testimonial space, I also account for their impact on the expressions of court participants. Rhetorical scholars have developed tools for identifying emotional expressions as well as the signs that a speaker is containing emotion.¹⁸⁵ Because victims are often expected to limit their affective-emotional expression to be seen as credible in courtrooms, tools for identifying containment are particularly important in this project. Using rhetorical methods to identify containment, I focus on physiological signs that a speaker is losing and attempting to regain affective-emotional composure, such as voice cracks, apologies, extended moments of silence, and enactments of their experience with violence in testimonial expressions. When the naming and performance of judicial procedure is met with observable affective-emotional modulation, the transjudicial space has been successfully constituted.

In my first chapter, I examine a shocking point of bipartisan agreement during Brett Kavanaugh's Supreme Court confirmation hearing: the confirmation proceedings

¹⁸⁴ Prasch, "Toward a rhetorical theory of deixis," 166-193.

¹⁸⁵ Gunn, "On Speech and Public Release," 1-42; Larson, *What It Feels Like*; and Winderman, "Anger's Volumes," 327-346.

were not a trial. Despite the Senate Judiciary Committee's insistence, commentators asserted that the confirmation hearing, nevertheless, felt like a trial to those who witnessed it. This chapter analyzes the confirmation hearing to illuminate the rhetorical features that made the Senate Judiciary Hearing feel like a criminal trial. In doing so, this analysis illustrates how a space that is not a courtroom was made to feel like a courtroom by way of the material-discursive intra-actions that constituted a transjudicial space. Throughout the chapter, I detail three interrelated phenomena that observably constituted the committee chambers as a transjudicial space. First, the Kavanaugh confirmation hearing could function as a transjudicial space because of the spatial, procedural, and individual histories and experiences that shaped the rhetorical possibilities available to those who encountered it. Second, in the Kavanaugh confirmation hearing, the spatial and procedural histories of Supreme Court Confirmations combined with particular material-discursive intra-actions to render the judicial features of the confirmation hearing recognizable. Finally, physiological and mediated circulatory systems that brought Ford's moving testimony and auditors' bodies into a boundary-shaping contact zone constituted legal subjects implicated in Ford's expressions, exclusions, and containments.

My second content chapter examines the former USA Gymnastics Team Doctor, Larry Nassar's sentencing hearing after he pleaded guilty to seven counts of criminal sexual misconduct. Nassar's abuse initially received national attention because of the scale of his crimes and the reputation of his victims. Before long, however, attention shifted from the monstrosity of Nassar's abuse to the radical transformation happening in his sentencing hearing. Judge Rosemarie Aquilina accepted Nassar's plea and an unusual request made by Prosecutor Angela Povilatis: any and all of Nassar's victims would be

allowed to voice VISs at the sentencing hearing. Ultimately, 156 women and girls came forward to take part in the eight-day hearing that far exceeded the legal minimum requirements for rendering a criminal legal sentence. Social commentators and rhetorical scholars set the stage for an analysis that maps how and why the Nassar sentencing hearing was transformed by the enactment of rhetorical listening. In this chapter, I argue that the transformative presence of rhetorical listening in the Nassar sentencing hearing disrupted common circulations of violent judicial forces in judicial spaces and, as a result, constituted a transjudicial space. Transjudicial spaces emerge as a phenomenon in which a courtroom is made to feel and function extrajudicially as the result of the disruption of judicial procedure in three observable and rhetorical ways. First, during the Nassar sentencing hearing, rhetorical listening significantly disrupted the judicial space because the histories and procedures characteristic of judicial spaces are at odds with the theory and practice of rhetorical listening. Second, the transjudicial space emerged from the spatial arrangement of the sentencing hearing which invited victims to confront Nassar and positioned the criminal legal institution listen, a decision that altered the pathways through which violence could circulate in the transjudicial encounters. Finally, the hearing materialized contact zones that allowed victim voices to touch the auditors who encountered them resulting in renegotiation of the boundaries between individuals, collectivities, and institutions.

My final content chapter examines the transformation of judicial spaces in Spring 2020 when criminal courts across the nation closed to prevent the spread of COVID-19. Out of concern for public health, the exacerbation of domestic violence due to stay-at-home orders, and defendants' Sixth Amendment right to a speedy trial, US criminal

courts began holding remote hearings via Zoom. In this chapter, I theorize the circulation of judicial procedures beyond physical courtrooms in the phenomenon of Zoom court hearings. This chapter examines my 600 hours of fieldwork as a virtual court observer in Minnesota courtrooms to map how features of the criminal legal system were evoked in virtual hearings to make spaces outside of courtrooms *feel* like courtrooms. I argue that material-discursive features characteristic of physical courtrooms are adapted and transformed to render them functional in virtual hearings, constituting transjudicial spaces which emerge from three interlocking phenomena. First, residues of recognizably judicial structures, individuals' prior experiences with the criminal legal system, and local histories of police and prosecutorial violence in the Twin Cities shaped the materialization of judicial matterings in the virtual space of Zoom court. Second, the formal procedures, logics, and technologies characteristic of courtrooms were commonly referenced, adapted, and enacted in Zoom court hearings to catalyze material-discursive intra-actions that made the couches, cars, and break rooms from which individuals appeared *feel* like courtrooms. Finally, the circulation of judicial procedure beyond courtrooms via Zoom court hearings erected a contact zone that necessarily (re)constituted boundaries that determine the treatment of legal subjects, the enactment of court procedure, and the legally meaningful differences between interpersonal violence and state violence.

Chapter Two Transjudicial Matters in Brett Kavanaugh's Supreme Court Nomination Hearing

Amidst the vitriol of Brett Kavanaugh's Supreme Court Confirmation Hearing, there was one persistent point of bipartisan agreement: this hearing was *not* a trial. When Kavanaugh was on the shortlist of potential Supreme Court nominees, Dr. Christine Blasey Ford's testimony accounting his attempt to rape her in high school evoked a public controversy. Before a mediated audience of over 20 million people,¹⁸⁶ both Democrats and Republicans on the Senate Judiciary Committee repeatedly emphasized that the confirmation process was not a criminal proceeding. Democrat Mazie Hirono reassured Ford, "the Republicans' prosecutor has asked you all kinds of questions ... that would be asked in a cross-examination of a witness in a criminal trial. But this is not a criminal proceeding."¹⁸⁷ Democrat Kamala Harris told Ford, "just so we can level set, you know you are not on trial. You are not on trial."¹⁸⁸ Republican John Cornyn made clear, "this isn't a trial ... I just wanted to make sure that we understood."¹⁸⁹ The frequency with which participants within the hearing and those who witnessed it were reminded of the distinctly non-forensic nature of the hearing indicates that there was a

¹⁸⁶ David Bauder, "More than 20 million people watched Kavanaugh hearing," *Associated Press*, September 28, 2018, <https://apnews.com/article/ap-top-news-jeff-flake-judiciary-sexual-assault-supreme-courts-caa510f21dcd4c569a4c8ea91f587a44>.

¹⁸⁷ CBC News, "Brett Kavanaugh and Christine Blasey Ford FULL testimony," *YouTube Video*, 8:39:37, September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

notable and, at least for the Senate Judiciary Committee, concerning resemblance between the Kavanaugh confirmation hearing and a criminal trial.

Despite the Senate Judiciary Committee's characterizations, social commentators and scholars have argued that the hearing certainly *felt like* a trial and opined about the implications of structuring the hearing as a criminal legal proceeding. Many asserted that the forensic structuring of the hearing disrupted the true intention of a Supreme Court confirmation process: to put politics aside and decide if an individual is worthy of being elevated to the highest court in the country.¹⁹⁰ In addition to the political effects, media pundits and scholars indicated a unique social implication—that the hearing would make

¹⁹⁰ Theodore Dalrymple, "A Gladiatorial Soap Opera: The Kavanaugh hearings, through the eyes of a British psychiatrist," *City Journal*, 2019, <https://www.city-journal.org/brett-kavanaugh-hearings>; Erica Scott Drennan, "The Kavanaugh sexual assault hearing shares a common thread with early 1900s Soviet mock trials," *Business Insider*, October 3, 2018, <https://www.businessinsider.com/kavanaugh-sexual-assault-hearing-evokes-1900s-soviet-mock-trials-2018-10>; Olivia Goldhill, "Women are always on trial. The Kavanaugh hearing is one devastating example," *Quartz Magazine*, September 27, 2018, <https://qz.com/1405491/the-kavanaugh-hearings-prove-that-women-are-always-on-trial/>; Julia Manchester, "Political analysis comparing Kavanaugh and Thomas says confirmation hearings are not legal trials," *The Hill*, September 24, 2018, <https://thehill.com/hilltv/what-americas-thinking/408124-just-because-thomas-wasnt-found-guilty-in-a-trial-doesnt-mean>; Heidi Matthews, "Why the Kavanaugh hearings were a show trial gone bad," *The Conversation*, October 7, 2018, <http://theconversation.com/why-the-kavanaugh-hearings-were-a-show-trial-gone-bad-102025>; Andrew C. McCarthy, "A Judicial Confirmation Hearing Is Not a Trial," *National Review*, September 26, 2018, <https://www.nationalreview.com/2018/09/kavanaugh-confirmation-hearings-not-a-trial/>; and David Smith, "Anita Hill and the Senate 'Sham Trial' That Echoes Down to Kavanaugh," *The Guardian*, September 23, 2018, <https://www.theguardian.com/law/2018/sep/22/brett-kavanaugh-christine-blasey-ford-anita-hill-clarence-thomas-senate-judiciary-committee>.

other victims less likely to report their own experiences with sexual violence.¹⁹¹ These responses suggested that, although most other victims would not be subjected to testifying before the Senate Judiciary Committee, Ford’s experience testifying before the committee strongly resonated with victims’ experiences amidst criminal legal proceedings, illustrating how “even when it does not press a legal claim, ... [victim testimony] can be made to seem to” and, as a result, “a legal form assembl[es] around [the testimony].”¹⁹² In these accounts of the legal boundaries that emerged around Ford’s

¹⁹¹ Zack Beauchamp, “Brett Kavanaugh, Donald Trump, and the chilling power of sexual violence,” *Vox*, October 3, 2018, <https://www.vox.com/policy-and-politics/2018/10/3/17915872/brett-kavanaugh-news-trump-defense-philosophy>; “Everything on Brett Kavanaugh, the Senate Vote and the Fallout,” *New York Times*, October 2, 2018, <https://www.nytimes.com/2018/10/02/us/politics/kavanaugh-news-fbi-investigation.html>; Goldhill, “Women are always on,” <https://qz.com/1405491/the-kavanaugh-hearings-prove-that-women-are-always-on-trial/>; Jacob Justice and Brett Bricker, “Brett Kavanaugh’s Self-Defense: A Case Study in Hyper-Partisan Apologia,” *Journal for the History of Rhetoric* 23, no. 3 (2020): 316-348; Megan McArdle, “There is no cleaning up this Brett Kavanaugh mess,” *Washington Post*, October 5, 2018, https://www.washingtonpost.com/opinions/there-is-no-cleaning-up-this-brett-kavanaugh-mess/2018/10/05/81e90900-c8ec-11e8-b1ed-1d2d65b86d0c_story.html; Kitty Morgan, “A year of #MeToo amplified women’s voices. But who is listening?” *San Francisco Chronicle*, October 10, 2018, <https://www.sfchronicle.com/style/article/A-year-of-MeToo-amplified-women-s-voices-But-13294462.php>; Katha Pollitt, “A Woman Can Never Be Likeable Enough,” *The Nation*, October 2, 2018, <https://www.thenation.com/article/a-woman-can-never-be-likable-enough/>; Rebecca Solnit, “The Brett Kavanaugh case shows we still blame women for the sins of men,” *The Guardian*, September 21, 2018, <https://www.theguardian.com/commentisfree/2018/sep/21/brett-kavanaugh-blame-women-anita-hill-cosby-weinstein>; and Jessica Valenti, “How Very Bad Men Get Away With Rape,” *Medium*, September 20, 2018, <https://medium.com/s/jessica-valenti/how-very-bad-men-get-away-with-rape-317e1db7a919>.

¹⁹² Gilmore, “Frames of Witness,” 614.

testimony, however, a shared tension illuminated the impossibility of a complete forensic constitution. Both rhetorical and feminist scholars agree that, even as observable legal boundaries took shape in the confirmation proceedings, the structure of the hearing,¹⁹³ the history of the Supreme Court confirmation process,¹⁹⁴ and the inevitability of Kavanaugh's confirmation¹⁹⁵ meant that the hearing was "never either a trial or a job interview."¹⁹⁶ Framing the confirmation hearing as what it was not, these scholars did not fully conceptualize what the hearing *was*. As such, this chapter focuses on the formation of legal parameters around victim testimony outside of legal spaces to contribute conceptual precision to the complex phenomenon at hand by pursuing an exigent question: what made the Kavanaugh Confirmation Hearing *feel* like a criminal trial?

The Kavanaugh confirmation hearing is an ideal case study from which to map the contours of judicial matters that emerge beyond judicial spaces—an urgent task amidst the rapidly expanding reach of the U.S. criminal legal system and prison industrial complex.¹⁹⁷ Stephanie R. Larson recently argued that the judicial logics and technologies mobilized in the adjudication of sexual violence allegations in criminal trials are "disseminate[d] widely beyond the capacities of courtrooms" to silence victims,¹⁹⁸

¹⁹³ Gilmore, "Frames of Witness," 610-623; and Justice and Bricker, "Brett Kavanaugh's Self-Defense."

¹⁹⁴ Trevor Parry-Giles, *The Character of Justice: Rhetoric, Law, and Politics in the Supreme Court Confirmation Process* (East Lansing, MI: Michigan State University Press, 2006); and Schuster, *The Victim's Voice*.

¹⁹⁵ Gilmore, "Frames of Witness," 610-623.

¹⁹⁶ *Ibid.*, 621.

¹⁹⁷ Kimberlé Crenshaw, *On Intersectionality* (New York, NY: The New Press, 2014); Davis, *Are prisons obsolete?*; and Gilmore, *Golden gulag*.

¹⁹⁸ Larson, *What It Feels Like*, 3.

“mimic a legal quest to assign guilt and responsibility,”¹⁹⁹ and “contain a sense of bodily excess” that often accompanies description and contextualization of sexual violence.²⁰⁰ While Larson shows how these circulating judicial logics and technologies result in a “failure to understand embodied experiences” of sexual violence and, ultimately, impact “how justice claims” are made within the criminal legal system,²⁰¹ the Kavanaugh confirmation hearing demonstrates how justice claims and the judicial features that they carry impact public understandings of and responsiveness to sexual violence when they circulate beyond courtroom walls. Understanding the co-constitutive relationship between public and judicial judgements that emerge in response to allegations of sexual violence has the potential to help rhetorical theorists examine the complex relationship between spoken word, material world, and institutional power.

In this chapter, I argue that the Kavanaugh confirmation hearing was constituted by a transjudicial space, a phenomenon made possible by the history of Supreme Court confirmation hearings, the judicial features that emerged during the Kavanaugh hearing, and the mediated circulation of the confirmation proceedings, all of which led auditors to conclude that the confirmation proceedings felt like a criminal trial. Throughout, I offer three tenets that can be used to identify, examine, and evaluate transjudicial spaces. First, history enfolds in transjudicial spaces to make racial, gender, class, and disability status differences matter in distinctly judicial ways. Second, particular material-discursive intra-actions orient the transjudicial space to make seemingly extrajudicial spaces feel like

¹⁹⁹ Ibid., 4.

²⁰⁰ Ibid., 111.

²⁰¹ Ibid., 4.

courtrooms. Finally, the transjudicial encounter is affirmed and amplified by physiological and mediated circulatory systems which (re)constitute legal subjects who encounter transjudicial emergences. I begin theorizing the transjudicial space constituted amidst the Kavanaugh confirmation hearing by situating this study within feminist communication studies, genre studies, and scholarly work about Supreme Court confirmation hearings. Next, I articulate the three tenets that work to identify and map the emergence of transjudicial spaces. Then, I analyze Ford's testimony to demonstrate how the emergence of racial and gender difference in moments of emotional and visceral display illustrated her limited situated agency to displace Kavanaugh and, ultimately, constituted a transjudicial encounter. Finally, I conclude by offering several implications that emerge from my conceptualization of transjudicial spaces regarding its potential for identifying the emergence of judicial boundaries, features, and violences beyond courtrooms and its use for rhetorical theorists interested in broader cases of constitutive rhetorics and rhetorics of space/place.

Generic Features, Rhetorical Situations, and Ecological Emergences

Rhetorical studies has long been interested in how particular configurations of rhetorical form and substance come to reflect recognizable categories of rhetorical expression that meet audience expectations in social situations, conceptualizing these configurations as rhetorical genres. In *Rhetoric*, Aristotle outlined three rhetorical genres: deliberative, or political speech; epideictic, or ceremonial speech; and forensic, or speech in a courtroom. However, in 1973, Kathleen Hall Jamieson highlighted the inadequacy of these three genres for classifying contemporary speech, noting that, for rhetorical scholars attempting

to categorize rhetorical phenomena in the late twentieth century, the Aristotelean taxonomy “fractures when confronted by the data with which the contemporary critic must deal.”²⁰² Thus, Jamieson argues for a less contained taxonomy that can account for the permutations of genre throughout time, defining rhetorical genre as a category that “contains specimens of rhetoric which share characteristics distinguishing them from specimens of other rhetorical genres ... shaped in response to a rhetor’s perception of the expectations of the audience and the demands of the situation.”²⁰³ Building upon her earlier work, Jamieson co-authored an article with Karlyn Kohrs Campbell in 1982 to examine the permeable boundaries of generic categories responsible for the permutation of generic categories throughout time, arguing that a rhetorical phenomenon can contain characteristics of two genres simultaneously, resulting in the “creative fusion” of rhetorical genres, which they referred to as “rhetorical hybrids.”²⁰⁴ For Jamieson and Campbell, rhetorical hybrids tend to share some specific characteristics: it is common that, amidst the fusion, “one generic form predominates,” these “fusions are not inherently successful,” and “hybrids are called forth by complex situations and purposes and, as such, are transitory and situation bound.”²⁰⁵ The concept of rhetorical hybrids is important for considering how a Supreme Court confirmation hearing came to feel like a criminal trial because this phenomenon seems to suggest that the confirmation hearing

²⁰² Kathleen M. Hall Jamieson, “Generic Constraints and the Rhetorical Situation,” *Philosophy & Rhetoric* 6, no. 3 (1973): 162.

²⁰³ *Ibid.*, 162-163.

²⁰⁴ Kathleen Hall Jamieson and Karlyn Kohrs Campbell, “Rhetorical Hybrids: Fusions of generic elements,” *Quarterly Journal of Speech* 68, no. 2 (1982): 147.

²⁰⁵ *Ibid.*, 150.

fused characteristics of the deliberative genre and the forensic genre, creating a rhetorical fusion. Trevor Parry-Giles argued that, since the drafting of the Constitution, Supreme Court confirmation hearings were meant to primarily have a deliberative function, which would ostensibly inspire politicized discussions that strengthen U.S. political culture.²⁰⁶ However, he acknowledges that contemporary Supreme Court confirmation hearings have the potential to adhere to all three rhetorical genres. In her analysis of the Kavanaugh confirmation hearing, Leigh Gilmore acknowledges the impact of the fusion of deliberative and forensic generic features, writing, “the ease with which the hearings came to resemble a trial, casting Kavanaugh as an aggrieved defendant and Blasey Ford as an accuser making a legal complaint, exploited the vulnerability victims of sexual violence face in the forums of judgement in which they bear witness and seek justice.”²⁰⁷ Amidst the unique configuration of the Kavanaugh confirmation hearing, the forensic genre emerged as the prominent genre and, as a result, determined the rhetorical parameters of the uniquely constituted situation, impacting the rhetorical means available to participants.

Amidst renderings of genre theory is an important discussion about the relationship between rhetorical genres and rhetorical situations, one that provides useful theoretical equipment for considering how genres operate in institutional settings and amidst the circulation and disruption of institutional features. Jamieson acknowledged Lloyd Bitzer’s claim that recurring rhetorical forms emerge from “comparable situations

²⁰⁶ Parry-Giles, *The Character of Justice*, 164.

²⁰⁷ Gilmore, “Frames of Witness,” 615.

... prompting comparable responses,”²⁰⁸ noting that she did not deny this rendering, but instead “wish[ed] to suggest ... that the perception of the proper response to an unprecedented rhetorical situation grows *not merely from the situation* but also from the antecedent rhetorical forms.”²⁰⁹ For Jamieson, the rhetorical forms that precede particular situations provide rhetors with a frame of reference for responding to particular situations and, also, enable audiences and critics to identify “isolated generic characteristics” that can be used to describe, for example, “what makes an inaugural an inaugural and not an apology.”²¹⁰ However, she concedes that genre also emerges from the observable “demands of the situation,” which “is why, even if we haven’t heard a eulogy, when we are asked to give one, we will deliver eulogistic rhetoric.”²¹¹ I linger on Jamieson’s work here because, within her discussion of the relationship between rhetorical genres and rhetorical situations, she emphasizes that, in institutional settings, the rhetorical situation may more heavily constrain the generic forms and rhetorical possibilities available to rhetors because “establishment and maintenance of definable institutional forms of rhetoric serve to define the institution itself,” in order to “perpetuate[] and insulate[] the institution,” “guarantee[] a sense of continuity,” and “perpetuate[] a distinguishable institutional rhetoric by creating expectations which any future institutional spokesmen feel obliged to fulfill rather than frustrate.”²¹² In institutional settings, the rhetorical genres that come to characterize the institution itself cannot be thought of as

²⁰⁸ Bitzer, “The Rhetorical Situation,” 3-4.

²⁰⁹ Jamieson, “Generic Constraints,” 163.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid., 165.

categorization based solely upon the form and substance of rhetorical phenomena that happen in institutional situations. Rather, these institutional forms of rhetoric are utilized in institutional settings to accomplish particular kinds of rhetorical action.²¹³ Carolyn Miller theorized “genre as social action” in a 1984 article where she argued that genre theory should be organized around the pragmatic, those genres that “we have names for in everyday language,” in order to “explicate the knowledge that practice creates” by “tak[ing] seriously the rhetoric in which we are immersed and the situations in which we find ourselves.”²¹⁴ Adding to the conversation about the relationship between rhetorical genres and rhetorical situations, Miller does conceptualize the situational components as socially constructed, rather than material, noting that situational components are composed of “a set of particular social patterns and expectations that provides a socially objectified motive for addressing danger, ignorance, and separateness.”²¹⁵ For Miller, material situations never recur, the situations that we find ourselves in are always unique, but they can be made to seem recurrent as a result of our perceptions and our social frames for making meaning around particular experiences.²¹⁶ It is these perceptions and frames, according to Miller, that lead rhetors to conceptualize situations as similar and to approach them in generically similar ways.²¹⁷ Debates regarding the complex relationship between rhetorical situations, rhetorical genres, and the role of materiality as it relates to each of these theories provide generative theoretical equipment for examining

²¹³ Carolyn R. Miller, “Genre as Social Action,” *Quarterly Journal of Speech* 70 (1984): 152.

²¹⁴ *Ibid.*, 155.

²¹⁵ *Ibid.*, 158.

²¹⁶ *Ibid.*, 156-157.

²¹⁷ *Ibid.*

relationship between generic characteristics that, when circulated beyond an institution, impact the rhetorical parameters in particular spacetimes.

Taking seriously the co-constitutive relationship between genres and situations, I build upon the work of genre theorists in this chapter by identifying the entanglement of the generic and situational components characteristic of Supreme Court Confirmation Hearings and criminal trials with space, bodies, histories, procedures, forces, and violences as a rhetorical ecology.²¹⁸ Although genre theory provides conceptual equipment for thinking about unexpected emergences of generic characteristics, genre theory alone cannot account for the circulation of judicial features beyond the walls of courtrooms and the common assertion that the Kavanaugh confirmation hearing felt like a criminal trial. As Miller noted in her rendering of genre theory, Campbell and Jamieson's "explanation of genre ... reflects Lloyd F. Bitzer's formulation of the relationship between situation and discourse."²¹⁹ Thus, recent critiques of Bitzer's conceptualization of the rhetorical situation, in many ways, also apply to common conceptualizations of genre theory. Conceptualized as "a potential fusion of elements that may be energized or actualized as a strategic response to a situation," as well as audience expectations and rhetorical constraints,²²⁰ rhetorical genres are reminiscent of Bitzer's rendering of the rhetorical situation and subject to some of the same critiques. Some of these critiques include a failure to acknowledge the way that rhetoric constitutes contexts,²²¹ a theoretical rendering that "posit[s] the audience of any rhetorical event as no more than a

²¹⁸ Edbauer, "Unframing models of public distribution," 5-24.

²¹⁹ Miller, "Genre as Social Action," 152.

²²⁰ Jamieson and Campbell, "Rhetorical Hybrids," 157.

²²¹ Vatz, "The Myth of the Rhetorical Situation," 154-161.

conglomeration of subjects whose identity is fixed prior to the rhetorical event itself,”²²² and a framework that imagines rhetorical elements as discrete and contained.²²³ An ecological approach to thinking about genre will enable scholars to attend to how genre emerges not only as a result of what is said, but what is not said, what keeps it from being said, and the felt silences that texture generic form in many rhetorical situations. In this chapter, I account for the generic and contextual characteristics of Supreme Court Confirmation hearings and criminal trials as they interact with the space, bodies, histories, procedures, forces, and violences present in a particular moment as a rhetorical ecology, a framework that “recontextualizes rhetorics in their temporal, historical, and lived fluxes” to attend to the distribution of institutional forces across spacetimes,²²⁴ the fluidity of boundaries and exchanges,²²⁵ and “the affective channels of rhetorical communication and operation.”²²⁶ My analysis of the Kavanaugh confirmation hearing as a transjudicial space contributes to both rhetorical genre theory and the theoretical conversation surrounding the components of rhetorical situations and rhetorical ecologies by accounting for the “possib[ility] for entangled relationalities to make connections between ‘entities’ that do not appear to be proximate in space and time.”²²⁷ Transjudicial spaces emerge when judicial features are evoked outside courtrooms to usher in violent

²²² Biesecker, “Rethinking the Rhetorical Situation,” 111.

²²³ Edbauer, “Unframing models of public distribution,” 9; and Craig R. Smith and Scott

Lybarger, “Bitzer’s Model Reconstructed,” *Communication Quarterly* 44, no. 2 (1996): 200.

²²⁴ *Ibid.*, 14.

²²⁵ *Ibid.*, 19.

²²⁶ *Ibid.*, 21.

²²⁷ Barad, *Meeting the Universe Halfway*, 74.

judicial forces that work to diminish victim voices, criminalize marginalized communities, and entangle interpersonal and state violence.

In their contemporary configuration, Supreme Court confirmation hearings are thought to be a predominantly deliberative process upheld as the enactment of crucial checks and balances, as well as a way to strengthen the relationship between U.S. citizens and constitutional law.²²⁸ However, the opportunity for elected officials to publicly question nominees to determine their fitness for the job was not built into the Supreme Court confirmation process. In fact, Supreme Court confirmations were once a quiet, behind-the-scenes process that adhered to “Article 2, Section 2 of the United States Constitution [which] states that the President with the advice and consent of the Senate, has the power to appoint justices to the Supreme Court of the United States.”²²⁹ The Senate Judiciary Committee was established in 1816 to aid in the confirmation process, but “rarely took public testimony about [nominees].”²³⁰ This changed in 1939 when, upon his nomination, Felix Frankfurter fielded “unrestricted questions in an open, transcribed, public hearing,” but until 1955, “nominees appeared [for questioning] only intermittently.”²³¹ The contemporary, public configuration of the Supreme Court confirmation process has been used to appoint every Supreme Court Justice since 1955. In their examination and completion of the most comprehensive study of all Supreme

²²⁸ Parry-Giles, *The Character of Justice*; and Lori A. Ringhand and Paul M. Collins, Jr. “May It Please The Senate: An Empirical Analysis of the Senate Judiciary Committee Hearings of Supreme Court Nominees, 1939-2009,” *American University Law Review* 60, no. 3 (2011): 591.

²²⁹ Ringhand and Collins, “May It Please The Senate,” 594.

²³⁰ *Ibid.*

²³¹ *Ibid.*

Court confirmation hearings between 1939 and 2009, Lori A. Ringhand and Paul M. Collins, Jr. found that, since public hearings became commonplace in the Supreme Court confirmation process, Senate Judiciary committee members tend to focus on civil rights, judicial philosophy, and criminal justice in the hearings.²³² In addition to these general findings, their data indicated that the Supreme Court nominee's race and gender are made to matter within the confirmation process, significantly impacting the nature of the questions asked during the public hearing, with senators focusing heavily on questions of judicial philosophy and implications of banking and finance and deemphasizing questions about government operations and engagement in non-substantial chatter during the confirmation proceedings for nonwhite and women nominees. Ringhand and Collins' findings also indicate that particular questions, rhetorical maneuvers, and subject matters are outside the scope of the Supreme Court confirmation process. Of note, some of the excluded components of Supreme Court confirmation proceedings were "non-substantive discussions, such as the scheduling of breaks, ... social chitchat ... [and] discussions of the nominee's education, family, and background," as well as the entire "portion of the Clarence Thomas hearing that was re-opened solely for the purposes of taking testimony regarding the accusations of sexual harassment made by law professor Anita Hill."²³³ These historical accounts of the Supreme Court confirmation process suggest that the processes for addressing allegations of sexual misconduct are distinct from traditional confirmation proceedings.

²³² Ibid., 600.

²³³ Ibid., 595.

Although the Kavanaugh confirmation hearing was not included in this comprehensive study, the similarities between Kavanaugh and Thomas' confirmation processes suggest that the portion of Kavanaugh's confirmation regarding Ford's allegations would have also been considered distinct from the Supreme Court confirmation process in Ringhand and Collins' study—marking it, procedurally, as something other than what it was expected to be. Despite their similarities, each of these hearings took unique forms. While judicial features were evoked in the Kavanaugh confirmation hearing, those same features were avoided in the Thomas confirmation hearing to disrupt the consequences of legal framing. In Thomas' confirmation hearing, history of Black men criminalized through allegations of sexual violence and the racialization of victimhood in the United States disrupted the forensic constitution of the hearing. Although both of these confirmation hearings had the potential, because of the history that ties the Senate Judiciary Committee to the criminal legal system, to be forensically structured, Thomas' confirmation hearing “was always a political battleground ... and never a legal process”²³⁴ because “Hill's description of Thomas' behavior toward her did not ignite a careful search for the truth; her testimony simply produced an exchange of racial tropes.”²³⁵ In the 1991 hearing, racial difference was made to matter, working as a sociopolitical force that significantly impacted both Hill and Thomas' rhetorical means for conveying their experiences. For Hill, her testimony “offer[ed] a tableau vivant of the racist association of black bodies and sexuality ... as an

²³⁴ Gilmore, *Tainted Witness*, 50.

²³⁵ Toni Morrison, ed., *Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality* (New York, NY: Pantheon Books, 1992), xvi.

enactment of white supremacy.”²³⁶ For Thomas, the allegations evoked stereotypes of aggressive, sexually deviant Black men, an association that threatened his impending confirmation. Thus, rather than risk adjudication of a Black nominee’s sexual conduct by constituting the hearing forensically, which likely would have diminished both Thomas and Hill’s credibility, the Bush administration, the media, and Thomas himself restructured the hearing, predominantly, as an epideictic rhetorical event by evoking the narrative of his rural, impoverished upbringing.²³⁷ This choice was politically effective, as it “offered a way for white conservative politicians to brush aside the history of race entirely [by framing] Thomas [as] a self-made man.”²³⁸ It was also procedurally complex, leading one committee member to question, “What are the rules?”²³⁹ Where the procedural rules of Thomas’ confirmation hearing were questioned, they did not need to be in Kavanaugh’s confirmation—his racial identity enabled the Trump administration, the Senate Judiciary Committee, and the media to stage it as a predominantly forensic event. The history of Thomas’ confirmation hearing equipped the Senate Judiciary Committee to anticipate the controversy of sexual violence allegations leveraged against Supreme Court nominees and the consequences of importing judicial features into the traditionally deliberative process

That Supreme Court confirmation hearings can be made to feel like a criminal trial is not particularly surprising considering that the rhetorical, political, and social significance of confirmation hearings tie these processes to the criminal legal system. The Supreme

²³⁶ Gilmore, *Tainted Witness*, 46.

²³⁷ Parry-Giles, *The Character of Justice*, 148.

²³⁸ Gilmore, *Tainted Witness*, 33.

²³⁹ *Ibid.*, 43.

Court and its Justices inspire “affective investments in the majesty of the law ... [that] beckon[] [witnesses] to invest in a vision of the legal system as the ultimate and necessary arbiter of justice in matters of sexual violence.”²⁴⁰ Additionally, because of the Senate Judiciary Committee’s ties to the criminal legal system, as the committee that oversees judicial matters, confirmation proceedings can be expected evoke some aspects of criminal proceedings. For example, it is standard for the Senate Judiciary Committee chairperson to “subpoena the attendance of a witness at a Committee or Subcommittee hearing or Committee deposition” and to place these witnesses under oath.²⁴¹ It is important to consider how criminal legal and Senate Judiciary Committee procedures overlap in some ways because the relationship between the Supreme Court, the Senate Judiciary Committee, and the criminal legal system equips senators with tools to evoke features of a criminal trial within committee hearings. It is also crucial to acknowledge that the mere presence of judicial features in a traditionally extrajudicial space does not necessarily mean that a transjudicial space will emerge. We can certainly think about situations where a speaker or interlocutor took on a prosecutorial tone, but the audience did not necessarily feel that the interlocutor adjudicated the issues in a court of law. However, in some cases, situated entanglements of generic features, audience expectations, past encounters with institutions, and judicial forces constitute a unique transjudicial space. The constitution of a transjudicial space which makes spaces outside of courtrooms feel like courtrooms can be identified by attending to how particular

²⁴⁰ Mack and McCann, “Recalling Persky,” 380.

²⁴¹ “Rules of Procedure United States Senate Committee on the Judiciary,” *Committee on the Judiciary*, <https://www.judiciary.senate.gov/about/rules>.

bodies and matters move through the differently constituted spaces. I offer three tenets that can be used to identify, examine, and evaluate transjudicial spaces. First, history unfolds in transjudicial spaces to make racial, gender, class, and disability status differences matter in distinctly judicial ways. Second, particular material-discursive intra-actions orient the transjudicial space to make seemingly extrajudicial spaces feel like courtrooms. Finally, the transjudicial encounter is affirmed and amplified by physiological and mediated circulatory systems which (re)constitute legal subjects who encounter transjudicial emergences.

The Transjudicial Matterings in Christine Blasey Ford's Testimony

In 2002, during an interview with *The Stanford Report*, Hill asked, “how do you think certain people would have reacted if I had come forward and been white, blond-haired and blue-eyed?”²⁴² The possibility of someone like Christine Blasey Ford bringing allegations of sexual violence before the Senate Judiciary Committee materialized in 1991, long before she and her allegations ever did. That Ford's whiteness afforded her different rhetorical possibilities when she testified, and that treatment of her testimony was impacted the memory of Hill's diminishment is notable and textures understandings of how Ford was uniquely silenced by the emergence of judicial boundaries beyond a courtroom. In this section, I will illustrate how the three tenets of transjudicial spaces can be used to map the emergence of a transjudicial space by applying them to Ford's testimony, the Senate Judiciary Committee treatment of it, and auditors' reactions to the

²⁴² Barbara Palmer, “Ten years later, Anita Hill revisits the Clarence Thomas controversy,” *Stanford Report*, April 3, 2002, <https://news.stanford.edu/news/2002/april3/anitahill-43.html>.

rhetorical phenomenon, reflecting upon the generic elements and judicial features that were evoked to restructure the hearing and the resulting sensations, affective-emotional expressions, and silences that emerged from its reconfiguration.

Encountering Spatial, Procedural, and Embodied Histories

The history of Supreme Court confirmation processes was made present in the Kavanaugh confirmation hearing as residues of past confirmation hearings were ushered in by the configuration of the hearing, content of the testimony, and stylistic details. Specifically, the Kavanaugh confirmation hearing carried with it memories of Hill's testimony in the Thomas confirmation hearing. Hill, like Ford, was a professor whose allegations of sexual misconduct were leaked to the press resulting in a call for her to testify before the Senate Judiciary Committee. Social commentators anticipated that these hearings would resemble one another in the days before Ford testified.²⁴³ Even as such predictions emerged, no one could have imagined how striking their similarities would be. When Ford approached the stand in a blue suit, it evoked the iconic image of Hill testifying 27 years earlier in a blue linen dress,²⁴⁴ despite reports that Ford chose the suit because it was “the one non-black option ... one that she would be able to wear

²⁴³ Cheryl Gay Stolberg and Nicholas Fandos, “Christine Blasey Ford Reaches Deal to Testify at Kavanaugh Hearing,” *New York Times*, September 23, 2018, <https://www.nytimes.com/2018/09/23/us/politics/brett-kavanaugh-christine-blasey-ford-testify.html>.

²⁴⁴ Gilmore, *Tainted Witness*.

teaching.”²⁴⁵ Both Hill and Ford were sworn in.²⁴⁶ Both testimonies are widely remembered as professional, calm, and credible by those who witnessed them.²⁴⁷ However, neither Thomas nor Kavanaugh were among the witnesses, both claiming that they did not watch their accusers’ testimonies.²⁴⁸ That Ford’s experience testifying before the Senate Judiciary Committee evoked Hill’s much earlier experience matters as it reveals the histories made present and meaningful during the Kavanaugh confirmation hearing. In addition to the relevance of the history of Supreme Court confirmation hearings, the history of U.S. criminal trials and prosecutorial decision making are relevant to the successful constitution of a transjudicial space in the Kavanaugh hearing. The Kavanaugh confirmation hearing had the potential to be constituted as a transjudicial space because of the spatial and procedural histories of the Supreme Court, the Senate

²⁴⁵ Jodi Kantor and Megan Twohey, *She Said: Breaking the Sexual Harassment Story That Helped Ignite a Movement* (New York, NY: Penguin Press, 2019), 232.

²⁴⁶ Gilmore, *Tainted Witness*, 43.

²⁴⁷ Christina Cauterucci, “Christine Blasey Ford Shows the Power of Letting Survivors of Sexual Violence Tell Their Own Stories,” *Slate Magazine*, September 27, 2018, <https://slate.com/news-and-politics/2018/09/christine-blasey-ford-brett-kavanaugh-opening-statement.html>; Kantor and Twohey, *She Said*, 233; Lili Loofbourow, “Why Christine Blasey Ford Isn’t Allowed to Be Mad,” *Slate Magazine*, September 28, 2018, <https://slate.com/news-and-politics/2018/09/brett-kavanaugh-hearing-angry-shouting.html>; and Jia Tolentino, “One Year of #MeToo: What Women’s Speech Is Still Not Allowed to Do,” *The New Yorker*, October 10, 2018, <https://www.newyorker.com/news/our-columnists/one-year-of-metoo-what-womens-speech-is-still-not-allowed-to-do>.

²⁴⁸ Gilmore, *Tainted Witness*, 17; and Doreen St. Félix, “The Ford-Kavanaugh Hearing Will Be Remembered as a Grotesque Display of Patriarchal Resentment,” *The New Yorker*, September 27, 2021, <https://www.newyorker.com/culture/cultural-comment/the-ford-kavanaugh-hearings-will-be-remembered-for-their-grotesque-display-of-patriarchal-resentment>.

Judiciary Committee, and the U.S. Criminal Legal System. The significance of these histories is recognizable by attending to the ways that differences were made to matter in order to disrupt the functioning of the Supreme Court confirmation process and erect criminal legal structures within it.

