

# Report of the Independent Investigation

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## The Constellation of Factors Underlying Larry Nassar's Abuse of Athletes

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**ROPES & GRAY**

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## EXECUTIVE SUMMARY

Across two courtrooms, in early 2018, nearly 200 girls and women stood up to Larry Nassar. Facing him directly, and speaking to the world, with courage, eloquence and powerful emotion, they documented the abuse he had perpetrated, the physical and emotional suffering they had endured, and the force they had become. With one unflinching account after the next, they brought forth the full scope, depth and magnitude of the tragedy that had unfolded, over almost three decades, across America and around the globe, including in the heart of elite gymnastics, at the pinnacle of Olympic magnificence. Whether measured by the number of survivors, the tally of abusive acts, the range of adults and institutions that failed to intervene, or the span of years over which Nassar was able to perpetrate his crimes, the chronicle of his serial child sexual abuse is devastating.

In all, Nassar committed thousands of sexual assaults between the early 1990s and the summer of 2016. He abused some survivors one time, while abusing others hundreds of times over a period of many years. Nassar carefully constructed a comprehensive system of abuse. He cultivated a reputation and image as a highly-skilled, well-meaning and caring doctor, and he committed almost all of his crimes under the guise of performing medical treatments. He groomed the survivors, their families and numerous other adults into believing that he was not only a world-renowned doctor, but also an advocate for the athletes, a physician who cared deeply about his patients' physical well-being and mental and emotional health. With the cover he crafted, he became, in the words of one survivor, a "wolf in sheep's clothing," who cloaked himself in the "guise of a loving friend and medical professional."

In the late summer and early fall of 2016, in the wake of the *Indianapolis Star's* reporting on sexual abuse in gymnastics, first one survivor of Nassar's abuse came forward, and then another and another. With his survivors rising up en masse and law enforcement finally closing in, Nassar

took his work laptop to a computer service store and paid to wipe all of its content. By the next day, Nassar had placed a number of hard drives containing thousands of images of child pornography in his trash for roadside collection. The garbage truck was late, and the police seized the hard drives. On November 21, 2016, the State of Michigan charged Nassar with multiple counts of first degree criminal sexual conduct, and on December 14, 2016, a federal grand jury indicted Nassar on charges of child pornography. State and federal felony proceedings for criminal sexual conduct, child pornography and destruction of evidence ensued in three separate courts in Michigan.

Nassar pleaded guilty in federal court and two Michigan state courts, and he was sentenced, cumulatively, to between 140 and 360 years in prison. During the sentencing hearings, a survivor posed the question of what label to affix to Nassar: “A predator? A criminal? A molester? A psychopath? A pornographer? An abuser? A thief of innocence?” The survivor concluded, “They all seem so inadequate because they are. And so you will be given a number.” Nassar is currently prisoner number 21504-040, serving his sentence in United States Penitentiary Coleman II, a high-security federal prison in central Florida.

While Nassar bears ultimate responsibility for his decades-long abuse of girls and young women, he did not operate in a vacuum. Instead, he acted within an ecosystem that facilitated his criminal acts. Numerous institutions and individuals enabled his abuse and failed to stop him, including coaches at the club and elite level, trainers and medical professionals, administrators and coaches at Michigan State University (“MSU”), and officials at both United States of America Gymnastics (“USAG”) and the United States Olympic Committee (the “USOC”). These institutions and individuals ignored red flags, failed to recognize textbook grooming behaviors, or in some egregious instances, dismissed clear calls for help from girls and young women who were

being abused by Nassar. Multiple law enforcement agencies, in turn, failed effectively to intervene when presented with opportunities to do so. And when survivors first began to come forward publicly, some were shunned, shamed or disbelieved by others in their own communities. The fact that so many different institutions and individuals failed the survivors does not excuse any of them, but instead reflects the collective failure to protect young athletes.

Nassar found an environment in elite gymnastics and Olympic sports that proved to be conducive to his criminal designs. With an overwhelming presence of young girls in the sport and accepted, indeed required, intimate physical contact in the training and treatment of gymnasts, the sport rendered athletes inherently vulnerable. In addition, there were embedded cultural norms unique to elite gymnastics that eroded normal impediments to abuse while at the same time reducing the likelihood that survivors would come forward. The culture was intense, severe and unrelenting. It demanded obedience and deference to authority. It normalized intense physical discomfort as an integral part of the path to success. Young gymnasts were largely separated from their parents during their training programs and travel to competitions. And due to the demands of high-performance training and competitions, gymnasts also found themselves socially isolated – largely cut off from the world outside the four walls of the gym. These conditions, coupled with the driving intensity of the cultural expectations to be perfect every day, and every minute of every day, taught these young gymnasts to toe the line. They learned not to rock the boat if they were to achieve – after years of immense personal sacrifice and tremendous commitment by their families – the dreams they had been chasing, year in and year out, for almost the whole of their young lives.

Given these cultural conditions and features of the sport, implementation of, and rigorous adherence to, formal structures and policies reflecting the highest standard of care were required to protect vulnerable young athletes. Yet the USOC and USAG did not keep pace with best

practices being adopted by other youth-serving organizations. Instead, they made decisions regarding appropriate roles and responsibilities for their respective organizations that did not embrace a child-first approach and led to stark failures in implementing effective measures to protect athletes from sexual and other forms of abuse. Nassar's ability to abuse athletes for nearly three decades is a manifestation of the broader failures at USAG and the USOC to adopt appropriate child-protective policies and procedures to ensure a culture of safety for young athletes. Although neither organization purposefully sought to harm athletes, both adopted general governance structures and specific policies concerning sexual abuse that had the effect of allowing abuse to occur and continue without effective intervention.

As the USOC evolved toward a more traditional corporate governance model, it did not meaningfully involve athletes in decisions or policy-making; nor did it provide an effective avenue for athletes to raise and resolve complaints involving sexual misconduct matters. The complaint process that did exist had been designed, consistent with the purposes of the Ted Stevens Olympic and Amateur Sports Act of 1978 (the "Ted Stevens Act" or the "Act"), to protect athletes' rights to compete in Olympic sports. The USOC did not have specific processes in place during the period of Nassar's abuse that were sufficient to protect athletes from sexual abuse.

The USOC also chose to adopt a deferential, service-oriented approach to the National Governing Bodies ("NGBs"), including USAG. In this governance model, the USOC exerted its broad statutory authority and monetary influence over individual sports primarily for the purpose of encouraging success at the Olympic Games, effectively outsourcing any decisions regarding on-the-ground child-protective practices to the NGBs. As a result of this approach, the USOC was not in a position to know whether the NGBs were implementing strong, effective policies. And the NGBs, operating independently, enacted a wide range of policies and procedures, many of



which failed to conform to best practices. As a result, patterns emerged across the NGBs where survivors of sexual and other forms of abuse encountered a complaint process that was difficult to navigate, poorly tailored to allegations of sexual abuse, and lacking in protections against retaliation for athletes and others who advanced allegations of misconduct against successful coaches or other adults in positions of authority. The USOC, despite having been directly informed by NGBs of the threat of sexual misconduct in elite sports, failed to address the risk until 2010, and then failed to take effective action for many years, permitting NGBs to continue adhering to inadequate and harmful policies and practices.

USAG, in particular, implemented an array of sexual misconduct policies that ranged from the proactive and well-intentioned to the convoluted and detrimental. USAG was aware of the risk of sexual abuse in gymnastics, took high-level steps to help protect gymnasts, and promoted itself as a leader in athlete protection. But despite this branding, USAG repeatedly declined to respond adequately to concrete reports of specific misconduct, and instead erected a series of procedural obstacles to timely investigation and effective response, even in the face of serious, credible allegations of child sexual abuse. USAG's actions in response to allegations against former coaches Marvin Sharp, Bill McCabe and Doug Boger highlight how in the years leading up to the revelation of Nassar's abuse, the organization ignored credible reports of abuse, and instead required the complaining party to comply with numerous procedural requirements that operated to block or delay effective action.

The USOC's and USAG's failure to exercise appropriate oversight to protect athletes from sexual abuse is perhaps best exemplified by the conditions and lack of oversight at the Karolyi Ranch. For 17 years, the Ranch was the epicenter of competitive gymnastics in the United States. Approximately once every month, members of the Women's Artistic Gymnastics Team (the

“National Team”) and other elite female gymnasts gathered from across the country to participate in rigorous training camps run by Bela and Martha Karolyi. The Karolyi Ranch, which was owned and operated by the Karolyis, was both the USAG-designated Training Center for the National Team and, beginning in 2011, a USOC-designated official Olympic Training Site. Notwithstanding the expectation of excellence associated with the imprimatur of the USOC and USAG brands, as well as that of the Karolyi training program, no institution or individual took any meaningful steps to ensure that appropriate safety measures were in place to protect the young gymnasts. And within the isolated and secluded environment of the Karolyi Ranch, “two hours away from nothing,” Nassar had broad latitude to commit his crimes, far from the gymnasts’ parents and unimpeded by any effective child-protective measures.

The institutional failures, however, extended beyond weak structural elements, governance deficiencies and failures of oversight. In the summer of 2015, when the National Team member allegations of sexual assault were squarely presented to USAG and the USOC, the two organizations, at the direction of their respective CEOs, engaged in affirmative efforts to protect and preserve their institutional interests – even as Nassar retired from the sport with his reputation intact and continued to have access to girls and young women at the college, club and high school levels. The actions of these organizations, their CEOs and other senior personnel reveal that, apart from USAG’s referral to law enforcement in the summer of 2015 and again in the spring of 2016, USAG and the USOC took no meaningful steps to protect athletes from the danger presented by Nassar. Rather, these organizations, each in their own way, maintained secrecy regarding the Nassar allegations and focused on controlling the flow of information about his alleged misconduct.

*Response by USAG* – USAG was directly presented with credible sexual abuse allegations by athletes against Nassar by no later than mid-June 2015. USAG responded by initiating and

conducting an internal investigation of the athlete complaints over a five-week period. In late July, USAG referred the matter to the Federal Bureau of Investigation (“FBI”), at the recommendation of the outside investigator USAG had retained to assess the athlete complaints. USAG acted almost immediately to provide false excuses for Nassar’s non-attendance at USAG events, thereby keeping the gymnastics community in the dark about the complaints of Nassar’s sexual abuse. USAG thereafter allowed Nassar to quietly retire under the pretense of a long and illustrious career. These actions by USAG, notwithstanding its well-founded fear that Nassar had serially abused athletes, permitted Nassar to continue to have access to young athletes and girls for another 14 months, including at other youth-serving organizations with which Nassar was known to be affiliated: MSU (Nassar’s employer); Twistars USA Gymnastics Club (“Twistars”) (where Nassar routinely treated gymnasts); and Holt High School (where Nassar served as a team doctor).

After the *Indianapolis Star*’s public exposure of Nassar in September 2016, USAG continued to take steps to control the flow of information regarding his abuse of athletes. In November of 2016, two months after the *Indianapolis Star* reported on Nassar’s abuse, and immediately following a visit to the Karolyi Ranch by Texas Rangers in search of evidence, USAG’s then-CEO, Steve Penny, directed an immediate effort to urgently retrieve all medical forms and all documents that pertained to Nassar. All such records were collected, removed and returned to USAG’s offices in Indianapolis on an urgent basis. Mr. Penny has since been indicted by a grand jury in Texas for obstructing the Texas Rangers’ investigation by “tampering with evidence,” a third-degree felony. Moreover, one month following the removal of records from the Karolyi Ranch, USAG entered into a confidential settlement agreement with a survivor of Nassar’s abuse. In the agreement, USAG conditioned its settlement of her claims – against the organization for its role in her years-long abuse by Nassar – on her agreement to sign a non-disclosure

agreement, a practice that many youth-oriented organizations had stopped a decade earlier. The non-disclosure agreement purported to prohibit the gymnast from speaking publicly not merely about the terms of the settlement, but also about Nassar's abuse.

*Response by the USOC* – In July 2015, Mr. Penny directly notified Scott Blackmun, then-CEO of the USOC, that National Team members had lodged sexual abuse allegations against USAG's National Team doctor. Mr. Penny also shared certain information with Alan Ashley, Chief of Sport Performance for the USOC, about the sexual abuse allegations. Neither Mr. Blackmun nor Mr. Ashley shared the information received from Mr. Penny with others in the organization, and the USOC took no action between July 2015 and the date the *Indianapolis Star* published its account of Nassar's child sexual abuse in September 2016. Specifically, after Mr. Penny advised Mr. Blackmun that USAG had received disturbing allegations about the gymnastics team doctor, Mr. Blackmun did not inform anyone else at the USOC of the allegations, including any member of the USOC Board of Directors or any member of the USOC SafeSport team. Mr. Ashley likewise took no action in response to the information that Mr. Penny had shared with him. Nor did Mr. Blackmun initiate any internal review or other assessment to gather facts regarding Nassar, the athlete concerns, the scope of the alleged misconduct or Nassar's ability to gain access to athletes at USOC-owned and operated facilities, such as the U.S. Olympic Training Center in Colorado Springs, Colorado. Nor did he alert other youth-serving organizations with which Nassar was affiliated to the ongoing risk of harm. And when Larry Buendorf, the USOC's then-Chief Security Officer, reported to Mr. Blackmun that he had learned from Mr. Penny that athletes had raised concerns about a doctor's "technique" and that USAG had made a report to the FBI, Mr. Blackmun told Mr. Buendorf that he was already aware of the issue and neither asked

any questions nor sought any guidance from his Chief of Security on appropriate child-protective measures.

Mr. Blackmun and Mr. Ashley also each deleted from their respective email accounts the one email referencing Nassar by name that Mr. Penny had sent to the two of them in September 2015. Further, in early 2018 – long after the *Indianapolis Star* had publicly exposed Nassar – Susanne Lyons, then a board member at the USOC and soon to become the organization’s acting CEO, sent an email to Mr. Blackmun conveying her understanding that, prior to publication of the *Indianapolis Star* article, Mr. Buendorf was the only person at the USOC who had known that Nassar was the alleged perpetrator. Mr. Blackmun failed to correct Ms. Lyons’s clear misunderstanding. He failed to explain to Ms. Lyons not only that he and Mr. Ashley had been the first to know of the allegations, but also that Mr. Buendorf, promptly after learning of the allegations from Mr. Penny, had dutifully reported those allegations to Mr. Blackmun.

USAG’s and the USOC’s inaction and concealment had consequences: dozens of girls and young women were abused during the year-long period between the summer of 2015 and September 2016.

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This Report sets forth in detail the factual findings of the Independent Investigation.

**Part I** provides a high-level overview of what happened, from the start to the finish of Nassar’s criminal career – from his earliest reported abuse of children in the early 1990s through late 2016, when an overwhelming number of survivor complaints finally brought him to justice. This Part addresses the courageous accounts that hundreds of survivors have publicly provided.

**Part II** examines the manner and means of Nassar’s comprehensive system of abuse, including his grooming of athletes, the facade he created for himself, and the methods he employed to “normalize” his conduct and cover for his crimes.

**Part III** sets forth who knew what when with regard to Nassar’s abuse, and what was and was not done in response. This Part looks at both individuals and institutions and tracks the early reports of Nassar’s abuse to coaches, trainers and other adults, as well as early warning signs of Nassar’s predation. It chronicles complaints to institutions and law enforcement that led to Title IX and law enforcement investigations – investigations that proved to be ineffective and allowed Nassar to slip from the grasp of direct, credible survivor reports of criminal sexual assault. This Part also identifies individual enablers and examines institutional failures that contributed to Nassar’s abuse. This Part looks in depth at the actions of USAG and the USOC and their senior leadership, and also examines deficiencies at other institutions, including, in particular, the Karolyi Ranch, where Nassar abused elite gymnasts, and the FBI, which did not move expeditiously to investigate the serious, credible allegations of Nassar’s abuse.

**Part IV** looks at the embedded culture in elite gymnastics and Olympic sport. While the culture fosters many positive values – including teamwork, patriotism and the pursuit of excellence – it also makes the sport of gymnastics inherently attractive to child sexual predators, erodes normal impediments to abuse and reduces the likelihood that survivors will raise complaints. In this unique and extreme environment, Nassar’s sexual misconduct was able to proliferate and metastasize. Without strong, affirmative child-protective measures, there was little to stand between these brave and committed young girls and the predator in their midst.

**Part V** analyzes the Olympic governance structure and the complex systemic factors that contributed to Nassar’s system of abuse and to his uninterrupted, decades-long run of criminal

misconduct. This Part reviews the choices that the USOC and USAG made to adopt self-limiting governance structures, which led to a marked disconnect at both institutions between adopted policies and effective action. This disconnect in turn permitted the unchecked growth of policies, practices and cultural norms that were not reflective of a child-first approach and led to the absence of effective, on-the-ground protective measures. The effects of the USOC's self-limiting governance structure extended beyond USAG, and likewise permitted other NGBs to implement policies and practices that failed adequately to address the risk of athlete abuse, resulting in patterns of deficiencies in complaint processes across Olympic sports.

Nassar thrived in this loose governance model. The USOC had minimal interactions with him and deferred to USAG, which in turn permitted Nassar to create a personal fiefdom where he wrote the rules and set the tone for the medical treatment of the women's gymnastics program for close to 20 years – overseeing medical care at USAG events, serving as the point person for approval of any outside medical providers, and participating in drafting rules governing sexual misconduct by the medical staff. USAG engaged in essentially no oversight of Nassar throughout the lengthy period of his serial sexual assault of gymnasts.

## **INVESTIGATIVE INDEPENDENCE, SCOPE AND METHODOLOGY**

On February 2, 2018, a subcommittee of the Board of Directors (“Board”) of the USOC engaged Ropes & Gray LLP (“Ropes & Gray”) to conduct an independent investigation (“Independent Investigation”) “into the decades-long abuse by Larry Nassar to determine when individuals affiliated with USA Gymnastics or the USOC first became aware of any evidence of Nassar’s abuse of athletes, what that evidence was and what they did with it.” This mandate was subsequently clarified to explicitly encompass not only “who knew what when” and what was and was not done in response, but also the circumstances that contributed to and allowed for Nassar’s abuse to continue for such an extended period of time, including systemic deficiencies, failures of oversight and contributing cultural conditions across Olympic sports.

The team of independent investigators (“Independent Investigators”) was led by former federal prosecutors Joan McPhee and James Dowden. The mission of the Independent Investigators was to collect the facts and publicly issue a comprehensive report that addresses both the underlying facts and individual and institutional accountability.

We interviewed over 100 individuals, including more than 60 current and former employees of the USOC and USAG, ranging from the most senior leadership throughout the relevant time period to junior employees with potentially relevant information. We had access to over 1.3 million documents, including hard copy material, reports and files, emails, contemporaneous notes-to-self, text messages and cell phone data. In addition, we reviewed publicly available material, including transcripts from Nassar’s criminal proceedings, social media and news coverage spanning the relevant period, topical books and biographies and various other sources, to assist our understanding of the relevant facts.

This report (the “Independent Report” or the “Report”) is the culmination of ten months of investigative efforts and reflects our distilled conclusions based on a detailed review of the factual



record. We recognize that many interviewees shared highly personal experiences and opinions, and by necessity the Report directly references only some of them. This should not be taken as a rejection of the material that is not referenced, but rather as our attempt to distill a large volume of information. Every single interview was an integral part of the investigative process and contributed to the findings contained in the Report. In particular, we would like to thank the survivors of sexual and other abuse in elite and Olympic sports who shared their stories with us. We are, and remain, deeply thankful to these survivors, whose voices contributed greatly to our understanding of the issues at the heart of the investigation.

#### A. Independence

Before we agreed to accept the role of Independent Investigators for this matter, we confirmed with the USOC the following:

- We would not be providing legal advice to any individual or organization.
- We would not be acting as lawyers to any individual or organization.
- Attorney-client privilege would not prevent us from releasing our factual findings.
- Our complete report would be made available to the public upon the completion of the investigation.
- No one at the USOC, USAG or any other organization would have authority to direct or guide our fact-finding or the content of our report.
- Ropes & Gray verified that it had not previously represented the USOC or USAG and committed that it would not represent either organization in any separate matter, however unrelated, for an extended period of years following completion of the Independent Investigation.

Consistent with our expectations and requirements of full independence, no party has influenced or attempted to influence the findings in this Independent Report.

## B. Scope

As noted above, the scope of our investigation included not only “who knew what when” and what was and was not done in response, but also any systemic deficiencies, failures of oversight, cultural conditions or other factors contributing to Nassar’s serial sexual abuse of gymnasts over an extended period of time. We also were afforded latitude to look across elite athletics and Olympic sports to identify relevant facts and circumstances and any patterns across NGBs to inform our assessment of contributing factors and conditions. Our mandate did not include offering recommendations for reform.

We established at the outset that our investigative team would have broad access to witnesses, documents and other information from the USOC and USAG, as well as cooperation from both entities. We also confirmed the following:

- We would have the authority, in our sole discretion, to determine what information and material was relevant to the investigation.
- The investigation would include interviews of officers, directors, employees and agents, as well as a review of emails, internal communications, central files and other records at the USOC and USAG.
- If any individual or organization asserted that any requested information was privileged, confidential or not relevant and declined to provide access, we could so state in our public report.
- The investigation would not be narrowly limited to issues related to “who knew what when” about Nassar’s abuse of athletes and what was and was not done in response, but more broadly would encompass all relevant contributing conditions and factors.

Both the USOC and USAG, consistent with their commitments, cooperated extensively in our investigation.

## C. Methodology

At the outset of the engagement, we established a dedicated email address and toll-free telephone hotline to receive information and advertised the availability of these resources to the

public in various forums. In mid-September, we issued an Open Letter to the survivor community, which ran as a full page advertisement in USA Today and as a banner in the online edition of Inside Gymnastics, inviting survivors to contact us.<sup>i</sup> Where individuals expressed privacy concerns, we agreed to take steps to help protect their identities from disclosure. We also reached out to individuals known to have potentially relevant information to request their participation in the Independent Investigation.

At the outset of our outreach effort, the Independent Investigation team participated in a training led by the Rape Abuse & Incest National Network (“RAINN”) to reinforce our understanding of survivor-centered considerations. Out of respect for their privacy, we did not directly contact survivors of abuse, although we did engage in continuous indirect outreach efforts to ensure that any survivors who wished to participate in the Independent Investigation would have the opportunity to do so. In particular, we made a concerted effort from the earliest days of the investigation to speak with the community of survivors of Nassar’s abuse, including by reaching out to numerous lawyers who represent survivors. The survivors of Nassar’s abuse elected not to speak with us due to lingering concerns about our independence from the USOC and their understandable distrust of the organizations at the center of this investigation. We understand and respect their decision. Because, however, the Independent Investigation and Report would not be complete without reflecting the voices of the survivors of Nassar’s abuse, we reviewed the voluminous publicly available statements of survivors, including the impact statements provided during the Michigan sentencing hearings in January and February 2018. While the Report is heavily sourced and footnoted, the Report does not attribute any quotation to any specific survivor,

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<sup>i</sup> A copy of the Open Letter is appended hereto as Exhibit A.

and likewise, narrative descriptions that rely on these statements are derived from a composite of unattributed material.

1. *Witness Interviews*

We spoke with a diverse group of over 100 people, ranging from individuals who reached out to the hotline with information in the first few days of the investigation, to former Olympians and competitive gymnasts, to survivors of sexual misconduct in gymnastics and other sports. We also spoke with several individual athlete advocates and advocacy organizations whose thoughts contributed substantially to our research and reporting.

We also directly requested the opportunity to speak with employees and board members of the USOC, USAG and the U.S. Center for SafeSport (“Center for SafeSport”). These organizations made available every current employee and board member with whom an interview was requested. In all, we interviewed more than 60 individuals at the USOC and USAG, from the most senior leadership to junior employees. We likewise requested to speak with certain former employees and board members of the USOC and USAG, and in particular, Scott Blackmun and Steve Penny. Both Mr. Blackmun and Mr. Penny agreed to participate in the Independent Investigation, and they answered all questions during their interviews with the exception of information protected by the attorney-client privilege. Also on privilege grounds, Mr. Penny, through counsel, declined to answer any questions regarding the removal of documents from the Karolyi Ranch.

We also made numerous efforts to interview other individuals with potentially relevant information, including Martha and Bela Karolyi, Fran Sepler, former USAG employees Deborah Van Horn and Gary Warren, former USAG board member Jay Binder, former MSU employee Brooke Lemmen, former outside counsel for USAG Scott Himsel, Daniel Connolly and Jack Swarbrick, retired Special Agent Jay Abbott with the FBI, Larry Nassar and others. These

individuals either declined or did not respond to requests to be interviewed. Fran Sepler submitted a written statement, but otherwise declined to participate in the investigation.

## 2. *Document Review*

We requested documents from: the USOC; USAG; Twistars; MSU; each of the other NGBs and Paralympic Sports Organizations; the U.S. Center for SafeSport; Baker Tilly, an auditing firm that conducted an audit of NGB compliance with SafeSport in 2017; the Karolyi Ranch; and the FBI. Each of the above entities produced documents in response to our requests, with the exception of three NGBs, the Karolyi Ranch and the FBI.<sup>ii</sup> The following NGBs declined to provide documents: USA Diving, USA Pentathlon and USA Surfing. Mr. and Ms. Karolyi also declined to produce any documents relating to the Karolyi Ranch. And the FBI responded that the requested material was exempt from disclosure under applicable law. We also received documents directly from several witnesses who voluntarily provided documents to us through our dedicated email address or during the course of interviews.

Given the voluminous relevant material at the USOC and USAG, we drafted a list of broad search terms to identify relevant documents in specified email accounts and other central files. After applying these broad search terms, the USOC produced a total of almost 30,000 documents, which we reviewed. USAG produced a total of approximately 1.3 million documents. In accord with best practices, we reviewed these documents by utilizing advanced technologies, both conceptual analytics and algorithmic prioritization, to identify relevant documents. We also requested and received information from personal mobile phones and computers of certain former employees of USAG.

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<sup>ii</sup> The U.S. Center for SafeSport also declined to produce documents, asserting, among other reasons, that it is an independent entity and the requested materials could not be disclosed pursuant to its confidentiality policy. Letter from Joseph Zonies, Counsel to the U.S. Center for SafeSport, to Independent Investigators (Feb. 22, 2018), on file with the Independent Investigators.

Finally, as addressed in Part III.C, upon our discovery that a particular email had not been produced to the Independent Investigation by the USOC, the USOC engaged a computer forensics firm to conduct a complete review of the USOC's electronic database to determine the circumstances and timing of the deletion of the specified relevant email. The firm was unable to reach a definitive conclusion about the deletion of the specified email, but provided a report detailing the most likely deletion scenarios, which is attached to this Report as Exhibit B.

The Independent Investigators would like to thank each person who contributed time and shared valuable experiences with our team.<sup>iii</sup> We hope that the Report provides a meaningful contribution to the understanding of the institutional and individual factors that allowed for a tragedy of this magnitude to unfold uninterrupted over such an extended period of time. It is also our sincere hope that the Report will help to protect young athletes from such devastating harm in the future.

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<sup>iii</sup> We also would like to thank Helen Gugel, Ezra Geggel and the entire team of lawyers, paralegals and staff at Ropes & Gray who showed tremendous dedication and commitment to the Independent Investigation and to the accuracy and completeness of this Report. Their contributions were extensive and materially advanced the investigation and reporting of our factual findings.

## I. WHAT HAPPENED

### SELECTED FINDINGS

- Nassar sexually assaulted hundreds of girls and young women over a span of almost three decades. He abused some of them once and others hundreds of times. Nassar generally assaulted young female athletes under the guise of performing medical treatments, but he also abused the daughter of his family friends, starting when she was six years old, and at least one young male gymnast. The earliest public reports of abuse date to the early 1990s; the latest to the summer of 2016.
- The *Indianapolis Star's* August 4, 2016 article concerning USAG's failure to alert authorities to allegations of sexual abuse caused several former gymnasts to come forward to the newspaper and the police about Nassar's abuse. This initial outreach prompted MSU to suspend and later terminate Nassar, resulted in a civil lawsuit in early September and led the *Indianapolis Star* to publish an article with accusations against Nassar on September 12, 2016. Thereafter, dozens of athletes and former athletes came forward to the media and the authorities to report abuse by Nassar.
- Throughout the fall of 2016, Nassar defiantly maintained his innocence and received support from longtime friends and colleagues, as well as from the larger gymnastics community. Many survivors initially faced resistance and criticism. Over time, the weight of their numbers, Nassar's arrest in November and, finally, the discovery of thousands of images of child pornography caused support for Nassar to all but evaporate.
- In July and November 2017, Nassar was convicted in federal and state courts. After nearly 200 survivors testified during his sentencing hearings, he was sentenced cumulatively to between 140 and 360 years in prison.
- In addition to the criminal consequences for Nassar, former employees of USAG and MSU face criminal proceedings for events related to Nassar's abuse. Federal and state legislatures and agencies have also launched investigations into USAG, the USOC, certain NGBs, MSU, the FBI and others.

Over the course of approximately 30 years, Larry Nassar sexually abused well over 400 children and young adults, some once and some dozens and even hundreds of times.<sup>1 iv</sup> In all, Nassar committed thousands of sexual assaults between the early 1990s and 2016. He abused famous Olympians in hotel rooms across the globe; elementary-school-aged gymnasts in local Michigan gyms and in the basement of his family’s home; athletes from MSU in his clinic’s office; and the daughter of his family friends, starting when she was six years old.<sup>2</sup> Nassar abused almost all of these girls and young women under the guise of performing medical treatments. He presented himself as a doctor to Olympic champions who, at the same time, was their humble friend and caring confidant. He groomed the survivors, their families and numerous other adults into believing that he was an exceptional doctor who tirelessly devoted himself to the health and well-being of others. Under that cover, Nassar engaged in crime after crime.<sup>3</sup>

#### A. Nassar’s Abuse

Athletes vividly described the initial excitement of an appointment with Nassar. He was the doctor to Olympic heroes, whose pictures and personal thank you notes adorned his exam room walls.<sup>4</sup> Club-level athletes “felt so privileged, so special”;<sup>5 v</sup> an appointment with Nassar “was more like the feeling of going to see a celebrity.”<sup>6</sup> The Olympians and National Team members likewise felt grateful for all of the small ways in which Nassar provided them with comfort and a sympathetic ear in the demanding environment of competitive gymnastics.<sup>7</sup> Nassar always seemed

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<sup>iv</sup> A complete accounting of the number of survivors cannot be determined with precision. The estimate referenced here almost certainly reflects the lower end of the likely number of survivors and is based on a May 16, 2018 statement in which MSU announced that it had agreed to settle claims by 332 survivors for \$425 million, and set aside an additional \$75 million to compensate additional survivors who may bring future claims. Amy Held, *Michigan State University Reaches \$500 Million Settlement With Nassar Abuse Victims*, NPR (May 16, 2018), <https://www.npr.org/sections/thetwo-way/2018/05/16/611624047/michigan-state-university-reaches-500-million-settlement-with-nassar-abuse-victims>. As of September 10, 2018, an additional 167 claimants have come forward. Catherine Shaffer, *Number of Nassar accusers approaches 500*, MICH. RADIO (Oct. 19, 2018), <http://www.michiganradio.org/post/number-nassar-accusers-approaches-500>.

<sup>v</sup> Based on privacy considerations, we have not referenced individual survivors by name and have instead cited to statements from survivors collectively.



to put the athletes first, working around their schedules. He offered appointments after-hours at his MSU clinic; weekends at his home in Holt, Michigan; and for national team members exhausted by a day of training, he came to their cabins or hotel rooms for treatments.<sup>8</sup> Many athletes were grateful that “[t]his amazing doctor was willing to take time out of his busy schedule to help me.”<sup>9</sup> Nassar often performed legitimate Osteopathic Manipulative Treatments – a set of hands-on techniques employed by doctors of osteopathy<sup>10</sup> – and did not engage in sexual abuse during every treatment session. But with hundreds of athletes, on thousands of other occasions over a period of almost three decades, Nassar committed criminal sexual abuse.

According to survivor statements, Nassar’s pattern of sexual abuse began no later than the early 1990s, as he was finishing his medical degree at the MSU College of Osteopathic Medicine.<sup>11</sup> Claiming that he was conducting a study on behalf of his medical school, Nassar invited girls that he had groomed at a local gym to his apartment, one at a time. When each girl showed up at his apartment, he asked her to take a bath. He then directed her to lie on his treatment table in his living room while he performed a full-body massage. The full-body massages included penetrating each of these girls with his fingers.<sup>12 vi</sup>

Nassar eventually developed a series of methods to normalize the abuse during seemingly routine medical appointments. As described in greater detail in Part II.B, Nassar varied how much information he shared with the athlete to justify the nature of the abusive procedure, ranging from clinical explanations to providing no warning at all.<sup>13</sup> One athlete recalled that “the first time it happened, you were massaging my back as normal, and then without warning, or explanation, you

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<sup>vi</sup> On September 11, 2018, a woman filed a civil lawsuit stating that in the early 1990s, Nassar had drugged and raped her during a treatment and that Nassar had videotaped the rape. The lawsuit states that local police and MSU’s athletic director became aware of Nassar’s conduct, but did not take any action against Nassar. Civil Complaint, Court Filings on file with the Independent Investigators.

stuck your ungloved fingers into my vagina.”<sup>14</sup> The survivors universally reported that Nassar never wore gloves during his abuse.<sup>15</sup>

Many survivors described the assaults as painful. One gymnast testified to “searing pain” that lasted for 30 minutes as Nassar inserted his fingers into her and grunted while she lay there terrified.<sup>16</sup> Another testified that she went into “such shock that I flinched and I grabbed the exam table with both hands as hard as I could . . . just waiting for you to be done, for it to all be over.”<sup>17</sup> A third survivor testified that in “[t]reatment after treatment[,] I closed my eyes tight, I held my breath, and I wanted to puke. My stomach pierced me with pain.”<sup>18</sup> Other survivors, however, recounted that their main emotion during the abuse was confusion. As Nassar abused them, questions, paired with justifications, came rushing through their minds: “[I]sn’t it weird that he’s not wearing gloves[,] I wonder if he does this to other girls[,] [w]hy is he closing his eyes? He’s a doctor though, I’m sure it’s fine. Plus, he’s Larry. He’s been so nice to me and someone with his name I can obviously trust, right?”<sup>19</sup> As a result, many athletes explained that they “did not at the time think he was molesting me, just that this procedure was awful.”<sup>20</sup>

In the immediate aftermath of the assaults, many athletes felt relieved that the procedure was complete and did not consciously recognize the actions as abusive and criminal. But others described an intense period of embarrassment and humiliation as they attempted to reconcile the abuse they had just suffered with Nassar’s reputation.<sup>21</sup> One survivor recalled how she sat in “great disbelief, complete shock, and total humiliation.”<sup>22</sup> Another testified to the “intense sense of terror, anxiety, and disbelief that came washing over me. I lay there in pain unable to speak, staring blankly at the wall, desperately searching for a way to escape.”<sup>23</sup>

Beyond the immediate pain of the assaults and the awful and embarrassing aftermath, the survivors and their families have poignantly described the long-term consequences of the abuse.

Survivors described grappling with self-doubt and self-blame as they tried “to figure out how I became so brainwashed not to realize that it was abuse at the time.”<sup>24</sup> Many spoke of lifelong troubles with trust and intimacy,<sup>25</sup> and “the pain of never trusting someone physically again.”<sup>26</sup> Others described periods of anxiety, bouts of panic attacks,<sup>27</sup> and “paralyzing flashbacks.”<sup>28</sup> The survivors explained how unwelcome memories “invade at the most inopportune times,”<sup>29</sup> and how they live with a pain that creates “a seemingly immovable obstacle that stands waiting for me as I attempt to approach each new day.”<sup>30</sup> Many detailed how their lives spiraled out of control; they suffered from eating disorders<sup>31</sup> and from “horrible anxiety attacks . . . that make me want to rip out of my own skin.”<sup>32</sup> They endured “incredibly long sleepless nights,”<sup>33</sup> punctuated with nightmares that caused them to vomit<sup>34</sup> and included images of being “trapped in his examination room . . . yelling but my voice doesn’t work.”<sup>35</sup> Survivors described self-harm, such as cutting,<sup>36</sup> and thoughts of suicide,<sup>37</sup> “so that I can turn off the thoughts of him, get rid of the nightmares.”<sup>38</sup> One mother recounted how her daughter took her own life “because she couldn’t deal with the pain anymore. It just became worse as the years went by until she couldn’t deal with it anymore.”<sup>39</sup>

Finally, in addition to the children and women he directly abused, Nassar downloaded thousands of images of child pornography over a period of decades. Starting no later than 2004, Nassar downloaded at least 37,000 separate images and videos.<sup>40</sup> The material depicted “children as young as infants,” and included “images and videos of prepubescent children being vaginally and anally raped by adult males, children being digitally penetrated, prepubescent children performing oral sex, and prepubescent children engaged in other sex acts.”<sup>41</sup> At least one gymnast has stated in a civil complaint that Nassar took photographs of her during the abuse and shared these photographs with other pedophiles.<sup>42</sup>

## B. Efforts to Bring Nassar to Justice

As discussed in greater detail in Part III.A, over more than two decades, a number of survivors of Nassar's abuse have stated that they reported his conduct to adults, but none of these reports led to adult intervention to stop Nassar from continuing to assault athletes. In the late summer and early fall of 2016, however, an overwhelming series of complaints finally resulted in criminal charges, civil lawsuits and public exposure of Nassar's crimes.

On August 4, 2016, the *Indianapolis Star* published an article titled "A blind eye to sex abuse: How USA Gymnastics failed to report cases," which detailed how USAG had failed to alert authorities to allegations of sexual abuse by coaches.<sup>43</sup> On the morning the article was published, a gymnast who had been abused in 2000, and who had wrestled with whether to file a police report ever since, contacted the *Indianapolis Star* to report that Nassar had abused her under the guise of medical treatment.<sup>44</sup> Within the month, the *Indianapolis Star* received two additional complaints from two former Olympians with similar allegations of abuse.<sup>45</sup> On August 29, 2016, the gymnast who first contacted the *Indianapolis Star*, and who had since independently consulted with medical and legal professionals about Nassar's conduct and the possibility that police would bring charges,<sup>46</sup> filed a criminal complaint against Nassar with the MSU police, alleging that she was sexually assaulted in 2000 when she was 15 years old.<sup>47</sup> The next day, MSU suspended Nassar from clinical and patient duties pending its investigation.<sup>48</sup>

At first, Nassar reacted swiftly and affirmatively to the reports of misconduct. He sat down with the MSU police on the day after the August 29, 2016 police report.<sup>49</sup> In that interview, Nassar explained that he had been performing "pelvic floor" techniques since the early 1990s and had lectured extensively on the treatment.<sup>50</sup> He explained that he constantly talked with his patients during the procedure to ask whether the treatment was making the patient feel better, and that he relied on the patient to provide feedback.<sup>51</sup> He explained that he rarely performed procedures

involving penetration, and that he would do so only to treat a broken coccyx.<sup>52</sup> Nassar expressed shock that anyone could be hurt by his treatments, given that he constantly was receiving feedback from the patient.<sup>53</sup>

Nassar also reached out to the Dean of the MSU College of Osteopathic Medicine, William Strampel, immediately after learning of the allegations. The two spoke on August 31, 2016 and exchanged emails over the following week.<sup>54</sup> At first, Nassar offered to no longer perform Osteopathic Manipulative Treatments and to focus instead on teaching and administrative matters.<sup>55</sup> Nassar repeated his position that “[w]hen I perform these treatments, I always am asking the patient if they are comfortable with my hand placement and if they feel relief of their pain. If they respond that it is not relieving their pain or they are not comfortable, I readjust and change treatment. If they tell me yes, they are comfortable and yes it does help then I trust that they are telling me the truth.”<sup>56</sup> Nassar also notified Dr. Strampel that a reporter from the *Indianapolis Star* had contacted him about the allegations, and Nassar sought to discuss with Dr. Strampel his approach to answering the reporter’s questions.<sup>57</sup> Shortly before Nassar’s interview, Dr. Strampel wrote to Nassar: “Good luck. Keep me informed as much as you want. I am on your side.”<sup>58</sup> Nassar also reached out to one of his colleagues to inform him of the allegations and to ask this colleague to garner support in his defense.<sup>59</sup>

Nassar continued to reiterate his defenses during two interviews, one with the MSU Office of Institutional Equity (“OIE”) on September 8, 2016, and one with a reporter from the *Indianapolis Star* on September 12, 2016. In the interview with the MSU OIE, Nassar explained the ostensible medical purpose for his treatments; emphasized that he had been performing his treatments for a long time, including with Olympic athletes; discussed how he lectured on pelvic floor treatments; and stated that he talked to the patient throughout the procedure.<sup>60</sup> Likewise, in

the interview with the *Indianapolis Star*, Nassar showed the reporter a video of the treatments in an effort to explain that the allegations against him were the result of a patient misunderstanding his work.<sup>61</sup> Nassar's attorney also told the reporter that Nassar never used any procedure involving vaginal penetration.<sup>62</sup> The interview was cut short after the reporter and Nassar learned that a former gymnast had filed a lawsuit against Nassar alleging that Nassar had abused her between the years 1994 and 2000.<sup>63</sup>

On September 12, 2016, the *Indianapolis Star* published the first article publicly naming Nassar.<sup>64</sup> Following the *Indianapolis Star* article, the complaints started flooding in. By September 25, 2016, at least 16 women had filed criminal complaints against Nassar with the MSU police.<sup>65</sup> It would grow to 81 by February 2017,<sup>66</sup> and the publicly known count is now well over 400.<sup>67</sup> Women of many different ages from all across the country were making police reports. Some stated that they had previously made reports to adults with no result and were now redoubling their efforts.<sup>68</sup> Some women explained that the *Indianapolis Star* article helped them put a label on the abuse they had suffered.<sup>69</sup> Others explained that they had always trusted that Nassar was performing legitimate medical treatments, but the *Indianapolis Star* article caused them to realize that they had experienced sexual abuse.<sup>70</sup> These survivors described how they could feel their hearts sink the moment they heard the news and realized that they had been abused.<sup>71</sup> As one survivor recounted, "When I saw Nassar's face on the news I immediately knew."<sup>72</sup> Other survivors, however, still wanted to give Nassar the benefit of the doubt, with one explaining that at first she "could not believe it. I would not believe it. I laughed it off,"<sup>73</sup> and another explaining, "I didn't want to let myself believe it actually happened to me."<sup>74</sup>

Even with the reports of abuse mounting, Nassar continued to receive support from people in positions of authority. In particular, Nassar's longtime friends John Geddert and Kathie Klages,

both gymnastics coaches, came to his defense. Mr. Geddert, then-owner of Twistars, told the *Indianapolis Star* in September that Nassar is “probably one of the most respected gymnastics professionals I’ve ever had to deal with,”<sup>75</sup> and Ms. Klages, then-women’s gymnastics coach at MSU, told her gymnasts in an emergency team meeting on September 12, 2016 that “she did not believe that any of the allegations against [Nassar] had any truth,” and that “she would feel comfortable right then sending her own daughter or granddaughter to Dr. Nassar for treatment.”<sup>76</sup> A former member of the MSU gymnastics team reported to the media that later in September 2016, Ms. Klages circulated a greeting card during a team meeting and asked the gymnasts to sign it in a show of support for Nassar.<sup>77</sup> Around that same time, according to testimony, a gymnast spoke to Mr. Geddert to report that she had been abused,<sup>78</sup> and Mr. Geddert responded that “what Larry did was a medical treatment and [you] need to do [your] research.”<sup>79</sup>

Nassar also received support from other friends in the medical and gymnastics worlds. The day after the initial *Indianapolis Star* article, a medical professional reached out to let Nassar know that she was thinking of him and “sending vibes for strength.”<sup>80</sup> And certain members of the community not only defended Nassar, but also attacked the survivors for coming forward, accusing them of “making up these lies just for the attention.”<sup>81</sup> One of the first public survivors testified that even individuals she considered her friends did not believe her and called her “a liar, a whore.”<sup>82</sup>

Armed with this support, Nassar continued to strike a defiant tone; in his response to the *Indianapolis Star* article, his attorney stated that Nassar’s decision to retire from USAG “was not influenced by the current allegations because he was unaware of those allegations until yesterday. Instead, he retired because it was a voluntary position and he wished to pursue other interests outside of USA Gymnastics. During his retirement, Dr. Nassar continues to support USA

