

Ex-MSU President Simon's criminal case: 15 questions raised in preliminary exam

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Ex-MSU president Lou Anna Simon, middle, listens during the fifth day of her preliminary hearing at the Eaton County Courthouse in Charlotte, Michigan, on Tuesday, June 11, 2019. (Cory Morse | MLive.com)

It's been 18 months since Lou Anna Simon resigned as president of Michigan State University as a result of the Larry Nassar scandal.

Simon has yet to put that controversy behind her: This week marked the end of an extended preliminary hearing to decide whether she will face trial on criminal charges.

Simon is accused of lying to Michigan State Police when they interviewed her in May 2018.

That interview occurred as part of the state's investigation into MSU's handling of the controversy, in which Nassar -- an MSU sports doctor -- abused hundreds of patients over a two-decade period.



Judge Julie Reincke presides over ex-MSU president Lou Anna Simon's preliminary hearing at the Eaton County Courthouse in Charlotte, Michigan, on Tuesday, April 16, 2019. (Cory Morse | MLive.com)

The preliminary hearing began in February in Eaton County District Court.

Since then, Judge Julie Reincke has heard seven days of testimony, with the final day on Tuesday, July 23. Lawyers now have a nine-week period to file legal briefs.

Here's a look at the prosecution's case, what Simon's lawyers say, and what comes next.



<https://youtu.be/teR7QaOrUQ8>

Amanda Thomashow, the one who filed the MSU Title IX report in 2014 speaks about her voice not being heard during the second day of Nassar's sentencing in Lansing, Mich. on Wednesday, Jan. 17, 2018. (Joel Bissell | MLive.com)

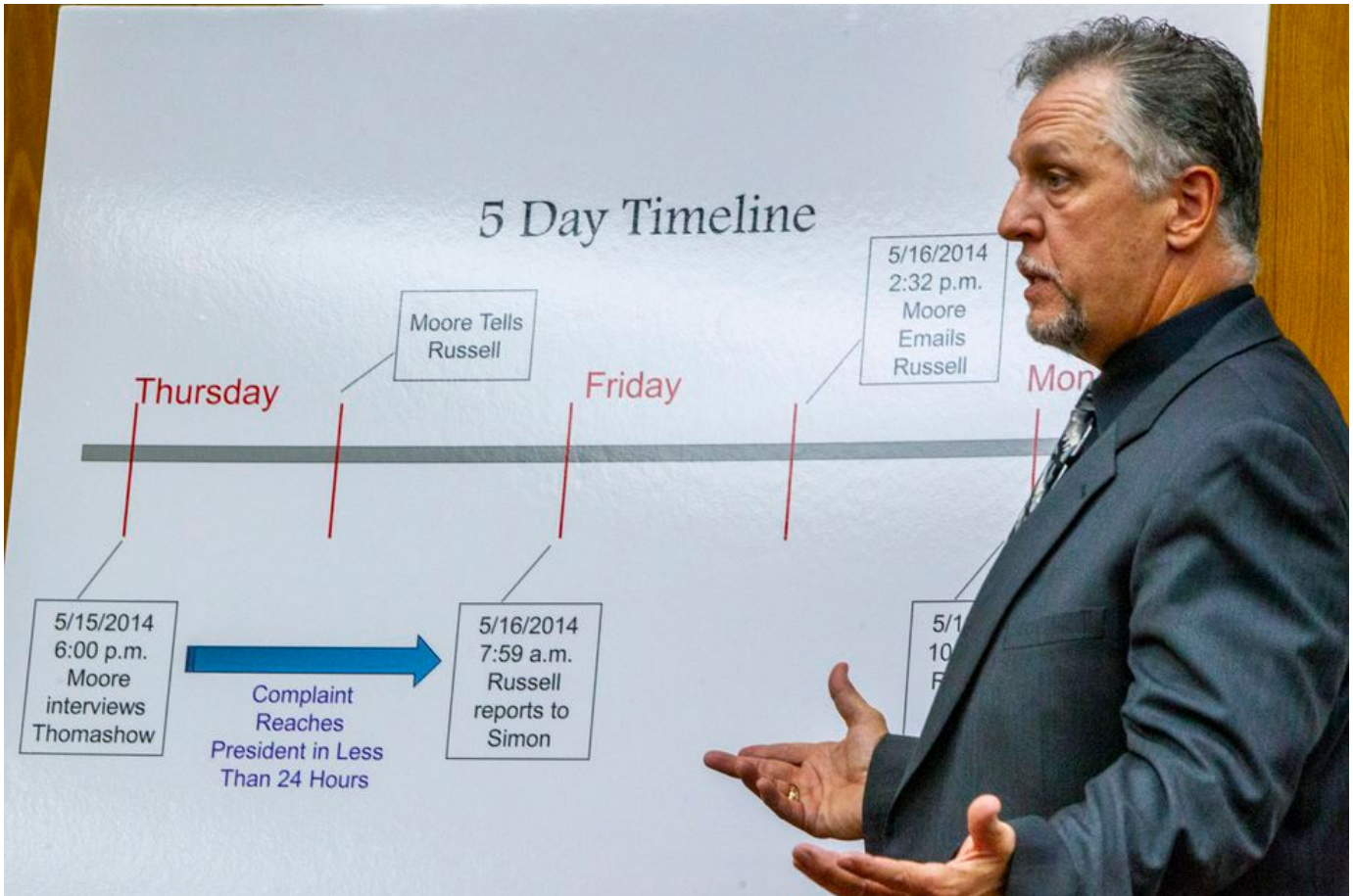
1. What happened with the 2014 complaint against Nassar?