Prior to the start of the hearing, Senate Judiciary Committee Republicans decided to bring in sexual violence prosecutor Rachel Mitchell who brought with her a complex history of prosecution in the U.S. criminal legal system. Mitchell's inclusion in the Kavanaugh confirmation hearing was unprecedented. Haunted by the impacts of the Senate Judiciary Committee's diminishment of Professor Hill in 1991 and emboldened by Kavanaugh's white, male privilege, Republican senators imported features of the criminal legal system into the confirmation hearing to generate the impression of the hearing as an objective process. For senators concerned about being perceived as silencing Ford's voice, Mitchell's presence functioned in very strategic ways. In his introduction of Mitchell, Senator Grassley gestured toward her function in the hearing, asserting, "I can think of no one better equipped to question the witnesses than Rachel Mitchell. Ms. Mitchell is a career prosecutor, civil servant with decades of experience investigating and prosecuting sex crimes. She has dedicated her career to seeking justice for survivors of sex-related felonies."²⁴⁹ Mitchell's inclusion in the hearing seemed to rely upon a commonly held belief in the United States that criminal prosecutors represent victims in legal proceedings—despite the fact that, in criminal legal proceedings, victims have no formal role and prosecutors represent the interests of the State, opposed to the

²⁴⁹ CBC News, "Brett Kavanaugh and Christine Blasey Ford," September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

defense counsel who represents the rights and interests of the defendant. In fact, in the courtroom, it is a prosecutor's "duty and responsibility to seek justice for all parties—defendants as well as victims—and to assure that all parties receive equal protection under the law."²⁵⁰ In order to uphold these protections of all parties, prosecutors are granted prosecutorial discretion, or the power to determine if and how a case is charged, the extent to which it is investigated, and the plea offerings that, in most cases, determine the outcome of a criminal case prior to trial. This discretion means that prosecutors' decisions may work to benefit victims. However, their work may also invisibilize victim experiences through their decisions about whether to charge, investigate, and dismiss cases of sexual and gendered violence, often to the benefit of abusers with privilege.

Although considered important for the functioning of a fair and effective criminal legal system, prosecutorial discretion also contributes to discriminatory practices and decision-making that work to criminalize and incarcerate nonwhite, queer, disabled, poor, and immigrant defendants at rates higher than their white, heterosexual, cisgender, able-bodied, wealthy, male counterparts.²⁵¹ As such, the role of a prosecutor inside and beyond the walls of a courtroom has a significant impact on whether or not sexual violence allegations are taken seriously—an impact which is shaped by the white supremacist, colonial, sexist, ableist, heteronormative, and classist history of prosecutorial discretion. Additionally, the history of discriminatory prosecutorial discretion is tightly entangled with the Supreme Court as all of the civil plaintiffs and

²⁵⁰ Angela J. Davis, "Prosecution and Race: The Power and Privilege of Discretion," *Fordham Law Review* 13 (1998): 36.

²⁵¹ *Ibid.*, 17-18.

criminal defendants who have brought evidence of race-based prosecutorial discrimination to the Supreme Court over the last 112 years have lost their cases due to the extremely high standard of evidence required to prove wrongful prosecutorial discretion.²⁵² The importation of a criminal prosecutor with a history of prosecuting sexual assault into the Kavanaugh confirmation hearing brought with it this history. Mitchell's presence feigned objective investigation into the behavior of an alleged abuser who, because of his whiteness, status, power, and privilege, was promised protection by the criminal legal structures erected by Mitchell's presence and the forensic structuring of the confirmation process.

Mitchell was the first person to question Ford and, although she began gently, her questioning soon took the form of a cross-examination in a criminal trial. Prior to Mitchell's first round of questioning, Ford acknowledged that being questioned by a prosecutor is a unique experience and highlighted the criminal legal function of cross-examination, stating, "I have never been questioned by a prosecutor and I will do my best. At the same time because the committee members will be judging my credibility, I do hope to be able to engage directly with each of you. And at this point, I will do my best to answer your questions."²⁵³ In watching Mitchell's questioning of Ford, one might question her adherence to prosecutorial conduct, as she seemed to be working on the side of "the defense," asking questions that defended Kavanaugh against the allegations and diminished Ford's credibility. However,

²⁵² Ibid., 45.

²⁵³ CBC News, "Brett Kavanaugh and Christine Blasey Ford," September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

Mitchell’s experience as a prosecutor and the complicated history of prosecutorial discretion in U.S. courts equipped Mitchell to appear neutral, even as she represented the Republicans who appeared “in defense” of Kavanaugh. On the one hand, she seemed to both provide Ford space and time to explain herself without interruption, a common approach taken by prosecutors who are questioning victims that is distinct from the adversarial treatment of victims by defense attorneys.²⁵⁴ On the other hand, however, Mitchell’s questioning pointed to holes in her story and, at times, denigrated her credibility by asking pointed, yes-or-no questions, a tactic often used by defense attorneys to discredit victims and their accounts of violence.²⁵⁵ Sometimes, these questions worked to illustrate how Ford’s story failed to hang together, disrupting the narrative coherence of Ford’s experience.²⁵⁶ In one such moment, Mitchell asked Ford about a specific detail included in her allegations when she explained that, following the assault, she hid in a bathroom while Brett Kavanaugh and the bystander to the attack, Mark Judge, stumbled down the stairs, talking and laughing, to rejoin the party. Mitchell asked, “And the bathroom was—door was closed when you heard this. Is that correct?”²⁵⁷ The following exchange emerged from this line of questioning:

Dr. FORD: I could hear them very clearly hitting the walls going down the stairwell.

²⁵⁴ Larson, *What It Feels Like*; and Taslitz, *Rape and the Culture*.

²⁵⁵ Peter Brooks and Paul Gerwitz, eds., *Law’s Stories: Narrative and Rhetoric in the Law* (New Haven, CT: Yale University Press, 1996); and Taslitz, *Rape and the Culture*.

²⁵⁶ Taslitz, *Rape and the Culture*, 15.

²⁵⁷ CBC News, “Brett Kavanaugh and Christine Blasey Ford,” September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

Ms. MITCHELL. In fact, in your letter, you said that they went down the stairs, and they were talking with other people in the house.

Dr. FORD. Mm-hmm. Correct.

Ms. MITCHELL. Were you able to hear that conversation?

Dr. FORD. I was not able to hear that conversation, but I was aware that they were downstairs and that I would have to walk past them to get out of the house.

Ms. MITCHELL. Now let me make sure we are on the same page. Were you not able to hear the conversation or not able to understand the conversation?

Dr. FORD. I couldn't hear the conversation. I was upstairs.

Ms. MITCHELL. Okay. How do you know there was a conversation?

Dr. FORD. I'm just assuming since it was a social gathering, people were talking. I don't know.

Ms. MITCHELL. Okay. In your letter, you——

Dr. FORD. I could hear them talking as they went down the stairwell. They were laughing and——²⁵⁸

This moment is striking because whether or not Ford could hear the conversation between Kavanaugh and Judge as they walked down the stairs does not prove whether or not Kavanaugh sexually assaulted her. Rather, this exchange between Ford and Mitchell is an attempt to unravel Ford's narrative by pointing to a moment in which Ford's description of the experience could be challenged due to inaccurate language or, more likely, confusion amidst Mitchell's line of questioning.

²⁵⁸ Ibid.

Mitchell’s questioning did not only challenge the narrative coherence of Ford’s testimony, but also challenged the narrative fidelity of her experience by taking aim at her credibility and reliability. In an oft-discussed portion of the questioning, Mitchell zeroed in on Ford’s trip to Washington D.C. to testify before the Senate Judiciary Committee, inquiring, “May I ask, Dr. Ford, how did you get to Washington?”²⁵⁹ When Ford noted that she travelled by airplane, Mitchell responded, “Okay. I ask that because it’s been reported by the press that you would not submit to an interview with the Committee because of your fear of flying. Is that true?”²⁶⁰ Ford indicated that these reports were true, but that she had been encouraged to “get up the gumption with the help of some friends and get on the plane.”²⁶¹ Then, departing completely from the issue at hand in the Senate Hearing, Mitchell asked Ford about a previous trip, questioning, “When you were here in the Mid-Atlantic area back in August—end of July, August, how did you get here?”²⁶² In response to this question, Ford again clarified that she travelled via airplane, as she does once a year to see her family.²⁶³ Once Ford answered this question, Mitchell fired a number of air travel related questions at Ford, one after the other: “In fact, you fly fairly frequently for your hobbies and you’ve had to fly for your work. Is that true?”²⁶⁴ “You were a consulting biostatistician in Sidney, Australia. Is that right?”²⁶⁵ “I also saw in your C.V. that you list the following interests of surf, travel and

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

you, in parentheses, put Hawaii, Costa Rica, South Pacific Islands, and French Polynesia. Have you been all to those places? ... By airplane?"²⁶⁶ "And your interests also include oceanography, Hawaiian and Tahitian culture. Did you travel by air as a part of those interests?"²⁶⁷ Ford answered these questions honestly and provided nuance to explain her travel experiences, some of which negated Mitchell's implication that Ford's stated fear of airplanes did not seem to stop her from making many trips by air for various reasons. However, Mitchell's point was already made—Ford's reliability and character were put in question as a result of her expressed fear of flying and Mitchell's rapid-fire questioning that was intended to disprove that fear. Her approach—the copious repetition of questions to prove a point and the use of forced-choice answers to limit victim expressions²⁶⁸—are characteristic of cross examination in the adversarial criminal legal system which works to interrupt victim voices and fragment victim testimony.²⁶⁹

At the very end of her time questioning Ford, Rachel Mitchell indicated that she had been performing a judicial procedure that carried with it the force of cross examination. Near the end of Ford's time in front of the Senate Judiciary Committee, Mitchell inquired, "I've been really impressed today because you've talked about norepinephrine, and cortisol, and what we call in the profession basically the neurobiological effects of trauma. Have you also educated yourself on the best way to get

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Taslitz, *Rape and the Culture*," 90.

²⁶⁹ Ibid., 10.

to memory and truth in terms of interviewing victims of trauma?”²⁷⁰ Ford, whose knowledge of these lasting impacts of trauma were the result of her training as a psychologist, answered, “no.”²⁷¹ In this line of questioning, Mitchell noted that, for her own understanding of the impact of trauma on victims of sexual violence, she was relying upon the Maricopa County Protocol on Sexual Assault, a protocol that was developed in the county where she serves as a prosecutor to guide criminal legal professionals as they investigate sexual assault cases, conduct forensic medical examinations for victims of sexual assault,” utilize a trauma-informed approach “as it relates to the performance of their responsibilities,” and “hold offenders accountable.”²⁷² Referencing this protocol in response to Ford’s denial that she had done research on the topic of interviewing victims of trauma, Mitchell asked, “Would you believe me if I told you that there is no study that says that this setting [and being questioned] in 5-minute increments is the best way to do that?”²⁷³ When Ford’s retained counsel agreed with Mitchell, she followed by questioning, “Did you know that the best way to [interview victims about a traumatic experience] is to have a trained interviewer talk to you one-on-one in a private setting and to let you do the talking, just let you do a narrative? Did you know that?”²⁷⁴ This exchange was the final line of questioning following Ford’s testimony and, within it,

²⁷⁰ CBC News, “Brett Kavanaugh and Christine Blasey Ford,” September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

²⁷¹ Ibid.

²⁷² Bill Montgomery, “Sexual Assault Protocol Manual,” *Maricopa County Attorney’s Office* (2017): v.

²⁷³ CBC News, “Brett Kavanaugh and Christine Blasey Ford,” September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

²⁷⁴ Ibid.

Mitchell analogized her questioning of Ford with procedures for cross examination in a criminal trial, highlighting that both in front of the Senate Judiciary Committee and in front of a jury, such an exchange is not the best way to access a victim's memories or pursue the truth. Mitchell's role in the Kavanaugh confirmation hearing offers a nuanced view of prosecutorial discretion that works to highlight how prosecutorial decision-making and discretion play a role advancing charges against a defendant, a process that works to make racial, gender, class, disability status, and immigration status differences matter in criminal courtrooms and, in the Kavanaugh confirmation hearing, worked to secure Kavanaugh's ascendance to the Supreme Court.

The history of Supreme Court confirmation processes emerged as this hearing was orchestrated. Additionally, the histories of criminal trials emerged in the procedures evoked and performed within the hearing, such as Mitchell's cross examination of Ford and performance of prosecutorial discretion. These judicial procedures and the histories that they carried with them emerged, in part, as an attempt by Senate Judiciary Committee Republicans to demonstrate the objectivity of the confirmation process and to avoid being seen as silencing Ford, a decision that was responsive to the memory of political consequences faced by Republicans following the Senate Judiciary Committee Republicans' silencing of Hill in 1991. These histories, as well as the racial and class privilege of both Ford and Kavanaugh, emerged to create ideal conditions for the constitution of a transjudicial space.

Communicating Violence: Deictic Indicators and Evidence of Containment

Transjudicial spaces emerge from the entanglement of spoken word and material world in particular spacetimes that make formerly extrajudicial spaces *feel* judicial. Attending to the relationship between the physical space of the confirmation hearing, the judicial features ushered in, and Ford's testimonial expression requires tools for identifying how these histories, procedures, and institutions—those larger discourses that typically hover below the surface—are brought into the realm of the observable. One such tool is deictic indicators or those indexicals which “direct the audience to the ‘persons, objects, events, processes and activities being talked about, or referred to, in relation to the spatiotemporal context.’”²⁷⁵ Deictic indicators do not only point to the spatiotemporal factors that are present in a particular rhetorical situation but import other spatiotemporal factors from the past or the future by pointing to distant spaces and times. Discursive references to material features “often spark[] mental images (phantasmata) in the mind’s eye”²⁷⁶ to connect the immediate rhetorical moment to “broader historical, temporal, and discursive contexts” and “extend[] and enlarge[] [its] relational, spatial, and temporal contours.”²⁷⁷ Deictic indicators function as connective tissue to import, link, extend, and enlarge the spatiotemporal moment. Attending to deictic indicators illuminates the common practices and agencies in a particular place that “gain power through repetition and reflect culturally produced and sustained meanings that, within the context they inhabit, are more or less naturalized.”²⁷⁸ Attunement to deictic indicators and the

²⁷⁵ Prasch, “Toward a rhetorical theory of deixis,” 167.

²⁷⁶ Prasch, “Obama in Selma,” 46.

²⁷⁷ *Ibid.*, 48.

²⁷⁸ Redeker and Hallenbeck, “Gender, Material Chronotypes,” 405.

immediate and distant matters that they reference enables scholars to map how repeated practices, cultural traditions, and shared meanings are evoked and enacted to constitute transjudicial spaces. That a hearing which is explicitly “not-a-trial” feels like one suggests that histories, procedures, and institutions can be felt, but that their existence in an unexpected place “hovers just below the level of shape or structure.”²⁷⁹ In this section, I use deictic indicators to point to the moments when contextual features of the committee chambers and imported judicial features are named in Ford’s testimony to account for the impact of circulating judicial features on the expressions that emerge within the hearing.

Additionally, I expand the range of deictic indicators to include not only the naming of physical features present in the committee chambers and Ford’s memory, but the physiological utterances that gestured toward Ford’s constrained testimony, traumatic memory, and affected body. Often, rhetorical scholars identify deictic indicators as the spoken names of physical features—expressions that can be **bolded** to indicate a relationship between word and world. However, in cases where silencing is prevalent, such as in judicial or transjudicial reckonings with sexual violence allegations, references to physical features may not be explicitly named in neat, discursive ways, but instead referenced in the moments when the fleshy, traumatized, recalcitrant body escapes visceral containment. Silencing in judicial spaces and by judicial forces is mechanized by contextual features—space, time, procedure, institutional authority, and habitus that dictate who speaks, what they can say, and whether they are heard. Amongst a victim’s

²⁷⁹ Eve Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (Durham, NC: Duke University Press, 2003), 16.

silencing and diminishment, identifying the silencing function of these contextual features requires a scholarly attunement to “the affective specter of silence.”²⁸⁰ As many rhetorical scholars have detailed, available affective-emotional resources and perceptions of affective-emotional expression are determined by both institutional and individual histories as emotions “wax[] and wane[] through public life along raced, gendered, and classed lines.”²⁸¹ Transjudicial spaces are identifiable by attending to how affect-emotion circulates and is halted in particular spacetimes because, in such moments, the stereotypes and performances of objectivity that emerge to diminish victim testimony are recognizably juridical. In this section, I highlight the material-discursive intra-actions that emerge from direct verbal naming and physiological utterances that indicate the entangled relationship between evoked and enacted judicial features and contained testimonial expression.

Amongst her Senate audience and within the emergent transjudicial setting, Ford encountered violent judicial forces that constrained her description of the assault. For the

²⁸⁰ Larson, *What It Feels Like*, 66-67.

²⁸¹ Winderman, “Anger’s Volumes,” 327-346. On the intra-action between institutional and individual histories that impact emotional expression and containment, see Ahmed, *The Cultural Politics*; Antoine J. Banks, *Anger and Racial Politics: The Emotional Foundation of Racial Politics in America* (Cambridge, UK: Cambridge University Press, 2014); Celeste Condit, *Angry Public Rhetorics: Global Relations and Emotion in the Wake of 9/11* (Ann Arbor, MI: University of Michigan Press, 2018); Fricker, *Epistemic Injustice*; Deborah B. Gould, *Moving Politics: Emotion and ACT UP’s Fight Against AIDS* (Chicago, IL: University of Chicago Press, 2009); Rachel Alicia Griffin, “I AM an Angry Black Woman: Black Feminist Autoethnography, Voice, and Resistance,” *Women’s Studies in Communication* 35, no. 2 (2012): 138-157; McCann, “Chrysler Pulled the Trigger,” 131-155; and Olson, “Anger Among Allies,” 283-308.

most part, Ford's opening statement was in line with traditional expectations of victim testimony. She conveyed the details of her violent experience without reference to her own body and visceral experience, presenting most of her opening statement in an observably anxious, but otherwise constrained and sterile style: "**I was pushed from behind into a bedroom,**" "**I was pushed onto the bed,**" "**He began running his hands over my body and grinding into me,**" "**I yelled,**" "**Brett groped me and tried to take off my clothes,**" "A couple of times **I made eye contact with Mark** and thought **he** may try to help **me** but **he** did not."²⁸² These short, simple, declarative statements focused on Kavanaugh and Judge's bodily configurations and actions, using Ford's perceptions of their bodies to frame her own experience. The focus on men's bodies is common and necessary in criminal legal sexual violence proceedings, as a man's body parts and violent actions are used to determine the degree of severity and criminal charge, as well as to "determine how to catalog, measure, and account for violation."²⁸³ By referencing Kavanaugh and Judge's bodies, Ford attempted to account for the severity of the violence, all the while avoiding visceral accounts of her own experience that may lead her audience to perceive her as overly emotional, hysterical, or inappropriate. To this end, her emotion was observable only in her efforts to contain it. When Ford was talking about the assault in her opening statement, her voice cracked for the first time as she declared, "The **details** that—about **that night** that bring **me here today** are the ones **I** will never forget [**voice crack**]. They have been seared into **my memory**, and have **haunted me**

²⁸² CBC News, "Brett Kavanaugh and Christine Blasey Ford," September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

²⁸³ Larson, *What It Feels Like*, 13.

episodically as an adult [**deep breath**].”²⁸⁴ Following this statement, Ford described the assault in vivid detail and, as she did, she audibly regained and lost emotional control over and over. Many of the effects of Ford’s difference emerged here—the effect of her gender difference in this forensic setting was that she had to be mild, the opposite of angry, if she wanted any chance of being believed and, at the same time, her whiteness made mildness an available rhetorical strategy. In front of the Senate Judiciary Committee, outside the walls of the courtroom, Ford could have openly resisted the judicial features and standards containing her testimony and, had she done so, the confirmation hearing may not have been transformed into a transjudicial space. However, the adherence of Ford’s testimony to the emotional, visceral, and content constraints characteristic of a courtroom illuminates the power of the material-discursive entanglements that erected legal structures around her testimony and constituted the hearing as a transjudicial space.

Despite the mildness of Ford’s testimony, the technology used in the hearing picked up her unconstrained, bodily utterances, which made present her “body in feeling”²⁸⁵ and the physical impacts of communicating her traumatic memory.²⁸⁶ When she discussed what happened once she, Kavanaugh, and Judge were inside the upstairs bedroom, her body almost seemed to enact the scene that she was describing. She explained, “**I was pushed onto the bed, and Brett got on top of me [slight whimper]. He began running his hands over my body and grinding [brief pause, more forceful**

²⁸⁴ CBC News, “Brett Kavanaugh and Christine Blasey Ford,” September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

²⁸⁵ Gunn, “On Speech and Public Release,” 4.

²⁸⁶ Larson, *What It Feels Like*, 5; and Taguchi and Palmer, “A more ‘livable’ school?” 671-687.

delivery after] into me [gasp and deep breath]. I yelled, [voice crack] hoping that someone downstairs might hear me.²⁸⁷ While she was describing this, the microphone picked up Ford's heavy, difficult breathing. Her heavy breaths did not seem to indicate anything about the event until, still breathing heavily, she articulated,

I tried to yell for help [gasp]. When I did [high pitch voice], Brett put his hand over my mouth to stop me from yelling [gasp]. This is what terrified me the most [higher pitch voice], and has had the most lasting impact on my life [gasp]. It was hard for me to breathe [gasp], and I thought that Brett was accidentally [emphasis] going to kill me [pause and gasp].²⁸⁸

By the end of this statement, Ford was gasping for breath and the microphone picked up her physiological reaction to and enactment of this memory. The sound technology in the room picked up the physiological and bodily expressions that indicated the obligation that Ford felt to contain her body and her bodily recalcitrance which could not be contained. The unmanageable expressions that resisted containment enabled Ford's testimony to viscerally communicate her violent experience at the hands of Kavanaugh, details that were ultimately circulated as observable phenomena outside the committee chambers. In the context of the transjudicially constituted Supreme Court confirmation hearing, the silencing mechanisms worked to diminish Ford's available resources for communicating about her traumatic experience at the hands of Kavanaugh, but violence and violation communicated through her physiological reactions. This moment represents not only the entanglement of testimony and traumatized bodies, but also the way that judicial silencing and containment retraumatizes victims who are called upon to speak about their

²⁸⁷ CBC News, "Brett Kavanaugh and Christine Blasey Ford," September 27, 2018,

<https://www.youtube.com/watch?v=OZ7ovA37u-0>.

²⁸⁸ Ibid.

trauma²⁸⁹ which can be observed amidst the permitted verbal expressions and enforced silences. In the Kavanaugh confirmation hearing, the emergence of evidence, bodies, matter, violence, and trauma present in the committee chambers and their particular entanglement constituted an identifiable transjudicial space.

In addition to the way that Ford's body and experience was made present through deictic indicators in her testimony, throughout the hearing, Ford used deictic indicators to point to evidence of Kavanaugh's guilt and her own innocence as a means of establishing narrative coherence, a function that these deictic indicators would have also had in a criminal courtroom.²⁹⁰ As the person who brought allegations against Kavanaugh and amidst the constitution of a transjudicial space, Ford shouldered the burden of proof in the confirmation hearing. She used deictic indicators to meet that burden of proof by telling a coherent story. In her initial testimony, Ford detailed her allegations against Kavanaugh, using deictic indicators to detail the events and materialize a timeline of the assault in an attempt to establish narrative coherence. She described,

During my freshman and sophomore school years ... my group of friends intersected with Brett and his group of friends for a short period of time. ... In the summer of 1982, like most summers, I spent most every day at the Columbia Country Club in Chevy Chase, Maryland, swimming and practicing diving. One evening that summer, after a long day of diving at the club, I attended a small gathering at a house in the [slight pause] Bethesda area.²⁹¹

²⁸⁹ Rebecca Campbell, *Emotionally Involved: The Impact of Researching Rape* (London, UK: Routledge, 2001); and Graham Matthews and Sam Goodman, eds., *Violence and the Limits of Representation* (London, UK: Palgrave Macmillan, 2013).

²⁹⁰ Brooks and Gerwitz, *Law's Stories*; and Taslitz, *Rape and the Culture*, 15.

²⁹¹ CBC News, "Brett Kavanaugh and Christine Blasey Ford," September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

These spatiotemporal deictic indicators— “the summer of 1982,” “Columbia Country Club in Chevy Chase, Maryland,” “One evening that summer,” and “a house in the Bethesda area”— allowed Ford to map the neighborhood and timeline in which her assault occurred as evidence of the validity of her allegations and the coherence of her narrative account. However, Ford’s deictics also revealed holes in her story, likely because in moments of violent assault, “there’s a lot more sensation around than stories.”²⁹² Ford acknowledged that her memory of the night she was assaulted was not as complete as she would have liked it to be—she stated, “**I don’t have all the answers and I don’t remember** as much as **I** would like to,” specifically mentioning that she did not remember who hosted the gathering or how she got home.²⁹³ These holes in Ford’s memory were a focus of Mitchell’s questioning, during which, Ford was asked pointed, leading questions about that which she did not remember and given little time to answer—tactics characteristic of cross-examination in criminal trials that contribute to the fragmentation, distortion, and decontextualization of victim experience.²⁹⁴ In Ford’s testimony, deictic indicators marked her certainty and coherence, but also that which she could not recall as she was asked to “look backwards on events [she] did not realize [she was] observing, restoring deleted files from memory.”²⁹⁵ In criminal trials and transjudicial spaces, deictic indicators are a rhetorical resource for all parties to convey their experience. However, they also operate as a constraint for a victim who did not

²⁹² Peters, “Witnessing,” 722.

²⁹³ CBC News, “Brett Kavanaugh and Christine Blasey Ford,” September 27, 2018, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

²⁹⁴ Taslitz, *Rape and the Culture*.

²⁹⁵ Peters, 722.

know they would be called upon to remember such vivid details, in Ford's case, so many years later. In questioning, Mitchell and the Democratic Senators focused on the references to the physical circumstances and evidence in Ford's testimony in order to point to the details that helped Ford's story to fall together and the holes that, with a little pressure, could make it fall apart.

Deictic indicators also functioned to diminish and bolster Ford's credibility throughout the hearing by making reference to space and time in ways that evoked a common legal defense tactics used to discredit allegations of sexual violence—the reasonable doubt that accompanies a delayed report of sexual violence, a detail that threatened the narrative fidelity of Ford's account.²⁹⁶ Often, both prosecutors and defense attorneys rely on evidence and information outside of the particular moment in which a crime was committed to establish narrative fidelity. Like many victims who face criminal legal procedures, such as cross-examination, that will be used to question their credibility and reasonability, “in preparation of the hearing, Ford submitted therapy notes from several sessions recounting her history with sexual assault in addition to taking a polygraph test that concluded she was telling the truth.”²⁹⁷ Additionally, many documents unrelated to the act of violence in question were submitted to the committee prior to the hearing, a common feature of criminal trials in which it is required that each party disclose discovery prior to trial. During questioning, both Ford and Mitchell used deictic indicators to point to material-discursive evidence present in the documents distributed and displayed before the Senate Judiciary Committee. For example, Mitchell probed,

²⁹⁶ Taslitz, *Rape and the Culture*, 15.

²⁹⁷ Larson, *What It Feels Like*, 54.

In your July 6th text to The Washington Post that you looked at earlier, you said that this happened in the mid 80s. In your letter to Senator Feinstein you said it occurred in the early 80s. ... Later in your interview with The Washington Post, you were more specific. You believed it occurred in the summer of 1982 ... How were you able to narrow down the timeframe?²⁹⁸

In terms of the Supreme Court confirmation, these deictic indicators functioned to make a case about whether or not Ford communicated her allegations within a reasonable time. Politically, if the Republicans could prove that Ford's delayed report of these allegation was unreasonable, they could paint her allegations as no more than a politically motivated farce. However, this focus on delayed reporting is an issue with a long history in criminal legal approaches to allegations of sexual violence that frame delayed reports as unreasonable. Statutes of limitations set legal limits for the maximum amount of time that can pass between a sexual violence incident and a prosecutor filing charges. Recently, many states have passed laws to eliminate statutes of limitations in cases of sexual violence citing the valid and legitimate reasons that victims may wait months or years to report abuse, but the underlying assumptions carried by these legal policies still impact the perception of a delayed report as unreasonable, unfair, and ulteriorly motivated.

The material-discursive intra-actions were observable in the Kavanaugh confirmation hearing in the moments when judicial features were named and performed, forensically structuring the hearing. As they circulated, the evoked judicial features met Ford's testimony and, as she attempted to convey her violent experience at the hands of Kavanaugh, they contained her rhetorical expression in ways that resembled the

²⁹⁸ CBC News, "Brett Kavanaugh and Christine Blasey Ford," September 27, 2018,

<https://www.youtube.com/watch?v=OZ7ovA37u-0>.

containment of victim testimony in judicial spaces. These material-discursive interactions which emerged amidst the histories of Supreme Court confirmation hearings that were enfolded into the Kavanaugh confirmation process, worked to constitute an observable and, for those who witnessed it, moving transjudicial space.

Circulating Testimony and Chilling Responses

In judicial and transjudicial spaces, testimony serves more than a truth-seeking function—the testifying bodies, the bodies in testimony, and the bodies of auditors who witness the testimony are all implicated in expressions, exclusions, and containments. Ford’s testimony resisted containment by the forensically structured hearing and the walls of the committee room via mediated circulatory systems that brought her moving testimony and auditors’ bodies into a boundary-shaping contact zone. Victim testimony about experience with sexual violence is visceral, what Larson defines as “the bone-deep, felt sense of communication that transpires from a position of flesh and wound.”²⁹⁹ Because Ford’s testimony was widely circulated across a variety of media—news media, social media, late night television shows, journalistic writing, artistic renderings, and televisual representation of the hearing itself—it placed Ford’s bodily and visceral experience with sexual violence and institutional silencing on display³⁰⁰ and created contact zones between the testifying body and the bodies of auditors. This section traces public responses to Ford’s testimony that evoked other victims of sexual violence as a group of auditors uniquely bound together and impacted by Ford’s testimony and the

²⁹⁹ Larson, *What It Feels Like*, 5.

³⁰⁰ Michael Warner, *Publics and Counterpublics* (Princeton, NJ: Zone Books, 2005).

Senate Judiciary Committee's response to it. Those who argued that the Kavanaugh confirmation hearing functioned as a criminal trial emphasized how the forensic structure, judicial standards of evidence, and diminishment of Ford's experience and credibility resonated with victims of sexual violence who saw their "past histories of contact"³⁰¹ with a retraumatizing criminal legal system reflected in the confirmation hearing.

Media coverage was central in the emergence of Ford's allegations against Kavanaugh and is an expected aspect of Supreme Court nomination processes, but the role that the cameras played in transmitting the circulation of judicial features in the committee chambers does speak to a larger and related controversy about cameras in judicial proceedings. As detailed within the hearing and in media coverage of it, after learning that Kavanaugh was on the shortlist of Supreme Court nominees, Ford wanted to make the violent experience that she endured at his hands known before President Trump nominated a candidate. After much deliberation, Ford called her congressional representative, Anna Eshoo, on July 6, 2018, communicating to the woman who answered her call, "Someone on the Supreme Court short list sexually assaulted me in high school. I need to talk to someone in the office. It's urgent; Trump is about to make his selection."³⁰² When she was told that she would be contacted as soon as possible regarding these allegations, Ford became concerned that Eshoo's office might attend to her allegations too slowly and, in hopes of bringing them forward prior to Kavanaugh's

³⁰¹ Ahmed, *The Cultural Politics*, 194.

³⁰² Kantor and Twohey, *She Said*, 194-195.

confirmation, she also submitted an anonymous tip to the *Washington Post*.³⁰³ Eventually, Ford's allegations made it to the office of Senator Diane Feinstein, the minority leader on the Senate Judiciary Committee and, after securing this contact, Ford ceased pursuing media coverage of her allegations. Yet, the media remained central even after Ford made the decision to handle the situation outside of the public eye. In their book about the media's role in bringing sexual violence allegations against powerful men, Jodi Kantor and Megan Twohey wrote about the media's pursuit of Ford, explaining, "on Monday, September 10, Ford showed up to teach the opening session of her Introduction to Statistics doctoral course. ... Three hours later, someone asking questions stopped her as she departed. Not a graduate student. A reporter, from *BuzzFeed*. The journalist said she knew about the letter as Ford ordered her to leave. ... On Wednesday, September 12, an article appeared anyway."³⁰⁴ Ultimately, despite Ford's vehement desire to remain outside of public purview, Ford's retained counsel encouraged her to appear in front of the Senate Judiciary Committee in a televised hearing, urging that "speaking to senators or their staff behind closed doors would only provide them with an opportunity to spin, conceal, or otherwise dismiss Ford's words"³⁰⁵ and "the only way she could ensure that her account was communicated with accuracy and integrity was in a televised hearing."³⁰⁶ The presence of cameras was presented to Ford as an opportunity to tell her own story and to be heard on her own terms and her choice to take

³⁰³ Ibid.

³⁰⁴ Ibid., 212.

³⁰⁵ Ibid., 217.

³⁰⁶ Ibid., 230.

part in the televised hearing enabled auditors to observe the unique transjudicial constitution of the Kavanaugh confirmation hearing.

Although Ford expressed feeling uncomfortable with the presence of cameras and anticipated widespread media coverage of the hearing, the presence of cameras within Senate Judiciary Committee hearings is not uncommon. Since Sandra Day O'Connor's confirmation in 1981, gavel-to-gavel television coverage has become standard in Supreme Court confirmation proceedings,³⁰⁷ allowing the public to take in the confirmation process and enabling the processes to function as “moments of constitutive formation for American conceptions of law, justice, and democracy.”³⁰⁸ In order to facilitate extensive media coverage of confirmation proceedings, there is a clearly laid out process for bringing cameras into Senate Judiciary Committee hearings and media coverage of these hearings which guides media personnel through the process of “pre-register[ing] with the United States Senate press and media galleries” and “obtain[ing] the proper access and accreditation for [Senate Judiciary Committee hearings].”³⁰⁹ In fact, in an interview with NBC's “Meet The Press,” Senator Amy Klobuchar listed the cameras in the hearing as one of the normal aspects of Kavanaugh's abnormal confirmation process when she asserted, “You have a nominee with excellent credentials, with his family behind him. You have the cameras there. You have the senators

³⁰⁷ Scott Bomboy, “Early Supreme Court hearings little resembled their modern counterparts,” *Constitution Daily*, March 3, 2017, <https://constitutioncenter.org/blog/early-supreme-court-hearings-little-resembled-their-modern-counterparts>.

³⁰⁸ Parry-Giles, *The Character of Justice*, 3.

³⁰⁹ “Instructions for News Media,” *Committee on the Judiciary*, 2018, <https://www.judiciary.senate.gov/kavanaugh/instructions-for-news-media#Kavanaugh-documentary>.

questioning. But this isn't normal."³¹⁰ Some oppose the presence of cameras amidst the Supreme Court confirmation process, noting how the "lights and microphones" act as stark reminders of "who was out there watching — and what they required" and that "the camera is the enemy of real discussion and debate."³¹¹ These criticisms of the effect of cameras in formal proceedings resonate with arguments against cameras in courtrooms, a phenomenon that the Supreme Court has issued a number of rulings prohibiting since the issue was first brought before the court in 1965,³¹² arguing that "live television coverage distracts trial participants, unfairly affects the outcome of trials and diminishes the dignity of the courts."³¹³ Amidst the portion of his Supreme Court confirmation that happened prior to Ford's testimony, Kavanaugh was asked about this controversial issue. Senator John Cornyn acknowledged the controversy of cameras in the courtroom, stating, "I know the OJ Simpson trial—I'm showing my age here—gave cameras in the courtroom a bad name and certainly some of the activities we see at hearings like this where people know they are going to be on TV camera encourages them to misbehave

³¹⁰ Aubree Eliza Weaver, "Klobuchar says Kavanaugh's confirmation is 'not normal,'" *Politico*, September 2, 2018, <https://www.politico.com/story/2018/09/02/klobuchar-says-kavanaughs-confirmation-is-not-normal-806121>.

³¹¹ Joe Ferullo, "Eliminate television coverage from Supreme Court confirmation," *The Hill*, March 27, 2022, <https://thehill.com/opinion/technology/599920-eliminate-television-coverage-from-supreme-court-confirmation-hearings/>.

³¹² *Estes v. Texas*, 381 U.S. 532 (1965).

³¹³ Douglas E. Lee, "Cameras in the Courtroom," *Freedom Forum Institute*, February 2010, <https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-the-press/cameras-in-the-courtroom/#:~:text=Rather%2C%20the%20courts%20most%20receptive,in%20which%20certain%20witnesses%20object>.

and disrupt.”³¹⁴ However, Cornyn expressed, “I would hope that the court would continue to look at the possibility that, um, more and more of its activities would be available, uh, to the American people. ... I think they would learn a lot about how the courts do operate and should operate in our government.”³¹⁵ Following this discussion of the controversy, Cornyn asked Kavanaugh to speak to his opinion on cameras in Supreme Court chambers. Kavanaugh answered by articulating his openness to discussing the possibility with the other justices.³¹⁶ In the other case studies examined in this dissertation, the Supreme Court and Kavanaugh’s opinions about the constitutionality of cameras in the courtroom is even more relevant, as the mediated circulation of criminal legal proceedings in the Nassar Sentencing Hearing and Zoom court hearings during the COVID-19 pandemic are central to the constitution of transjudicial spaces.

The contact zone carved out by media coverage of the Kavanaugh confirmation hearing is observable by mapping various emotional and bodily public reactions to the diminishment of Ford’s testimony which suggest that the procedures, technologies, and logics that functioned to diminish Ford’s testimony were recognizably judicial. In mapping these reactions, I do not mean to suggest that everyone who witnessed Ford’s testimony responded in the same way. Following Hill’s testimony at the Thomas confirmation hearing, Nancy Fraser detailed the various publics and counterpublics

³¹⁴ C-Span, “Judge Kavanaugh on Cameras in the Court (C-Span),” YouTube Video, 7:12, September 6, 2018, <https://www.youtube.com/watch?v=k9PAUFQYUm4>.

³¹⁵ Ibid.

³¹⁶ Ibid.

shaped within the contact zone created amidst the 1991 hearing.³¹⁷ More recently, Jacob Justice and Brett Bricker wrote about the emergence of public support for Kavanaugh following the hearing. Analyses of the publics formed in support of those accused of sexual violence are crucial, as these studies do the important work of “interrogating how patriarchal perspectives rooted in a desire for rationality, heteronormativity, ableism, white supremacy, and male dominance establish the grounds for public discourse about rape, comprised in mainstream conversations in seemingly benign ways.”³¹⁸ Yet, this focus on public understandings and dismissals of sexual violence allegations is not the whole story—when victims’ voices and experiences reach a wide audience, they do not only reach publics united around denial, but those whose embodied experiences and institutional encounters position them against such denial and prompt recognition of the trauma of sexual violence and the retraumatization that emerges from public and legal conversations about rape.

To track the formation of collectivities and boundaries amongst victims who found Ford’s testimony resonant, I turn to the rhetorical scholars who contend that scholars can map the circulation of intense public feeling through the “affix[ation] of adjectives”³¹⁹ or “analyz[ing] the emotion words used by media and public commentators.”³²⁰ Tracing these adjectives and emotion words elucidates how the

³¹⁷ Nancy Fraser, “Sex, Lies, and the Public Sphere: Some Reflections on the Confirmation of Clarence Thomas,” *Critical Inquiry* 18, no. 3 (1992): 595-612.

³¹⁸ Larson, *What It Feels Like*, 4.

³¹⁹ Gunn, “On Speech and Public Release,” 14.

³²⁰ Jamie Landau and Bethany Keeley-Jonker, “Conductor of public feelings: An affective-emotional rhetorical analysis of Obama’s national eulogy in Tucson,” *Quarterly Journal of Speech* 104, no. 2 (2018): 171.

hearing's constitution as a transjudicial space erected collectivizing boundaries. Although audience members had a relatively positive response to Ford's negotiation of constraints, many reported intensely negative feelings about the treatment of Ford's testimony. Although they did not always disclose their own histories of sexual violence or encounters with retraumatizing criminal legal processes, I expect that many of the commentators that I cite in this section wrote about the united experience of victims who watched Ford's testimony as a kind of first-hand experience. Also, these commentators generally published in longform, liberal news media websites. In these publications, journalists noted Ford's "*good-humored quip* about needing caffeine [and] *earnest resolve* in the face of *intimidation and fear*,"³²¹ her "*striking composure ... her control and precision and goodwill*,"³²² her narrative that was "*instantly recognizable* to anyone who's been forced to relive and recount an experience of *unspeakable terror*,"³²³ and her testimony that was continuously described as "*credible ... [but] again and again, as not enough*."³²⁴ In contrast, they described Kavanaugh's opening statement as an "*appalling, partisan, unhinged display*,"³²⁵ a "*damp, extraordinary tantrum*,"³²⁶ a "*blundering,*

³²¹ Cauterucci, "Christine Blasey Ford Shows," <https://slate.com/news-and-politics/2018/09/christine-blasey-ford-brett-kavanaugh-opening-statement.html>.

³²² Loofbourow, "Why Christine Blasey Ford," <https://slate.com/news-and-politics/2018/09/brett-kavanaugh-hearing-angry-shouting.html>.

³²³ Cauterucci, "Christine Blasey Ford Shows," <https://slate.com/news-and-politics/2018/09/christine-blasey-ford-brett-kavanaugh-opening-statement.html>.

³²⁴ Tolentino, "One Year of #MeToo," <https://www.newyorker.com/news/our-columnists/one-year-of-metoo-what-womens-speech-is-still-not-allowed-to-do>.