Gymnastics and has been called on by coaches and staff many times since his retirement to assist the athletes with various health issues.”<sup>83</sup> Nassar actively cultivated assistance, remarking in a September 15, 2016 email to Dr. Strampel that he was trying to round up support “before the ‘Me Toos’ come out in the media and the second media blitz occurs.”<sup>84</sup>

The next day, however, Dr. Strampel wrote to Nassar that “there seems to be more people who have come forward,” and that “there is a report of an investigation back in 2004, that I did not hear about.”<sup>85</sup> He closed the email chain by stating that “[t]hings are moving outside of my control.”<sup>86</sup> Later that day, MSU sent Nassar a letter stating that the University had received reports that Nassar was in violation of the protocols that had been put in place following the 2014 Title IX investigation (detailed in Part III.A.4) and that the University had also learned that Nassar had not been forthcoming about prior patient complaints.<sup>87</sup> In response, Nassar wrote: “My heart is breaking but I will stay strong in my Faith and with the support of my family and my friends I will overcome this.”<sup>88</sup> On September 20, MSU terminated Nassar’s fixed-term appointment.<sup>89</sup>

The day before he received his notice of termination, Nassar took his work laptop to a computer service store and paid to wipe all of its content. By the next day, Nassar had placed a number of hard drives containing thousands of images of child pornography in his trash for roadside collection in an attempt to destroy them. Instead, the garbage truck was late and the police were able to seize the hard drives.<sup>90</sup> Around this same time period, Nassar asked his colleague, Dr. Brooke Lemmen, to box up and remove files from his office. Dr. Lemmen removed the files from Nassar’s office but, after taking the files home, decided to turn them over to MSU.<sup>91</sup>

After Nassar was terminated from his position at MSU on September 20, 2016, he continued to receive support from former colleagues, members of the gymnastics and medical communities and supporters in his hometown of Holt, Michigan. In early November 2016, Nassar



received more than 2,700 votes for a school board position, over 20 percent of the total, even after having withdrawn his name from contention.<sup>92</sup> And in a November 17, 2016 email, he wrote to a former colleague, “I also gain strength from the continued support I receive from the community. I have 27 physicians, 21 physical therapists and 122 patients/parents/coaches all willing to testify to support me and the list continues to grow each week.”<sup>93</sup>

But four days later, on November 21, 2016, the Michigan Attorney General’s office charged Nassar with three counts of criminal sexual conduct against a minor under the age of 13, resulting in his arrest and arraignment in Ingham County Court.<sup>94</sup> The charges stemmed from Nassar’s abuse of the daughter of his family friends and were unrelated to his medical work.<sup>95</sup> The Attorney General’s office also revealed that it was investigating complaints filed by dozens of former patients.<sup>96</sup> Support for Nassar started to fall apart following the news that he was accused of abusing a girl who was never his patient and that dozens of former patients had filed complaints.<sup>97</sup> Nevertheless, Nassar continued to reach out for support, and one survivor testified that Nassar sent her a message on the day after he was first arrested asking her to pray for him and expressing thankfulness that he was able to spend the holiday with his family.<sup>98</sup> Further evidence against Nassar emerged on December 14, 2016, when a federal grand jury indicted Nassar on charges of child pornography.<sup>99</sup> After the FBI arrested Nassar on these charges on December 16, 2016,<sup>100</sup> support for Nassar almost completely evaporated, with some of Nassar’s former supporters describing it as a “moment of clarity.”<sup>101</sup> As one survivor noted, even with the avalanche of young women making reports about his abuse, “It took 37,000 pornographic images for people to believe.”<sup>102</sup> After his arrest, Nassar was held in the Newaygo County Jail in White Cloud, Michigan for the duration of the criminal proceedings.<sup>103</sup>

## C. Legal Proceedings

### 1. *Criminal Proceedings*

Nassar faced charges in three separate courts. He faced federal charges in the Southern Division of the Western District of Michigan, and he faced state charges in two Michigan state courts located in Ingham County and Eaton County.<sup>104</sup>

In the federal case, prosecutors indicted Nassar on three charges, and in July 2017, Nassar entered into a plea agreement, pursuant to which he pleaded guilty to charges of child pornography and destruction of evidence.<sup>105</sup> On December 7, 2017,<sup>106</sup> he received a sentence of 720 months (60 years).<sup>107</sup>

In Ingham County Circuit Court, Nassar faced 26 counts of criminal sexual conduct, which represented only a fraction of the 81 complaints the MSU police department had received as of February 21, 2017, the date of the criminal complaint.<sup>108</sup> Nassar pleaded guilty to seven counts of criminal sexual conduct in the first degree; as part of the plea deal, Nassar agreed that the Court could take into consideration testimony from any complainant during the sentencing phase.<sup>109</sup> In Eaton County Circuit Court, Nassar faced 13 charges of criminal sexual conduct. Nassar pleaded guilty to three counts of criminal sexual conduct in the first degree in that court on November 29, 2017,<sup>110</sup> again agreeing that the Court could take into consideration testimony from any complainant during the sentencing phase.<sup>111</sup> Although not all of the 265 survivors who were identified at the time of the sentencing phase testified,<sup>112</sup> 156 survivors spoke or contributed statements during the Ingham County sentencing hearings,<sup>113</sup> and 65 spoke or contributed statements during the Eaton County sentencing hearings.<sup>114</sup> Both courts permitted live streaming, and news media televised the survivors' statements on national broadcasts. Following the survivors' statements, a judge of the Ingham County Court sentenced Nassar to between 480 and

2,100 months (40 to 175 years).<sup>115</sup> A judge of the Eaton County Court sentenced Nassar to 40 to 125 years.<sup>116</sup>

Nassar is currently prisoner number 21504-040, serving his sentence in United States Penitentiary Coleman II,<sup>117</sup> a high-security federal prison in central Florida.<sup>118</sup>

## 2. *Other Proceedings*

Nassar has also faced over 50 civil lawsuits.<sup>119</sup> The many civil suits have named numerous other defendants, including the USOC, USAG, MSU, former USAG CEO Mr. Penny, Mr. and Ms. Karolyi, Twistars and Mr. Geddert, among others.<sup>120</sup> On May 16, 2018, MSU announced that it had settled the cases against it for \$500 million, \$75 million of which is to be set aside to pay future claimants.<sup>121</sup>

In addition to the criminal proceedings against Nassar and the civil lawsuits, many federal and state bodies are conducting investigations. On January 25, 2018, the Senate Committee on Commerce Science and Transportation opened an investigation into the USOC, USAG and MSU;<sup>122</sup> that same day, 27 Members of the House of Representatives sent a discovery request letter to the USOC and USAG;<sup>123</sup> also on January 25, 2018, the Michigan House of Representatives started its investigation into MSU;<sup>124</sup> on January 27, 2018, the Michigan Attorney General announced the existence of an ongoing investigation led by a special prosecutor into MSU's conduct;<sup>125</sup> on February 8, the House Committee on Oversight and Government Reform began its investigation into the USOC, USAG, MSU, the Karolyi Ranch and Twistars;<sup>126</sup> on February 26, 2018, the Department of Education announced a new investigation into MSU's compliance with Title IX;<sup>127</sup> and on March 7, 2018, the House Energy and Commerce Committee launched its investigation into the USOC, USAG, MSU, USA Judo, USA Swimming and USA Taekwondo.<sup>128</sup> The Indiana Attorney General's Office is also conducting an investigation into USAG.<sup>129</sup>

At the end of March 2018, Dr. Strampel was charged with two misdemeanor counts of willful neglect of duty related to his alleged actions during and after Nassar's 2014 Title IX investigation.<sup>130</sup> Dr. Strampel also faces one felony count of misconduct in office and a misdemeanor count of fourth-degree criminal sexual conduct.<sup>131</sup> At the end of June 2018, a Texas grand jury indicted Nassar on six counts of sexual assault and indicted longtime USAG athletic trainer Ms. Van Horn on one count of sexual assault in connection with the abuse of six gymnasts at the Karolyi Ranch in Huntsville, Texas.<sup>132</sup> The Texas prosecutors elected not to file any charges against Mr. and Ms. Karolyi.<sup>133</sup> On August 23, 2018, the Michigan Attorney General's special prosecutor announced that Ms. Klages had been charged with lying to a peace officer in connection with her statements denying that she had received reports of Nassar's misconduct prior to 2016.<sup>134</sup> On September 28, 2018, a Texas grand jury indicted Mr. Penny on charges of tampering with evidence in connection with the removal of documents from the Karolyi Ranch; Mr. Penny was arrested on these charges on October 17, 2018, and taken into custody until being released on bail following his arraignment.<sup>135</sup> In mid-November 2018, the Michigan Attorney General charged former MSU President Lou Anna Simon with two felony counts and two misdemeanor counts alleging that Ms. Simon made false or misleading statements to the Michigan State police.<sup>136</sup>

## II. NASSAR’S SYSTEM OF ABUSE

### SELECTED FINDINGS

- In the late 1980s and early 1990s, Nassar carefully cultivated a reputation as a hardworking, dedicated volunteer, and in 1996, he was named to the position of National Medical Coordinator for USAG, a position he would hold for almost 20 years.
- Nassar used his position as National Medical Coordinator for USAG, and as the doctor to Olympians, to project an image as an exceptional doctor.
- Nassar groomed his patients by acting as a caring “friend” in the often harsh environment of competitive gymnastics. Nassar regularly gave his patients gifts; provided career advice; offered to perform treatments on evenings and weekends, many times for free; and ostensibly acted as the “athlete’s advocate.”
- Nassar also applied a variety of techniques to normalize the abuse, including masking his abuse as a medical treatment, talking to his patients throughout the abuse, and abusing patients while their parents were in the room.
- Nassar’s medical cover, reputation, position as a doctor, role as a confidant and the perceived unlikelihood that a successful physician would commit sexual abuse silenced survivors, caused numerous adults to disregard reports from survivors, and contributed to multiple failed investigations.

One significant contributing factor to Nassar's ability to assault athletes for close to three decades without facing consequences was his carefully constructed system of abuse. Nassar cultivated a reputation and image as a highly skilled, well-meaning, and deeply caring doctor; established relationships of trust with his colleagues; groomed his patients and their parents; and used specific methods and means to normalize and disguise his abuse. Survivors raised complaints infrequently, and when they did, as discussed in Part III.A, adults in a position to intervene failed to act.

#### A. Nassar's Career: Building a Facade and Grooming Athletes

Nassar began working with gymnasts when he was in high school, where he served as a trainer for his school's gymnastics team.<sup>137</sup> Following his graduation from the University of Michigan in 1985 with a degree in kinesiology, he worked as a graduate assistant trainer at Wayne State University.<sup>138</sup> While serving in this position, he reached out to USAG to serve as a volunteer on the medical staff and was soon appointed to work at the 1987 Pan Am Games.<sup>139</sup> In 1988, he volunteered at additional USAG events, including the pre-Olympics trials and the post-Olympics tour.<sup>140</sup> That same year, he began working with gymnastics coach Mr. Geddert at the Great Lakes Gymnastics Club, and he began medical school at the MSU College of Osteopathic Medicine.<sup>141</sup>

Nassar continued to work at local gymnastics clubs and at USAG events throughout the late 1980s and early 1990s as he attended medical school.<sup>142</sup> One witness observed, he "practically lived in the gym."<sup>143</sup> He was "there almost every single day for hours," arriving early to tape ankles and staying late to tend to pulled muscles.<sup>144</sup> From 1991 to 1993, he received the Region 5 Contributor of the Year award; in 1993, 1994 and 1996, he received the Michigan Contributor of the Year award; and in each year from 1993 to 1997, he received a similar award from the United States Women's Gymnastics Elite Coaches Association.<sup>145</sup> By the mid-1990s, following his graduation from medical school, Nassar had established himself as an expert on gymnastics

injuries, and in 1996, he served as the Women's National Team physician at the Olympic Games.<sup>146</sup> In that role, Nassar attended his first Olympic Games,<sup>147</sup> where he was well-positioned to capitalize on the success of the Women's Team that earned the first-ever team gymnastics gold medal for the United States.<sup>148</sup> Indeed, one of the enduring images from the Games depicted Nassar reaching out to help a limping Kerri Strug following her vault.<sup>149</sup> Coming out of these successful Games, Nassar was named to the position of National Medical Coordinator, a position he would occupy for close to 20 years. In that same period, Nassar was also named an assistant professor at MSU and began working as a team doctor at Holt High School in Holt, Michigan.<sup>150</sup>

Over the ensuing decades, Nassar established himself as “a miracle worker,” who “can fix anyone or anything.”<sup>151</sup> Nassar volunteered at the National Team training camps, held at the Karolyi Ranch;<sup>152</sup> at the Women's Artistic Gymnastics World Championships in 1991, 1995, 1999, 2003, 2007, 2010 and 2011; and at the 1996, 2000, 2008 and 2012 Olympic Games, among other events.<sup>153</sup> Nassar also drafted medical guidelines for USAG,<sup>154</sup> reviewed the performance of other medical professionals,<sup>155</sup> helped decide which medical personnel would work at which events,<sup>156</sup> and lectured at USAG Congresses and other conferences, including on the importance of the pelvic floor to core strength.<sup>157</sup> Indeed, Nassar was open about his focus on the pelvic area and recorded instructional videos, composed PowerPoints and exchanged emails discussing the importance of the ligaments in the pelvic area.<sup>158</sup>

As detailed in Part V.B.1, Nassar's colleagues at USAG held him in high regard. The Vice President of Member Services told him that “[t]here could be NO one better to represent the USA than you.”<sup>159</sup> The former director of the Women's Program and of the National Team Training Center, Gary Warren, remarked that “I have always admired your dedication to the athletes and coaches. Your energy level, your compassion and your commitment is unsurpassed by anyone I

know.”<sup>160</sup> And Nassar described his relationship with Ms. Karolyi as incredibly close, noting that “we have a working relationship of trust.”<sup>161</sup> Nassar used similar language to describe his relationship with key colleagues, writing that Ms. Karolyi, together with Assistant U.S. Woman’s Olympic Team Coach Steve Rybacki and athletic trainer Ms. Van Horn, comprised his “inner circle of confidence,” with whom he shared confidential injury information.<sup>162</sup> In 2006, a high ranking member of USAG wrote to the USOC regarding credentialing Nassar and Ms. Van Horn for the 2008 Olympics: “We cannot begin to tell you the importance these two individuals have on the women’s gymnastics National Team,”<sup>163</sup> a sentiment again shared six years later: “The women’s team has determined that it will be essential that Dr. Larry Nassar is a member of the delegation.”<sup>164</sup>

Not only did the cumulative experience and close relationships at USAG continue to cement Nassar’s role at that organization, but Nassar also leveraged his Olympic reputation for his work outside of USAG. Nassar adorned his MSU office with pictures of Olympians, which as one survivor noted, was a “small yet significant detail that strengthened my trust in Mr. Nassar’s intentions.”<sup>165</sup> Survivors remarked that they “felt so incredibly lucky to be there,”<sup>166</sup> and were “in awe,”<sup>167</sup> a feeling Nassar cultivated by regularly referencing the Olympic pictures.<sup>168</sup> Upon passing the famous photograph of Kerri Strug, he noted, “That’s me[.] I taped her up so she could do that.”<sup>169</sup>

Nassar enjoyed a celebrity status within the gymnastics community, and he was able to cultivate the belief that his help was essential to success at the highest levels. Gymnasts sought out his treatments not only because he was the rare doctor who “understood gymnastics,” but also because they believed treatments from Nassar were critical to their success.<sup>170</sup> As one survivor



noted, Nassar was “someone that I counted on . . . so that I could reach my highest potential,”<sup>171</sup> or as another simply stated, Nassar was “hope in the face of tragedy.”<sup>172</sup>

Alongside this reputation as an exceptional doctor to Olympians, Nassar developed a reputation as a physician who cared deeply about treating patients in a holistic manner and as a caring friend in the harsh environment of competitive gymnastics. One survivor commented that for “a young girl away from her home being worked into exhaustion by screaming coaches, a kindly doctor offering relief from pain and a little sympathy was easy to like.”<sup>173</sup> In the words of another survivor, Nassar was “the good cop,” who defended gymnasts against overbearing coaches and “literally and metaphorically put us back together.”<sup>174</sup> “He was the good guy in a sport of cruel people.”<sup>175</sup> Nassar was often willing to take the time to listen to his patients,<sup>176</sup> and a survivor recounted that he was “my close friend who always had my best interests in mind, whether it is about my injuries, my eating habits, my gymnastics practices, school choices, college decisions, career path, and all the way up to my family plans.”<sup>177</sup> Nassar reinforced this impression by giving his patients gifts – Olympic pins to the young gymnasts he treated at MSU<sup>178</sup> and pieces of bread and forbidden candy to the Olympic athletes during training camps.<sup>179</sup>

In his public statements and actions, Nassar was careful to cultivate his reputation as an ally of the athlete. For example, in a 2004 gymnastics listserv conversation, Nassar responded to a parent’s assessment that she needed a second opinion because her daughter’s orthopedist is “very conservative and I think he hates gymnastics,” by writing: “Please, be very cautious[.] Let her heal properly and then continue with her training. Please, keep things in perspective.”<sup>180</sup> Nassar struck a similar tone during an interview on a popular gymnastics podcast, stating: “Not just physically, but mentally you have to protect your athletes, you have to let them know that we care, you have to not just let them know but let them feel it, let them understand it, let them breathe

it.”<sup>181</sup> Writing in the USAG National Team Medical Staff Guidelines, he stated that the “first prong” of treatment is to “see and treat the whole person,” because “[o]ne of the most important factors in providing effective medical care to our athletes is trust.”<sup>182</sup> Reflecting on his career in a 2014 Facebook post, he continued with this theme: “My continued advice is to always be the athlete’s advocate, always.”<sup>183</sup> Even outside of competitive gymnastics, Nassar consistently exuded an image of a do-gooder, someone who embodied wholesome values, whether by plowing his neighbor’s driveway after a snowstorm or volunteering to teach Sunday School.<sup>184</sup> Nassar even updated his email signature line to include a reference to his charity, Gymnastics Doctor Autism Foundation, following his establishment of the foundation in 2011.<sup>185</sup>

Toward the end of his career, Nassar continued to build on his reputation, and in 2012, he was elected to the Region 5 Hall of Fame.<sup>186</sup> In a letter congratulating Nassar on his induction into the Hall of Fame, Mr. Penny and Peter Vidmar, then-Chair of the Board of USAG, summarized Nassar’s dual reputation as a world-class doctor and a caring friend: “[E]veryone at USA Gymnastics recognizes the incredible commitment you have made to the welfare of athletes. Not only have you provided outstanding medical support, but you have been a friend and confidante.”<sup>187</sup> While at the time of this letter USAG was already turning to a different leader for its medical program, Nassar continued to serve as the head medical professional for the Women’s Team.<sup>188</sup> In 2014, Nassar announced that he planned to serve as the doctor for the Women’s Team through the 2016 Olympics,<sup>189</sup> and USAG began planning for Nassar to attend those Games.<sup>190</sup> When Nassar announced his retirement from USAG a year in advance, in September 2015,<sup>191</sup> he suffered no immediate harm to his reputation and continued to see patients, who believed they were lucky to see such a talented and seemingly well-meaning doctor.

The combination of a well-respected doctor and a caring adult who appeared to be completely devoted to the welfare of athletes was a powerful trust-building tool. As the mother of a survivor testified, Nassar “was someone we completely trusted. He was our friend, our neighbor.”<sup>192</sup> Survivors were “told to trust [him] by everyone. My parents, my coaches, and even by my teammates.”<sup>193</sup> But as another survivor summarized, “Larry’s the most dangerous type of abuser, one who is capable of manipulating his victim through coldly-calculated grooming methodologies, presenting the most wholesome and caring external persona as a deliberate means to ensure a steady stream of young children to assault.”<sup>194</sup>

#### B. Nassar’s Methods for Normalizing the Abuse

On thousands of occasions across almost three decades, Nassar criminally sexually abused hundreds of children and young women. Nassar adopted various methods of abuse, but the unifying theme is that he effectively normalized his criminal acts, convincing his patients that the awful, uncomfortable and confusing procedure was medically necessary – or at least sowing enough doubt in their minds. And Nassar only needed to create sufficient confusion so that the cumulative effect of his reputation and grooming could weigh on the scales and convince survivors to not identify the criminal acts as abusive, or at least lack confidence in any such determination.

Nassar used various justifications for performing treatments in the pelvic region. If the athlete presented with hip problems, Nassar might explain that he needed to perform an “intravaginal adjustment” to adjust the bones in the athlete’s hips.<sup>195</sup> If the athlete presented with back pain, Nassar might explain that there was a pressure point in the pelvic floor that would lessen the pain,<sup>196</sup> or that he needed to “realign” the patient’s back.<sup>197</sup> If the athlete presented with a hamstring issue, Nassar might explain that you have to get up in there to massage.<sup>198</sup> And Nassar often told athletes that they had a “dumb butt” that restricted their flexibility, and he had to treat this condition by manipulating the pelvic floor.<sup>199</sup>

Nassar varied how much information he shared with the athlete concerning the ostensible justifications for the abusive procedure. Occasionally, Nassar explained the invasive nature of the procedure by using a model or pointing to a page in a textbook.<sup>200</sup> He also told some athletes that an intravaginal manipulation was “the easiest way to stretch [the hamstring] without pain,”<sup>201</sup> or that he “had to relieve the pressure in those muscles down there.”<sup>202</sup> With other athletes, he explained only that the next procedure was “a little invasive”<sup>203</sup> and “might be uncomfortable.”<sup>204</sup> With still other athletes, Nassar provided no warning that he intended to massage areas around the pelvic floor,<sup>205</sup> or mentioned only that he was going to perform an “adjustment.”<sup>206</sup> For these athletes, Nassar often started slowly massaging closer to the pelvic region before escalating his criminal acts.<sup>207</sup> Nassar also regularly touched the athletes’ breasts under the guise of fixing an issue with the ribs, shoulder or other upper body area.<sup>208</sup>

As a doctor of osteopathy, Nassar regularly performed hands-on treatments known as Osteopathic Manipulative Treatments. A fundamental principle of these treatments is “myofascial continuity” – that tightness in one muscle group can lead to a corresponding looseness in a separate muscle group – and therefore Nassar had an asserted medical basis for performing treatments in areas removed from the location of injury.<sup>209</sup> Although Nassar had no medical support for any of his abusive, criminal acts, by simply referencing the ostensible medical basis of the procedure, even with a cursory explanation of needing to “get up in there” or to “realign,” Nassar coated his abuse in a patina of medical justification. Conversely, on the other end of the spectrum, when Nassar started his abuse with little to no warning, the implicit message was that this procedure is so normal, so standard, that it required no additional explanation.

During the procedure, Nassar also varied his strategies for normalizing the abuse. Survivors recalled how Nassar committed the assaults “all the while talking to me as if what [he

was] doing was perfectly normal,”<sup>210</sup> with one survivor remarking that it was “like when you go to the dentist and they talk about random stuff to try to make you feel at ease.”<sup>211</sup> At other times, Nassar asked if everything was OK, or if anything hurt.<sup>212</sup> On some occasions, Nassar’s questions seemed to serve the dual purpose of putting his patients at ease while also satisfying his sexual desires, such as when he asked the athletes “how it felt,”<sup>213</sup> or telling athletes that he hoped he was making them feel better.<sup>214</sup> Nassar’s comments sometimes crossed over into explicitly sexual topics, although he usually kept the comments seemingly lighthearted. He told some athletes that he was “playing” with them,<sup>215</sup> made comments to other athletes along the lines of showing their boyfriends the technique<sup>216</sup> and asked some athletes about their sexual experiences with their boyfriends.<sup>217</sup>

However, Nassar was not entirely in control of himself during his abuse. Nassar acted aroused during some of his assaults, and many survivors have recounted that he had an erection.<sup>218</sup> Others observed that he panted and breathed heavily during the assaults and would sweat profusely from his forehead.<sup>219</sup> Some gymnasts noted a “creepy” look on his face.<sup>220</sup> And as one survivor detailed in an interview with a reporter, in one especially egregious episode, Nassar drugged a gymnast and, dropping any pretext of a medical procedure, climbed on top of the gymnast and abused her.<sup>221</sup>

Both during and after the procedures, Nassar was prepared to manage questions and concerns. If an athlete questioned Nassar during an exam, he assured her that the treatment would alleviate the pain.<sup>222</sup> If an athlete told him to stop, Nassar would merely reposition his hand.<sup>223</sup> On at least one occasion, when an athlete stated, “stop, you’re hurting me,” Nassar continued the abuse – implicitly refusing to acknowledge that he was engaging in any improper acts.<sup>224</sup> He also assured athletes that he performed the procedure on many girls.<sup>225</sup>

One particular way that Nassar normalized his assaults was by abusing athletes while the athlete's parent was in the room.<sup>226</sup> To do so, he turned the athlete away from the parent and positioned himself between the parent and the athlete.<sup>227</sup> Sometimes Nassar even engaged in conversation with the parent during his assault.<sup>228</sup> The ability to abuse survivors in the presence of their parents was a powerful cover. One survivor testified to a "disoriented sense of safety since my mom was there."<sup>229</sup> Another testified that she "assumed it was necessary since he did it with my mother in the room, and I just never fully understood."<sup>230</sup> And a third remarked, "I also told myself that if my mom thought it was weird she would have said something about it, but what I didn't realize was you had always positioned yourself and me in a way so that she couldn't see what was happening."<sup>231</sup>

Nassar's mere title of "doctor" was a powerful cover and silencing mechanism, and many survivors testified that they simply "didn't know how to act," during and after the abuse.<sup>232</sup> Gymnasts were "willing to trust and allowed the doctor to do anything to help [them] feel better,"<sup>233</sup> with one survivor explaining that "I was supposed to never question anything you did because you were a doctor."<sup>234</sup> Survivors expected that a medical procedure might be uncomfortable and therefore, even though Nassar's abuse "felt wrong,"<sup>235</sup> they did not recognize his actions as abusive, reasoning that "we're taught from an early age that doctors are there to help you,"<sup>236</sup> and "[j]ust because I did not like the treatment, it did not mean that it shouldn't have been done."<sup>237</sup>

Moreover, Nassar was more than an ordinary doctor; gymnasts had been told "he was the best and he would be my best shot of not being in pain anymore."<sup>238</sup> Athletes, therefore, "assumed from there that anything that happened was medically necessary."<sup>239</sup> Again, even when survivors recognized something was amiss, they could not believe that they were experiencing abuse. As

one survivor stated, “I kept repeating in my head, this is a mistake, this isn’t real. I thought, he’s a famous doctor, there’s no way he would do something inappropriate.”<sup>240</sup> As a different survivor remarked, she “knew it felt strange, but he was the national team doctor,”<sup>241</sup> with another commenting that she reasoned “he was a famous sports medicine doctor, and I assumed the gross thing he did would help me get better.”<sup>242</sup>

Nassar’s carefully cultivated reputation as a trusted friend further helped ensure the survivors’ silence, with survivors recounting that even though “it hurt and it was uncomfortable,” they trusted Nassar<sup>243</sup> and “truly believed he had my best interest at heart.”<sup>244</sup> Another survivor summarized her thoughts with, “why get rid of a perfectly nice, kind and caring doctor because I felt a little uncomfortable?”<sup>245</sup>

The sheer unlikelihood that someone as well-respected as Nassar would be committing sexual assault also drove the athletes to stay silent, with one survivor explaining, “I remember thinking it was a mistake, why would he ever need to do that?”<sup>246</sup> Another commented that “I couldn’t possibly believe that someone in such a powerful position would do that to anyone so I started to make myself believe that it didn’t happen.”<sup>247</sup> And a third emphatically stated, “I refused to believe there were people as evil as [Nassar] in the world.”<sup>248</sup>

The cumulative effect of Nassar’s reputation, grooming and methodical means of abuse created a class of survivors who shared a similar, strange experience that many of them could not yet label as criminally abusive. As a result, when survivors spoke to each other and learned that Nassar had conducted the same procedure on other athletes, they reaffirmed each other’s belief that the procedure must be fine and quieted the suspicion that something was wrong.<sup>249</sup>

### III. WHO KNEW WHAT WHEN AND WHAT WAS AND WAS NOT DONE IN RESPONSE

#### SELECTED FINDINGS

- Over a period of decades, numerous adults ignored credible reports of Nassar's criminal abuse.
- In 2004 and 2014, the Meridian Township Police and MSU, respectively, failed to effectively investigate allegations against Nassar, resulting in no charges being filed in response to credible, first-hand accounts of abuse.
- On June 17, 2015, USAG was informed that multiple athletes were uncomfortable with treatment methods that Nassar had performed on them. Over the course of the next five weeks, USAG conducted an internal investigation with the assistance of a private investigator before reporting the matter to law enforcement. USAG did not make any report to civil child protection authorities.
- USAG's legal counsel notified Nassar of the internal investigation while it was still ongoing and before USAG had reported Nassar to the FBI. USAG did not inform members of the gymnastics community of the athletes' concerns or of the investigation; instead, USAG developed, in consultation with Nassar, false excuses for Nassar's non-appearance at USAG events.
- Mr. Penny informed Mr. Blackmun and Mr. Ashley at the USOC in July 2015 of allegations of sexual misconduct, telling Mr. Blackmun that National Team members had alleged misconduct by the National Team doctor. Mr. Penny notified them both of the plan to report the conduct to law enforcement. After receiving this information, Mr. Blackmun and Mr. Ashley did not alert any other USOC employee or board member, independently confirm that USAG had reported the conduct to law enforcement and appropriate state authorities, or take any other action.
- In late September 2015, when Larry Buendorf, then-Chief Security Officer at the USOC, approached Mr. Blackmun following Mr. Penny's independent report to Mr. Buendorf, Mr. Blackmun told Mr. Buendorf that he was aware of the situation and did not further engage the USOC's then-Chief of Security on the matter or appropriate child-protective measures.



- USAG reported Nassar’s conduct to FBI agents, including Jay Abbott, Special Agent in Charge of the Indianapolis office, on July 28, 2015. Approximately one month later, the Indianapolis office concluded its initial investigation and transferred the matter to the FBI office in Detroit.
- The day after making the FBI report, USAG relieved Nassar of any further assignments and requested that Nassar not communicate with USAG athletes or personnel. Nassar almost immediately violated this request by texting a gymnast, and later informed USAG, in September 2015, that he would no longer honor this request. USAG took no effective steps to enforce its no-contact directive.
- In early September 2015, Nassar communicated his decision to “retire” to USAG. On September 8, 2015, Mr. Penny informed Mr. Blackmun and Mr. Ashley by email of this development and, two days later, informed the FBI. Neither USAG nor the USOC informed anyone outside of these three organizations of Nassar’s pretense that he had retired voluntarily following a long and successful career. The September 8, 2015 email referencing Nassar by name was deleted from Mr. Blackmun’s and Mr. Ashley’s respective email accounts.
- In the fall of 2015, after the file had been transferred to the Detroit office, Mr. Penny and Agent Abbott met informally for a “beer and conversation,” where Mr. Penny offered to provide assistance to Agent Abbott in securing a high-level position as Chief Security Officer for the USOC upon Mr. Buendorf’s anticipated retirement.
- In late April 2016, following nearly eight months with no evident action by the Detroit office of the FBI, Mr. Parilla contacted the Los Angeles FBI office to arrange a meeting for USAG to re-report the Nassar allegations. Two weeks later, Mr. Penny and Mr. Parilla met with FBI agents from the Los Angeles office. The FBI’s Los Angeles office thereafter began to interview witnesses, but did not complete its investigation or arrest Nassar prior to the *Indianapolis Star*’s public exposure of Nassar in September 2016.
- As the *Indianapolis Star* began investigating USAG’s failure to report allegations of sexual misconduct involving USAG coaches, Mr. Penny reached out to a detective at the Indianapolis Metropolitan Police Department for assistance to “kill the story.” The detective lobbied reporters and took other actions in consultation with Mr. Penny for the purpose of minimizing negative media coverage of USAG. A few weeks later, after the *Indianapolis Star* published its article concerning Nassar, Mr. Penny reached out to Agent Abbott and sought his input and assistance in connection with the media coverage of Nassar’s abuse and the manner in which USAG was being portrayed.

- On or about November 11, 2016, after learning that Texas Rangers had arrived unannounced at the Karolyi Ranch and stated that they would be returning with a search warrant, Mr. Penny instructed a USAG employee to retrieve any and all documents at the Ranch related to Nassar or medical care. The employee, as directed, brought the documents, in a large suitcase and multiple boxes, to USAG's Indianapolis offices. It is not clear what happened to some of these documents.

#### A. Early Reporting of Nassar’s Abuse and Notice of Other Conduct<sup>vii</sup>

Among the reasons that many survivors did not report Nassar’s conduct to people in positions of authority was a fear that no one would believe them.<sup>250</sup> That fear proved to be well-founded.<sup>251</sup> Over more than two decades, a number of survivors of Nassar’s abuse reported his conduct to coaches, trainers and other adults in positions of authority, but none of these reports led to adult intervention to stop Nassar from continuing his abuse of athletes. Based on our review of available materials, Nassar’s close friends Mr. Geddert and Ms. Klages ignored the reports they received, and other adults not only declined to take action to halt Nassar’s abuse, but also discouraged athletes from voicing their concerns. Even when law enforcement received a direct report of sexual abuse, and MSU conducted a full Title IX investigation in response to allegations of sexual assault, nothing happened. Nassar’s reputation and ostensible medical justifications were credited over the direct accounts of survivors, allowing Nassar to continue his abuse. And while USAG and the USOC, in the summer of 2015, were put directly on notice of the credible allegations by National Team members that Nassar had sexually abused athletes under his care, USAG and the USOC did not take effective action to halt Nassar’s abuse. Only the September 2016 reporting by the *Indianapolis Star*, an ensuing avalanche of complaints and the discovery of child pornography on Nassar’s computer hard drives, including images of child sexual abuse involving infants as young as eighteen months, finally broke the pattern of disbelief and inaction. These events in turn led to criminal charges and a public accounting of Nassar’s crimes, almost 30 years after his serial sexual abuse had begun, and more than 400 survivors later.<sup>252</sup>

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<sup>vii</sup> Our Independent Investigation focused on “who knew what when” and what was and was not done in response at the USOC and USAG. A recitation of the early reports to adults is necessary to understand in full the environment that enabled Nassar’s abuse and to provide context for the institutional and individual failures to intervene and halt Nassar’s abuse. Part III.A relies largely on publicly-available information to tell the story of almost 20 years of inaction by adults who were in a position to stop Nassar.

*1. Reports to Geddert and Klages*

According to publicly available sources, Mr. Geddert and Ms. Klages received among the earliest reports of Nassar's abuse; they were also longtime friends of Nassar. The three began their gymnastics careers working together at a Michigan club in the late 1980s.<sup>253</sup> Each then went on to successful and decorated careers – Mr. Geddert as the owner and coach at Twistars, a club with a record of producing top-level gymnasts, and Ms. Klages as the head coach of the Michigan State women's gymnastics team.<sup>254</sup>

Mr. Geddert is reported to have engaged in abusive methods of coaching.<sup>255</sup> Gymnasts explained in their testimony at Nassar's sentencing hearings that Mr. Geddert verbally abused the gymnasts who trained with him, applying a fear-based coaching technique, and forced gymnasts to train on injuries. According to one gymnast, while Mr. Geddert "broke [gymnasts] mentally and physically, depriving us of water on a hot summer's day in the un-air conditioned gym or pushing us to practice on broken bones," Nassar was "the one who stepped in. You defended us. You stood up to him on our beha[lf]. You protected our bodies from further pain."<sup>256</sup> Gymnasts "felt like Larry was my hero. He was going to yell at John for mishandling me,"<sup>257</sup> and, therefore, they sought shelter with Nassar, whose kind words and comforting presence masked his abuse.

Nassar protected Mr. Geddert. When Mr. Geddert was facing possible criminal liability stemming from his physical abuse of a young gymnast, Nassar personally texted the gymnast's grandmother to vouch for Mr. Geddert.<sup>258</sup> And according to testimony and other public statements from the survivors, Mr. Geddert repeatedly failed to act on notice of Nassar's abuse. A gymnast who trained with Mr. Geddert testified that, in 1998, her mother reported an inappropriate treatment by Nassar to Mr. Geddert, who arranged for the gymnast not to see Nassar again for one-on-one treatments, but took no further action.<sup>259</sup> Likewise, a different gymnast, who trained with Mr. Geddert in the 2000s, testified that her mother reported Nassar's conduct to the tight-knit

Twistars community, but that no action was taken.<sup>260</sup> A third gymnast stated in an interview with a reporter that, after Nassar abused her during the 2011 World Championships in Tokyo, Japan,<sup>261</sup> she was traveling in a car with Mr. Geddert and three other gymnasts and stated that, “Last night, it was like Larry was fingering me.”<sup>262</sup> The other gymnasts were shocked, one of them “rebuked” her, but Mr. Geddert did not react.<sup>263</sup> And as noted above in Part I.B, after Nassar was first publicly accused, Mr. Geddert defended him as “one of the most respected gymnastics professionals I’ve ever had to deal with.”<sup>264</sup>

Ms. Klages had less day-to-day interaction with Nassar, but remained his loyal friend throughout their careers. A former gymnast testified during the sentencing hearings that when she was 16 years old and while participating in a youth gymnastics program at MSU during the 1997–98 time period, she was abused by Nassar and reported concerns about his “treatment” to Ms. Klages.<sup>265</sup> According to a recently filed civil complaint, Ms. Klages responded by informing the gymnast that she must be “misunderstanding” or “reading into” Nassar’s conduct and that any report would have serious consequences.<sup>266</sup> The gymnast testified that Ms. Klages then asked other participants of the youth program whether they had felt uncomfortable with a procedure performed by Nassar, but even after another gymnast answered in the affirmative, Ms. Klages never reported these concerns.<sup>267</sup> The gymnast testified that Ms. Klages instead informed Nassar of her report.<sup>268</sup> At the gymnast’s next appointment with Nassar, he explained why she had been mistaken and proceeded to abuse her again.<sup>269</sup>

Ms. Klages steadfastly continued to stand by Nassar, including during the fall and winter of 2016. Ms. Klages asked MSU gymnasts to sign a card of support for Nassar in September 2016. Following Nassar’s arrest, Ms. Klages told investigators for the Michigan Attorney General’s office that she could not recall receiving any reports of Nassar’s abuse prior to 2016.<sup>270</sup> And she

was one of the very few people to continue to support Nassar following the revelation that he had collected thousands of images of child pornography, reportedly remarking to the mother of a survivor that the pornography could have been planted.<sup>271</sup> On August 23, 2018, Ms. Klages was indicted on two counts, one felony and one misdemeanor, of lying to a peace officer in connection with her statements asserting a lack of prior knowledge of reports of Nassar's abuse.<sup>272</sup>

## 2. *Reports to Coaches, Trainers and Other Adults over a Span of Decades*

Based on testimony from the sentencing hearings, around the same time that Mr. Geddert and Ms. Klages received reports of abuse, the mother of a survivor spoke to her daughter's coach and reported to him that Nassar had penetrated her daughter with his ungloved fingers.<sup>273</sup> The mother testified that the coach responded by saying that he had known Nassar for years and that her account of the treatment could not have happened.<sup>274</sup> And according to a recently filed civil complaint, a gymnast informed an assistant coach at Twistars in 1998 that Nassar had touched her inappropriately.<sup>275</sup> The coach responded by stating that Nassar "wouldn't do that," and the gymnast never made another report.<sup>276</sup>

In the 1999–2001 time period, three different MSU athletes reported Nassar's conduct to adults without any apparent responsive action being taken against Nassar, according to testimony, recently filed civil complaints and media reports. First, an MSU softball player reported to a trainer on the softball team that Nassar had inserted his fingers into her during a treatment; the trainer responded that Nassar was a world-renowned doctor performing legitimate medical treatment.<sup>277</sup> After Nassar continued his abuse, the athlete spoke to supervising trainers in the MSU athletic department, who provided the athlete with a similar response.<sup>278</sup> Second, an MSU track and cross country athlete reported to her coach that Nassar had penetrated her during a treatment. The coach responded that Nassar was "an Olympic doctor and he should know what he is doing."<sup>279</sup> And third, a former MSU volleyball player went to see Nassar, who she recalled was "jokingly referred

to as the crotch doc for his unconventional methods of treating back and hip pain.”<sup>280</sup> After Nassar abused her, she spoke to a trainer at MSU – one of the trainers who had reportedly been contacted by the softball player – and stated that she wanted to make a report about discomfort with Nassar’s treatment.<sup>281</sup> The trainer discussed the process of filing an official complaint, and the athlete understood from the discussion that she could not just file a complaint saying that she was “uncomfortable,” but instead would have to accuse Nassar of criminal wrongdoing.<sup>282</sup> Following her conversation with the trainer, the athlete decided against making a report.<sup>283</sup>

In 2004, according to her own statements in media interviews and testimony, a 12-year-old daughter of Nassar’s family friends reported to her parents that Nassar had been sexually abusing her for years.<sup>284</sup> Her parents discussed the allegations with Nassar and a child psychiatrist, and Nassar was able to convince both the parents and the psychiatrist that he had not acted inappropriately.<sup>285</sup> Nassar then met with the survivor, and in a feint designed to reassert his dominance, told her that if anything like that ever should happen to her, she would need to “tell someone.”<sup>286</sup>

As reflected in media reports, in 2004, a gymnast who had been abused in 2000 warned the head coach of a Michigan gym against sending athletes to Nassar for treatment.<sup>287</sup> The gymnast explained that Nassar had sexually assaulted her under the guise of medical treatment and that the coach should not send athletes to Nassar.<sup>288</sup> The coach responded by expressing her concern to the gymnast that there would be negative fallout if people heard what she was saying about Nassar.<sup>289</sup> And despite the gymnast’s warning, the coach continued to send gymnasts to Nassar.<sup>290</sup>

Finally, according to media reports, in January 2016, two gymnastics coaches learned from a former gymnast that Nassar had penetrated her during a medical appointment five years earlier.<sup>291</sup> One of the coaches spoke with a doctor who practiced in sports medicine about the treatment, and

both the doctor and the coach concluded that the conduct constituted sexual assault.<sup>292</sup> The two coaches then discussed the situation with each other and expressed concern about the consequences of making an accusation against such a high-profile person within USAG.<sup>293</sup> The coaches decided against making a report.<sup>294</sup>

### 3. *Meridian Township Police Investigation*

In 2004, Nassar abused a 17 year old who sought treatment for back pain.<sup>295</sup> She was hesitant to report Nassar due to a fear “that no one would believe me.”<sup>296</sup> Despite these hesitations, she told her mother and they filed a police report with the Meridian Township, Michigan Police Department.<sup>297</sup> The daughter detailed how Nassar had attempted to penetrate her, had rubbed her breasts and had neither explained the invasive procedure nor worn gloves.<sup>298</sup> The police took her statement and sent her to a hospital for a sexual assault kit.<sup>299</sup>

The police then interviewed Nassar about the medical basis for the procedure and reviewed a PowerPoint presentation he provided to explain the procedure.<sup>300</sup> Failing to interview any other practitioner about the medical basis of the procedure or to conduct any additional investigation, the police credited Nassar’s account.<sup>301</sup> The police concluded the investigation without a referral to a prosecutor “due to the facts presented to [the police] by Dr. Nassar.”<sup>302</sup> The police did set up a meeting between the girl’s parents and Nassar, where Nassar told the parents that it was a misunderstanding and that because their daughter was not a gymnast, she was not as comfortable with her body.<sup>303</sup>

### 4. *MSU Title IX and Police Investigation*

In 2014, a recent MSU graduate made a Title IX report concerning Nassar’s abuse, where she detailed Nassar’s inappropriate conduct in an interview with an employee from MSU’s Office of Inclusion and Intercultural Initiatives and an MSU police detective.<sup>304</sup> Specifically, she related that Nassar had made inappropriate comments about her boyfriend, molested her breasts and



massaged her vaginal area in a sexual manner.<sup>305</sup> The student reported to MSU that she tried to stop the assault by telling Nassar that he was hurting her, but Nassar responded that he was “almost done” and continued to assault her.<sup>306</sup> MSU investigators interviewed other witnesses, including friends of the reporting student.<sup>307</sup>

The MSU Title IX investigators and police confronted Nassar with these allegations in separate interviews. Nassar explained in both interviews that his massaging of the chest and pelvic regions had a medical purpose, that he had been performing these treatments for a long time and that he teaches and lectures on pelvic floor treatments.<sup>308</sup> In the Title IX interview, Nassar addressed the student’s allegation that the treatment did not stop after her complaint by explaining that he would have understood the student’s statement to indicate that his specific hand placement was causing pain rather than an issue with the procedure in general.<sup>309</sup> Nassar explained that his standard operating procedure is to “explain as he goes,” and that he talks throughout his appointments about where he is about to place his hands.<sup>310</sup> Nassar added that he was “very hurt to think that he violated a patient’s trust,” that “he was so sorry, that he never had any inappropriate intent and that it especially hurts because helping people is what he does.”<sup>311</sup>

The Title IX report also notes that Nassar discussed a slide from a “frequently used power point that contains Star Trek images and is entitled ‘Pelvic Floor: Where no man has gone before.’”<sup>312</sup> The report does not state whether Nassar provided MSU with PowerPoint presentations in 2014; Nassar shared his PowerPoint presentations with USAG in 2015 and MSU in 2016 following allegations of abuse, and he “used them to lecture frequently.”<sup>313</sup> Nassar’s PowerPoint presentations have bizarre language and images. As Nassar stated to the Title IX investigators, one of his slides is based on a Star Trek theme. The Star Trek slide in his PowerPoint presentation contains a video with scrolling text: “These are the voyages of the ‘Sports Pelvic

Floor' specialist/Whose life time mission . . . to boldly go where no man has gone before (in most of our young gymnasts – hopefully).”<sup>314</sup> In a different slide, Nassar quotes an 11-year-old gymnast as saying “Larry, I think I hurt my WhoHaa”; in another, Nassar uses the title: “Do your athletes have a PP Problem.”<sup>315</sup>

The investigators evaluated the complaint by consulting with other physicians who practiced in the field of Osteopathic Manipulative Therapy, but the physicians they consulted were Nassar’s own colleagues.<sup>316</sup> Many of these colleagues had known Nassar for decades, and they vouched for him, stating that he was a well-respected doctor who conducted appropriate and professional procedures.<sup>317</sup> Although one colleague, an athletic trainer, is reported to have received a complaint concerning Nassar in the early 2000s,<sup>318</sup> this trainer told the MSU investigators that she “has never had a complaint about Dr. Nassar . . . and has no concern about him crossing a line between medically appropriate and inappropriate.”<sup>319</sup> Ultimately, each colleague told the Title IX investigators that she considered Nassar’s conduct to be medically appropriate.<sup>320</sup>

The Title IX report concluded, based on the statements from these medical practitioners, that they “cannot find that the conduct was medically inappropriate and thus, cannot find it was sexual in nature.”<sup>321</sup> The report criticized Nassar for his failure to explain the nature of the procedure, failure to communicate to the patient how to stop the procedure, failure to provide the patient with the option of having another person in the room, and for his inappropriate comments about the patient’s boyfriend.<sup>322</sup> The investigators drafted two conclusions to the report. In the report provided to the student, the MSU investigators stated that they found “the claim helpful in that it allows us to examine certain practices at the MSU Sports Medicine Clinic.”<sup>323</sup> In the internal report, the investigators discussed the many ways in which Nassar’s conduct had exposed the

Sports Medicine Clinic to legal liability, including Nassar’s failure to adequately explain his invasive, sensitive procedures; his failure to obtain consent; his failure to provide patients with the option to have the procedure performed over clothing; and the effects of his conduct in exposing patients to unnecessary trauma based on “perceived inappropriate sexual misconduct.”<sup>324</sup>

Following the investigation, MSU imposed certain requirements on Nassar, including that (i) there would always be a second person in the room during procedures involving a sensitive area; (ii) Nassar would modify his procedure to minimize skin-to-skin contact; and (iii) if skin-to-skin contact was necessary, Nassar would explain the procedure in detail.<sup>325</sup> In communicating these requirements to Nassar in July 2014, the former dean of MSU’s College of Osteopathic Medicine, Dr. Strampel, explained that he was “happy this has resolved . . . and I am happy to have you back in full practice.”<sup>326</sup> MSU never ensured that Nassar implemented these requirements, and when Nassar was permitted to return to practice following the investigation, he immediately returned to serially sexually abusing athletes.<sup>327</sup> <sup>viii</sup>

Almost a year after the Title IX report, the MSU police department forwarded the case to the Ingham County’s prosecutor’s office with a recommendation to charge Nassar with fourth-degree criminal sexual conduct, a misdemeanor,<sup>328</sup> but in December 2015, the prosecutor’s office declined to pursue charges against Nassar, reasoning that Nassar’s procedure appeared to be “a very innovative and helpful manipulation.”<sup>329</sup>

##### 5. *Nassar’s Longtime Colleagues*

Nassar worked closely with numerous medical professionals over the course of his career. Although there is no evidence available to the Independent Investigators that these professionals

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<sup>viii</sup> Dr. Strampel faces two counts of willful neglect of duty related to his alleged actions during and after Nassar’s 2014 Title IX investigation. Complaint, *People v. Strampel*, No. 18-0472FY (Ingham Cty., Mich. Mar. 27, 2018). Dr. Strampel is also facing two additional criminal charges, a felony misconduct in office charge and a fourth-degree criminal sexual assault charge. Complaint, *People v. Strampel*, No. 18-0472FY (Ingham Cty., Mich. Mar. 27, 2018).

had knowledge of Nassar’s abuse, their very presence – working next to a serial abuser – was an important feature of his facade.