At the crux of the Simon case is a 2014 complaint by Amanda Thomashow that she was sexually abused by Nassar during a medical exam at MSU's Sports Medicine Clinic.

It was the first time a formal complaint at been filed at MSU against Nassar, who had molested hundreds of patients since the 1990s. However, MSU's investigation of Thomashow's complaint cleared Nassar of wrongdoing. He returned to his job for another two years, abusing dozens more women until he was fired in September 2016.

“MSU cleared a monster and put him back in position” to abuse more women, Michigan Assistant Attorney General Scott Teter said during his closing argument Tuesday.

When the state launched an investigation of MSU's handling of the Nassar controversy, they zoomed in on the events in May 2014.



Assistant Attorney General Scott Teter makes his closing statement during the seventh day of ex-MSU president Lou Anna Simon's preliminary hearing at the Eaton County Courthouse in Charlotte, Michigan, on Tuesday, July 23, 2019. (Cory Morse | MLive.com)

2. What did Simon know and when did she know it?

Thomashow was interviewed by Kristine Moore, then MSU's Title IX investigator, the evening of May 15, 2014.

Shocked by Thomashow's account of sexual assault, Moore immediately called her boss, Paulette Granberry Russell, director of the Office for Inclusion and Intercultural Initiative.

Russell, a senior advisor to Simon, sent the president an email the first thing the next morning, Friday, May 16, 2014.

The email said: "We have an incident involving a sports medicine doc."

Russell and Simon had a previously scheduled meeting the following Monday, May 19. It appears the two discussed Nassar at the time.

"COM incident" appears on Russell's meeting agenda. On Simon's agenda, "COM" is handwritten next to the agenda item "sexual assault cases." COM is the acronym for MSU's College of Osteopathic Medicine, Nassar's employer, according to testimony.



Paulette Granberry Russell, director of the Office for Inclusion and Intercultural Initiatives, while testifying during ex-MSU president Lou Anna Simon's preliminary hearing at the Eaton County Courthouse in Charlotte, Michigan, on Tuesday, April 9, 2019. (Cory Morse | MLive.com)

3. What exactly was Simon told during the meeting?

We don't know what was said in the meeting.

Russell testified she has no recollection of the conversation. Simon didn't testify.

Prosecutors maintain that it's probable Simon was told Nassar's name and specific details about the Thomashow's complaint.

That's based on the fact Russell had obtained a summary of Nassar's complaint, and she wrote Nassar's name on the cover of a file folder for the May 19.

Simon's attorneys maintain it's more likely Russell made a cursory mention that a MSU doctor was under investigation, without providing names or details.

They point to Russell's testimony that she obtained the complaint summary to pass along to Nassar's boss, rather than to give to Simon.

In addition, defense attorneys note the 45-minute meeting covered 17 topics, based on the agendas. And Simon's copy of the agenda shows that she wrote down five names referenced during the meeting, and Nassar's name is not among them.



A blowup of Paulette Granberry Russell's agenda for her May 19, 2014, meeting with Lou Anna Simon. Notice the agenda listing for "COM Incident." Russell testified that COM stands for MSU's College of Osteopathic Medicine, where Nassar was employed. (Cory Morse / MLive)

4. What was Simon's role in MSU sexual misconduct cases?

Simon told police she largely stayed out of ongoing sexual misconduct investigations. That was backed by Russell in her testimony.