³²⁵ Loofbourow, "Why Christine Blasey Ford," <https://slate.com/news-and-politics/2018/09/brett-kavanaugh-hearing-angry-shouting.html>.

³²⁶ Ibid.

messy, enraged, arrogant performance [that] gave us a close-up look at what *white fragility* and *entitlement* look like ... [delivered by a] *sweaty* and *flushed* and *overwhelmed* and *pissed off*” man.³²⁷ The way that commentators affixed adjectives in these reactions reveals that the emergence of gender and racial difference effects in the forensically structured hearing did not just amplify or diminish the testimonies, but impacted auditors’ evaluations of them. The constitution of a transjudicial space impacted Ford’s testimony—as the legal structures emerged, she contained her testimony in ways that adhered to the expectations of decorum and appropriateness in judicial settings. In contrast, Kavanaugh appeared the opposite of contained—expressing his emotions in striking, leaky, and unwieldy ways. Something interesting emerges in the journalists’ receptions of his testimony—he is marked as someone who utterly fails to adhere to the norms of emotionality and decorum in the courtroom. Yet, as we are reminded in many renderings of this hearing, Kavanaugh’s judicial authority suggests that he is no stranger to these juridical expectations. This is the moment, I contend, when we can most clearly see the effects of the constitution of a transjudicial space. Not only do Kavanaugh’s race, gender, sexuality, class, disability status, and citizenship status protect him from criminalization amidst the evocation of judicial procedures, but his status and experience as a judge make him one of the only participants in a forensically structured space who can openly express extreme emotions without sanction. Evidencing the impacts of the Kavanaugh confirmation hearing, journalists noted their own emotional and bodily

³²⁷ Heather Havrilesky, “Mediocre White Man Falls Apart and Is Promptly Put Back Together,” *The Cut*, September 28, 2018, <https://www.thecut.com/2018/09/brett-kavanaugh-barely-had-to-try-at-supreme-court-hearing.html>.

reactions to the hearing, describing it “as one of those ‘*Where were you?*’ moments—A type of moment where everyone will be able to immediately recall the *emotion*, the *drama*, or even the *pain*”³²⁸ that left them feeling “*shut ... down* for the evening”³²⁹ and had “a *seismic national, cultural, and political* effect.”³³⁰ Justice and Bricker detailed the personal impacts of such visceral, traumatic testimony, noting, “on the day of the final hearing, crisis centers around the country experienced an increased volume of calls from survivors, while ‘the National Sexual Assault Hotline estimated its call volume increased 147 percent above normal’ (Pattani 2018).”³³¹ Although this increase in calls may seem to suggest that the anticipated effect of the hearing’s potential to discourage victims from reporting their experiences with sexual violence did not emerge upon its conclusion, it is important to note that the National Sexual Assault Hotline, run by the Rape, Abuse & Incest National Network (RAINN) provides information about resources for sexual violence victims, confidential counseling, programs to prevent sexual assault, and information about reporting options.³³² Thus, an increase in calls to “the nation’s largest anti-sexual violence organization”³³³ may be evidence of victims’ desire to report after

³²⁸ Anna Goorevich, “Where were you?: the importance of Kavanaugh-Ford testimonies,” *The College Reporter*, September 30, 2018, <http://www.the-college-reporter.com/2018/09/30/where-were-you-the-importance-of-kavanaugh-ford-testimonies/>.

³²⁹ Tolentino, “One Year of #MeToo,” <https://www.newyorker.com/news/our-columnists/one-year-of-metoo-what-womens-speech-is-still-not-allowed-to-do>.

³³⁰ Kantor and Twohey, *She Said*, 239.

³³¹ Justice and Bricker, “Brett Kavanaugh’s Self-Defense,” *Journal for the History of Rhetoric* 23, no. 3 (2020): 316-348.

³³² “About RAINN,” *Rape, Abuse, & Incest National Network*, 2022, <https://www.rainn.org/about-rainn>.

³³³ *Ibid.*

witnessing the Kavanaugh confirmation hearing, or a desire to access services, receive confidential counseling, or connect with anti-sexual violence prevention initiatives. Although the increased number of calls cannot be taken as an indication of how the hearing impacted those who have experienced sexual violence, it does suggest a shared visceral impact and response to Ford's testimony and subsequent treatment by the Senate Judiciary Committee amongst sexual violence victims.

The boundaries that emerged did not merely unite those who identified with and supported Ford; it complicated the boundaries of individual bodies and redrew the boundaries that define the relationship between individuals and the state. Despite the uniqueness of Ford's testimonial moment and the large increase of calls made to national anti-sexual violence organizations, media commentators continuously proclaimed the hearing posed "chilling" consequences that would discourage current and future victims of sexual assault from coming forward. Notes published in the *Columbia Law Review* define the "chilling effect" as "the practical consequences of state action for the conduct of the individual."³³⁴ News media referred to multiple aspects of the hearing as chilling: a *Vox News* headline read, "Brett Kavanaugh, Donald Trump, and the chilling power of sexual violence"³³⁵ and *The Washington Post* asserted "confirming Kavanaugh will send

³³⁴ "Notes: The Chilling Effect in Constitutional Law," *Columbia Law Review* 69 (1969): 808. On the impact of mediated public trials, see also Corrigan, *Up Against A Wall*, 81; and Larson, "Everything inside me was silenced," 126.

³³⁵ Beauchamp, "Brett Kavanaugh, Donald Trump," <https://www.vox.com/policy-and-politics/2018/10/3/17915872/brett-kavanaugh-news-trump-defense-philosophy>.

a chilling message to victims of sexual assault.”³³⁶ The concept is often employed in cases regarding freedom of speech, helping to explain how state action reduces the likelihood that an individual will exercise their first amendment rights. The chilling effect helps to explain the anticipated widespread impact of the Kavanaugh hearing, as responses indicated a resulting distrust of state action in cases of sexual violence. Directly noting the impact that the distrust of the state caused by Kavanaugh’s confirmation will have on the conduct of individuals, Jessica Valenti insisted,

For women, there’s a chilling effect on our desire to come forward. Why would we report abuse when we see that the consequences for victims are often far worse than those for our attackers? Even more dangerous, though, is the message that abusers receive: that they will be protected. That they can do what they like because no one will believe their victims anyway.³³⁷

Spoken in a transjudicial space, constituted by the deictic indicators and emergence of difference effects present in the space, these reports indicated that Ford’s testimony circulated a chilling effect through the general public, potentially discouraging those who witnessed how Ford was treated from reporting their own experiences with sexual violence. The conflation of Ford’s experience before the Senate Judiciary committee with victims’ encounters with the criminal legal system not only reveals what has been detailed in this piece as the importation of judicial features into extrajudicial spaces, but also the entanglement of victim testimony, sexual violence, and violent state intervention.

³³⁶ McArdle, “There is no cleaning,” https://www.washingtonpost.com/opinions/there-is-no-cleaning-up-this-brett-kavanaugh-mess/2018/10/05/81e90900-c8ec-11e8-b1ed-1d2d65b86d0c_story.html. .

³³⁷ Valenti, “How Very Bad Men,” <https://medium.com/s/jessica-valenti/how-very-bad-men-get-away-with-rape-317e1db7a919>.

The political benefits of importing legal procedure into the committee chambers were not only the constitution of the hearing as a criminal trial and containment of Ford's emotional and visceral expression, but also the reinforcement of a relationship between feminist political goals and the carceral state.³³⁸ Simply put, because of the transjudicial constitution of the confirmation hearing, the chilling effect circulated by Ford's testimony convinced victims that "the state cannot not save you"³³⁹ while simultaneously invigorating calls for retributive punishment and carceral solutions to sexual violence. This importation of judicial features into an extrajudicial space and the formation of affective ties between individuals and the criminal legal institution that emerged from it is concerning, as it illuminates how the importation of legal procedure circulates state violence that silences, diminishes, and co-opts victim testimony and how that same importation activates the violent judicial forces that function to police and imprison people without the racial, gender, and class privilege afforded to now-Justice Brett Kavanaugh.

Conclusion

Christine Blasey Ford's testimony offers an ideal case study for demonstrating how the material-discursive constitution of transjudicial spaces results in the emergence of meaningful differences that work to enable and silence affective-emotional and visceral testimonial expression and impact those who witness the victim's voicing of violence. As

³³⁸ Gruber, *The Feminist War on Crime*; Law, "How Can We Reconcile Prison Abolition," <https://filtermag.org/how-can-we-reconcile-prison-abolition-with-metoo/>; and Mack and McCann, "Critiquing state and gendered violence," 329-344.

³³⁹ *Ibid.*, 331.

I have shown, the constraining impact of the transjudicial space was observable during Ford's testimony in her encounters with judicial features, efforts to maintain her composure, careful discussion of bodily sensation, and unconstrained bodily utterances. Such containment produced a contact zone in which auditors were bound by their affective-emotional reactions to Ford's diminishment, mobilized to resist rape-supportive arguments, and contained by the perceived reinforcement of the silencing function of state reporting mechanisms.

When judicial features circulate to alter the rhetorical parameters of rhetorical phenomena that take place outside of courtrooms, two implications emerge. First, an analysis of circulating judicial procedures, technologies, and logics beyond the walls of courtrooms illuminates how these features circulate violent judicial forces that modulate the rhetorical means available to participants and the generic form that the rhetorical phenomena takes. The circulation of judicial features is not unique to transjudicial spaces—these features also circulate in judicial spaces. However, attending to their circulation in the Senate Judiciary Committee hearing, where their emergence took auditors by surprise, enabled an analysis that revealed not only how these judicial features function beyond courtroom walls, but also provided insight about their function within them. Because judicial procedures, technologies, and logics are expected within judicial spaces, their presence often goes unnoticed and, even if the circulation of these features is acknowledged, it is hard to determine whether the rhetorical expressions that emerge or are contained amidst their circulation are a result of the circulating features or, simply, the criminal legal context that they were designed for. The transjudicial constitution of Kavanaugh's Supreme Court confirmation hearing elucidated the generic

characteristics and judicial features that make extrajudicial spaces feel judicial and offered a new perspective from which to observe their silencing and diminishing functions within and beyond courtroom walls.

Second, the circulation of judicial features amidst the Kavanaugh confirmation hearing and their silencing function also illustrated the entanglement of victims' rights concerns and the carceral state. Even amidst discussions about the criminal legal system's failures, those who witnessed the hearing recalcified the relationship between victim testimony and the carceral state. Noting the impact of the chilling effect that emerged from Ford's testimony on victims' perceptions of state intervention, Rebecca Solnit asserts, "We know why victims don't report rapes. We know that a minority of rapes are reported; and of those, ... [o]nly a very small percentage result in convictions and sentences. ... We are, of course, seeing it again with Professor Ford. ... We have been here before. We are going to go there again."³⁴⁰ The conflation of Ford's experience before the Senate Judiciary committee with victims' encounters with the criminal legal system and the commentary which suggests that convictions and sentences are the only responses to sexual violence that can be measured as successes not only reveal what has been detailed in this piece as the importation of judicial proceedings into extrajudicial spaces, but also the entanglement of victim testimony, sexual violence, and violent state intervention. This entanglement is notable because it showcases that the transjudicial constitution of the hearing not only resulted in the containment of Ford's affective-

³⁴⁰ Solnit, "The Brett Kavanaugh case,"

<https://www.theguardian.com/commentisfree/2018/sep/21/brett-kavanaugh-blame-women-anita-hill-cosby-weinstein>.

emotional and visceral expression, but also the reinforcement of a relationship between feminist political goals and the carceral state.³⁴¹ The conceptualization of this hearing as a rhetorical phenomenon which constituted a formerly extrajudicial space as a transjudicial space illuminates how the importation of legal procedure circulates state violence that silences, diminishes, and co-opts victim testimony and how that same importation activates the carceral logics and mechanisms that function to police and imprison people without the racial, gender, and class privilege afforded to now-Justice Brett Kavanaugh. The next chapter of this dissertation will conceptualize transjudicial spaces as they emerge within courtrooms, looking to an instance when judicial procedures, technologies, and logics were significantly disrupted amidst criminal legal proceedings: the sentencing hearing of former USA gymnastics team doctor, Larry Nassar.

³⁴¹ Gruber, *The Feminist War on Crime*; Law, “How Can We Reconcile Prison Abolition,” <https://filtermag.org/how-can-we-reconcile-prison-abolition-with-metoo/>; and Mack and McCann, “Critiquing state and gendered violence,” 329-344.

Chapter Three
Listening Matters:
Constituting the Larry Nassar Sentencing Hearing as a Transjudicial Space

On November 22, 2017, Larry Nassar, the former USA Gymnastics Team Doctor, pleaded guilty to seven counts of criminal sexual misconduct. At the time of his sentencing hearing, Nassar faced up to 125 years in prison, a number intended to represent both a life sentence and the number of women and girls who reported him to authorities throughout his career as a sports medicine doctor.³⁴² Nassar's abuse initially received national attention because of the scale of his crimes and the reputation of his victims. Before long, however, attention shifted from the monstrosity of Nassar's abuse to the observable transformation happening in his sentencing hearing. When Nassar requested a plea deal after his criminal trial had already been scheduled, Judge Rosemarie Aquilina accepted his plea and an unusual request made by Prosecutor Angela Povilaitis: that any and all of Nassar's victims would be allowed to testify at the sentencing hearing.³⁴³ Ultimately, 156 women and girls came forward to take part in the eight-day hearing that far exceeded the requirements for rendering a criminal legal sentence, a process that would have only required Aquilina to hear Victim Impact Statements from the seven victims involved in the charges for which Nassar was sentenced. Some criticized Aquilina's commitment to healing, worrying that her judicial demeanor "could

³⁴² Matt Mencarini, "Larry Nassar sentencing: 5 things to know," *Lansing State Journal*, January 15, 2018, <https://www.lansingstatejournal.com/story/news/local/2018/01/15/larry-nassar-sentencing-5-things-know/1030371001/>.

³⁴³ Amanda Duberman, "The Women Who Built The Case That Brought Down Larry Nassar," *Huffington Post*, January 22, 2019, https://www.huffpost.com/entry/andrea-munford-angela-povilaitis-larry-nassar_n_5c423848e4b0a8dbe1714daf?jnk.

turn courts into therapy chambers,”³⁴⁴ arguing that “doing justice is one thing ... [but] it is not a judge’s function to get people healed.”³⁴⁵ Others praised her for “creat[ing] a therapeutic place for the survivors.”³⁴⁶ The sentencing hearing was widely circulated and had a sizeable impact upon those who witnessed the women and girls putting their experiences with violence into words and, more importantly, being listened to in a judicial setting, prompting a discussion about the criminal legal system’s capacity to hear victims.

Feminist rhetorical scholars have attended to this hearing, calling attention to the power of the victim testimony spoken within and the features of the criminal legal system that were disrupted to allow victims to speak about their violent experiences and feel heard. Stephanie Larson pointed to one of the most striking features of the Nassar sentencing hearing, “that the judge welcomed a magnitude of victims into her courtroom,”³⁴⁷ which she called “a remarkable shift in legal proceedings regarding rape and sexual assault,”³⁴⁸ but noted that this was not “what made the Nassar case

³⁴⁴ Liz Brody, “Judge Rosemarie Aquilina Isn’t Done Listening Yet,” *Glamour*, October 30, 2018, <https://www.glamour.com/story/women-of-the-year-2018-judge-rosemarie-aquilina>.

³⁴⁵ Gina Kaufman and Joe Guillen, “Judge Rosemarie Aquilina: Who is the woman who signed Nassar’s ‘death warrant’?” *USA Today*, January 25, 2018, <https://www.usatoday.com/story/news/nation-now/2018/01/25/larry-nassar-judge-rosemarie-aquilina/1064554001/>.

³⁴⁶ Jessica A. Gold, “Why Judge Aquilina’s Handling of the Larry Nassar Sentencing Is So Important for Abuse Survivors,” *Glamour*, January 28, 2018, <https://www.glamour.com/story/judge-aquilinas-handling-of-larry-nassar-sentencing-so-important-for-survivors>.

³⁴⁷ Larson, *What It Feels Like*, 2.

³⁴⁸ *Ibid.*, 1.

exceptional.”³⁴⁹ For Larson, what was exceptional about this case was not the disruption of legal proceedings, but “the sheer power and volume of [the victims’] testimonies, which ... gave audiences a way to experience the felt sense of violation.”³⁵⁰ Shari Stenberg also argued that the descriptions voiced by victims transformed the hearing, writing, “in describing to a public audience how they suffered both sexual abuse and institutional betrayal, their testimonies ... demand[ed] not only the punishment of Nassar, but the recognition and accountability of a culture that looked away ... teach[ing] us what kind of looking and listening to survivors is required if we are to change cultures that enable sexual assault.”³⁵¹ Mary Schuster centered the institutional betrayal voiced in the Nassar sentencing hearing and the listening enacted in response to it, calling it the enactment of *rhetorical listening* and arguing that it was made possible by the expansion of the Victim Impact Statement (VIS) genre.³⁵² Katie Gibson, similarly, acknowledged the transformative potential offered by the rupturing of the VIS genre in the Nassar sentencing hearing, but asserted that “the positive amplification of these particular voices ... was most certainly rooted in hegemonic understandings of innocence and guilt, which are always, at least, raced, classed, and gendered.”³⁵³ I seek to extend these analyses of the Nassar sentencing hearing to draw attention to how the disruption of judicial procedure and expected judicial responses to VISs constituted an environment that

³⁴⁹ Ibid.

³⁵⁰ Ibid., 2.

³⁵¹ Shari J. Stenberg, “Acknowledging Betrayal: The Rhetorical Power of Victim Impact Statements in the Nassar Sentencing Hearing,” *Rhetoric Review* 41, no. 1 (2022): 47.

³⁵² Schuster, *The Victim’s Voice*, 60-61.

³⁵³ Gibson, “A Rupture in the Courtroom,” 2.

enabled the emergence of powerful, transformative victim expressions in the Nassar sentencing hearing and the resulting entanglement of victim testimony and the white supremacist logics of state violence. Prior rhetorical scholarship focused on the expressions and disruptions within the hearing set the stage for my analysis which maps how and why the judicial hearing was transformed to enable rhetorical listening.

In line with the work of rhetorical scholars who highlighted the power of the VISs and the disruption of criminal legal procedure in this case, I attend to how rhetorical listening emerged from the entanglement of physicality, physiology, and institutional power. Rhetorical listening scholarship offers “a postmodern feminist reclamation of what the ear has to offer rhetorical theory”³⁵⁴ that attunes scholars to particular enactments that could be used to identify, evaluate, and enact rhetorical listening. Krista Ratcliffe names these enactments as a set of discursive practices that equip individuals to “understand self and other, practice accountability toward the other, identify across differences and sameness, and emphasize the importance of cultural contexts.”³⁵⁵ Recently, rhetorical listening scholars have called attention to the limits of conceptualizing rhetorical listening as a set of discursive practices, noting that such a focus “assumes that spacetimes are experienced the same way across contexts and bodies” and that all bodies can enact listening or be listened to if the discursive practices

³⁵⁴ Timothy Oleksiak, “A Fullness of Feeling: Queer Rhetorical Listening and Emotional Receptivity,” *Peitho* 23, no. 1 (2020): <https://cfshrc.org/journal/peitho-volume-23-issue-1-fall-2020/>.

³⁵⁵ Krista Ratcliffe, *Rhetorical Listening: Identification, Gender, Whiteness* (Carbondale, IL: Southern Illinois University Press, 2005), 26.

of rhetorical listening are properly enacted.³⁵⁶ The focus on discursive practices also obfuscates how institutions are designed to silence particular voices and experiences and to ensure that, if they are spoken, they are delegitimized before they are listened to. As Sara Ahmed asserts, institutional contexts are designed to not listen and, in them, “You have to shout because you are not heard. If you have to shout because you are not heard, you are heard as shouting. When complaints are heard as shouting, complaints are not heard.”³⁵⁷ Attending to rhetorical silencing and listening in institutional contexts illuminates the moments in which complaints must be shouted to be heard, as well as the moments when features that function to foreclose listening in institutional spaces are disrupted. Gavin Johnson notes that, when thinking about rhetorical listening, it is important to acknowledge that, in institutional contexts, the discursive practices characteristic of rhetorical listening can be enacted on behalf of and by the institution. Johnson connects the discursive practice of eavesdropping, forwarded by Ratcliffe as a means of enacting rhetorical listening, to institutional settings in which individuals are “secretly listen[ed to] or forcibly overhear[d] without consent,” noting that “[w]ithin our contemporary context, under an ever-growing surveillance state, the act of eavesdropping seems wholly unwelcomed and, in many ways, exceedingly dangerous. ... as a tool of oppressive systems of power seeking to collect information on targeted groups.”³⁵⁸ In this chapter, I follow rhetorical scholars who call for an attentiveness to the entanglement of

³⁵⁶ Johnson, “From Rhetorical Eavesdropping,” 124.

³⁵⁷ Ahmed, *Complaint!*, 89.

³⁵⁸ Johnson, “From Rhetorical Eavesdropping,” 120.

materiality and discursivity amidst enactments of rhetorical listening³⁵⁹ to examine how, in the Nassar sentencing hearing, the criminal legal institution was positioned to listen to the VISs and the impact that this unique arrangement had on the style and substance of the VISs spoken within. In doing so, I map the emergence of a transjudicial space within a judicial space and contribute an analytical framework for identifying and examining institutional enactments of rhetorical listening by looking for the moments in which judicial features are named, disrupted, and cast aside, allowing me to attend to how the institutional listening bodies “enact or disrupt violence”³⁶⁰ and to “contemplate the rhetoricity of consent” as it relates to rhetorical listening.³⁶¹

In this chapter, I argue that the transjudicial space constituted in the Nassar Sentencing Hearing emerged from the enactments of rhetorical listening, physical arrangement of the courtroom, voluminous allowances, and responsiveness to affective-

³⁵⁹ Michael J. Faris, “Queer Kinesthetic Interlistening,” *Peitho* 23, no. 1 (2020):

<https://cfshrc.org/article/queer-kinesthetic-interlistening/>; Michaela Frischherz, “Listening to orgasm: hearing pleasure sounds in the normative noise,” *Argumentation and Advocacy* 54, no. 4 (2018): 270-286; Johnson, “From Rhetorical Eavesdropping,” 119-138; Rachel Lewis, “Troubling the Terms of Engagement: Queer Rhetorical Listening as Carceral Interruption,” *Peitho* 23, no. 1 (2020): <https://cfshrc.org/article/troubling-the-terms-of-engagement-queer-rhetorical-listening-as-carceral-interruption/>; Oleksiak, “A Fullness of Feeling,” <https://cfshrc.org/article/a-fullness-of-feeling-queer-rhetorical-listening-and-emotional-receptivity/>; Storm Christine Pilloff, “Métis and Rhetorical Listening to #BlackLivesMatter,” *Peitho* 23, no. 1 (2020): <https://cfshrc.org/article/metis-and-rhetorically-listening-to-blacklivesmatter/>; J. Logan Smilges, “Bad Listeners,” *Peitho* 23, no. 1 (2020): <https://cfshrc.org/article/bad-listeners/>; and Hua Zhu, “Rhetorical Listening: Guiguzi and Feminists in Dialogue,” *China Media Research* 15, no. 1 (2019): 3-12.

³⁶⁰ Johnson, “From Rhetorical Eavesdropping,” 131.

³⁶¹ *Ibid.*, 133.

emotional and visceral reactions which rerouted the pathways through which violence typically circulates in judicial spaces. In this case study, the transjudicial space emerged as a phenomenon in which the courtroom was made to feel extrajudicial, even as it functioned judicially to prosecute and sentence, as the result of the disruption of judicial features in three observable and rhetorical ways. First, during the Nassar sentencing hearing, rhetorical listening disrupted judicial histories and procedures that are commonly at odds with the theory and practice of rhetorical listening—particularly, rhetorical listening that centers victim voices. Second, rhetorical listening emerged from the spatial arrangement of the sentencing hearing that invited victims to speak directly to Nassar and positioned Nassar and the judicial institution to listen, a material-discursive intra-action that altered the pathways through which violence could circulate amidst the transjudicial encounters within the courtroom. Finally, the mediated circulation of victim testimony amidst the Nassar sentencing hearing materialized contact zones that allowed victim voices to touch the auditors who encountered them resulting in renegotiation of the boundaries between individuals, collectivities, and institutions. While theories about the rhetoric of space/place typically consider how the material world shapes discourse and discourse shapes the material world, the emergences examined in this chapter refuse the tendency to privilege the discursive over the material by distinguishing between discursive listening, or “the listening ear” and embodied listening, or “the embodied ear.”³⁶² Ultimately, I contend that a listening criminal legal institution requires the

³⁶² Frischherz, “Listening to orgasm,” 270-286; and Jennifer Lynn Stoeber, *The Sonic Color Line: Race & the Cultural Politics of Listening* (New York, NY: New York University Press, 2016).

disruption of the judicial features that function to silence victim voices which, when successfully accomplished, results in powerful expressions that, outside of these conditions would not emerge in VISs, but upon their circulation, work to constitute a transjudicial space and tether victims' rights efforts, the general public, and particular instantiations of guilt, innocence, and violence to the carceral state

I begin conceptualizing how rhetorical listening disrupted the pathways along which violent judicial forces travel to constitute a transjudicial space in the Nassar sentencing hearing by situating this study within feminist rhetorical studies, rhetorical listening scholarship, and critical legal studies, focusing primarily on rhetorics of space/place, theories of affect/emotion, and embodiment to distill the impact of rhetorical listening on formal constraints, traumatic memory, and affected bodies. Then, I analyze the Nassar sentencing hearing to demonstrate how the material-discursive arrangement of the courtroom entangled with the privileged identities of many of the victims enabled the successful enactment of rhetorical listening on behalf of the criminal legal institution and worked to constitute a transjudicial space. Finally, I conclude by offering several implications that speak to the possibilities and threats of institutional enactments of rhetorical listening and their significance for rhetorical theorists interested in broader cases of constitutive rhetorics, rhetorics of space/place, and the relationship between listening and consent.

Rhetorical Listening, Institutional Intentions, and Violent Forces

Whether victim voices are rendered permissible, audible, or legible in judicial settings and to what effect are questions that have long captured the attention of rhetorical

scholars.³⁶³ These analyses highlight the function of judicial procedures, logics, and technologies to relegate victims to the periphery of the criminal legal process, illuminating that listening to victims is not a priority in judicial spaces and judicial features must be disrupted to enable the enactment of rhetorical listening. Because, as previously mentioned, the criminal legal system does not adjudicate harm between individuals but between the person who caused harm and the state,³⁶⁴ victim testimony is most often diminished, captured, or silenced because it is not procedurally necessary and its containment enables the maintenance of perceptions of “the legal system as being governed by reason and objectivity.”³⁶⁵ In some cases, however, victim voices are amplified in high profile criminal cases and co-opted in order to bolster the reputation of criminal legal institutions. Carrie Rentschler aptly names the silencing and co-optation of victim voices, calling it “the law-and-order movement’s ventriloquism of crime

³⁶³ Deer, *The Beginning and End of Rape*; Dougherty and Calafell, “Before and beyond #MeToo and #TimesUp,” 213-218; Gibson, “A Rupture in the Courtroom,” 1-24; Hsu, “(Trans)forming #MeToo,” 269-286; Larson, *What It Feels Like*; Leung and Williams, “#MeToo and Intersectionality,” 360-362; Mack and McCann, “Critiquing state and gendered violence,” 329-344; Mack and McCann, “Harvey Weinstein, monster,” 103-120; Mack and McCann, “Recalling Persky,” 372-393; Mack and Na’puti, “Our Bodies Are Not Terra Nullius,” 347-370; McKinnon, “Citizenship and the Performance of Credibility,” 205-221; Palacios, “Ain’t No Justice... It’s Just Us,” 279-295; Rentschler, *Second Wounds*; Richie, *Arrested Justice*; Ritchie, *Invisible No More*; Schuster, *The Victim’s Voice*; Schuster and Proppen, *Victim Advocacy in the Courtroom*; Simmons, ed., *Love With Accountability*; and Thuma, *All Our Trials*.

³⁶⁴ Deer, *The Beginning and End of Rape*; Simmons, ed., *Love With Accountability*; and Zehr, *Changing Lenses*.

³⁶⁵ Schuster and Proppen, *Victim Advocacy in the Courtroom*, 38-39.

victims.”³⁶⁶ It is notable that the judicial forces that silence and co-opt victim voices in judicial spaces circulate amidst particular extrajudicial features that have become accepted and expected in courtroom settings. Recent conceptualizations of legal realism assert that judges often bring political, social, and personal concerns into their judicial decision making.³⁶⁷ However, these circulating extrajudicial features do not disrupt the judicial procedures, logics, or technologies, nor the violent judicial forces that travel upon them. Rather, these extrajudicial features are expected, undisruptive, and supportive of the violent judicial forces that individuals expect to face in judicial settings. Considering the kind of silencing and co-optation that is often observed and criticized in criminal legal treatments of victim testimony, the presence of rhetorical listening in a criminal legal setting is notable and disruptive of expected criminal legal responses to sexual violence, factors which set the stage for the emergence of a transjudicial space.

Because rhetorical listening scholarship renders the long-considered passive communicative behaviors of listening and silence as symbolic, meaning making processes, rhetorical listening scholarship has remained, predominantly, focused on the discursive practices that enact listening and mark its presence. Rhetorical listening, as conceptualized in Krista Ratcliffe’s 2005 book, *Rhetorical Listening: Identification, Gender, Whiteness*, describes discursive practices that, when enacted, enable an interlocutor to approach “any person, text, or culture” with “a stance of openness.”³⁶⁸ The discursive practices that mark rhetorical listening and its open stance are a willingness to

³⁶⁶ Rentschler, *Second Wounds*, 34.

³⁶⁷ James L. Gibson and Gregory A. Caldeira, “Has Legal Realism Damaged the Legitimacy of the U.S. Supreme Court?” *Law & Society Review* 45, no. 1 (2011): 195-219.

³⁶⁸ Ratcliffe, *Rhetorical Listening*, 17

engage positivity and negativity, attentiveness to the emergence and value of difference, rhetorical stances of recognition, critique, or accountability, and metonymic, rather than metaphoric structuring of ideas.³⁶⁹ Undeniably, Ratcliffe's conceptualization of rhetorical listening and the tools for observing, describing, and enacting it contributed generously to feminist rhetorical studies, providing language for attending to processes of intentionally listening and examining the intentions of listeners, rather than listening for intent, or focusing only on the purpose of a speaker in a communicative encounter.³⁷⁰ The symbolic focus of rhetorical listening scholarship was formative for its theoretical uptake because it "differentiates listening as a behavior open to study from the communication studies perspective from (on the one hand) audiology and (on the other hand) listening as a purely aesthetic activity. It rules out questions of the physiology of hearing in listening."³⁷¹ However, a focus on the discursive formations of rhetorical listening obscures the material focus centered in its introduction to the discipline. In her 1995 CCCC's address, Jacqueline Jones Royster tasked rhetorical scholars with attending to the relationship between speaking and listening, noting that, "voicing actually sets in motion multiple systems, prominent among them are systems for speaking but present also are the systems for hearing."³⁷² Although focus on the symbolic indicators of listening has enabled scholars to conceptualize how openness to another constitutes the

³⁶⁹ Ibid., 94-98.

³⁷⁰ Ibid., 28.

³⁷¹ David Beard, "A Broader Understanding of the Ethics of Listening: Philosophy, Cultural Studies, Media Studies and the Ethical Listening Subject," *International Journal of Listening* 23 (2009): 8.

³⁷² Jacqueline Jones Royster, "When the First Voice You Hear Is Not Your Own," *College Composition and Communication* 47, no. 1 (1996): 38.

speaker and the listener, Royster's observation that "we speak within systems that we know significantly through our abilities to negotiate noise and to construct, within that noise, sense and sensibility" seems to consider the structural, physiological, mechanical, and sensible systems that impact listening significant to its rhetorical treatment.³⁷³ Even as Ratcliffe described and prescribed the discursive practices of rhetorical listening, she recognized that the process was not wholly discursive, that one could not enact rhetorical listening outside of corporeality, noting that listening requires "body organs"³⁷⁴— meaning that it does not only involve a listener's enactment of discursive practices of rhetorical listening, but the organs for speaking (tongue, larynx, voice box), as well as the organs for listening (cochlea, auditory nerve, eardrum). However, conceptualizing rhetorical listening as a predominantly discursive practice forecloses the opportunity of thinking about rhetorical listening's relationship with the embodied process of listening, as well as the way that configurations of space/place, institutional power, and external noise impact rhetorical listening in institutional contexts.³⁷⁵ When considering the entanglement of rhetorical listening and institutions, particularly the criminal legal system and its enactments of violence, attentiveness to the material-discursive intra-actions that enable the enactment of rhetorical listening reveals much about the relationship. Specifically, such attentiveness reveals that rhetorical listening does not just happen within institutional settings but can be enacted by institutions in disruptive and violent ways.

³⁷³ Ibid.

³⁷⁴ Ratcliffe, *Rhetorical Listening*, 24.

³⁷⁵ Johnson, "From Rhetorical Eavesdropping," 124.

Attending to the intentions behind enactments of listening practices is aligned with the goals of rhetorical listening—Ratcliffe identified that rhetorical listening shifts the focus from determining the intent of the rhetor to attending to the listeners’ intentions.³⁷⁶ However, the notion of rhetorical agency upon which rhetorical listening scholarship relies makes listening seem like an agential decision made by an autonomous actor—a rendering that does not account for how “agency emerges from the entanglement of matter and meaning; ... [and how it] orients different bodies, cultures, places, histories, objects, and futures.”³⁷⁷ Thus, examining rhetorical listening within institutional settings requires a lens that identifies and evaluates the material-discursive intra-actions that enable enactments of rhetorical listening in particular contexts and a distributed understanding of agency that acknowledges how rhetorical listening can be enacted not only within institutions, but by them. Additionally, attending to the material-discursive intra-actions from which rhetorical listening emerges enables an analysis that accounts for how institutional rhetorical listening, particularly when enacted by an institution known for diminishing particular voices, changes what is spoken within. An analysis of how the disruption of judicial procedures, logics, and technologies impacts how victims express their experiences with violence reveals how these judicial features function in traditional criminal legal contexts: judicial procedure renders victim experience irrelevant, judicial logics diminish and delegitimize affective and emotional expressions, and judicial technologies extract bodily, experiential, relational, and visceral knowledges. When the judicial features that function to circulate violent judicial forces

³⁷⁶ Ratcliffe, *Rhetorical Listening*, 28

³⁷⁷ Johnson, “From Rhetorical Eavesdropping,” 125.

are disrupted, those violent forces move differently, altering the pathways through which violence can move in a transjudicially constituted space.

Rhetorical listening in formal institutional settings requires both the enactment of discursive practices and the reconfiguration of material-discursive criminal legal features. Attending to the entanglement of these components enables an analysis that both illuminates how the institution itself is positioned to listen, as well as how the rhetorical distinction between a hearing and a listening—double meaning intended here—is made meaningful in criminal legal contexts. For example, after the abolition of slavery in the U.S., the marking of some voices—“those enflashed voices that do not conform to the ideal voice of the self-possessed liberal subject”³⁷⁸—as illegible and excessive was central to “the racialized constructions of civility” built into systems of policing, prosecution, and prisons.³⁷⁹ The distinction between speech (active) and noise (passive) at the heart of a distinction between listening (active) and hearing (passive) enables “the racialized deployment of a rhetoric of responsibility [that] continues to be reinforced by forms of affective policing—such as the policing of speech, tone of voice, eye contact, and movement—designed to uphold a white social order and its hierarchies of class and race.”³⁸⁰ Rendering this relationship explicit is crucial as it demonstrates how the very distinction drawn between hearing as a process of reception and listening as a process of

³⁷⁸ Andrew Navin Brooks, “Fugitive Listening: Sounds from the Undercommons,” *Theory, Culture, & Society* 37, no. 6 (2020): 34.

³⁷⁹ Kristiana L. Báez and Ersula Ore, “The moral imperative of race for rhetorical studies: on civility and walking-in-white in academe,” *Communication and Critical/Cultural Studies* 15, no. 4 (2018): 334.

³⁸⁰ Brooks, “Fugitive Listening,” 31.

invention reinforces the oppressive force of rhetorics of respectability and civility which function within and in service of the criminal legal institution to determine whose voices are worth listening to and “whether listening is said to accomplish anything.”³⁸¹ Simply, rhetorical listening scholarship done with an eye toward material-discursivity highlights how judicial procedures, technologies, and logics both limit and allow the emergence of rhetorical listening practices and its enactment by institutions.

In this chapter, I build from the work of Johnson, J. Logan Smilges, Rachel Lewis, Kristiana Báez, and Ursula Ore that highlights how rhetorical listening is enacted and enforced by oppressive institutions as a means of enacting violence. Throughout my analysis, I seek to illuminate the material-discursive intra-actions that, amidst the enactment of rhetorical listening by an institution, modulate the pathways through which institutional violence circulates and, as a result, constitute transjudicial spaces. Thus, this chapter channels the theoretical and methodological offerings of feminist new materialist theory to account for the contextual, embodied, and institutional ways that rhetorical listening emerges with an understanding that theoretical concepts, like rhetorical listening are “not ideational but rather [an] actual physical arrangement[.]”³⁸² Because of disciplinary interest in the co-constitutive relationship between space/places and speech, rhetorical scholars frequently identify how formal histories, procedures, and institutions shape the rhetorical capacities of those who encounter them and speech transforms seemingly impermeable spaces.³⁸³ Throughout this chapter, I seek to illuminate how the

³⁸¹ Harris, *Beyond the Rapist*, 101.

³⁸² Barad, *Meeting the Universe Halfway*, 148.

³⁸³ Cram, ““Angie was Our Sister,”” 411-438; Gibson, “A Rupture in the Courtroom,” 1-24; Harris, *Beyond the Rapist*; Keremidchieva, “The Congressional Debate on the 19th

presence of extrajudicial features, like rhetorical listening, can emerge within judicial spaces and, in some cases, constitute a transjudicial space. I propose that three tenets are necessary for identifying, examining, and evaluating the emergence of a transjudicial space amidst a criminal legal proceeding. First, transjudicial spaces emerge from institutional, procedural, and individual histories that texture speaking and listening in particular institutional contexts. Second, transjudicial spaces emerge from material-discursive practices, arrangements, and enactments that alter the common circulations of violence in judicial settings. Finally, transjudicial spaces meet auditors via mediated and physiological circulatory systems and materialize contact zones that alter the boundaries between individuals, collectivities, and institutions.

The Larry Nassar Sentencing Listening

Judge Aquilina explicitly explained how she arranged the Nassar courtroom to enable listening in response to a letter from Nassar that accused her of placing him “in the witness box next to her for all four days so the media cameras [would] be directed toward her.”³⁸⁴ She asserted “you’re sitting here in the witness box not for my entertainment, quite honestly so that your victims can face you in the eye without turning back constantly. Because then we would lose part of their statements because our court

Amendment,” 51-73; Larson, *What It Feels Like*; McCann, “Chrysler Pulled the Trigger,” 131-155; McKinnon, “Citizenship and the Performance,” 2015-221; Rentschler, *Second Wounds*; Schuster, *Victim’s Voice*; Schuster and Propen, *Victim Advocacy in the Courtroom*; and Winderman, “Anger’s Volumes,” 327-346.

³⁸⁴ Click On Detroit Local 4 WDIV, “VIDEO: Judge responds to Nassar letter in full,” Youtube Video, 16:13, April 6, 2018, <https://www.youtube.com/watch?v=7gVvKpJp7RI>.

reporter needs to hear everything.”³⁸⁵ This statement painted a picture of Aquilina’s arrangement of the courtroom. Nassar, his counsel, and Aquilina sat directly in front of the testifying victim. The court transcriber sat to Aquilina’s right. The victim stood in the middle of the room at the podium. Here, the victim was positioned to speak to her abuser, but more importantly for the purposes of this analysis, positioned to be heard, not necessarily by Nassar, but *by the court*. Amidst this unusual arrangement of the courtroom, judicial procedures, technologies, and logics were observably disrupted and, as a result of the material-discursive intra-actions, victims’ affective-emotional and visceral expressions emerged alongside the enactment of rhetorical listening on behalf of the institution. In such a space, the violent judicial forces that commonly contain victim voices were redirected, forced to circulate differently because the judicial features upon which they travel were disrupted. In order to account for all of the material-discursive elements that came together in this eight-day hearing to enable the emergence of affect-emotion, viscosity, rhetorical listening, and a transjudicial space, I detail the embodied presence of each victim and the physiological ways in which they enacted their emotions and experiences of violation. When I quote these victims, I **bold** the moments in which the physical courtroom, expected judicial constraints, and bodily matters emerge in victim testimony, using these deictic indicators to call attention to the entanglement of bodies, discourse, matter, and violence in the VISs spoken during Nassar’s sentencing hearing.