At USAG, Nassar developed a strong relationship with his co-worker, athletic trainer Ms. Van Horn. Since the two first met at the 1988 Olympic Trials,<sup>330</sup> they traveled together, collaborated on presentations and shared confidential injury information.<sup>331</sup> In June 2015, Nassar referred to Ms. Van Horn as the “neck” to his “head.”<sup>332</sup> In all of the years they worked side-by-side, Ms. Van Horn never raised any concerns about Nassar’s medical practices. Interviewees describe Ms. Van Horn as good at her job, but “painfully shy” and someone who never contradicted Nassar, and instead did “whatever [Nassar] told her to do.”<sup>333</sup> Ms. Van Horn is currently facing criminal charges in Texas stemming from Nassar’s abuse of gymnasts,<sup>334</sup> and she declined to participate in the Independent Investigation.

At MSU, Dr. Lemmen worked closely with Nassar. Dr. Lemmen was aware that Nassar had resigned from his position at USAG following a review of his treatment methods that had made athletes feel “unfomfortable.”<sup>335</sup> Instead of reporting this news to her supervisors, Dr. Lemmen provided advice to Nassar and recommended that he speak with lawyers.<sup>336</sup> And when Nassar faced his first civil lawsuit in August 2016, he asked Dr. Lemmen to remove medical files from the MSU Sports Medicine department so that he could identify the anonymous plaintiff.<sup>337</sup> Dr. Lemmen removed the files, but ultimately decided against turning them over to Nassar, and she returned the files to MSU on the following day.<sup>338</sup>

#### 6. *Notice of Other Conduct by Nassar*

In addition to the direct reports of abuse that went unaddressed and the failures by Nassar’s co-workers to report any concerns about his conduct, employees of both USAG and the USOC learned of actions that – while seemingly innocent at the time – in retrospect are examples of missed warning signs. Employees and athletes at USAG were aware that Nassar had a practice of

taking extensive photographs of gymnasts during events. Nassar would then send gymnasts and their coaches DVDs of these photographs.<sup>339</sup> In around 2010, Mr. Penny told Kathy Kelly, the former-Vice President of the Women’s Program, that Nassar’s practice of taking photographs at competitions “bothered” him, as Nassar was attending in his capacity as a physician and USAG had retained professional photographers to cover the events.<sup>340</sup> Mr. Penny stated to the Independent Investigators that he did not suspect that Nassar had any nefarious intentions in taking these photographs, but he asked Ms. Kelly to tell Nassar to stop.<sup>341</sup> ix Ms. Kelly thereafter spoke with Nassar, who agreed to end his practice of taking photographs at meets and other competitive events.<sup>342</sup>

At the Olympic Games, the Women’s Artistic Gymnastics team had a practice of separating themselves from the rest of Team USA, including by staying in different accommodations and, in particular, not receiving medical care at the central USOC medical clinic.<sup>343</sup> Shortly prior to the 2012 Games, the USOC appointed Dr. Bill Moreau as the new Managing Director of Sports Medicine. Dr. Moreau spoke with Nassar at the Games about the practice of treating gymnasts outside of the central USOC medical area, telling Nassar that it would be “safer for you” to treat the gymnasts next to other athletes and that Nassar “shouldn’t take care of athletes alone,” given the absence of any witnesses who could defend Nassar in the event of a dispute with an athlete.<sup>344</sup> Dr. Moreau explained that he would never treat patients without a chaperone, suggesting that Nassar should not either.<sup>345</sup> Nassar responded to Dr. Moreau that Ms. Karolyi “won’t let me” treat the gymnasts next to the other athletes because she does not want “the gymnasts to be with the boxers.”<sup>346</sup> Following this conversation, Dr. Moreau visited the area where Nassar was treating gymnasts. Upon arriving, he observed Nassar performing treatments in an open setting, next to

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<sup>ix</sup> Mr. Penny's interview with the Independent Investigators spanned two days in August 2018.

Ms. Van Horn and with multiple athletes present.<sup>347</sup> Dr. Moreau concluded that there was no reason to believe the treatment setting was unsafe or inappropriate.<sup>x</sup>

At the end of the Games, a USOC medical staff member filled out an evaluation of Nassar. The evaluation gave Nassar high scores on “clinical acumen” and “respects athletes and involves them in clinical decision-making,” and also noted as a strength that Nassar was “very dedicated to his female athletes.” Nassar received an “unsatisfactory score” on “functions as a team player,” however, and the evaluation noted that he “does not appear to trust other medical providers to work with his athletes.” Nassar received an overall score of 41 out of 70, and the evaluation concluded that the USOC should not consider Nassar for another Games appointment.<sup>348 xi</sup>

#### B. Reporting to USA Gymnastics

On June 17, 2015, Sarah Jantzi, a gymnastics coach with Twin City Twisters, notified USAG’s then-Senior Vice-President Rhonda Faehn by phone that Nassar had made one of her gymnasts (“Athlete 1”) feel uncomfortable.<sup>349</sup> Athlete 1, who was a minor at the time, had gone to see Nassar for an injury. After Ms. Jantzi overheard Athlete 1 explaining her discomfort with Nassar to another gymnast and inquired about her concerns, Athlete 1 told Ms. Jantzi that she had gone to see Nassar for a knee injury.<sup>350</sup> She explained that he had massaged her groin area “too close” to her vagina and had sent her a private Facebook message telling her that she looked beautiful in her prom dress.<sup>351</sup> Ms. Jantzi also provided Ms. Faehn with the names of two other gymnasts (“Athlete 2” and “Athlete 3”) who may have experienced “the uncomfortable factor” with Nassar.<sup>352</sup> Ms. Faehn immediately relayed this information to Mr. Penny, then-CEO of

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<sup>x</sup> Every member of the USAG Women’s National Team at the Olympic Games in London has since identified as a survivor.

<sup>xi</sup> The USOC also prepared a review of Nassar’s treatment of athletes at the Colorado Springs Olympic Training Center in 2005. The review stated in part: “Relates well with young athletes. . . . Always willing to take time to work with athletes’ personalities. . . . Strengths: Osteopathic/manual medicine hands-on skill sets.” USOC-R&G-00071500.

USAG, who stated that he would handle the matter and notify the proper authorities.<sup>353</sup> xii By “proper authorities,” Ms. Faehn understood Mr. Penny to be referring to law enforcement.<sup>354</sup> Mr. Penny subsequently spoke directly with Ms. Jantzi to confirm the report. Ms. Jantzi, after conveying the allegations to Mr. Penny, asked him if she needed to report the matter to “any other authorities.”<sup>355</sup> Mr. Penny responded that “he would handle it.”<sup>356</sup> Neither Mr. Penny nor anyone else acting on behalf of USAG notified law enforcement or child protective authorities of the athlete concerns at that time.<sup>357</sup>

Mr. Penny then contacted USAG’s legal counsel, Scott Himsel of Faegre Baker Daniels LLP (“Faegre”).<sup>358</sup> xiii While USAG has asserted a claim of attorney-client privilege with regard to the substance of Mr. Penny’s conversations with counsel,<sup>359</sup> the outcome of their conversations in June 2015 is evident: the decision was made to hire a private investigator to interview the athletes who had expressed concerns about Nassar’s conduct and to assess whether a report should

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<sup>xii</sup> While Mr. Penny acknowledged receiving a call from Ms. Faehn regarding the concerns of one or more athletes, he recalled that the conversation “was very general.” Penny Interview. Mr. Penny recalled that Ms. Faehn relayed that Athlete 1 felt uncomfortable after receiving a private social media message from Nassar. He also recalled learning from Ms. Faehn that Athlete 1 had concerns regarding Nassar’s medical treatments; he did not recall Ms. Faehn providing him with any detail about the nature of the medical treatments or identifying any other athletes who felt uncomfortable. Penny Interview. Nor did he recall telling Ms. Faehn he was going to make a report to the proper authorities: “That never came up because no one was describing [what happened] as molestation or abuse.” Penny Interview. Ms. Faehn’s recollection is corroborated by the contemporaneous notes she took during her call with Ms. Jantzi. Rhonda Faehn, Testimony Before the Senate Subcommittee on Consumer Protection, Product Safety, Insurance and Data Security (June 5, 2018), Ex. A. The statement she submitted to Congress on June 5, 2018 is in accord. Rhonda Faehn, Testimony Before the Senate Subcommittee on Consumer Protection, Product Safety, Insurance and Data Security (June 5, 2018).

<sup>xiii</sup> The Independent Investigators requested interviews with Mr. Himsel and his colleague, Daniel Connolly, through their counsel. Counsel declined on behalf of their clients, citing, among other reasons, a concern that Faegre’s “representation of USAG cannot be fairly assessed or described” absent a waiver of attorney-client privilege by USAG that would allow Messrs. Himsel and Connolly to discuss “what advice [the firm] may have given USAG, what information was available (or not available) to the firm at the time it gave that advice, or the extent to which USAG may have heeded the firm’s advice (or not).” Letter from Margaret Keeley to the Independent Investigators (Nov. 26, 2018). Although USAG, through counsel, agreed to make certain accommodations in response to other concerns raised by Messrs. Himsel and Connolly, it did not agree to a waiver of the attorney-client privilege, and Messrs. Himsel and Connolly, through counsel, declined to answer any questions on any topic, including on the subject of non-privileged communications with Nassar and his counsel, or otherwise to participate in the Independent Investigation. Letter from the Independent Investigators to Margaret Keeley (Nov. 20, 2018); Letter from Margaret Keeley to the Independent Investigators (Nov. 26, 2018).

be made to law enforcement. The next day, Mr. Penny contacted Athlete 1's mother and informed her that he was aware of the concerns that Athlete 1 had raised about Nassar and that the matter would be handled by USAG.<sup>360</sup> Mr. Penny emphasized the need for privacy.<sup>361</sup> On July 3, 2015, USAG retained Fran Sepler, a workplace investigator with experience interviewing survivors of sexual abuse. She had no prior relationship with USAG.<sup>362</sup>

Although Mr. Penny participated in a previously scheduled USAG Board meeting on June 28, 2015 in Greensboro, North Carolina, he did not report either the athlete concerns or the retention of Ms. Sepler to the full board.<sup>363</sup> Instead, following the board meeting, Mr. Penny privately confided in a small group of board members: Board Chair Peter Vidmar, Vice-Chair Paul Parilla and Director Dr. Jay Binder.<sup>364 xiv</sup> He informed them that a minor female athlete had raised concerns about Nassar's conduct during medical treatments and that USAG, on advice of counsel, had hired a female investigator to speak with the athlete and her parents to better understand the nature of her discomfort.<sup>365</sup> Although Mr. Parilla and Mr. Vidmar had differing recollections regarding the level of detail that Mr. Penny provided about the athlete's concerns, Mr. Vidmar recalls being advised by Mr. Penny that a gymnast on the women's team had expressed concern about Nassar's conduct.<sup>366</sup> Mr. Vidmar understood from Mr. Penny's description of the allegations that Nassar's treatments had made the gymnast "feel funny." Specifically, the athlete had sought treatment from Nassar for a knee injury, but Nassar had manipulated her close to her groin area and made her feel uncomfortable.<sup>367</sup> Mr. Vidmar also recalled that the allegations "made [his] blood curl," and that he told the assembled group, in words or substance, that Nassar "will never touch one of our athletes ever again."<sup>368</sup>

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<sup>xiv</sup> Although Dr. Binder initially expressed a willingness to participate in the Independent Investigation, he thereafter failed to respond to repeated requests to schedule an interview.



Following discussion, the group decided there was insufficient information to determine whether the reports concerned sexual abuse or an uncomfortable medical procedure, and concluded that further investigation was needed.<sup>369</sup> Mr. Penny, Mr. Vidmar, Mr. Parilla and Dr. Binder also addressed in that initial meeting the need to protect athletes in the interim and agreed that Nassar should not be allowed to have any involvement with USAG events or athletes during the pendency of the investigation.<sup>370</sup> However, as discussed in Part III.G.2, no action was taken to effect this decision until several weeks later, and then without benefit of measures to ensure effective implementation.

On June 30, 2015, 13 days after the initial report of athlete concerns, USAG received an additional report regarding potential misconduct by Nassar.<sup>371</sup> Specifically, Ms. Jantzi informed Ms. Faehn that she had learned from Athlete 1 that another elite gymnast (“Athlete 4”) had stated that Nassar had “massaged her oddly as well.”<sup>372</sup> Athlete 4 was a minor at the time. According to Ms. Faehn, she promptly relayed this information on July 1 to Mr. Penny, who stated that he would contact Athlete 4’s parents and “report this as well.”<sup>373</sup> There is no independent corroboration that Mr. Penny provided Athlete 4’s name to the FBI; and the FBI declined to provide any information to the Independent Investigators concerning this or any other matter.<sup>374</sup>

In late June or early July 2015, Mr. Penny and Ms. Faehn went to see Kathy Kelly, the former Vice-President of the Women’s Program, regarding Nassar.<sup>375</sup> Mr. Penny informed Ms. Kelly that a gymnast had expressed discomfort with Nassar’s treatments and inquired whether Ms. Kelly had ever heard similar complaints about Nassar. When Ms. Kelly replied that she had not, Mr. Penny asked her whether she thought Nassar was capable of sexual abuse.<sup>376</sup> Ms. Kelly answered that she did not, although she cautioned that her personal opinion was irrelevant.<sup>377</sup>

### *1. Fran Sepler's Investigation*

Ms. Sepler's investigation took place over the course of several weeks, commencing in early July, and included interviews with three athletes: Athlete 1, Athlete 3 and Athlete 5. USAG facilitated the scheduling of each interview, and at least some of the athletes were informed in advance that Ms. Sepler was a private investigator acting on behalf of USAG.<sup>378</sup> At the conclusion of each interview, Ms. Sepler provided a report to USAG.<sup>379</sup> Although there is no evidence that Ms. Sepler provided written reports or memoranda of the interviews to USAG, the substance of the interviews and Ms. Sepler's conclusions are separately memorialized in contemporaneous internal USAG memoranda and communications.<sup>380 xv</sup>

On July 3, 2015, the same day USAG formally retained Ms. Sepler, Mr. Penny put Athlete 1's mother in touch with Ms. Sepler via email to arrange a meeting among Ms. Sepler, Athlete 1 and Athlete 1's mother.<sup>381</sup> On July 11, 2015, Ms. Sepler interviewed Athlete 1, who was then a member of the National Team and a minor.<sup>382</sup> According to an internal memorandum prepared by USAG, Athlete 1's interview was consistent with the information that previously had been relayed to USA Gymnastics.<sup>383</sup> Specifically, Athlete 1 reported her discomfort with Nassar's treatments and identified other athletes who had experienced similar discomfort with Nassar's procedures.<sup>384</sup>

On the same day that Athlete 1 was interviewed by Ms. Sepler – July 11, 2015 – Mr. Penny sent himself what he later described as a “stream of consciousness” email to memorialize “things that were on [his] mind.”<sup>385</sup> Although Mr. Penny wrote “Contact the FBI” in his email-to-self,<sup>386</sup> USAG did not contact the FBI until the close of Ms. Sepler's investigation two weeks later.<sup>387 xvi</sup>

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<sup>xv</sup> Mr. Penny stated to the Independent Investigators that USAG did not receive written reports of the interviews, Penny Interview, and no such records were produced by USAG to the Independent Investigation.

<sup>xvi</sup> Mr. Penny has since stated that he does not recall the context for this email or what he was thinking when he wrote “Contact the FBI.” Penny Interview.

Mr. Penny also stated in his same email-to-self on July 11, 2015, that “[w]e have been advised by our attorneys that it is in everyone’s best interest for Larry Nasser [sic] to not be given any assignment with USA Gymnastics.”<sup>388</sup> An additional ten days elapsed before USAG directed Nasser not to contact any gymnasts and not to participate in any USAG events.<sup>389 xvii</sup>

Even after being given a no-contact directive by USAG, Nasser continued to contact gymnasts by text message. Upon learning on August 20, 2015, that Nasser had almost immediately ignored the directive by sending a text message to Athlete 3,<sup>390</sup> USAG did not confront Nasser or his counsel with the violation of the no-contact directive. Instead, five days later, without any specific reference to the text message to Athlete 3, Mr. Himsel generally reminded counsel to Nasser of the instruction.<sup>391</sup> Specifically, Mr. Himsel stated: “As I mentioned in response to your question when we spoke, Dr. Nasser can best help expedite the review by refraining from being in contact with USAG personnel and athletes while it is on-going. And we continue to ask that he refrain from any such contacts.”<sup>392</sup>

Nor did USAG inform employees that Nasser had been told not to contact gymnasts, thereby disabling USAG as an organization from monitoring Nasser’s compliance with the no-contact directive. Mr. Penny instead expressly limited the number of individuals who were informed of the allegations regarding Nasser and shared with them only certain details, as he deemed necessary. These individuals included Renee Jamison, then-Executive Office Manager and Mr. Penny’s personal assistant; Ron Galimore, then-Chief Operating Officer; and Ms. Faehn.<sup>393</sup> Ms. Faehn was necessarily in the circle of knowledge by virtue of being the first

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<sup>xvii</sup> Ms. Sepler has stated that she insisted, as a condition of her acceptance of the investigator role, that Nasser be directed to have no contact with athletes during the pendency of her review. Letter from Fran Sepler to the Independent Investigators (Sept. 5, 2018), on file with the Independent Investigators. We were not able to identify any corroboration for this account. USAG did not issue such a directive to Nasser until two days prior to the close of Ms. Sepler’s investigation.

point of contact within USAG for the athlete concerns.<sup>394 xviii</sup> Mr. Penny instructed each of these individuals, as well as Mr. Parilla, Mr. Vidmar and Dr. Binder, “not to have any conversations with anyone concerning this issue.”<sup>395</sup> Mr. Penny’s insistence on maintaining the confidentiality of the Nassar matter extended beyond USAG employees and directors. He also instructed Ms. Jantzi, as well as the athletes being interviewed and their parents, to refrain from speaking with anyone else about the complaints regarding Nassar’s conduct.<sup>396</sup> Ms. Faehn recalled that, in the course of reporting Athlete 4’s concerns, Ms. Jantzi told her that “she knew she wasn’t supposed to talk about Larry.”<sup>397</sup>

Following Ms. Sepler’s interview of Athlete 1, she concluded that the information provided “was inconclusive as to whether abuse or misconduct had occurred,” and that an interview with at least one additional athlete was warranted.<sup>398</sup> After evaluating Ms. Sepler’s report of her interview with Athlete 1, and her recommendation to interview at least one additional athlete, USAG determined that Ms. Sepler should continue with her investigation and interview Athletes 2 and 3, whom Ms. Jantzi had described during her initial call with Ms. Faehn as potentially sharing a feeling of discomfort with respect to Nassar’s conduct.<sup>399</sup> Both of these athletes were adults at the time, and Mr. Penny requested that Ms. Faehn reach out to them directly to arrange the interviews without “disclosing the nature of the conversation, other than that it is private or confidential.”<sup>400</sup> Mr. Penny stated: “Our preference is for them to meet privately with

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<sup>xviii</sup> On December 7, 2018, Leslie King, Vice President of Communications for USAG, reported to the Independent Investigation through counsel for USAG that – after reflecting on her October 18, 2018 interview with the Independent Investigators, during which she reported no recollection of being aware of the Nassar allegations in 2015 – she now recalls that she was advised by Ms. Jamison in “late Fall 2015 that Nassar had been reported to the FBI.” Email from Christopher Schneider, counsel to USAG, to the Independent Investigators (Dec. 7, 2018), on file with the Independent Investigators. Consistent with her present recollection, on September 28, 2015, upon Nassar’s retirement from USAG, Ms. King sent an email to Mr. Penny, Ms. Jamison and Mr. Galimore in which she commented, “Typically we would post something when an individual retires after years of service, which I am guessing we do not want to do.” USAG\_HR\_O00006085. Ms. King further stated through counsel that she did not learn the identity of the athletes who made the allegations against Nassar until 2017. Email from Christopher Schneider, counsel to USAG, to the Independent Investigators (December 7, 2018), on file with the Independent Investigators.

the interviewer and not involve their coach or their parents. If they had to involve someone, the preference would be their parents.”<sup>401</sup> Ms. Faehn objected to Mr. Penny’s request, stating that parents or coaches should be involved given the seriousness of the matter, and declined to facilitate the interviews.<sup>402</sup> While expressing his irritation with Ms. Faehn for her refusal to facilitate the interviews as requested, Mr. Penny agreed that Ms. Faehn would not have to arrange the interviews herself and agreed that the athletes’ parents could be involved.<sup>403</sup>

Notwithstanding a contemporaneous statement by Mr. Penny that “[t]he reason we are doing this is entirely to determine if this has occurred with multiple athletes,” so that USAG can “take action with a higher degree of resolve and evidence,”<sup>404</sup> there is no available evidence that Athlete 2 – who has since publicly identified as a survivor of Nassar’s abuse – was ever contacted by Ms. Sepler for an interview. Nor does there appear to have been any effort to schedule an interview for Ms. Sepler with Athlete 4, whose concerns Ms. Jantzi had separately relayed to USAG almost two weeks earlier.

Mr. Penny arranged for Ms. Sepler to conduct a second interview, with Athlete 3, on July 17, 2015.<sup>405</sup> According to USAG’s internal memorandum summarizing the interview, Athlete 3 reported that, while she had not experienced many treatments with Nassar, she was familiar with the procedure.<sup>406</sup> Athlete 3 identified another athlete whom she understood had experienced even more unpleasant treatments with Nassar.<sup>407</sup> Ms. Sepler reported to the Independent Investigation in a written statement that Athlete 3 recommended to her that she contact this other athlete, Athlete 5.<sup>408</sup>

The day after her interview, Athlete 3 contacted Ms. Faehn by phone to provide additional details that she had not provided to Ms. Sepler.<sup>409</sup> Specifically, she informed Ms. Faehn that Nassar had “actually penetrated”<sup>410</sup> Athlete 5 with his fingers during a treatment at the World

Championships in Japan in 2011,<sup>411</sup> and that the treatment took place in his hotel room with no one else present.<sup>412</sup> Ms. Faehn immediately reported this information to Mr. Penny and, at his request, confirmed with Athlete 3 that Athlete 5 would be willing to speak about her experience with Nassar.<sup>413</sup> Mr. Penny then arranged an interview with Athlete 5 for Ms. Sepler the following week.<sup>414</sup> USAG did not commence any review at that time to understand how Nassar had been able to treat athletes alone, in a hotel room, at a World Championship event.<sup>415</sup> Nor did Mr. Penny contact law enforcement or child protection authorities based upon the additional information provided by Athlete 3.<sup>416</sup>

Shortly after her conversation with Ms. Faehn, Athlete 3 received a text message from Ms. Sepler stating: “I appreciate your interest and concern in this matter ... but please remember that there are risks in sharing information at this point. There is a process in place and staying clear of the process will protect you and others.”<sup>417</sup> Athlete 3 has stated publicly that she construed the message from Ms. Sepler as an attempt to silence her.<sup>418</sup> Ms. Sepler has denied that this was her intent, stating that USAG had informed her that Athlete 3 wanted to initiate her own inquiry with other athletes and that her text message was intended to “thank[ ] [Athlete 3] for her interest,” while explaining “that the investigative process was underway.”<sup>419</sup> The Independent Investigation has been unable to confirm from any source that Ms. Sepler was so advised by USAG, and Ms. Sepler declined to be interviewed or otherwise to participate in the Independent Investigation beyond submission of a written statement.<sup>420</sup>

Ms. Sepler interviewed Athlete 5 on July 23 or 24, 2015.<sup>421</sup> As reflected in an internal USAG memorandum summarizing the interview, Athlete 5 reported that she was aware of general treatment techniques in the pelvic floor, but that the treatments she had received from Nassar were different and more aggressive, and included digital penetration.<sup>422</sup> In addition, Athlete 5 reported

no therapeutic effect, and instead reported that Nassar might be getting sexual gratification from the procedure. Athlete 5 also stated to Ms. Sepler that Nassar had provided special attention and gifts to her.<sup>423</sup> Ms. Sepler concluded that Athlete 5 presented an unambiguous claim of sexual abuse and recommended that USAG immediately notify law enforcement.<sup>424</sup>

USAG agreed to implement Ms. Sepler's recommendation and decided to notify law enforcement on the next business day – Monday, July 27, 2015. Because Nassar's actions were not confined to a single jurisdiction and USAG is affiliated with a federally chartered corporation (the USOC), USAG determined that the report should be made to the FBI rather than to a local law enforcement agency.<sup>425</sup> USAG contacted the FBI on July 27, 2015; a meeting was convened at the FBI's offices in Indianapolis on the following day, Tuesday, July 28, 2015.<sup>426</sup> There is no available evidence of any report to child protection authorities.

#### C. Reporting to the United States Olympic Committee

On July 25, 2015, after USAG had already decided to report the matter to the FBI, Mr. Penny notified the USOC about the allegations against Nassar. According to a contemporaneous email from Mr. Ashley to Mr. Blackmun, Mr. Penny spoke with Mr. Ashley early in the morning on Saturday, July 25, 2015, to inform him of certain information concerning sexual misconduct and to request that he arrange a conference call with Mr. Blackmun for later that day so the three of them could discuss the matter.<sup>427</sup> Mr. Ashley then sent Mr. Blackmun an email telling him that he had a "long call" with Mr. Penny "regarding a safe sport issue he is pursuing."<sup>428</sup> Mr. Ashley explained that Mr. Penny "is pretty distraught and is looking for some help" and would like to "get on the phone with the two of us to talk through his challenges and get

advice.”<sup>429</sup> <sup>xix</sup> Due to scheduling issues, the conference call with Mr. Ashley did not take place;<sup>430</sup> instead, Mr. Penny spoke directly with Mr. Blackmun later the same day.<sup>431</sup>

On their call, Mr. Penny informed Mr. Blackmun that national team athletes had expressed discomfort with medical treatments they had received from USAG’s national team doctor.<sup>432</sup> Mr. Blackmun did not inquire about the identity of the team doctor or the national team athletes, and neither Mr. Penny nor Mr. Blackmun recalls either Nassar or the athletes being identified by name during the call.<sup>433</sup> <sup>xx</sup> According to Mr. Blackmun, Mr. Penny explained that USAG had “hired someone on the outside to take a look” at the concerns and that the investigator had conducted interviews with multiple athletes, at least one of whom described conduct that the investigator considered to be sexual abuse.<sup>434</sup> Mr. Penny further explained that the treatments included vaginal penetration and that the doctor had provided videos and other materials to support the notion that the treatments had a medical purpose, but that USAG could not conclude that the treatments were legitimate and had made the decision to report the doctor to the FBI on the next business day.<sup>435</sup>

Mr. Blackmun stated during his interview with the Independent Investigators that he told Mr. Penny that he assumed USAG had taken steps to prevent Nassar from continuing to have access to gymnasts, and that Mr. Penny had confirmed that Nassar would not treat anyone at USAG going forward.<sup>436</sup> However, Mr. Penny reported during his interview that the topic of whether Nassar had continuing access to gymnasts was not a part of his conversation with Mr. Blackmun.<sup>437</sup>

Both agree that Mr. Blackmun concurred with USAG’s decision to refer the matter to law

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<sup>xix</sup> During his interview with the Independent Investigators, Mr. Penny stated that he did not have a specific recollection of the call with Mr. Ashley, although he acknowledged that such a call may have taken place.

<sup>xx</sup> During his interview with the Independent Investigators, Mr. Blackmun stated that the name “Nassar” would not have meant anything to him at the time of his conversation with Mr. Penny, and that his response would have remained unchanged no matter who the athletes were. Blackmun Interview.



enforcement.<sup>438</sup> Mr. Blackmun made clear during his interview that he immediately recognized the seriousness of the matter because the concerns involved “a longstanding highly ranked USAG official,” which, in Mr. Blackmun’s mind, constituted a “different level of abuse.”<sup>439</sup> Mr. Blackmun went on to distinguish these allegations from other sexual abuse cases due to the involvement of an “insider,” as opposed to an individual “outside of our control,” which “made this one especially sensitive.”<sup>440</sup>

Mr. Penny asked Mr. Blackmun if Rick Adams, Chief of Sport Operations and Paralympics for the USOC, could come to Indianapolis and assist USAG in its reporting of the matter given Mr. Adams’ experience as a former detective and his role as the USOC liaison to NGBs.<sup>441</sup> Mr. Blackmun told Mr. Penny that he would get back to him,<sup>442</sup> and later informed him that the USOC did not feel it was appropriate for Rick Adams to participate or for the USOC otherwise to get involved in USAG’s report to law enforcement.<sup>xxi</sup>

While Mr. Ashley acknowledged knowing that USAG planned to refer the matter to law enforcement and understood that the allegations related to a SafeSport issue involving a “minor” and an “adult,”<sup>443</sup> neither Mr. Blackmun nor Mr. Ashley disclosed either the sexual abuse allegations or the USAG referral to law enforcement to any other person at the USOC.<sup>444 xxii</sup>

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<sup>xxi</sup> Mr. Blackmun did not recall Mr. Penny’s request to involve Mr. Adams at this or any other juncture. Blackmun Interview. However, Mr. Penny’s recollection is consistent with other evidence. First, in a contemporaneous email following his own conversation with Mr. Penny, Mr. Ashley stated that Mr. Penny was “looking for some help.” USOC-R&G-00022689. Second, and more directly, Mr. Adams recalled speaking with Mr. Blackmun about Mr. Penny’s request that he assist USAG with a SafeSport issue sometime in the summer of 2015. Adams Interview. Mr. Adams believed that Mr. Penny wanted him to go to Indianapolis and accompany him in discussions with law enforcement or other parties in light of his law enforcement and legal background. Adams Interview. However, Mr. Adams did not recall receiving any further detail about the matter, and did not know that it was related to athlete concerns about medical treatments by the team doctor. Adams Interview. Mr. Adams stated that the decision regarding whether or not he should go to Indianapolis would have been driven by factors such as whether law enforcement had been notified, whether legal counsel was involved, and whether the NGB had followed its own stated processes. Adams Interview. It was ultimately decided – either by Mr. Blackmun or by Mr. Blackmun in conjunction with Mr. Adams – that Mr. Adams and the USOC would not participate. Penny Interview; Adams Interview.

<sup>xxii</sup> In the email exchange between Mr. Ashley and Mr. Blackmun on July 25, 2015 setting up the phone call with Mr. Penny, Mr. Ashley wrote: “Let me know how I can help keep this moving.” USOC-RG-00022689. Both Mr. Blackmun and Mr. Ashley recall having a conversation with each other concerning the matter. Mr. Blackmun stated

Mr. Blackmun stated to the Independent Investigators, without having any direct recollection, that he believed he would have shared the athlete allegations and the referral to law enforcement with Larry Probst, Chair of the USOC Board of Directors, on one of their regularly-scheduled weekly calls.<sup>445</sup> However, there is no evidence of such a communication and Mr. Probst has no recollection of being apprised of the allegations or the referral in the summer of 2015.<sup>446</sup> He instead recalls first learning of the matter when the *Indianapolis Star* broke the story over a year later, in September 2016.<sup>447</sup>

On September 8, 2015, Mr. Penny sent an email to Mr. Blackmun and Mr. Ashley, with the subject “FYI – Larry Nassar,” which identified Larry Nassar by name in writing to the USOC for the first time. Specifically, Mr. Penny said “Just a quick follow-up note” that “Larry Nassar announced his retirement from USA Gymnastics this past weekend.”<sup>448</sup> Although Mr. Penny, through counsel, had by then advised Nassar of the athlete complaints, he went on to say that he was “not too sure what prompted this, however, it could have been a number of things” and promised to keep Mr. Blackmun and Mr. Ashley “posted as [he] learn[ed] more.”<sup>449</sup> Neither Mr. Blackmun nor Mr. Ashley responded directly by email to Mr. Penny or forwarded the email to any other individual at the USOC, including any board members.<sup>450</sup> xxiii

Mr. Blackmun did not have a clear recollection of this email, but acknowledged that he was “sure” he would have understood the Larry Nassar referenced in Mr. Penny’s follow-up email

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during his interview that he understood that Mr. Ashley had heard the facts directly from Mr. Penny. Mr. Blackmun recalled that he and Mr. Ashley had the same reaction – this case was especially tragic because “this guy was a trusted advisor, someone whom USAG had empowered to be a leader of the organization.” Blackmun Interview. Mr. Blackmun observed that he knew Mr. Ashley well enough to know how sick the story made Mr. Ashley feel. Blackmun Interview. During Mr. Ashley’s interview, he reported having only a “general recollection” that he may have talked with Mr. Blackmun in the week after the call with Mr. Penny and stated that he believed the conversation with Mr. Blackmun was “general” in nature. Ashley Interview.

<sup>xxiii</sup> Two days later, on September 10, 2015, Mr. Penny notified FBI Agents Abbott and Langeman that “earlier this week we received a notice from Dr. Nassar that he was ‘retiring’ from his involvement with USA Gymnastics.” USAG\_00036569.

to be the National Team doctor alleged to have engaged in sexual misconduct.<sup>451</sup> Mr. Ashley, by contrast, stated to the Independent Investigators that he had no recollection of the email and that he would not have concluded that the follow-up note to him and Mr. Blackmun related back to the conversations that took place with Mr. Penny on July 25, 2015.<sup>xxiv</sup> Mr. Blackmun explained during his interview, which spanned two days in July and August 2018, that, likely prompted by the email about Nassar’s retirement, he convened a meeting with a small group of individuals at the USOC in or about September 2015 “to talk about making sure we do the right follow-up on our side.”<sup>452</sup> Although he subsequently acknowledged through counsel that he was mistaken in his recollection that he had initiated such an internal review,<sup>453</sup> Mr. Blackmun explained in detail during his interview with the Independent Investigators that he had called the meeting because he “wanted to make sure that we were doing everything that we should be doing in response and that our response was appropriate.”<sup>454</sup> Mr. Blackmun was certain that the meeting included Mr. Adams and in-house counsel, either Gary Johansen or Chris McCleary, and likely Mr. McCleary.<sup>455</sup> Mr. Blackmun mentioned that it was possible that Malia Arrington, then-Director of Ethics and SafeSport, attended the meeting as well.<sup>456</sup> Mr. Blackmun further reported that Mr. Adams was going to take charge following the meeting to “make sure [the USOC] was doing everything that [it] should be doing.”<sup>457</sup> Mr. Blackmun reiterated that the purpose of the meeting was to make sure they were “doing the right thing,”<sup>458</sup> and that his point of view going into the meeting was that the USOC needed to make sure the Nassar concerns did in fact get reported to law enforcement and that the USOC was doing everything it was “supposed to be doing.”<sup>459</sup> He stated specifically:

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<sup>xxiv</sup> During his interview with the Independent Investigators, Mr. Ashley stated that he did not recall the content of his “long call” with Mr. Penny on July 25, 2015, apart from the call relating to sexual abuse allegations involving an “adult” and a “minor.” Ashley Interview. When he reviewed the September 8, 2015 email from Mr. Penny, Mr. Ashley observed that Mr. Penny did not usually raise matters of personnel retiring from USAG with him, but that Mr. Penny may have sent this email because Nassar was such an important figure at USAG. Ashley Interview.

“That was my point of view: what else should we be doing, if anything, and have we been able to confirm that USAG did in fact report this? That was it.”<sup>460</sup> Regarding confirmation of what exactly USAG was doing to ensure that no athletes would be treated by Nassar going forward, Mr. Blackmun stated, “I don’t remember myself thinking through that, but I would have expected our SafeSport team to do that.”<sup>461</sup>

Notwithstanding Mr. Blackmun’s detailed recounting of the effort he put in motion at the USOC to follow up and take appropriate steps in response to the allegations of child sexual abuse, there is no evidence that either Mr. Blackmun or Mr. Ashley initiated any USOC internal review of the Nassar matter in the summer or fall of 2015, or at any time prior to the public exposure of Nassar’s crimes in September 2016. After the Independent Investigators notified Mr. Blackmun, through counsel, of the lack of corroborating evidence for the internal review and asked for an explanation, Mr. Blackmun informed the Independent Investigators, through counsel, that he was mistaken in his recollection about having undertaken such an effort. The USOC did not, in fact, take any steps after receiving notice of the allegations from Mr. Penny to assess whether Nassar had treated athletes at USOC facilities or while on the medical staff at the Olympic Games or other USOC events.<sup>462</sup> Nor did the USOC undertake any follow up to ensure the safety of athletes, such as confirming that USAG had in fact referred the allegations of abuse to law enforcement or that USAG had implemented effective measures to prevent Nassar from having any further contact with athletes. Similarly, the organization did not take any steps to ensure that Nassar would be denied access to athletes at USOC training facilities or at USOC-sponsored events.<sup>463</sup> Nor did it make any independent report to any child protection authority.<sup>464</sup> At no point did Mr. Blackmun or Mr. Ashley provide USOC personnel, including those with relevant expertise in SafeSport matters, with any of the information from Mr. Penny regarding the alleged sexual misconduct or

the referral to law enforcement. By way of example, Malia Arrington, then USOC's Director of Ethics and SafeSport, did not learn of the sexual misconduct allegations, or more specifically that a USAG team doctor was alleged to have sexually abused one or more athletes, until the allegations were made public in the *Indianapolis Star* approximately one year later.<sup>465</sup> Nor did Mr. Blackmun notify the USOC's Board of Directors, notwithstanding that SafeSport issues were a continuing subject of discussion at board meetings during this time.<sup>466</sup> According to witness interviews, USOC board members remained unaware of the allegations and the potential ongoing threat to athletes until the *Indianapolis Star* published its account of Nassar's abuse in September 2016.<sup>467</sup>

Although neither Mr. Blackmun nor Mr. Ashley initiated a conversation with anyone else at the USOC about the allegations, Mr. Penny separately, and without consultation with either Mr. Blackmun or Mr. Ashley, reached out in September 2015 to another senior officer of the USOC. Specifically, on September 24, 2015, several weeks after USAG had reported Nassar to the FBI, Mr. Penny contacted Larry Buendorf, then the Chief Security Officer at the USOC, and arranged to meet with him while they both were attending the U.S. Olympic and Paralympic Assembly in Colorado Springs.<sup>468</sup> The email correspondence between the two reflects that the meeting being scheduled pertained to "the FBI issue."<sup>469</sup> When they met, Mr. Penny informed Mr. Buendorf that USAG had a situation with a doctor who was using a questionable medical technique and that the FBI was investigating him.<sup>470</sup> Mr. Buendorf did not have any prior knowledge of the matter or the fact that it had previously been reported to Mr. Blackmun and Mr. Ashley.<sup>471</sup> Mr. Penny requested that Mr. Buendorf – who had worked for the Secret Service for close to 23 years before joining the USOC – use his law enforcement connections to find out the status of the investigation.<sup>472</sup> Mr. Buendorf agreed.<sup>473</sup> Over the next two days, Mr. Penny forwarded Mr. Buendorf several documents with additional information about USAG's

investigation and the report to law enforcement.<sup>474</sup> These documents identified Nassar and the athletes who had spoken with the investigator by name, and they included a link to Nassar's Dropbox account.<sup>475</sup> Mr. Buendorf did not send a reply email to any of these emails from Mr. Penny.