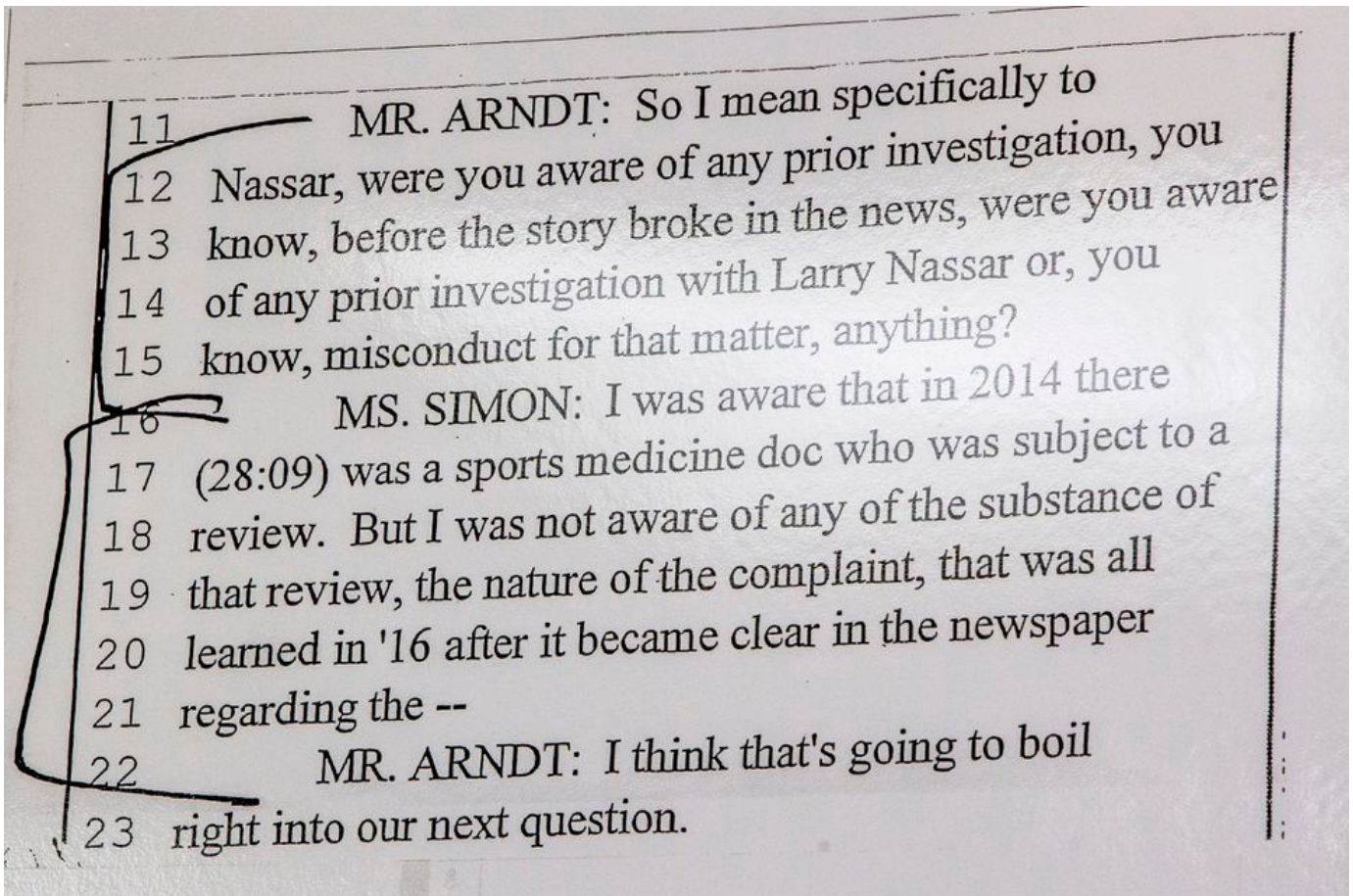
Prosecutors question that assertion. They showed that "sexual assault cases" and "Title IX" were standing agenda items for the monthly meetings between Russell and Simon.

Moreover, at the time Thomashow filed her complaint, Michigan State was under investigation by the federal Office of Civil Rights for mishandling sexual-abuse complaints, testimony showed.

"I've seen lots of agendas with Title IX and OCR on them," Reincke said at one point. "That leads to probable cause that Dr. Simon knew what was going on."