³⁸⁵ Ibid.

Disruptive Differences and Distributed Blame

Judicial spaces, extrajudicial practices like rhetorical listening, and the bodies of those who encounter them have histories that matter in the emergence of transjudicial spaces. Judicial spaces have a long history of diminishing victim voices because judicial procedures do not need victims, so they are easily and unproblematically silenced—this is particularly true for victims who belong to nonwhite, queer, poor, disabled, and immigrant communities.³⁸⁶ The practice, presence, and (disruptive) possibility of rhetorical listening also carries with it particular histories. Lisbeth Lipsari names the relationship between identity, history, and listening a listening habitus or the way in which “we each develop ways of listening (or not) that are partly shaped by culture and our social location within it, and partly by our personalities and particular life experiences.”³⁸⁷ Rhetorical listening in formal institutional settings requires both the enactment of discursive practices and the reconfiguration of material-discursive criminal legal features. Judicial spaces, transjudicial spaces, and rhetorical listening rely on historical enactments of agency, exclusion, and constraint that can be observed by attending how particular bodies experience judicial spaces and disruption of judicial features.

³⁸⁶ Curry, “Expendables for Whom,” 302-303; Fricker, *Epistemic Injustice*; Gavey, “Feminist Poststructuralism,” 183-188; Gibson, “A Rupture in the Courtroom,” 1-24; Harris, *Beyond the Rapist*; Mack and McCann, “Critiquing state and gendered violence,” 329-344; McKinnon, “Citizenship and the Performance,” 2015-221; Richie, *Arrested Justice*; Ritchie, *Invisible No More*; Simmons, ed., *Love With Accountability*; Thuma, *All Our Trials*; Towns, “Black ‘Matter’ Lives,” 349-358; and Watts, “Indigenous place-thought & agency.”

³⁸⁷ Lisbeth Lipsari, *Listening, Thinking, Being: Toward an Ethics of Attunement* (Philadelphia, PA: Pennsylvania State University Press, 2014), 52-53.

Procedurally, the history of VISs matters in the Nassar sentencing hearing because enactments of rhetorical listening in response to them is uncommon and procedurally limited. VISs have been permitted in sentencing hearings since 1990, providing victims the opportunity to convey how the crime impacted them, as well as their wishes regarding sentencing decisions, prior to the imposition of a sentence.³⁸⁸ In traditional sentencing hearings, judges have the right to limit the length and content of VISs, but in the Nassar sentencing hearing, victims were permitted to exceed such limits, “to spend as much time as they needed to describe the abuse they suffered, to relate or even celebrate their progress toward recovery, and, somewhat unusual in the courtroom, to address the defendant directly and to converse with Aquilina after presenting the impact statement.”³⁸⁹ Under different circumstances, the features of the hearing that disrupted judicial procedure would have been rendered excessive and excluded from the proceedings. If Aquilina had only heard from victims whose cases were being considered in Nassar’s sentencing, only Victim ZA, Victim A, Victim B, Victim C, Victim D, Victim E, and Victim G would have been allowed to give VISs. Instead, Judge Aquilina agreed to listen to these seven victims and any other victims who wished to come forward. Throughout the trial, some victims chose not to speak, while others added their names to the list, and still Aquilina maintained that anyone who wished to speak would be recognized and heard because, according to her judicial philosophy, it transforms a victim to be able to address the defendant.³⁹⁰ Judge Aquilina allowed the testimony of

³⁸⁸ Schuster, *Victim’s Voice*, 65.

³⁸⁹ *Ibid.*, 66.

³⁹⁰ *An Evening with Judge Rosemarie Aquilina*, presented by Rosemarie Aquilina, Coffman Memorial Union, Minneapolis, MN, November 28, 2018.

each victim to repeat, echo, enhance, and complicate the testimony of their fellow “sister survivors.” Rhetorical listening did not emerge from any singular VIS, nor did it emerge only from those VISs given by victims who would have been excluded from a traditionally structured sentencing hearing. Rather, rhetorical listening was made present in the hearing due to the disruption of judicial procedure which allowed meaningful similarities and differences to emerge through, within, and between the voluminous voices³⁹¹ in Aquilina’s courtroom. These disruptions of procedural history constituted a transjudicial space.

In most news media accounts of the hearing, the victims’ similarities were emphasized because of the national recognition of many of those who came forward and testified at the Nassar sentencing hearing. Many accounts of the Nassar’s abuse and the sentencing hearing noted that a number of Olympic gymnasts reported abuse at the hands of Nassar, such as Simone Biles, Gabby Douglas, and McKayla Maroney.³⁹² Additionally, the VISs given by Olympians Aly Raisman and Jordyn Wieber were

³⁹¹ Larson, *What It Feels Like*; and Winderman, “Anger’s Volumes,” 327-346.

³⁹² Brody, “The Army of Women,” <https://www.glamour.com/story/women-of-the-year-2018-larry-nassar-survivors>; Ben Klayman, “‘Stench’ of Nassar scandal will dog USA Gymnastics for years,” *Reuters News*, January 25, 2018, <https://www.reuters.com/article/uk-gymnastics-usa-nassar-sponsors-idUKKBN1FE2X8>; Alanna Vagianos, “The Hearing That Forced The World To Listen To Larry Nassar’s Survivors,” *Huffington Post*, January 16, 2019, https://www.huffpost.com/entry/larry-nassar-hearing-one-year-later_n_5c2f8280e4b0407e908b0982; and Katy Waldman, “Why We Didn’t Listen to Larry Nassar’s Victims,” *Slate*, January 19, 2018, <https://slate.com/culture/2018/01/why-we-didnt-listen-to-larry-nassars-victims.html>.

heavily circulated amidst media coverage of the hearings.³⁹³ The focus on similarity reflected the judicial procedures that work to draw comparisons between violent events to make decisions based on precedent and respond consistently to similar crimes. Thus, listeners within and beyond the courtroom encountered the testimony with an expectation of the victims' similarities. However, the prosecution's intentional arrangement of VISs to convey meaningful differences and Aquilina's willingness to hear any victim who wished to come forward had the effect of revealing that Nassar was capable of such abuse across various social contexts. The very first victim to testify at the sentencing hearing was Kyle Stephens, also known as Victim ZA in the criminal complaint. Because Nassar was arrested on Stephens', as well as six other victims' charges, her VIS served a legal function and could be considered when Aquilina was contemplating sentencing. Importantly, Stephens' VIS also served a significant evidentiary role in the hearing because she is not a gymnast and was the only non-medical victim to testify. At the beginning of her statement, Stephens calmly and unemotionally explained her unique relationship with Nassar, glancing at him multiple times while she stated, "I met **Larry Nassar** when I was somewhere around **the age of five years old. My parents** had become close friends with **Larry and his wife, Stephanie**. ... We shared **sporting events, holidays, and many weekends in between**. It was during **this time, I estimate I**

³⁹³ Jonathan Borge, "Aly Raisman's Powerful Testimony at Larry Nassar's Sentencing Must Be Heard," *InStyle*, January 19, 2018, <https://www.instyle.com/news/aly-raismain-larry-nassar-court-testimony>; and Whitney Medworth, "Aly Raisman, Jordyn Wieber delivered powerful statements in sentencing hearing against Larry Nassar," *SBNation*, January 19, 2018, <https://www.sbnation.com/2018/1/19/16909990/aly-raisman-jordyn-wieber-usa-gymnastics-larry-nassar-sexual-abuse>.

was approximately **six years old**, that **Larry Nassar** began to **sexually abuse me**.³⁹⁴ As soon as she began explaining her abuse, Stephen's expressions became emotional—her pace quickened, her face turned red, and she took on a biting tone, spitting, “without **my** knowledge or consent, **I** had engaged in **my** first **sexual experience by kindergarten [louder throughout]**.”³⁹⁵ Her emotion shifted throughout her testimony from anger when describing Nassar's abuse to despair when talking about her parent's choice to side with Nassar when she told them about the abuse, a choice that Stephens explains contributed to her father's death by suicide. Stephen's testimony set the affective-emotional tone for the VISs that would follow hers and, because of her unique relationship with Nassar, contextualized Nassar's abuse of other victims. In the portion of her testimony where Stephens spoke directly to Nassar, she asserted, “**You** were first arrested on my charges, and now as **the only non-medical victim** to come forward, **I** testify to let the world know that **you** are a **repulsive liar** and that those treatments were **pathetically veiled sexual abuse**.”³⁹⁶ The arrangement of the sentencing hearing to prioritize the institution's ability to hear and take record of the testimony enabled this intra-action. Although it is possible that, as Aquilina predicted, Stephens may have turned around to face Nassar as she made this assertion, that she was able to remain facing the judge and the court reporter while leveraging this criticism at Nassar framed this reaction as legitimate and legible in the transjudicial space constituted within the sentencing hearing. Stephens' unique relationship with Nassar and her position as the first victim to testify invalidated any

³⁹⁴ Click On Detroit Local 4 WDIV, “Nassar victim: Kyle Stephens statement,” YouTube Video, 11:04, April 6, 2018, https://www.youtube.com/watch?v=Q0_qzIsQtkI.

³⁹⁵ Ibid.

³⁹⁶ Ibid.

claims that Nassar's abusive behavior was simply a misunderstood, controversial medical procedure. The importance of her statement as evidence of Nassar's capacity for abuse served a corroborative function in relation to the testimony of Nassar's 155 medical victims, a function made possible by the constitution of the hearing as a transjudicial space.

Stephens' VIS, as the first spoken in the sentencing hearing, highlighted that the differences in victim experiences would be meaningful and, as a result, listeners were primed to expect such differences and to resist the tendency to homologize them, a phenomenon that altered the typical procedural treatments of VISs and the typical pathways through which violence is allowed to travel in criminal legal contexts. Judge Aquilina acknowledged that the differences in each testimony were as, if not more, important than the similarities. In her response to Rebecca Mark, a victim who met Nassar when she was seeking treatment for a soccer injury, Aquilina noted, "I'm also sorry that this wasn't just a gymnastics bad event, it was—also reaches into soccer ... **I appreciate you being here**, because what that says, too, is that there's not **an isolated area for this kind of predator.**"³⁹⁷ Aquilina's words of affirmation suggested that these victims' presence and voices were meaningful and significant even if they could not be considered in the sentencing decision. Her recognition of the violence that these victims experienced would not be possible in a sentencing hearing where only the victims involved in the criminal charges were allowed to speak. The transjudicial space enabled violent experiences different from those detailed in the criminal charges being considered

³⁹⁷ Click On Detroit Local 4 WDIV, "Nassar victims: Rebecca Mark statement," YouTube Video, 5:53, April 5, 2018, <https://www.youtube.com/watch?v=LDOY1UXWUYM>.

to emerge, circulate, and enhance understandings of Nassar’s abuse. The arrangement of the testimony and continuous permission of meaningful differences in the Nassar sentencing hearing illustrated the complexity of Nassar’s abuse and, in many cases, permitted complicated expressions and experiences of victimhood. In another complicated VIS, Jennifer Rood Bedford viscerally described both Nassar’s engagement with her body and her body’s reaction to Nassar. Beginning her VIS, Rood Bedford apologized for the length of her statement and started by speaking at a very quick pace. Aquilina stopped her, reassuring her, “you have **all the time in the world**” and “if you wanted to take until **5 o’clock**, that’s okay.”³⁹⁸ The allowance of time and space for Rood Bedford to articulate her experience of the violence that she endured disrupts common procedural rules in criminal legal contexts where judges often “set reasonable limits on the time, length, and format of victim impact statements.”³⁹⁹ Rood Bedford slowed her pace and remained calm while describing her background as a volleyball player at Michigan State University. However, her voice broke when she explained the first time she was treated by Nassar, explaining, “**he had me lay down face first—face [voice crack] down on the medical table.**”⁴⁰⁰ Continuing her testimony, Rood Bedford stated, “[I]n **my** opinion this is the worst part. Again, growing up in a culture with little experience of **my** own, I assumed **something like what happened to me** would only

³⁹⁸ Click On Detroit Local 4 WDIV, “Nassar victim: Jennifer Rood Bedford statement,” April 5, 2018, <https://www.youtube.com/watch?v=nNS6jMbclH4>.

³⁹⁹ Schuster, *Victim’s Voice*, 65.

⁴⁰⁰ *Ibid.*

happen if **I wanted it to.**⁴⁰¹ By beginning her VIS with a description of her lack of knowledge about sexual violence and sexual activity and because she, like most of the victims who testified in the sentencing hearing, appeared to be a “white, cisgender, and middle-class [woman] who [was a] minor[] when [she] was abused,”⁴⁰² Rood Bedford’s testimony initially “‘fit’ the category of innocence,”⁴⁰³ positioning her as a “quintessential ‘victim.’”⁴⁰⁴ However, as she continued her statement, her positioning as an ideal victim became complicated as she explained not only the physiological experience of Nassar’s abuse, but her body’s physiological response to Nassar, voicing,

To be clear, [**deep breath**] during that appointment **Nassar** put direct pressure on **places I didn’t know existed** at the time [**voice crack**] and **my body reacted**. I didn’t want it to [**louder and shaking head**] but it **reacted** anyways, and as **it was happening** I remember **laying there frozen stiff on the table** utterly mortified [**louder still and emotional break**], confused, and scared [**quieter**]. I felt so powerless to control what was happening. My **mind** was willing one thing, for it to stop, and my **body** was doing another thing, not stopping.⁴⁰⁵

In this testimony, Rood Bedford acknowledged that her experience problematized expectations of a passive victim’s response to abuse. She recognizes that, because of the logics of rape culture that structure conversations and judgements about how victimhood

⁴⁰¹ Click On Detroit Local 4 WDIV, “Nassar victim: Jennifer Rood Bedford statement,” April 5, 2018, <https://www.youtube.com/watch?v=nNS6jMbclH4>.

⁴⁰² Gibson, “A Rupture in the Courtroom,” 2.

⁴⁰³ Lisa Langstraat, “Emotional and Community Rhetorics: Victim Impact Statements as Cultural Pedagogy,” in *Rhetorical Agendas: Political, Ethical, Spiritual*, ed. Patricia Bizzell (Mahwah, NJ: Erlbaum Publishing, 2006), 272.

⁴⁰⁴ Larson, *What It Feels Like*, 58. Larson defines the quintessential victim as “a heterosexual, college-aged, cis, white, able-bodied, US American, middle-class, educated woman in need of protection from a male body and male gaze.”

⁴⁰⁵ Click On Detroit Local 4 WDIV, “Nassar victim: Jennifer Rood Bedford statement,” April 5, 2018, <https://www.youtube.com/watch?v=nNS6jMbclH4>.

is experienced, her testimony could be rendered illegible by her body's physiological responses.⁴⁰⁶ In her analysis of these public discussions and judgements about sexual violence, Larson asserts, "the logics of rape culture work to place blame and responsibility on women's bodies, ... [c]onsequently, their bodies become sites of culpabilities outside of their own testimonies."⁴⁰⁷ That she became sexually aroused by Nassar's abuse complicates individualized notions of agency.⁴⁰⁸ In a different courtroom structured by the logics of rape culture where such complicated differences were not rendered meaningful, it is not hard to imagine that this experience would likely have been used to delegitimize Rood Bedford's testimony and in defense of the accused's conduct. However, in the Nassar sentencing hearing, Rood Bedford's experience, that in many ways, was not analogous with the experience of other victims in the Nassar case, could be read alongside those experiences and rendered valuable for the understanding that its differences, as well as similarities, invited.

Because differences in victim experiences were made to matter in the Nassar sentencing hearing, the VISs spoken within not only disrupted criminal legal procedure in

⁴⁰⁶ Báez and Ore, "The moral imperative of race," 331-336; Curry, "Expendables for Whom," 287-307; Fricker, *Epistemic Injustice*; Gavey, "Feminist Poststructuralism," 183-188; Gibson, "A Rupture in the Courtroom," 1-24; Johnson, "From Rhetorical Eavesdropping," 119-138; Larson, *What It Feels Like*; Mack and McCann, "Critiquing state and gendered violence," 329-344; Harris, *Beyond the Rapist*; McKinnon, "Citizenship and the Performance," 2015-221; Richie, *Arrested Justice*; Ritchie, *Invisible No More*; Simmons, ed., *Love With Accountability*; Thuma, *All Our Trials*; Towns, "Black 'Matter' Lives," 349-358; and Watts, "Indigenous place-thought & agency."

⁴⁰⁷ Larson, *What It Feels Like*, 64.

⁴⁰⁸ Gavey, "Feminist Poststructuralism," 183-188; Harris, *Beyond the Rapist*, 121; Towns, "Black 'Matter' Lives," 349-358; and Watts, "Indigenous place-thought & agency," 20-34.

the courtroom, but painted a picture of the institutional procedures that silenced Nassar's victims for decades and disrupted the criminal legal process by calling for Nassar, the "custodians of rape culture" who protected him,⁴⁰⁹ and institutions themselves to be held accountable. The opportunity for victims to express their disdain for the institutional authorities, reporting processes, and responses that allowed for their abuse to continue bumped up against and disrupted judicial procedures that individualize harm, opening up pathways along which calls for retribution and accountability could be leveraged at institutions and their continued failure.⁴¹⁰ The emergence of new pathways through which communication about and of violence could travel was crucial in this case, because Nassar was a doctor. His victims expected that his treatments, even if uncomfortable, were legitimate. Throughout the Nassar sentencing hearing, victims expressed their understanding of Nassar's abusive behavior in strikingly different ways. Some acknowledged that they felt uncomfortable with Nassar's behavior but trusted him because he was a doctor. Others articulated that they knew viscerally, deep down, that his treatment was not right. Others, still, explained that they did not realize they had been abused until the *Indy Star* published an article about USA Gymnastics' protection of abusive coaches⁴¹¹ and, following communication with gymnast Rachel Denhollander

⁴⁰⁹ Hill and Stabile, "Rhetoric and Sexual Violence," 155.

⁴¹⁰ Carrington, "Mike Brown's Body," 276-283; Harris, *Beyond the Rapist*; Hill, "Breast cancer's rhetoricity," 281-298; Irni, "The politics of materiality," 347-360; López, "Contesting the Material Turn," 371-386; Towns, "Black 'Matter' Lives," 349-358; and Watts, "Indigenous place-thought & agency," 20-34.

⁴¹¹ Marisa Kwiatkowski, Mark Alesia, and Tim Evans, "A blind eye to sex abuse: How USA Gymnastics failed to report cases," *IndyStar*, August 4, 2016,

and another of Nassar's victims who had filed a civil suit against him, broke the story about Nassar's abuse that set the case in motion.⁴¹² That these experiences were, in Aquilina's courtroom, laid next to one another facilitated a nuanced understanding of the nature of sexual violence, the different ways in which it is experienced, and the potential for confusion to hinder a victim's understanding of abuse. That the differences amongst the VISs were allowed to compliment, contradict, and corroborate one another disrupted judicial procedures that relegate victims to the periphery, homologize victim experience to treat similar crimes similarly, and function to hold individuals, rather than the systems, organizations, and culture that enabled them, accountable, constituting an observable transjudicial space.

Listening Arrangements Materialized Angry Emergences

Transjudicial spaces emerge in courtrooms from the entanglement of spoken word, material world, and institutional power in particular spacetimes that disrupt judicial procedures to make judicial spaces *feel* extrajudicial. I want to be clear, this disruption changes the way that the judicial space feels, but does not change the carceral function of such a space. Attending to the material-discursive intra-actions that disrupt judicial proceedings to such an extent that they feel extrajudicial enables an analysis that can map

<https://www.indystar.com/story/news/investigations/2016/08/04/usa-gymnastics-sex-abuse-protected-coaches/85829732/>.

⁴¹² Tim Evans, Mark Alesia, and Marisa Kwaitkowski, "Former USA Gymnastics doctor accused of abuse," *IndyStar*, September 12, 2016,

<https://www.indystar.com/story/news/2016/09/12/former-usa-gymnastics-doctor-accused-abuse/89995734/>.

the pathways through which violence circulates and the effect of their alteration. Notably, testimony often occurs in two seemingly impermeable institutional spaces that are both organized by strict procedures, formal histories, and physical arrangements: churches and courtrooms.⁴¹³ Because both of these institutional spaces are defined, at least in part, by their openness to the public, maintaining the procedures and structures characteristic of these institutions requires strict policing and prohibition of inappropriate conduct that threatens to permeate the spatial boundaries and institutional logics of church and court. In the courtroom, there are various extrajudicial features that can enact such disruption, but one most commonly referred to by rhetorical and legal scholars is the presence of uncontained affect-emotion which, from a legal perspective, threatens the court's objectivity.⁴¹⁴ In spite of the judicial logics deployed to contain affect-emotion in the courtroom, rhetorical, legal, anti-carceral, architectural, and sociological scholars have recently mapped possibilities for disrupting these diminishing judicial logics.⁴¹⁵ Some suggest that the openness and responsiveness offered by rhetorical listening will allow individuals' experiences, emotions, and viscera to emerge despite the barriers intended to contain them,⁴¹⁶ while others indicate that the placement of tables, chairs, and bodies in

⁴¹³ Wendy S. Hesford, *Spectacular Rhetorics: Human Rights Visions, Recognitions, Feminisms* (Durham, NC: Duke University Press, 2011).

⁴¹⁴ Fricker, *Epistemic Injustice*; Larson, *What It Feels Like*; Schuster, *Victim's Voice*; and Schuster and Proppen, *Victim Advocacy in the Courtroom*.

⁴¹⁵ Fricker, *Epistemic Injustice*; Larson, *What It Feels Like*; Schuster, *Victim's Voice*; Schuster and Proppen, *Victim Advocacy in the Courtroom*; and Winderman, "Anger's Volumes."

⁴¹⁶ Oleksiak, "A Fullness of Feeling," <https://cfshrc.org/article/a-fullness-of-feeling-queer-rhetorical-listening-and-emotional-receptivity/>.

the courtroom can facilitate excessive affective-emotional expression.⁴¹⁷ Rhetorical listening, because of its emphasis on creating understanding and identification across differences, requires a disruption of the judicial procedures and logics that diminish how violent encounters are differently experienced, expressed, and embodied and, when enacted in a judicial proceeding, has the potential to constitute a transjudicial space.

Judge Aquilina did not enact rhetorical listening by simply expressing her openness to anger and viscerality in the courtroom. Rather, rhetorical listening emerged from the spatial arrangement of the sentencing hearing which invited victims to confront Nassar and positioned the criminal legal institution to listen, a decision that catalyzed angry testimony and disrupted the judicial logics that typically diminish such expressions in criminal legal contexts. Normally, in a sentencing hearing, a victim speaks to the judge and explains the impact that the violence they experienced had on their life, a process that, research has found again and again, retraumatizes victims.⁴¹⁸ In the Nassar sentencing hearing, the courtroom was arranged to allow victims to speak to Nassar, an arrangement that catalyzed named, embodied, direct, and disruptive anger and disrupted the judicial logics that function to contain emotional expression and, often, retraumatize victims. Many victims named their emotional response to Nassar's actions as anger and, because they were facing Nassar, directed it at him. Tiffany Thomas Lopez asserted, "I imagined **hitting you** if I ever had the opportunity to **see you** again"⁴¹⁹ and Jennifer Rood

⁴¹⁷ Fischer, "Justice for Immigrants," 49-51; Philippopoulos-Mihalopoulos, "Spatial Justice," 209; and Weizman, ed., *Forensis*, 19.

⁴¹⁸ Campbell, *Emotionally Involved*; and Matthews and Goodman, eds., *Violence and the Limits*.

⁴¹⁹ Click On Detroit Local 4 WDIV, "Nassar victim: Tiffany Thomas Lopez statement," Youtube Video, 2:40, April 5, 2018, <https://www.youtube.com/watch?v=zsuUr5xo6kw>.

Bedford explained, “**I** came up with a plan for the future. If **I** ever had to be treated by **the doctor** again ... **I** would **drop kick him** in the **face**.”⁴²⁰ Even when the anger was not expressed as violent and bodily, it emerged in a direct style, an expressive style that is normally contained in formal institutional settings to diminish and delegitimize the voices of marginalized individuals.⁴²¹ The directness of this anger is evident in Bethany Bauman’s testimony. Bauman generally spoke from a third person perspective when talking about her experience, but when referencing her anger, she switched to the second person, addressing Nassar directly. She stated, “**We** all trusted **Larry** and are angry for the way **you** deceived **us**. **He**’s made it difficult to trust anyone.”⁴²² That victims were positioned to face Nassar while reading their VISs enacted particular material-discursive intra-actions that not only allowed the emotion to be named, embodied, and directed, but in some cases allowed it to emerge in the first place. Although the emotion was direct toward Nassar, the impact of that emotion, spoken from a place that allowed the court reporter to include it in judicial record, was made legally meaningful. Disrupting the judicial logics that work to diminish and silence affective-emotional expressions made the expressions of anger in the Nassar sentencing hearing possible and legible, constituting a transjudicial space.

⁴²⁰ Click On Detroit Local 4 WDIV, “Nassar victim: Jennifer Rood Bedford statement,” YouTube Video, 25:08, April 5, 2018, <https://www.youtube.com/watch?v=nNS6jMbclH4>.

⁴²¹ Báez and Ore, “The moral imperative of race,” 331-336; Johnson, “From Rhetorical Eavesdropping,” 119-138; Smilges, “Bad Listeners,” <https://cfshrc.org/article/bad-listeners/>; and Lewis, “Troubling the Terms of Engagement,” <https://cfshrc.org/article/troubling-the-terms-of-engagement-queer-rhetorical-listening-as-carceral-interruption/>.

⁴²² Click On Detroit Local 4 WDIV, “Nassar victim: Bethany Bauman statement,” YouTube Video, 3:02, April 6, 2018, <https://www.youtube.com/watch?v=7H8DWOwbJIU>.

In some testimonies, anger was not merely discursively named and described, but physiologically eruptive. These eruptive expressions of anger are a reasonable enactment of the trauma experienced by victims, but are disruptive of the judicial logics that, in most criminal legal contexts, function to eliminate and punish such enactments.⁴²³ Moreover, the permission of such enactments of anger enabled community members to call attention to how, in addition to violating and traumatizing victims, Nassar's abuse impacted entire communities and to demand accountability. One of the most striking examples of this happened amid Gwen Anderson's testimony. Anderson brought her former coach, Tom Brennan, as a support person. Brennan stood next to her while she made her statement. At one point, Brennan interrupted Anderson to speak to Nassar, demanding, "**Look at her.**"⁴²⁴ Violating standard court procedure, Nassar responded, "**I've been looking at her.**"⁴²⁵ This is the moment when the permission of emotional excess in the courtroom became most clear because, instead of chastising Brennan and Nassar for interrupting the trial, Judge Aquilina asked Brennan, "Anything else **you'd** like to say?"⁴²⁶ Brennan responded,

I have a different relationship with Larry from the standpoint that I was a coach for many years. ... He's been a mentor of mine. I've done clinics with him for years in the past. And I have probably sent well over a hundred kids to him over the years. So the guilt I feel for that is hard to fathom. So he didn't only deceive those girls, which is—honest to God that's the worst of the worst [lowers eyes, shakes head], what he did to these girls ... That's all I got to say.⁴²⁷

⁴²³ Larson, *What It Feels Like*; and McCann, "Chrysler Pulled the Trigger," 131-155.

⁴²⁴ Click On Detroit Local 4 WDIV, "Nassar victim: Gwen Anderson statement," YouTube Video, 14:25, April 6, 2018, <https://www.youtube.com/watch?v=ufOjO6SI54E>.

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid.

Judge Aquilina did not prohibit or constrain Brennan’s anger in this moment. Rather than prioritizing court procedure, Aquilina invited the disruptions, allowing Brennan to demand that Nassar pay attention to Anderson’s emotional VIS and, at the same time, allowing him to express his own emotional response to learning about Nassar’s abuse—“the **guilt I feel** for that.”⁴²⁸ By allowing Brennan to speak directly to Nassar, demand that he listen to the victims, and express his own emotional response, Aquilina allowed community harm, support, and accountability to emerge and supplement victims’ individual experiences with Nassar’s abuse. The voicing of community harm permitted in the sentencing hearing altered the common pathways along which violent judicial forces often travel to individualize violent experiences and extract them from the social conditions in which they emerged. In some cases, in her support of community members, the judge even seemed to encourage community members’ anger. The mother of Victim 105 finished her testimony and, as Aquilina attempted to proceed with the hearing, she interrupted to address Nassar, declaring, “**I hate you.**”⁴²⁹ The mother apologized to Aquilina, who responded, “That’s okay. Got anymore? **He** can take it. **He’s in chains.**”⁴³⁰ Although such disruptions are possible in courtrooms that are not arranged to enact rhetorical listening that centers victims, the direction of the eruptive anger at Nassar suggests that the support persons positioned to face Nassar experienced a confrontational emotional response that erupted as anger and disrupted judicial logics that function to contain such expression. Amidst such a physical arrangement, confrontational conduct

⁴²⁸ Ibid.

⁴²⁹ People of the State of Michigan v. Lawrence Gerard Nassar, 17-000526-FC (30th Cir. 2018): 41.

⁴³⁰ Ibid.

was made possible by positioning those testifying to face Nassar and, because the court reporter was positioned on the other side of Aquilina, the criminal legal institution was positioned to listen to all that emerged. Aquilina's allowance of support persons' testimony enabled the voices included in the sentencing hearing and listened to by the court to speak to the failure of institutions and the responsibility of communities to reckon with and prevent sexual violence, a decision that rerouted the common circulations of violence in the courtroom that would normally individualize harm and turn to the State, rather than community, for response, constituting a transjudicial space.

Attending to the physical arrangement of the courtroom to enact rhetorical listening and the material-discursive intra-actions from which the observed phenomenon emerged illuminates how the arrangement of the Nassar sentencing hearing disrupted judicial logics that diminish victim testimony and, often, retraumatize victims by taking into account the bodies at stake in each testimonial performance. That bodies were at stake in the testimony is even more evident in Rachel Denhollander's explanation of the importance of the physical arrangement of the Nassar sentencing hearing. In her memoir, Denhollander noted Aquilina's choice to position Nassar in the front of the courtroom, facing his victims, asserting, "**I was actually relieved** at that; it would make it easier to **address him**, and **I** didn't like the idea of **him** being **behind me**. **He'd** always **stood behind me** [during the abuse]."⁴³¹ The physical arrangement of the Nassar sentencing hearing positioned Nassar's victims to face their abuser, positioned bodies to ensure that they could be heard by the institution, and positioned Nassar in such a way to both

⁴³¹ Rachel Denhollander, *What Is a Girl Worth?* (New York, NY: Tyndale Momentum, 2019), 294.

symbolically and physically disrupt the violent dynamics that enabled his abuse. This arrangement disrupted both the violent interpersonal histories that characterized this sentencing hearing, but also violent judicial logics that, without disruption, often reviolate victims as they testify. Ultimately, the arrangement of the Nassar sentencing hearing constituted a meaningful transjudicial space that not only enabled victims to speak and feel heard but altered what they were able to express and how they were able to express it.

Listening to Listening and (Re)Bounding Reactions

The Nassar sentencing hearing reached many audiences because of its heavy media circulation. Considering the number of victims who provided statements, the heinousness of Nassar's abuse, live coverage of the hearing, widespread media circulation, and emergence of the case amidst the #MeToo movement's reckoning with the prevalence of sexual violence, the Nassar sentencing hearing can be considered a popular trial, a distinction afforded to judicial hearings that capture the attention of a large audience because of "the oddity of the crime," "great intensity in audience response," "timeliness," and "special media representation."⁴³² Popular trials are not only representations of trial proceedings, but rhetorical tools that "supply opportunities and materials for advancing causes, both within and without the courtroom, before, during and after the trial, by the participants themselves and by commentators."⁴³³ Victim testimony about sexual

⁴³² Robert Hariman, ed., *Popular Trials: Rhetoric, Mass Media, and the Law* (Tuscaloosa, AL: University of Alabama Press, 1993), 2.

⁴³³ *Ibid.*, 3.

violence is particularly useful for impacting viewers and advancing causes because, although all popular trials have “presence effects”⁴³⁴ that bring the past experience with violence before the eyes of “an audience that was not present at the event and yet must make some kind of judgment about it,”⁴³⁵ victim testimony about sexual violence “provokes feeling to redraw public attention back to the body when existing discourses have failed to understand and account for cases of embodied violence.”⁴³⁶ In her rhetorical analysis of the Nassar sentencing hearing, Stephanie Larson observes that the VISs spoken within had such visceral effects on a large scale because of the way that the testimony dealt with the issue of violated bodily boundaries, noting “the vast circulation of these testimonies emphasized a visceral account of violation, provoking a bodily response in audiences. Hearing testimonies like [those spoken in the Nassar sentencing hearing] over and over again prompted audiences to feel their stomachs sink, their throats tighten, or their chests burn—examples of ... ‘visceral rhetorics,’ or instances when the body responds, reacting to certain words or actions.”⁴³⁷ For those who witnessed the VISs spoken at the Nassar sentencing hearing, the discussions of bodily violation, presence effects, and visceral descriptions of the traumatic memories of embodied violence left distinct impressions, creating contact zones that worked to (re)constitute auditors as legal subjects. In this section, I map the contours of the contact zones that emerged from the mediated circulation of the Nassar sentencing hearing by attending to shared reactions to the visceral testimony and the boundaries that emerged around auditors and systems. To

⁴³⁴ Gunn, “On Speech and Public Release,” 28.

⁴³⁵ Peters, “Witnessing,” 722.

⁴³⁶ Larson, *What It Feels Like*, 127.

⁴³⁷ *Ibid.*

do so, I again turn to the rhetorical scholarship that contends scholars can map the circulation of intense public feeling through the “affix[ation] of adjectives”⁴³⁸ or “analyz[ing] the emotion words used by media and public commentators.”⁴³⁹ Tracing these adjectives and emotion words will elucidate how the presence of rhetorical listening in the Nassar sentencing hearing circulated the material-discursive intra-actions that constituted the hearing as a transjudicial space and erected collectivizing boundaries.

As was the case in the Kavanaugh confirmation hearing, the contact zones erected by the Nassar sentencing hearing were made possible by the mediated circulation of the VISs spoken within, a decision which required that Judge Aquilina allow cameras in the courtroom. The presence of cameras in the courtroom was made possible by the State of Michigan’s decision to allow cameras in the state trials and appellate courts, leaving the decision about whether or not cameras will be included up to the discretion of the judge overseeing the case.⁴⁴⁰ When the Nassar case was first assigned to her, Judge Aquilina was not inclined to allow cameras in the courtroom and attempted to significantly impact media coverage of the case. Because of the national attention that the case garnered, Aquilina issued gag orders for the attorneys and any victims and witnesses who might be involved out of concern for the fairness of the trial that she was arranging and the ability

⁴³⁸ Gunn, “On Speech and Public Release,” 14.

⁴³⁹ Jamie Landau and Bethany Keeley-Jonker, “Conductor of public feelings: An affective-emotional rhetorical analysis of Obama’s national eulogy in Tucson,” *Quarterly Journal of Speech* 104, no. 2 (2018): 171.

⁴⁴⁰ C Lassiter, “Cameras in the Courtroom? A Fair Trial Is at Stake,” *Trial* 31, no. 3 (1995): 68-72.

“to get an impartial jury.”⁴⁴¹ A group of victims sued Aquilina for the gag order that silenced their voices in the media, “which they perceived as stifling their constitutional rights and their newfound voice.”⁴⁴² However, this suit failed and, as a result, the victims expressed a concern resonant with one that emerged in the previous chapter—that the gag order had “real potential . . . to put a chilling effect on anyone who was willing to come forward” and to “give Larry control of the narrative again.”⁴⁴³ When Nassar pleaded guilty, Aquilina squelched the gag orders and decided to allow cameras in the sentencing hearing.⁴⁴⁴ As a result, “cameras crowded into the snug, carpeted space” to capture the voicing of victim experience,⁴⁴⁵ producing gavel-to-gavel coverage and contact zones which enabled victim voices to reach auditors outside of the courtroom. In some reflections about the decision to allow cameras in the courtroom, Aquilina’s decision was applauded.⁴⁴⁶ Social commentators argued that the cameras and subsequent media

⁴⁴¹ Brody, “The Army of Women,” <https://www.glamour.com/story/women-of-the-year-2018-larry-nassar-survivors>.

⁴⁴² Bonnie D. Ford, “Judgement Call,” *ESPN*, July 12, 2019, https://www.espn.com/espn/feature/story/_/id/27156746/journey-judge-rosemarie-aquilina.

⁴⁴³ *Ibid.*

⁴⁴⁴ *Ibid.*

⁴⁴⁵ Brody, “The Army of Women,” <https://www.glamour.com/story/women-of-the-year-2018-larry-nassar-survivors>.

⁴⁴⁶ Brody, “The Army of Women,” <https://www.glamour.com/story/women-of-the-year-2018-larry-nassar-survivors>; Denhollander, *What Is a Girl Worth?*; Ford, “Judgement Call,” https://www.espn.com/espn/feature/story/_/id/27156746/journey-judge-rosemarie-aquilina; and “EDITORIAL: Cameras in PA courts will allow justice to be done – and seen,” *Philadelphia Inquirer*, July 23, 2018, <https://www.inquirer.com/philly/opinion/editorials/cameras-pennsylvania-meek-mill-larry-nassar-oj-simpson-courts-court-media-20180723.html>.

circulation of the hearing inspired previously hesitant victims to come forward about the abuse that they suffered at the hand of Nassar and “serve[d] as a tool of accountability and as an amplifier to the work of justice.”⁴⁴⁷ However, other commentaries expressed hesitation amidst this applause and, in their hesitation, a refrain heard in the Kavanaugh confirmation hearing, again, emerged—that the risk of cameras in the courtroom was demonstrated in a previous high-profile case: the OJ Simpson trial. An editorial in the *Philadelphia Inquirer* referenced the Simpson trial to contrast the use of cameras in the Nassar hearing, asserting, “Judge Ito lost control of his courtroom because of the pressure that came with televising the trial.”⁴⁴⁸ Making the same connection that Senator Cornyn did when questioning Kavanaugh, the editorial cites the Simpson trial as the media phenomenon that “made judges wary of allowing cameras into their courtroom,” even as it applauded the use of cameras in the Nassar hearing as evidence that “the proceedings that ensure justice should be viewable to all.”⁴⁴⁹ These references to the disruptive force of cameras in the OJ Simpson trial amidst applause of the powerful, productive, and overwhelmingly positive force of the cameras that captured the statements of Ford and the 156 victims who testified in the Nassar sentencing hearing give me pause. The reemergence of the Simpson trial in each of these cases seems to speak to Megan Foley’s argument about “the striking endurance of the Simpson case in the mainstream American media” as “an exemplary illustration of how rhetorics of white privilege can replicate

⁴⁴⁷ “EDITORIAL: Cameras in PA courts,”

<https://www.inquirer.com/philly/opinion/editorials/cameras-pennsylvania-meeek-mill-larry-nassar-oj-simpson-courts-court-media-20180723.html>.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

themselves by operating in a serialized temporal register.”⁴⁵⁰ In the Kavanaugh confirmation hearing and the Nassar sentencing hearing, the Simpson trial operates, as it does in Foley’s analysis, to “reconstitute[] racialized subjects through a double effect of stagnation and suspense,”⁴⁵¹ serving as a stagnant example of the disruption of past technologies remedied by recent advancements and as an object of suspense that demonstrates the always present risk of cameras in the courtroom. Additionally, it might also be the case that the positive interpretation of the effects of cameras for victims expressing their experience with violence in the Kavanaugh confirmation hearing and the Nassar sentencing hearing has less to do with technology and more to do with the privileged identities of the victims and the men who caused harm in each of these cases. The emergence of the OJ Simpson trial in reflections about cameras in the Nassar sentencing hearing raises important questions about the impact of media technology in the courtroom for those who disclosing their experiences of violence and those who encounter those disclosures via mediated circulation, as well as how those impacts are influenced by the positionalities of rhetors and audience members. My pursuit of these questions guides the remainder of this section.

Although the Nassar sentencing hearing was experienced differently by differently positioned audiences, it was often characterized as a mediated phenomenon that had a visceral rhetorical effect on those who encountered it because of how the proceedings deviated from expectations of criminal legal hearings based on auditors’ past

⁴⁵⁰ Megan Foley, “Serializing Racial Subjects: The Stagnation and Suspense of the O.J. Simpson Saga,” *Quarterly Journal of Speech* 96, no. 1 (2010): 70.