As memorialized in Mr. Buendorf's contemporaneous notes, he promptly went to see Mr. Blackmun about the matter that Mr. Penny had brought to his attention. Specifically, in a personal appointment book that he maintained, Mr. Buendorf included the following entry in handwritten notes for September 28, 2015: "meet with Scott re: Steve Penny & Doctor technique."<sup>476</sup> On that day, Mr. Buendorf went to Mr. Blackmun's office, informed him of his conversation with Mr. Penny, and explained that the FBI was conducting an investigation regarding a doctor's technique.<sup>477</sup> Mr. Buendorf did not identify Nassar or any of the athletes by name during his brief conversation with Mr. Blackmun, and he did not refer to the emails he had received from Mr. Penny.<sup>478</sup> Mr. Blackmun did not ask for the identity of the doctor or pose any other questions and responded that he was already aware of the situation.<sup>479</sup> The conversation ended there.<sup>xxv</sup> Mr. Buendorf did not have any further discussions about the matter with Mr. Blackmun or anyone else at the USOC.<sup>480 xxvi</sup>

In short, as of September 8, 2015, Mr. Blackmun and Mr. Ashley had been informed by Mr. Penny of the sexual abuse allegations and the referral to law enforcement, and both had received the September 8, 2015 email regarding Nassar's retirement, which Mr. Blackmun acknowledged he would have connected at the time to the July 25, 2015 report of sexual

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<sup>xxv</sup> Mr. Blackmun reported no recollection of this meeting with Mr. Buendorf. Blackmun Interview.

<sup>xxvi</sup> On October 2, 2015, Mr. Buendorf informed Mr. Penny that he had connected with the FBI in Colorado Springs and that agents there had "recommended you remain in contact with your bureau contact," referring to agents in the Indianapolis office. USAG\_01207301. No information with regard to the status or substance of the investigation was provided to Mr. Buendorf by the Colorado Springs agents. Buendorf Interview. Mr. Buendorf apologized to Mr. Penny for not being able to be more helpful, and they did not speak of the matter again. Buendorf Interview; USAG\_01207301.

misconduct. During the roughly year-long period thereafter, from September 2015 to September 2016, neither Mr. Blackmun nor Mr. Ashley engaged with USAG on the reported concerns, shared the information with others at the USOC, or took any other action in response to the information from Mr. Penny to ensure that responsible steps were being taken by USAG and the USOC to protect athletes:

*First*, as noted above, there is no evidence that Mr. Blackmun or Mr. Ashley ever told anyone at the USOC about the information they had learned from Mr. Penny.

*Second*, after consideration of Mr. Penny's request for the USOC to get involved and help with the reporting to law enforcement of Nassar's alleged abuse of national team members, Mr. Blackmun declined on behalf of the organization.

*Third*, while Mr. Penny's September 8, 2015 email to Mr. Blackmun and Mr. Ashley identifying Nassar by name was recovered from Mr. Penny's email account at USAG, it was no longer present, in either Mr. Blackmun's or Mr. Ashley's email account, at the time searches were run by counsel to the USOC in the spring of 2018 for production to the Independent Investigation.<sup>xxvii</sup> Surrounding emails from the same 2015 time period remain intact in both email accounts.<sup>481</sup> While Mr. Ashley stated in his interview that he had no recollection of ever receiving or deleting the September 8, 2015 email, Mr. Blackmun acknowledged receiving the email,<sup>482</sup> he also acknowledged deleting it.<sup>483</sup> Specifically, having registered its significance, Mr. Blackmun stated in his interview that he may have purposely deleted the September 8, 2015 email, noting its sensitivity and explaining that he was concerned about the potential for his email account to be

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<sup>xxvii</sup> The September 8, 2015 email was produced to the Independent Investigators by USAG on May 10, 2018. After determining that the email had not been produced by the USOC, the Independent Investigators shared the email with the USOC's outside counsel and requested confirmation that the email was not in the USOC's possession. Thereafter, upon receiving confirmation that the email was not in the USOC's possession, the USOC's outside counsel engaged a third-party computer forensics firm to conduct a review of when and how the email had been deleted from Mr. Blackmun's and Mr. Ashley's respective email accounts. A copy of the forensics report, together with the September 8, 2015 email, is appended as Exhibit B.

hacked.<sup>484</sup> In this regard, he stated that he had been apprised by an IOC official that a Russian hacking group, Fancy Bear, had infiltrated the IOC's email system.<sup>485</sup> According to Mr. Blackmun, the IOC official cautioned him that the USOC's email system could similarly be vulnerable.<sup>486</sup> Mr. Blackmun did not recall when this conversation with the IOC official took place in relation to his receipt or deletion of the September 8, 2015 email.<sup>487</sup> He stated, however, that he was "super sensitive" about the potential for hacking and observed that, "because there was an active investigation, if the Russians wanted to use [the September 8 email about Larry Nassar,] they probably could."<sup>488</sup> Despite extensive forensic recovery efforts led by Stroz Friedberg, an independent firm with digital forensics expertise, there is no recoverable data to establish the dates of deletion of the September 8, 2015 email from Mr. Blackmun's and Mr. Ashley's respective email accounts. Nor is there any available evidence to establish any temporal relationship or lack thereof between the deletions and the asserted concern about Russian hacking. Mr. Blackmun has since stated through counsel that, while he believes he did delete the email "shortly after receiving it," he no longer "recall[s] what he was thinking as to a reason for deleting the email."<sup>489</sup>

*Fourth*, while Mr. Blackmun emphasized in his interview that, within weeks of learning of the athlete concerns, and likely prompted by receipt of the September 8 email, he had initiated an internal effort at the USOC to alert his SafeSport team to the allegations and to confirm that the USOC was taking all appropriate steps to respond to the allegations and ensure athlete safety,<sup>490</sup> no such conversations were had and no such steps were taken. Counsel to the USOC has confirmed, following a thorough search at the request of the Independent Investigation, that they found no documentary support in the form of an email, calendar entry or other record at the USOC that reflects any internal project or working group or other effort to address the Nassar allegations until after the *Indianapolis Star* broke the story about Nassar's abuse in September 2016. Nor do any



of the individuals at the USOC with whom Mr. Blackmun recalled conferring, or with whom he believed he may have conferred, have any recollection of any meeting or discussion about either the athlete concerns or the need for a thoughtful internal review and response by the USOC. Mr. Adams, Ms. Arrington and counsel were unequivocal in their recollections that they did not learn of the allegations against Nassar until they were reported in the media in September 2016.

*Fifth*, when Mr. Buendorf went to Mr. Blackmun's office to meet with him about the athlete allegations regarding Nassar that Mr. Penny had recently brought to his attention, Mr. Blackmun did not engage Mr. Buendorf in discussion or seek his advice on appropriate child-protective measures.<sup>491</sup>

*Sixth*, when Susanne Lyons sent an email to Mr. Blackmun in February 2018 expressing dismay over recent media coverage based on her understanding that Mr. Blackmun had not been aware that Nassar was the alleged perpetrator until the public disclosures in the *Indianapolis Star*, Mr. Blackmun remained silent and left uncorrected her clear misunderstanding.<sup>492</sup>

#### D. Referral to the Federal Bureau of Investigation

USAG contacted the Indianapolis office of the FBI on July 27, 2015 and set up a meeting for the following day to report the allegations against Nassar.<sup>493</sup> Mr. Penny, Mr. Parilla and Mr. Himsel, legal counsel to USAG, participated in the meeting.<sup>494</sup> Three FBI agents were in attendance: Jay Abbott, then Special Agent in Charge; Gregory Massa, Assistant Special Agent in Charge; and Michael Langeman, Supervisory Special Agent.<sup>495</sup> The agents were briefed on the athlete concerns regarding Nassar's treatment techniques and Ms. Sepler's investigation, particularly with respect to her interview of Athlete 5.<sup>496</sup> Mr. Penny provided the FBI with links to the PowerPoints and videos that Nassar had shared with USAG, a memorandum that USAG had prepared summarizing the timeline of events, and contact information for Athletes 1, 3 and 5.<sup>497</sup>

Following the meeting, the agents confirmed that the FBI would consult with the United States Attorney's Office ("USAO") for the Northern District of Indiana on next steps, but would at least interview Athlete 5.<sup>498</sup>

On July 29, 2015, after conferring with the U.S. Attorney's Office, Agent Abbott contacted Mr. Penny to arrange an interview with Athlete 5.<sup>499</sup> Agent Abbott explained, "At the conclusion of that interview, the FBI will determine next steps with referral to the Western District of Michigan and the FBI Detroit Division, if necessary, as per counsel from the USAO here in the Northern District of Indiana" and "will also provide an update to [USAG] at that time."<sup>500</sup> Mr. Penny responded later that evening to confirm that he had "spoken with the mother of Athlete [5] in Southern California and explained the steps we have taken" and that "[s]he is going to speak with her daughter and hopefully get back to me as soon as possible."<sup>501</sup>

Mr. Penny notified the FBI once he heard back from Athlete 5's mother, and the agents reached out to Athlete 5 directly to set up an interview, considering both Indianapolis and California, where Athlete 5 lived, as potential venues.<sup>502</sup> In the interim, Mr. Penny remained in regular communication with the FBI regarding the scheduling of Athlete 5's interview. For example, on August 12, 2015, Mr. Penny contacted Agents Abbott, Langeman and Massa to ask about the FBI's timing with respect to Athlete 5's interview.<sup>503</sup> Agent Massa assured Mr. Penny that the FBI has "made it a priority and will ensure the interview gets scheduled and conducted."<sup>504</sup> On August 27, 2015, Agent Massa emailed Mr. Penny to "follow[ ] up on the interview of [Athlete 5] in LA."<sup>505</sup> He noted that Agent Langeman "has attempted on three occasions to set up the interview," but Athlete 5 "has not returned any of his phone calls."<sup>506</sup> Mr. Penny sought clarification on whether Agent Langeman had contacted Athlete 5 directly, or had tried to contact her mother, explaining that he had learned from Athlete 5 that her mother had "either lost the phone

or it was stolen.”<sup>507</sup> Mr. Penny then independently contacted Athlete 5’s mother by email and asked Agent Langeman for the opportunity to “take one more shot at trying to get them to Indy” for an interview.<sup>508</sup>

Thereafter, USAG arranged to fly Athlete 5 and her mother to Indianapolis for an interview with the FBI. On August 31, 2015, Mr. Penny emailed Agent Langeman, copying Agent Massa, to inform them that “[w]e are looking at getting [Athlete 5 and her mother] here Thursday night and flying home Friday evening.”<sup>509</sup> However, the following day, September 1, 2015, Agent Langeman informed Mr. Penny that the FBI would be conducting a phone interview, rather than an in-person interview, with Athlete 5 based on a discussion with Athlete 5’s mother.<sup>510</sup> Specifically, Agent Langeman stated that he had informed Athlete 5’s mother that the purpose of the initial interview was just to “establish the violation and initiate the investigation” and that Athlete 5 may need to participate in a “more in depth, perhaps forensic interview” in the future; he also explained that the case would be transferred to the Detroit Office of the FBI after the initial interview because that office had “prosecutorial venue” and would therefore have “investigative purview.”<sup>511</sup> Agent Langeman relayed that “[a]fter considering these facts, the inconvenience of the travel involved, the potential for a more in depth intetview [sic] in the near future and the comfort level of [Athlete 5], the decision was made to conduct the initial interview telephonically.”<sup>512</sup> He stated that the interview was “tentatively scheduled for tomorrow afternoon/evening” and that “[o]nce the interview is conducted and memorialized, the case will be packaged and sent to the Detroit office who will take full ownership of the case and proceed where the evidence leads.”<sup>513</sup>

Concurrently with his efforts to facilitate the FBI’s interview of Athlete 5, Mr. Penny sent the agents numerous emails to set up an interview with Athlete 3. For example, on August 6, 2015,

Mr. Penny informed the FBI that Athlete 3 would be available for an interview on August 16, 2015.<sup>514</sup> Several days later, Mr. Penny notified the FBI that Athlete 3 had requested that the interview be postponed while she prepared for an upcoming competition.<sup>515</sup> On August 27, 2015, Athlete 3's mother emailed Mr. Penny and Ms. Faehn "to touch base . . . about the investigation and find out what if anything [they] are able to share at this point."<sup>516</sup> She reiterated that Athlete 3 "wants to cooperate fully" and requested that the FBI contact Athlete 3 and her family directly if they need to speak with Athlete 3.<sup>517</sup> Mr. Penny then updated the FBI that Athlete 3 "has reconnected and wonders if the FBI would like to speak with her."<sup>518</sup>

On September 4, 2015, Mr. Penny sent Agent Abbott an email, in follow up to an earlier call, to summarize his understanding of the status with regard to setting up an interview with Athlete 3:

Athlete [3] is located in Boston. We had hoped she would stay following the Championships for an interview on that Sunday. That became a distraction to her so we cancelled the Sunday interview so that she could still focus on the competition. I did not know whether or not the agents would follow up with her by phone or otherwise, but she is the athlete that first made us aware of the abuse issue. Her mother has contacted me several times for updates and I just tell her I don't have much information. She has informed me that her daughter has not been contacted by the FBI.<sup>519</sup>

Mr. Penny's email also reflected his understanding that the FBI had completed a phone interview with Athlete 5 earlier that week.<sup>520</sup> Mr. Penny identified another individual ("Athlete 6"), with whom he thought the FBI might wish to speak.<sup>521</sup> Mr. Penny recalled that Athlete 6 had trained at Twistars since she was young and, according to her mother, had received medical treatments from Nassar for a long time.<sup>522</sup> Because of these experiences, Mr. Penny believed that she would be especially familiar with Nassar and that the FBI might want to interview her.<sup>523</sup> In his email to the FBI, Mr. Penny stated:

[Athlete 6] is an athlete that has not been involved but was a member of the team in 2011 in Japan. Athlete [5] reported that when she went into the hotel room in Tokyo, [Athlete 6] was receiving treatment and left the room when [Athlete 5] arrived. I do not know if this was mentioned during the interview conducted by the FBI but wanted to share it in case it is helpful.<sup>524</sup>

In response to Mr. Penny's email, Agent Abbott confirmed that "pertinent interviews have been completed and the results have been provided to the FBI and the USAO in Michigan (Detroit) for appropriate action if any."<sup>525</sup> Mr. Penny was not directly apprised by the FBI as to which athlete or athletes the FBI had interviewed in connection with its inquiry, although he believes there were "no communication[s] with the first athlete whatsoever."<sup>526</sup> According to public reports by Athlete 3, she was not contacted by either the Indianapolis office of the FBI or the USAO for the Northern District of Indiana.<sup>527</sup>

Thereafter, on September 10, 2015, Mr. Penny notified Agents Abbott and Langeman that "earlier this week we received a notice from Dr. Nassar that he was 'retiring' from his involvement with USA Gymnastics."<sup>528</sup> From all available evidence, there was no discussion at this or any other time between USAG and the FBI regarding steps to ensure the safety of athletes during the pendency of the investigation. Specifically, no issues or concerns were addressed by USAG and the FBI regarding Nassar's retirement or the false representations he made regarding the reasons for his separation from USAG – all couched in terms of a long and illustrious career and the selfless desire as "a good mentor" to make room for other colleagues.<sup>529</sup> As a result, and notwithstanding that he was under active FBI investigation for multiple credible allegations of sexual abuse of minor athletes, Nassar was allowed, not merely to control the public narrative of his departure, but thereby to continue to have access to girls and young women, including at MSU, Twistars and Holt High School. It was not until the *Indianapolis Star* publicly reported the allegations against Nassar, some 14 months later, that the public was made aware of Nassar's abuse.

E. Communications with Nassar

On July 22, 2015, USAG apprised Nassar of the allegations against him in a call from USAG’s outside counsel, Mr. Himself, and his colleague, Mr. Connolly.<sup>530</sup> In advance of that call, on July 20, 2015, USAG counsel met with several USAG employees – namely, Mr. Penny, Ms. Jamison, Ms. Faehn and Mr. Galimore.<sup>531 xxviii</sup> The day after that meeting, Mr. Penny sent himself what he would later describe as a “stream of consciousness” email setting forth his thoughts on the contemplated conversation with Nassar.<sup>532</sup> His email-to-self included his thoughts in the form of a list:

- Larry
- Contact by attorneys
- Concerns brought forward about techniques
- Massage under their garments
- No draping
- Groin area
- No gloves
- Lotion
- Concern about this technique with young female athletes
- No formal complaint
- No formal investigation
- Have not contacted law enforcement
- Need to sort through this in a respectful and private manner
- Distance from USA Gymnastics and the athletes
- Not involved in camps or competitions
- Set up a meeting to discuss with Larry that involves legal counsel if desired as soon as possible
- Resolve the issue to everyone’s satisfaction so long as nothing aggregious [sic] has taken place.
- Everyone’s interest to cooperate.<sup>533</sup>

At the time he sent this email to himself – apparently proposing to advise Nassar that there was “no formal complaint” against him and “no formal investigation,” and that the goal was to “sort

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<sup>xxviii</sup> Mr. Galimore reported to the Independent Investigators that he did not recall attending the meeting. He stated that he was likely at the Pan American Games, which concluded on July 20, 2015, although he acknowledged that he may have come back to the United States a day or two early. Galimore Interview. At least one other participant recalled Mr. Galimore’s participation in the meeting. Faehn Interview.

through this in a respectful and private manner” and “resolve the issue to everyone’s satisfaction so long as nothing [egregious] has taken place,” with everyone having an “interest to cooperate”<sup>534</sup> – USAG had engaged Ms. Sepler, who was then actively investigating athlete complaints,<sup>535</sup> and Mr. Penny had been apprised of allegations that Nassar had digitally penetrated at least one athlete on three separate occasions.<sup>536</sup> In considering this approach, Mr. Penny appears to have been balancing USAG’s need to direct Nassar to keep his “distance from USA Gymnastics and the athletes,” and in particular not to attend the upcoming Secret U.S. Classic competition, with a goal of keeping Nassar in the fold and maintaining his “cooperat[ion].”<sup>537</sup>

Later that same day, Mr. Penny emailed all of the participants at the July 20, 2015, meeting, together with Dr. Binder, Mr. Parilla and Mr. Vidmar, to provide a “summary of the points that will be made tomorrow morning in a phone conversation between USA Gymnastics legal counsel and the interested party,” referring to Nassar:

- “Attorneys are contacting on behalf of my client USA Gymnastics and with the approval of the Chairman and Vice Chair of USA Gymnastics’ board of directors·
- USA Gymnastics has been made aware of concerns regarding therapy techniques, and that athletes are uncomfortable.
- These concerns are being reviewed and USA Gymnastics has decided that it is in everyone’s best interests to not attend the Classic.
- At the earliest appropriate point, we wish to contact this medical professional for his perspective, and during this period we request he not communicate with USA Gymnastics personnel or athletes.”<sup>538</sup>

Later that day in the evening, Mr. Penny and Ms. Faehn called Ms. Karolyi to inform her that Nassar would not be attending the upcoming Secret US Classic competition.<sup>539</sup> Mr. Penny explained that athletes had raised concerns about Nassar’s treatment techniques, although he did not describe the concerns as being of a sexual nature.<sup>540</sup> Ms. Karolyi responded with what Mr. Penny and Ms. Faehn perceived as surprise, and then sought assurance that a doctor would be

on site for the competition.<sup>541 xxix</sup> When Ms. Karolyi continued to inquire about Nassar at the competition, Ms. Faehn informed her that Nassar was being investigated.<sup>542</sup>

On July 22, 2015, Mr. Himsel and his partner Mr. Connolly called Nassar as planned to inform him that concerns had been raised regarding some of his medical techniques and to request that he not attend the Secret US Classic.<sup>543</sup> Nassar agreed not to attend the competition and stated that he would send counsel information regarding his medical techniques to help answer any questions.<sup>544</sup> Mr. Himsel then sent Nassar an email summarizing their call, using much of the language from the email Mr. Penny had sent to selected USAG personnel, board members and counsel the day before:

As we explained on the call, USA Gymnastics has been made aware of concerns regarding some of your therapy techniques, and that athletes are uncomfortable with certain areas of their bodies that are being treated. These concerns are being reviewed, and USA Gymnastics has decided that it is in everyone's best interest that you not attend the Secret US Classic in Illinois this weekend. As we mentioned on the phone, I am sure you can appreciate as a medical professional that in today's atmosphere, we need to address these concerns thoroughly and discreetly. We understand from our call that you will not attend the Secret US Classic this weekend. USAG will make alternative arrangements.

At the earliest appropriate point, we will contact you with additional information and to get your perspective.

Let me reiterate that during this period, we respectfully requested that you not communicate with USA Gymnastics' personnel or athletes. We understood that you agreed to this request. We suggested during the call that Ron Galimore advise the medical team that you are not attending the Classic for personal reasons. Ron will now proceed to do so.

You mentioned that you could send me some links regarding your medical techniques in response to this email. Please feel free to do so."<sup>545</sup>

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<sup>xxix</sup> Mr. and Ms. Karolyi declined through counsel repeated requests for interviews with the Independent Investigation. Email from Gary Jewell to the Independent Investigators (Mar. 8, 2018), on file with the Independent Investigators.



Nassar responded to Mr. Himsel's July 22 email stating that he felt "horrible" that anyone felt uncomfortable with his medical treatments and that in his view he "communicate[s] well" with athletes to "make sure they are comfortable with [his] treatments since [he is] touching them in sensitive areas."<sup>546</sup> Nassar also stated that he had "not had any complaints in the past."<sup>547</sup> He sought to explain that the "pelvic floor is an issue with gymnasts since they have stress urinary incontinence" and that his pelvic floor treatments are a legitimate medical procedure "to enhance core stability."<sup>548</sup> He also shared with counsel the link to a dropbox containing "many of [his] videos and power points of these techniques."<sup>549</sup> Mr. Himsel shared the links to Nassar's Dropbox with Mr. Penny, who then forwarded them to Ms. Faehn.<sup>550</sup>

Many false statements are embedded in this exchange between counsel to USAG and Nassar. First, as noted above and reflected in counsel's email to Nassar, false explanations were proposed by USAG – thereafter agreed to by Nassar – for the express purpose of masking the true reason for Nassar's failure to attend the USAG Classic competition.<sup>551</sup> Second, Nassar's representation that he always made sure athletes were comfortable with his treatments is belied by the accounts of numerous survivors that he never explained what he was doing or obtained their consent.<sup>552</sup> Third, Nassar's statement to USAG counsel that there had been no prior complaints against him was demonstrably false. As of July 2015, Nassar was aware of several separate and independent complaints against him, including complaints in 2004 and 2014 that led to investigations involving Nassar.<sup>553</sup> Finally, all of Nassar's representations about the medical legitimacy of his treatments and how "horrible" he felt about having unwittingly made athletes feel uncomfortable were pure lies.

After establishing that Nassar had agreed not to attend the competition, Mr. Himsel explained to Nassar the details for how Nassar's absence would be presented to the medical

team.<sup>554</sup> Mr. Himsel informed Nassar that “this evening or tomorrow Ron Galimore will let the medical team know that you have advised USAG that you will be unable to attend the Classic this weekend.”<sup>555</sup> In response, Nassar inquired, “Can we just say that i am sick? That would make more sense to everyone. Would that be ok?”<sup>556</sup> Mr. Himsel agreed to use the cover story Nassar suggested, stating, “We’ll let Ron know to advise people that you weren’t feeling well and decided to stay home.”<sup>557</sup> Nassar thanked him and noted, “That just makes more sense and honestly since your phone call i have been feeling sick. This hurts beyond hurt.”<sup>558</sup>

Shortly thereafter, on July 23, 2015, Nassar emailed Mr. Himsel and Mr. Connolly and informed them that “the story works” – he explained that he told Dr. Brooke Lemmen, one of his colleagues at MSU and a fellow USAG volunteer, that he could not attend the Secret US Classic because he was “nauseated, not feeling well and staying home” and that she believed him.<sup>559 xxx</sup> He also “promise[d] to stay with the story and not discuss [it] with anyone as we stated earlier,” with the exception of his wife.<sup>560</sup>

Nassar’s communications with USAG reflect that Nassar, growing anxious, continued to rely on defenses that had worked for him in the past. In a long email to USAG’s counsel, dated July 23, 2015, Nassar observed that “it is important to have this completed before P&G Championships,” and detailed the ways in which the current situation was “extremely difficult” for him:

i am very disappointed in myself for not being better at explaining my treatments but I always talk to the athlete and get feedback while doing these treatments since they are in a sensitive area. I know I am slowing down, I just want to get through 2016 and be done. I am tired. 30 years is a long time working at this intensity and in such a personal sensitive nature with tens of thousands of encounters with adolescent females. It is one thing to see them in the “sterile, professional” doctor’s office with their parent present. It is another

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<sup>xxx</sup> Whether in response to Nassar’s email confirmation or for other reasons, it does not appear that Mr. Galimore ever sent the contemplated email to the medical team regarding Nassar’s non-attendance at the Classic competition.

to do the same treatments with no parent present, in a common lounge room or training room. There are always other people present and all is done out in the open. Actually, when you think about it, it is an amazing accomplishment to have gone 29 years on the national team without a single complaint about my treatments. I wanted to stop after 2012 but Martha Karolyi decided to go another 4 years. These past few years have been a huge struggle for me and I wish I had stopped in 2012. I have been training 2 female doctors to take my place, Dr. Green and Dr. Lemmen. I do not want to place another male in the same situation I have had to deal with for so long. I am an osteopathic physician and touching/manipulating people is my profession. I do not want to become that “old doc” that lost his touch. This has been a wake up call for me to get back on my game better and to be even more careful and more detailed to my explanations for all my treatments. It is hard enough explaining things to adults, let alone children who are miles away from home/parents.<sup>561</sup>

This further email from Nassar to USAG counsel elaborated on his earlier false representations about the legitimacy of his medical treatments and the steps he took to ensure the comfort of athletes under his care, while also repeating his lie about the absence of any prior complaints against him. In this email, Nassar also sought overtly to draw upon one of the more brazen elements of the cover he had built to “normalize” his conduct and hide his crimes: performing his abusive acts with parents in the room under the guise of legitimate medical treatment.

Several days later, on July 27, 2015, Nassar followed up with USAG counsel to request a meeting “as soon as possible” and to obtain “more specifics of the treatment in question” so he could “retrieve any documentation of this encounter with the gymnast.”<sup>562</sup> Nassar sent another email two days later to Mr. Himsel, copying Mr. Connolly, and suggested that they meet the next morning to “work together to bring a light to the issue at hand.”<sup>563</sup> He reiterated that he “would like to move forward with this since I will need to be at USA P&G Championships in Indianapolis.”<sup>564</sup> In response, Mr. Himsel declined Nassar’s request for a meeting, explaining that

USAG's review would not be completed before the USA P&G Championships and proposing another cover story to explain Nassar's non-attendance:

Thanks for the invitation to meet, however we have not yet reached that point in our review. Previously you had expressed your wish that this review be concluded before Championships in Indianapolis (beginning August 13). Unfortunately, the review will not be concluded by that time. Because the review is on going, USA Gymnastics has determined that it is in everyone's best interest that you not attend USA Gymnastics events or communicate with USA Gymnastics athletes and personnel until further notice. In addition, we suggest that prior to Championships that Ron Galimore will once again advise the medical staff (the Athlete Care Coordinator) that you cannot attend for personal reasons, unless you prefer a different approach that we are prepared to discuss.

Please advise whether Ron may do so. Thanks again for the information you have already provided. We appreciate your patience and cooperation.<sup>565</sup>

Before Mr. Himsel sent this response to Nassar, Mr. Penny shared a draft of the email with Agent Abbott for approval.<sup>566</sup> Agent Abbott responded that, "given the assessment stage of the FBI's involvement, I do not see any issues with your proposed communication to Dr. Nassar," but he copied the FBI's Chief Division Counsel "in case he determines something to the contrary."<sup>567</sup> Agent Abbott also copied Agents Langeman and Massa "for their information and input if desired."<sup>568</sup> Later that day, Mr. Penny informed Agent Abbott that USAG had received another email from Nassar and determined that it was important to respond to him "to keep things calm."<sup>569</sup> He further asked whether USAG could proceed with sending Nassar the proposed response if they had not received any comments from the Chief Division Counsel by 10:00 a.m. the following morning.<sup>570</sup> Agent Abbott responded promptly: "Certainly respond as you deem appropriate," noting that he did not know if the Chief Division Counsel would have time to review by then.<sup>571</sup>

While Mr. Penny was corresponding with the FBI, Nassar wrote back to Mr. Himsel requesting "more details of what is happening, who has made the complaint, and what the

complaint is.”<sup>572</sup> On July 30, 2015, Mr. Himsel forwarded this email from Nassar, together with his embedded email to Nassar proposing an innocuous reason for Nassar’s nonattendance at the P&G Championships, to Mr. Penny, Mr. Parilla and Ms. Jamison.<sup>573</sup> Mr. Penny then, in turn, forwarded the email string in full to Agent Abbott, copying Mr. Himsel, with a note that read in part:

As you can see below, we have a very squirmy Dr Nassar. Our biggest concern is how we contain him from sending shockwaves through the community. In conversations with Scott [Himsel], we are trying to make sure that any correspondence with him is consistent with FBI protocol. Right now we are looking for a graceful way to end his service in such a manner that he does not ‘chase the story.’

Without disclosing to him that we have reported our concerns, I am inclined to want Scott [Himsel] to give him some explanation as to why we need some distance. We just know we are dealing with a unique character here.<sup>574</sup>

Agent Abbott responded the same day and informed Mr. Penny that “[y]ou certainly are able to advise Dr. Nasser [sic] as you deem appropriate and we in no way want to hinder that or lead you to believe you must follow an ‘FBI protocol’ though the FBI will not confirm or deny any ongoing investigation OR assessment.”<sup>575</sup>

Also on July 30, 2015, Nassar sent an email to Mr. Himsel, copying Mr. Connolly, instructing USAG that “[i]f I am not going to be at Championships, then it is due to financial reasons with my clinical practice, which is an accurate statement.”<sup>576</sup> Mr. Himsel responded that he understood, and that Mr. Galimore would “proceed accordingly.”<sup>577</sup> Consistent with this agreement, in an email approved by Mr. Penny,<sup>578</sup> Mr. Galimore that day notified Dr. David Kruse, USAG’s Athlete Care Coordinator, that “I was just informed that Larry Nassar is unable to come to Indianapolis for the P&G Championships. He has to focus on his clinic during this time.”<sup>579</sup>

Over a month later, on September 2, 2015, Nassar’s legal counsel, Matthew Borgula of Springstead Bartish & Borgula Law P.L.L.C., informed Mr. Himsel that Nassar would “no longer honor [USAG’s] request to provide false excuses to his colleagues, the USAG staff and/or the athletes about his absences” from USAG events, and intended to “communicate with members of the USAG staff and athletes that wish to speak with him.”<sup>580</sup> Mr. Borgula noted that he had not heard from USAG in several weeks despite USAG’s prior assurances that “the investigation into Dr. Nassar’s medical techniques would be resolved without unnecessary delay” and requested that USAG “conclude its investigation.”<sup>581</sup> Shortly after Mr. Borgula’s September 2 email, Nassar announced his retirement, on September 6, 2015.<sup>582</sup> USAG formally acknowledged Nassar’s retirement through its counsel, in an email from Mr. Himsel to Mr. Borgula dated September 11, 2015. The email stated: “USA Gymnastics acknowledges and accepts Dr. Nassar’s statement of retirement and duly notes that he will not be subject to further assignments.”<sup>583</sup> In response, Mr. Borgula attributed Nassar’s retirement to the “stress caused by [ ]. . . USAG.”<sup>584</sup>

Mr. Himsel and Mr. Borgula continued to correspond about USAG’s investigation after Nassar’s retirement. Although Mr. Himsel responded to Mr. Borgula’s “request that the USAG conclude its investigation” concerning Nassar, Mr. Himsel did not acknowledge or otherwise address Mr. Borgula’s statement regarding Nassar’s intent to resume contact with “USAG staff and athletes.”<sup>585</sup> By this point, USAG – though not necessarily Mr. Himsel – was aware that Nassar had already reached out to at least one athlete. Specifically, in an email dated August 20, 2015, Athlete 3’s mother had informed Mr. Penny and Ms. Faehn that Nassar had sent Athlete 3 “a congratulatory text after the meet this past weekend.” Mr. Penny replied to Athlete 3’s mother, thanking her for “letting [him] know.”<sup>586</sup> Notwithstanding Mr. Penny’s awareness of Nassar’s non-compliance with the one child safety measure USAG had imposed in response to the athlete

allegations, neither Mr. Penny nor anyone else at USAG confronted Nassar with his breach at the time of its occurrence. Nor did USAG respond to Nassar's counsel's written representation on September 2, 2015 that Nassar henceforth planned to communicate with athletes and USAG staff who wished to speak with him.<sup>587</sup> These failures in tandem left unaddressed both Nassar's past violation of the no-contact directive and his asserted present intention to continue to violate its terms.

Nor is there any evidence that USAG addressed, either with the FBI or anyone else, Nassar's failure to abide by the no-contact order, or otherwise took any steps to immediately remedy the threat that Nassar, despite his separation from USAG, continued to pose to children and young athletes in numerous venues and at other institutions, such as MSU, Twistars and Holt High School. There is similarly no available evidence that the FBI independently acted to address such concerns during the pendency of its investigation. As a result, athletes and their parents, as well as other members of the gymnastics community, remained in the dark about the serious, credible allegations of child sexual abuse leveled against Nassar. They were to remain in the dark for another 14 months, with disclosure of the threat presented by Nassar finally arriving not from USAG, the USOC or the FBI, but from the *Indianapolis Star*.

#### F. Nassar's Quiet Retirement

USAG's decision not to disclose the allegations against Nassar or the referral to law enforcement beyond a closely controlled inner circle enabled Nassar to retire quietly, on his own terms and with his reputation intact. On September 6, 2015, Nassar sent an email to Dr. Kruse, an individual with whom he had worked closely over the years and to whom he had reported since 2014, with the subject, "retirement from USAG." Nassar stated:

I look back on 29 years of a wonderful adventure in my life as a volunteer for USAG. As you know I was planning on retiring in

2016 but the time has come sooner rather than later. Please, accept this as my official retirement from USAG. I wish you, the medical team and the national team all the best.<sup>588</sup>

Dr. Kruse had no knowledge of the circumstances underlying Nassar's departure, and he forwarded Nassar's email to Mr. Galimore and Ms. Jamison with a note stating, "I hope it becomes appropriate, at some time in the near future, for USAG to handle Larry's retirement, after 29 years of service, with the respect it deserves."<sup>589</sup>

The next day, on September 7, 2015, Nassar emailed Dr. Moreau, the Managing Director of the Sports Medicine Division at the USOC, notifying him that he had retired and requesting that he be removed from the USOC Medical Advisory Committee<sup>xxx</sup> now that he was "no longer associated with an NGB."<sup>590</sup> Nassar commented that he had been "training a staff for several years in preparation for this day."<sup>591</sup> Dr. Moreau stated during his interview with the Independent Investigators that he had no indication at the time that Nassar was not, as Nassar had suggested in his resignation email, generously "step[ping] back" to "let those that [he] mentored move ahead and take [his place]."<sup>592</sup> Nor did he know that the underlying circumstances of Nassar's departure belied his description of himself in his resignation email as "upfront and honest to a fault at times."<sup>593</sup>

On September 27, 2015, Nassar publicly announced his retirement from USAG in a lengthy Facebook post. In his post, he detailed his version of his biography and accomplishments over his years of service to the gymnastics community. Nassar concluded his post with a photograph from the 1996 U.S. Olympic Team Gymnasts Trials with a caption that read: "29 years with the Women's Artistic National Team and now it is time to step down and retire and let the next

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<sup>xxx</sup> When the USOC was organizing a nationwide network of hospitals to provide care to elite athletes, the USOC invited medical providers from various NGBs to provide their advice on potential partnerships. Nassar was invited to join this advisory committee and attended two meetings. Moreau Interview. The committee was disbanded after the USOC's National Medical Network was formed. Moreau Interview.



generation move forward.”<sup>594</sup> Mr. Penny was alerted to the Facebook post by Leslie King, USAG’s Vice President of Communications, the next day, September 28, 2015.<sup>595</sup> Also on September 28, 2015, Mr. Penny asked Ms. Faehn to monitor Nassar’s Facebook page. Ms. Faehn looked at Nassar’s Facebook page that day, but she did not continue to monitor the page.<sup>596</sup> Ms. Faehn informed Mr. Penny, via email, that Nassar’s Facebook page was “mild with his posting his retirement and everyone thanking him and wishing him well.”<sup>597</sup>

Notwithstanding knowledge of Nassar’s Facebook post, USAG did not make any statements, either to the public or to USAG personnel, to correct Nassar’s representations that his decision to retire was wholly voluntary. Mr. Penny informed the USOC and the FBI in September 2015 that Nassar had announced his retirement from USAG,<sup>598</sup> but these communications appear to be the only disclosures that Mr. Penny made regarding Nassar’s quiet retirement. The failure to correct Nassar’s false narrative of a routine retirement at the end of a long and illustrious career kept his cover intact and allowed him to maintain his status and role in the sports community – all while under investigation for child sexual abuse of athletes under his care.

USAG’s decision not to inform the medical team and other personnel that Nassar was under investigation for sexually abusing athletes – and to actively conceal the reason for Nassar’s absences from USAG events and the true circumstances of his retirement from USAG – had consequences. Nassar continued to be invited to calls and was consulted on issues affecting the medical team.<sup>599</sup> Athletes, coaches and trainers all continued to seek out his opinion on medical issues, sometimes with the knowledge of USAG officials. For example, on August 8, 2015, a coach emailed Ms. Karolyi, copying Ms. Faehn and Nassar, and explained that he had sent Nassar an MRI of an athlete’s foot for a second opinion.<sup>600</sup> After noting Nassar’s recommended course of treatment, the coach stated that he “trust[ed] Dr Larry” and agreed with his advice.<sup>601</sup>

Employees at USAG also continued to view Nassar as an authority in his field and to seek him out for his expertise. For example, on February 24, 2016, Lynn Moskovitz-Thompson, the Managing Director of Club and Educational Services at USAG, invited Nassar to be a presenter at an upcoming USAG educational event regarding Sports Injury and Concussion.<sup>602</sup> Nassar accepted the invitation and contacted Ms. Karolyi to inform her that he would be speaking at the event.<sup>603</sup> Ms. Karolyi relayed this information to Ms. Faehn; Ms. Faehn then contacted the Vice-President of Member Services at USAG, Cheryl Jarrett, who confirmed that Nassar had been invited to participate and noted that “[w]e have never been communicated to about not asking him.”<sup>604</sup> Ms. Faehn then relayed to Ms. Jarrett that Nassar “had been dismissed from USA Gymnastics” and instructed her to speak to Mr. Penny,<sup>605</sup> who responded to her question of whether Nassar could lecture at the upcoming event with a terse “No.”<sup>606</sup> On March 11, 2016, 16 days after she had issued the invitation, Ms. Moskovitz-Thompson emailed Nassar to retract the invitation and explain that she “was not aware that you are no longer a part of National Medical Staff therefore we must go a different direction.”<sup>607</sup> Further, trainers, including USAG medical staff, continued to consult Nassar on issues related to medical treatment and staffing. For example, on August 6, 2015, Nassar provided input on a resident who was being considered for inclusion on the medical team.<sup>608</sup> Dr. Kruse stated that he had “confidence in [the resident] since Larry” endorsed her skills and agreed to Nassar’s proposed plan for utilizing the resident for manual procedures.<sup>609</sup>

There is also evidence to suggest that individuals employed by USAG, without being privy to the true circumstances of Nassar’s departure, may have continued affirmatively to recommend him to the public following his “retirement.” Rachel Brazo, Director of Program Administration at USAG, reflected on this scenario in an email to Mr. Galimore and Mark McCreary, Chief

Administrative Officer at USAG, after USAG personnel were informed of the allegations on September 12, 2016<sup>610</sup> – the same day that the *Indianapolis Star* broke the story about Nassar:

I feel like I have indirectly been put in a position where I may have recommended that a parent put their child in harm's way because staff weren't made aware of allegations[.]

I am not sure the timing of when we first heard about these allegations against N[assar] but I am sure it wasn't yesterday. I have been managing the USA Gymnastics National Health Care and Sports Referral Network for many years. This morning I removed N[assar] from this referral list on our website, not because anyone told me to but because it's my job and my responsibility. I have also removed him from the list of the Referral Network review board, the list of selected doctors that review other doctors in their field for inclusion in the network. For years' [sic] when members call and ask for referrals for medical services with doctors who have experience with gymnastics I direct them to this referral list on our website. Not only was N[assar] on it up until this morning but he has approved some of the other doctors on it. These doctors are not asked to take background checks and apparently can remain on the list even after we receive allegations, as happened with this case. It is my hope and my assumption that this was simply an oversight [sic] and that it honestly didn't occur to anyone on Senior Staff that N[assar] was on the Healthcare Referral Network which is a public document on our website[.] At some point you have to trust us, the staff, to do our jobs. This includes giving us needed information to help us protect not only children, but ourselves and this organization. We can't do that without all the facts. It sounds like there was direction from law enforcement to not make the allegations public or to not take any action but at some level staff is not the public and a minimum level of caution is warranted. Do we not sign confidentiality statements each year for these types of situations?<sup>611</sup>

Ms. Brazo's "hope" and "assumption" at the time that it was simply an oversight that had led USAG not to take appropriate protective steps to remove Nassar from the organization's network of trusted medical providers is not borne out by the facts. Not only had Mr. Penny kept the vast majority of USAG personnel in the dark about Nassar's alleged misconduct, but the organization also failed to implement any systematic child-protective measures to ensure that Nassar would be stopped from further abusing athletes while under investigation for serial sexual

abuse. As a result, Nassar not only remained on USAG's list of recommended physicians on the organization's public website,<sup>612</sup> but he also continued to see patients and pursue other opportunities following his departure from USAG.<sup>613</sup> Specifically, with no disclosure of the athlete complaints or the pending investigation, Nassar ran for a position on the Holt High School Board of Directors in 2016<sup>614</sup> and continued to have uninterrupted access to patients at Holt High School, Twistars and MSU for a full year following his departure from USAG.<sup>615</sup> During this period of silence, dozens of girls and young women have publicly reported that they were sexually abused by Nassar.<sup>616</sup>

G. Period of Inaction Following Reporting to USAG, the USOC and the FBI

During the period from Nassar's announced retirement in September 2015 to the *Indianapolis Star* article exposing Nassar a full year later in September 2016, no effective action was taken by USAG or the USOC to protect vulnerable children and athletes from the ongoing threat posed by Nassar. This period is also marked by unexplained delays on the part of the FBI.

1. *FBI Investigation*

Following USAG's report to the FBI on July 28, 2015, the FBI's inquiry into Nassar spanned many months and was still incomplete when the *Indianapolis Star* reported over a year later that two gymnasts had accused Nassar of sexual abuse.<sup>617</sup> The Bureau's investigation began in the Indianapolis office following USAG's referral in late July 2015, continued in the Detroit office following a transfer from the Indianapolis office in late September 2015, and was later assumed by the Los Angeles office, following USAG's separate referral to that office in the spring of 2016.

*Early investigative steps in Indianapolis* – On July 28, 2015, during USAG's initial meeting with the FBI to report Nassar's alleged abuse of athletes, USAG provided the FBI with contact information for the three athletes whom Ms. Sepler had interviewed as part of her

investigation: Athlete 1, Athlete 3 and Athlete 5.<sup>618</sup> During the pendency of the investigation out of the Bureau's Indianapolis office, the FBI did not interview either Athlete 1 or Athlete 3. Although Mr. Penny had arranged for Athlete 5 and her mother to fly to Indianapolis for an in-person interview with the Indianapolis agents,<sup>619</sup> that meeting never took place. The FBI instead decided to conduct the interview of Athlete 5 over the telephone.<sup>620</sup> The telephonic interview took place on September 2, 2015.<sup>621</sup>

While the investigation was still pending in the Indianapolis office, as noted in Part III.D, Mr. Penny provided information to the Indianapolis agents about an additional athlete – Athlete 6 – who had potentially relevant information.<sup>622</sup> Athlete 6 has since identified as a survivor of Nassar's abuse.<sup>623</sup>

*Transfer from Indianapolis to Detroit* – After the matter was transferred from the Indianapolis office to the Detroit office, the investigation appears to have stalled. There is no available evidence that the Detroit office interviewed any witnesses or undertook any other external investigative steps with regard to the Nassar allegations during the period from September 2015 through April 2016.