Simon's attorneys counter those discussions did not involve individual investigations, but the "30,000-foot view," such as the number of complaints filed and cases closed, and university efforts to address the issue.

They point out none of the two dozens agendas introduced into evidence and none of the handwritten notes on them include names or details about individual cases.



A blowup of the crucial part of the transcript of the May 1, 2018, interview of Lou Anna Simon by Michigan State Police. (Cory Morse | MLive.com)

5. Did Simon lie during the police interview?

The allegations of lying involve more what Simon didn't say versus what she did.

In her May 1, 2018, police interview, Simon said she was aware in 2014 "there was a sports medicine doc who was subject to a review. But I was not aware of any of the substance of that review, the nature of the complaint."

In that interview, Simon also said she knew in 2014 that review involved the Title IX office, which handled sexual misconduct cases.

That response is the basis for the criminal charges: Prosecutors say it was a lie, based on their theory that Simon was told Nassar's name and specifics about Thomashow's allegations by Russell.

Simon's attorneys have forcefully put forth three arguments to that.

One is that prosecutors are only speculating that Simon knew Nassar's name and more details, saying investigators haven't produced "any document, any witnesses" to prove that point.

They also note Simon was never directly asked in the interview if she knew Nassar's name in 2014 or to expand on her answer about not knowing the "substance" or "nature" of the allegations.

The defense team's third argument: In 2018, Simon was being asked about events that happened four

years earlier and even if she was told Nassar's name and given some more detail, it's possible she forgot.



State Police Detective Sgt. Bill Arndt testifies during ex-MSU president Lou Anna Simon's fifth day of her preliminary hearing at the Eaton County Courthouse in Charlotte, Michigan, on Tuesday, June 11, 2019. (Cory Morse | MLive.com)

6. Why didn't police ask follow-up questions?

One point of contention during the preliminary hearing has been the lack of followup questions during the 2018 police interview.

The interview was conducted by Michigan State Police Sgt. Joseph Cavanaugh and Detective Sgt. Bill Arndt.

Testimony showed the attorney general's office specifically asked the officers to question Simon about how she found out about the 2014 complaint, who told her, what specifically she was told and her reaction.

None of those questions were asked. In their testimony, the officers conceded the lack of follow-up questions was a mistake.

Silver says that Simon is being prosecuted for not providing information she was never asked about.

"It's not her job to volunteer information," he said. "Dr. Simon should not face criminal charges because Arndt and Cavanaugh didn't do their job."



Sgt. Joseph Cavanaugh at preliminary hearing for former Michigan State University President Lou Anna Simon on July 23, 2019 in Eaton County District Court.

7. Can prosecutors prove Simon lied "knowingly and willfully?"

To get a conviction, prosecutors must prove Simon lied "knowingly and willfully" with the intention of impeding a criminal investigation.

Arndt testified that he has "no doubt" Simon was deliberately deceptive during the police interview.

"I believe that she did lie to us," Arndt said

But Silver says there's no evidence of a "knowing and willful" lie, and noted the two police investigators had their own memory lapses while testifying.

For instance, Cavanaugh said that Simon had received an email with Nassar's name, confusing that with an email sent to Russell.

"The irony of this is astounding," Silver said. "... I guess by the standards of the prosecution, Sgt. Cavanaugh should be prosecuted for perjury."

Instead, Silver said, "we're giving him a pass and say, 'We don't think you committed perjury. You just didn't remember.'"

"So why are we treating Lou Anna Simon differently?" Silver said. "Why assume she deliberately lied instead of having a lack of memory for something four years earlier?"



Michigan Assistant Prosecutor Scott Teter in Eaton County District Court. (Cory Morse / MLive)

8. Can prosecutors prove that Simon impeded the investigation?

Another issue has been whether Simon's answers impeded the investigation, another element needed for conviction.

Ardnt said that if police had known earlier about the email and meeting between Simon and Russell, it would have allowed them to zero in on that time frame earlier, especially in looking through emails and other documents.

"We would have known where to look instead of going through thousands of documents," Ardnt said. "It would have narrowed our focus vs. (the investigation) being so large."

Judge Reincke seems to agree with that point. "If she had given more information," it might have made things easier for state investigators, she said.

However, Silver says the real issue is the officers' failure to ask Simon who told her about the 2014 complaint and when -- which would have given investigators the information they say they needed.

"All they had to do was ask," Silver said.