⁴⁵¹ *Ibid.*

histories of contact. To call the Nassar sentencing hearing a transjudicial space is not to suggest that the presence of rhetorical listening changed the function of the sentencing hearing—Nassar was still sentenced to life in prison. Rather, the hearing can be considered transjudicial because of the reactions that emerged due to the number of VISs and the affective-emotional expressions permitted in the sentencing hearing which pointed to the diminishing and silencing judicial features that many auditors expected to emerge amidst the Nassar sentencing hearing and perceptions of how their absence changed the judicial proceedings. Popular news sources emphasized the affective-emotional energy that emerged amidst the hearing, naming the “anger,”⁴⁵² “rage,”⁴⁵³

⁴⁵² Brody, “The Army of Women,” <https://www.glamour.com/story/women-of-the-year-2018-larry-nassar-survivors>; Julie Mack, “Larry Nassar’s Victims slam Michigan State, USA Gymnastics at sentencing hearing,” *Advance Local Media*, January 19, 2018, https://www.al.com/news/2018/01/larry_nassars_victims_slam_mic.html; Laura Mazade, “‘By the way, enjoy hell’: Read the words of the many women who confronted Larry Nassar,” *Lansing State Journal*, January 16, 2018, <https://www.lansingstatejournal.com/story/news/2018/01/16/larry-nassar-sentencing-victim-statements/1037631001/>; and Molly Olmstead, “Victims Confront USA Gymnastics Doctor Larry Nassar in Court,” *Slate*, January 16, 2018, <https://slate.com/news-and-politics/2018/01/larry-nassar-sentencing-victims-testify-impact-abuse.html>.

⁴⁵³ Brody, “The Army of women,” <https://www.glamour.com/story/women-of-the-year-2018-larry-nassar-survivors>; Will Hobson, “At Larry Nassar sentencing hearing, a parade of horror and catharsis,” *Washington Post*, January 18, 2018, https://www.washingtonpost.com/sports/olympics/at-larry-nassar-sentencing-hearing-a-parade-of-horror-and-catharsis/2018/01/18/19bed832-fc55-11e7-8f66-2df0b94bb98a_story.html; D’Arcy Maine, “Hear Larry Nassar’s victims in their own (powerful and brave) words,” *ESPN*, January 18, 2018, https://www.espn.com/espnw/voices/story/_/id/22145563/hear-larry-nassar-victims-their-own-powerful-brave-words; Chris McGonigal and Alanna Vagianos, “30 Photos of Larry Nassar Survivors That Show The Rage And Resilience Of Women,” *Huffington Post*,

January 24, 2018, https://www.huffpost.com/entry/30-photos-larry-nassar-survivors_n_5a68bd3ce4b0dc592a0eb5f3; Edwin Rios, “‘You Were Building an Army of Survivors’: The Most Horrifying and Inspiring Testimony from the Larry Nassar Hearing,” *Mother Jones*, January 19, 2018, <https://www.motherjones.com/crime-justice/2018/01/you-were-building-an-army-of-survivors-the-most-horrifying-and-inspiring-testimony-from-the-larry-nassar-hearing/>; and Waldman, “Why We Didn’t Listen,” <https://slate.com/culture/2018/01/why-we-didnt-listen-to-larry-nassars-victims.html>.

“fury,”⁴⁵⁴ “anguish,”⁴⁵⁵ and “horror”⁴⁵⁶ that accompanied the victims’ “confrontation”⁴⁵⁷ of Nassar via, what they called, “searing,”⁴⁵⁸ “fierce,”⁴⁵⁹ “defiant,”⁴⁶⁰ “gut-wrenching,”⁴⁶¹

⁴⁵⁴ Mack, “Larry Nassar’s victims slam,”

https://www.al.com/news/2018/01/larry_nassars_victims_slam_mic.html.

⁴⁵⁵ Dwight Adams, “Here are some of the most empowering moments from the Larry Nassar victim testimony,” *IndyStar*, January 23, 2018,

<https://www.indystar.com/story/news/2018/01/23/here-some-most-empowering-moments-larry-nassars-victim-testimony/1057306001/>.

⁴⁵⁶ Hobson, “At Larry Nassar sentencing hearing,”

https://www.washingtonpost.com/sports/olympics/at-larry-nassar-sentencing-hearing-a-parade-of-horror-and-catharsis/2018/01/18/19bed832-fc55-11e7-8f66-2df0b94bb98a_story.html; and Waldman, “Why We Didn’t Listen,”

<https://slate.com/culture/2018/01/why-we-didnt-listen-to-larry-nassars-victims.html>.

⁴⁵⁷ Duberman, “The Women Who Built The Case,” https://www.huffpost.com/entry/andrea-munford-angela-povilaitis-larry-nassar_n_5c423848e4b0a8dbe1714daf?jnk; Olmstead,

“Victims Confront USA Gymnastics Doctor,” *Slate*, <https://slate.com/news-and-politics/2018/01/larry-nassar-sentencing-victims-testify-impact-abuse.html>; Vagianos, “The Hearing That Forced,”

https://www.huffpost.com/entry/larry-nassar-hearing-one-year-later_n_5c2f8280e4b0407e908b0982; and Waldman, “Why We Didn’t Listen,”

<https://slate.com/culture/2018/01/why-we-didnt-listen-to-larry-nassars-victims.html>.

⁴⁵⁸ Adams, “Here are some of the most empowering moments,”

<https://www.indystar.com/story/news/2018/01/23/here-some-most-empowering-moments-larry-nassars-victim-testimony/1057306001/>.

⁴⁵⁹ Borge, “Aly Raisman’s Powerful Testimony,” <https://www.instyle.com/news/aly-raismain-larry-nassar-court-testimony>;

Victoria Lopatka, “Judge Aquilina’s Sentencing of Larry Nassar was within her judicial rights,” *The Peak*, February 14, 2018, <https://the-peak.ca/2018/02/judge-rosemarie-aquilinas-sentencing-of-larry-nassar-was-within-her-judicial-rights/>;

and Waldman, “Why We Didn’t Listen,”

<https://slate.com/culture/2018/01/why-we-didnt-listen-to-larry-nassars-victims.html>.

⁴⁶⁰ Waldman, “Why We Didn’t Listen,” <https://slate.com/culture/2018/01/why-we-didnt-listen-to-larry-nassars-victims.html>.

“horrifying,”⁴⁶² “powerful,”⁴⁶³ “damning,”⁴⁶⁴ “harrowing,”⁴⁶⁵ “devastating,”⁴⁶⁶ and “cathartic”⁴⁶⁷ testimony. This use of vivid, emotional, and sensory language to describe

⁴⁶¹ Vagianos, “The Hearing That Forced The World To Listen,”

https://www.huffpost.com/entry/larry-nassar-hearing-one-year-later_n_5c2f8280e4b0407e908b0982.

⁴⁶² Rios, “You Were Building an Army of Survivors,”” <https://www.motherjones.com/crime-justice/2018/01/you-were-building-an-army-of-survivors-the-most-horrifying-and-inspiring-testimony-from-the-larry-nassar-hearing/>.

⁴⁶³ Borge, “Aly Raisman’s Powerful Testimony,” <https://www.instyle.com/news/aly-raismain-larry-nassar-court-testimony>; Maine, “Hear Larry Nassar’s victims,” https://www.espn.com/espnw/voices/story/_/id/22145563/hear-larry-nassar-victims-their-own-powerful-brave-words; Rios, “You Were Building an Army of Survivors,”” <https://www.motherjones.com/crime-justice/2018/01/you-were-building-an-army-of-survivors-the-most-horrifying-and-inspiring-testimony-from-the-larry-nassar-hearing/>; and Waldman, “Why We Didn’t Listen,” <https://slate.com/culture/2018/01/why-we-didnt-listen-to-larry-nassars-victims.html>.

⁴⁶⁴ Rios, “You Were Building an Army of Survivors,”” <https://www.motherjones.com/crime-justice/2018/01/you-were-building-an-army-of-survivors-the-most-horrifying-and-inspiring-testimony-from-the-larry-nassar-hearing/>.

⁴⁶⁵ Hobson, “At Larry Nassar sentencing hearing,” https://www.washingtonpost.com/sports/olympics/at-larry-nassar-sentencing-hearing-a-parade-of-horror-and-catharsis/2018/01/18/19bed832-fc55-11e7-8f66-2df0b94bb98a_story.html.

⁴⁶⁶ Hobson, “At Larry Nassar sentencing hearing,” https://www.washingtonpost.com/sports/olympics/at-larry-nassar-sentencing-hearing-a-parade-of-horror-and-catharsis/2018/01/18/19bed832-fc55-11e7-8f66-2df0b94bb98a_story.html.

⁴⁶⁷ Hobson, “At Larry Nassar sentencing hearing,” https://www.washingtonpost.com/sports/olympics/at-larry-nassar-sentencing-hearing-a-parade-of-horror-and-catharsis/2018/01/18/19bed832-fc55-11e7-8f66-2df0b94bb98a_story.html; and Melissa Jeltsen, “There’s A Line Between Justice and

the hearing is not surprising— the amplification and aggregation of the experience of the 156 testifying victims elevated the volume and appraisals of angry expressions that were felt in the bodies of auditors.⁴⁶⁸ However, the continuous focus on the affective-emotional and visceral nature of this testimony highlights how mediated audience came to understand the disruptions of judicial features that were happening in the Nassar sentencing hearing. For many of us, our expectations of what judicial procedures, technologies, and logics do are based upon “past histories of contact” with the criminal legal system or media portrayals of criminal legal responses to sexual violence. For victims of sexual violence or those who are aware of their risk of being victimized, mediated public hearings impact whether or not victims attempt to explain their experience to legal authorities because “many assumptions about what counts as rape can be traced back to how legal outcomes in rape cases are taken up in public conversation.”⁴⁶⁹ Aquilina’s permission of such anger and caring responses to it disrupted the threat of diminishment and dismissal that victims have come to expect from portrayals of and encounters with criminal legal responses to sexual violence. Commentators also observed that the affective-emotional and visceral reactions had sticking power, in large part, because of the way that these expressions violated expectations of judicial responses to sexual violence. Employing a particularly sensory

Vengeance. Larry Nassar’s Judge Crossed It,” *Huffington Post*, January 25, 2018, https://www.huffpost.com/entry/larry-nassar-judge_n_5a6a204ee4b06e25326595eb.

⁴⁶⁸ Winderman, “Anger’s Volumes,” 329.

⁴⁶⁹ Larson, *What It Feels Like*, 126. For more information about the impact of heavily mediated trials on public perceptions of the legal system’s capacity to respond to sexual violence, also see Corrigan, *Up Against A Wall*, 81.

description, one news commentator asserted that “the stench of the Nassar scandal” prompted USA Gymnastic “sponsors [to] back away from the organization.”⁴⁷⁰ Additionally, many media commentators noted that the felt experience of taking in the VISs in this case motivated auditors to take particular action, calling attention to how the powerful testimony led to collective judgements about the appropriateness of emotional response to Nassar’s abuse, calling it “the kind of thing that makes level-headed people bay for blood.”⁴⁷¹ *Glamour* magazine even found evidence that, “following the case, the Rape, Abuse, and Incest National Network saw a 46 percent increase in calls to its National Sexual Assault Hotline.”⁴⁷² This report of increased calls to RAINN is interesting and resonates with the 147 percent increase in calls following the Kavanaugh confirmation hearing. Again, an increase in calls to the national anti-sexual violence organization does not necessarily suggest that, following the mediated circulation of testimony in each of these hearings, victims wanted to report their experiences with sexual violence. However, it does suggest that the affective-emotional and visceral rhetoric that emerged amidst the VISs in the Nassar sentencing hearing had a similar effect to the silencing of affect-emotion and viscerality in the Kavanaugh confirmation hearing—it got under auditors’ skin and insighted a collectivizing response, evidenced by the number of victims who sought out RAINN to connect with support, services, and resources. Based on past histories of contact with a criminal legal system that often

⁴⁷⁰ Klayman, “‘Stench’ of Nassar scandal,” <https://www.reuters.com/article/uk-gymnastics-usa-nassar-sponsors-idUKKBN1FE2X8>.

⁴⁷¹ Bruce Arthur, “Fault lines drawn in sex abuse scandal,” *Toronto Star*, February 10, 2018.

⁴⁷² Brody, “The Army of women,” <https://www.glamour.com/story/women-of-the-year-2018-larry-nassar-survivors>.

responds to sexual violence in utterly inadequate and devastatingly retraumatizing ways, these reports and social commentaries affixed adjectives to name and applaud the unexpected presence of affect-emotion amidst the sentencing hearing and the ways that such expression moved audiences, reactions that note the observable presence of a transjudicial space.

Even as many of these reactions applauded the deviation from criminal legal tradition that allowed rhetorical listening to emerge, some commentators expressed concern about the way that the Nassar sentencing hearing and its circulation via media technologies disrupted criminal legal notions of decorum, objectivity, and retribution, critiques that also point to observations of the hearing as a transjudicial space. Many media commentators highlighted Aquilina's inappropriate judicial demeanor and bias against Nassar throughout the hearing, calling her the "ugly," "vindictive," "avenging angel of womanhood"⁴⁷³ and highlighting moments in which they identified "vehemence" and "bloodthirstiness"⁴⁷⁴ in her demeanor and decision-making. For many, these characteristics disrupted not just the judicial features that function to silence victim testimony, but those that are necessary for fulfilling a defendant's guaranteed right to due process and Eighth Amendment right to not have excessive cruel and unusual punishments inflicted by the courts. Some saw Aquilina's disposition as a sign that she

⁴⁷³ Justin Dillon, "When Investigators Do Too Little And Judges Do Too Much: Some Thoughts On Larry Nassar," *Above the Law*, February 8, 2018, <https://abovethelaw.com/2018/02/when-investigators-do-too-little-and-judges-do-too-much-some-thoughts-on-larry-nassar/>.

⁴⁷⁴ Jeltsen, "There's A Line Between Justice and Vengeance," https://www.huffpost.com/entry/larry-nassar-judge_n_5a6a204ee4b06e25326595eb.

was looking for recognition and celebrity status amidst a highly-publicized judicial proceeding, calling attention to her media appearances on *Saturday Night Live* and the *Today Show* following Nassar’s sentencing and claiming that, based on her demeanor, Aquilina ought to be “considered an intemperate show pony who desperately sought attention and prominence.”⁴⁷⁵ Others, however, seemed to point to how Aquilina’s conducting of the sentencing hearing amidst the cameras in the courtroom exposed not only the interpersonal violence committed by Nassar, but the state-sanctioned violence committed by courts and prisons. Amidst conversation about Aquilina’s demeanor and emotionality in sentencing Nassar, one news source quoted a tweet from David von Ebers, a legal editor, who asserted, “If you think the Nassar judge's comments were inappropriate or even unusual, you should go down to 26th and California in Chicago and listen in on sentencing hearings in murder cases.”⁴⁷⁶ This defense of Aquilina seems to indicate that judicial emotion and bias are both appropriate and built into the criminal legal system and notions of judicial authority—a meaningful realization made possible by the circulation of the sentencing hearing and the contact zones where audiences beyond the courtroom encountered it. Although the aforementioned commentator pointed to the commonality of Aquilina’s conduct, others expressed concern about Aquilina’s permission of statements from victims and their family members that proclaimed hope that Nassar would experience violence in prison and Aquilina’s own expression of such hopes when, while handing down Nassar’s sentencing, “she said she was honored to

⁴⁷⁵ Scott H. Greenfield, “Judge Aquilina’s 156 Errors,” *Simple Justice: A Criminal Defense Blog*, December 19, 2018, <https://blog.simplejustice.us/2018/12/19/judge-aquilinas-156-errors/>.

⁴⁷⁶ Lopatka, “Judge Aquilina’s Sentencing of Larry Nassar,” <https://the-peak.ca/2018/02/judge-rosemarie-aquilinas-sentencing-of-larry-nassar-was-within-her-judicial-rights/>.

sentence Nassar to die in prison and suggested he deserved to be sexually assaulted himself.”⁴⁷⁷ For these commentators, expressions that framed prison violence and sexual violence as permissible because of Nassar’s history of abuse have no place in criminal legal proceedings which, we are told, function to prosecute precisely these kinds of violence. Aquilina’s permission and statement of wishes for Nassar to experience the very violence that he was being prosecuted for makes present a fact that normally remains unacknowledged in public discourse and, particularly, in courtroom settings—that “carceral violence is sexual violence.”⁴⁷⁸ Those critiquing Aquilina’s conduct point to important moments in the sentencing hearing that reveal the boundaries that determine what kinds of violence are made legible in the criminal legal system and which violences are imposed and sanctioned by it.⁴⁷⁹

Public criminal cases often work to (re)constitute legal subjects in particular ways, creating and severing affective ties that connect individuals to the criminal legal institution, but the Nassar sentencing hearing created a contact zone that (re)drew boundaries around individuals, collectivities, and institutions in unique and violent ways.⁴⁸⁰ The progression of the Nassar sentencing hearing resulted in the renegotiation of

⁴⁷⁷ Jeltsen, “There’s A Line Between Justice and Vengeance,”

https://www.huffpost.com/entry/larry-nassar-judge_n_5a6a204ee4b06e25326595eb.

⁴⁷⁸ Mack and McCann, “Critiquing state and gendered violence,” 342.

⁴⁷⁹ Lewis, “Troubling the Terms of Engagement,” <https://cfshrc.org/article/troubling-the-terms-of-engagement-queer-rhetorical-listening-as-carceral-interruption/>.

⁴⁸⁰ Rosi Bradotti, “The politics of ‘life itself’ and new ways of dying,” in *New materialisms: Ontology, agency, and politics*, eds. Diana Coole and Samatha Frost (Durham, NC: Duke University Press, 2010), 208; Harris, *Beyond the Rapist*; and Johnson, “From Rhetorical Eavesdropping,” 125.

the boundaries between individual and collective bodies. These boundaries emerged in response to Aquilina's arrangement of the testimonial space, the anger catalyzed by that arrangement, and the shared experience of a criminal legal space disrupted to facilitate listening. The constitution of such a space was notable, but not particularly surprising considering the individual privilege and status of many of Nassar's victims, a feature of the hearing indicated by scholars and news sources.⁴⁸¹ In her reading of the Nassar case, Harris observes, "several of the women who were assaulted were competing in international venues where gymnasts and other athletes were symbols of their home countries. To discount their stories—and suggest that the women were lying—would call into question the character of the United States, not simply the individual athletes."⁴⁸² That these women were, collectively, symbols of the United States made it, in some ways, easier to justify creating a space where they could all be heard. The Nassar sentencing hearing, with these features in mind, bears a striking resemblance to another case in which rhetorical listening was physically arranged to allow victims to testify to their experience with sexual violence. Katherine Mack details the South African Truth and Reconciliation Commission's creation of "three 'special hearings on women'"

⁴⁸¹ Borge, "Aly Raisman's Powerful Testimony," <https://www.instyle.com/news/aly-raismain-larry-nassar-court-testimony>; Brody, "The Army of women," <https://www.glamour.com/story/women-of-the-year-2018-larry-nassar-survivors>; Gibson, "A Rupture in the Courtroom," 1-24; Harris, *Beyond the Rapist*; Klayman, "'Stench' of Nassar scandal," <https://www.reuters.com/article/uk-gymnastics-usa-nassar-sponsors-idUKKBN1FE2X8>; Vagianos, "The Hearing That Forced The World To Listen," https://www.huffpost.com/entry/larry-nassar-hearing-one-year-later_n_5c2f8280e4b0407e908b0982; and Waldman, "Why We Didn't Listen," <https://slate.com/culture/2018/01/why-we-didnt-listen-to-larry-nassars-victims.html>.

⁴⁸² Harris, *Beyond the Rapist*, 131.

intended to amplify the voices of sexual violence victims during South African Apartheid.⁴⁸³ Of the creation of these hearings, she concluded, “while victims’ public storytelling ostensibly promoted their healing, the restoration of their dignity, and their ability to perform as citizens in the new South Africa, it also served the nation-building goals of the commission.”⁴⁸⁴ Both the Truth and Reconciliation Commission’s hearings and the Nassar sentencing hearing established a contact zone between victims conveying their experience and auditors, (re)drawing collective boundaries. From this collectivity, due to the international status of some victims, emerged a national body. With boundaries made up of this self-proclaimed “army of survivors,” the individual bodily boundaries were transformed into something that looked a lot like a national border. Rhetorical listening in courtrooms, particularly when enacted amidst victim testimony, can be disruptive and constitutive of transjudicial spaces. However, these transjudicial emergences should not be applauded as progressive or unproblematic, as judicial disruption is often enacted and circulated with the intention of tightly tethering us to the institutions that we were inclined to disrupt in the first place.

When court proceedings concerned with matters of sexual and gendered violence are widely circulated in the media, they produce boundary-making contact zones where audience members encounter communication about such violence. Not all auditors who witness the criminal legal renderings of violent experiences will judge those proceedings or find themselves affected in the same way. However, in the case of the Nassar

⁴⁸³ Katherine Mack, “Hearing Women’s Silence in Transitional South Africa: Achmat Dangor’s *Bitter Fruit*,” in *Silencing and Listening as Rhetorical Arts*, eds. Cheryl Glenn and Krista Ratcliffe (Carbondale, IL: Southern Illinois University Press, 2011), 201.

⁴⁸⁴ *Ibid.*, 204.

sentencing hearing, where the transjudicial constitution of the hearing permitted voluminous affective-emotional and visceral expression about the violation of bodily boundaries, many auditors experienced a visceral reaction. Because of the strength of that reaction, auditors' expressions suggested that they felt moved, undone, or like their own boundaries have been permeated, resulting in their own renegotiation of the boundaries between individuals, collectivities, and institutions and reconstitution as legal subjects.

Conclusion

Larry Nassar was sentenced to 175 years in prison on January 24, 2018. Although the criminal case concluded over four years ago, the circulation of victims' renderings of Nassar's violence has continued and taken the form of biographies, Netflix documentaries, and most recently Senate Judiciary Committee testimony. That the women and girls who testified against Nassar were heard in the mediated sentencing hearing set the stage for a continuation of their advocacy for institutional reform. In this article, I outline the constitution of the Nassar sentencing hearing as a transjudicial space and argue for the importance of a conceptualization of transjudicial spaces to add conceptual precision to conversations about the boundaries of courtrooms and the disruptive enactments that permeate them. Attunement toward the permeability of judicial spaces and what emerges from the disruption of judicial procedures may translate into an overt effort to consider the sensations and feelings that accompany encounters with judicial spaces, extrajudicial procedure, and the different histories from which they emerge as significant analytical starting points. Transjudicial spaces will prove useful in identifying the enactment and disruption of violence made possible by rhetorical listening

in institutional spaces. Simply, transjudicial spaces provides a way of identifying, examining, and evaluating the moments when the rhetorical tools that we proffer as hopeful and institutional violences become entangled.

As I work to finish my analysis, four victims are testifying in front of the Senate Judiciary Committee about the abuse that they suffered at the hands of Nassar and the FBI's failure to investigate their allegations, "including omitted information, false statements and outright lies to inspector general investigators ... [that] allowed Nassar to continue to abuse more than 100 victims before his eventual arrest."⁴⁸⁵ Just months before the Senate Judiciary Committee hearing, Simone Biles explained that she decided to compete in the 2021 Tokyo Olympics because "as the only remaining survivor [of Nassar's abuse] still competing, she hopes her presence is a visible and constant reminder of what [USA Gymnastics] still owes all survivors."⁴⁸⁶ I mention these extensions of the action called for by victims in the Nassar sentencing hearing because, in many ways, calls for institutional accountability following a criminal proceeding are rare. The criminal legal system functions to individuate crimes and punish the person responsible for harm. In this chapter, I do not intend to offer a general map or set of guidelines that can be used to arrange rhetorical listening or to argue that it ought to be arranged amidst allegations of sexual violence. Rather, I offer an account of the significant and unique ways that

⁴⁸⁵ Danielle Campoamor, "Senators applauded Nassar's victims for being 'strong' and 'brave.' They shouldn't have to be," *The Lily*, September 15, 2021, <https://www.thelily.com/senators-applauded-nassars-victims-for-being-strong-and-brave-they-shouldnt-have-to-be/>.

⁴⁸⁶ Alice Park, "'It's Been a Really Stressful Olympics.' Why Simone Biles Withdrew From the Gymnastics Team Event," *Time*, July 27, 2021, <https://time.com/6084384/why-simone-biles-out-team-event-silver/>.

judicial features were disrupted in this case to create a space where the institution was arranged to listen to victims and victims felt heard, as well as the consequences of such arrangement.

Transjudicial spaces also help rhetorical scholars understand how the entanglement between efforts to protect victim rights and carceral logics become and remain intertwined amidst public criminal court proceedings. Even as the Nassar case revealed how the criminal legal system consistently fails victims, it was met with calls for reinvestment in state responses to sexual and gendered violence. In the Nassar sentencing hearing, the amplification and aggregation of victim voices,⁴⁸⁷ whether their testimony was legally relevant or not, demonstrated the potential for diminishing judicial features to be disrupted by the enactment of rhetorical listening that centered victims. Yet, even amidst discussions about the rarity of such treatment of victim testimony and the ways that the criminal legal system's typical proceedings would have silenced these voices, those who witnessed the hearing recalcified the longstanding relationship between victim testimony and the carceral state.⁴⁸⁸ Simply put, Nassar's victims convinced those who witnessed their testimony that, if you are a victim of sexual violence, "the state cannot not save you"⁴⁸⁹ while simultaneously invigorating calls for retributive and carceral solutions to sexual violence. These seemingly contradictory messages often coexist in anti-violence work led by white feminists and, as this case study and my previous

⁴⁸⁷ Winderman, "Anger's Volumes," 327-346.

⁴⁸⁸ Gruber, *The Feminist War on Crime*; and Mack and McCann, "Critiquing state and gendered violence," 329-344.

⁴⁸⁹ Mack and McCann, "Critiquing state and gendered violence," 331.

analysis of the Kavanaugh confirmation hearing indicate, their entanglement ought to give us pause. In the next chapter, I will detail the emergence of transjudicial spaces in criminal court hearings held on Zoom during the COVID-19 pandemic, attending to how the evocation, adaptation, and disruption of judicial procedures, technologies, and logics in these cases worked to make the homes, cars, and workplaces from which court participants appeared feel like courtrooms.

Chapter Four
“This is a courtroom”:
Transjudicial Matters in Zoom Court Hearings

Long before buzzwords like “viral spread,” “isolation,” and “unprecedented” emerged to explain the COVID-19 pandemic, public health and legal experts used this language to explain the devastating physical and mental health effects of intimate partner violence and mass incarceration.⁴⁹⁰ Although these public health crises existed long before COVID-19 and pandemic protocols, their spread was exacerbated by the stay-at-home orders that increased economic precarity and decreased social support and services for victims of intimate partner violence, as well the airborne virus that increased the risk that the always dire consequences of arrest will be fatal.⁴⁹¹ One of my central premises, following anti-carceral and critical legal research from scholars like Angela Davis, Kimberlé Crenshaw, and Ruth Wilson Gilmore, is that the U.S. criminal legal system is

⁴⁹⁰ Linda Chambliss, “Domestic Violence: A Public Health Crisis,” *Clinical Obstetrics and Gynecology* 40, no. 3 (1997): 630-638; David Cloud, “On Life Support: Public Health in the Age of Mass Incarceration,” *Vera Institute of Justice*, November 2014, <https://www.vera.org/publications/on-life-support-public-health-in-the-age-of-mass-incarceration#:~:text=Mass%20incarceration%20is%20one%20of,illness%20than%20the%20general%20population>; and Leigh Goodmark and Aya Gruber, “Domestic Violence Is Also a Virus,” *The Gender Policy Report*, April 21, 2020, <https://genderpolicyreport.umn.edu/domestic-violence-is-also-a-virus/>.

⁴⁹¹ Goodmark and Gruber, “Domestic Violence,” <https://genderpolicyreport.umn.edu/domestic-violence-is-also-a-virus/>; Aya Gruber, “The Carceral State Will Not Be Feminist,” *The Gender Policy Report*, August 4, 2020, <https://genderpolicyreport.umn.edu/the-carceral-state-will-not-be-feminist/>; and Anant Kumar, “COVID-19 and Domestic Violence: A Possible Public Health Crisis,” *Journal of Health Management* 22, no. 2 (2020): 192-196.

built upon white supremacy.⁴⁹² Thus, the deteriorating health impacts of both intimate partner violence and mass incarceration disproportionately fall upon Black and Brown Americans. In response to stay-at-home orders exacerbating intimate partner violence, rampant viral spread in jails and prisons, and defendants' Sixth Amendment right to a speedy trial, courts across the country began holding virtual hearings via Zoom to mitigate the public health threat posed by policing, prosecution, and prisons in the time of COVID-19.

Upon the emergence of Zoom court hearings, court authorities, anti-violence advocates, social commentators, and scholars raised questions and concerns about definitions of presence, credibility, and the impact of the communicative environment on judicial decision-making. These concerns marked Zoom court's functions and effects as uniquely rhetorical problems centering around, in many ways, notions of decorum, or "the rules of conduct guiding the alignment of signs and situations, or texts and acts, or behavior and place"⁴⁹³ which emerge as "an embodied social force that organizes the spectacular and the mundane"⁴⁹⁴ in relation to normative social standards, rhetorical situations, and power dynamics. For defendants, Zoom hearings posed a risk to "the

⁴⁹² Crenshaw, *On Intersectionality*; Davis, *Are prisons obsolete?*; and Gilmore, *Golden gulag*.

⁴⁹³ Robert Hariman, "Decorum, Power, and the Courtly Style," *Quarterly Journal of Speech* 78, no. 2 (1992): 156.

⁴⁹⁴ Kimberlee Pérez and Daniel C. Brouwer, "The Performance Space: Potentialities and Ambivalences in the Performance of Queer Decorum," *Text and Performance Quarterly* 30, no. 3 (2010): 317.

accused’s right ‘to be confronted by witnesses.’”⁴⁹⁵ For attorneys and judges, conducting judicial business on screens raised concerns that screens would hinder perceptions of “demeanor and body language” necessary for ascertaining defendant, witness, or victim credibility leading one Minnesota judge to question, “how can I tell if a witness is credible if I can’t see them sweat?” Perceptions of credibility often sway judicial decision-making and, in virtual hearings, threaten to significantly impact criminal legal proceedings. In fact, a study published prior to the COVID-19 pandemic found that when bail hearings are conducted virtually, judges order 51% higher bail than they do in physical courtrooms.⁴⁹⁶ This effect is striking, particularly during a pandemic, because higher bails increase the likelihood that defendants will be held in detention pending their trial and disproportionately impact defendants of color and their families.⁴⁹⁷ Zoom court hearings raise questions and concerns about presence, credibility, and decorous conduct that mark this recent transformation of criminal legal settings as a particularly rhetorical phenomenon.

Doing research about the functions and effects of court proceedings offers significant contributions to both rhetorical studies and critical legal scholarship by

⁴⁹⁵ Scigliano, “Zoom Court Is Changing,

<https://www.theatlantic.com/magazine/archive/2021/05/can-justice-be-served-on-zoom/618392/>.

⁴⁹⁶ Shari Seidman Diamond, Locke E. Bowman, Manyee Wong, and Matthew M. Patton, “Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions,” *Journal of Criminal Law and Criminology* 100, no. 3 (2010): 869-902.

⁴⁹⁷ Savanna Jones, “Ending Cash Bail is a Women’s Rights Issue,” *George Town Law* (2020): 1-7; Camille Squires, “Covid Was Supposed to Cut Jail Time. Not for Those Awaiting Trial,” *Bloomberg News*, April 29, 2021, <https://www.bloomberg.com/news/articles/2021-04-29/covid-is-making-pretrial-detention-even-longer>; and Thuma, *All Our Trials*.

attending to the unique institutional and technological context of Zoom hearings and their disparate legal effects. This research contributes to the important work feminist rhetorical scholars have done to explain how court participants' individual communicative choices impact whether or not they are heard in legal settings by focusing on how particular judicial features function to permit or contain expression.⁴⁹⁸ Additionally, it advances a call for rhetorical fieldwork that focuses on digital communication which "demands that rhetoricians [broaden their approaches to] attend to the contexts that generate [and are generated by] online exchanges."⁴⁹⁹ Moreover, qualitative research attentive to criminal legal settings makes necessary contributions to critical legal studies scholarship, answering Angela Davis' call for "racial impact studies of criminal legal proceedings which will indicate whether, and to what extent, disparate treatment of similarly situated victims and defendants is based on race."⁵⁰⁰ Because victim and defendant race are not recorded in relation to the outcomes of criminal legal proceedings, these racial impact studies require approaches that place the researcher in the world to observe disparate treatment in U.S. courtrooms.

⁴⁹⁸ Gibson, "A Rupture in the Courtroom," 1-24; Larson, "Everything inside me was silenced," 123-144; Larson, *What It Feels Like*; Mack and McCann, "Critiquing state and gendered violence," 329-344; Mack and Na'puti, "Our Bodies Are Not *Terra Nullius*," 347-370; McKinnon, "Citizenship and the Performance of Credibility," 205-221; Rentschler, *Second Wounds*; Schuster, *The Victim's Voice*; and Schuster and Proppen, *Victim Advocacy in the Courtroom*.

⁴⁹⁹ Lisa Silvestri, "Context Drives Method: Studying Social Media Use in a War Zone," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (University Park, PA: Penn State University Press, 2016): 165-166.

⁵⁰⁰ Davis, "Prosecution and Race," 54.

In this chapter, I respond to these calls by identifying the circulation of judicial features beyond physical courtrooms and the disruption of judicial features by extrajudicial phenomena in Zoom court hearings by using approaches offered by rhetorical criticism, rhetorical field methods, and qualitative research methods to examine my fieldnotes collected during my 600+ hours of fieldwork as a virtual court observer in Minnesota courtrooms. Within, I map how material-discursive judicial features that organize decorous conduct in physical court proceedings were evoked and adapted to render them functional in Zoom court hearings, making the homes, cars, and workplaces from which court participants appeared feel like courtrooms and constituting what I call transjudicial spaces. I conclude that transjudicial spaces emerge from three interlocking phenomena. First, residues of recognizably judicial structures, individuals' prior experiences with the criminal legal system, standards of decorum in judicial spaces, and local histories of police and prosecutorial violence in the Twin Cities shaped the materialization of judicial matterings in the virtual space of Zoom court. Second, the formal procedures, technologies, and logics characteristic of courtrooms were commonly referenced, adapted, and enacted in Zoom court hearings to catalyze material-discursive intra-actions that evoked notions of court decorum and made the couches, cars, and break rooms from which individuals appeared *feel* like courtrooms. Finally, the circulation of judicial procedure beyond courtrooms via Zoom court hearings erected contact zones that necessarily (re)constituted boundaries that determine the treatment of legal subjects, the enactment of court procedure, and the legally meaningful differences between interpersonal violence and state violence.

I begin conceptualizing transjudicial spaces by situating this study within feminist communication studies, rhetorical notions of decorum, qualitative research methods, critical legal studies, and rhetorical field methods. Then, I use the three tenets of transjudicial spaces to analyze my fieldnotes and experience from my 600+ hours of Zoom court observation in Hennepin, Ramsey, and Washington counties in Minnesota. Finally, I conclude by offering several implications for the conceptualization of transjudicial spaces regarding its potential for identifying the emergence of judicial boundaries, logics, and violences beyond courtrooms and its use for rhetorical theorists interested in other cases where institutional features are circulated beyond their institutional settings.

(In)Decorous Judgements: Speech, Situations, and Social Forces

In February 2020, I began conducting preliminary fieldwork as a legal observer in Minnesota courtrooms with Women Are In The Court House (WATCH), a nonprofit organization that evaluates the criminal legal system's responsiveness to sexual and gendered violence. Initially, I intended to examine how physical features within courtrooms amplify and diminish victim voices. In March 2020, my fieldwork abruptly halted as courtrooms across the country closed to limit the spread of COVID-19. For many months after, courtrooms remained inaccessible to any unnecessary personnel and the public. However, in September 2020, as court proceedings transitioned online, WATCH volunteers were again welcomed back into Minnesota courtrooms, but instead of observing from a courtroom gallery, we observed from disparate places via Zoom. Beyond the boundaries of a physical courtroom, judicial procedures, technologies, and

logics moved differently to enforce judicial rules of decorum for those who appeared for court remotely, raising questions and concerns about the significance of judicial spaces, the function of criminal legal rhetoric, and the capacity for rendering justice on virtual platforms.

How criminal proceedings are conducted and arranged to ensure orderly conduct in Zoom court hearings raises questions about decorum because adherence to the embodied social forces that organize conduct is a high stakes requirement in criminal legal proceedings. Generally, rhetorical scholars conceptualize decorum as a “persuasive resource available to rhetors who must craft discourse that will be judged appropriate”⁵⁰¹ made up of “standards of appropriateness that make some topoi, modalities of communication, and subject positions appropriate while invalidating others.”⁵⁰² Renderings of decorum date back to the works of “Aristotle, Demetrius, Cicero, Horace, Quintilian, Longinus, Augustine,” and other classical scholars⁵⁰³ who grounded their understanding of decorum “in a stable social code which specified that dramatic characters should not speak urbanely if they are rustics, poets should not use pedestrian words for heroic subjects, and orators should not discuss weighty matters in an offhand manner.”⁵⁰⁴ Despite significant disagreements about rhetorical concepts and principles amongst “canonical rhetorical theorists from antiquity to the premodern age,” these

⁵⁰¹ Christopher M. Duerringer, “Dis-Honoring the Dead: Negotiating Decorum in the Shadow of Sandy Hook,” *Western Journal of Communication* 80, no. 1 (2016): 81.

⁵⁰² *Ibid.*, 84.

⁵⁰³ Hariman, “Decorum, Power, and the Courtly Style,” 152.

⁵⁰⁴ *Ibid.*

scholars were “surprisingly uniform” in their renderings of decorum.⁵⁰⁵ Quintilian has long been regarded as the scholar who most fully defined decorum due to his thorough work “suggesting the salience of decorum as a general concept of delivery relevant to all elements of rhetoric.”⁵⁰⁶ Quintilian’s treatment of decorum indicates that decorum is what guides judgements of delivery based on the context in which a speech is spoken, the character of the speaker, discursive and embodied movements within the speech, perceivable symbols such as dress and composure, and “the historical trajectory of delivery.”⁵⁰⁷ These early renderings of decorum resulted in technical understandings of the rhetorical function of decorum “as a set of conventions and as a theory of conventions,”⁵⁰⁸ which made this theorizing practical for offering instructions to speakers concerned about giving speeches that would be judged as appropriate, but limited the theoretical contributions of decorum beyond the time of classical handbooks. Christopher M. Duerringer explains these limits, narrating, “As the Roman Empire fragmented and fell in the West, a major shift in conceptions of decorum took root. As the sole centralized institution to survive the collapse, the Catholic Church took on a central role in society. ... The dictates of faith and society supplanted the contours of situation and audience. Though still imagined as a resource for rhetorical action, decorum now appeared to be little more than protocol.”⁵⁰⁹ Conceptualized as a set of protocols “reduced

⁵⁰⁵ Duerringer, “Dis-Honoring the Dead,” 81.

⁵⁰⁶ Glen McClish, “‘A Kind of Eloquence of the Body’: Quintilian’s Advice on Delivery for the Twenty-First Century *Rhetor*,” *Advances in the History of Rhetoric* 19, no. 2 (2016): 176.

⁵⁰⁷ *Ibid.*, 176-177.

⁵⁰⁸ Hariman, “Decorum, Power, and the Courtly Style,” 152.

⁵⁰⁹ Duerringer, “Dis-Honoring the Dead,” 82.

to prescriptive formulae and kinesthetic instruction akin to a child's paint-by-numbers activity" there was a marked decline in scholarly interest in decorum in the 20th century, as the principles of decorum became closely aligned with performances "emulating the ruling classes, [resulting in] normative standards of decorum [which] functioned to prop up imperialism, patriarchy, and White supremacist ideology."⁵¹⁰ Because of this technical understanding, theorization about decorum was scarce in contemporary rhetorical scholarship until Michael Leff's call for rhetorical scholars to "recover[] the concept of decorum" in order to resist "the conventional schism between argument and style [which] inhibits full consideration of the rhetorical text as a mode of action."⁵¹¹

Scholars who theorize contemporary understandings of decorum embrace a broader definition of the term to render it useful for understanding the complex relationship between speech, rhetorical situation, and power. Robert Hariman offers a broad definition of decorum arguing that it "consists of: (a) the rules of conduct guiding the alignment of signs and situations, or texts and acts, or behavior and place; (b) embodied in practices of communication and display according to a symbolic system; and (c) providing social cohesion and distributing power."⁵¹² Rather than conceptualizing decorum as a set of protocols that one ought to follow for their conduct to be considered appropriate, recent rhetorical work on decorum describes it as a concept that "marks both a principle of social order and the complex of communicative habits within which all principles of order are advanced, resisted, or accepted."⁵¹³ In their "move[s] away from a

⁵¹⁰ Ibid.