USAG attempted to monitor the progress of the FBI's investigation and, shortly after the matter was transferred from Indianapolis to Detroit, sought guidance on how best to follow-up on the status of the FBI's investigation. On September 24, 2015, three weeks after Agent Abbott informed Mr. Penny that the matter had been transferred to the Detroit office,<sup>624</sup> Mr. Penny asked Mr. Buendorf to use his law enforcement contacts to obtain information about the status of the investigation.<sup>625</sup> As noted in Part III.C, Mr. Buendorf spoke with one of his contacts at the FBI office in Colorado Springs, who suggested that Mr. Penny "remain in contact with [his] bureau contact" in Indianapolis.<sup>626</sup>

Mr. Penny separately sought guidance from USAG's outside legal counsel at Faegre.<sup>627</sup> Although Mr. Penny did not contact the Detroit office of the FBI directly,<sup>628</sup> on October 12, 2015, he shared with Athlete 5's mother a message he had received from legal counsel in response to his request for advice regarding how to proceed with the Detroit FBI office. The advice Mr. Penny passed along to Athlete 5's mother was that the Detroit office would likely be most responsive to a direct inquiry from Athlete 5 or her mother, accompanied by a reference to the prior telephonic interview and a request for a further "in person interview in Michigan."<sup>629</sup> There is no available evidence, however, that the contemplated further interview in Detroit ever took place.

The Nassar investigation appears to have languished in the Detroit office with no action for over seven months.<sup>xxxii</sup> It is unclear whether the investigation ever would have left its dormant status in the Detroit office if it were not for the intervening event of USAG making its second referral to the FBI's Los Angeles office.

*Second Referral by USAG to the Los Angeles Office* – After months of not hearing any update from law enforcement, USAG determined that it should make an additional report to a different FBI office given the perceived lack of progress with the FBI's investigation. USAG then contacted the FBI office in Los Angeles because Athlete 5 was from the area and it was among the larger bureaus in the country.<sup>630</sup> On April 28, 2016, at Mr. Penny's request, Mr. Parilla, a California resident, contacted the FBI in Los Angeles to re-report athlete concerns about Nassar and to set up a meeting.<sup>631</sup> Mr. Parilla spoke with Agent Michael Hess and arranged a meeting for May 10, 2016.<sup>632</sup> Although Athlete 5 and her mother were originally scheduled to participate in the May 10 meeting, the FBI requested a separate meeting with them. Mr. Penny put Athlete 5's mother in touch with Agent Hess over email<sup>633</sup> on May 8, 2016, so that Agent Hess and Athlete 5's

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<sup>xxxii</sup> The FBI declined to provide information regarding its handling of the Nassar matter, or any related communications with USAG, in response to written requests.

mother could arrange a meeting for May 11, 2016, the day following USAG’s scheduled meeting.<sup>634</sup>

On May 10, Mr. Parilla and Mr. Penny met with Agent Hess and his colleague and relayed to them essentially the same information they had provided to the Indianapolis office of the FBI in July 2015.<sup>635</sup> Mr. Parilla brought a flash drive with relevant materials, including Nassar’s videos and PowerPoints, and he and Mr. Penny walked the agents through the allegations.<sup>636</sup> The following day, Mr. Penny sent Agent Hess an email with a “request regarding any further steps [the FBI] might take.”<sup>637</sup> In keeping with his prior efforts to maintain a low profile within the gymnastics community for the Nassar investigation, Mr. Penny underscored to Agent Hess that he would greatly appreciate it “[i]f there is anyway [sic] you can not identify that USA Gymnastics has filed the complaint against Dr. Nassar when you talk to people, but just generally suggest that ‘a complaint has been filed.’ It will keep things on a much more level playing field if no one can point in any one direction.”<sup>638</sup> The FBI did not respond by email to Mr. Penny’s request.<sup>xxxiii</sup>

After USAG, and thereafter Athlete 5 and her mother, met with agent Hess and his colleagues, the FBI’s investigation appeared to become more active, and the FBI reportedly opened a “Full Investigation” for the first time in May 2016.<sup>639 xxxiv</sup> The FBI did not take any public action against Nassar, however, until after Nassar’s abuse of gymnasts had been exposed by the *Indianapolis Star*, approximately four months after the FBI’s May 11, 2016 interview of Athlete 5.

*Review of the FBI’s Handling of the Nassar Investigation* – The factual record raises concerns about the length of time it took and the manner in which the FBI conducted its

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<sup>xxxiii</sup> Mr. Penny stated during his interview with the Independent Investigators that he was concerned that “some people may perceive [USAG’s filing of a report against Nassar] as [Mr. Penny] going after” Nassar because of a prevailing view that Mr. Penny did not like Nassar. Penny Interview.

<sup>xxxiv</sup> A “Full Investigation,” according to the FBI Domestic Investigations and Operations Guide, is distinct from an “Assessment” or a “Preliminary Investigation,” and may be opened where there is an “articulable factual basis” of “possible criminal . . . activity.” 2013 FBI Domestic Investigations and Operations Guide.

investigation into Nassar's abuse. The FBI is currently conducting an internal inquiry into its handling of the allegations against Nassar. The FBI's actions in connection with the Nassar investigation are also under review by the Office of the Inspector General for the Department of Justice and by the Senate Judiciary Committee. No report or findings have been issued to date.

## 2. *Inaction by USAG*

Apart from the repeated steps USAG took to follow up with the FBI on the status of its investigation, USAG took no further affirmative steps to address the ongoing risk to children and athletes posed by Nassar's quiet retirement.

USAG instead appears to have been preoccupied with confidentiality within the gymnastics community. That preoccupation took many forms:

(i) narrowly confining the group of USAG personnel with knowledge of the Nassar concerns to a small handful of employees,<sup>640</sup> thereby compromising USAG's ability to monitor Nassar's compliance with USAG's no-contact order;

(ii) limiting knowledge of the Nassar concerns to only a few board members, thereby precluding oversight by the full board;<sup>641</sup>

(iii) affirmatively directing athletes, parents and coaches not to discuss the Nassar matter with anyone other than Mr. Penny, thereby keeping the gymnastics community in the dark;<sup>642</sup>

(iv) directing Nassar not to speak with any USAG personnel, seemingly with an eye toward keeping USAG personnel – other than the small group of employees in the circle of knowledge – unaware of the athlete concerns;<sup>643</sup>

(v) through direction to Ms. Faehn, seeking to exclude parents and coaches from participation in USAG-directed interviews of athletes who had expressed concerns about Nassar's conduct;<sup>644</sup>



(vi) failing to disclose the serious, credible allegations against Nassar to MSU, Twistars and Holt High School – all youth-serving organizations with which Nassar was known to have affiliations;<sup>645</sup> and

(vii) following the referral to law enforcement in July 2015, continuing to insist on silence and confidentiality, notwithstanding that Nassar had been apprised of the allegations against him on July 22, 2015.<sup>646</sup>

In an email to Agent Abbott at the FBI dated July 30, 2015, Mr. Penny summed up in his own words his mission on behalf of USAG: “Our biggest concern” is “how we contain [Nassar] from sending shockwaves through the community.”<sup>647</sup>

### 3. *Inaction by the USOC*

As set forth in detail in Part III.C, above, the USOC took no action between the time it was notified of the athlete concerns in July 2015 and the date the *Indianapolis Star* published its account of Nassar’s sexual abuse in September 2016. The USOC as an organization was effectively disabled from considering and taking appropriate action in response to the athlete complaints about Nassar due to the decision by two senior officers of the USOC to keep the matter to themselves.

#### H. Interactions Between USAG and the FBI

Our review identified a number of documents that reflect Mr. Penny’s efforts to cultivate a personal relationship with Agent Abbott, then-Special Agent in Charge of the Indianapolis office of the FBI and one of Mr. Penny’s key contacts with regard to the Nassar investigation. Emails indicate that, in October 2015, two months after USAG’s referral to the FBI and following the early September transfer of the Nassar investigation from the FBI’s Indianapolis office to the Detroit office, Agent Abbott agreed to meet Mr. Penny for a beer.<sup>648</sup> In an email from Agent Abbott to Mr. Penny on October 20, 2015, Agent Abbott wrote: “just another quick ‘thank you’

for the beer and conversation a few weeks ago.”<sup>649</sup> The email also reflects that Mr. Penny had offered to provide assistance to Agent Abbott as he considered his job prospects beyond the FBI,<sup>650</sup> including in particular a potential opportunity for Agent Abbott to step into Mr. Buendorf’s position as the Chief Security Officer for the USOC upon Mr. Buendorf’s anticipated near-term retirement.<sup>651</sup> As Agent Abbott stated after expressing his thanks to Mr. Penny for the beer and the conversation: “I very much appreciate what you did. Though I realize there would be many qualified applicants, the position with the USOC is truly a tantalizing and interesting possible opportunity post-Bureau that I continue to think about.”<sup>652</sup> He then signed off, “Cheers and thanks again, Jay Abbott, FBI SAC Indy.”<sup>653</sup> Later that same day, Agent Abbott forwarded Mr. Penny a link to a video of an interview he had done with a local news station about an FBI-State Police initiative to combat violent crime.<sup>654</sup> Mr. Penny responded, “This is great. Thanks for sharing. I am going to forward to Larry [Buendorf].”<sup>655</sup> He also thanked Agent Abbott “for everything you do.”<sup>656</sup>

There is no evidence that Mr. Penny followed through on his statement that he would forward the video to Mr. Buendorf. Mr. Penny did follow through, however, on his offer to provide assistance to Agent Abbott with regard to Agent Abbott potentially stepping into Mr. Buendorf’s role upon Mr. Buendorf’s retirement from the USOC. In an email from Mr. Penny to Mr. Buendorf in the summer of 2016, Mr. Penny wrote:

Hey Larry,

Looking forward to seeing you in Rio.

I wanted to let you know that I found a great guy who might be the perfect fit for your role when you decide to leave. His name is Jay Abbott and he is the senior agent in charge at the FBI office in Indianapolis. Let me know if you would like to speak with him.

Regards,

Steve<sup>657</sup>

Mr. Buendorf responded the same day with information on the timing of his anticipated retirement and the “advertisement” for the position that Agent Abbott could look out for the following year.<sup>658</sup> He did not offer any substantive assistance. Mr. Penny responded with, “Thanks Bueny,” and nothing more.<sup>659</sup>

Shortly before the Nassar allegations broke, Mr. Penny again picked up his correspondence with Agent Abbott, and Mr. Penny forwarded him the *Indianapolis Star* article on September 12, 2016.<sup>660</sup> Thereafter, on September 21, 2016, Mr. Penny sent an email to Agent Abbott: “Will call you shortly if that is okay. Am I in trouble?”<sup>661</sup> Agent Abbott responded the same day, “No. . . . and no worries. Hopefully you have chatted with LA’s FBI’s SAC by now re our conversation last night. Catch up with you tomorrow during business hours if you desire.”<sup>662</sup> On November 21, 2016, Mr. Penny wrote to Agent Abbott informing him that Nassar had been arrested,<sup>663</sup> and then sent a further email a few minutes later referencing “a press conference tomorrow” and inquiring “how it might portray us.”<sup>664</sup> In response, Agent Abbott assured Mr. Penny that the “FBI will be very professional.”<sup>665</sup> On February 16, 2017, Mr. Penny sent another email to Agent Abbott about USAG’s “timeline of reporting.”<sup>666</sup> The next day, February 17, 2017, Mr. Penny forwarded to Agent Abbott a publicly available job posting for the USOC Chief of Security position.<sup>667</sup> Agent Abbott acknowledged the posting in response and wrote: “I’m also aware of your timeline reporting and will be happy to discuss further tomorrow morning.”<sup>668</sup> Later the same day, Mr. Penny wrote again to Agent Abbott and reported: “The us attorney is not helping. This is getting much worse for me.”<sup>669</sup> Agent Abbott responded: “Sorry to hear that re the AUSA. He must have his reasons.”<sup>670</sup>

These email exchanges do not afford a complete picture of the communications between Mr. Penny and Agent Abbott, a number of which appear to have taken place in person or over the

telephone. They do, however, reflect an effort on Mr. Penny's behalf, drawing upon his relationship with and assistance to Agent Abbott, to encourage the FBI to support USAG and its proffered "timeline of reporting" with regard to how USAG had responded to the Nassar allegations. Similar to his successful effort in the summer of 2016 to enlist a detective in the Indianapolis Metropolitan Police Department to defend USAG and its handling of the Marvin Sharp allegations, as discussed in Part V.B.2.c, Mr. Penny appears here as well to have sought law enforcement support for USAG's handling of the Nassar allegations. In this regard, the "timeline of reporting" that Mr. Penny references in his email communications with Agent Abbott includes an affirmative statement by USAG that "the FBI . . . assured USA Gymnastics that the FBI was the appropriate agency to make the report and that USA Gymnastics had handled the matter correctly."<sup>671</sup>

#### I. Further Actions by USAG

Even after the *Indianapolis Star's* public exposure of Nassar in September 2016, USAG continued to take steps to control the flow of information regarding Nassar's alleged abuse of athletes.

##### 1. *Confidential Settlement Agreement with Survivor of Nassar's Abuse*

In one notable example, in December 2016, almost three months after publication of the *Indianapolis Star* article, USAG entered into a settlement agreement with a survivor of Nassar's abuse, pursuant to which it agreed to resolve one of the athlete's claims against USAG for her years-long abuse by Nassar on terms that included the athlete's agreement to sign a non-disclosure agreement ("NDA") prohibiting her from speaking publicly about Nassar's abuse, even though many youth-oriented organizations have discontinued use of such NDAs.<sup>672 xxxv</sup> The existence of

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<sup>xxxv</sup> The agreement further sought to preclude the survivor from speaking to any individual not privy to the agreement, with the exception of her parents, healthcare providers, accountants or attorneys.

the NDA was made public when the athlete filed a lawsuit in December 2017 challenging its legality.<sup>673</sup> On February 9, 2018, USAG represented in a letter to the Chairman and Ranking Member of the Subcommittee on Consumer Protection Product Safety, Insurance and Data Security that USAG had “not used NDAs in conjunction with any investigation.”<sup>674</sup>

## 2. *Removal of Documents from the Karolyi Ranch*

On or about November 11, 2016, two months after the *Indianapolis Star* published its article about Nassar’s abuse, Texas Rangers showed up unannounced at the Karolyi Ranch in Walker County, Texas.<sup>675</sup> USAG – at Mr. Penny’s direction – immediately set in motion an urgent effort to retrieve all medical forms and all records specifically pertaining to Nassar from the Ranch before those documents could be seized by law enforcement.<sup>676</sup> Mr. Penny ordered Amy White, USAG’s National Team Manager, and Gary Warren, then the National Team Training Center Director, both of whom were at the Ranch that day, to immediately locate, pack up and remove any and all documents at the Karolyi Ranch related to Nassar or medical care.<sup>677</sup>

At the time the Texas Rangers arrived at the Karolyi Ranch, Ms. White was leading an acrobatics camp.<sup>678</sup> The two Texas Rangers explained to Ms. White that they wanted to speak to medical personnel, tour the Ranch and take photographs in connection with an ongoing investigation.<sup>679</sup> They did not have a warrant.<sup>680</sup> While the Rangers were waiting, Ms. White contacted Mr. Penny for guidance.<sup>681</sup> After consulting with counsel, Mr. Penny instructed Ms. White to tell the Texas Rangers to leave and to offer that they could return at a mutually agreeable time when there was no active camp in session.<sup>682</sup>

The Texas Rangers, visibly aggravated by the request that they leave the premises, stated that they would be returning to the Ranch with a search warrant.<sup>683</sup> Ms. White promptly relayed to Mr. Penny that, while the Texas Rangers had left in response to his request, they had stated that they would be returning with a search warrant.<sup>684</sup> Upon hearing this report, Mr. Penny turned his

attention immediately to retrieval of the records. He spoke by telephone with both Ms. White and Mr. Warren.<sup>685</sup> He first instructed Mr. Warren to “take all of the boxes out of the barn” and give them to Ms. White.<sup>686</sup> Mr. Penny then directed Ms. White to review these materials and cull out “anything that ha[d] Nassar’s name on it” as well as “all of the participant welfare waivers” that had been signed by gymnasts in connection with the provision of medical care at the Ranch.<sup>687 xxxvi</sup> He directed Ms. White to return these records immediately to USAG’s office in Indianapolis. When Ms. White asked Mr. Penny how she was going to do that, he told her to go buy a big suitcase.<sup>688</sup> When Ms. White proposed to send the documents back via Federal Express, Mr. Penny insisted that she personally transport the documents to the airport and take them with her on the plane.<sup>689</sup> When Ms. White expressed concern about the high cost of transporting extra, overweight baggage by plane, Mr. Penny became irritated and told her to follow his instructions and not to question him.<sup>690</sup>

Ms. White thereafter went with a couple of colleagues from the Ranch to a local Target store and bought a large suitcase.<sup>691</sup> She went through the boxes that Mr. Warren had retrieved and also took all of the files from the drawers in the office where she knew the medical waivers for the women’s program to be maintained.<sup>692</sup> From this combined collection of materials, Ms. White separated for return to Indianapolis anything that looked like it related to Nassar, including printed emails, rooming lists, FIG documents,<sup>xxxvii</sup> directives from FIG, assignments and participant welfare forms.<sup>693</sup> Ms. White specifically stated during her interview with the Independent Investigation that “if [a document] had Nassar on it, . . . then she pulled it out” and

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<sup>xxxvi</sup> Ms. Brazo, the Director of Program Administration for USAG, was in Mr. Penny’s office at the time of this call and heard Mr. Penny tell Ms. White to bring back to USAG’s offices “anything to do with Larry,” including all medical records, waivers and completed forms. Brazo Interview.

<sup>xxxvii</sup> “FIG” refers to Fédération Internationale de Gymnastique, the international governing body of competitive gymnastics.

included it in the materials for return to USAG's offices in Indianapolis, as directed by Mr. Penny.<sup>694</sup> She also collected a few "jump drives," although she "did not know what was on them."<sup>695</sup> She placed all of the materials she identified as responsive to Mr. Penny's directive into the suitcase she had purchased and a couple of additional boxes, and personally transported the documents as checked baggage on her flight back to Indianapolis.<sup>696</sup> Ms. White recalled that Mr. Penny was anxious to receive the records immediately; although she had been planning to take a day off upon her return from the Ranch, he told her to come to the office to drop off the documents instead.<sup>697</sup> The morning following Ms. White's return to Indianapolis, she brought the documents to USAG's offices, as directed.<sup>698</sup>

The documents inside the suitcase and boxes were not organized in any way.<sup>699</sup> Nor did USAG or anyone acting on USAG's behalf prepare a log of the documents that had been collected and placed into the suitcase and boxes at the Karolyi Ranch.<sup>700</sup> Ms. White delivered the suitcase and one or two of the boxes to Ms. Brazo, who was tracking USAG's response to document requests in connection with ongoing litigation.<sup>701</sup> According to Ms. White, Mr. Penny intercepted her in the hall and took the last box from her.<sup>702</sup> It is unclear what, if anything, Mr. Penny did with the contents of the box he retrieved from Ms. White.<sup>703</sup>

Ms. Brazo recalled during her interview with the Independent Investigation that, in or about early November 2016, she had received from Ms. White "one box and one suitcase."<sup>704</sup> She did not receive a second box and was unaware at the time that a second box of records had been retrieved from the Karolyi Ranch.<sup>705 xxxviii</sup> Ms. Brazo sorted through the documents in the suitcase and the one box.<sup>706</sup> The contents included "forms that everyone who attended camp at the Karolyi

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<sup>xxxviii</sup> Ms. Brazo did not learn of the existence of a second box of documents until late 2017 or early 2018 when, in a conversation with Ms. White, Ms. White informed her that she had brought documents from the Ranch in two boxes and one suitcase. Brazo Interview.

Ranch completed, such as waivers, consent forms for treatment, pre-participation physicals and agreements to follow camp rules.”<sup>707</sup> The box did not contain emails or other documents pertaining to Nassar.<sup>708</sup> Although Ms. Brazo never saw or reviewed the contents of the second box that was intercepted by Mr. Penny, she reported during her interview that, upon learning of the existence of a second box, she believed that the further box contained “something different” from what was in the suitcase and the one box that she did review. Her belief stems from a conversation she had with Ms. White in late 2017 or early 2018, during which Ms. White told her that, when she had gathered the documents at the Ranch, “if it was an email with Nassar’s name, I did not even read it, I just put it in there.”<sup>709</sup>

Pursuant to requests from the Independent Investigation, USAG, through counsel, represented that it had produced all documents in its possession that had been collected from the Karolyi Ranch, and that these documents were contained in a specified range of documents within the USAG production to the Independent Investigation.<sup>710</sup> The documents within this specified range include: (i) participant information and waiver forms, (ii) consent to treat forms, (iii) insurance verification forms, (iv) medical authorization and disclosure forms, (v) pre-participation physical evaluation forms, (vi) agreements to follow USAG’s national team rules and (vii) athlete lists for various competitions.<sup>711</sup> There are no emails or other documents that match the description of “anything to do with Larry” or any documents that include Nassar’s name or otherwise reference Nassar.<sup>712</sup>

Citing attorney-client privilege, Mr. Penny declined to speak with the Independent Investigators about anything pertaining to the removal of documents from the Karolyi Ranch.<sup>713</sup> Ms. White’s recollection of events is corroborated by contemporaneous documents, including her receipt for the purchase of the suitcase,<sup>714</sup> and the recollections of Ms. Brazo<sup>715</sup> and other



witnesses.<sup>716</sup> Mr. Penny has since been indicted by a grand jury in Walker County, Texas, on one count of tampering with evidence, a third-degree felony, in connection with his direction to USAG personnel to remove medical forms and other Nassar-related materials from the Karolyi Ranch.<sup>717</sup>

#### IV. CONTRIBUTING CULTURAL CONDITIONS

### SELECTED FINDINGS

- Numerous features embedded in elite women’s gymnastics render athletes particularly vulnerable to child sexual abuse. These features include the overwhelming presence of children in the sport; the physicality of the training environment; strict expectations of obedience and deference to authority; the normalization of intense physical discomfort as an integral part of the path to success; the exclusion or discouragement of parental participation; the social isolation of many elite gymnasts; and the presence of numerous powerful incentives for gymnasts to toe the line and avoid “rocking the boat.”
- The harshness of the prevailing training methods, as exemplified by the culture at the Karolyi Ranch, further amplified the pressures on elite gymnasts and intensified the expectations of perfection, obedience and deference to authority.
- The tone at the top from the USOC and USAG contributed to a perception among athletes that the culture prioritized performance over their welfare.

In developing and implementing his system of abuse, Nassar benefited from an embedded culture in elite and Olympic gymnastics, certain features of which not only made the sport inherently susceptible to child sexual abuse, but also operated to break down barriers to predatory conduct. Even allowing for the benefit of 20/20 hindsight, the acute threat of child sexual abuse in youth sport, and especially in elite women's gymnastics, was present for those in leadership positions to recognize and address throughout the lengthy span of Nassar's serial sexual abuse of gymnasts.<sup>xxxix</sup>

A. Embedded Features of the Sport

Numerous features embedded in elite women's gymnastics render the sport conducive to child sexual abuse, including: (i) the overwhelming presence of children in the sport; (ii) the physicality of the training environment; (iii) strict expectations of obedience and deference to authority; (iv) the normalization of intense physical discomfort as an integral part of the path to success; (v) the exclusion or discouragement of parental participation; (vi) the social isolation of many elite gymnasts; and (vii) the presence of numerous powerful incentives for elite gymnasts to toe the line and avoid "rocking the boat."

*Youth* – Perhaps more than any other sport, gymnastics is a sport of youth. In 1976, 14-year-old Nadia Comaneci astounded the world with routines that earned the sport's first perfect 10s at the Olympic Games, heralding a new degree of difficulty in the sport. Winning three gold medals in the process,<sup>718</sup> she served as "the most prominent 'advertisement' for a nascent trend towards younger, pre-pubescent gymnasts which had begun in the late 1960s."<sup>719</sup> The previous era of gymnastics had focused more on artistry and emotional expression than acrobatic feats,

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<sup>xxxix</sup> This Part draws from publicly available source material, as well as witness interviews and documents obtained during the course of the Independent Investigation. The inclusion of a particular quote should not be construed to infer the speaker's participation in the Independent Investigation.

enabling athletes in their 20s and 30s to dominate the sport. For example, one of the most decorated gymnasts of all time, Larisa Latynina, won her first World Championship all-around title at age 23 – while four months pregnant – and her last European Championship all-around title at age 30.<sup>720</sup> With Ms. Comaneci's success, however, gymnastics began to prize technical proficiency and skill: "Women's gymnastics, which in the 1950s and 1960s was about grace, poses and the ability to dance, was now about twists and turns in the air."<sup>721</sup> And in this regard, younger, lighter gymnasts who had not yet undergone puberty had an advantage.

As the sport shifted towards youth, gyms began to be populated primarily by children. In one representative account, a former gymnast noted: "I started gymnastics when I was 3. Most good gymnasts do. Three or 4, maybe 5 if you're pushing it[.] By the time I was 7, I was training 16 hours a week. By the age of 9, it was 20."<sup>722</sup> Mr. Geddert, former owner of Twistars and himself the subject of numerous abuse allegations, once observed: "[T]his is a little girl's sport[.] With their body changes and the wear-and-tear everybody goes through, once they become women, it just becomes very, very difficult."<sup>723</sup> Because the physical demands and rigors of the sport are difficult to sustain over longer periods, it is generally believed that gymnasts "peak at an early age" and that the period between ages 12 and 16 is particularly critical for their career development.<sup>724</sup>

Although the sport is again shifting in ways that provide more opportunities for older athletes – including through rule changes that allow athletes to specialize in a specific event, as opposed to competing in all events, and an increasing emphasis on power moves that rely on muscle developed after puberty<sup>725</sup> – the vast majority of elite gymnasts who represent the United States in the World Championships and at the Olympic Games are still children.<sup>726</sup> In the words of one gymnast, "I think we have to remember, yes, these are world-class athletes, but they're also

little girls.”<sup>727</sup> And little girls have particular vulnerabilities, including a limited capacity to recognize and protect themselves against inappropriate behavior by trusted authority figures.

*Physicality of Gymnastics* – Gymnastics is also unique in that it requires a measure of physical contact between athletes and adults for instruction, safety and wellness. For example, a coach may have to touch an athlete to stretch her, to assist her in completing a skill or to correct her form. As one coach explained, “I call gymnastics a contact sport because we cannot teach our athletes without touching them. We spot, poke, shape, and catch our athletes every day.”<sup>728</sup> Similarly, athletic trainers and doctors frequently touch athletes in the course of providing preventative, emergency and rehabilitative treatments for injuries and other medical conditions. In this way, coaches and medical personnel may have access to gymnasts’ bodies in a manner and to a degree that is not normal in other contexts.<sup>729</sup> For example, one witness recalled that police investigated his coach after a young female gymnast came home with a chalk handprint on her chest area, but the contact was appropriate because the coach had acted to stop her from falling off an apparatus.<sup>730</sup> The witness stated that it “would have been natural for the coach to catch the girl and push her up by her chest in that situation.”<sup>731</sup>

*Strict Expectations of Obedience and Deference to Authority* – By many accounts, “Gymnastics culture promotes obedience without question.”<sup>732</sup> As one gymnast noted, she and her teammates were “programmed to believe that any deviation from the prescribed methods would enhance the probability of failure.”<sup>733</sup> In their drive to succeed, many gymnasts “hand[ed] [themselves] over completely” to coaches and medical staff,<sup>734</sup> who were generally assumed to have the specialized knowledge necessary to develop the athletes’ skills and keep them safe in what can be an “intensely scary”<sup>735</sup> and “extreme[ly] danger[ous]”<sup>736</sup> sport. In turn, these authority figures often dictated every aspect of the gymnasts’ training, from what leotards they wore, to

when they worked out, to which skills they practiced, to what they ate and even to how they spent their time outside of the gym.<sup>737</sup> Another gymnast echoed more broadly that her coach “dictat[ed] [her] life,” notwithstanding that she was a self-described “good” but not “excellent” gymnast who “topped out on the provincial circuit.”<sup>738</sup>

By the time many gymnasts begin competing at the elite level, they have already lived “a lifetime of obedience and engrained trust in coaches and staff.”<sup>739</sup> As one witness explained, “I was supposed to be quiet and do what I was told.”<sup>740</sup> She noted that she and her teammates “were raised not to question authority whatsoever[.] We were told to do something and we did it.”<sup>741</sup> A physical trainer who worked with many elite gymnasts observed that they were “never allowed to make any decisions on their own; decisions were always made for them.”<sup>742</sup> Consistent with this observation, the witness recalled an incident involving an athlete who had injured her foot at a championship event: multiple adults stood around her discussing what they should do and whether she would compete, but at no point did anyone ask her how she felt or whether she thought she would be able to compete.<sup>743</sup>

Many gymnasts recalled that they were “eager to please” authority figures, going to great lengths to win their approval.<sup>744</sup> Given the emphasis that coaches often placed on maintaining a slim physique, many athletes recalled that these efforts often took the form of extreme measures to keep their weight artificially low. One gymnast explained, “I took anywhere from five to 15 laxatives without missing a single day for those six years thinking that was the only way to stay skinny enough and, therefore, be liked by my coaches and the national team staff.”<sup>745</sup> Another gymnast explained that she was often weighed twice a day and would thus forgo water and food over the course of the training day so as not to risk the ire of her coaches.<sup>746</sup> In the words of one gymnast, even “[o]ur bodies did not belong to us.”<sup>747</sup>

Several gymnasts have suggested that this sustained deference to authority and lack of individual agency deprived them of the opportunity to learn to use their own voices or conditioned them to refrain from doing so. One gymnast explained, “In gymnastics, you got a pat on the back if you were quiet and stayed in your lane – you never really felt comfortable using your voice.”<sup>748</sup> Describing her own experience in the sport, another gymnast noted, “I was raised in the culture of gymnastics where we were taught your voice doesn’t matter. You follow instructions and never complain, especially about treatment.”<sup>749</sup> These sentiments were echoed by another gymnast, who noted: “I have been told throughout my elite gymnastics career to not question authority as it was disrespectful and I was told not to speak up. Therefore, I felt like I didn’t have a voice.”<sup>750</sup> A survivor who was sexually abused by her coach at age 12 recalled that she knew he should not be touching her the way he did, but she did not tell him to stop because “I was raised that you don’t really question authority.”<sup>751</sup> One witness explained, “[I]f a guy who you are told to trust does something that doesn’t seem right, you don’t trust your perception of the world enough to say something or say no; you are told your perception and your voice [don’t] matter.”<sup>752</sup>

A former USOC executive with experience in SafeSport issues observed that athletes in sports that emphasize obedience and hierarchy, such as gymnastics, “are less likely to push back on boundaries of what is or is not ok.”<sup>753</sup> She noted that this feature of the sport makes it very difficult for athletes to assert themselves even when they “think things are not ok.”<sup>754</sup> The young age of many gymnasts exacerbates this dynamic: as one witness observed, “These girls are going to do whatever they are told. They are not going to challenge it or talk about it. One can talk about giving athletes a voice, but it is difficult to give an 8-year-old or a 10-year-old a voice.”<sup>755</sup> <sup>xl</sup>

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<sup>xl</sup> The inherent intimacy of the coach-athlete relationship may also lead to abuse under the guise of “dating.” The existence of child-protective measures (or lack thereof) regarding appropriate boundaries between coaches and athletes is discussed in Part V.A.5.

*Normalization of Intense Physical Discomfort as Integral to Success* – The physical demands of gymnastics often result in sustained physical discomfort, so much so that – in the words of one gymnast – pain becomes a “fact of life.”<sup>756</sup> As one gymnast explained, “One of the most prevalent attitudes taught to young gymnasts . . . is silent suffering. From the beginning we are taught to soldier on through intense training sessions, through the emotional roller coaster of competition, through injury and fatigue, through pain.”<sup>757</sup> One witness, a former Olympian, explained that many gymnasts have a mentality of “[w]hatever I need to do, I will do it. We know gymnastics is difficult and we want it to be difficult. Whatever is put in our path, we accept it, and do it. We don’t ask questions.”<sup>758</sup> Another recalled that she learned to look at injuries and pain as a “badge of honor of how tough [she was].”<sup>759</sup> Simply put, the culture “was to push the young girls to be psychologically indestructible and stoic in the face of adversity, pain, or [any other challenge].”<sup>760</sup>

Relatedly, many gymnasts expressed that they were reluctant to acknowledge their injuries lest their pain be construed as weakness, which “was simply intolerable in the gym,” and could lead to punishment or lost opportunities to compete.<sup>761</sup> A female physical trainer recalled that an athlete asked her to come into her room at the Karolyi Ranch to treat her privately so that she would not be “caught” with an injury by her coach.<sup>762</sup> On another occasion, an athlete told her trainer that she wanted to be treated for an injury, but was “too afraid of getting into trouble.”<sup>763</sup> At the suggestion of her teammate, the athlete agreed to be treated in her teammate’s hotel room so she could pull a blanket over herself if the coach came in and make it appear as though she were not the one receiving the treatment.<sup>764</sup> As explained by a former national team member who broke her back three times before the age of 14, “You’d rather hide the pain, even if you had a broken bone, because you were so afraid of getting yelled at by your coach[.] You were so worried about



looking weak in front of your coach or getting yelled at by your coach that you'd just continue to hurt yourself. It was ingrained in our heads."<sup>765</sup> Another former gymnast recalled that, as a 13-old, she "pushed through the excruciating pain" of a severely pulled hamstring to complete a vault to impress a top USAG coach, who "proceeded to yell at [her] and shamed [her] for not being tough enough to fight through the pain" more effectively.<sup>766</sup> The coach then told her that she "would never make the national team if [she] didn't toughen up."<sup>767</sup>

A number of gymnasts have noted that, to the extent they did raise injuries with their coaches or medical staff, they felt that their pain was ignored or dismissed, leading them to doubt their own perceptions. For example, one former Olympian recalled in her memoir that "[i]f I had ever started to talk about my pain or injury, [my coaches] would immediately cut me off, dismissing it or making comments or gestures that I was becoming weak, faking, or exaggerating injury out of laziness."<sup>768</sup> She explained that "[t]hese negative mind games . . . confused my psyche. I actually started to buy in to their psychology and believe that, perhaps, I didn't hurt *that* much and that the sharp drilling pain in my leg was coming from my head. I remember thinking, *Is it my fault that I am in so much pain?*"<sup>769</sup> Another former Olympian publicly expressed similar sentiments:

I was just told I was making it up. And I needed to lose weight. . . . They always make excuses for pain. And it's just a joke. Because you literally start thinking that your pain isn't real. I for so long thought I was going insane. I thought I was making it up. That's what everybody was telling me. You're just making it up. You need to work harder and eat less. And . . . then [it's] just a downward spiral.<sup>770</sup>

One witness observed that gymnastics operated almost "like a cult" in this sense, "where what is normal is reframed and you see everything through a funhouse mirror."<sup>771</sup>

*Exclusion of Parents/Discouragement of Parental Participation* – In the interests of avoiding unnecessary distractions, many gyms – especially those training high-level gymnasts –

have employed policies or practices that restrict or sharply discourage parent access to their children during training sessions or travel to competitions. For example, numerous former gymnasts through the 2000s have reported that their parents were barred from their gyms or restricted to specific areas in the gyms where they could not fully see or hear what was happening on the training floor.<sup>772</sup> Many gymnasts and staff members who trained or worked in gyms during that time period have reported that, as a result of such policies, parents had little insight into what actually took place during practice sessions or how their children were treated.<sup>773</sup> As one former gymnast said in describing her abusive coach, “He could pretty much do whatever he wanted in the gym because nobody was watching.”<sup>774</sup>

Although policies or practices that discourage or preclude parental involvement may be falling out of favor, there are numerous recent examples of intentional exclusion of parents. For example, parents were not permitted to attend training camps at the Karolyi Ranch, and this remained the protocol through at least 2016.<sup>775</sup> Moreover, although an unwritten rule, it was widely understood that parents of National Team members were not permitted to travel with their children or to stay at the same hotel based on Ms. Karolyi’s preferences.<sup>776</sup> A USAG employee explained that she often made travel arrangements for athletes and their parents, and that she typically tried to separate them based on her understanding of the unofficial policy.<sup>777</sup> Along the same lines, an athletic trainer reported that parents were not allowed in treatment rooms at USAG events except where an athlete appeared to have a serious injury.<sup>778</sup>

*Social Isolation* – In their pursuit of athletic achievement, many gymnasts find themselves not only isolated from family and friends inside the gym and on the road, but also in their lives outside the sport. The demands of elite gymnastics lead many gymnasts to “sacrifice the kind of lives other young people enjoy – school, social life, normal childhood recreation – in favor of

home schooling, many hours of practice every day, and a limited circle of acquaintances based around the gym.”<sup>779</sup> This single-minded focus often means that athletes spend more time at the gym than with their families. In one representative example, the mother of an elite gymnast explained that she and her daughter “never really shared any teenage years together,” and that her daughter’s coach spent “more time raising [her] child” than she or her husband.<sup>780</sup> A former gymnast similarly recalled that once she “entered the world of competitions beyond the state line, family vacations ended. And so did any memorable time spent with my brother.”<sup>781</sup> The concept of any regular social life is typically out of the question entirely. One elite coach noted that her athlete “saw her friends that she grew up with going to prom and homecoming and all that stuff, and she didn’t get to participate in any of that, and I know that was a struggle.”<sup>782</sup> As one former elite team member succinctly put it, “The only people you see are gymnasts[.] . . . The only people you talk to are gymnasts and coaches. Socially, you have no idea what the hell is going on in the real world. You’re so isolated.”<sup>783</sup>

Such social isolation may cultivate a certain innocence amongst elite gymnasts. As the mother of one former elite gymnast observed, “As a rule, gymnasts are very intelligent girls[.] These kids can make international plane connections, make overseas phone calls, talk to the press.”<sup>784</sup> But, she explained, they are socially at a remove from normal life. “They’re not thrown in with the normal teen population.”<sup>785</sup> Instead, as one gymnast explained, their perceptions of “normal” behavior are informed almost exclusively by the examples they see and the expectations they feel within the four walls of the gym:

I had to accept that my coaches would yell and belittle me on a daily basis. I wouldn’t be allowed to have friends at school or go to school dances because they were “distractions.” I would never go on family vacations and rarely see my siblings perform in their sports. I wouldn’t be allowed to talk to my teammates at the gym because that meant I wasn’t focused. I couldn’t feel like a person anymore

if I wanted to reach my dream. I felt like a robot. This became my “normal.”<sup>786</sup>

Given the years they spend in such isolated training environments, often from a young age, a number of gymnasts have explained that they lacked any understanding that certain behavior was not appropriate or constituted abuse until they were adults. For example, two sisters who were abused by Nassar noted that they did not fully understand “the sweating and the panting” that Nassar exhibited during his medical treatments and did not come to recognize that they were abused until after other gymnasts began to come forward with stories of similar encounters with Nassar years later.<sup>787</sup> Numerous other gymnasts noted that they believed the various forms of abuse they endured from coaches and other authority figures in their gyms were normal, as they lacked a broader reference point to inform their understanding. For example, in describing her verbally and physically abusive coach, one former elite gymnast noted that he “would kind of brainwash you into thinking all of his weird ways of disciplining you were normal, like when he would stretch your shoulders past your breaking point until you screamed, but still wouldn’t stop.”<sup>788</sup>

*Powerful Incentives for Gymnasts not to Rock the Boat* – Elite gymnasts face powerful incentives that serve to discourage them from taking any actions that could impede their singular focus and dedicated pursuit of excellence in the sport. Perhaps chief among these is the narrow window of opportunity in which they can achieve their goals. As one gymnast explained, “I had a looming sense of the very narrow window of opportunity afforded me in gymnastics. Mortality hovered persistently. Time was of the essence. Each passing year represented the narrowing of the window, the tightening of the vise. Even the best gymnasts didn’t usually compete beyond age eighteen.”<sup>789</sup> Another gymnast echoed these realities, remarking that “[i]n this country, gymnasts

come built-in with an expiration date[.] There's this whole idea in the sport that if you're 16, you're over the hill. So it's rush, rush, rush, push, push, push. It's an obscene craziness."<sup>790</sup>

In this context, some gymnasts have expressed fear that any distraction from their single-minded focus on their dreams may make it "impossible to catch up" before the window of achievement has closed.<sup>791</sup> Because of these pressures, there is a sense that "gymnasts are not allowed to miss a season, rest and recover from injuries, or otherwise lose time."<sup>792</sup> Every training day, every competition, is another building block for the foundation of an Olympic or college career that must be developed in the span of a few short years. As one witness observed, "One thing that is clear about the USAG child population is how vulnerable they are. They are physically very strong, but many of them live or die on whether they move on to the next competition, obtain a college scholarship, etc. They have no power in that dynamic."<sup>793</sup>

The incentives to carry on and prevail at all costs in order to maximize the potential for success within a narrow window of achievement are amplified by a host of other pressures on elite gymnasts, including not only their own personal level of investment and sacrifice, but also that of their families and the intense pressure not to let their teammates down or disappoint the broader community.

Personal Sacrifice. As described above, elite gymnasts make many sacrifices for their sport. They endure physical pain and the constant risk of injury. They give up the typical diversions and levity of childhood. In the words of one former gymnast, "People see the overall impression, the tricks, the pretty music. They don't realize how hard we work, how much pressure we're under, how much we give up of a normal life."<sup>794</sup> Another witness observed that the lives of elite gymnasts are often so exclusively devoted to gymnastics that it may be difficult for them even to imagine any life outside of the sport.<sup>795</sup> As an elite gymnast explained, "To be able to excel, you

have to live the sport you're doing. You have to eat it, sleep it. It's a full-time job. It takes so much of our time, there's not much time to do otherwise. All I know now is gymnastics."<sup>796</sup> A former Olympian captured the all-encompassing level of personal sacrifice when she observed that "[t]he cult culture of Gymnastics convinces gymnasts that there is nothing more important than their gymnastics. This thinking creates a mindset of knowing that they will sacrifice, they will abide, they will do what they are told, they will always come second, and they will only be valuable if they succeed."<sup>797</sup>

Sacrifice by the Entire Family. An elite gymnastics career often involves immense sacrifices by the athlete's family. For one, families of elite athletes must contend with the substantial financial commitment required to fund the athlete's training, equipment, competition fees, travel expenses and a whole host of other ancillary costs. That often means that parents, brothers, sisters and other family members must "do without a lot of things" to enable the athlete to pursue her Olympic dreams.<sup>798</sup> As the mother of one Olympian recalled,

I didn't realize when I got into this sport how expensive it was. Just the commitment over the years, sometimes it felt crushing. I didn't think I'd be able to keep her in the sport. But then I'd think about it and say: you've got to fight. If I had to sell, I sold almost all of my jewelry, if I had to pick up extra shifts at work. Whatever it takes.<sup>799</sup>

Beyond the financial pressures, families of elite athletes often rearrange their whole lives to accommodate the athlete's training and competition schedules, giving up the ordinary trappings of family life and their own pursuits in the process.<sup>800</sup> Sometimes, families must also make the difficult decision to move or live apart in order to better support an athlete's career. As the mother of an elite gymnast recalled:

We moved out of state, we lived with my father for a short time, we lived with other team members that were near the gym as training got more intense, we moved into a small apartment for [a year and a half] in a dangerous area so we could be 3 [minutes] from the gym.