⁵¹¹ Hariman, "Decorum, Power, and the Courtly Style," 150.

⁵¹² Ibid., 156.

⁵¹³ Ibid., 163.

strictly stylistic and technical understanding of decorum,”⁵¹⁴ contemporary rhetorical scholars “open[] up space for investigations into how rhetors react to particular situations beyond surface examinations into stylistic choices.”⁵¹⁵ Such analyses enable insights about decorum that operate on two levels, both the “specific but impersonal rules for correct behavior in familiar situations. ... [which] impl[y] predictable judgements of approval or disapproval” and “a higher order rule ... that any code of conduct must be ‘fitted’ to the specific situation.”⁵¹⁶ According to Thomas Rosteck and Michael Leff, this broader understanding of decorum requires that scholars attend to the relationship between piety, or what is commonly thought of as “a profound moral or religious commitment” which sustains social order and propriety, or appropriateness, a principle of “local integration” of the higher social codes observable by attending to “what is said and how it is said within a particular context.”⁵¹⁷ By attending to how decorum functions at the higher level of piety and the local level of propriety, rhetorical scholars can analyze (in)decorous conduct to understand both the instrumental function of notions of decorum, as well as how decorum works as a “force of social composition and as a complex of differentiated communicative patterns... [which] sustains social order through the

⁵¹⁴ Jarrod Atchison, “The Mystic Chords of Separation: Decorum and Jefferson Davis’s Resignation from the Senate,” *Southern Communication Journal* 77, no. 2 (2012): 115.

⁵¹⁵ Ibid.

⁵¹⁶ Hariman, “Decorum, Power, and the Courtly Style,” 164.

⁵¹⁷ Thomas Rosteck and Michael Leff, “Piety, Propriety, and Perspective: An Interpretation and Application of Key Terms in Kenneth Burke’s *Permanence and Change*,” *Western Journal of Communication* 53, no. 4 (1989): 328-329.

creation and interiorization of decorous modes of subjectivity.”⁵¹⁸ Ethan Stoneman asserts that, with attentiveness to the nontechnical system of decorum, rhetorical scholars can attend to how this higher level of decorum operates as a “technique of subjectivization”⁵¹⁹ which constitutes subjects by guiding individuals “in how to coordinate [their] communicative habits with the behavioral norms inhering in the social ordering of bodies and speech.”⁵²⁰ However, as Stoneman notes, the coordination of conduct is not distributed equally because judgements of decorous “communicative patterns ... are as arbitrary as they are unequal.”⁵²¹ Thus, a study of decorum must attend to not only the higher level beliefs and values that sustain social order and the local integration of those values in processes of invention, but the way that decorum and its associated principles, propriety and piety, are used to police conduct as a means of “maintain[ing] extant hegemonic power structures and limit[ing] the viable options and mechanisms” available to rhetors along arbitrary lines.⁵²² Conducting analyses of decorum attentive to speech, rhetorical situations, and power is undeniably complicated as “the broader understanding of decorum ... resists the formal rules that would make judgement efficient.”⁵²³ However, as Duerringer aptly argues, amongst an observable

⁵¹⁸ Ethan Stoneman, “Appropriate Indecorum: Rhetoric and Aesthetics in the Political Theory of Jacques Rancière,” *Philosophy & Rhetoric* 44, no. 2 (2011): 131.

⁵¹⁹ *Ibid.*, 133.

⁵²⁰ *Ibid.*

⁵²¹ *Ibid.*

⁵²² Shardè M. Davis, “The Aftermath of #BlackGirlsRock vs. #WhiteGirlsRock: Considering the DisRespectability of a Black Women’s Counterpublic,” *Women’s Studies in Communication* 41, no. 3 (2018): 270.

⁵²³ Atchison, “The Mystic Chords of Separation,” 115.

“disintegration in our collective sense of the civil and decorous” in the contemporary political moment, it would not be accurate “to believe that members of the public are less invested in observing and policing decorous behavior,⁵²⁴” but rather that our “collective sense of the decorous appears to be in a period of significant struggle.”⁵²⁵ Amidst political corruption, the collapse of social infrastructure, and violence leveraged against marginalized U.S. citizens, it is urgent to approach social relations with a broader understanding of decorum which attends the rhetorical elements that render a response to a particular situation (in)appropriate, the higher-level social forces that inform that judgement, and the way that these forces are organized by white supremacist, colonialist, and patriarchal logics.

With a broader understanding of decorum that enables scholars to attend to social forces, the particularity of rhetorical situations, individual rhetorical choices, and hegemonic power dynamics, analyses of decorum can point to how decorum emerges to police and punish the public participation of marginalized individuals, as well as how decorous conduct can be a tool for expanding the rhetorical means available in to marginalized rhetors. Often associated with other theoretical concepts, like the politics of respectability and civility, rules of decorum function to “restrict[] access to public spaces to certain individuals who do not perform or conform to these social codes that govern public spaces (Deem 2002)”⁵²⁶ in order to “silence those groups that are trying to draw

⁵²⁴ Duerringer, “Dis-Honoring the Dead,” 80.

⁵²⁵ Ibid.

⁵²⁶ Chloe Banks, “Disciplining Black activism: post-racial rhetoric, public memory and decorum in news media framing of the Black Lives Matter movement,” *Continuum: Journal of Media & Cultural Studies* 32, no. 6 (2018): 715.

attention to inequalities (Lozano-Reich and Cloud 2009)⁵²⁷ and “leave those already disempowered in a continued state of conformity, punishment, and or silence.”⁵²⁸ However, because conformity has the potential to grant marginalized rhetors access to public spaces and conversations, decorum ought not be conceptualized as only “a mode of interaction that inhibits certain types of utterances” because “decorum can function to broaden a rhetor’s options in a tumultuous environment.”⁵²⁹ In fact, one of the reasons that individuals engage in decorous conduct is because it benefits their communicative encounters and goals and, much more importantly for marginalized rhetors, serves as a shield against racist, gendered, classist, ableist, and homophobic violence. To describe how decorous conduct is both enforced and rewarded, Evelyn Brooks Higginbotham coined the concept “politics of respectability” to define the Black feminist efforts to “equate[] public behavior with individual self-respect and with the advancement of African Americans as a group. ... [by means of] psychological allegiance to temperance, industriousness, thrift, refined manners, and Victorian sexual morals.”⁵³⁰ Higginbotham located these efforts in the Black church and “the cynical era of Jim Crow,” where “black church women were conveyers of culture and vital contributors to the fostering of middle-class ideas and aspirations in the black community.”⁵³¹ Throughout history, the idea that Black women’s public behavior had the ability to stifle or bolster the social

⁵²⁷ Ibid., 716.

⁵²⁸ Nina M. Lozano-Reich and Dana L. Cloud, “The Uncivil Tongue: Invitational Rhetoric and the Problem of Inequality,” *Western Journal of Communication* 73, no. 2 (2009): 224.

⁵²⁹ Atchison, “The Mystic Chords of Separation,” 124-125.

⁵³⁰ Evelyn Brooks Higginbotham, *Righteous Discontent: The Women’s Movement in the Black Baptist Church, 1880-1920* (Cambridge, MA: Harvard University Press, 1993), 14.

⁵³¹ Ibid.

status and political goals of the Black community persisted, furthering the policing and judgement of Black women's conduct. In 1965, Daniel Patrick Moynihan released "The Negro Family: The Case for National Action," a report that is more commonly known as the Moynihan report which evoked images of Black women using welfare "to perpetuate stereotypes of loose morality among Black women"⁵³² and to claim that "Black people's problem is not disenfranchisement through racist institutions and histories, but ... the disrespectful cultural standards that Black people, and particularly pathological Black matriarchs, maintain."⁵³³ Amidst these attacks leveraged at Black women and their social conduct, the politics of respectability persisted, making adherence to decorous conduct defined by patriarchal and white supremacist standards the only way to secure Black women's "safety in predominantly white spaces."⁵³⁴ However, as Montinique Denice McEachern asserts, even as politics of respectability worked to protect Black women and girls from violence, they are simultaneously "impossible and violent to Black girls and femmes whose sexualities and existence are most regulated and silenced by them."⁵³⁵ The politics of respectability operate as "a cultural code of decorum" for policing and punishing the conduct of marginalized individuals—Black women, in particular—when it

⁵³² Alisha L. Menzies and Emily D. Ryalls, "Depicting Black Women, the Politics of Respectability, and HIV in *Precious*," *Howard Journal of Communications* 31, no. 5 (2020): 484

⁵³³ Ralina L. Joseph, "Strategically Ambiguous Shonda Rhimes: Respectability Politics of a Black Woman Showrunner," *Souls: A Critical Journal of Black Politics, Culture, and Society* 18, no. 2-4 (2016): 303-304.

⁵³⁴ Menzies and Ryalls, "Depicting Black Women," 484.

⁵³⁵ Montinique Denice McEachern, "Respect My Ratchet: The Liberatory Consciousness of Ratchetness," *Departures in Critical Qualitative Research* 6, no. 3 (2017): 82.

does not conform with ideals of normative white social order, illustrating how social forces, situational elements, individual conduct, and power dynamics are entangled in (in)decorous performances and judgements of them.

Alongside a broader understanding of decorum which enables rhetorical scholars to attend to higher level social forces that sustain social order and orchestrate decorous behavior and judgement, attentiveness to local integrations of decorum is crucial because they allow us to see how the judgement and policing of indecorous conduct emerges to reinforce power dynamics in public spaces. Many times, decorous behavior can appear unnoteworthy, operating in what Hariman calls “the administrative mode ... as the background of ordinary rhetorical practice ... [such as when] a judge does what is correct in the courtroom.”⁵³⁶ However, with sustained focus on local integration of principles of piety and propriety as they influence one’s ability to conduct themselves in a decorous manner, rhetorical scholars can examine and evaluate the moments when these ordinary and administrative modes of decorum work to silence, diminish, and contain those who resist or cannot adhere to “normative standards of decorum” which are largely unavailable to marginalized rhetors because of the way that they function[]to prop up imperialism, patriarchy, and White supremacist ideology.”⁵³⁷ With a focus on how decorum is evoked to contain the conduct of some rhetors and cast aside to permit the conduct of others in judicial settings, scholars can attend how “what is correct in the courtroom”⁵³⁸ shifts based upon the arbitrary evocation of decorum which works, in most

⁵³⁶ Hariman, “Decorum, Power, and the Courtly Style,” 164-165.

⁵³⁷ Duerringer, “Dis-Honoring the Dead,” 82.

⁵³⁸ Hariman, “Decorum, Power, and the Courtly Style,” 164.

cases, to police, prosecute, and “sentence those bodies variously marked by race, gender, sexuality, and class to the cramped space of the minority.”⁵³⁹ Melissa Deem argues that, because of the “empirical effects that these discursive logics [at the center of rules of decorum] have on variously marked bodies,”⁵⁴⁰ close study of the situational, localized adherences to and resistance of “the language of the majority,”⁵⁴¹ are “central to an understanding of the logics that are mechanisms of containment and exclusion” from which rules of decorum emerge.⁵⁴² In judicial spaces, rules of decorum are perceived as ordinary and nonnegotiable because, in such spaces, these rules are framed as a means of “provid[ing] justice through a system that assures equal access for the fair and timely resolution of cases and controversies.”⁵⁴³ The Minnesota Judicial Branch asserts that, in criminal and Supreme Court cases, Rules of Decorum are intended to uphold “the policy of the State Court Administrator’s Office (SCAO) to provide the best possible customer service at the Minnesota Judicial Center (MJC) in an accessible, safe, and inviting environment” and “shall be enforced in a consistent and impartial manner.”⁵⁴⁴ The rules of decorum in Minnesota Judicial spaces prohibit entering secured areas, failing to comply with security screening, “failing to sit in the audience area or follow any other directive of the Chair or presider,” “engaging in loud or disruptive behavior, or failing to

⁵³⁹ Melissa Deem, “Stranger sociability, public hope, and the limits of political transformation,” *Quarterly Journal of Speech* 88, no. 4 (2002): 448.

⁵⁴⁰ *Ibid.*

⁵⁴¹ *Ibid.*, 447.

⁵⁴² *Ibid.*, 448.

⁵⁴³ “Minnesota Judicial Center Rules of Decorum,” *Minnesota Judicial Branch Policies and Procedures* (2017): 1.

⁵⁴⁴ *Ibid.*, 1.

supervise children engaging in such behavior,” consuming alcohol in judicial buildings, “soliciting, proselytizing, or panhandling,” “physically blocking aisles exits, or entrances,” loitering or sleeping in judicial buildings, “failing to conduct business in a reasonable time, place, or manner,” “entering into or remaining in the building while emitting odors, including bodily odors or perfumes,” “disturbing the normal activities or environment,” and “using camera or photographic equipment ... without the advance written consent of the State Court Administrator.”⁵⁴⁵ Because of the way that these rules are phrased, it is not difficult to imagine that they may be differently enforced in high stakes moments to police and punish the conduct of folks with the least amount of power and the most to lose. For example, the wording of many of these rules of decorum leave judgement of decorous behavior up to the interpretation of the judge as to what constitutes “reasonable time, place, or manner” or “the normal activities or environment” of judicial spaces.⁵⁴⁶ Additionally, these rules of decorum become more interesting amidst the transition to virtual criminal court hearings in Minnesota due to the COVID-19 pandemic. While in some cases these rules are no longer applicable as participants appear remotely, such as the prohibition on perceivable bodily odors and “blocking aisles, exits, or entrances,”⁵⁴⁷ others must be adapted in order to render court proceedings functional on Zoom, such as the use of cameras which, in Zoom court hearings, make appearances of court authorities, defendants, victims, and the public possible. Fortunately, analysis of decorous expectations, conduct, and subjectification amidst this

⁵⁴⁵ Ibid., 2-3.

⁵⁴⁶ Ibid.

⁵⁴⁷ Ibid., 2.

unique configuration of Minnesota courtrooms is possible because of the tools generated by rhetorical scholars with a broader vision for rhetorical notions of decorum. In fact, Hariman encourages studies of “those techniques by which decorous presentation activates power”⁵⁴⁸ and, specifically, moments when “a code of conduct emerges by overruling another code ... [such as the] times we have a courtly style without a court.”⁵⁴⁹ In the remainder of this chapter, I detail the methodological tools and concerns at the center of my study of the evocation, adaptation, and enforcement of criminal legal rules of decorum in Zoom court hearings in Minnesota during the COVID-19 pandemic and, following my review of these methodological insights, offer an ethnographic reconstruction of my experience as a virtual court observer that I analyze using rhetorical criticism methods.

Legal Rhetoric, Rhetorical Fieldwork, and Virtual Fields: A Methodological Review

Rhetorical, feminist, and critical legal scholars have conducted fieldwork to capture how the diminishment, containment, and amplification of participant voices emerges amidst the consequential, yet fleeting, encounters and enforcements of rules of decorum during criminal legal proceedings, in judicial spaces, and amongst judicial authorities.⁵⁵⁰ In her 1996 book, *Gender Trials: Emotional Lives in Contemporary Law Firms*, Jennifer L.

⁵⁴⁸ Hariman, “Decorum, Power, and the Courtly Style,” 165.

⁵⁴⁹ Ibid., 166.

⁵⁵⁰ Elizabeth C. Britt, *Reimagining Advocacy: Rhetorical Education in the Legal Clinic* (Philadelphia, PA: Pennsylvania State University Press, 2018); Fischer, “Justice for Immigrants,” 40-66; Jennifer L. Pierce, *Gender Trials: Emotional Lives in Contemporary Law Firms* (Berkeley, CA: University of California Press, 1996); Ptacek, *Battered Women in the Courtroom*; and Schuster and Proppen, *Victim Advocacy in the Courtroom*.

Pierce writes of her ethnographic fieldwork performed while she was working as a paralegal in a corporate law firm. Pierce conveys her experience to highlight how emotional expressions, reactions, and containments in law offices contribute to the racist, sexist, and classist oppression in such spaces and work to ensure that legal power remains in the hands of legal professionals with privilege.⁵⁵¹ In her 2018 book, *Reimagining Advocacy: Rhetorical Education in the Legal Clinic*, Elizabeth Britt recounts her rhetorical fieldwork studying the client empowerment advocacy model in “two clinical legal programs”⁵⁵² where law students were taught to engage an “embodied approach to advocacy,”⁵⁵³ impacting their practices and attitudes while listening to, advocating for, and affirming domestic violence victims. In their 2011 book, *Victim Advocacy in the Courtroom: Persuasive Practices in Domestic Violence and Child Protection Cases*, Mary Schuster and Amy Proppen engage rhetorical field methods in their examination of Minnesota courtrooms in partnership with WATCH, the same organization that I partnered with to conduct my fieldwork for this project, to uncover how victim advocates help victims legibly convey their experiences with violence in judicial settings. An even larger number of scholars have studied meaningful remnants of legal proceedings, contributing to a robust understanding of the relationship between law and society.⁵⁵⁴ Yet, for rhetorical scholars, attending to judicial encounters that texture criminal legal

⁵⁵¹ Pierce, *Gender Trials*.

⁵⁵² Britt, *Reimagining Advocacy*, 3.

⁵⁵³ *Ibid.*, 4.

⁵⁵⁴ Gibson, “A Rupture in the Courtroom,” 1-24; Larson, ““Everything inside me was silenced,”” 123-144; Larson, *What It Feels Like*; and McKinnon, “Citizenship and the Performance of credibility,” 205-221.

proceedings in physical courtrooms, fieldwork holds the potential for analyses that do not rely on the state's record and is not limited to that which was deemed worthy of recording. Schuster and Proppen highlight the rhetorical matters made visible by ethnographic research in judicial spaces, noting that during their fieldwork observing VISs in Minnesota courtrooms, they watched a homicide sentencing during which "the first VIS reader was overcome with emotion and had to start over with her VIS" and noted "how the judge maintained eye contact with each VIS reader."⁵⁵⁵ They argued that being present in the judicial space allowed them to capture these "subtle signs of emotional investments in VISs and judicial demeanor when confronting such expressions of emotion."⁵⁵⁶ For a legal rhetorical scholar, these moments illustrate what happens when "someone considered an outsider steps into the legal system and tries to persuade those in power to accept his or her point of view or recommendations ... reveal[ing] the nuances of those power structures that frame the legal system."⁵⁵⁷ Doing rhetorical fieldwork in judicial spaces enables scholars to "reach below the surface of legislation and formal legal processes"⁵⁵⁸ to account for the emergence of relational, affective-emotional, and structural dynamics at play in criminal legal proceedings, most of which are not accounted for in court transcripts and records.

Rhetorical field work is heavily influenced by the theoretical and methodological tradition of ethnography which emerged as a response to and an enactment of colonialism, a history that has shaped the methodological commitments and ethical

⁵⁵⁵ Schuster and Proppen, *Victim Advocacy in the Courtroom*, 16.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.*, 19.

⁵⁵⁸ *Ibid.*, 20.

anxieties of ethnographic researchers throughout history.⁵⁵⁹ Ethnography largely originated in the tradition of cultural anthropology, yet has been taken up as a methodological approach in a variety of disciplines.⁵⁶⁰ The combination of two Ancient Greek terms, ethnography “means writing about or describing people and culture, using firsthand observation and participation in a setting or situation.”⁵⁶¹ Ethnographic researchers observe, interpret, and represent people, actions, and culture, using “ethnographic methods or approaches to specific contextual research needs (e.g. Ashcraft, 2007) ... to engage in participant observation and field interviewing.”⁵⁶² Although these methods have been formalized over time, many of the ethnographic approaches to immersing oneself in and drawing conclusions about people and cultures have their roots in 15th century enactments of ethnocentrism that were used to mark indigenous populations who occupied the land stolen by imperialist expansion as inferior and to justify their annihilation. The relationship between colonialism and ethnography continued into the 17th century when ethnographic practices were further developed to “document[] exotic cultural legends, myths, history, language, and medicines”⁵⁶³ as a means of preserving cultural knowledges of colonized populations. In the 1900s, the

⁵⁵⁹ Robin Patric Clair, *Expressions of Ethnography: Novel Approaches to Qualitative Methods* (Albany, NY: State University of New York Press, 2003); and Sarah J. Tracy, *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact* (West Sussex, UK: Blackwell Publishing, 2013): 31.

⁵⁶⁰ Jenna Burrell, “The Field Site as a Network: A Strategy for Locating Ethnographic Research,” *Field Methods* 21, no. 2 (2009): 181.

⁵⁶¹ Carolyn Ellis, *The Ethnographic I: A Methodological Novel about Autoethnography* (Lanham, MD: Rowman and Littlefield, 2003): 26.

⁵⁶² Tracy, *Qualitative Research Methods*, 29.

⁵⁶³ *Ibid.*, 31.

World Wars focused the scope of ethnographic research closer to home and, in particular, the emergences of the Nuremberg Code in World War II catalyzed a call for more clearly defined research methods.⁵⁶⁴ As a result, the post-World War II era brought an “evolution of American sociology and its presumptions” that changed “the criteria for drawing professionally acceptable ‘scientific’ conclusions from empirical research,” resulting in the prioritization and celebration of positivist methodologies in the social sciences.⁵⁶⁵ However, this turn to quantitative methodologies which “tended to reduce and simplify the analytic categories” pursuable in social science research became suspect amidst the emergence of postmodern thinking in the 1960s and 1970s and social science research “began to take an interpretive turn,” with an increasing focus on interaction and linguistics.”⁵⁶⁶ The interpretive turn catalyzed crises for ethnographic researchers, like the “crisis of ethnographic authority” which raised questions about the ability for a social scientist to draw objective and empirical conclusions about a population or phenomenon that they claimed to stand apart from.⁵⁶⁷ Relatedly, the interpretive turn raised a question about whether or not a social scientist, even if they were able to be objective in their observations, could accurately portray the populations or phenomena that they observed, resulting in the “crisis of representation that occurred in the 1980s.”⁵⁶⁸ The colonialist

⁵⁶⁴ Ibid.

⁵⁶⁵ Mary Jo Maynes, Jennifer L. Pierce, and Barbara Laslett, *Telling Stories: The Use of Personal Narratives in the Social Sciences and History* (Ithaca, NY: Cornell University Press, 2008), 11.

⁵⁶⁶ Tracy, *Qualitative Research Methods*, 33.

⁵⁶⁷ Ibid.

⁵⁶⁸ Sarah Wall, “Easier Said than Done: Writing an Autoethnography,” *International Journal of Qualitative Methods* 7, no. 1 (2008): 41.

origins of ethnographic research were not left behind in the methodological progression of social science research. Rather, the anxieties that guided these progressions and the contemporary crises of ethnographic methodology and representation are the result of and response to this violent history. The anxieties and inquiries characteristic of contemporary ethnographic research seem to carry with them a rhetorical force as scholars determine how to record, interpret, and convey their ethnographic experience “to generate intersubjective understandings—between narrator and analyst and between analyst and audience.”⁵⁶⁹

For rhetorical scholars, ethnographic research methods provide tools that enable analyses that center the contextual, embodied, affective nature of rhetorical phenomena. Although ethnographic research was slower to emerge in rhetorical studies, the use of ethnographic methods to study rhetorical phenomena has existed in rhetorical studies since the 1950s when, in response to the atrocities of World War II, “the federal government offered grants to study mass persuasion and propaganda.”⁵⁷⁰ Yet, scholars who took advantage of this funding “increasingly identified their work as akin to social psychology.”⁵⁷¹ Ethnographic research did make small inroads into rhetorical studies in the 1960s and 1970s through the “ethnography of speaking literature ... which emphasized the rules for communicating both verbally and nonverbally.”⁵⁷² However, it was not until the 1970s and 1980s that fieldwork was thoroughly engaged in rhetorical

⁵⁶⁹ Maynes, Pierce, and Laslett, *Telling Stories*, 2.

⁵⁷⁰ Ellis, *Ethnographic I*, 12.

⁵⁷¹ *Ibid.*, 13.

⁵⁷² *Ibid.*, 12.

studies,⁵⁷³ and it took until nearly the 1990s before ethnographic research found a stable home in rhetorical studies. This late arrival characterizes the way that ethnography was picked up in the discipline.⁵⁷⁴ Because ethnography emerged in rhetorical studies following the interpretive turn and subsequent crises, rhetorical ethnographic research has long been tied to the interpretive and critical traditions.

In recent years, rhetorical scholars have adopted ethnographic research methods to enable the examination and analysis of a variety of rhetorical objects, naming the efforts to observe, analyze, and communicate rhetorical phenomena in the field as

⁵⁷³ Michael Middleton, Aaron Hess, Danielle Endres, and Samantha Senda-Cook, eds. *Participatory Critical Rhetoric: Theoretical and Methodological Foundations for Studying Rhetoric In Situ* (Lanham, MD: Rowman and Littlefield, 2015): xv; and Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard, eds. *Text + Field: Innovations in Rhetorical Method* (Philadelphia, PA: Pennsylvania State University Press, 2016): 3.

⁵⁷⁴ Ellis, *Ethnographic I*, 12.

rhetorical field methods,⁵⁷⁵ participatory critical rhetoric,⁵⁷⁶ and critical ethnography.⁵⁷⁷

Although the ethnographic tradition in rhetorical studies is certainly influenced by

⁵⁷⁵ Joshua P. Ewalt, Jessy J. Ohl, and Damien Smith Pfister, "Rhetorical Field Methods in the Tradition of *Imitatio*," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (Philadelphia, PA: Pennsylvania State University Press, 2016), 40-55; Aaron Hess, "Embodied Judgement: A Call for a Phronetic Orientation in Rhetorical Ethnography," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (Philadelphia, PA: Pennsylvania State University Press, 2016), 86-100; Jamie Landau, "Feeling Rhetorical Critics: Another Affective-Emotional Field Method for Rhetorical Studies," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (Philadelphia, PA: Pennsylvania State University Press, 2016), 72-85; McKinnon et al., *Text + Field*; Tiara R. Na'puti, "From Guåhan and Back: Navigating a 'Both/Neither' Analytic for Rhetorical Field Methods," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (Philadelphia, PA: Pennsylvania State University Press, 2016), 56-71; and Samantha Senda-Cook, Michael K. Middleton, and Danielle Endres, "Interrogating the 'Field,'" in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (Philadelphia, PA: Pennsylvania State University Press, 2016), 22-39.

⁵⁷⁶ Hess, "Embodied Judgement," 86-100; Middleton et al., *Participatory Critical Rhetoric*; and Senda-Cook, Middleton, and Endres, "Interrogating the 'Field,'" 22-39.

⁵⁷⁷ Caitlin Francis Bruce, *Painting Publics: Transnational Legal Graffiti as Spaces for Encounter* (Philadelphia, PA: Temple University Press, 2019); Lorne Dwight Conquergood, ed., "Rethinking Ethnography: Towards a Critical Cultural Politics," *Cultural Struggles: Performance, Ethnography, Praxis* (Ann Arbor, MI: University of Michigan Press, 2013); Alina Haliluc, "Being, Evoking, and Reflecting from the Field: A Case for Critical Ethnography in Audience-Centered Rhetorical Criticism," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (Philadelphia, PA: Pennsylvania State University Press, 2016), 133-147; Hess, "Embodied Judgement," 86-100; Alexandria L. Lockett, Iris D. Ruiz, James Chase Sanchez, and Christopher Carter, eds., *Race, Rhetoric, and Research Methods* (Boulder,

disciplines who played a larger part in the historical development of the approach, rhetorical studies has adapted these methodological tools to enable them to answer rhetorical questions and draw conclusions about rhetorical phenomena. For these rhetorical scholars, ethnographic approaches have enabled the study of everyday rhetoric;⁵⁷⁸ expanded available rhetorical texts to include marginalized rhetors;⁵⁷⁹ disrupted traditional notions of agency;⁵⁸⁰ revealed the dynamic forces that shape, define,

CO: University Press of Colorado, 2021); and Phaedra C. Pezzullo, "Afterword: Decentralizing and Regenerating the Field," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (Philadelphia, PA: Pennsylvania State University Press, 2016).

⁵⁷⁸ Branstetter, "A Mining Town Needs Brothels," 381-409; Roberta Chevrette, "Holographic Rhetoric: De/Colonizing Public Memory at Pueblo Grande," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (University Park, PA: The Pennsylvania State University Press, 2016), 148-162; Kathleen M. de Onís, "Pa' que tú lo sepas': Experiences with Co-presence in Puerto Rico," in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (University Park, PA: The Pennsylvania State University Press, 2016), 101-116; Bruce, *Painting Publics*; Haliluc, "Being, Evoking, and Reflecting," 133-147; Hess, "Embodied Judgement," 86-100; Landau, "Feeling Rhetorical Critics," 72-85; Julie Lindquist, *A Place to Stand: Politics and Persuasion in a Working-Class Bar* (Oxford, UK: Oxford University Press, 2002); Na'puti, "From Guâhan and Back," 56-71; Pezzullo, "Afterword," 177-188; and Senda-Cook, Middleton, and Endres, "Interrogating the 'Field,'" 22-39.

⁵⁷⁹ Adams, "Rhetorics of Unwed Motherhood," 91-110; Bruce, *Painting Publics*; Chevrette, "Holographic Rhetoric," 148-162; de Onís, "Pa' que tú lo sepas,'" 101-116; Ellis, *Ethnographic I*; Landau, "Feeling Rhetorical Critics," 72-85; Lindquist, *A Place to Stand*; McKinnon et al., *Text + Field*; Middleton et al., *Participatory Critical Rhetoric*; and Na'puti, "From Guâhan and Back," 56-71.

⁵⁸⁰ Adams, "Rhetorics of Unwed Motherhood," 91-100; Branstetter, "A Mining Town Needs Brothels," 381-409; Bruce, *Painting Publics*; McKinnon et al., *Text + Field*; Middleton et

and summon people, publics, and places in particular spacetimes;⁵⁸¹ offered greater insight into the constitutive function of rhetoric;⁵⁸² and productively complicated “the relationship between critic, rhetor, text/context, and audience.”⁵⁸³ For rhetorical scholars interested in the relationship between rhetoric, culture, and structural forces, ethnographic methods enable “scholars of rhetoric [to] ‘travel’ to virtual and topical locations in search of argumentative resources, which emerge as resonant and rhythmic forces, reverberating, echoing, and repeating-with-a-difference (Muckelbauer 139),”⁵⁸⁴ offering “a productive way to apprehend the dynamics of persuasion.”⁵⁸⁵ Rhetorical scholars engaged in emplaced, embodied research in the field must be equipped with tools for capturing the ephemeral, affective-emotional, sensual, relational dynamics of rhetorical

al., *Participatory Critical Rhetoric*; and Senda-Cook, Middleton, and Endres, “Interrogating the ‘Field,’” 22-39.

⁵⁸¹ Adams, “Rhetorics of Unwed Motherhood,” 91-110; Branstetter, ““A Mining Town Needs Brothels,”” 381-409; Bruce, *Painting Publics*; Chevrette, “Holographic Rhetoric,” 148-162; Haliluc, “Being, Evoking, and Reflecting,” 133-147; Landau, “Feeling Rhetorical Critics,” 72-85; McKinnon et al., *Text + Field*; Middleton et al., *Participatory Critical Rhetoric*; Na’puti, “From Gu’ahan and Back,” 56-71; and Valerie Thatcher, “It’s Like a Prairie Fire! Rhetorics of Trust and Reciprocity in the Texas Coal Plant Opposition Movement,” in *Text + Field: Innovations in Rhetorical Method*, eds. Sara L. McKinnon, Robert Asen, Karma R. Chávez, and Robert Glenn Howard (University Park, PA: The Pennsylvania State University Press, 2016), 117-132.

⁵⁸² Branstetter, ““A Mining Town Needs Brothels,”” 381-409; Bruce, *Painting Publics*; de Onís, ““Pa’ que tú lo sepas,”” 101-116; Landau, “Feeling Rhetorical Critics,” 72-85; Lindquist, *A Place to Stand*; Haliluc, “Being, Evoking, and Reflecting,” 133-147; McKinnon et al., *Text + Field*; and Middleton et al., *Participatory Critical Rhetoric*.

⁵⁸³ Middleton et al., *Participatory Critical Rhetoric*, xiv.

⁵⁸⁴ Branstetter, ““A Mining Town Needs Brothels,”” 386.

⁵⁸⁵ Lindquist, *A Place to Stand*, 4.

encounters that emerge amidst the relevant social phenomenon. For that reason, ethnographic research in rhetorical studies must be attuned to “patterns that indicate systemic behaviors rather than anomalies,”⁵⁸⁶ “sensory investigation ... [of] what materializes, is not shown, and is absent in documentary evidence,”⁵⁸⁷ the relationship between individuals, the material world, and institutional power,⁵⁸⁸ and the narrative ethics and representational politics that impact rhetorical action within the field and rhetorical analysis of it.⁵⁸⁹ Enabling such attunement requires that rhetorical scholars enter the field with a “desiring radical openness,”⁵⁹⁰ embodying “a posture that is open and evolving.”⁵⁹¹ In her rhetorical work about communities who create public art, Caitlin Bruce guides rhetorical scholars attempting to embody such a stance, writing, “Fieldwork is not a one-way relationship of transmission, or translation, whereby the fieldworker visits and then reports back; it is better understood as a process of negotiating shifting subjectivities and layered relations. It involves grappling with meaningful differences in history, identity, and experience; recognizing one’s gaps or fissures in knowledge or compassion.”⁵⁹² Rhetorical scholars in the field bear witness to “how affect energizes public formations,” enabling a nuanced understanding of “the public [as] a temporary and shifting entity, constituted through changing plays of force rather than logical

⁵⁸⁶ Lockett et al., *Race, Rhetoric, and Research Methods*, 142.

⁵⁸⁷ Ibid.

⁵⁸⁸ McKinnon et al., *Text + Field*, 9.

⁵⁸⁹ Middleton et al., *Participatory Critical Rhetoric*, 149-150.

⁵⁹⁰ Barad, *Meeting the Universe Halfway*, 29.

⁵⁹¹ Bruce, *Painting Publics*, 22.

⁵⁹² Ibid.

arguments.”⁵⁹³ Rhetorical work done in the field offers rhetoricians a new corpus of rhetorical texts that would likely conclude and fade from memory unrecorded if not for the critic’s emplaced, embodied work to capture the movement within particular spacetimes.

Many rhetorical, media, and legal scholars have observed the impact of media technology on and in court proceedings, as well as the possibility of media technology as a means of conducting some court proceedings. In 1993, Robert Hariman published an edited collection entitled *Popular Trials: Rhetoric, Mass Media, and the Law*, “argu[ing] that popular trials should be recognized as a genre of public discourse”⁵⁹⁴ and defining “popular trials” as those that gain public attention “through sustained coverage by the mass media.”⁵⁹⁵ Hariman’s edited collection details the significant impact that cameras in the courtroom, dramatization of legal proceedings by popular media, and public consumption of criminal legal arguments have upon judicial processes and decisions. Tanya Horeck’s 2019 book, *Justice on Demand: True Crime in the Digital Streaming Era*, also examines these topics by pursuing the contemporary phenomenon and “ethico-political dimensions of viewer engagement with real-life crime through the internet.”⁵⁹⁶ Although these studies are interesting and important to the discussion of criminal legal proceedings happening online, because of the way that true crime media impact how individuals form perceptions and expectations of the criminal legal system, a study of criminal legal proceedings conducted entirely online is markedly different from these

⁵⁹³ Ibid, 20.

⁵⁹⁴ Hariman, ed., *Popular Trials*, 1.

⁵⁹⁵ Ibid., 2.

⁵⁹⁶ Horeck, *Justice on Demand*, 4.

studies of how criminal legal proceedings conducted in a physical courtroom are impacted and portrayed by media technology. Some legal scholars have conducted studies to argue for the potential for new media to be used as a tool for orchestrating judicial proceedings. For example, in his 2019 book, *Online Courts and the Future of Justice*, Richard Susskind asserts that, “in a digital society it makes sense for much of the work of courts to be conducted online.”⁵⁹⁷ However, even Susskind does not imagine that, in these virtual judicial proceedings, criminal legal authorities and participants would appear online from their homes, cars, and workplaces. Rather, Susskind argues for a virtualization of particular judicial matters, making the argument that online courts could be used to settle “many low value disputes,” “help court users understand relevant law and the options available to them,” “guide users in completing court forms,” and “offer various forms of non-judicial settlement such as negotiation and early neutral evaluation, not as an alternative to the public court system but as part of it.”⁵⁹⁸ Because of the unique and unprecedented configuration of Zoom court hearings, studying them requires digital ethnographic tools that enable analysis of how institutional forces and judicial matters move across disparate locations amidst the encounters that take place in virtual courtrooms.

Digital ethnography offers tools for thinking about the permeability of an ethnographic field site, the complex notion of presence, and the movement of matters and forces through physical and digital networks. In many ways, the conceptual and methodological questions that emerged amongst scholars studying virtual spaces were

⁵⁹⁷ Susskind, *Online Courts*, 1.

⁵⁹⁸ *Ibid.*, 6.

foreshadowed in earlier ethnographic debates. For instance, just as ethnographic scholars over several decades “called into question the traditional conception of the field site as a bounded space containing a whole culture (Gupta and Ferguson 1997),”⁵⁹⁹ study of virtual spaces catalyzed “a profound sense of spatial disorientation” due to the distribution of interaction across space and time in virtual contexts.⁶⁰⁰ In response to the unique dynamics of digital spaces as they relate to ethnographic study, scholars asserted that digital ethnographic scholars must resist the tendency to define “the field” according to the movement of the scholar who enters the field to collect data and exits the field to analyze it and must, rather, think of it as “a space in which a social phenomenon takes place” that can be accessed from a multitude of physical locations.⁶⁰¹ Similarly, digital ethnographers also had to adapt to the development of digital technology which rendered inadequate early insights about internet users’ online lives as separate and distinct from their offline lives, requiring scholars to account for the entanglement of virtual and physical spaces, processes, and interactions.⁶⁰² Such an understanding also complicates the common conceptualizations of presence in fieldwork because, unlike studies in which the researcher physically enters the field and is perceivable by those they are observing, digital ethnographers can observe digital interactions without being perceived, revealing their identity, or making their presence known at all. Considering the problematic histories of ethnographic researchers conducting fieldwork without acknowledging the

⁵⁹⁹ Burrell, “Field Site as a Network,” 182.

⁶⁰⁰ Ibid., 185.

⁶⁰¹ Ibid., 186.

⁶⁰² Burrell, “Field Site as a Network,” 186; and Adriana de Souza e Silva, “Mobile Technologies as Interfaces of Hybrid Spaces,” *space and culture* 9, no. 3 (2006): 264.

impact that their presence had on the field site and participants, as well as the more significant tendency for white scholars to invisibilize their whiteness or to confuse it with a disembodied mind,⁶⁰³ the disembodiment effect of digital ethnography requires that scholars account for how they show up in digital spaces and the way that their embodied presence, even if not perceivable, impacts the social phenomenon that they observe. Scholars have proposed approaches for coping with the unique challenges of digital ethnographic research. Jenna Burrell argues for a conceptualization of field sites as “network[s] composed of fixed and moving points including spaces, people, and objects ... that can be constructed from the observable connections performed by participants.”⁶⁰⁴ Also emphasizing movement, Adriana de Souza e Silva calls for studies of mobile technology that account for their role in creating hybrid spaces, arguing that because of the integration of digital technology into everyday life due to the mobility of technology, digital spaces and the physical spaces that they are entangled with ought to be thought about as hybrid spaces where the co-constitutive relationship between the virtual and the physical can be accounted for.⁶⁰⁵ What’s important is that digital ethnography enables an analysis of the movement of institutional structures and rhetorical encounters across virtual channels which change both the relationships and institutional processes that structure the encounters, as well as the spaces to which these institutional features travel via digital technology.

⁶⁰³ Lockett et al., *Race, Rhetoric, and Research Methods*, 125.

⁶⁰⁴ Burrell, “Field Site as a Network,” 189.

⁶⁰⁵ de Souza e Silva, “Mobile Technologies as Interfaces,” 261-278.

Since I began observing virtual hearings in 2020, I have witnessed 1786 criminal legal hearings and 809 of those have been related to sexual or domestic violence. This project is an ethnographic reconstruction of my experience as a virtual court observer that I analyze using rhetorical criticism methods. My observation and analysis were guided by central ethical concerns in qualitative research methods and rhetorical field methods that prompt necessary critical reflection about the role of the critic, the nature of relationships with participants, the effect of critic's embodied presence in the field, and the ethics of representation and textualization. In line with these ethical considerations, I randomly numbered my observation shifts to protect the anonymity of court participants. Using rhetorical methods to identify institutional silencing, I focus on the naming of judicial features, as well as signs of containment, such as voice cracks, apologies, extended moments of silence, and enactments of experiences with violence and trauma present in participant expressions. Equipped with these methodological tools, I observed Zoom court hearings and the three tenets that can be used to identify, examine, and evaluate transjudicial spaces emerged from my data: 1) particular histories of judicial procedures, extrajudicial spaces, and affected bodies shaped expectations of judicial matterings; 2) the entanglement of discourse and materiality made the spaces from which individuals appeared feel like courtrooms; and 3) the mediated circulation of judicial proceedings created contact zones that worked to (re)constitute legal subjects.

Transjudicial Matterings in Zoom Court Hearings

I only completed three in-person observation shifts in Hennepin and Ramsey County before my fieldwork was halted by the COVID-19 pandemic, leaving me with little

understanding of how court hearings in physical courtroom function, but this experience did impact my observation of Zoom court hearings. During my shifts in early March, the threat of COVID-19 changed the courtroom space and intra-actions within it. I watched as attorneys went to shake one another's hands and then recoiled, expressing that they probably should not have gotten so close. Hand sanitizer was positioned near the door of the courtroom to be used by those who entered. In some courtrooms, deputies or attorneys sprayed down microphones and chairs between appearances. Because I am chronically ill, I ended my in-person observation work when my university announced the pivot to online learning, so I did not experience the intensification of reactions to COVID-19 in physical courtrooms. However, because of my work as a WATCH volunteer, I was informed that, by April, most hearings were being held remotely and there were few people working in the courtroom, the top priority cases were Order for Protection hearings and domestic violence cases, and if victims were allowed to participate at all, they were appearing remotely without access to victim advocates. WATCH staff, court authorities, and those working in victim services expressed concern that the significant embodied, emplaced experience of appearing in court would be diminished if individuals participated virtually. Hennepin and Ramsey counties' move to conduct more and more criminal hearings online between April and September 2020. In what follows, I will detail how the circulation of judicial proceedings beyond courtrooms impacted those who encountered the circulation of judicial features and histories beyond courtrooms in various ways, produced unique entanglements between judicial proceedings and the extrajudicial world, and (re)constituted legal subjects.

Violent Personal, Individual, and Institutional Histories

Residues of judicial history, individual experiences with the criminal legal system, and local police and prosecutorial violence in the Twin Cities shaped the materialization of judicial matters in Zoom court hearings. Rhetorical scholars engaged in ethnographic fieldwork emphasize that public memory places and formal institutions cannot be adequately attended to with a focus only on their symbolicity or as a kind of material text.⁶⁰⁶ Rather, such places must be approached with tools that attune the scholar to engage the space and the visitors that are intertwined with it,⁶⁰⁷ the spatial aspects referenced by participants,⁶⁰⁸ the histories and temporalities embedded within,⁶⁰⁹ and the sets of spatial norms which contribute to a community of meaning.⁶¹⁰ In Zoom courtrooms, because U.S. law was crafted to criminalize nonwhite, queer, disabled, poor, and immigrant communities, members of these communities are impacted by the histories made present and meaningful in significantly and observably different ways. As I conducted my fieldwork, I observed meaningful personal, intra-institutional histories,

⁶⁰⁶ Barad, *Meeting the Universe Halfway*; Harris, *Beyond the Rapist*; Gavey, "Feminist Poststructuralism," 183-188; Johnson, "From Rhetorical Eavesdropping to Rhetorical Foreplay," 125; Chevrette, "Holographic Rhetoric," 151; Towns, "Black 'Matter' Lives," 49-358; and Watts, "Indigenous place-thought & agency," 20-34.

⁶⁰⁷ Barad, *Meeting the Universe Halfway*; López, "Contesting the Material Turn," 371-386; Chevrette, "Holographic Rhetoric," 157; Watts, "Indigenous place-thought & agency," 20-34.

⁶⁰⁸ de Onís, "'Pa' que tú lo sepas," 103; Middleton et al., *Participatory Critical Rhetoric*, 103; and Prash, "Toward a rhetorical theory of deixis," 166-193.

⁶⁰⁹ Barad, *Meeting the Universe Halfway*; López, "Contesting the Material Turn," 371-386; de Onís, "'Pa' que tú lo sepas," 102; Towns, "Black 'Matter' Lives," 349-358; and Watts, "Indigenous place-thought & agency," 20-34.

⁶¹⁰ de Onís, "'Pa' que tú lo sepas," 104.

individual histories, and institutional histories that impacted how Zoom court proceedings were conducted and experienced by differently positioned individuals.

The racial, gender, and class differences made to matter in physical courtrooms impacted my embodied experience as someone not system-entangled and the move to Zoom court hearings complicated the sense in which I was present in judicial spaces. During my last day in a physical courtroom, I took note of my discomfort conducting embodied and emplaced research, writing:

In this courtroom, prior to court beginning, all attorneys are white. Yet, I am the only white person sitting among the public. I also find myself wishing I wasn't seen or that I could perform in a way that is more confident. I feel in question, suspect—not by court authorities, but by those who are also in question and suspect. What am I—a white girl writing a lot—doing in this space? I guess I feel seen in a way that I am not used to.

In this moment of reflection, I was aware that my presence and observable acts of witnessing were disruptive for the system-entangled folks seated in the gallery and appearing in court. This emplaced, embodied discomfort emerged from the individual, institutional, and procedural histories built into judicial spaces and my own whiteness and privilege because, as a white woman, my body is often not suspect, and my performances of scholarly activity often afford me unquestioned access. Little did I know, my wish to not be seen would be granted in the move to Zoom courtrooms and that move would change my embodied experience as a court observer. I no longer shared space with those seated in the gallery and, instead of my whiteness and observable acts of witnessing being visible during court proceedings, I appeared in court as a **black tile** labeled “**Observer—WATCH Volunteer, Brittany.**” Despite the difference in these embodied experiences, I never forgot my initial reaction to being seen or feeling in question and suspect. Throughout this analysis, I use that embodied experience as a reminder that,

even when observing from my home, I cannot keep “my positionality in the background ... [or] confuse whiteness with disembodied mind” because “there can be no escape from the body, and no refuge from the violence that it witnesses.”⁶¹¹ The embodied experience of observing criminal legal proceedings did not feel any one way, but this early experience in a physical courtroom keeps me tethered and committed to embodied, affective, and sensory rhetorical analysis to reflect upon my own presence as I describe the shift to Zoom court hearings.

During my fieldwork, intra-institutional histories emerged and made my presence matter in virtual courtrooms. In Zoom hearings, I was identified by my Username: “Observer—WATCH Volunteer, Brittany,” which was displayed prominently because I was required to keep my camera off at all times. During my fieldwork, judges and court staff revealed that WATCH volunteers intimidate judges because, in the early years of the organization, WATCH published and widely circulated a newsletter that named judges who were not responsive to cases of violence against women and children, publicly shaming them for their dismissal. WATCH staff was careful to assure me and other volunteers that public shaming is no longer an active organizational tactic. Yet, many judges called attention to the presence of WATCH in court proceedings. During one monitoring shift, the judge noted my appearance at the beginning of each hearing, listing the participants present on Zoom: “**me** [the judge], **you** [the defendant], **your attorney**, the **prosecutor**, **my intern/extern**, and **an observer** from an **organization** called

⁶¹¹ Christopher Carter, “Taser Trouble: Race, Visuality, and the Mediation of Police Brutality in Public Discourse,” in *Race, Rhetoric, and Research Methods*, eds. Alexandria L. Lockett, Iris D. Ruiz, James Chase Sanchez, and Christopher Carter (Boulder, CO: University Press of Colorado, 2021), 125.

WATCH which stands for We Are In The Court House.” Although this judge misstated the name of the organization, that my presence was consistently noted on the record suggests that the organization’s presence was procedurally significant.

Individual histories bump up against institutional histories in criminal court proceedings, illuminating how differences are made to matter. For example, gender differences emerged during my observation as court clerks would consistently call the cases, naming the defendant as “**Mr. [Defendant’s last name]**.” In many cases, defendants would unmute their audio and video to clarify that Mr. was the wrong title because they were women or gender-nonconforming individuals, highlighting the underlying criminal legal logic that naturalizes the gender binary and makes gender salient in criminal legal settings, particularly those involving domestic and sexual violence.⁶¹² Some meaningful differences were not often explicitly referenced, but always present in criminal proceedings. Only 26% of the cases that I have observed I observed in Hennepin and Ramsey County courtrooms involved white defendants—striking, considering that 68% of the residents in those counties are white. Although race was often unspoken in these hearings, it was a force that impacted judicial outcomes. For instance, when deciding bail, judges must take into account whether the defendant poses public safety or flight risk—factors that are determined by a defendant’s criminal history, as well as their access to stable housing, employment, and social support. These factors are used to calculate the defendants’ bail scores, but during my time observing virtual courtrooms, many defense attorneys highlighted the components of a defendant’s life that may increase their bail score and the likelihood that they will be held in custody pending

⁶¹² Taslitz, *Rape and the Culture*, 74.

trial as “markers of poverty,” rather than public safety risk. For instance, during one shift, a defense attorney brought up some of the factors that contributed to defendants’ bail scores, noting that, for one defendant, “**the points** listed on **her bail evaluation** seemed to be **markers of poverty**, rather than **markers of public safety** or **flight risk**. **He** noted that **she** was given **points** for both **brief unemployment** and **homelessness**.” For another, the same attorney explained that “**3** of [the] **points** [were] attributed to **the defendant** being **self-employed**, as well as **some higher education** [out of state].” Because nonwhite defendants in Minnesota are more likely to face housing instability, unemployment, and social isolation, race is a factor in bail decisions, whether it is spoken or not. Additionally, race emerged in my observations via references to police and prosecutorial violence in the Twin Cities, like in a case which involved a Black defendant fleeing police, during which the judge asserted, “**this case** seemed to be the **best-case scenario** ... [because], often, **cases like this** result in a **crash** in which **others** are **hurt** or a **police shooting**.” As these cases show, the presence of judicial histories and procedures are experienced differently by differently positioned individuals. Transjudicial spaces observably emerge when those who interact with a formerly extrajudicial space *feel like they are in a courtroom* not despite different histories but because of them.

In many ways, virtual court hearings amplified disparities embedded in the criminal legal system, especially those that emerge at the intersection of race, gender, class, sexuality, disability status, and immigration status. Class difference appeared uniquely in Zoom court hearings because the modality of hearings allowed defendants to appear from work breakrooms and work sites, but also mattered long term because of the difficulty of appearing for Zoom court for defendants without technology access,

technological skills, and stable housing, circumstances that again disproportionately impact nonwhite, queer, disabled, poor, and immigrant defendants. Differences are made to matter in all spacetimes, including physical courtrooms, but differences are made to matter differently in judicial and transjudicial spaces—often, with violent consequences. My first shift as a virtual court observer was on September 20, 2020, and, during this shift, the difficulty of moving a largely analog system online emerged. For this first shift, I called Ramsey County for access to the courtroom and was given the wrong Zoom information. The misinformation on my end was quickly remedied, but seemed relevant when I entered the courtroom and, throughout the day, witnessed many scheduled court hearings in which defendants did not appear. It was never confirmed, but I suspect that, if I was given the wrong information, other may have been misdirected, too. During this shift and others that I observed during September and October, judges seemed irritated by nonappearances, but also expressed hesitancy about issuing warrants for nonappearance because of their uncertainty about defendants' technology access, as well as whether or not notices informing them that their hearings had been moved online with Zoom information reached them. Throughout my time as a virtual court observer, the difficulty of appearing for Zoom court for defendants without technology access, technological skills, and stable housing emerged as differences that significantly impacted defendants' participation in the criminal legal system and mattered when considering their nonappearance history. When participating in court proceedings, many defendants who were taken into custody on bench warrants expressed that they had attempted to login to a Zoom court hearing but were not able to connect due to incorrect Zoom information, inadequate internet access, or other miscommunication. Additionally, because jury trials

were still happening in-person, many defendants became confused about which aspects of the legal process were conducted in-person and which they could attend online. Often, these circumstances resulted in nonappearances, placing the case in warrant status and significantly impacting a defendant's criminal history. During first appearances in 2021, it was not uncommon to hear public defenders refer to a defendant's history of nonappearance bench warrants and then state that, because this nonappearance history was in 2020, the warrants were likely issued due to lack of technology access necessary for remote hearings. The histories of U.S. criminal law, legal precedent, and institutional relationships made intersecting racial, gender, class, disability status, immigration status, and language differences matter in virtual courtrooms. Upon their emergence, these differences cultivated the conditions necessary for the constitution of transjudicial spaces in Zoom court hearings.

Complications, Adaptations, and Silence in Zoom Court Hearings

Transjudicial spaces are constituted by the naming, adaptation, and enactment of elements characteristic of physical courtrooms. In Zoom court hearings, histories, procedures, and institutional characteristics that typically hover below the surface are brought into the realm of the observable. Thus, the judicial proceedings emerged amidst the evocation of judicial features, the extrajudicial spaces from which judges, attorneys, and court participants appeared, and the virtual platform that structured the judicial encounter. Work in rhetorical field methods takes seriously that the entanglement of matter and discourse in particular spacetimes cannot be easily separated to be separated for the purposes of analysis and that, to force such a distinction would be

counterproductive because ephemeral, immediate rhetorical acts emerge from the comingling of materiality and discourse in meaningful ways. Rhetorical scholars engaged in research in the field approach this work by intending to identify the co-mingling of word and world and recording them in field notes. When recording fieldnotes about the intra-actions between myself, Zoom court, court participants, court authorities, domestic spaces, and judicial features, determining whether to categorize the virtual space, emotional reactions, monetary and carceral consequences, racial trauma, and gender violence as material or discursive would have likely been impossible. Instead of working to separate these entangled physical, physiological, psychological, and rhetorical phenomena, I utilized rhetorical tools that allowed me to highlight their intra-actions and document their consequences. In this section, I illuminate moments in which the physical world made its way into participants' speech, brought about particular reactions, and textured my embodied experience, allowing me to map how these judicial features, references to court decorum, and criminal legal histories worked to constitute transjudicial spaces in Zoom court hearings.

Many judicial features emerged in Zoom court to alter the extrajudicial spaces from which participants appeared and their intra-actions with those spaces. Judges commonly stated, “**this is a courtroom**” and reminded participants that court procedure still stands in Zoom hearings. One procedure that that was specifically evoked in every courtroom I observed was that no one, except the court reporter, should record the meeting. Zoom court hearings were recorded and the court reporter kept a stenographic record. In some courtrooms, the clerk would announce the judge's entrance as they would in a physical courtroom, announcing, “**Court is now in session. The Honorable Judge**

[Name] presides,” while proceedings in other courtrooms began more casually. In Zoom court, appearance was taken very literally. Defendants who could not be seen on camera due to positioning, poor video quality, or bad lighting were asked to remedy the situation to ensure that their identities could be verified. Additionally, some judges consistently commented on defendants’ behavior and attire, noting, “remember, **we are in the courtroom**, so no **smoking**,” “[Defendant’s name], you need to **remove your hoody**. Please **take off your hoody** or at least **your hood** because **we are in court**,” and “**we** try to **approximate the courtroom experience** as closely as possible ... so **I’m** going to ask you to **take your hat off**.” In some cases, the naming of court decorum was made legally meaningful, such as when one judge went on the record to note that a defendant was wearing a suit coat and that another was lying in bed during his hearing. These decorous expectations seemed to, also, impact attorney conduct. A defense attorney once appeared and could not turn on her camera but assured the judge that she was “**appearing in a suit**.” Another defense attorney who was called to come back to the courtroom because his client appeared late apologized, “**I’m** sorry **Judge**, **I** thought **we** were done for **the day** and just realized that **I took my tie off**.” These references to judicial features and participants’ appearances, dress, and posture did not seem to emerge without purpose and, I expect, were more prevalent in Zoom hearings than they would have been in physical courtrooms. The prevalence of commentary about court participants’ intra-actions with the extrajudicial spaces that they appeared from sounded like strategic attempts to make the disparate places from which judges, attorneys, defendants, victims, and public observers appeared feel like a courtroom.

Many features characteristic of physical courtrooms had to be adapted to render them functional in Zoom court. Judges often read a script at the beginning of the calendar that listed the specific procedures they thought were important for participating in virtual hearings: “If **you** can’t **hear someone**, please **raise your hand** to **alert the court**. Make sure **you** are in a **quiet place** to ensure **you** can be **heard**. No **inappropriate sounds** or **images**. We can permit **side conversations**, just like in **physical courtrooms**. Ask and we will **move you** to a **breakout room**. There is a **button** called **reactions**—please don’t **click this button** during **the hearing**.” A common adaptation was the use of breakout rooms to ensure that defense attorneys could privately meet with their clients. Additionally, because defendants and court authorities were not in the same space, Zoom court required adaptation of the process for serving and verifying receipt of court orders, like Domestic Abuse No Contact Orders (DANCO) and Firearm Prohibition Orders. When Zoom proceedings began, police officers were tasked with delivering these orders to defendants after their court appearances, but after a few months, judges gave defendants the option to receive orders via email. Every defendant that I encountered in my observation opted to have documents emailed, citing the risk of contracting COVID-19 if they were in contact with officers and a desire to keep officers out of their communities. Zoom court also changed the traditional processes of pleading guilty and signing plea petitions. Rather than going through the petition with the defendant in person, the defense attorney screen shared to go through the document and signed on behalf of the defendant. Even swearing in defendants who, in rare cases, did not appear by video required significant adaptation. In one case, the judge dealt with this digital difficulty by asking a defendant who appeared by audio and could not be seen on camera,

“**Mr. [Defendant’s last name], will you raise your right hand?**” Then, she followed up, asking, ‘**Is it raised?**’” The adaptation of traditional judicial elements rendered them function in virtual courtrooms and worked to constitute transjudicial spaces amidst court proceedings.

The constitution of transjudicial spaces in Zoom court hearings is not only the result of the circulation of judicial procedure beyond the courtroom, but the disruption of judicial procedure by the extrajudicial matters that made their way into the courtroom. During the height of the pandemic, many judges, defendants, and attorneys appeared from their homes, making the financial disparities between affluent judges, prosecutors, and private defense attorneys a stark contrast to the shared living spaces, cars, and workplace breakrooms from which defendants appeared. Many observation shifts were interrupted by extrajudicial occurrences in a judges’ home—they would take a recess to let their dogs out, pause to answer their door if the bell rang, and even ask their court clerks, who were also appearing from their homes, to check the score of the baseball game. Despite these understandable and never questioned extrajudicial disruptions that emerged from judges’ extrajudicial spaces, judicial authorities were often quick to police the extrajudicial disruptions emerging from defendants’ living spaces, reprimanding them for interacting with children or other residents present in their space, asking them to move to a quieter or more private space, and ensuring that defendants appearing from their cars were not driving during their hearings. The requirement that defendants appear on camera almost necessitated that they agree to the surveillance and judgement of their private spaces, highlighting a contrasting and concerning aspect of transjudicial circulations that intra-act with extrajudicial disruption.

The material-discursive intra-actions that emerged from the evocation of specific judicial procedures, technologies, and logics worked to contain participants' voices in recognizably judicial ways as a means of constituting a transjudicial space. The most recognizable judicial containment was the silencing of victim voices and emotions using Zoom court technology. One of the clearest instances of the silencing of victim voices was during a first appearance on a Domestic Assault by Strangulation case. A victim named "**Observer**" unmuted to speak to the court after the prosecutor requested that the judge impose a DANCO. Immediately, the judge and prosecutor both jumped in to say, "No, **you** aren't permitted to partake in **this hearing**" and muted the observer. Additionally, even during sentencing hearings, the only portion of a criminal proceeding during which a victim is permitted to speak, emotions were recognizably contained during VISs. During one particularly difficult VIS, the victim turned on her camera when invited to voice her statement and detailed the harassment and abuse that she endured at the hands of the defendant. At the end of her VIS, the victim broke down as she voiced, "I'm sorry that **I'm emotional**, but **I** just want to say one thing to **[the defendant]**—**I** hope that **you** do everything **you** are **required to** as a result of this and **I** hope **you leave me alone**. **I** hope the best for **you**, **I** really do. **I** just need the peace. **I** need to move on." The judge responded to the victim to reassure her that she did not need to apologize for being emotional, but then, just as quickly as he had offered reassurance, he asked her to turn off her video, silencing any expression of the uncontained emotion.

Many of the tools for silencing victims were also used, even more aggressively, to silence defendants. Often, when defendants became emotional, outraged, or panicked in response to legal decisions, court staff would mute their microphones to halt the

expression. The use of the mute button seems to function similarly to a technology characteristic of a physical courtroom—the gavel. In physical courtrooms, judges use gavels to maintain order. In Zoom court, the gavel is a mute button that completely silences those speaking “out of turn.” For example, during an observation shift, I recorded in my fieldnotes that “a **Black defendant** spoke up to say that **his criminal history** is the result of a **racist state** and **racist policing**. **He ... was muted.**” Muting of defendants’ expressions that did not please the court, like this one, was commonplace in Zoom court hearings. Although the complete silencing of defendants’ concerns, emotions, and questions is a particularly violent way of maintaining order in the courtroom, the mute button often works to restore order at the same time that it protects a defendant’s 5th Amendment rights. Often, when defendants react to legal decisions, they make statements that threaten to incriminate them. Most judges see this coming and, before the defendant shares too many details on the record, will mute the defendant and ask their attorney, “**I know your client** wants to address **the court**, but **I** also don’t want **him** to interfere with **his 5th amendment rights**. Do you want a **breakout room** with **him first**?” Whether the attorney accepts or declines the opportunity to meet with their client in a breakout room, the judge often does offer to unmute the defendant. However, if the emotional outburst continues, the defendant is often permanently muted. After one particularly intense emotional exchange with a defendant during a first appearance, a Hennepin County judge set the unconditional bail requested by the prosecutor and ended the hearing. After, he said, “this is why **I hate Zoom**,” suggesting to me that at least this judge thought that emotional outburst happened as a result of the particular material-discursive intra-actions that emerge in Zoom hearings. That judicial technologies were

adapted and transformed in Zoom hearings is undeniable, but their function remained the same—to contain court participants’ expressions, contributing to the constitution of an orderly transjudicial space.

The emergence of material-discursive intra-actions from the naming, adaptation, and performance of judicial procedures, mechanisms, and logics during Zoom court hearings worked to impose standards of decorum and circulate violent judicial forces during court proceedings happening beyond courtroom walls. In many cases, the adaptation of judicial features and standards of decorum was necessary in order to render them functional in virtual hearings. As they were evoked, these judicial features, forces, and decorous standards impacted how court participants were able to speak about cases and violence, as well as whether or not they were heard.

Technological Contact Zones, Domestic Disruptions, and Violent Boundaries

The evocation, adaptation, and performance of judicial features and standards of decorum to render them function beyond courtrooms does more than impact the communication during court proceedings; it also erects contact zones that necessarily (re)constitute legal subjects who encounter them. Our perceptions of communication over nonphysical networks, like Zoom or social media are shaped by “past histories of contact.” When we encounter judicial matters outside of courtrooms, we are both influenced by our prior experiences with virtual platforms and popular portrayals of crime. As Denise Bissler and Joan Connors illuminate, there is a meaningful reciprocal relationship between crime media and responses to crime in reality because crime media “rel[ies] heavily on ... real-life cases as the basis for their plots” at the same time that these fictionalized portrayals

“influence viewers’ expectations of real crime cases and trials ... with socializing effects.”⁶¹³ Because of this relationship, when judicial matters are portrayed on screen, they evoke similar feelings as crime media and viewers are positioned to interpret them in similar ways. The technology utilized in the media circulation of judicial matters contributes to the adjudication of the information presented on screen as “the camera serves as a technology for rendering: render includes to deliver a verdict, to produce an image through computer software, and to make or become somebody.”⁶¹⁴ In this section, I detail how the constitution of a feeling public in relation to circulating judicial features works to redraw boundaries around legal subjects, reforming relationships amongst members of the public, violent experiences, and institutions with disruptive and dehumanizing consequences.

As previously mentioned, rules of decorum in Minnesota courtrooms prohibit the use of “camera or photographic equipment, or audio, video, or broadcast equipment ... without the advance written consent of the State Court Administrator or delegate, or the Chair or presider of a public meeting.”⁶¹⁵ As was the case in the Nassar sentencing hearing held in Michigan, the decision about whether or not to allow cameras in the courtroom in Minnesota is left to the discretion of the judge. However, the COVID-19 pandemic and subsequent shift to virtual criminal legal hearings required a kind of adaptation to this recording technology prohibition because participants were not appearing from a courtroom and, as a result, cameras were necessary for conducting court

⁶¹³ Bissler and Connors, “Inequalities in CSI,” 127-150.

⁶¹⁴ Lockett et al., *Race, Rhetoric, and Research Methods*, 134.

⁶¹⁵ “Minnesota Judicial Center Rules of Decorum,” 3.

appearances. Essentially, in Zoom court hearings, cameras served a necessary function for identifying defendants, maintaining connection and immediacy in virtual proceedings, and ensuring that deaf or hard of hearing defendants, as well as non-English speaking defendants who relied upon interpreters were able to understand and participate in court proceedings. In her feminist new materialist analysis of the production of social media selfies, media scholar Katie Warfield posits that, when individuals use personal cameras for public participation, “the boundaries of the self are agentially cut and demarcated within the material–discursive entanglement of body, image, technology, photo, and place.”⁶¹⁶ Although posting a selfie on Instagram is a different situation with significantly lower stakes than appearing for court via your cellphone camera or computer webcam, Warfield’s observation is useful for thinking about the unique configuration of virtual hearings. Many times throughout my observation, court participants and authorities referenced how they arranged the physical space from which they were appearing and intentionally cultivated their backdrop for court appearances. Defendants would assure judges that they attempted to find the quietest place possible to appear for court, sometimes apologizing that the only quiet space available to them was a closet or car. Additionally, about one year into the pandemic, I observed a conversation amongst attorneys who were appearing from home and “talked about having to **move their family pictures** out of the **background** of **Zoom calls**.” In Zoom court hearings, the camera is not in the courtroom, but a necessary part of the courtroom, enabling the encounters necessary to conduct criminal legal proceedings online. However, the use of personal

⁶¹⁶ Katie Warfield, “Making the Cut: An Agential Realist Examination of Selfies and Touch,” *Social Media + Society* 2, no. 2 (2016): 4.

cameras complicated processes of impression management, adherence to rules of decorum, and the versions of themselves that court participants could convey because, as judges, attorneys, defendants, victims, court support staff, and the public appeared from various and, often, private spaces, their personal space became entangled with their public image.

In addition to altering the ability for court participants to shape their public image, the presence of technology necessary to circulate judicial procedure beyond the traditional bounds of the courtroom impacted the progression of and communication within court proceedings. The technology was often referenced in Zoom court conversations to note internet connection issues, usually through exasperated expressions of the difficulty of conducting court online, and to remedy some of the specific technological problems that hindered court proceedings by, for example, talking louder so that defendants with audio issues could hear conversation about their cases. Additionally, the use of technology raised some concerns about the circulation of defendants' and victims' private information in the courtroom. For instance, during first appearances, judges use a defendants' address as one of the methods of verifying their identity and they are often asked to share their phone numbers with public defenders. Some defendants expressed discomfort with stating their personal information in a public courtroom being circulated by mediated technology. After a few months of conducting court on Zoom, court staff and defense attorneys would ask defendants if they knew how to use Zoom chat, stating, "**I need to get your contact information, but I don't want to make you say it in front of everyone.**" For victims, the adaptation required to hold hearings online afforded them more privacy in some ways because they could participate

in court hearings without having to be physically present in a public space where they would inevitably face their abuser. However, they were often asked to state their name and the reason that they were appearing in court— “are **you** appearing for **your own case today** or are **you a public observer?**”—when they logged on to observe hearings, leading to the public circulation of victim information. In many ways, the technology was often used to communicate messages that, in a physical courtroom, likely could not have been conveyed. Participants used their screennames and default images to convey messages that, if they were verbalized, would have likely been contained. In one court hearing, every time a public defender turned his camera off, his default image was displayed, picturing him in a mask that read “not guilty” across it. In another courtroom, a participant named “Observer 1” had a default image of a red hat that included the text, “Made you look. Black Lives Matter.” One clerk strategically changed his default image to list the courtroom rules: “**This is a courtroom. Please act accordingly. Please remove your hat. No Smoking or Drinking. Please do not speak until addressed by the court.**” Because of the circulation of judicial spaces via Zoom technology, defendants and attorneys often appeared from their cars and signed on from their workplaces, noting that they could not take time off work to attend their hearings—a reality for many low-wage workers, but also something that would have been required if judicial proceedings were happening in physical courtrooms. The implementation of court procedure into extrajudicial spaces even extended beyond the time of a defendant’s hearing, as court administration developed a text and email reminder system that circulated court schedule reminders and Zoom links to defendants. Zoom and other digital technology was not only a medium through which Zoom court proceedings were made possible during the

COVID-19 era; rather, it was a tool with particular limitations and affordances built into it and these mediated features impacted the intra-actions between participants and the criminal legal institution.

Because the circulation of criminal legal proceedings outside of courtroom walls erected a contact zone “shaped by past histories of contact” and formative of “the distinction between inside and outside,”⁶¹⁷ Zoom court hearings were influenced by the tendency of judicial processes and their mediated circulation to individualize instances of interpersonal violence, obscuring how they are entangled with social conditions and carceral violence. However, the importation of judicial features into extrajudicial spaces complicates this individualization, highlighting the impact of social and carceral forces on interpersonal relationships. The context of the global pandemic, peak unemployment rates, and local racial justice uprisings highlighted the complicated relationship between social conditions, interpersonal violence, and state violence, resisting the criminal legal system’s tendency to individualize gendered violence. Court authorities, anti-violence activists, and scholars communicated a common understanding that precarious social conditions impact the prevalence of violence in communities upon the implementation of stay-at-home orders and the financial stress resulting from widespread unemployment. Zoom court hearings often revealed the complicated relationship between social conditions, interpersonal violence, and state violence. For example, many of the proceedings that I observed highlighted that social conditions often catalyze violent behavior as defendants, defense attorneys, criminal complaints, and victims detailed the impact of unemployment, isolation, health concerns, and increasingly difficult care

⁶¹⁷ Ahmed, *The Cultural Politics*, 194.

responsibilities on domestic relationships. During one observation shift, I witnessed a certified student attorney who was acting as a prosecutor read a VIS that detailed the abuse that a woman suffered at the hands of her brother. In a fast-pace and sterile style, the student attorney read the victim's words in which she expressed that her relationship with her brother began to deteriorate as they struggled to care for their mother since moving her out of a nursing home in March 2020, due to the COVID-19 pandemic. Her statement articulated the extent of the violence, as well as the physical and mental health problems that she endured after two assaults at the hands of her brother. In other cases, defendants expressed that financial precarity, grief, and risk of contracting COVID-19—conditions faced by large swaths of the global population during the COVID-19 pandemic—played a significant role in their substance abuse, violent behavior, and entanglement with the criminal legal system. Some defendants even expressed that, because of the rampant viral spread in jails and prisons, they fled the police or did not turn themselves in when notified of warrants out of fear that they would contract COVID-19. The conversations about the impact of unemployment, collective grief, isolation, and public health on interpersonal violence complicates the traditionally narrow, individualized conceptualization of interpersonal violence in the criminal legal system to problematize assumptions that such violence emerges from individual circumstances and unhealthy relationship dynamics.

The complication of the traditionally neat distinction between interpersonal violence and state violence functions to justify criminal punishment by conceptualizing the violence that individuals in the system endure at the hands of the state as different than the violence committed by individuals to harm other individuals. However, the

acknowledgement that social conditions and state action impact the nature of interpersonal relationships and the emergence of interpersonal violence complicates this distinction and raises important questions about the circulation of state violence via the constitution of transjudicial spaces. I journaled about this relationship during an observation shift in the Hennepin County Public Safety Facility when I was observing first appearances. A defendant appeared with a private defense attorney on a domestic assault charge. Amidst bail arguments, his attorney detailed the sexual violence that the defendant suffered at the hands of the state when he was assaulted by a staff member while in juvenile detention. The defense noted that he was awarded a large settlement from the State of Minnesota for their failures and, although this argument was not made, I began thinking about the relationship between the violence that incarcerated individuals experience in carceral institutions as a catalyst for hostile interpersonal relationships and violent interpersonal behavior upon release. If the argument that state violence contributes to cycles of interpersonal violence stands, the circulation of judicial procedures, technologies, and logics that often enact violence toward nonwhite, queer, disabled, poor, and immigrant communities beyond the walls of courtrooms raises concerns about how the constitution of domestic spaces as transjudicial spaces transforms relational dynamics within them. Evidence of transjudicial constitution transforming interactions in a domestic space emerged as I was observing pre-trial hearings, during which one defendant logged onto the Zoom call and, upon the Public Defender's request, the law clerk moved him and his attorney into a private breakout room. When they returned to the virtual courtroom, the judge was hearing a different case. Throughout the next several minutes, the defendant whose case had not been called yet could be heard,

intermittently, yelling at someone in the background of the space that he was appearing from. He could be heard aggressively stating, “fuck you... **this shithole. I’m in court.**” After a few outbursts, the judge asked his clerk, “**where is that noise coming from?**” She responded by naming the defendant and explained, “**I’ve been muting him, but he keeps unmuting himself.**” When the judge eventually did call this defendant’s case, he was no longer present on the call, raising concern about the escalation of interpersonal violence as a result of the state violence brought into his domestic habitat by virtue of virtual court. The way that virtual court appearances, in cases where the defendant is out of custody, redraw the boundaries between domestic and public space, reveals the necessity of disrupting seemingly fixed boundaries between public and private space and interpersonal and state violence.

Spaces touched by the mediated circulation of judicial procedures, technologies, and logics were constituted as transjudicial and will long hold residues of the transjudicial encounter. I cannot say that I understand how everyone who logged into Zoom court felt occupying the virtual courtroom from their domestic space or other extrajudicial spaces, but I can say that my fieldnotes suggest that it was difficult to maintain extrajudicial boundaries during months of participation in Zoom court. I often described my own reactions to Zoom court hearings in my fieldnotes or when journaling after an observation shift, using words like “**distraught,**” “**troubled,**” “**uncomfortable,**” “**strange,**” and “**gutted.**” As might be familiar to readers who worked from home during the COVID-19 pandemic, my experience utilizing my domestic space as a classroom, library, courtroom, and living space made it difficult to separate myself from the feelings that emerged amidst the constitution of my home as a transjudicial space. Early in my

virtual observation experience, I committed to observing court only from my office to try to maintain boundaries around my work and the violence that accompanies it. However, I underwent seven surgeries during this time period and, throughout my recoveries, observed from my living room where I could be more comfortable while still maintaining my fieldwork schedule, making these boundaries even more difficult to maintain. The affective and emotional expressions, vivid descriptions of violence, and relatively constant hopelessness in virtual courtrooms changed the energy of my space. I could sense it, most potently after a particularly difficult shift, but always as an undercurrent. Additionally, the constitution of a transjudicial space observably impacted the nonhuman entities in my household to the extent that, when she heard Zoom court begin, one of my dogs positioned herself under my desk for the entire observation shift every single time I observed—a behavior that she did not replicate when I lectured, attended meetings, or socialized with friends on Zoom. In her book about working dogs and their accompaniment by human partners, a relationship that is common in criminal legal pursuits, Cat Warren explains the function of dogs' senses as a kind of legal technology, writing, "dogs are not just good friends but irreplaceable extensions, lending noses and ears and sometimes bodies and teeth to their human partners, smelling and hearing things that their human handlers cannot."⁶¹⁸ My dog, whose only job is to be a good friend and who has not been trained to use her senses as an extension of my own, seemed to pick up on something distinct about the sounds, affects, energies, and impacts of Zoom court hearings. Although my observation of her reactions was far from scientific, I do believe

⁶¹⁸ Cat Warren, *What the Dog Knows: Scent, Science, and the Amazing Ways Dogs Perceive the World* (New York, NY: Touchstone, 2013), xiv.

that what she picked up on was a kind of transjudicial constitution present in these Zoom encounters, but not others, suggesting that the circulation of judicial features and forces is both observable and formative of the spaces and bodies touched by them.

Just as my domestic space was significantly altered by the mediated and physiological circulation of judicial matters to constitute transjudicial spaces, so too were the configurations of judicial spaces that are often considered stable, analog, and unchanging. Between June 2021 and September 2021, virtual hearings in Ramsey County Courtroom 1240 were livestreamed from the physical courtroom, with the camera positioned just above the jury box to display almost the entire courtroom in the Zoom screen. Some court participants appeared in the courtroom, while others logged on via Zoom, a process that the court clerk explained to the judge by pointing at their screen to say, “so, we have **the court reporter** and a **WATCH observer here via Zoom** and the **next case** is scheduled for 2:30pm—I think both **defense** and **defendant** are appearing via **Zoom**.” The creation of a hybrid courtroom to conduct sentencing hearings in Ramsey County was intended to provide a space where individuals could appear virtually if they were exposed to COVID, scheduled in other virtual courtrooms in quick succession, or wished to appear remotely for other reasons. The hybrid courtroom also allowed for defendants who were in-custody or might be taken into custody during their sentencing to appear in person, while allowing others to partake in the hearing virtually. In these hybrid spaces, the judicial procedures, technologies, and logics evoked to constitute transjudicial spaces adapted to fit the physical court room setting and the virtual circulation of proceedings. For instance, unlike the other Zoom court proceedings that I observed in the 9 months prior to the creation of the hybrid courtroom, when the

judge entered everyone rose from their seats. Despite return to some of the enactments that traditionally appear in judicial spaces, the virtual component of the hearing raised some questions, such as how to facilitate private conversations between defendants and their attorneys if one was appearing in person and the other by Zoom or where defendants and attorneys should sit in order to be seen by court staff present in the courtroom and those participating online. The constitution of transjudicial spaces and the ways in which these spaces changed throughout the pandemic required the adaptation and transformation of judicial matters to enable them to functionally travel via mediated circulatory systems. As a result, all of the spaces and bodies touched by these transjudicial encounters were altered by the circulations and, it would seem, might be forever changed by the residues of the Zoom court era.

Conclusion

I first entered Minnesota courtrooms in Spring of 2020 to examine how physical features within courtrooms amplified and diminished victim voices. The move to Zoom court hearings soon after complicated my intentions to study courtroom *spaces*. Additionally, in May of 2020, the Hennepin County criminal legal system attracted national attention when George Floyd was murdered by Minneapolis Police Officer Derek Chauvin and local protests erupted in the streets. Prior to Chauvin's murder trial in Spring of 2021, conversations about the case were commonplace during my observations in Hennepin County courtrooms. The physical composition of the Hennepin County Government Center changed drastically—barricades were erected and snipers were placed atop city buildings to secure the location for the trial. Just as the spaces around the Government

Center were transformed, so too were spaces within it. All trial dates were canceled in Hennepin County from the time the jury selection began on March 9 until the verdict was announced on April 20. The restrictions erected around the Chauvin trial significantly impacted criminal legal proceedings in Hennepin County. For many months after the trial, defendants brought in for first appearances after being arrested for active warrants indicated that they attempted to access virtual court with technology assistance that is usually available in the Government Center or to turn themselves in but could not access the Government Center because of the restrictions around the Chauvin trial. Additionally, during the Chauvin trial, Kim Potter, a police officer in Brooklyn Center which is in Hennepin County, shot and killed Daunte Wright during a traffic stop. Upon stopping Wright, Potter and another officer learned that a bench warrant had been issued when he failed to appear for a court hearing in February. Minnesota Court Records indicate that Wright was sent notice of this remote hearing with Zoom information, but the notice was returned because it was sent to an incorrect address. My project is not distinct from these police murders and trials, nor is it distinct from the effects that these have had upon Twin Cities communities. In this chapter, I focus specifically on the way that Zoom court hearings impacted the adjudication of sexual and domestic violence cases. However, with my dissertation completed, I plan to turn my attention to the data that will help me to attend to the entanglement of interpersonal violence and state violence in the Twin Cities during the Zoom court era more fully. Transjudicial spaces will be a useful concept as I pursue this related project and for rhetorical scholars analyzing the transjudicial emergences that texture public deliberation about and experiences with violence, as well

as the circulation of other institutional features due to the use of technology to facilitate institutional processes during the COVID-19 pandemic.