Family vacations were . . . not even [to] be thought about. Life with an Elite gymnast is just that, Gymnastics!<sup>801</sup>

A number of gymnasts have observed that such familial sacrifices increase the pressure they feel to persevere at all costs in order to justify the investments that have been made on their behalf. One elite gymnast noted that she trained with serious injuries because “you don’t want to let your parents down. You think they’re spending all this money and time on you, and you don’t want them to think it’s not worth it.”<sup>802</sup> Another recalled that, “Miserable as I was, I didn’t seriously entertain the idea of quitting gymnastics. After all my family had sacrificed and my coaches had invested, it was out of bounds.”<sup>803</sup> A long-time elite coach similarly stated that when she asks athletes “what they are stressed about, a lot of times they will say ‘it is so hard for my parents to pay for this and [they] will be so devastated if I don’t make the team.’”<sup>804</sup>

Notably, as Joan Ryan documents in her 1995 book, *Little Girls in Pretty Boxes*, families may become so invested in an athlete’s career by virtue of their own sacrifices that they have difficulty stepping back enough to even recognize that the environment may be unhealthy, let alone take the steps necessary to extricate and protect the child. In the book, a mother recalled that she became obsessed with her daughter’s elite gymnastics career and did not want her to quit even when her daughter developed bulimia and depression in connection with the pressures of her burgeoning career: “We had come too far[.] It was to the point where if one girl quit the gym, you wouldn’t let your daughter spend time with her. You didn’t want her to find out there was more to life.”<sup>805</sup> She went on to explain that when her daughter did quit the sport, she was overcome with grief and anger: “I was grieving the loss of everything we put into this. I knew she could have walked away with medals at the Olympics. I’ll tell you what it’s like. It’s like a death. All the steps you go through when someone close to you dies. It was the same thing. Overnight a door slammed shut.”<sup>806</sup> When another elite gymnast told her mother she wanted to quit, her mother

recalled to Ryan that she responded, “I put this much time and effort into this and, by God, if you think I’m going to let you quit now, you’re crazy. If I have to literally go out there and get up on the beam with you, you’re going to do it. If I have to beat you every day, you’re going to do it.”<sup>807</sup> Another mother dismissed her daughter’s suggestion that she endured mental abuse during the years she was coached by Mr. Karolyi, telling Ryan that if she had another daughter with talent, she would send her to him because he was the best coach in the world.<sup>808</sup>

In addition, a witness noted that families may be reluctant to acknowledge an unhealthy or abusive environment because doing so could hinder a child’s “chance to become the big champion” and upset everything that she and the family had worked so hard for.<sup>809</sup> He explained, “I know from experience that some of the parents knew that one gymnast was molested and even had sex with a coach. They didn’t take all the kids out of the gym and make a group protest . . . and write to USAG or do something; they stayed with that coach. It happened in my gym.”<sup>810</sup> A gymnastics judge recalled a similar story: she explained that she filed a disciplinary complaint after witnessing a coach hit his athlete, but the parents of the athlete refused to pursue the complaint even though they were aware of the incident.<sup>811</sup> To the contrary, they sided with the coach after he threatened to bar their daughter from his gym, potentially upending her ability to secure a college scholarship.<sup>812</sup> As the father of the athlete said, the family “felt like we had no choice.”<sup>813</sup>

The Burden on Their Shoulders. Even beyond the pressures that arise for elite gymnasts from their own intense dedication to the sport and that of their families, there is an enormous weight of responsibility to deliver for the team – their teammates and coaches – as well as for the broader community. As one coach described the pressures that rain down from all sides on these young gymnasts:

The amount of pressure to succeed, to win, to have the best execution, the most difficulty, the right look is mind boggling.



There is so much judgment from everyone, spoken and unspoken. The athletes want this so bad. They have worked their entire lives for a coveted spot on the national team, worlds team, Olympic team. Family and even friends want it for them. Their home clubs want to see them succeed. Their state, their region, their school, and even their town.<sup>814</sup>

In certain respects, this pressure is amplified as elite athletes advance in their careers and are within striking distance of achieving the dreams they have chased and sacrificed for their entire lives. At that critical juncture, they may be willing to do almost anything, to push through any challenge, to pay any price. And they often do, with the full assent, whether implicit or explicit, of their teammates, coaches, families and communities.

There is perhaps no more telling example than Kerri Strug's iconic vault on a badly sprained ankle at the 1996 Olympic Games. At the time, the US team believed that the vault had to be completed in order to secure the gold medal.<sup>815</sup> As millions of spectators watched on televisions around the world, Ms. Strug's coach, Mr. Karolyi, screamed "you can do it"<sup>816</sup> from the sidelines and sent her barreling down the mat without knowing the extent of her injuries or whether she risked permanent harm.<sup>817</sup> And when she stuck her landing before hopping on one foot and collapsing in pain, the Olympic stadium and living rooms all over the world filled with cheers. That moment has since become a source of national pride. And yet it also serves as a warning about the casual disregard for athlete safety by those entrusted with their welfare and the overwhelming pressure on athletes to persevere at any cost.

Ms. Strug's perseverance in the face of injury and pain is remarkable, but it is not unique among elite gymnasts. As one former athlete commented,

[I]n the microcosmic world of hyper-competitive athletics, a high-performance culture where winning trumps all, obvious moral choices become blurred. The sport, the team, a berth on the squad, a medal on the stand – that becomes the priority. The parents, coaches and teams put everything else aside in honor of the win. I know this firsthand[.]

I competed on broken bones, with black eyes, and went days without food. I broke my femur and had the cast removed more than a few weeks too early so that I could get back to training in time to compete at the U.S. Championships. I broke the opposing leg's ankle in the process - but I competed and won. Two bum legs, but I got the trophy. There was never any question about what I'd do. Long-term damage didn't matter. My mental and emotional health didn't matter. Winning did.<sup>818</sup>

After devoting their lives to the pursuit of excellence in the sport, few elite gymnasts would be willing to risk foregoing the very things for which they had worked so hard and so long by saying no to competing with injuries or otherwise speaking up or stepping back.

Moreover, because the selection procedure for major competitions is highly subjective and the standing of even the best gymnasts is constantly being re-evaluated from competition to competition,<sup>819</sup> many athletes believe that speaking up about anything could have negative consequences for their gymnastics careers. As summarized in a legal complaint that a gymnast filed against USAG: "The perfectionist culture and the insular politics of the sport [mean] that the consequences of speaking out are too great for these young girls with dreams of the National Teams, as it could mean the difference between qualifying up or flunking out."<sup>820</sup> As one witness commented, it was a given that "if you speak out, you are done."<sup>821</sup> Athletes who did so were "viewed as 'problems.'"<sup>822</sup> As one witness explained, "The nail that sticks up gets hammered down. This is a sport based solely on judgments, there are no objective criteria. Your life, future depends on the selection process. If you rock the boat, you are kicked off."<sup>823</sup>

Beyond concerns for preserving one's place on the team, several witnesses discussed other potential risks that may elevate the pressure on athletes to maintain course and keep quiet to avoid making waves. With specific reference to speaking up about abuse, a witness observed that many athletes have a "deep concern" about how their decision to come forward "will affect [their] teammates" and how they will be treated by their teammates in response.<sup>824</sup> She explained that

this concern is well-founded “because this type of thing can tear teams apart . . . [i]n terms of who they believe and don’t believe.”<sup>825</sup> The experience of a survivor of Nassar’s abuse suggests that the question of whether and whom to believe also reverberates through the larger sports community, only intensifying the pressure on athletes who may need help but fear the consequences of seeking it out: “Just as I feared, many didn’t believe me. Some of the comments on social media were incredibly hurtful. I was accused of making the entire thing up for attention. The most disappointing part was that many of the people saying these negative things were those I had considered friends.”<sup>826</sup> And because their abusers are often master manipulators who have attained a level of cult status or recognition in the sports community,<sup>827</sup> athletes often bear a very real risk that they will similarly be shunned, shamed or disbelieved if they come forward.

#### B. The Unique Cultural Influence of the Karolyis and the Karolyi Ranch

No discussion of the cultural conditions in women’s gymnastics in the United States during the period of Nassar’s abuse would be complete without addressing the influence of Mr. and Ms. Karolyi on the sport, and the role they played in driving the cultural conditions in elite gymnastics to further and further heights of intensity. As one journalist has observed, “The way most people tell it, the story of American women’s gymnastics has a before and after: Before the Karolyis and After the Karolyis.”<sup>828</sup> In the popular narrative, much of the phenomenal success enjoyed by the Americans on the international gymnastics stage is attributable to the Karolyis,<sup>829</sup> who together played a leading role – either as Head Coach or National Women’s Coordinator – in every Olympic Games since 1988.<sup>830</sup> And in the Olympic Games before that, in 1984, the Karolyis were the personal coaches to the first American all-around champion, Mary Lou Retton.<sup>831</sup> During their tenure, the Americans secured a staggering 97 World and Olympic medals for women’s artistic gymnastics.<sup>832</sup> This remarkable track record gave the Karolyis outsize influence in the sport, establishing their training methods as the gold standard for many years.

The Karolyis' training methodology has been described in different ways by different people, with some extolling its virtues and others condemning it as unduly harsh or even abusive.<sup>833</sup> But there appears to be a general consensus about certain of its fundamental attributes – namely, an expectation of absolute perfection and a single-minded and exacting focus on an athlete's training and performance-readiness to the exclusion of everything else. This heightened level of perfectionism and intensity pushed elite gymnasts further still to succeed “no matter what.”<sup>834</sup> And when those pressures were coupled with the harsh and isolated conditions at the Karolyi Ranch, they together gave rise to a perfect storm of circumstances that facilitated and enabled Nassar's abuse of elite gymnasts during training camps at the Karolyi Ranch, where Nassar had broad latitude to commit his crimes far from the girls' parents and free of child-protective rules and effective oversight.<sup>835</sup>

#### *1. The Karolyis' Approach to Training*

The Karolyis' training methods were cultivated in their native country of Romania and are a product of the totalitarian Eastern Bloc mindset.<sup>836</sup> This system allowed for no dissent or emotion, instead requiring absolute submissiveness and a singular focus on gymnastics to the exclusion of family, school, the ordinary trappings of childhood or anything else. As Mr. Karolyi has described the system: “You get the child at an early age; you follow her; her life is directed towards performance[.] They are living, breathing and eating the sport – in a special environment directed to the highest quality of athletic preparation.”<sup>837</sup> In this vein, young children demonstrating athletic promise were plucked out of kindergarten classes and enrolled in a government training program, often alone and far from home, with the goal of competing at the elite level before the “storm of puberty” hit.<sup>838</sup> A choreographer who worked alongside the Karolyis in Romania recalled that nine- or ten-year-old children were subject to rigorous physical training – “like the marine corps but more extreme” – in daily morning and evening workout

sessions, each lasting several hours.<sup>839</sup> He recalled that, in conjunction with this conditioning regimen, the gymnasts' diets were carefully monitored and restricted to keep their weight artificially low and delay puberty.<sup>840</sup> In the words of one former Romanian national team gymnast who trained with the Karolyis under that system, "hunger was our eternal enemy" and "the methods by which [we were kept] away from food probably could have killed us."<sup>841</sup> Under this system, the athletes functioned as a means to an end – winning medals – and were discarded if they deviated from the path that was laid out for them, demonstrated any weakness or failed to live up to their perceived potential. As Mr. Karolyi himself described it: "You were not good? Good-bye. If you goofed off once, you were out in two minutes. As a coach, I had no obligation to you. That was just the political system."<sup>842</sup>

The central feature of the Eastern Bloc system of training was complete control over the athlete. This control extended to every facet of the athlete's life. As one Romanian coach explained to a reporter:

Here, as coach, for 24 hours I know what happens to my gymnast – I know how she sleeps, what she eats. It's difficult in other countries to say to a family: "She leaves home on Jan. 1 and comes back on Dec. 25." They say: "You are crazy." Here the family gives me 100 percent power to make what I want with this child. They say: "I give you this girl and I come two or three times a year."<sup>843</sup>

Many former participants in the Romanian gymnastics system have explained that this level of control over the athletes was reinforced through a system of forced isolation from the outside world. For example, after the Karolyis coached Ms. Comaneci to Olympic gold in 1976, they built a training center in a remote location "away from everything" where they could cultivate more champions.<sup>844</sup> The training center was built at the bottom of a huge hill with a fortress at the top, allowing "no escape" or access to outsiders – however the Karolyis chose to define the term.<sup>845</sup> "Parents were not allowed to even get close to the facilities."<sup>846</sup>

Beyond Romania, Ms. Comaneci's success brought the Karolyis global recognition and appeared to validate their training methods around the world. When they defected to the United States several years later, in 1981, the Karolyis were already a brand name.<sup>847</sup> Although they struggled in the early days after their defection, established elite gymnasts from across the country left their coaches and started to flock to a gym the Karolyis set up in Houston in 1982.<sup>848</sup> And as these gymnasts won more titles, the Karolyis received much of the credit, further reinforcing the merits of their training methodology.<sup>849</sup> For example, Mary Lou Retton had been training with the Karolyis for only two years when she became the first American to win an all-around gold medal in women's gymnastics at the 1984 Olympics, scoring two perfect 10s along the way.<sup>850</sup> Her success was viewed as further proof of the efficacy of the Karolyis' training methods. And the Karolyis' influence continued to grow.<sup>851</sup>

Although the Karolyis moderated many Eastern Bloc practices to better align with American mores – and what American gymnasts and their families would tolerate – certain of their practices remained as before. For example, as in Romania, the training regimen was exceptionally rigorous and all-consuming. The Karolyis doubled the amount of hours that gymnasts were expected to train every day, and in so doing, “single-handedly refashioned the U.S. system of gymnastics” as gyms across the country replicated the new model.<sup>852</sup> Practices focused on “seeking perfection every single time,” and some gymnasts reported that they were publicly berated or kicked out of the gym – occasionally for good – when they failed to deliver.<sup>853</sup> As Mr. Karolyi explained, “Gymnastics is not for fun[.] . . . It is not golf. I believe everything worthwhile is hard. Mildness is not the proper approach. You always have to be demanding, always asking for more. As long as you want to create something better, you have to be hard. If you want to be the best, you have to get the most out of every minute.”<sup>854</sup>

Similar to the model they had developed in Romania, the Karolyis built a training center – the Karolyi Ranch – in a remote and isolated location, deep within the Sam Houston National Forest in Texas, “two hours away from nothing.”<sup>855</sup> A gymnast recalled:

In the case of an emergency, the closest hospital is so far away, you’d need to be helicoptered there. To get to the ranch, you must drive up a dirt road for what seems like an eternity[.] . . . On top of that, there is no cell service. It’s completely isolated, and that’s no mistake. That is how the Karolyis wanted it.<sup>856</sup>

During the early years, before the Ranch became a USAG-designated National Training Center, parents were ostensibly permitted to observe regular practices, but their ability to do so was often limited. As described by a staff member who then worked at the Ranch, there was a “little viewing area in the back of the gym,” but Mr. Karolyi “put up a blind” that could “be open[ed] or closed from inside the gym.”<sup>857</sup> One gymnast’s mother was a constant presence at the gym; according to the staff member, Mr. Karolyi “would smile at [her and] then close the blind.”<sup>858</sup>

Although there were many hallmarks of intensity, or even harshness, in American women’s artistic gymnastics before the Karolyis entered the scene,<sup>859</sup> the Karolyis’ success arguably normalized and even exalted certain of these elements. As one gymnast recalled, “other coaches saw that [the Karolyis] were winning and thought, ‘This is the way you have to coach.’”<sup>860</sup> Another gymnast expressed a similar sentiment about other coaches: “They wanted to win and nothing else mattered. They took on the demeanor of those eastern European coaches who trained the world’s best. They aspired to Bela Karolyi’s greatness, confident that if they mimicked his approach, they’d produce girls as perfect as Nadia.”<sup>861</sup> A coach agreed with these sentiments, explaining: “I grew up in the culture of Bela and Martha and thought that they were it – because they were it. And we all saw that and when they then became the leaders you had to follow that leadership or you wouldn’t have a place. And so we all did that for a period of time, me included.”<sup>862</sup>

Criticisms of the Karolyis' training methodology were often "drowned out by applause" as their athletes kept winning medals.<sup>863</sup> And in those rare instances when gymnasts did speak out against the Karolyis, they were ostracized by the gymnastics community or derided by the public. For example, after a member of the Magnificent Seven – the team that won gold in the 1996 Olympics in Atlanta – publicly accused Mr. and Ms. Karolyi of emotional and physical abuse during the years she spent training with them from age 10 to 14,<sup>864</sup> she was "shunned, blacklisted, and criticized" by the gymnastics community.<sup>865</sup> In a magazine piece recalling the experience years later, she wrote:

Hate mail came – from former fans who didn't want to hear what I had to say and from high-ranking coaches in the system who accused me of stabbing gymnastics in the back.

To USAG, I became a non-person. I stopped receiving financial opportunities and referrals, I was no longer invited to speak at and attend many events, and very few athletes came to my defense or chose to corroborate what I had to say, even though they had seen what I had seen.<sup>866</sup>

As another example, when a member of the 2000 Olympic team commented that Mr. Karolyi "has too much control" and unfairly "takes credit when we do good, and blames everyone else when we do bad," a popular sports journalist denounced the gymnast's "accusatory, finger pointing trill" and came to Mr. Karolyi's defense:

Bela Karolyi is everything the United States needs[.] The problem is not that Karolyi has too much control of U.S. gymnastics, but that he hasn't had enough, and unless he is given full authority over the program for the next four years, you can look for another scattered, artless performance [at the next Olympics.]<sup>867</sup>

Another sports journalist similarly opined that "[t]he U.S. gymnastics program needs Karolyi, not only as a team leader, but as a touchstone. The ones who don't agree need to either look at a mirror or a scoreboard."<sup>868</sup>



## 2. *Establishing a Semi-Centralized Training System in the United States*

The perception that the Karolyis' training methods were inextricably tied to the success of the American team was bolstered by the medal-free years following their retirement after the 1996 Olympics. Following disappointing showings at two consecutive World Championships<sup>869</sup> – and with an eye toward achieving the organization's self-proclaimed “three major objectives” of “medals, growth, and visibility”<sup>870</sup> – USAG brought Mr. Karolyi out of retirement in 1999 to serve in the newly created position of “National Team Coordinator” and to oversee a new semi-centralized national team training system that had been designed by the Karolyis.<sup>871</sup> From that point on, members of the National Team (and their coaches) were required to participate in regular training camps at the Karolyi Ranch under the direction of the National Team Coordinator, who agreed not to train individual gymnasts to avoid conflicts of interest.<sup>872</sup> These monthly check-ins provided an opportunity for the National Team staff to evaluate and compare each gymnast's physical fitness, technique, consistency and demeanor as part of a newly revised selection procedure for the Olympic team.<sup>873</sup> Whereas the composition of previous Olympic teams was largely informed by individual rankings at certain competitions, the new selection procedure was a more subjective, centralized, closed-door process that was intended to construct a team that would maximize the chance of achieving the highest score on each apparatus.<sup>874</sup>

On the one hand, the new semi-centralized training system represented some positive developments for athletes – and turned out the most successful women's gymnastics teams in American history. It provided an opportunity for athletes and coaches around the country to develop relationships with one another and cultivated a new unity and cohesion in the sport.<sup>875</sup> Because coaches were also given technical support and instruction to help them advance along with their athletes, it made it less likely that athletes would need to leave their homes and local

coaches to pursue better training opportunities at other clubs.<sup>876</sup> As one coach explained to a reporter:

I just got an incredible amount of education from the national staff[.] They see [my athlete], they see her talent, and they know that I didn't have the tools necessarily to get her where she needed to be. So instead of saying [to my athlete], 'you need to go to another gym,' they said [to me], 'we're going to teach you how to get her where she needs to be.' I will forever be grateful for that because now I feel like I am a coach of a world champion, not like I was somebody who had talent that I let slip away because I was too afraid to get my hands in there and work for it.<sup>877</sup>

And the new selection procedures ushered out the rigid rules that had previously been operative – where, for example, subject to an exception for injured athletes, the Olympic team was to be determined solely on the basis of a gymnast's scores at the Olympic trials.<sup>878</sup> The new selection procedures, while a complete black box to athletes, allowed for more open-ended consideration of relevant factors, and thereby allowed for the possibility that one bad day at the Olympic trials or other previously critical competitions would not disqualify an athlete from attaining her Olympic dreams.<sup>879</sup>

On the other hand, however, the new semi-centralized training system effectively served to consolidate the Karolyis' dominance over the sport and enshrine their intensive training methodology as the new American way. Perfection was the expectation, and by many accounts, nothing less was tolerated. As Ms. Karolyi herself explained, "It's a very serious atmosphere to try to come as close as possible as perfection[.] You have to find out who are the best ones, who are the best ones who are able to stand the pressure?"<sup>880</sup> Athletes were closely scrutinized from the moment they stepped into the gym – which, to demonstrate their commitment, was advisedly at least fifteen minutes before the scheduled training session.<sup>881</sup> Many arrived in make-up and with their hair styled, just as they would for a competition, to signal that they were "ready and alert."<sup>882</sup> Beginning from the gymnasts' first line-up, everything from their "body posture" to the

“expression on their face” was closely monitored to assess “who has confidence and who has fallen behind.”<sup>883</sup> As one gymnast recalled, “Everyone is watching you; they watch every move you make[.] You just want every move to be perfect.”<sup>884</sup> Athletes were generally expected to keep up with the rigorous training regimen regardless of whatever injuries or challenges they may have been facing: “You felt like you had to do everything they asked you to do, no matter what, no matter how injured you were[.] . . . I remember a time when I had to come crawling back on the vault runway because my shin was hurting so bad, but you had to keep going.”<sup>885</sup>

Many athletes have reported that the isolation of the Karolyi Ranch and its “complete detachment from the outside world” ensured that there was little relief from its all-consuming pressures even outside the gym.<sup>886</sup> One gymnast described the experience as akin to a “fishbowl,” suggesting that she always had to be on because she never knew who was watching.<sup>887</sup> In particular, she explained that mealtimes were stressful, and that “everyone felt they were being fully watched” with every bite.<sup>888</sup> To deal with this pressure, one athlete noted “we just don’t eat.”<sup>889</sup> Another gymnast noted that “Martha would kinda look around, and she would comment when people had like very little food on their plate, and she’d be like, ‘eating so well.’”<sup>890</sup> Speaking more broadly about her experience at the Karolyi Ranch, one gymnast publicly explained:

Martha was the national team coordinator but the way I saw it, she sort of had control over anything and everything that went on at the ranch[.] . . . She knew what was going on every second in the gym. She knew how many routines that we did. She knew what we were eating. She knew our treatments. So it was just, when you go there, you know that Martha is watching. Everything you’re doing, she’s watching.<sup>891</sup>

As one former USAG executive said in a private text message, “with [Ms. Karolyi], everyone was afraid to sneeze.”<sup>892</sup> In a telling anecdote, an Olympic gymnast publicly recalled that she and her teammates were even afraid to ask for more soap when it ran out, explaining that “[n]obody wanted

to be the one who was difficult.”<sup>893</sup> On a separate occasion, she explained, “I felt like I sometimes did well out of fear.”<sup>894</sup>

Many athletes have also reported that the selection process for the Olympic team exacerbated the pressures they felt. One gymnast explained that the general perception was that “if you don’t follow the rules, and you don’t do what we say, then there’s pressure that you’re not going to make the Olympics team.”<sup>895</sup> The team was chosen “at the last possible moment to ensure that the athletes were always competing” and that their status was never ensured.<sup>896</sup> One former Olympic gymnast reflected:

[Y]ou feel like every move is like, this is me making the team or not, you know? And that moment and that amount of pressure had been building up since like, for years[.] . . . And they never say that you’re on the team. They never say that until you’re there and you’ve competed the first day. So they’re always just like “we can switch you out, don’t get big in your head.”<sup>897</sup>

Another former Olympian agreed, explaining that “the way the system was set up, . . . nothing was guaranteed. It’s all about who can hit when it matters.”<sup>898</sup> Another gymnast likened the process to an episode of *Survivor*: “It was just, ‘We’ll just run you down, wait ‘til we find the last man standing and we’ll see what the team is.’”<sup>899</sup> This high-pressure environment fueled constant apprehension among athletes, who recognized that missteps in practice at the Karolyi Ranch could have a direct impact on their Olympic dreams. As a former USAG executive told the media, athletes were “probably more nervous” in the camps “than they would be in a competition – and that’s the goal.”<sup>900</sup>

### C. Cultural Priorities of Olympic Organizations

The USOC’s and USAG’s open emphasis on winning medals played a role in informing athlete perceptions of the organizations’ priorities. As former CEO Scott Blackmun stated with regard to the USOC, “We are in the medal business.”<sup>901</sup> Former USOC counsel Gary Johansen

echoed Mr. Blackmun’s statement in a deposition, explaining that “[t]he USOC has a lot of priorities” and “[c]hief among them is sending athletes to the Olympic, Pan American and Paralympic Games and doing well at those Games.”<sup>902</sup> USAG’s leadership has expressed similar sentiments over the years. Former CEO Robert Colarossi stated back in 2000 that USAG is guided by three principles – “medals, growth, and visibility.” And Mr. Colarossi reported in his interview with the Independent Investigators that, to this day, he believes that everything the organization does is “funneled” to those ends.<sup>903</sup> Consistent with these goals, Mr. Penny evaluated USAG’s success in terms of its medal count and bottom line. Boasting to a reporter in the spring of 2015, just months before USAG would become embroiled in one of the worst sexual abuse scandals in the history of sport, Mr. Penny remarked:

You want to take a picture of a prototypical NGB, you take a picture of us[.] . . . We’re winning medals. We’re the No. 1 country in the world in the medals count. We have probably one of the strongest social media followings in the Olympic movement and the value of our social media actions are as great as anything. Our sponsor relationships are very solid. We do a great job of promoting our events, our ticket sales. Every metric that I could provide you is going up. We have money in the bank. We have a pretty decent nest egg.<sup>904</sup>

According to Mr. Penny, “My mission has always been to keep elevating the stature and brand recognition and relevance of the organization.”<sup>905</sup>

Against this backdrop, many athletes have expressed frustration, dismay and concern that USAG and the USOC are focused almost exclusively on winning, to the detriment of other values in sport, and that their individual welfare is subordinate to the organizations’ medal-count mission.

For example, numerous athletes have publicly expressed the following sentiments:

- “Their biggest priority from the beginning and still today is their reputation, the medals they win and the money they make off of us.”<sup>906</sup>
- “I think U.S.A. Gymnastics for a very, very long time has focused on nothing but winning gold medals.”<sup>907</sup>

- “I’d like USA Gymnastics to overtly say they put the athlete first, but they don’t put the athlete first.”<sup>908</sup>
- “Young athletes who dedicate mind, body and soul to their love and dreams in sport have been primed for sexual abuse by USA Gymnastics through perpetual judgment and punishment where they are treated as machines, not humans, conditioned to comply never complain.”<sup>909</sup>

The perception that athletes are but a means to an end, even as they are the centerpiece of the sport for brief moments in time, has been lamented by numerous athletes, including one former elite gymnast, who observed that, as soon as athletes retire from competition, they are simply “cut and released.”<sup>910</sup> From that point, she noted, the athlete becomes persona non grata to the organization, with no alumni association or institutional acknowledgement of the athlete’s contribution to the sport.<sup>911</sup> As a former elite gymnast put it: “We were treated like a business plan.”<sup>912</sup>

On November 3, 2016, USAG engaged former federal prosecutor Deborah Daniels to conduct an independent review of USAG’s policies, procedures and bylaws regarding sexual misconduct matters.<sup>913</sup> Following a multi-month review, Ms. Daniels issued a report on June 26, 2017 concluding that USAG “needs to undergo a complete cultural change” and adopt a culture in which the organization’s “top priority is the safety and well-being of its athletes, not just their success on the field of play.”<sup>914</sup> The same day, USAG’s Board of Directors unanimously agreed to accept Ms. Daniel’s 70 recommendations to remediate the significant cultural problems that permeated the organization.<sup>915</sup> A number of her recommendations have yet to be implemented.<sup>916</sup> The USOC determined that USAG’s prospects for fully implementing the recommendations were “poor,” a factor the USOC noted in its November 5, 2018 decision to initiate decertification proceedings against USAG.<sup>917 xli</sup>

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<sup>xli</sup> USAG filed for Chapter 11 bankruptcy on December 5, 2018. Bankruptcy Petition, Court Filings on file with the Independent Investigators.

**V. OLYMPIC GOVERNANCE STRUCTURE AND THE DISCONNECT BETWEEN ADOPTED POLICIES AND EFFECTIVE ACTION**

**A. United States Olympic Committee**

**SELECTED FINDINGS**

- The USOC’s governance structure evolved over the decades from a dispersed committee-based structure toward a more traditional corporate model.
- The USOC adopted a deferential, service-oriented approach to the NGBs.
- No later than 1999, the USOC was alerted to the risk of child sexual abuse in gymnastics; in 2004, the USOC reportedly was similarly apprised of the risk of child sexual abuse in the sport of swimming.
- The USOC did not view itself as a youth-oriented organization and was delayed in recognizing the need to adopt global child-protective measures.
- When the USOC began to address the threat posed by child abuse in light of the public reporting of abuse in USA Swimming in 2010, its response was slow. And during the delayed implementation of SafeSport policies, the USOC maintained a deferential approach toward the NGBs, resulting in a continuation of policies at the NGB level that were ineffective in protecting athletes.
- Patterns of inadequate policies and practices emerged across the NGBs, including overly formalized complaint processes, lack of sufficient training for employees handling sexual abuse matters, and inadequate attention to the risk of retaliation against athletes and others for raising complaints.
- The USOC’s deferential governance approach affected the structures that enabled Nassar and his system of abuse. For example, the USOC entered into a marketing relationship with the Karolyi Ranch, the USAG National Team Training Center, whereby the USOC lent its name and brand to the Ranch, allowing it to call itself an Olympic Training Site, but took no steps to ensure that USAG and the Ranch enacted policies consistent with the high quality that the Olympic brand conveyed. The USOC also permitted USAG to continue to credential Nassar for future Olympic Games notwithstanding the negative review Nassar received from the USOC at the London Games.

1. *The Ted Stevens Act Endowed the USOC with Broad Powers and General Purposes*

The USOC and the NGBs are part of the patchwork structure of the national and international Olympic movement. The movement centers on elite athletes performing on the Olympic stage once every two years, but it also encompasses a wide range of athletes, coaches, trainers, officials, governing bodies, international organizations, clubs, teams, training facilities, medical networks, partnerships and sponsors, among many other interested parties. The participants in the broader Olympic movement range from elite athletes perfecting their craft at national training camps to young athletes participating in recreational activities at local clubs. Yet unlike in other countries, in the United States there is no “ministry of sport” responsible for overseeing this broad swath of athletic activity. In addition, Congress does not provide the USOC with annual funding.<sup>918</sup> Instead, the USOC and the NGBs engage in fundraising and develop Olympic sports in accordance with powers and responsibilities rooted in a statute passed in 1978, the Ted Stevens Act.<sup>919 xlii</sup>

Congress drafted the Ted Stevens Act to address the issues then plaguing Olympic organizations and amateur sports in general – in particular the disorganization in the sport governing bodies and the arbitrary rules dictating which athletes could participate in the Olympic movement. After reviewing the report of a commission appointed by President Ford and charged with recommending solutions (the “Commission”), the Senate Committee on Commerce, Science and Transportation concluded that the Olympic organizations’ “difficulties lie in failing to join together for the purpose of increasing athletic opportunities.”<sup>920</sup> The Committee, implementing the findings of the Commission, therefore recommended increasing the opportunities available to

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<sup>xlii</sup> On November 2018, Congress authorized \$2.2 million in funding for the U.S. Center for SafeSport. Eddie Pells, *Govt Olympic funds not usable for abuse probes*, ASSOCIATED PRESS (Nov. 8, 2018), <https://www.apnews.com/ce0508e3649b402aa2540bfa46712733>.



athletes and decreasing the tension between competing organizations, by creating a “vertical sports structure, using the USOC as the coordinating body through which amateur sports organizations could work to be responsive to the needs of the Nation’s amateur athletes.”<sup>921</sup> To achieve that goal, the Commission recommended expanding the charter of the USOC to grant it additional powers to (i) coordinate organizations and resolve factional disputes, (ii) better protect athletes’ ability to participate and (iii) ensure a sufficient level of funding from non-governmental sources to achieve these aims.<sup>922</sup>

Congress adopted these recommendations in 1978 by passing the Ted Stevens Act. First, the Act resolved the issue of inter-factional disputes by creating a vertical structure that provided the USOC with the authority to grant essentially monopoly power to an NGB to develop athletes for a specific Olympic sport.<sup>923</sup> There are currently 50 NGBs.<sup>924</sup> Second, the Act protected athletes’ ability to participate by recognizing an athlete’s right to compete in amateur athletic competitions and granting the USOC the authority to develop procedures to resolve disputes.<sup>925</sup> Third, the Act endowed the USOC with exclusive rights to the Olympic trademark and associated marks to provide the USOC with a means of generating revenue.<sup>926</sup> In particular, the familiar Five Rings mark has provided the USOC with the ability to form strong partnerships with sponsors and to generate volunteer enthusiasm through what one former USOC employee colorfully referred to as “Five Ring Fever.”<sup>927</sup>

Aside from vesting powers in the USOC, the Ted Stevens Act initially provided the USOC with a list of 14 “purposes.”<sup>928</sup> <sup>xliii</sup> These purposes ranged from establishing national goals for amateur athletic activities, to promoting and encouraging physical fitness, to encouraging the development of sports medicine and sports safety.<sup>929</sup> The Act also included other key governance

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<sup>xliii</sup> In 2018, the Act was amended to add a fifteenth purpose, “to promote a safe environment in sports that is free from abuse, including emotional, physical, and sexual abuse, of any amateur athlete.” Pub. L. No. 115-126 (2018).

provisions, including the creation of the Athletes Advisory Council to “ensure communication” between the USOC and the athletes, and the requirement that athletes hold at least 20 percent of the voting seats on both the USOC and the NGB boards.<sup>930</sup>

The broad powers and general purposes in the Act shaped the development of the USOC, which became a parent organization overseeing a wide range of athletic activity in the United States, much of which was only loosely tied to the Olympic Games. And at its core, the USOC continued to reflect the animating purposes behind the Ted Stevens Act: ensuring that the United States was producing athletes who could compete at the highest level on the international stage by decreasing internal tensions at NGBs, providing athletes with a fair process for selection and providing NGBs and athletes with the resources necessary for the NGBs to develop and support highly skilled athletes. The Ted Stevens Act, however, provided the USOC with little concrete guidance concerning how to pursue these broad goals, and the USOC has consequently adopted various approaches over the decades.

2. *The USOC’s Evolution Toward a More Traditional Corporate Structure Corresponded with an Increased Focus on Generating Revenue and Athlete Success and a Diminishing Voice for Athletes in Governance*

In general terms, the USOC’s approach evolved from a governance structure with diffused decision-making across a large “House of Delegates” and various committees to a model akin to a modern, professional non-profit. With this governance change, the USOC placed a heightened emphasis on earning medals and generating revenue. These goals are necessarily connected as athletic success attracts sponsors, who in turn provide the private funding necessary to support the athletes of Team USA. Alongside these developments, however, the USOC did not incorporate effective policies and structures to provide athletes with either a strong role in governance or an effective avenue for raising complaints.

In the years following the enactment of the Ted Stevens Act, ultimate authority at the USOC resided in the House of Delegates. This was the body that adopted the USOC's initial bylaws and that resolved to boycott the 1980 Moscow Games by a vote of its 275 members.<sup>931</sup> Given its size, the House of Delegates governed through a committee system, but this governance structure proved to be unwieldy and the USOC began a process of reform. In the late 1980s, a George Steinbrenner-led committee issued a report recommending that the USOC reduce the number of committees to 13 from close to 30,<sup>932</sup> and in 1990, the USOC replaced the then-approximately 400-member House of Delegates with a 101-member board of directors.<sup>933</sup> In 2004, following an in-depth review from an independent commission, the USOC reduced the size of its board to 11 directors to "create a more efficient, effective and engaged organization."<sup>934</sup> Currently there are 15 board members, with the CEO sitting as a sixteenth member.<sup>935</sup>

The revised governance model at the USOC led to the types of benefits that flow from the ability of corporations to set clear direction and strategy. For example, in the 2000s, the USOC, under the guidance of the Director of Medical Operations, Dr. Bill Moreau, modernized the sports medicine department, including by updating the treatment facilities at the Olympic Training Centers, which had previously been little more than sophisticated training rooms.<sup>936</sup> Under the leadership of the Chair of the Board, Larry Probst, the USOC improved its standing with the international Olympic movement.<sup>937</sup> And under the leadership of former CEO Scott Blackmun, the USOC improved its relationship with the NGBs, which had grown tense over the previous decade, resulting in a revolving door of USOC CEOs, each of whom had lasted an average of approximately two years.<sup>938</sup> Mr. Probst and Mr. Blackmun also developed important sponsor relationships, resulting in a steep increase in revenue.<sup>939</sup>

The modernized USOC facilitated the development of Olympic teams that have garnered unparalleled success at the Games – in the past four Olympics, Team USA has won cumulatively 100 more medals than the next closest country.<sup>940</sup> The USOC has also steadily increased its revenue, generating more than \$350 million in the most recent Olympic year.<sup>941</sup> The success on these metrics is partly a result of the benefits of enhanced organization at the USOC, but it also reflects the modern USOC’s focus on generating medals and the accompanying revenue as overarching goals. Mr. Blackmun explained that “our approach was to make sure the athletes who are medal capable get supported,” and the analysis in providing support was “what is going to give us the best chance for an American to win a medal?”<sup>942</sup> Alan Ashley, Chief of Sport Performance, provided further color by explaining that his job is to help NGBs create the environment where athletes can succeed, and he believes that medals are a good indication of whether the USOC has supported athletes in achieving their goals.<sup>943</sup>

The USOC exerted its influence, especially its monetary influence, over NGBs based on success at the Olympic Games. In 2017, the USOC provided funding to each of the NGBs, but this funding ranged from a few hundred to a few million dollars.<sup>944</sup> And although the USOC evaluates many factors when distributing funds, the foremost consideration is the NGB’s ability to generate medals, with the marketability of successful athletes serving as an important secondary consideration.<sup>945</sup> Indeed, the USOC’s focus on athletic and monetary success was such that a former USOC executive recalled that the words “money and medals” were probably uttered at every staff meeting, typically more than once, with the effect of marginalizing other topics such as athlete programming.<sup>946</sup> As a result, the USOC evaluated athletes much like a professional sports organization or any other company evaluating assets and examined the return in athletic success on its monetary investments.<sup>947</sup>

Developing in parallel with the new governance model and the increased focus on generating money and medals was a diminishing opportunity for athletes to participate in the governance of the USOC or to register their complaints. Former USOC employees recall that in the 1980s, the diffuse governance structure encouraged grassroots participation and consequently, athletes had a “huge voice”<sup>948</sup> and a “significant presence.”<sup>949</sup> But following the restructuring of the organization, the relationship between athletes and the USOC became, as one former employee commented, a “hierarchical business relationship.”<sup>950</sup> A contributing factor to the nature of the relationship between the corporate officers of the USOC and the athletes is the short amount of time athletes spend on the Olympic stage – a factor inherent to Olympic sports. Athletes have emphasized in their interviews the feeling of being a cog in the Olympic machine that churns through athletes even as the administrators remain.<sup>951</sup> Given this environment, athletes and their legal representatives have expressed the need for easily available avenues for raising concerns.<sup>952</sup> However, the structures that ostensibly provided athletes with an ability to impact the governance of the USOC – the Athlete Advisory Council (“AAC”), the Athlete Ombudsman, and the formal complaint process – were geared narrowly toward one of the animating purposes of the Ted Stevens Act, protecting athletes’ rights to compete, and failed to give athletes a meaningful mechanism for effecting change or raising complaints not directly related to athlete participation.<sup>953</sup>

*The AAC* – The Ted Stevens Act created the AAC to serve as the athletes’ voice in governance,<sup>954</sup> but this body has had limited effectiveness. One reason is that the AAC is structurally designed to provide policy feedback at a high-level, rather than to act as a decision-making authority.<sup>955</sup> Another is that the AAC is comprised solely of volunteers, whereas the USOC and NGB staff members are full-time employees.<sup>956</sup> Therefore, although the leadership of

the AAC consists of an active and well-informed group, Mr. Blackmun noted that it can be difficult to fill the ranks with current athletes, who cannot easily devote the “significant investment of time” needed to become informed, given their rigorous training schedules.<sup>957</sup> In combination, these factors have impaired the AAC’s ability to act as a strong governing body. By way of example, following the Rio Olympic Games, the Athlete Ombudsman’s office gave a presentation to the AAC to explain the role of that office, but in a meeting approximately a year and a half later, the majority of the AAC – the body charged by the Act to oversee the Athlete Ombudsman’s office<sup>958</sup> – was reportedly confused as to what duties the Athlete Ombudsman performed.<sup>959</sup> As the Associate Ombudsman commented, although the Athlete Ombudsman is required to “report” to the AAC, “nobody is certain what this means.”<sup>960</sup> The chairman of the AAC, in his July 2018 testimony recommending more vigorous athlete representative bodies, further noted the organization’s limitations, remarking that the AAC “is structurally limited,” and has narrow powers to “nominate representatives to various boards and serv[e] as a communication channel.”<sup>961</sup> And a former chair of the AAC remarked that the AAC’s only “real power” is “to go to the press.”<sup>962</sup>

*The Athlete Ombudsman* – The need to provide athletes with greater representation and protections motivated in part the 1998 amendments to the Act, which, most notably, created the position of the Athlete Ombudsman.<sup>963</sup> Like many other provisions of the Ted Stevens Act, however, the section concerning the role and responsibilities of the Athlete Ombudsman is capable of multiple interpretations. Due to the current structure of the position, the Athlete Ombudsman’s office has been an insufficient resource for athletes to voice their complaints or to engage in governance.

The Athlete Ombudsman is tasked with providing “independent advice to athletes at no cost” concerning the relevant statutes and bylaws, and at the same time is responsible for mediating any disputes.<sup>964</sup> As a result, the Athlete Ombudsman can, consistent with the Act, either be an advocate for athletes or a neutral mediator. The first Athlete Ombudsman, John Ruger, came to the position from his role as chair of the AAC,<sup>965</sup> and he approached both roles from the perspective of championing athlete causes.<sup>966</sup> By contrast, Mr. Ruger’s successor, Kacie Wallace, acts as both a confidential advisor to athletes and a facilitator between athletes and NGBs.<sup>967</sup> Therefore, while the Athlete Ombudsman continues to be an important resource for athletes who are seeking to navigate the somewhat complicated statutes and bylaws, especially concerning disputes that involve athlete participation, such as those arising out of team selection or doping, the position has limited value in providing athletes a voice in governance.<sup>968</sup> And the Athlete Ombudsman’s office is likewise a poor fit for athletes seeking to raise complaints about sexual misconduct matters, as the office adopted a practice – prior to the launching of the Center for SafeSport – of rerouting sexual misconduct complaints back to the relevant NGB for processing.<sup>969</sup> Ms. Wallace noted that athletes often do not know where to go with such complaints or larger structural concerns,<sup>970</sup> and the Associate Athlete Ombudsman observed that the athletes who do reach out to the Athlete Ombudsman’s office come to realize that there is a gap between their perception of the office as championing the athlete’s cause and the office’s current role.<sup>971</sup>

*Formal Complaint Process* – Finally, as discussed in greater detail in Part V.A.5, the formal complaint process at the USOC is likewise an insufficient mechanism for either giving athletes a voice in governance or providing an opportunity to raise complaints on topics such as sexual misconduct. An athlete has two options for filing a complaint directly with the USOC. First, an athlete can assert that an NGB is failing to comply with the requirements in the Ted

Stevens Act or the USOC Bylaws and bring a complaint under Section 10 of the Bylaws, seeking the NGB's decertification or placement on probation.<sup>972</sup> The athlete must follow specific procedures, including demonstrating that the athlete has exhausted available remedies at the NGB level and has filed a signed, written complaint listing the allegations and the jurisdictional basis for the complaint.<sup>973</sup> The athlete cannot remain anonymous<sup>974</sup> and needs to tie the complaint to a specifically listed obligation in the Act or USOC Bylaws.<sup>975</sup> Section 10 complaints are legally complex, involving the navigation of NGB and USOC bylaws in addition to the Ted Stevens Act, and athletes must either pay for their own legal counsel or rely on pro bono assistance.<sup>976</sup> Section 10 complaints are extremely rare, with approximately only one or two cases proceeding to a hearing panel each year.<sup>977</sup> And given the Section 10 process, the typical complainant is not an Olympic athlete, but rather a member of an NGB who is sufficiently aggrieved to devote the time and resources to attempt to bring about the NGB's decertification or placement on probation<sup>978</sup> – sanctions that are available only where the NGB has ceased to function as a competent organization.<sup>xliv</sup>

Second, an athlete can assert that he or she has been denied the right to participate under Section 9 of the USOC Bylaws. These complaints are more frequent, about one a month is filed with the USOC, and they often relate to team selection or athlete disqualification.<sup>979</sup> The athlete must file a written complaint stating the factual and legal basis for the claim regarding the denial of an opportunity to compete.<sup>980</sup> The athlete files such a complaint with the USOC, but if the athlete wants an arbitrator to resolve the matter, the athlete must make such a claim within six

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<sup>xliv</sup> In a Section 10 Complaint, a hearing panel makes a finding of an NGB's compliance or non-compliance and, upon a finding of non-compliance, submits the finding to the USOC Board, which then determines whether to place the NGB on probation or to decertify the NGB. USOC Bylaws §§ 10.18, 10.19. "However, if the hearing panel finds that the NGB[']s . . . non-compliance can readily be rectified, then, prior to making a recommendation to the Board, the hearing panel may issue an order directing that the NGB . . . take such action as is appropriate to correct the deficiency." USOC Bylaws § 10.18.



months of the alleged denial of the opportunity to participate; otherwise the claim is time-barred.<sup>981</sup> Section 9 complaints apply narrowly to an athlete's ability to compete, and because the majority of such complaints relate to selection for a team or athlete disqualification, the complaints typically involve two affected athletes: the athlete who was not selected or failed a drug test or was otherwise disqualified, and the replacement athlete. The Section 9 process is therefore geared to resolving disputes involving two athletes in a fair and timely manner that permits NGBs discretion in selecting the best possible team for competitions. As discussed in Part V.A.5, neither a Section 9 nor a Section 10 complaint is a useful tool for addressing issues relating to sexual misconduct. Under a Section 10 complaint, the complainant would have to argue that sexual misconduct is so pervasive that the NGB is not able to continue to function effectively. Under a Section 9 complaint, the complainant would need to, first, bring the complaint to an arbitrator within six months, and second, argue that the sexual misconduct resulted in a denial of the athlete's opportunity to compete in an event.

3. *The USOC Adopted a Service-Oriented Governing Approach Toward the NGBs*

As the USOC was adapting its governance model and increasing its focus on generating revenue and medals, the USOC was also adopting a service-oriented approach toward the NGBs that involved providing resources without accompanying oversight. This shift in the USOC's relationship with the NGBs was one of the fundamental changes that Mr. Blackmun implemented following his appointment as CEO in 2010. In the years prior to his arrival, the relationship between the USOC and the NGBs had grown tense, with one board member noting that there was a "coup building within the NGBs" based on a perception that the USOC was meddling too much in their affairs.<sup>982</sup> Mr. Blackmun wanted "to change the nature of the dialogue a bit."<sup>983</sup> He reasoned that having high-performing athletes "is much more dependent on a healthy NGB than it

is a healthy USOC,” and oriented “USOC to be more of a service culture to the NGBs – how can we help them be successful?”<sup>984</sup>

Over the past year, many observers have identified the USOC’s decision not to exert greater authority over NGBs as a critical element in the USOC’s inability to respond effectively to sexual abuse in sports. For example, Ms. Lyons, then acting as the CEO of the USOC, testified before Congress in May 2018 that the USOC “did not exercise the authority that I think the act gives us,” and opined that “I think a change we need to make is for us to exercise that authority more thoroughly.”<sup>985</sup> Ms. Lyons’s view reflects one side of a long-running debate within the USOC concerning the proper role of the USOC in managing NGB affairs, a view that is in ascendance following the public exposure of Nassar’s crimes.

One contributing factor to this debate is the vagueness of the Ted Stevens Act. As Rick Adams, Chief of Sport Operations and Paralympics, summarized, “[T]here seems to be no shortage of people with strong opinions about what the Act does and does not afford [the USOC] or require [the USOC] or NGBs to do.”<sup>986</sup> The general purposes of the Act contribute to this uncertainty, as there are any number of ways for the USOC “to establish national goals for amateur athletic activities” and “to coordinate and develop amateur athletic activity in the United States.”<sup>987</sup> Likewise, some of the broad powers granted to the USOC have limited practical effectiveness, leading to the USOC’s hesitancy to employ them. In particular, the USOC’s greatest power is its authority to decertify, but USOC employees referred to decertification as the “nuclear” option and a “poor instrument” for effecting change, because there is typically no alternative organization for the USOC to choose as the replacement NGB following decertification.<sup>988</sup> As Mr. Blackmun explained, “[I]t doesn’t help to go take away [an NGB’s] license,” because “then no one is going to step in.”<sup>989</sup> Ultimately, from Mr. Blackmun’s perspective, the harm from decertification would

fall on the athletes, who would be left without an organizing body and would have to rely on direct support from the USOC, which is ill-equipped to act as the governing body for any specific sport.<sup>990</sup> Therefore, the USOC almost never exercised its authority to decertify an NGB, and over the past 25 years, only two NGBs have been decertified: the National Rifle Association in 1994 and the U.S. Team Handball Federation in 2006.<sup>991</sup> On November 5, 2018, the USOC began the decertification process for USAG.<sup>992</sup>

One step removed from decertification is probation,<sup>993</sup> and while the USOC has taken this step more frequently than decertification, it has also exercised its probationary power cautiously.<sup>994</sup> The USOC is ultimately hesitant to use this authority to effectuate change in an NGB, given that through such interference, the USOC must become involved in the governance of an NGB. As Mr. Blackmun remarked concerning actively controlling an NGB, “all of the sudden we are a governing body.”<sup>995</sup> Therefore, the USOC avoided exerting its powers in a manner that would create too much oversight because the USOC does not have “the relationship with the athletes” or insight into the “complex cultures” of the various NGBs.<sup>996</sup> And fundamentally, the “USOC views itself, consistent with the Act, as an organization comprised of organizational members and no individual members,”<sup>997</sup> or as the USOC’s lawyer stated in a deposition, the USOC “does not have athletes.”<sup>998</sup>

As discussed above, however, the USOC did exercise a certain degree of authority with a straightforward goal: provide NGBs with the resources to produce medal-winning athletes. And the USOC applied many tools – aside from the blunt instruments of decertification and probation – to promote athletic success at the NGBs. The USOC’s most effective means of controlling and rewarding NGBs is its monetary resources, which are significant – in the two most recent Olympic years, 2014 and 2016, the USOC generated over \$275 million and over \$350 million,

respectively.<sup>999</sup> As Mr. Blackmun remarked, “[T]hey listen to us because we have the purse.”<sup>1000</sup> The USOC wielded this authority to encourage athletic success by basing its funding decisions, in part, on representations that the NGBs made in their “Performance Partnership Agreements” with the USOC regarding expected medal counts in upcoming Olympic Games.<sup>1001</sup> The USOC’s other powers over NGBs range from mandating peer-to-peer reviews, to increasing or decreasing support for non-performance staff during Olympic Games, to determining how many athletes from each sport are entitled to access USOC’s Elite Athlete Health Insurance, a medical insurance plan which Dr. Moreau described as a “Black Card for medical care.”<sup>1002</sup> The USOC likewise largely based its non-monetary support decisions on the athletic success of the NGBs.<sup>1003</sup> For example, at the Olympic Games, the USOC has a certain number of athlete and coach credentials to distribute to the NGBs; and as Mr. Penny observed, “it was an ongoing challenge to get the credentials we needed, but when we started winning it became less of a challenge.”<sup>1004</sup>

The governance structure also reflects the difficulties involved in governing a diverse collection of NGBs. Some NGBs are sophisticated non-profits that run programs in towns across the country, such as the U.S. Soccer Federation, USA Hockey and the U.S. Tennis Association, while others are responsible for niche sports, such as USA Team Handball and USA Pentathlon. The NGBs’ revenues vary dramatically. Some have partnerships with leading companies, while others struggle to generate revenue and develop their membership.<sup>1005</sup> Another fundamental difference, even between sophisticated NGBs, is the importance of the Olympic Games. For some NGBs, such as USA Wrestling and U.S. Figure Skating, the Games are a central focus, while the Games are less important to the mission of other NGBs.<sup>1006</sup> The wide-ranging scope of the NGBs raises important questions about the proper extent of the USOC’s authority. Should the USOC, which focuses on the development of elite athletes for Olympic teams, dictate policy for NGBs

concerning low-level youth recreational sports or control the U.S. Soccer Federation’s approach to the World Cup or the U.S. Tennis Association’s organization of the US Open tennis tournament? And how can the USOC implement policies that apply fairly to such a diverse collection of organizations? Mr. Blackmun’s answer was that “[f]itting a one-size-fits-all option is very difficult,” and therefore the USOC should “give [NGBs] the assets and resources to make themselves better.”<sup>1007</sup>

The USOC Board of Directors engaged on the question of the proper extent of the USOC’s authority. Some directors believed that the USOC should be careful not to become overly enmeshed in NGB affairs and expressed skepticism of the tools available to effect change at the NGBs,<sup>1008</sup> while others thought the USOC “should be more aggressive and use our leverage to ensure [the NGBs] were more efficiently run.”<sup>1009</sup> At least one board member expressed the view that the USOC should consider setting up a consulting unit to work directly with the NGBs and help them improve their operations.<sup>1010</sup> The service-oriented view prevailed, however, and the consulting unit was never formed. As the board member explained, the “approach of the USOC has always been to err on the side of NGB independence.”<sup>1011</sup>

As set forth more fully below, the USOC’s decision to defer to the NGBs and exert minimal oversight is highlighted by (i) the USOC’s willingness to credential an NGB’s preferred medical provider, even if there were concerns about the provider, and (ii) the USOC’s licensing of Olympic Training Sites, which carried the branding of the USOC, but otherwise operated independently.

*Credentialing Medical Providers Notwithstanding Concerns* – As discussed in Part III.A.6, following the 2012 Olympics, the USOC medical team filled out evaluations of the various NGB medical staff that worked at the Games, and Nassar received low marks and a recommendation that the USOC not invite him to future Games based on his inability to work well in a multi-sport

environment.<sup>1012</sup> But Dr. Moreau, when he reviewed the evaluation during his interview with the Independent Investigators, commented that this recommendation would have had no effect on whether Nassar attended a future Olympics.<sup>1013</sup> Instead, if USAG selected Nassar, then he would almost certainly attend the next Games.<sup>1014</sup> And documents from the spring of 2015 indicate that Nassar was indeed scheduled to attend the Rio Games, despite the negative review from 2012.<sup>1015</sup> To underscore this point, Dr. Moreau recalled that one of the NGBs selected as its medical provider a practitioner who believed that athletes should receive treatments on a “magnet bed.”<sup>1016</sup> Dr. Moreau engaged in heated arguments with the sports performance team at the USOC to try to exclude this practitioner from the Games, but he was ultimately overruled on the basis that the USOC wanted to keep the NGB and its athletes happy during the Games.<sup>1017</sup>

*Olympic Training Sites* – To train athletes for the Games, the Olympic organizations operate various types of training centers. At one end of the spectrum, the USOC operates two Olympic Training Centers (“OTCs”), located in Colorado Springs, Colorado, and Lake Placid, New York, for summer and winter sports, respectively.<sup>1018</sup> The OTCs are full-service facilities that provide dormitories for athletes to train year-round,<sup>1019</sup> and NGBs hold training camps at the facilities or apply for space and time to train.<sup>1020</sup> At the other end of the spectrum are National Team Training Centers, where the USOC has no involvement, other than through the general provision of funds to the NGBs.<sup>1021</sup> In the middle are the Olympic Training Sites, which carry the name and the Five Rings trademark of the USOC, but which function in every other respect like a National Team Training Center.<sup>1022</sup>

To create an Olympic Training Site, the USOC grants a training facility use of the Olympic brand. In return for the right to advertise itself with the familiar Five Rings, the training facility provides access to an NGB at a steeply reduced, or free, rate.<sup>1023</sup> Several USOC officials

characterized this relationship as essentially a marketing license.<sup>1024</sup> By adopting this arrangement, the USOC is implementing a strategy for supporting NGBs and elite athletes that is consistent with its view of the Ted Stevens Act. Mr. Adams explained his impression that “Congress made clear in 1978 that we are not going to give you money but [we] will give you exclusive jurisdiction over the marks and we need you to go out and leverage those marks to generate revenue to support athletes.”<sup>1025</sup>

When leveraging its marks in the context of Olympic Training Sites, however, the USOC conducts almost no initial or ongoing review of the facilities. The USOC receives quarterly and yearly reports, but these reports concern the number of athletes using the site, the performance results of those athletes and media coverage of the site, among related topics.<sup>1026</sup> Similarly, the USOC maintains a general checklist for each training site, but the Senior Director for the Olympic Training Centers noted by way of example that this checklist records information such as whether the training site serves food rather than any color on what food is served.<sup>1027</sup> Indeed, the USOC’s oversight almost entirely relates to whether the site is properly using the brand,<sup>1028</sup> which the USOC tightly protects through restrictive clauses in the operative contract.<sup>1029</sup> The Independent Investigation reviewed one email dated January 2014, in which a USOC employee stated that by 2017, the USOC would require the Karolyi Ranch to comply with SafeSport’s minimum standards, and “encourage[d]” USAG to adopt policies at the Ranch prior to 2017,<sup>1030</sup> but there is no indication that the USOC conducted any other measure of SafeSport-related oversight. As Mr. Blackmun acknowledged, the USOC had “no resources on the ground.”<sup>1031</sup>

By disclaiming any oversight of training sites that carry its brand, the USOC lost control over maintaining standards that correspond with the excellence and high quality the Five Rings convey. Mr. Blackmun acknowledged this threat by remarking that the USOC’s brand was

valuable in providing an Olympic seal of approval and recognized in his interview, “obviously the danger is that if athletes come there thinking that it is a USOC facility that is overseen by us.”<sup>1032</sup>

Ms. Lyons, reflecting on the shortcomings of this arrangement, observed in her interview that “it is confusing for people to draw the distinction” that the USOC does not oversee the training facility.<sup>1033</sup>

The USOC’s designation of the Karolyi Ranch as an Olympic Training Site provides an illustrative example of the danger of lending the Olympic brand without corresponding oversight. The USOC did not perform any traditional due diligence such as conducting a site inspection or otherwise investigating the conditions at the Ranch. Nor did it undertake any specific assessment to determine whether the remote location was appropriate for a physically dangerous sport like gymnastics.<sup>1034</sup> Nevertheless, in a press release announcing the designation of the Karolyi Ranch as an Olympic Training Site in 2011, Mr. Blackmun highlighted the relationship among the Karolyi Ranch, the USOC and USAG, stating “the designation as an official training site underscores the USOC’s support of this relationship.”<sup>1035</sup> And the USOC’s branding worked to create understandings and expectations among athletes and families.<sup>1036</sup> As the mother of a gymnast remarked in an interview with a reporter, “Where are the other adults that were at the Olympic training center, allowing this to go on[?]”<sup>1037</sup>

#### 4. *The Development of SafeSport Reflected the USOC’s Service-Oriented Approach*

The USOC’s decision to assume a deferential approach to the NGBs likely contributed to its slow response to the dangers of sexual misconduct in Olympic sports and hampered its ability to respond effectively when the organization first began to take action. Although NGBs raised the issue of child sexual abuse in sports to the USOC, including as early as 1999, the USOC only responded to the threat following a major public scandal at a large NGB in 2010.<sup>1038</sup> The USOC



ultimately took many steps to protect athletes, but it approached this work from within the self-imposed constraints of its limited ability and willingness to impose governance changes on NGBs, as well as its observance of certain due process considerations that were structured to protect an athlete's ability to compete rather than to protect minors from sexual abuse. Moreover, the USOC never created an auditing process by which it would become aware of sexual abuse allegations at NGBs<sup>1039</sup> and never required NGBs to track this information.<sup>1040</sup> The USOC therefore did not know, for example, that USAG had received a high number of complaints or anything about the nature of those complaints.<sup>1041</sup> At most, the USOC implemented a high level check-the-box audit to ensure that NGBs had a basic policy, but without any accompanying review of the actual policy.<sup>1042</sup>

*The USOC's Slow Response to a Growing Awareness of Sexual Misconduct* – Over the past few decades, there has been a growing societal awareness of the pervasiveness of sexual abuse in youth-oriented organizations. Large-scale sexual abuse crises have hit many organizations, such as the Catholic Church, the Boy Scouts, schools and hospitals. Stories of abuse in youth sports have likewise grabbed headlines. For example, the cover page of the September 13, 1999 issue of *Sports Illustrated* stated “Who’s Coaching Your Kid,” with a center story concerning coaches who used their position to gain the trust and loyalty of children and then abuse them.<sup>1043</sup>

In 1999, USAG's then-CEO Robert Colarossi sent a letter to William Hybl, Dick Schultz and Mr. Blackmun, the USOC's then-President, Executive Director and General Counsel, respectively, concerning the issue of sexual misconduct, specifically referencing and attaching the *Sports Illustrated* article.<sup>1044</sup> Although the topic of the letter related to a procedural issue, the letter underscored the threat of sexual misconduct in sports, including specifically in gymnastics, and urged the USOC to “position itself as a leader in the protection of young athletes,” warning that

otherwise the USOC would be “forced to deal with the problem under much more difficult circumstances.”<sup>1045 xlv</sup> Similarly, five years later, USA Swimming reportedly reached out to the USOC raising concerns about the risk of child sexual abuse in swimming, and requested that the USOC take a leadership role in developing protective policies that NGBs could implement on the local level.<sup>1046</sup>

Despite this growing recognition of the threat of sexual abuse, the USOC and many NGBs failed to adopt updated policies and practices. Mr. Blackmun stated that when he joined the USOC as CEO, the subject of child sexual abuse in sport was “not on my radar.”<sup>1047</sup> He stated that “when I started in 2010 if someone said what are the top fifteen priorities for the USOC, I wouldn’t have had sex abuse on the list.”<sup>1048</sup> And the USOC had not taken any steps to position the organization to better understand the nature and seriousness of the issue, such as by collecting information from NGBs on the topic.<sup>1049</sup> Moreover, the decreasing voice of athletes in the governance process and the ineffectiveness of the available avenues for raising complaints further isolated the USOC and delayed the USOC from recognizing the pervasiveness of the problem. The delayed leadership from the USOC on this issue permitted NGBs to continue to choose their own policies, some of which were not conducive to athlete safety. For example, NGBs, including USA Archery, U.S. Figure Skating, USA Water Polo and USA Water Ski, required complaints to be filed within 60 or 180 days of the violation,<sup>1050</sup> and at least U.S. Figure Skating reportedly cited this requirement in dismissing a complaint of sexual misconduct.<sup>1051</sup> Other NGBs enacted procedural requirements that operated to prevent the NGBs from taking effective action; for example, USA Swimming

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<sup>xlv</sup> In a recent affidavit, former USAG President Kathy Scanlan stated, “Despite communicating concerns about sexual misconduct in the sport (specifically by adult professional members of USAG) to USOC, the USOC discouraged USAG from using its established process to investigate and ban these members.” Scanlan Decl., Court Filings on file with the Independent Investigators. During her interview with the Independent Investigators, Ms. Scanlan recalled one conversation with representatives from the USOC concerning the appropriate procedures to follow when disciplining a coach. Ms. Scanlan noted, “It is fair to say I was extremely frustrated with USOC, but that frustration under my watch did not prevent us from doing what was right.” Scanlan Interview.

required a formal complaint before responding, even after receiving credible reports of ongoing abuse.<sup>1052</sup>

When the 2010 sexual abuse scandal erupted at USA Swimming with an ABC television report detailing numerous relationships between coaches and young swimmers, and revealing that 36 coaches had been banned over the previous decade,<sup>1053</sup> USA Swimming was caught in a media firestorm. The crisis was compounded by a statement made during a televised interview with ABC by the then-CEO for USA Swimming, Chuck Wielgus. When asked a question about the survivors of abuse, he responded indignantly by asking: “You feel I need to apologize to them?”<sup>1054</sup>

The survivors did not limit their criticism to USA Swimming, with one of the survivors explicitly stating that “this is not just USA Swimming.”<sup>1055</sup> Other NGBs took notice. As the former president and chairwoman of USA Track & Field (“USATF”) remarked, “Once the allegations and the findings came out at swimming, the [USATF] board felt like we needed to accelerate” checks at the elite level.<sup>1056</sup> But many NGBs were behind the curve, and the USOC faced the challenge of helping the diverse NGBs create new and proactive policies to address this now recognized danger.

The USOC initially reacted quickly to the USA Swimming news,<sup>1057</sup> and Mr. Blackmun convened an initial working group in June 2010 shortly after the USA Swimming allegations surfaced in the media.<sup>1058</sup> The group was “formed to assess the issue and make recommendations regarding child protection in U.S. Olympic and Paralympic sports” to the USOC Board.<sup>1059</sup>

*The USOC’s SafeSport Working Groups* – The findings of the initial SafeSport working group were consistent with the USOC’s service-centered outlook. The group noted that “As the NGBs are separate entities from the USOC, the Working Group determined that the USOC should encourage (though not require) NGBs to adopt policies, practices, programs and tools to address

sexual and physical misconduct and that the USOC should encourage NGBs, in turn, to encourage their clubs and other grassroots organizations in their sport to do the same.”<sup>1060</sup> The working group’s recommendation included that the USOC “play a leadership role in promoting safe training environments,” that the USOC “lead by example,” and that the USOC “[e]ncourage NGBs to [a]dopt Safe Sport [t]ools.”<sup>1061</sup> The Working Group concluded that “[e]ach sport will be responsible for putting safeguards in place and meting out punishments.”<sup>1062</sup>

Mr. Blackmun acknowledged that “we came to the game too late,” but emphasized that “when we got there we addressed it in earnest and with more resources than ever has been given to this issue.”<sup>1063</sup> He explained that the USOC’s hesitancy to force through policies at the grassroots level was due to resistance from the NGBs, which took the position that “that is their group and their sport and they don’t want a USOC presence there.”<sup>1064</sup> Some NGBs did push back against increased USOC oversight and the associated costs of SafeSport, especially certain NGBs less focused on the Olympics,<sup>1065</sup> but as indicated by the letters from USAG and USA Swimming in 1999 and 2004, other NGBs welcomed the USOC’s involvement.<sup>1066</sup> In particular, USAG expressed great interest in creating an outside body that could handle sexual misconduct matters.<sup>1067</sup>

As part of the USOC’s efforts, Mr. Blackmun hired Malia Arrington to the newly-created position of Director of Ethics and SafeSport in April 2011.<sup>1068</sup> Ms. Arrington explained that the job description “made it clear that initially [the USOC] envisioned a resource-based role that would provide resources to the NGBs,”<sup>1069</sup> and “it was very clear that my role was to provide resources.”<sup>1070</sup> Ms. Arrington summarized the USOC’s approach by explaining that when she arrived “in April 2011, it was all resources, resources, resources.”<sup>1071</sup> Consistent with this mindset,

it was the USOC's policy that if Ms. Arrington learned of a misconduct issue, "the obligation was to get [the complainant] to the right person within the NGB."<sup>1072</sup>

Ms. Arrington, however, soon recognized that "NGBs need to get out of the business of addressing these issues,"<sup>1073</sup> and the USOC's outlook began to evolve. In July 2012, the USOC organized an NGB task force for minimum SafeSport standards,<sup>1074</sup> and following discussions at the December 2012 Board meeting, the USOC issued its minimum standards requirements for the first time.<sup>1075</sup> These minimum standards included requiring that each NGB establish a reporting procedure and a grievance process, among other basic requirements.<sup>1076</sup> Mr. Blackmun commented that this was "the big step" in USOC's SafeSport initiative.<sup>1077</sup>

But the minimum standards requirements, while important, were nevertheless insufficient. Despite recognizing that NGBs were not well positioned to address issues of sexual misconduct in their own sports, the USOC ensured that there would be "a lot of room for each NGB to customize its program."<sup>1078</sup> The USOC summarized its approach in a December 2012 NGB meeting, explaining that, "How far each of the NGBs [goes] into each of these [elements of the SafeSport program], we've given some guidance, but ultimately it's up to the NGB to do their best to incorporate those elements into the program."<sup>1079</sup> In recognition of the limitations of this initial requirement, the USOC assured NGBs at the end of 2013 that it "has not mandated the adoption of uniform or specifically drafted policies or practices but instead has provided the Minimum Standards Policy for Athlete Safety Programs as a baseline guide."<sup>1080</sup>

As it was developing these "minimum standards," the USOC formed a second working group to study the issue in greater detail. This group had the task of "deliver[ing] an informed recommendation to the USOC concerning possible models to manage cases of misconduct in sport."<sup>1081</sup> This working group went further than the first and drew up plans for a new independent

SafeSport entity tasked with addressing all sexual misconduct-related matters.<sup>1082</sup> The working group recommended that the USOC empower the SafeSport entity with authority over all sexual misconduct investigations and discipline, and most strikingly, recommended that participation by NGBs should be mandatory.<sup>1083</sup> In January 2014, the AAC unanimously voted to endorse the SafeSport working group’s recommendation, and in June 2014, the USOC board approved the plan to create an independent SafeSport entity.<sup>1084</sup>

*Delay in Opening Center for SafeSport* – USOC eventually implemented the findings of the 2013 working group by opening the independent Center for SafeSport. In September 2014, approximately a year after the working group’s report, the USOC planned on a 2015 launch for the Center.<sup>1085</sup> A year later, the USOC had pushed the projected launch out to Q2-Q3 2016,<sup>1086</sup> and by December 2015, the USOC had settled on a July 2016 launch.<sup>1087</sup> The Center for SafeSport eventually opened in March 2017,<sup>1088</sup> almost seven years after the USOC had formed its initial SafeSport working group and over three and a half years after the second working group had presented its findings recommending the establishment of the Center.<sup>xlvi</sup>

Among the reasons for the delay were fundraising challenges,<sup>1089</sup> limited resources given that the USOC’s SafeSport “department” was a single person for much of this period,<sup>1090</sup> and difficulties obtaining insurance.<sup>1091</sup> In addition to these resource and logistical difficulties, the USOC continued to face structural challenges, including difficulties reorienting from a service- to

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<sup>xlvi</sup> The SafeSport policies, while an improvement, continued to have flaws reflective of USOC’s outlook. Specifically, the Center for SafeSport considered the impact of the allegations on the reputation of USOC as a factor in determining the punishment for an offense. In the grievance hearing process for a complaint against an individual, the review panel issues a finding and imposes sanctions by taking into account, among other factors, any ongoing risk, the age of the parties, and *the effects on the USOC’s reputation*. USOC, Policy on U.S. Center for SafeSport, <https://www.teamusa.org/-/media/TeamUSA/Media/USOC-SafeSport-Policy-62917.pdf>. Ms. Lyons recognized at the May 23, 2018 Congressional hearing that this final factor “does not belong on that list.” Ms. Pfohl, the Chief Executive Officer for the Center for SafeSport, sought to clarify the provision in her testimony, explaining that if the conduct “reflects poorly on the sport . . . then that can be used in terms of making an appropriate sanction.” Transcript, House Energy and Commerce Committee Hearing (May 23, 2018).

an oversight-centered approach<sup>1092</sup> and moving the NGBs away from an ingrained interpretation of the Act that was based on protecting athletes' right to compete.<sup>1093</sup> But during all of the delays in opening the Center for SafeSport, the USOC did not enact basic protective measures, such as ensuring that the Olympic Training Sites established sufficient athlete safety policies or requiring NGBs to comply with best practices during travel involving adults and children. One notable illustration of the USOC's failure to enact on-the-ground measures was the USOC's lack of attention to improving the process by which athlete complaints were being handled and resolved.

#### 5. *Concerns about the Complaint Process Across Olympic Sports*

In canvassing policies and procedures across the NGBs and interviewing numerous athletes who had raised complaints of misconduct over the years, certain patterns emerged. A number of interviewees discussed the concern that even as the SafeSport working groups were developing high-level policies between 2010 and 2017, the USOC failed to update its own processes for handling complaints.<sup>1094</sup> These witnesses also noted that the policies in place at many NGBs were ineffective.<sup>1095</sup> Indeed, the USOC continued its practice of declining to intervene at the level of individual complaints and, at the same time, remained largely in the dark with respect to NGB-level complaint processes. Many NGBs lacked employees with expertise in handling complaints of abuse, and some athletes and other participants feared that making a complaint directly to the NGB for their sport would result in retaliation and permanent harm to their athletic careers.<sup>1096</sup>

Interviewees, including survivors of sexual misconduct and other forms of abuse and their legal counsel, described a formal complaint process that reinforced the power disparity between the NGBs and individual amateur athletes.<sup>1097</sup> Given that the USOC does not provide attorneys for athletes and the Athlete Ombudsman does not currently act as an advocate for the athlete during the complaint process, athletes described a cumbersome process that was difficult to navigate on

their own, and for which it was too expensive to engage outside assistance.<sup>1098</sup> <sup>xlvi</sup> Some also described frustration with structural elements of the complaint process that required the exhaustion of certain administrative procedures.<sup>1099</sup> Finally, concerns were raised about the integrity and fairness of the dispute resolution process.<sup>1100</sup> Counsel who have represented a number of survivors of sexual abuse in Olympic sport reported that at least certain NGBs engage in a practice whereby the NGB's legal counsel initially works with the athlete during the NGB's internal review of the allegations at the outset of the complaint process, only to later oppose the athlete if the complaint proceeds to arbitration or civil litigation.<sup>1101</sup> In one instance, an NGB's lawyer, acting first in an investigative role, prepared an affidavit for a complaining athlete's signature.<sup>1102</sup> Yet after the athlete brought a civil lawsuit against the NGB, that same lawyer entered an appearance on behalf of the NGB in the court proceeding.<sup>1103</sup> Such "dual" roles, first as investigators and then as litigators in adversarial proceedings, allow counsel to an NGB to gain early access to the strengths and weaknesses of a complainant's allegations for potential use in subsequent confrontational proceedings, and also afford the NGB an opportunity to develop evidence during an early stage of the proceedings, such as sworn statements from the athlete, in a manner that may serve the interests of the NGB over those of the athlete.

In addition, and as detailed above, the USOC's formal complaint process does not naturally accommodate sexual misconduct matters. A contributing factor to this deficiency is that the USOC Bylaws are rooted in the animating purposes behind the Ted Stevens Act from the 1970s – protecting athletes' rights to participate. As Ms. Arrington explained, "the Act to my mind grew out of a rights-based movement about individual rights to compete and to participate."<sup>1104</sup> In that respect, the various protections that are part of the process – either as codified in the Bylaws or in

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<sup>xlvi</sup> Unlike in other civil enforcement schemes, providing for example "damages and reasonable attorneys fees," 18 U.S.C. § 1595, the USOC does not provide legal costs or fees to a successful complainant. 36 U.S.C. § 220500.



the long-observed USOC “Due Process Checklist” – are important, including, for example, the six-month statute of limitations to bring an arbitration claim when an NGB is looking to move forward with a settled team. But such requirements are not always appropriate in the context of sexual misconduct or other complaints involving child survivors of abuse.

Outside of the formal complaint process, prior to the creation of the Center for SafeSport, complaints raised by athletes alleging misconduct were routinely rerouted back to the associated NGB.<sup>1105</sup> The Chair of the AAC characterized this practice as cases being “thrown back over the wall” to the NGBs without any clear guidance to either the complainant or the NGB as to next steps.<sup>1106</sup> For example, when an athlete who had reported sexual abuse by a famous speed skater met with Mr. Blackmun in March 2013 to demand that US Speedskating revoke the perpetrator’s membership, the reporting athlete recalls Mr. Blackmun responding, “There’s nothing I can do,” and that he had “no control over the NGBs.”<sup>1107</sup> In November 2015, Ms. Arrington, following USOC policy at the time, responded to a report of misconduct by a member of an NGB’s administrative team by directing the complainant to make a report to that administrative team, writing, “I wanted to advise you that you have reached the U.S. Olympic Committee’s safe sport inbox and that allegations of misconduct are addressed through the relevant national governing body.”<sup>1108</sup> Similarly, in June 2016, Ms. Arrington, again following USOC policy, informed a complainant who wanted to “report multiple instances of bullying, emotional and physical harassment” that “any report needs to go to your sport national governing body.”<sup>1109</sup>

By directing complainants back to the relevant NGB, the USOC failed to appreciate the concern that the complainant could face retaliation from the NGB. Athletes and coaches expressed a fear of bringing complaints about a popular coach or administrator to a tight-knit NGB,<sup>1110</sup> with one coach reporting that she was terminated after raising concerns about an abusive swim

coach,<sup>1111</sup> and an athlete reporting that she received a designation as a troublemaker after making a complaint about a speedskating coach.<sup>1112</sup> This same athlete, fearing further retaliation, later did not file a complaint after learning that a popular coach was engaging in a sexual relationship with a teammate. Instead, this athlete had to endure what she termed a “rigged” selection process, where the coach favored the athlete with whom he was engaged in a sexual relationship.

Many other athletes raised concerns about NGBs’ tolerance for coach-athlete relationships, with a former track and field athlete recalling that “track coaches dated their athletes: from the beginning of time that is what happened,”<sup>1113</sup> and an Olympic swimmer recalling that the culture of the sport “allowed young girls to be molested under the guise of ‘dating.’”<sup>1114</sup> The USOC recognized this threat by including a ban on coach-athlete relationships in its Minimum Standards Policy for Athlete Safety Programs.<sup>1115</sup> But the USOC took no effective steps to ensure that NGBs were following this ban. And after USAG received this Minimum Standards Policy from the USOC in 2014, it interpreted the mandatory definitions concerning misconduct as “recommended,” and “toned them down several notches,” including by removing the required ban on romantic relationships between athletes and coaches at the club level.<sup>1116</sup>

B. United States of America Gymnastics

## SELECTED FINDINGS

- USAG was aware of the danger of sexual abuse in its sport, took high-level steps to help protect gymnasts and promoted itself as a leader in athlete protection issues. However, USAG erected numerous procedural obstacles in the complaint resolution process that kept USAG from effectively addressing serious, credible allegations of child sexual abuse.
- These obstacles included requiring a complaint to come from a survivor or a survivor’s parent; refusing to investigate complaints where the reporting party wished to remain anonymous to the perpetrator; refusing to investigate complaints where the reporting party did not submit a signed, written complaint; limiting available sanctions if the alleged conduct was not “criminal” in nature; failing to follow up on complaints of misconduct; and losing track of important information about accused coaches.
- USAG did not take steps to ensure effective oversight of Nassar throughout the period of his serial sexual assault of gymnasts, including at national and international competitions, in hotel rooms when the National Team was traveling, and at the National Team Training Center at the Karolyi Ranch.
- USAG’s lack of oversight allowed Nassar to consolidate and entrench his position within a larger structural environment that lacked effective athlete-protection policies and practices and operated to discourage reporting of misconduct.

Historically, USAG enjoyed substantial success as an NGB. As Mr. Penny proudly stated in the spring of 2015, if “[y]ou want to take a picture of a prototypical NGB, you take a picture of us.”<sup>1117</sup> Mr. Penny observed that USAG was winning medals, gaining sponsors, selling out events, building a vast social media following and generating ever-increasing revenues.<sup>1118</sup> Indeed, based on the repeated successes over the past two decades, especially by the Women’s National Team, “USA Gymnastics” came to be associated with Olympic excellence, and USAG used what it called its “Big Time Brand” to form partnerships with key sponsors and expand its membership across the country.<sup>1119</sup> USAG’s many successes, however, masked an organization that had developed major, fundamental weaknesses.

In particular, USAG failed to conduct oversight over powerful personalities charged with important responsibilities at the National Team level, most notably the Karolyis and Larry Nassar. Likewise, USAG failed to exert its substantial authority over its membership to better protect gymnasts across the country. And although USAG took many steps over the past decades to implement policies and practices aimed at keeping members safe (including the development of educational brochures<sup>1120</sup> and the creation of a “permanently ineligible list”<sup>1121</sup>), USAG adopted a role primarily as a resource-provider rather than an enforcer to its member clubs. Despite USAG’s unique position to take effective action, USAG restricted its response to allegations of misconduct due to a constrained view of its role, a mistaken perception of due process limitations and, ultimately, an unwillingness to become involved in complicated matters of misconduct.

#### *1. USAG Conducted Limited Oversight of Nassar*

USAG is a not-for-profit, membership organization comprised of gyms, athletes and professional members such as coaches and judges.<sup>1122</sup> <sup>xlvi</sup> USAG maintains requirements for

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<sup>xlvi</sup> As noted in Part IV.C, USAG filed for Chapter 11 bankruptcy on December 5, 2018. Bankruptcy Petition, Court Filings on file with the Independent Investigators.

membership, endorses or “sanctions” competitions, maintains records and databases about its membership, provides educational material to its membership, and hosts national conferences, called USAG Congresses, among other activities.<sup>1123</sup> And in addition to managing its membership, USAG, most recognizably, is responsible for selecting and training the national teams and coordinating participation in national and international competitions.<sup>1124</sup>

USAG, however, has historically conducted minimal oversight over certain aspects of the development of its national teams, including the Women’s National Team training camps at the Karolyi Ranch. And USAG’s decision not to exert its authority over Nassar or his management of the organization’s medical care contributed to Nassar’s ability to abuse hundreds of athletes. Nassar was able to carve out, and reinforce, a role in the organization where he had unrestricted access to young gymnasts with almost no oversight.

As explained in Part II.A, Nassar was able to create a reputation for himself as an advocate for athletes, and he gained the trust of gymnasts and their families. But Nassar was equally successful in establishing an area of influence and power at USAG. From his volunteer position as National Medical Coordinator, Nassar had a role in almost every aspect of USAG medical care for close to two decades. Nassar organized medical care for USAG’s events,<sup>1125</sup> coordinated with medical providers when the National Team was on tour,<sup>1126</sup> approved which medical staff attended which events,<sup>1127</sup> provided input on whether individual athletes could bring their own medical providers<sup>1128</sup> and served as the point person for approving any such outside medical providers.<sup>1129</sup> And USAG relied on Nassar to store and organize medical records.<sup>1130</sup> Nassar also regularly provided feedback to USAG on other medical personnel. For example, after Nassar learned that a trainer had taken “inappropriate pictures . . . of athletes,” he wrote to a USAG administrator that this was “a major violation that USAG needs to be aware of and should be investigated to see if

he should be banned from having professional membership and banned from all USAG sanctioned events.”<sup>1131</sup> And concerning a doctor who worked at one event, Nassar wrote: “I question his morals and medical ethics and I would not trust him for a minute since he is trying to conceal something since he is not being open about his procedure.”<sup>1132</sup> xlix

USAG also relied on Nassar to draft the policies and procedures for the medical department. As a result, Nassar was not only in a position to evade review, but also well-positioned to further entrench his position. Most strikingly, Nassar himself participated in drafting the rules concerning sexual misconduct, which he did by (i) including one bullet point under “prohibited conduct,” which listed “sexual misconduct” without further explanation, and (ii) providing protections against false accusations.<sup>1133</sup> The section in his initial draft on “disciplinary action” begins with a statement, “In order to protect our athletes from harm and protect our staff from false accusations, a criterion for disciplinary action has been developed,” and provides that “[i]f [a] staff member was falsely accused, then an apology will be submitted to the staff member.”<sup>1134</sup> The final version of the July 2014 Guidelines does not adopt this language and states that “[i]n the event a medical staff member’s treatment or care is called into question,” USAG can consult with medical professionals, including members of the USAG medical staff.<sup>1135</sup> Notably, when Nassar next edited the Medical Guidelines as part of a yearly update, he commented on this language, “How is this peer review decided? This needs to be discussed further. I am not comfortable with the way this is stated.”<sup>1136</sup>

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<sup>xlix</sup> In addition to providing feedback on medical providers, Nassar was in a position of authority to provide his opinion on other USAG members, including coaches facing allegations of misconduct. For example, in 2011, when a club coach approached Nassar regarding sexual misconduct-related concerns she had about Marvin Sharp, a gymnastics coach who later committed suicide in his jail cell following his arrest on four counts of child molesting and three counts of sexual misconduct with a minor, Nassar advised the coach not to report the conduct because she did not need anymore headaches in her life. RGID-3347161-0000003139; Associated Press, *Gymnastics coach accused of child molestation found dead*, ESPN (Sept. 20, 2015), [http://www.espn.com/olympics/gymnastics/story/\\_/id/13700729/gymnastics-coach-marvin-sharp-accused-child-molestation-found-dead-jail-cell](http://www.espn.com/olympics/gymnastics/story/_/id/13700729/gymnastics-coach-marvin-sharp-accused-child-molestation-found-dead-jail-cell).

Nassar also effectively consolidated his position at USAG by earning the trust of key members of USAG, including by leveraging sensitive injury information about gymnasts. Nassar included National Team Coordinator Martha Karolyi, Assistant Woman’s National Team Coach Steve Rybacki, and athletic trainer Ms. Van Horn in his “inner circle of confidence,” with whom he shared details of gymnasts’ injuries.<sup>1137</sup> Nassar noted that sharing this information could result in a breach of trust and, therefore, in the spring of 2015, shortly after Rhonda Faehn was appointed to lead the Women’s Team, he emailed Ms. Faehn to inform her that she was now part of this “inner circle,” and warned her that “[a]ll it takes is for one national team child to tell the others that ‘Larry can not be trusted’ and then my work with the team is ruined.”<sup>1138</sup> Nassar’s approach was successful, and he developed strong relationships with key USAG personnel, including what he termed a “relationship with trust” with Ms. Karolyi.<sup>1139</sup>

For the vast majority of Nassar’s career, USAG acted essentially as an administrator, helping Nassar with his work – arranging for his travel, helping him coordinate medical supplies and providing him with the opportunity to treat, and ultimately sexually abuse, gymnasts. USAG employees largely seemed thankful that such a talented doctor had decided to devote so much time as a volunteer.<sup>1</sup> Former Director of the Women’s Program and Director of the National Team Training Center, Gary Warren, remarked that he had “always admired your dedication to the athletes and coaches. Your energy level, your compassion and your commitment is unsurpassed by anyone I know.”<sup>1140</sup> And Ms. Kelly commented that “everyone knows how much you have contributed to the sport and how much you care about the athletes.”<sup>1141</sup>

USAG never examined Nassar’s medical records and never asked any detailed questions regarding exactly how Nassar conducted his treatments or what was the exact nature of the consent

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<sup>1</sup> USAG covered certain travel expenses for Nassar and provided him with a stipend for attending certain events, such as World Championships. USAG\_00009761; RGID-3347161-0000005197; USAG\_00360955.

he received from the athletes and their parents. In addition to failing to have any protocols in place regarding best practices for documenting and charting medical care,<sup>1142</sup> USAG similarly did not have any protocols in place concerning best practices for how to treat patients, such as whether, and how, trainers and doctors could treat patients in hotel rooms on the road, which is a practice Nassar often employed.<sup>1143</sup> Summarizing USAG's oversight of Nassar, Ms. Kelly, Nassar's ostensible supervisor, wrote to him in 2011 that she "somehow never thought that I was your supervisor."<sup>1144</sup>

USAG also had no staff member who was in charge of overseeing Nassar's delivery of medical care to gymnasts while they were training at the Ranch. At most, USAG had one staff member at the Karolyi Ranch, who was referred to as a "jack of all trades," and who, in addition to serving as a liaison for acquiring and managing training equipment, fixed mechanical and plumbing issues, ran errands for supplies and removed snakes and insects.<sup>1145</sup> As a result, Nassar had broad latitude to conduct medical treatments and commit serial sexual abuse at the Karolyi Ranch.