While criminal legal features have often been identified in public deliberations about interpersonal violence, Zoom court hearings serve as the most illustrative example of the emergence of judicial features beyond courtroom walls. Although circulating judicial procedures, logics, and technologies were more prominent and recognizable in Zoom court hearings than they are in these other spaces, my analysis invites attentiveness to those circulating judicial features that, because of where they emerge, are not as easily identified. Transjudicial emergences are present in public discussions of sexual and gendered violence because “mainstream discourses mimic a legal quest to assign guilt and responsibility and, in the process, target certain bodies as blameworthy or make excuses for why the harms committed against others do not amount to that of assault or rape.”⁶¹⁹ Transjudicial spaces, as a concept, seeks to provide nuanced language for talking about those moments when, in response to sexual and gendered violence allegations, judicial features are evoked to modulate the available means of expression. My analysis of transjudicial spaces in Zoom court hearings provides insights and tools to equip scholars and anti-violence advocates to recognize, examine, and explain the function of transjudicial emergences in other spaces.

Additionally, what this chapter describes in terms of the reach of institutional procedures, logics and technologies into spaces outside of institutions extends beyond the case study examined here and can be seen in other virtually adapted institutional encounters that emerged during the COVID-19 pandemic. In order to halt the spread of

⁶¹⁹ Larson, *What It Feels Like*, 4.

COVID-19, academic institutions, medical institutions, and other professional institutions moved operations online. In most cases, these institutions relied on the same technological platform that U.S. courts did, utilizing Zoom to virtually bring individuals together while they remained socially distanced. This transition of institutional operations online meant that, much like what happened in Zoom court, institutional features characteristic of academic spaces, clinics and hospitals, and workplaces circulated beyond the walls of those institutions. Amidst this circulation, those who encountered these circulating institutional features noted their impact on the institutional operations that were being conducted on Zoom, as well as their embodied and emplaced communicative experiences as they attempted to participate. For example, early in the pandemic, participants noted that gender imbalances that silence and diminish women's contributions in professional spaces are amplified in Zoom approximations of those spaces⁶²⁰ and how, for neurodivergent and disabled folks, many of the tactics recommended for managing impressions in Zoom meetings read like "descriptors of the appearance of neurotypicality and abled-ness."⁶²¹ When institutional features emerge in our virtual approximations of institutional meeting spaces, they quite often work to replicate and amplify the disparities embedded into the institutional spaces from which they emerged. From the language and conceptualization of transjudicial spaces comes

⁶²⁰ Alisha Haridasani Gupta, "It's Not Just You: In Online Meetings, Many Women Can't Get a Word In," *New York Times*, April 14, 2020, <https://www.nytimes.com/2020/04/14/us/zoom-meetings-gender.html>.

⁶²¹ H. E. Casson, "How to Zoom While Neurodivergent: So Not a Guide," *Spoonie Authors Network*, January 21, 2021, <https://spoonieauthorsnetwork.com/2021/01/21/how-to-zoom-while-neurodivergent-so-not-a-guide/>.

conceptual equipment for naming the institutional features that emerge beyond institutional settings and ascertaining their function in the places where they circulate.

Chapter Five

Some Conclusions on Transjudicial Spaces

The case studies that I brought together in this dissertation project do not seem, at first or second glance, particularly similar. Certainly, they have some similarities—for instance, they all deal with gendered and sexual violence and media circulation. However, their differences are glaring—each of these cases happened in different spaces, amidst different expectations, and with different intentions. I did not imagine that the concept of transjudicial spaces is what would bring each of these cases together when I began working with them. In fact, it was not until almost two years into my work on the Kavanaugh confirmation hearing that I began to think in the terms of transjudicial spaces. When I began the project, I pursued it because I was struck by social commentators’ proclamations that the Kavanaugh hearing felt like a criminal trial and the presence of judicial features in this extrajudicial hearing. However, as I worked with the recordings of the hearing, I continued to find examples of how these circulating judicial features and forces impacted Ford’s testimony, the progression of the hearing, and the media coverage that followed it. After reading Palacios work on transcarceral spaces,⁶²² I first named what was happening in the Kavanaugh confirmation hearing as the constitution of a transjudicial space. Following this naming, I received positive responses to my rendering of transjudicial spaces to explain the criminal legal emergences in the Kavanaugh confirmation hearing, but still did not imagine that the term had wider applicability or that it could be used to tie together my work on the Nassar sentencing hearing and Zoom

⁶²² Palacios, “‘Ain’t No Justice... It’s Just Us,’” 279-295.

court proceedings. However, as I began to work through these other case studies in an attempt to bring my dissertation together, the aspects that inspired my analysis of the Nassar hearing also began to point to the concept that I was thinking about, tinkering with, and beginning to develop. Thinking about the scholars and commentators who had commented upon the radical transformation of the Nassar sentencing hearing and the observable modulation of victim expressions as a result of disrupted judicial features and forces in the hearing, I began to wonder whether this, too, was a kind of reconstitution enabled by the judicial features that, in this case, were disrupted and cast aside, rather than evoked. As I did this thinking, I was observing criminal court proceedings via Zoom twice a week and watching as the kind of evocation, adaptation, and disruption of judicial features that I observed in these other case studies worked to circulate violent judicial forces and impose standards of decorum in the homes, cars, and workplaces from which court participants appeared. This project is a result of the tenets that observed from my careful reading and close observation of circulated and disrupted judicial features. It closes with a few conclusions on transjudicial spaces as a generative concept for scholars examining instances of interpersonal violence around which judicial features might emerge in rhetorical studies, critical legal studies, and social science research. This chapter will unpack these contributions through three related offerings. First, it will explore the insights this project offers for the discipline of rhetorical studies, specifically in relation to legal rhetoric, affective-emotional rhetoric, materialist rhetoric, and rhetorics of space/place. Second, it will address the interdisciplinary possibilities offered by the theory of transjudicial spaces, specifically as they relate to our understandings of the role that rhetoric plays to support the ever-expanding reach of the criminal legal

system and the foreclosing of extrajudicial spaces amidst this reach. Finally, it will examine the scholarly offerings of the project for scholars invested in humanities and social science research amidst precarious social, public health, and academic labor conditions, as well as the utility of the concept of transjudicial spaces for future anti-violence work.

My mapping of the circulation and disruption of judicial features upon which violent judicial forces are circulated in this project offers generative contributions for rhetorical scholars, particularly those focused on the rhetoric of affect-emotion and embodiment and related to rhetorical expressions within the criminal legal system. Because legal rhetorical scholars have so often foregrounded the important work of identifying the individual rhetorical choices that render victim voices (il)legible in judicial spaces, the judicial features that amplify, diminish, and silence rhetorical expression and the patterns regarding whose speech is silenced, listened to, or co-opted have remained somewhat in the background of these analyses. I offer transjudicial spaces as a concept that provides conceptual precision not only for identifying and examining the circulation and disruption of judicial features in cases of sexual and gendered violence cases, but also as a framework identifying and naming these features based on the function that they serve in judicial contexts. For example, my work to parse out the function of judicial procedure to relegate victims to the periphery of criminal legal proceedings and render their experience irrelevant highlights the entanglement between judicial procedures that emerge in cases of sexual and gendered violence and the diminishing judicial forces that they carry. My project is inspired by work done by scholars like Stephanie Larson, who identified rape kits as judicial technologies that

“leave the courtroom and work to contain a sense of bodily excess” as a case study that reveals the extractive function of these technologies while, at the same time, “ask[ing] us to take seriously what it might mean to listen to an individual’s account of what has been done to their flesh and the dialectics communicated by that flesh, as opposed to a technology that claims to translate it.”⁶²³ Throughout this project, I committed to naming how judicial procedure is evoked to render victim experience irrelevant, judicial logics function to diminish and delegitimize affective-emotional expressions, and judicial technologies extract bodily, experiential, relational, and visceral knowledges. By naming the function of these judicial features, I intended to offer conceptual equipment to scholars who do the important work of documenting the diminishment of affective-emotional and visceral expression in judicial spaces in order to enable future critiques that account for how these features limit the rhetorical means available to those who speak of their experiences with violence within and beyond the courtroom. I crafted my project to contribute to these conversations with hope that my work to identify the function of judicial procedures, technologies, and logics and the violent judicial force that travel upon them could inform future advocacy and scholarship that intends to disrupt the silencing, diminishment, and co-optation enacted through these judicial features.

In addition to offering conceptual equipment for examining the function of judicial features both within and beyond courtrooms, my conceptualization of transjudicial spaces contributes to materialist rhetorical scholarship concerned with the relationship between context and rhetorical expression more broadly. Since its conceptualization in the late 1960s, rhetorical scholars have recognized the generative offerings of Bitzer’s rhetorical

⁶²³ Larson, *What It Feels Like*, 111.

situation, both utilizing and adapting its central components of exigence, audience, and constraints. As mentioned in previous chapters, I think that this language has emerged in discussions about not only the relationship between rhetorical expressions and context, but also in scholarly rhetorical work focused on genre, deixis, listening, decorum, and field methods. In my conceptualization of transjudicial spaces, I necessarily rely upon notions of the relationship between rhetorical expression and context that attend to more expansive components of the situation, finding Jenny Rice's rhetorical ecologies and work that deals with affective components of the rhetorical situation particular helpful. I used these expanded components for conceptualizing the relationship between word and world in order to contribute to this vibrant conversation and offer ways for considering how violence, trauma, and physiology are also recognizable situational components. By accounting for indications of bodily recalcitrance as deictic indicators because of the way that they contribute to situational affects, ecologies, and orientations, this project proposes a modified or expanded conceptualization of the relationship between rhetorical expression and context to think about physiological and bodily contexts as both meaningful and part of the meaning making process. This expanded conceptualization of the relationship between rhetorical expression and context holds potential not only for rhetorical work engaging communication about trauma and violence, but also for scholars engaged in work about the rhetoric of health and medicine, disability, chronic illness, and accessibility. Such an approach takes the context of the body seriously in ways that refuse to "tak[e] for granted the nature of the body as it negotiates a world constructed specifically with an image of 'normal embodiment in mind'" and takes account of the

rhetoricity of moments “when the body doesn’t work—when the body breaks down.”⁶²⁴ To call attention to the body as a component of context and situation is to “focus[] on the nature of the materiality of able bodies [and disabled bodies] as phenomena, not individual objects/subjects.”⁶²⁵ Just as my project works to expose how the individualization of bodily experiences with violence forecloses opportunities for interrogating the systems, structures, and institutions that enabled the violence to emerge, so too does it work to bring the body into conversations about context in order to expose how the body and its (dis)ability status emerge from social, cultural, political, and historical forces. I intervene in scholarly conversations about rhetorical contexts and situations to make a case for the body as a meaningful component and a component that alters the capacity for meaning making in particular spacetimes.

Additionally, considering how this project contributes to conversations about materialist and legal rhetoric, transjudicial spaces seems to suggest a need for further investigation into the rhetorical distinction between space and place. Rhetorical scholars often distinguish between place, which “typically refers to a specific location that is bordered or semi-bordered”⁶²⁶ and space which is conceptualized as “open, undifferentiated, undesignated.”⁶²⁷ My conceptualization of transjudicial spaces, in many ways, presents an impetus to question this distinction, raising distinct(ion) questions

⁶²⁴ Barad, *Meeting the Universe Halfway*, 158.

⁶²⁵ Ibid.

⁶²⁶ Harris, “Rhetorical mobilities and the city,” 23.

⁶²⁷ Sara C. VanderHaagen and Angela G. Ray, “A Pilgrim-Critic at Plaes of Public Memory: Anna Dickinson’s Southern Tour of 1875,” *Quarterly Journal of Speech* 100, no. 3 (2014): 350.

about boundaries and borders that come to define what are perceived as meaningful, bounded, public, or institutional settings that are most likely governed by particular procedures, technologies, and logics. Specifically, transjudicial spaces conceptualize the permeability of these borders and the ability for settings that would be, within the space/place binary, considered spaces because of their lack of distinguishment and designation. Considering how spaces can be transformed into places by the permeation and circulation of features characteristic of institutional places presents an interesting rhetorical question that might be particularly important for rhetorical scholars who are studying rhetoric at the margins. Specifically, it may be helpful for scholars who are conceptualizing the way that domestic spaces have been transformed into places by marginalized rhetors who, although excluded from public and political places, constituted their domestic spaces to host public and political dialogue. Feminist public address scholars have already done some of the work to explain how domestic spaces and other private locales were used by women to host consciousness raising circles in order to illuminate how personal concerns pointed to political needs⁶²⁸ and how their depoliticization worked as a means of devaluing women's labor.⁶²⁹ Transjudicial spaces is a rhetorical concept that provides conceptual tools for further examining the transformation of spaces into places where marginalized rhetors can communicate about and formulate political consciousness, subjectivities, and collectivities despite their exclusion from public and political spaces and conversations.

⁶²⁸ Mary E. Triece, *On the Picket Line: Strategies of Working-Class Women during the Depression* (Champaign, IL: University of Illinois Press, 2007).

⁶²⁹ Jessica Enoch, *Domestic Occupations: Spatial Rhetorics and Women's Work* (Carbondale, IL: Southern Illinois University Press, 2019).

Finally, for rhetorical scholars, my commitment to feminist new materialist theory and efforts to call attention to the material-discursive intra-actions that work to constitute transjudicial spaces throughout my three case studies demonstrates how the entanglement of spoken word, material world, and institutional power emerge in ways that are recognizable because of their rhetorical significance. As I demonstrated throughout this dissertation, the emergence of transjudicial spaces in the Kavanaugh confirmation hearing, the Nassar sentencing hearing, and the nearly 2000 criminal legal hearings that I observed on Zoom during the COVID-19 pandemic was not merely the result of judicial features being evoked, adapted, and cast aside to modulate criminal legal process. Rather, the transjudicial space emerged amidst the circulation and disruption of these judicial features because of the violent judicial forces which travel upon them to activate power dynamics that contain, diminish, and amplify the rhetorical expressions of those who encounter them. It is notable that, when viewers observed that the Kavanaugh confirmation hearing felt like a criminal trial or claimed that the Nassar sentencing hearing did not feel like one, they often pointed to the rhetorical expressions in the proceedings as evidence to support these claims. The significance of rhetorical expression was not lost upon these auditors. They observed and named how violent judicial forces, as they were circulated by judicial features, enabled and contained the kinds of rhetorical expressions that could be expected in those situations. When the modulation of rhetorical expression is observable amidst circulating and disrupted judicial features, perceivable in the questions asked, the heavy breaths, and the contained affective-emotional and visceral expressions, a transjudicial space has been successfully constituted. For rhetorical scholars, this rendering provides unique insight into the way that material-discursive

intra-action both emerges from rhetorical expression via the naming, performance, and disruption of judicial features and impacts the rhetorical means available for expression, disrupting the oft-maintained binary between instrumental rhetoric, conceptualized as rhetorical expressions which respond to situational conditions, and constitutive rhetoric, thought of as rhetoric which shapes the situational conditions. This disruption, made possible by the feminist new materialist offering of material-discursive intra-action, provides rhetorical scholars with tools for naming the rhetorical significance of both the contextual elements which influence speech and the speech which works to constitute the context.

From an interdisciplinary perspective, this project demonstrates the potential for rhetorical studies to contribute analytical tools that orient scholars to answer many of the questions posed by feminist new materialism. In many ways, these rhetorical tools attune critics to some of the foundational concepts of feminist new materialist theory, such as intra-action, diffraction, and entanglement. In this dissertation project, the tools commonly used by rhetorical critics, specifically those that attune scholars to rhetorical deixis and circulations of public feeling, worked to illuminate material-discursive intra-actions amidst the circulation, adaptation, and disruption of judicial features, resulting in the enactment of particular difference effects that amplified and diminished rhetorical expressions in each of my case studies. Rhetorical deixis is particularly useful, as demonstrated throughout this dissertation project because it is an analytical tool that attunes critics to the context that shapes and is shaped by a speaking event.⁶³⁰ Because victim testimony often requires a victim to recount material evidence, narrate events

⁶³⁰ Prasch, "Toward a rhetorical theory of deixis," 166-193.

situated in a particular spacetime, and reference their body as evidence of the violence committed, this rhetorical genre relies heavily on deictic indicators. Mary Schuster asserts the impossibility of considering victim testimony without attending to materiality, writing, “solid objects as well as empty spaces convey messages and meanings to audiences in a more physical or embodied way than might reading sentences and listening to words. The body itself, then, contains a perspective—for example, the injured or wounded body of a victim of sexual assault or the comforting physical presence of the advocate.”⁶³¹ Such objects and bodies are materially present and, in some cases, named in transjudicial spaces and traditional legal proceedings. Other times, the physical and physiological features that are present amongst circulating and disrupted judicial features are not named but emerge as bodily recalcitrance. My use of rhetorical deixis throughout this dissertation showcased the ability for scholars to also render these physiological responses to violent judicial forces meaningful and analytically relevant. I demonstrate how these responses, which often come out as [**deep breaths**], [**heavy sighs**], [**quickened pace**], and [**voice cracks**], can be bracketed and bolded to indicate that they, alongside named aspects of the physical context operate as deictic indicators that tell scholars and readers something about the context in which they emerge. For feminist new materialist theory, deictic indicators are a generative analytical tool that attunes scholars to the consequences of particular material-discursive intra-actions and enables them to attend to the containment of emotional and visceral expression, as well as moments in which such containment is resisted.

⁶³¹ Schuster, *The Victim's Voice*, 172.

Related to the analytical tools from rhetorical studies that attune feminist new materialist scholars to the way that physical and physiological contexts emerge in rhetorical expressions, rhetorical studies also offers analytical tools that have the potential to attune scholars to the circulations of sensation, affect, and emotion between speaker and audience that may help feminist new materialist scholars to consider the entanglement of material-discursive entities, human and nonhuman bodies, and dynamic relationality. Thinking about the impact of victim testimony on auditors is important and illuminating as “survivor narratives do expose oppressive material conditions, violence, and trauma; give voice to heretofore silent histories; help shape public consciousness about violence against women; and thus alter history’s narrative.”⁶³² Throughout my analyses of each of my case studies, I demonstrate the analytical potential of rhetorical tools for tracking the intense feelings circulated to those who encounter the circulation, adaptation, and disruption of judicial features beyond courtroom walls. These analytical tools have the potential to orient feminist new materialist work toward the rhetorical expressions, such as “words for feeling, and objects of feeling” and how the affixation of feeling to particular phenomena “generate effects: how they move, stick, and slide.”⁶³³ For feminist new materialist theorists committed to acknowledging our “dynamic relationality to the other” by questioning the boundaries that we draw around individual bodies,⁶³⁴ rhetorical scholarship that attends to the circulation of sensations, affects, and emotions offers tools that can aid in efforts to trace the contours of such boundaries and

⁶³² Wendy S. Hesford, “Reading Rape Stories: Material Rhetoric and the Trauma of Representation,” *College English* 62, no. 2 (1999): 195.

⁶³³ Ahmed, *The Cultural Politics*, 5; and Larson, *What It Feels Like*, 14.

⁶³⁴ *Ibid.*

map the well-worn paths and new opportunities of relationalities forged by victim testimony. Rhetorical studies offers feminist new materialist scholars tools for naming the instances when the presence and effects of physical and physiological contexts show up in rhetorical expression and the circulation of affective-emotional and visceral rhetorical expressions circulate beyond their original context, enabling engagement with some of the ways that material-discursive intra-actions bring institutional spaces into being and language for examining and calling attention to their becoming.

Additionally, my dissertation project and rendering of transjudicial spaces contributes to theoretical and conceptual interventions focused on mapping, examining, and disrupting the expansive reach of the U.S. criminal legal system, work that is happening across a number of disciplines. My project contributes to recent efforts in anti-carceral scholarship to conceptualize the permeable boundaries of retributive institutions.⁶³⁵ By mapping the rhetorical maneuvers that constitute transjudicial spaces, I reveal the communicative gestures that support the expanding reach of the US criminal legal system. Specifically, my approach may help to articulate how guilt is adjudicated beyond courtroom walls to determine if cases of gendered violence will be charged and prosecuted. Even in cases where a victim reports an experience with sexual or gendered violence and wants the case to be taken through criminal legal proceedings, judicial features can emerge and deny legal responses and services outside of the boundaries of a courtroom or the discretion of a judge or prosecutor. This is because, over the last 40 years, “street-level bureaucrats, especially police, are invested with varying (but routinely

⁶³⁵ Allspach, “Landscapes of (neo-)liberal control, 705-723; Moran, “Leaving behind the ‘total institution’?,” 35-51; and Palacios, “‘Ain’t No Justice... It’s Just Us,’” 279-295.

high) levels of discretion to take reports and decide whether a crime has been committed.”⁶³⁶ Without any legal training, police officers arrive to crime scenes equipped with judicial procedures, technologies, and logics and, upon their initial investigation, decide whether or not a crime has been committed, an arrest will be made, and the case will be prosecuted. The concept of transjudicial spaces, with the conceptual and theoretical framework that it offers, may be helpful for examining processes like these, during which judicial features emerge to enable the adjudication of guilt and innocence outside of criminal legal proceedings and beyond the scope of judicial authorities.

Because of the way that the concept of transjudicial spaces points to the adjudication of guilt beyond the walls of courtrooms, it is also a concept that may be useful for identifying how the emergence of judicial features beyond courtroom walls to ascertain guilt contributes to the use of force in cases of police brutality. In many criminal legal cases, police intervention into alleged criminal behavior is the first moment in which individuals become entangled with criminal legal features and, when determining whether the use of force is appropriate, law enforcement officers are required to assess the situation and make determinations about the risk posed by an individual. Determinations of risk in the field and determinations of guilt in the courtroom are often assessed in very similar ways—through the examination of an individual’s criminal history, evidence or contextual elements that indicate potential or recent criminal behavior, and the individuals’ verbal and affective-emotional expressions. Essentially, determinations about whether or not it is appropriate to use force rely upon a number of considerations that resonate with the judicial features discussed throughout this

⁶³⁶ Corrigan, *Up Against A Wall*, 75.

dissertation which are deployed to determine the potential that an individual will commit a crime while engaged with police. Considering this observation, it is notable that, in a recent and highly publicized report, entitled *Investigation into the City of Minneapolis and the Minneapolis Police Department*, conducted by the Minnesota Department of Human Rights between 2020-2022, investigators found that Minneapolis Police Officers “use higher rates of more severe force against Black individuals compared to white individuals in similar circumstances,”⁶³⁷ suggesting that, at least in this department, officers determine that Black people are more likely to commit a violent act against police than white people under the same circumstances. Essentially, these officers are determining that an individual is guilty of being capable of committing a crime and ought to be detained using force, regardless of whether or not a crime has or will be committed. The determinations of guilt and innocence outside of courtrooms in cases of police brutality and use of force decisions are likely different than those that emerge around allegations of sexual and gendered violence. However, in both cases, my project provides tools for mapping the naming, performance, and disruption of judicial features which illuminate patterns of disparity, inequity, and exclusion that influence determinations of guilt and innocence, as well as the communicative maneuvers that can be used to disrupt the expansion of criminal legal reach.

⁶³⁷ “Investigation into the City of Minneapolis and the Minneapolis Police Department: Findings from the Minnesota Department of Human Rights,” *Department of Human Rights*, April 27, 2022,

https://mn.gov/mdhr/assets/Investigation%20into%20the%20City%20of%20Minneapolis%20and%20the%20Minneapolis%20Police%20Department_tcm1061-526417.pdf.

In addition to offering a conceptual tool and framework for mapping the expansion of criminal legal reach, this project also calls attention to the complexity and localities of extrajudicial spaces, as well as those where the boundaries are likely to be disrupted by circulating judicial features. Extrajudicial spaces are not stable. Extrajudicial boundaries always have the potential to be disrupted by judicial features and, in particular localities, may not be possible to maintain at all. Beth Richie highlights that extrajudicial spaces are unlikely in some neighborhoods and communities because, in the United States, “ideological and policy shifts ... have led to the increased criminalization of disenfranchised communities of color, more aggressive law enforcement strategies for norm-violating behavior, and an undermining of civil and human rights of marginalized groups.”⁶³⁸ Richie argues that these shifts form “a prison nation,” referring “to those dimensions of civil society” which punish and police marginalized communities and, in particular, Black women’s behaviors and decisions, contain their possibilities for economic stability, and regulate domestic life with “ideological schemes that build consensus around conservative values.”⁶³⁹ Within the U.S. prison nation, legal interventions into the homes of nonwhite, queer, disabled, poor, and immigrant communities emerge both as dimensions of civil society, as well as from the criminalizing practices that increase the likelihood that individuals from these communities will become entangled with the criminal legal system and subject to conditions of the court. When considering the conceptual work done by judicial, extrajudicial, and transjudicial spaces, it is important to consider how location, as well as

⁶³⁸ Richie, *Arrested Justice*, 3.

⁶³⁹ *Ibid.*

social, political, cultural, and historical forces shape the possibility for extrajudicial boundaries to emerge and remain stable. Feminist new materialist theory provides tools for keeping these considerations front of mind, calling for scholarly work that engages in “a more expansive, inclusive narrative setting . . . one more attuned to the larger systems of power in which both humans and material objects circulate.”⁶⁴⁰ Further interdisciplinary work to examine the contours and configurations of extrajudicial boundaries in particular spacetimes holds the potential to identify the judicial features that permeate and disrupt extrajudicial spaces in particular communities, as well as the foreclosure of extrajudicial spaces for multiply marginalized individuals for whom extrajudicial spaces may be rendered completely inaccessible.

The concept of transjudicial spaces and its generative contributions emerged from my case studies and a relationship between them that did not reveal itself until my ability to do research was disrupted. When I finished my preliminary exams in December 2019, I did not have a dissertation project in mind, but was convinced that I intended to do fieldwork in Minnesota courtrooms to examine the relationship between the physicality of courtrooms and the rhetorical expressions that emerged within them. To that end, in January 2020, I began writing my prospectus and, in February 2020, I began observing criminal court proceedings with WATCH. When courtrooms across the country closed to prevent the spread of COVID-19, my intention of examining the material-discursive intra-actions that amplified and diminished victim voices in courtrooms felt impossible. Throughout the Summer, as courtrooms remained closed to the public, I began counting the months between the present moment and my anticipated graduation date, aware that

⁶⁴⁰ López, “Contesting the Material Turn,” 377.

the delay of data collection in 2020 threatened my ability to complete my degree within the set institutional timeline, beyond which I would be ineligible for University funding. It would be too optimistic to say that I was motivated by this realization, but in light of it, I began revising two essays that I had written during my coursework—one about the judicial features evoked in the Brett Kavanaugh Supreme Court Confirmation hearing and the other about the emergence of rhetorical listening amidst the Larry Nassar sentencing hearing. I figured, if I could not go into courtrooms, I could at least continue to work on legal rhetoric and, perhaps, find a way to draw these essays together into a larger dissertation project. When the Minnesota criminal legal system began holding hearings via Zoom in September 2020 and I was, once again, able to observe criminal legal proceedings, my project remained impossible. I could not, as a virtual court observer, examine material-discursive intra-actions in physical courtrooms. However, as I began observing, the connections between these three case studies began to slowly emerge. During my prospectus defense in December 2020, I did not yet have the language or framework for explaining that what I intended to study was transjudicial spaces and I had not yet realized that it was the transjudicial emergences in each of these case studies that made me feel like they held together. In fact, when asked about my choice of case studies in my prospectus defense, I noted that bringing these three case studies together was an act of necessity, not creative choice, as the COVID-19 pandemic had disrupted my initial project. As it turns out, I was lucky that the COVID-19 pandemic presented this disruption early on because from July 2020-January 2022, I underwent seven extensive surgeries that would have made fieldwork in physical courtrooms impossible, but I was able to observe court proceedings via Zoom due to public health

disruptions, meaning that my personal health disruptions did not significantly impact my data collection. Eventually, the concept of transjudicial spaces emerged and, at this point, it is hard to believe that it was not part of the project from the beginning. The story of designing of this research project is one of fear, necessity, and precarity—a starting point which, I believe, offers valuable insights for scholars invested in humanities and social science research.

I tell this story about my disrupted research trajectory in order to complicate the narrative that often accompanies humanities and social science research. Often, humanities and social science researchers tell stories about the disruptions and detours in their research process as fortuitous and serendipitous, describing the process of stumbling across the exact right artifact, the perfect interviewee, or the truth in places where they never would have expected to find it. I also fall into this kind of narrativizing when describing the disruptions to my project. I talk about how serendipitous it was for the concept of transjudicial spaces to emerge from the case studies that I was trying to fit together, how fortunate it was that I could engage in my research from home because of my numerous operations, how lucky I was to have found my way to this project. In the narrative that I tell and those I have heard, it seems to me that the story of good fortune emerges to describe the feeling of being disrupted, of “experiencing and responding to a barrage of re-/dis-/orienting moments” in research.⁶⁴¹ In their article about such disruptions, Johnson et al. call these moments “investigative pivots,” a metaphorical

⁶⁴¹ Gavin P. Johnson, Melissa Guadrón, Keira Hambrick, Yanar Hashlamon, Addison Koneval, and Christa Teston, “Responding to the Investigative Pivots of Rhetoric Research,” *Rhetoric Society Quarterly* 51, no. 5 (2021): 407.

concept that “encourages readers to conceive of rhetoric research as a series of dizzying, re-/dis-/orienting dispositions that require reflection and responsivity, especially if researchers hope to offer robust analyses of complex phenomena in times of pervasive crisis.”⁶⁴² Throughout this article, they conceptualize investigative pivots in ways that may suggest why the language for describing these disruptions is so optimistic, even when the disruptions emerge amidst significant personal, social, and public crises, explaining that “our vocabulary for reflecting critically on such design decisions remains inadequate.”⁶⁴³ I tell the story of my investigative pivots, first and foremost, because I think that it provides insight into how pervasive crisis impacts research design, as well as what gets lost when these massive disruptions and crisis conditions are reflected upon and referred to as moments of good fortune and serendipity. I tell this story to acknowledge that crisis conditions shaped my research.

One of the main takeaways from this research project, for me, is the understanding that good research *can* emerge amidst precarious sociopolitical, public health, and labor conditions, but also that these conditions impact the project from the phase of research design all the way to project completion. In the Johnson et al. article about investigative pivots, four graduate student researchers shared their experiences with disruptions and detours in research. I was particularly struck by Yanar Hashlamon’s narrative reflecting upon how his precarious labor conditions as a graduate student employed by the University shaped his research. He writes,

I’m not Ballenger’s ostensibly curious researcher, but a relentless one. Worse than that, I’m exhausted. I don’t dwell in the data as much as I am pushed around by its current. The project rocks between my three jobs. I code during office hours. I

⁶⁴² Ibid, 408.

⁶⁴³ Ibid, 407.

transcribe between tutoring shifts. I hold interviews in a basement—their length isn't set by my methodological design, but by how long I can hold a room before a staff meeting kicks me out of my own reservation. I'm not afforded the time to code as [Strauss and Corbin](#) would have me. To dimensionalize as [Kathy Charmaz](#) instructs. Something as simple as waiting to finish collecting data before I begin to analyze becomes exponentially more complex. . . . With my political and cultural intuitions in tow, I found that graduate student labor emerges at every avenue of my study. Labor informed the grounded theory system that developed from my professionalization. Labor pressured me to modify and distort that same methodological orientation.⁶⁴⁴

My investigative pivot felt like, at the time, a terrifying and devastating shift in research plans and my pivot was not the result of the parts of the research process that we romanticize—it was not a shift because of the way that my data spoke to me, awakening me to what I was really investigating, nor an emergence from the serendipitous encounters characteristic of qualitative research. Rather, it emerged when a public health crisis threatened my degree completion and the funding structures and labor conditions that, amidst that crisis, constrained my available options. But the insight that this experience offers is not only about me. Rather, this insight is about how funding structures, precarious labor, and economic need shape the research that is being conducted at universities across the country. Taking seriously that the researcher, their precarious position, and pervasive crises are all part of the phenomenon studied and the apparatus for studying it, I stand in agreement with Johnson et al. who conclude their conceptualization of investigative pivots to acknowledge that “those who simultaneously occupy the identities of student and researcher need adequate spacetime for experiencing, naming, analyzing, and responding to the twists and turns of their research processes. The material-discursive hurdles of life and learning follow us into our research sites . . . [and]

⁶⁴⁴ Ibid, 412-413.

these hurdles are neither accidental nor serendipitous, nor should they be unexpected.”⁶⁴⁵ As more COVID-19 disrupted dissertations in the humanities and social sciences emerge, I hope that these conditions will be further considered not only as disruptions to data collection, archival visits, and fieldwork, but also as “pivot[s] toward . . . the rhetorical complications of our world and work” that are formative of the research design, process, and outcome.”⁶⁴⁶ The impulse to state, once again, that I feel very lucky for how this project emerged amidst a public health crisis, personal health challenges, and necessary investigative pivots is strong. I do feel very lucky and, also, I feel very called to critically reflect upon these unfortunate conditions and to acknowledge this research project as one formed by and through crisis. It is my hope that, as Universities and graduate programs adapt to ongoing pervasive crises, they establish resources for ensuring that completion is not left to chance and support systems for helping researchers navigate pivots are not determined by luck. Humanities and social science scholars and their research are vulnerable to social, cultural, and political upheaval and support of these researchers amidst the messy, complicated, sticky, emotional work of coping with and accounting for upheaval will produce good, necessary, and transformative scholarship.

Finally, I want to conclude this manuscript with answers to a set of questions that I was asked throughout the process of conducting my dissertation research and writing the dissertation manuscript. These questions seem to point to a similar line of thought and a sincere hope for the conclusion of this work. They took different forms, emerged in different spaces, and were composed of different words, but my graduate student

⁶⁴⁵ Ibid, 420.

⁶⁴⁶ Ibid.

colleagues, mentors, and academic advisors often responded to descriptions of my research, asking— isn't this some sort of double bind? This question is legitimate— throughout this dissertation project I concluded that disrupting the judicial features that diminish victim voices within courtrooms works to garner support for judicial interventions and carcerality in response to gendered and sexual violence and that circulating judicial features beyond courtrooms enables the expanded reach of the criminal legal system. Some of these questioners pondered whether there might be examples of responses to gendered and sexual violence in which judicial features and violent judicial forces do not emerge. Others wanted to know how I conceptualize the potential of this project to disrupt reliance upon judicial interventions and carcerality. I found these questions frustrating. To be clear, I was not frustrated with the question askers or even the questions themselves. In fact, I found them inspiring, generative, and hopeful. I was, however, frustrated by my inability to find examples of extrajudicial responses to gendered and sexual violence and to imagine how my work might contribute to the establishment of such responses.

My inability to answer these questions troubled me as I began the final revisions of this project. During a meeting with my advisors to discuss revisions, I acknowledged the importance of these questions and noted that, without answers to them, I worried that my dissertation would read like a laundry list of problems and harms and leave my readers feeling as though there was no way out of the grip of criminal legal features and forces. As I was working on my revisions, however, I picked up Sara Ahmed's recently published book, *Complaint!* In the book, Ahmed writes about institutional responses to allegations of racial, colonialist, gendered, and ableist violence, detailing the research

process she used to learn about these violences from university “students, academics, researchers, and administrators who had been involved in a formal complaint process.”⁶⁴⁷ As I read Ahmed’s introduction, I grew hopeful—it seemed that Ahmed’s work to collect and account for these experiences with interpersonal and institutional violence in university settings might qualify as a kind of extrajudicial approach to reckoning with such violence. Within the introduction, Ahmed detailed her intentional choices that seemed to enable an extrajudicial approach. She discussed her commitment to “hear with a feminist ear,”⁶⁴⁸ which she described as an attunement to “who is not heard, how we are not heard.”⁶⁴⁹ She noted her decision not to apply for funding for this project in order to ensure that it could “be conducted outside the influence of institutions to the extent that was possible.”⁶⁵⁰ She explained how, although she planned to “conduct semistructured interviews” using prepared questions, within the first few minutes of her first interview, she realized that the questions “were not going to work” because “complaints tend to be too messy even for a loose series of questions.”⁶⁵¹ Her commitment to listening for voices unheard and experiences unspoken, efforts to avoid institutional influence to allow for institutional critique, and realization that prepared questions modulate how experiences with violence emerge and diminish experiential knowledge seemed, to me, to indicate Ahmed’s rejection of judicial features and the violent judicial forces that they carry. Yet, just as I noted this observation in my marginal notes, Ahmed included a striking

⁶⁴⁷ Ahmed, *Complaint!*, 10.

⁶⁴⁸ *Ibid.*, 4.

⁶⁴⁹ *Ibid.*

⁶⁵⁰ *Ibid.*, 11.

⁶⁵¹ *Ibid.*, 13.

observation: “Over time I came to think of the spoken words less as an interview and more as testimony. A testimony can refer to an oral or written statement given in a court of law. The purpose of testimony in such a setting is to provide evidence ... Testimony is also what is required to identify an injustice, a harm, or a wrong.”⁶⁵² For Ahmed, despite her efforts to center victims’ voices, avoid institutional influence, and create space, time, and conditions for experiential knowledge about violence to emerge, the accounts shared by victims still took the shape of something that resembled victim testimony, a judicial speech genre. In this moment and as I read the rest of Ahmed’s book, I reflected on this observation and what it might mean in relation to the questions that I was often asked— if, even under these conditions, victim voices still seemed influenced by judicial forces, is there any hope in thinking about responses to violence beyond the courtroom? In these moments of reflection, I recalled another scholarly book about sexual violence, institutional failure, and the potential of restorative responses to violence—Sarah Deer’s *The Beginning and End of Rape: Confronting Sexual Violence in Native America*. Deer’s work offers a vision of responses to sexual violence in indigenous communities that could “ensure that survivors of rape are believed and perpetrators are held accountable.”⁶⁵³ Throughout her book, Deer narrates the devastating and entangled histories of U.S. colonization and sexual violence against indigenous women, detailing all of the ways that the U.S. criminal legal system was designed to obscure this violence and obfuscate processes for responding to it. In relation to this history, she advocates for the sovereignty of indigenous communities in establishing systems for responding to and reckoning with

⁶⁵² Ibid.

⁶⁵³ Deer, *The Beginning and End of Rape*, 158.

sexual violence, but warns that “extreme caution is warranted to ensure that a peacemaking or restorative approach does not replicate traditional Anglo-American constructs of victim blaming, shame, and secrecy,”⁶⁵⁴ noting that these approaches raise legitimate concerns about “safety, coercion, accommodation of offender’s needs at the expense of the survivors, and recidivism,” potential negative outcomes that also accompany criminal legal responses.⁶⁵⁵ However, for Deer, imagining victim-centered, culturally-responsive approaches to sexual violence cannot happen if scholars, advocates, and legal thinkers are “being trapped by a false dichotomy of choosing between the American adversarial model and the mediation.”⁶⁵⁶ Deer argues that, in any restorative process, there will be “elements of both retribution and restoration,”⁶⁵⁷ established amidst an ongoing history of criminality, colonization, rape apologist discourses, cultural values, and processes for healing and peacemaking. That judicial features, forces, and resonances show up in extrajudicial spaces, processes, and expressions, then, is not surprising—it is a result of a long history of criminal legal responses to gendered and sexual violence and the expansive reach of the institutions from which they emerge.

Although I cannot offer you a case study through which I demonstrate the extrajudicial efforts that enable responses to gendered and sexual violence which do not circulate violent judicial forces, my project does provide answers to questions related to the crucial next steps for imagining such responses. The conceptualization of transjudicial spaces provides tools for thinking about alternative responses to gendered and sexual

⁶⁵⁴ Ibid., 124.

⁶⁵⁵ Ibid., 127.

⁶⁵⁶ Ibid., 135.

⁶⁵⁷ Ibid.

violence that do not rely on criminal legal interventions or judicial features and forces. More than that, this conceptualization provides tools for accounting for the way that judicial features and forces leak into these alternative responses and to what effect. Restorative, victim-centered, trauma-informed, and transformative approaches to responding to gendered and sexual violence hold the potential to disrupt the violent judicial forces that so commonly emerge when victims voice experiences with such violence. However, these approaches also emerge amidst the histories of criminality and retribution, histories that will not disappear just because new approaches are established. The concept of transjudicial spaces is crucial for scholars, advocates, and activists seeking responses and solutions to gendered and sexual violence. Naming the judicial features that emerge, the violent judicial forces that they circulate, and the impact of these on the rhetorical means available to those who have experienced violence in spaces where these experiences are voiced will ensure that transjudicial circulations and disruptions do not go unnoticed. Transjudicial spaces is a concept developed to ensure that these judicial features and forces can be named, accounted for, and reckoned with to imagine responses to gendered and sexual violence that truly are beyond the courtroom.

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