In January 2013, USAG belatedly began implementing policies to provide the organization with greater control over the medical department.<sup>1146</sup> As Mr. Penny commented, he "felt like we needed to just have a higher level of oversight and a higher level of accountability as to what we were doing in that area to provide care."<sup>1147</sup> Mr. Penny, therefore, convened a medical task force to centralize and systematize decision-making concerning medical care.<sup>1148</sup> Mr. Penny stated to the Independent Investigators that he did not create this task force due to a concern over any abuse, but rather to create "a higher level of administrative oversight than just having everything go through Larry Nassar."<sup>1149</sup> As Mr. Penny observed in a January 2013 email to Mr. Ashley



concerning delays in establishing a partnership with St. Vincent’s, an outside medical provider, “if Larry Nassar is the gate-keeper, then we have a real issue.”<sup>1150</sup>

At first, Nassar expressed excitement over the creation of the task force,<sup>1151</sup> and as noted above, he participated in the drafting of new Medical Guidelines. Nassar, however, eventually grew frustrated with his inability to control the group’s decision-making. The task force recommended that USAG partner with St. Vincent’s over Nassar’s strenuous objections and attempts to forge a partnership with MSU instead,<sup>1152</sup> and in February 2014, the task force’s work resulted in the consolidation and centralization of medical staffing decisions at USAG’s headquarters.<sup>1153</sup> As the task force continued its work, Nassar received an even more direct indication that he would have a diminished role at the organization. In the summer of 2014, USAG decided to appoint Dr. David Kruse as the “Athlete Care Coordinator,”<sup>1154</sup> essentially removing Nassar from his position at the center of the medical team. Following these decisions, in a July 2014 email, Nassar offered his resignation to Mr. Galimore, but Nassar ultimately agreed to continue working with the Women’s National Team, where he would remain until the summer of 2015.<sup>1155</sup> li

2. *USAG Failed to Exert Its Authority over Its Membership and Adopted Practices that Served as an Impediment to Addressing Credible Allegations of Abuse, While Maintaining a Public Reputation as a Leader in Protecting Athletes*

As explained in Part IV.A, there is an acute danger of sexual misconduct in the sport of gymnastics. USAG was better positioned than any other organization to take steps to confront and minimize this threat. USAG had the power to decide who could participate in official competitions;

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<sup>li</sup> In addition to his work for USAG, Nassar also worked with athletes in other Olympic sports. Email records reflect that Nassar served as the team doctor for Taekwondo at the 2008 Olympics, MSU-USOC-0004935, and worked with athletes from Figure Skating, Diving, Track & Field, and other NGBs in the 2012 time period. USAG\_SEN\_SCP\_00006176. The Independent Investigators have not been able to confirm whether Nassar abused athletes from these NGBs.

the authority to bestow its brand – strengthened by repeated Olympic triumphs – on qualified gyms and coaches; and a national voice and the ability to communicate with every member across the country. Given its position in the sport, USAG was uniquely situated to provide its membership with educational material, develop and enforce protocols and policies to ensure a safer gymnastics experience, learn of abusive coaches and improper conduct by other members, take effective action that could prevent such predators from moving from gym to gym, and otherwise build a positive culture conducive to promoting the safety of athletes. The importance of USAG taking such actions is magnified by the relative position of other participants in the sport, who often lacked the tools to independently address issues of sexual misconduct. Many of the member club gyms are small, family-run organizations<sup>1156</sup> with little experience concerning sexual misconduct matters.<sup>1157</sup>

Over the past few decades, USAG took many positive steps with an eye toward protecting athletes, including creating what was likely the first permanently ineligible membership list in Olympic sports, promulgating sexual abuse prevention policies, and providing education for its membership. Those steps, which USAG proudly advertised, generated a reputation for USAG as an organization focused on athlete safety. But at the same time that USAG was taking these publicized steps, it was also processing complaints of misconduct in a manner that permitted abusive adults to continue to have access to young children. The disconnect between USAG's public actions and private handling of complaints, between its asserted cutting-edge protective policies and its haphazard and disorganized approach when confronted with concrete reports of abuse, resulted from a cramped perspective of USAG's ability to take effective action combined with an unwillingness to take necessary steps.

a. *USAG's Efforts to Protect Gymnasts*

*Permanently Ineligible List* – In or about 1990, USAG became one of the first NGBs to maintain a list of persons permanently banned from membership and consequently any participation in a USAG-sanctioned competition.<sup>1158</sup> Since the 1990s, USAG publicized this banned list through its magazines *Technique* and *USA Gymnastics* and later placed the list on its website.<sup>1159</sup> The consequences of being named on the permanently ineligible list, aside from the notoriety and lack of membership in USAG, include not being permitted on the competition floor at a sanctioned event.<sup>1160</sup> In 2011, after USAG learned that a banned coach continued to coach at a gymnastics club, USAG updated its policies to prohibit any organization or individual hosting or participating in a USAG-sanctioned event from affiliating with a permanently ineligible member.<sup>1161</sup> By 2012, Ms. Jamison noted that USAG had added 69 names to the permanently ineligible list over the past ten years.<sup>1162</sup> In that same year, Mr. Penny and Ms. Jamison also began advocating with the USOC for a banned coaching list across the NGBs.<sup>1163</sup>

*Sexual Abuse Prevention and Response Policies* – USAG also promulgated many policies over the years aimed at protecting gymnasts, beginning in 1994 with the creation of the USAG Code of Ethics, which USAG updated over the years.<sup>1164</sup> USAG took another big step forward in 2008 in response to negative press coverage concerning former gymnastics coach Steve Infante. USAG had placed Mr. Infante on the permanently ineligible list in 1998,<sup>1165</sup> but did not alert law enforcement or take any other action at that time, and Mr. Infante continued to have access to gymnasts for the next decade.<sup>1166</sup> Following media coverage of this episode, Mr. Penny retained the services of attorney Suzette Bewley to review USAG's child-abuse prevention and response policies.<sup>1167</sup>

As Ms. Bewley noted, USAG was “increasingly facing issues concerning member and non-member misconduct, particularly sexual misconduct, in the sport of gymnastics,”<sup>1168</sup> and USAG had therefore requested that Ms. Bewley (i) review the policies and procedures of other organizations that regularly face member sexual misconduct issues – which Ms. Bewley did by reviewing policies at other NGBs; the British, Irish and Scottish gymnastics organizations; various churches; and other youth-oriented organizations<sup>1169</sup> – and (ii) explain USAG’s legal requirements after becoming aware of alleged sexual misconduct.<sup>1170</sup> Following Ms. Bewley’s report, USAG enacted the Participant Welfare Policy in 2009,<sup>1171</sup> which outlined USAG’s commitment to promoting a safe environment, as well as the requirements and expectations of its members.<sup>1172</sup> The Participant Welfare Policy included definitions of physical and sexual abuse, reporting procedures for suspected abuse, misconduct and grievance procedures, member obligations and recommendations, standards of behavior, and education and communication about the policy.<sup>1173</sup> USAG also implemented various other policies in response to Ms. Bewley’s recommendations, including creating an Event Sanction Certification, through which the director of a sanctioned meet was required to certify that no persons on the permanently ineligible list would be associated with the meet in any manner.<sup>1174</sup> And in the following years, USAG continued to implement new policies for its membership, including requiring member clubs to have a written policy regarding standards of behavior for staff and a policy for handling complaints of misconduct.<sup>1175</sup>

Even as USAG developed new policies designed to protect gymnasts, however, the organization did not draft comprehensive, internally consistent protocols, which resulted in a patchwork of policies that, as written, did not reflect a child-centric focus. For example, even after USAG created the Participant Welfare Policy to address matters related to sexual misconduct, USAG did not update the policy in the Code of Ethics laying out the process for filing a complaint.

In both the 1996 and 2016 versions of the Code of Ethics, a complainant raising any allegation of a violation of the Code, ranging from sexual abuse to cheating, must first address the concern to the offending member, and if that effort was ineffective, must provide a written, signed, specific complaint to the President of USAG or another appropriate staff member.<sup>1176</sup> Although there is no record of USAG using the obligation to directly confront an abuser as the basis for denying a complaint, a program director of an accused member coach's gym used this clause to defend the coach against a proposed boycott, arguing that the boycotters were violating USAG policy by refusing to directly confront the coach.<sup>1177</sup> And, as detailed below, USAG implemented the requirement that a complainant provide a written, signed, specific complaint in a manner that became one of the many obstacles to raising complaints about sexual misconduct.<sup>iii</sup>

*Educational Efforts* – In addition to implementing policies, USAG also provided its membership with educational resources for protecting athletes from sexual misconduct. In 1998, USAG mandated that all professional members, including coaches, judges and other officials, take the Safety/Risk Management Course, which included a subsection on child abuse prevention.<sup>1178</sup> The accompanying Risk Management handbook contains suggestions, such as to make all classes and practices transparent by encouraging parents and guardians to attend and watch.<sup>1179</sup> By 2005, USAG adopted a policy to hold sexual misconduct seminars at every regional and national congress.<sup>1180</sup> And in 2012, USAG launched the Clubs Care/We Care educational campaign aimed at member clubs and the parents of athletes to raise awareness regarding sexual abuse.<sup>1181</sup> As part of this effort, USAG created risk matrices listing various risk factors for clubs to consider.<sup>1182</sup>

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<sup>iii</sup> In a similar vein, the Women's National Team Manual defines unacceptable coaching behavior for events sanctioned by USA Gymnastics, including, among other violations, "verbal, emotional, sexual, or physical abuse of a gymnast." USAG\_HR\_O00001838; USAG\_HR\_O00000919. This policy provides for the same punishment for any violation of the policy, and the first penalty is a "verbal warning." USAG\_HR\_O00001838; USAG\_HR\_O00000919. Again, there is no indication that USAG provided a verbal warning as the official punishment for sexual abuse, but USAG did provide coaches accused of misconduct with a letter of warning when USAG was unable to process the complaint due to the procedural hurdles it had implemented, as discussed in greater detail in Part V.B.3.

Since April 2012, USAG has also run yearly programs in honor of Child Abuse Prevention Month by making SafeSport courses available for free and distributing information to professional members and parents of athletes.<sup>1183</sup>

b. *USAG's Reputation as a Leader in Protecting Athletes*

In conjunction with USAG's efforts to protect athletes from sexual misconduct, USAG cultivated a reputation as a leader in athlete safety and built a brand around its standard of care. In 1997, former president Kathy Scanlan wrote to a concerned parent that "USA Gymnastics has in fact been a leader among National Governing Bodies in the development of a Code of Ethics and in our vigorous pursuit of policies and programs to protect athletes."<sup>1184</sup> In 2008, Mr. Penny struck a similar chord in an editorial in *Technique* magazine, stating in part that USAG "has been a leader among national sports governing bodies for its proactive efforts in the areas of safety certification and other educational initiatives."<sup>1185</sup> And in 2011, Mr. Penny wrote an open letter to the USAG community in the wake of a negative press article regarding verbal, emotional, physical and sexual misconduct by gymnastics coach Doug Boger, stating that "[a]thlete safety is the #1 priority for USA Gymnastics."<sup>1186</sup>

USAG was successful in its promotion, and became a recognized leader among the NGBs. An article in *USA Today* from 2010 concerning allegations against USA Swimming noted that "[o]f the Olympic sport organizations, USA Gymnastics is among the most progressive in having [sexual abuse prevention] policies in place."<sup>1187</sup> Another outside observer wrote in 2013 that USAG was "a role model among NGBs."<sup>1188</sup>

As a result, when the USOC began developing its own SafeSport policies and practices, USAG was deeply involved.<sup>1189</sup> Mr. Penny, in particular, freely shared his perspective of best practices regarding child-protective policies with the USOC, NGBs and other organizations. For

example, after viewing a television special on sexual abuse at the Naval Academy, Mr. Penny emailed the reporter, noting that he felt compelled to reach out because “the military is not following best practices on the issue of sexual misconduct investigations and adjudications.” Mr. Penny noted that he has “dedicated [himself] and USA Gymnastics to being bold in its leadership on this topic,” and “it shocks me . . . that the military feels it should remain insulated on the topic.”<sup>1190</sup> As is apparent, USAG felt proud of its efforts, especially in comparison to other NGBs, and repeated the same message in other communications that “USA Gymnastics has always been the most proactive among the Olympic sports in attempting to safeguard athletes,”<sup>1191</sup> and that “[o]ur proactive measures are second to none in the Olympic movement.”<sup>1192</sup>

USAG actively marketed this reputation to parents and athletes to assure them of the high-level of safety at USAG member gyms. Mr. Penny explained in the foreword of a 2012 USAG newsletter, “[o]ur goal is for the USA Gymnastics brand to represent a level of prestige and credibility to the gymnastics club and sanctioned events. This adds value and reassurance to athletes and parents that the club is subscribing to a set of reliable standards.”<sup>1193</sup> The branding was effective in causing parents of elite gymnasts to place their trust in USAG. As one parent of an elite gymnast remarked in an interview with a reporter, they “told us they were taking care of our daughter,”<sup>1194</sup> and “we had to fully turn over trust.”<sup>1195</sup>

c. *Disconnect Between USAG’s Reputation and Effective Action*

As detailed in Part V.B.3, below, discussing USAG’s response to complaints about misconduct, USAG did not exercise its authority over member clubs and took many actions that failed to effectively respond to credible allegations of sexual assault, especially for an organization that viewed itself as – and had a reputation for being – a leader on the issue. There are many contributing factors to this disconnect, but two main causes emerge. First, USAG viewed itself as

a resource-provider and imposed limitations on its role in actively managing its membership. Second, USAG misconstrued principles of due process in a manner that led USAG to refuse to take action in response to credible allegations of sexual misconduct. And as demonstrated by USAG's response to the *Indianapolis Star's* investigation into the mishandling of the Marvin Sharp complaint, USAG fiercely guarded its reputation as a leader in child-protective measures, thereby widening this disconnect.

*USAG's Role* – USAG viewed itself akin to organizations similar to the American Medical Association and the American Bar Association.<sup>1196</sup> By assuming this position, USAG – much like the USOC – positioned itself as an organization responsible for educating its members, setting protocols for its membership and implementing general policies, rather than serving as an enforcement body, responsible for ensuring that members complied with best practices. USAG leaders, such as Mr. Penny, expressed the position that “[w]e can promote and encourage best practices, but we are not an enforcement agency.”<sup>1197</sup> More directly still, in a 2013–14 Athlete Member Advisement, USAG stated that it “is not responsible for actions or inactions that may occur at any local gymnastics club . . . [because] it does not . . . have any control or authority over what happens at the local level.”<sup>1198</sup>

USAG, however, had the power, if the leadership chose to exercise it, to mandate and enforce child-protective measures as a condition of membership. USAG's ability to withhold its brand and its exclusive authority to sanction elite gymnastics events afforded it significant power within the sport, given that competitive gymnasts needed to participate in such events if they were to advance toward National Team membership or the Olympic Trials or Games, and a local gymnastics club would have tremendous difficulty attracting talented coaches or athletes if they could not participate in USAG events. And even if USAG was not responsible for managing



affairs at the club level, USAG could still implement comprehensive and effective reporting policies so that it could promptly learn of misconduct at the club level and act decisively to protect gymnasts from abuse.

*Misconstrued Principles of Due Process* – One major reason that USAG publicly cited for its inability to act in response to reports of misconduct was the Ted Stevens Act.<sup>1199</sup> In May 2012, Ms. Jamison responded to a Facebook petition asking USAG to take more affirmative action by explaining that “[w]e continue to evaluate our policies and procedures against the industry’s best practices, but as we go forward we need to make sure that changes we make are allowable within the parameters of the Amateur Sports Act. As a result, we are not always able to move as quickly as some would like.”<sup>1200</sup> And in August 2016, Mr. Penny circulated a draft of a response to the *Indianapolis Star*’s story on USAG’s failure to report coaches accused of abuse by explaining that “[t]here have been times when the organization has been hamstrung by a hearing process mandated by its compliance with the Ted Stevens Olympic and Amateur Sports Act.”<sup>1201</sup> Such vague concerns regarding the requirements of the Ted Stevens Act had a trickle-down effect on the employees who were responsible for implementing USAG’s policies, and these employees passed along factually incorrect statements concerning the due process limitations. For example, Ms. Kelly explained to a parent reporting misconduct that, “As part of the Olympic sport family, we are also bound by the Amateur Sports Act (Federal Law) which forbids barring anyone from pursuing participation in the Olympic Movement.”<sup>1202</sup>

The source of USAG’s specific concerns regarding the Ted Stevens Act’s limitations is unclear. As explained above, in Part V.A.1, the Act establishes that an NGB must provide basic due process to any participant and does so by requiring “an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate . . . [and] fair notice and

opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate.”<sup>1203</sup> The Act also requires NGBs to “provide[ ] procedures for the prompt and equitable resolution of grievances of its members.”<sup>1204</sup> Therefore, as long as USAG provided accused coaches with a fair procedure before banning them, the Act would not interfere with USAG taking forceful and timely action in response to misconduct. As Mr. Blackmun explained in his interview with the Independent Investigators, “nothing in the Ted Stevens Act prevents . . . prompt and effective action,”<sup>1205</sup> further explaining that “any NGB who wants to suspend a coach can have a hearing on short notice and do that.”<sup>1206</sup>

Indeed, the Independent Investigation identified only one example concerning tension between USAG wanting to effect a policy aimed at protecting athletes from sexual misconduct and the USOC pushing back on the ground of due process. In the 1990s, USAG attempted to implement a policy in which any member who had been convicted of certain criminal charges or been placed on an official sex offender list would receive an automatic ban from the sport. The USOC raised the issue of the Act’s requirement that an NGB must provide an opportunity for a hearing before enacting a ban, and USAG’s CEO at the time, Mr. Colarossi, responded by writing a strongly worded letter to the USOC explaining his frustration with the hearing requirement as unnecessary process.<sup>1207</sup> USAG and the USOC ultimately resolved the matter after Mr. Blackmun, who was then serving as General Counsel at the USOC, was able to work with USAG’s lawyer to create a system whereby USAG held a prompt hearing and could suspend a coach expeditiously while complying with the requirements of the Act.<sup>1208</sup> A similar issue reappeared in 2006,<sup>1209</sup> and USAG and the USOC reached a resolution whereby USAG implemented changes to its bylaws by enumerating the criminal convictions that could trigger a ban without a hearing.<sup>1210</sup>

*Marvin Sharp* – The disconnect between USAG’s internal policies and its outward-facing reputation is strikingly illustrated by USAG’s response to allegations concerning former gymnastics coach Marvin Sharp. USAG not only failed to act in a responsible manner after receiving these allegations, instead relying on excessive process requirements, but also vigorously defended its public reputation after the *Indianapolis Star* began inquiring into this episode.

In October 2011, Mr. Penny and Mr. Vidmar received an email from a coach detailing concerns about Mr. Sharp’s behavior.<sup>1211</sup> Specifically, the email recounted that in 1995, the coach witnessed Mr. Sharp giving an inappropriate massage to a 10-year-old gymnast; in 2009, the coach heard from numerous athletes that they quit because “Marvin was weird and they didn’t want any part of it”; and now, in 2011, she learned that Mr. Sharp asked a 13-year-old gymnast to come into his office, had her remove her leotard and then massaged her pelvic area.<sup>1212</sup> Email records suggest that the coach and Mr. Penny thereafter spoke and later that evening, the coach sent a follow-up message to Mr. Penny memorializing her understanding that “the Mom must step to the plate” and make a complaint before USAG would act.<sup>1213</sup> The following day, the coach emailed Mr. Penny to explain that she had not yet spoken with the mother and then closed the email by emphatically stating, in capital letters, “Protect these girls, they deserve it!”<sup>1214</sup> Two weeks later, the coach reached back out to Mr. Penny to ask whether the mother had contacted him, but Mr. Penny does not appear to have responded to this message.<sup>1215</sup> Given that USAG never received a first-hand account of misconduct from a survivor or a survivor’s parent, pursuant to its policies discussed in greater length below, USAG took no action to contact authorities or to further investigate the allegations.<sup>1216</sup>

Almost four years later, on August 24, 2015, Mr. Sharp was arrested on charges of child molestation and was later charged with possession of child pornography.<sup>1217</sup> That same day,

Mr. Penny emailed himself the 2011 warning regarding Mr. Sharp,<sup>1218</sup> which he later shared with law enforcement at the Indianapolis Metropolitan Police Department (“IMPD”).<sup>1219</sup> The police did not fault USAG for not previously disclosing this notice.<sup>1220</sup> The following year, however, the *Indianapolis Star* reached out to USAG concerning its historical failures to report misconduct to law enforcement and specifically referenced the 2011 email regarding Marvin Sharp.<sup>1221</sup> Mr. Penny thereafter took actions emblematic of USAG’s efforts to maintain its public reputation, including by relying on a personal relationship with an IMPD detective to try to “kill the story.”<sup>1222</sup>

Throughout the summer of 2016, Mr. Penny engaged in regular communication with Lieutenant Bruce Smith, a supervisor at the Indianapolis Police Department’s Child Abuse Unit,<sup>1223</sup> concerning USAG’s failure to act on the 2011 notice.<sup>1224</sup> Detective Smith appears to have been on friendly terms with Mr. Penny.<sup>1225</sup> Although the communications show that both Mr. Penny and Detective Smith seem to have shared a personal belief that the 2011 email was too vague to implicate USAG’s duty to report or to conduct a further investigation, their text messages reflect a seemingly single-minded focus on protecting USAG’s public reputation.<sup>1226</sup> In particular, a text message in the exchange, reflecting on actions by the *Indianapolis Star* reporters, states that “it’s disgusting that someone would do this when USA Gymnastics is such a positive for a country which is frankly in real crisis.”<sup>1227</sup> Thereafter, Detective Smith, in consultation with Mr. Penny, defended USAG by engaging in individual outreach with *Indianapolis Star* reporters, including in off-the-record conversations,<sup>1228</sup> and by drafting a favorable press release from the IMPD concerning USAG’s reporting of Mr. Sharp,<sup>1229</sup> which the police department never released.<sup>1230</sup> Mr. Penny and Detective Smith’s outlook on the importance of the issue of whether USAG properly reported the 2011 email in comparison with the importance of protecting USAG’s

reputation is summarized in a text message from their exchange reading, “We need to body slam the other sources.”<sup>1231</sup>

During this time, Mr. Penny continued to portray USAG as following best practices, including in his communications with the USOC. In late July 2016, he emailed senior officials at the USOC, including Mr. Blackmun and Mr. Ashley, concerning the *Indianapolis Star*’s upcoming article, stating that “to reassure each of you, we have been told by local law enforcement that we handled that situation above and beyond any organization with which they have worked, and that there were no liabilities in our reporting.”<sup>1232</sup> This characterization is similar to USAG’s press statement regarding its report of Nassar’s conduct to law enforcement: “[T]he FBI . . . assured USA Gymnastics that the FBI was the appropriate agency to make the report and that USA Gymnastics had handled the matter correctly.”<sup>1233</sup>

### 3. *USAG’s Processing of Complaints Highlights Its Failure to Implement Athlete-Focused Policies and Practices*

USAG implemented a process for handling complaints that reflected, in USAG’s view, a “[s]trong desire to deal with misconduct in an effective way,” and that “[p]rioritiz[ed] safety.”<sup>1234</sup> In a presentation provided to the USOC to assist with the development of SafeSport, USAG explained that this process included “take the issue seriously, address all complaints, investigate facts, consult with legal counsel and other trusted advisors, stand behind decisions, continually review best practices [and] follow the policy.”<sup>1235</sup> In the spring of 2015, Mr. Penny confidently remarked, “[W]e have policies and procedures that I rely on every step of the way[.] . . . And if you’re asking yourself ‘What’s the right thing to do?’ you go back to the policy and say you followed the policy.”<sup>1236</sup> Yet, as illustrated by the Marvin Sharp example above and others below, despite the external statements and the surface appearance of thoughtful policies, USAG’s process

for handling complaints of misconduct failed to help protect athletes and contributed to additional harm.

Historically, USAG did not have robust protocols in place for handling complaint files, and throughout the 1990s, it “let a lot of this stuff languish.”<sup>1237</sup> Mr. Penny noted that when he was named CEO in 2005, he “[i]nherited [a] stack of unresolved files.”<sup>1238</sup> To sort through these files, as well as any new reports, Mr. Penny largely deputized Ms. Kelly, former-Vice-President of the Women’s Program, and Ms. Jamison, then-Executive Office Manager and Mr. Penny’s personal assistant, to handle misconduct matters, although neither had relevant education or training to help them understand the nuances of sexual misconduct matters.<sup>1239</sup> Both Ms. Kelly and Ms. Jamison also had many other duties at USAG, and therefore could not focus on misconduct issues with the attention the subject demanded. In March 2017, for example, Ms. Jamison wrote to Mr. Penny that she was “under water with [SafeSport] issues and need[ed] some help . . . [it] is too much for any one person to manage.”<sup>1240</sup>

*First-Hand Reporting Requirement* – USAG’s employees, who lacked proper expertise, enforced numerous policies that stifled appropriate responses to reports of misconduct. One notable policy was the requirement that any complaint must come from a survivor or the parent of a survivor before USAG would take any action, regardless of the seriousness or credibility of the report. For example, as noted in Part V.B.2.c, when Mr. Penny and Mr. Vidmar received the email expressing concerns about Mr. Sharp, Mr. Penny did not report the misconduct because the mother did not “step to the plate” and directly make a report.<sup>1241</sup> When the mother did not contact Mr. Penny, USAG took no action in response to the report of misconduct.<sup>1242</sup> Similarly, in 2009, a complainant reported to USAG that a gymnastics coach had sexually harassed the complainant’s wife by entering the bathroom where she was showering, opening the shower curtain and staring

at her, and also had been fired from a previous job for a relationship with an underage athlete.<sup>1243</sup> Ms. Kelly responded that USAG cannot address “these issues between Professional Members” because its policies only applied to minor athletes.<sup>1244</sup> After the complainant pushed back on that reasoning and restated that the coach had targeted underage athletes in the past, Ms. Kelly stated, “If you are able to have the underage athlete file a complaint, then we will pursue investigating that allegation.”<sup>1245</sup> And in 2010, after a gym owner reported that a coach had previously engaged in an intimate relationship with a minor gymnast, had claimed “mental illness” as a defense for the relationship and was now was in the process of opening a new gym, Ms. Jamison responded that “there is nothing to prohibit [the coach’s] continued membership in our organization,” because “[w]e must receive a complaint from an athlete (or a parent on behalf of an athlete) to open an investigation.”<sup>1246</sup>

Email correspondence reflects that Mr. Penny, and possibly other senior leaders, believed that the Ted Stevens Act justified the policy requiring a written complaint from a survivor or parent.<sup>1247</sup> The Act, however, does not prohibit investigating second-hand complaints of misconduct, and USAG noted in 2017 in response to media inquiries, “There is nothing in USA Gym rules, policies or Bylaws that precludes us from looking into concerns brought to our attention, regardless of the source.”<sup>1248</sup> Indeed, “USAG has the ability to initiate a complaint against a member (with or without an outside complaint) pursuant to section 10.2 of the Bylaws.”<sup>1249</sup>

*Requirements for Signed Complaint* – USAG rejected other complaints due to policies that similarly restrained USAG from taking action where the relevant reports were unsigned. In 1998, USAG received a detailed, but unsigned, complaint alleging that a coach, who was already on probation for molesting gymnasts in a hotel room, had given inappropriate massages and made sexual comments to young gymnasts.<sup>1250</sup> USAG reached out to the accused coach for a response,

but explained, “Please be assured that USA Gymnastics does not take action based on unsigned letters.”<sup>1251</sup> Similarly, in 2010, USAG received an anonymous complaint regarding a coach, which attached a 2008 police report concerning the coach and detailing “forcible fondling.”<sup>1252</sup> Soon thereafter, Ms. Kelly contacted the accused coach, explaining that “our procedures require a signed complaint letter before we begin an investigation. So until that occurs, we will not take any action.” Ms. Kelly then advised the coach to “take any steps necessary to discredit these allegation[s] before that happens.”<sup>1253</sup>

*Refusal to Process Complaints Where Complainant Requested Anonymity* – USAG also repeatedly refused to process even corroborated complaints where the reporting party, who was known to USAG, requested anonymity. For example, USAG received a complaint from a former gymnast regarding a coach’s sexual abuse of her, including touching her “back and bottom,” arranging her bra straps and kissing “on the cheek and crook of my neck.”<sup>1254</sup> But USAG refused to take any action because the complainant wanted to stay anonymous.<sup>1255</sup> USAG, therefore, sent the accused coach a letter explaining that USAG had received allegations, but because the gymnast had requested anonymity, “USA Gymnastics cannot move forward with its member misconduct process or an investigation.”<sup>1256</sup> Similarly, in February 2015, USAG received signed letters from a gym owner and a parent detailing a coach’s abusive style of training, which had resulted in one gymnast reporting the coach’s physical abuse to the police.<sup>1257</sup> The complaining parties, however, requested anonymity and expressed fear of retaliation.<sup>1258</sup> Ultimately, the gym owner asked to postpone the matter until after an upcoming competition due to a fear of unspecified “rep[e]rcussions,” but there is no indication that USAG ever attempted to reach out following that competition to reengage with the complaining parties, or otherwise moved forward with the allegations.<sup>1259</sup> USAG decided to codify these policies in the Participant Welfare Policy, which



required USAG staff members who received telephone inquiries regarding abuse to “[i]nform the caller that a written and signed complaint must be received for USAG to initiate its grievance procedures against a member of USAG pursuant to Article 10 of the USAG Bylaws.”<sup>1260</sup>

*Membership Requirements* – USAG further limited its response to allegations of misconduct by implementing policies that required reports to come from a member of USAG and required the report to concern a member of USAG. USAG justified these restrictions by citing to its limitations as a membership organization; Ms. Jamison’s understanding was “as a membership organization . . . the limit to our jurisdiction is the membership, period.”<sup>1261</sup> And although USAG had limited powers that extended largely to its own membership, the general rule that USAG could only take action when a report originated from a member and implicated a member restricted the USAG from acting on credible allegations of misconduct. For example, in 2013, a woman alleged that a USAG member had videotaped her in a bathroom stall eight years earlier “in a most vulnerable position.”<sup>1262</sup> Ms. Jamison responded that “our database shows you are not a member of the organization,” and encouraged the complaining witness to reach out to other witnesses, who were members, so that they could make reports.<sup>1263</sup> USAG also did not place former members accused of misconduct on the Permanently Ineligible list if their memberships had lapsed, which permitted these coaches to continue to participate in gymnastics without any warning to the public of their past misdeeds, a practice that USAG has begun correcting in recent years.<sup>1264</sup>

*Overreliance on Criminal Justice Process and Criminal Definitions of Abuse* – USAG also relied on the legal system’s adjudication of a coach’s conduct as a substitute for engaging in a thorough examination to protect its membership. As Mr. Penny and Ms. Jamison stated in a joint memorandum, “Our mantra is ‘let the law lead,’”<sup>1265</sup> which a former USAG representative expounded upon by explaining that USAG “waits until the evidence has been presented and a

judge/jury gives us their findings.”<sup>1266</sup> Where the legal system ultimately adjudicated a coach guilty of criminal acts of abuse, USAG responded by banning that coach, as the 1999 letter from Mr. Colarossi to the USOC and ensuing discussions between the USOC and USAG establish, as discussed in Part V.A.4. The flipside of this approach, however, was that USAG relied upon an acquittal or a decision not to press charges as a basis for limiting the punitive options available to USAG, and thereby adopted heightened standards of proof that were unwarranted in the context of permitting a coach to retain membership credentials and, through these credentials, access to young children. In 1997, USAG placed a coach on probation despite determining the report of child molestation to be credible because probation was “as much as we could do in light of the outcome of the court case,” which ended in acquittal.<sup>1267</sup> In a letter to the parents of the survivor, Ms. Scanlan expressed her “hope” that the probation will cause the coach to “not again abuse the trust an athlete and family give to him.”<sup>1268</sup> And in 2015, USAG did not take any action after receiving a report that a coach had been terminated from his position for inappropriate texting with minors and drinking alcohol with minors because the police “concluded their investigation and no charges have been filed.”<sup>1269</sup> Similarly, USAG did not suspend a member until there was an indication that law enforcement had taken action; in 2008, Mr. Penny wrote after receiving notice that a coach was accused of recording athletes changing in a locker room that “we do not suspend someone’s membership based on this level of information” and “[n]ormally we wait until someone has been arrested or indicted.”<sup>1270</sup>

USAG similarly failed to take action against coaches on the related basis that their actions were not “criminal” or failed to rise to a certain unspecified level of misconduct. In 1997, USAG suspended, but did not permanently ban, a coach who spent the night in a hotel room with gymnasts and touched them underneath their clothing because the behavior was “an isolated incident and

has ended.”<sup>1271</sup> In 2009, USAG imposed only a warning against a coach for inappropriately touching a minor because the conduct, while “not acceptable coaching practices,” was not “criminal.”<sup>1272</sup> In 2010, Ms. Kelly wrote to a parent who had reported that a coach told her 13-year old daughter that he loved her, “This is a difficult case as it seems [the coach] had inappropriate conversations with your daughter, which is unacceptable, [but] it is not criminal,” and USAG therefore only issued a warning letter and placed the coach on probation for a year.<sup>1273</sup> And in 2013, USAG did not take any actions against a 38-year-old coach who entered into a sexual relationship with a young gymnast and then lied to the gym owner about the relationship because USAG was not able to substantiate that the relationship began before the gymnast was 18.<sup>1274</sup>

*Disorganization* – In addition to adopting policies that limited responses to credible allegations of misconduct, USAG also repeatedly failed to follow-up on complaint matters, and the files contain inexplicable gaps in the investigations. For example, in April 2011, USAG received a letter stating that a coach was terminated from a gym due to his “involvement with a minor gymnast.” The complainant expressed concern that the coach was still working with children and asked USAG to investigate.<sup>1275</sup> USAG did not take any action for over four years until Ms. Jamison reviewed the file as part of an auditing process and then reported the conduct to the Texas Department of Family and Protective Services.<sup>1276</sup> USAG did not suspend the coach until June 2018.<sup>1277</sup> Similarly, in 2002, an investigator employed by USAG corroborated allegations that a coach had engaged in a romantic relationship with a 13-year-old gymnast, including kissing and writing love letters,<sup>1278</sup> and had kissed a 14-year-old cheerleader.<sup>1279</sup> Mr. Colarossi wrote to the coach asking whether he would like to have a hearing panel resolve the allegations,<sup>1280</sup> and the coach responded by asking Mr. Colarossi to adjudicate the matter on his own and attributed his actions to a failure of scripture study and prayer, writing, “Whenever I have

got lax on both of those two vital things I have been more vulnerable to temptation.”<sup>1281</sup> Notwithstanding this correspondence, it does not appear that USAG took any action against the coach, as three years later, in 2006, USAG received a complaint that the coach had been rehired at his original gym.<sup>1282</sup> In response, Ms. Kelly explained to the complainant that, “Since you have no personal knowledge about this, (only the information your friend told you), you cannot file a complaint.”<sup>1283</sup> After the complainant argued that USAG should already have all the information it needed to review the coach’s actions,<sup>1284</sup> USAG eventually, after a nine-month delay, reached out to the coach for his response.<sup>1285</sup> In 2007, five months after receiving the coach’s reply,<sup>1286</sup> USAG placed him on probation for one year.<sup>1287</sup> Five years later, USAG conducted a review of its files and realized it had made the 2007 decision to place the coach on probation without evaluating the 2002 investigator’s report.<sup>1288</sup> Still, USAG took no further action until 2017, when USAG reached back out to the coach, stating that the coach would be placed on the permanently ineligible list.<sup>1289</sup> After the coach’s lawyer objected, the coach and USAG appear to have reached an agreement whereby the coach elected not to renew his membership and was never placed on a public list.<sup>1290</sup>

*Mandatory Reporting* – Finally, USAG’s policies not only constrained the organization’s approach when disciplining its membership, but also appear to have influenced whether USAG filed reports with the police or civil child protection authorities, given USAG’s understanding that the “duty to report lies with those who have first-hand knowledge.”<sup>1291</sup> USAG does not have comprehensive records indicating when it made reports to the proper authorities, and USAG did make some such reports, but Ms. Jamison estimated that USAG only made “five or six” reports prior to reporting Nassar to the FBI.<sup>1292</sup> liii

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liii The Independent Investigation did not engage in an analysis of whether USAG violated mandatory reporting laws. The Independent Investigators are submitting this Report to the Indiana Department of Child Services.

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Nassar was only the most notorious product of the systemic deficiencies at USAG that placed children in danger over many years. And in addition to the numerous examples above, USAG's response to allegations against former coaches Bill McCabe and Doug Boger underscores how USAG – in myriad ways through its culture, structure, governance and processes – simply did not adopt a child-protective approach. USAG's response to the reports of misconduct against Mr. McCabe illustrates how USAG was uniquely positioned to take effective action, but instead chose to rely on policies and practices that limited its response. And USAG's response to the reports of misconduct against Mr. Boger reveals the many obstacles USAG implemented that delayed and obstructed effective action.

*Bill McCabe* – In October 1997, a club owner's star coach moved out of state, and she looked to hire a suitable replacement.<sup>1293</sup> A coach named Bill McCabe applied, and after the owner reviewed his resume, contacted a reference he had provided on his resume, and confirmed that Mr. McCabe was not on USAG's ineligible list, she hired him.<sup>1294</sup> Soon thereafter, however, the gym owner realized there was something about Mr. McCabe that she did not like, including how he seemed to play favorites with certain gymnasts for reasons unrelated to their gymnastics abilities.<sup>1295</sup>

The following spring, in or about March 1998, Mr. McCabe attended a state competition on behalf of the gymnastics club. After this competition, the gym owner received a call from the owner of a separate gym, who stated that he had recognized Mr. McCabe at the competition and wanted to relate that he had fired Mr. McCabe after Mr. McCabe bragged about inappropriate behavior with underage gymnasts.<sup>1296</sup> Following this notice, the gym owner began investigating Mr. McCabe's background, including by contacting other gym owners and speaking with her

gymnasts.<sup>1297</sup> She learned from the other gym owners that Mr. McCabe had bounced from gym to gym, had lied about his background and that the reference on his resume that she had relied upon in hiring him was a “set-up.”<sup>1298</sup> The gym owner also learned from her gymnasts that Mr. McCabe had been exposing himself to them by wearing loose-fitting shorts without underwear. The gym owner called Mr. McCabe into her office and instructed him to cease exposing himself to gymnasts. Following this meeting, she believed that Mr. McCabe would stop his misbehavior.<sup>1299</sup>

Soon thereafter, however, an 18-year-old cheerleader contacted the gym owner to state that Mr. McCabe had been sexually harassing her. The gym owner asked the cheerleader to record these allegations in writing, which the woman did in October 1998, shortly before the woman obtained a judicial restraining order against Mr. McCabe.<sup>1300</sup> The gym owner then confronted Mr. McCabe with the full results of the investigation, including her communications with other gym owners and asked Mr. McCabe to resign, which he did.<sup>1301</sup>

The following day, the gym owner faxed the results of her investigation to USAG.<sup>1302</sup> This packet of information included (i) detailed information with dates, names and contact information for multiple gym owners who had terminated their relationships with Mr. McCabe in recent years due to his sexual and other misconduct, and (ii) a letter from the 18-year-old target of Mr. McCabe’s harassment detailing his misconduct.<sup>1303</sup> A few days later, the gym owner who had raised concerns the previous spring sent a letter to USAG explaining that he had terminated Mr. McCabe because “he was bragging about the fact that he had one of the 15 yr old cheerleaders in her underwear and said he thought he would be able to F--- her very soon.”<sup>1304</sup> The gym owner concluded his letter by writing that Mr. McCabe “should be locked in a cage before someone is raped.”<sup>1305</sup>

USAG does not appear to have responded to the first gym owner's packet of information, and Ms. Kelly responded to the second gym owner's letter by writing: "I am awaiting an official letter of complaint from a parent and athlete. I will add your letter to the file in the event we receive the letter and an investigation is commenced."<sup>1306</sup>

In the months following Mr. McCabe's resignation in October 1998, he started working in a new gym, and some of the gymnasts decided to move gyms to continue training with him. As the gym owner remarked, "McCabe promised the parents the moon and the stars, so they believed him and followed him."<sup>1307</sup> After the gym owner attended an event where Mr. McCabe was coaching, she again sent a letter to USAG emphasizing the need for USAG to take action, and then followed up by phone.<sup>1308</sup> During this phone call, Ms. Kelly explained to the gym owner that her investigation had been based on "hearsay," and therefore USAG could take no action.<sup>1309</sup> On December 1, 1999, USAG renewed Mr. McCabe's professional membership.<sup>1310</sup>

In 2002, Mr. McCabe opened a new gym near Savannah, Georgia.<sup>1311</sup> A newspaper story from that time noted that Mr. McCabe was a "USA Gymnastics Professional member and USA Gymnastics safety-certified."<sup>1312</sup> In 2005, however, copies of the letters sent to USAG concerning Mr. McCabe's misconduct were anonymously placed on cars in the parking lot of the Savannah gym.<sup>1313</sup> One concerned parent contacted USAG to ask about these allegations, but was incorrectly told that USAG had not received any complaints about Mr. McCabe; the parent was also assured by USAG that Mr. McCabe was a coach in good standing.<sup>1314</sup> This parent was reassured by her conversation with USAG and permitted her daughter to continue to train with Mr. McCabe for months, until the parent noticed troubling emails between Mr. McCabe and her daughter that eventually resulted in Mr. McCabe's arrest, conviction, and 30-year prison sentence on a multitude of counts related to child pornography and the sexual exploitation of children.<sup>1315</sup>

*Doug Boger* – In contrast to the allegations against Mr. McCabe, the allegations against Mr. Boger resulted in his placement on the permanently ineligible list and a change to the USAG Bylaws to prohibit any gymnastics club or individual hosting USAG events from associating with anyone on the permanently ineligible list.<sup>1316</sup> Rather than showcasing the effectiveness of USAG’s policies and practices, however, the process by which Mr. Boger was banned from the sport underscores the slow-moving nature of the process, the many procedural obstacles, the necessity for persistent and multiple complainants, and the effectiveness of media coverage in ultimately spurring change. As the woman who spearheaded the efforts to ban Mr. Boger remarked, USAG told her, “you are not enough, you need more people,”<sup>1317</sup> reinforcing the message expressed by others that “one letter is not enough and one person is not enough.”<sup>1318</sup> This woman, and her fellow former gymnasts, needed to overcome a series of roadblocks and persevere through years of repeatedly detailing their abuse before USAG took any action.

In the early 1980s, multiple young gymnasts reported to their parents that their gymnastics coach, Mr. Boger, routinely punched and kicked gymnasts, resulting in criminal charges.<sup>1319</sup> Following a trial, however, a jury acquitted Mr. Boger of four criminal counts of child abuse and battery.<sup>1320</sup> Twenty-six years later, in June 2008, one of the gymnasts who had trained with Mr. Boger in the early 1980s sent a letter to Mr. Penny detailing her first-hand account of Mr. Boger’s extensive abuse of gymnasts, and asked USAG to take action.<sup>1321</sup> Four months later, Ms. Kelly responded by calling the reporting gymnast and telling her that USAG needed more witnesses to come forward before it could process the matter.<sup>1322</sup>

The reporting witness then reached out on her own to women, some of whom she had not spoken to for decades and some of whom she had never met.<sup>1323</sup> Initially nine women signed a joint letter in February 2009 detailing how Mr. Boger had physically and verbally abused all of



them and sexually abused some of them from 1977 to 1981.<sup>1324</sup> USAG responded to this letter by requesting more detailed statements from the signatories of the letter.<sup>1325</sup> In response, the women who had signed the February 2009 letter, as well as three additional women, wrote individual follow-up letters to USAG between July and September 2009, covering a total of 21 pages, explaining in detail how Mr. Boger slapped, pushed, choked, kicked and verbally abused gymnasts on a regular basis, with one woman detailing Mr. Boger's sexual abuse.<sup>1326</sup> Again, USAG took no immediate action in response to these letters; instead, in the fall of 2009, while the detailed, first-hand complaints of abuse were pending, Mr. Boger was named USAG Trampoline and Tumbling Coach of the Year, and in November 2009, Mr. Boger attended the World Championships as a USAG National Team coach.<sup>1327</sup>

In December 2009, in response to a further request by USAG, the group of women who had reported the abuse by Mr. Boger met with Mr. Penny and others from USAG, including two USAG lawyers.<sup>1328</sup> The meeting was convened in offices near the Los Angeles airport, with each former gymnast responsible for paying her own travel costs, including flights into and out of Los Angeles for those traveling from distant geographies.<sup>1329</sup> Thereafter, in January 2010, Mr. Penny followed up with the complainants to inform them that USAG would reach out to Mr. Boger with the details of their allegations and would provide Mr. Boger with their names, which was contrary to a request for anonymity from at least one of the women.<sup>1330</sup> After Mr. Boger provided a blanket denial, USAG retained the services of an investigative firm to take sworn statements in one-on-one interviews with each of the 12 women who made complaints about Mr. Boger.<sup>1331</sup> And USAG then asked the investigative firm to locate and interview other former gymnasts who trained with Mr. Boger and who had not previously reached out with complaints.<sup>1332</sup> After the survivors persevered through this costly, time-consuming and emotionally wrenching process, and after at

least five other women, who had not chosen to affirmatively share their stories, provided further corroboration, USAG finally placed Mr. Boger on the permanently ineligible list in June 2010, two years after first receiving a detailed account of Mr. Boger's misconduct.<sup>1333</sup>

The following spring, Ms. Kelly received an email stating that despite Mr. Boger's placement on the permanently ineligible list, he was continuing to coach at a gym in Colorado and that this gym was permitted to compete in USAG-sanctioned events.<sup>1334</sup> Ms. Kelly responded by stating that USAG "has no authority over the club business" and therefore could take no action.<sup>1335</sup> In July 2011, Ms. Jamison received another complaint that Mr. Boger was permitted to remain in gymnastics, and she provided a similar response that USAG was powerless to take any additional action.<sup>1336</sup> But in October 2011, the Orange County Register ran a story detailing how Mr. Boger was permitted to continue coaching gymnasts, and included accounts from interviews with many of the same gymnasts who had filed complaints with USAG.<sup>1337</sup> That article resulted in Mr. Boger's resignation from the Colorado gym,<sup>1338</sup> and in November 2011, USAG updated its bylaws to prohibit any club participating in USAG-sanctioned events from hiring anyone on the permanently ineligible list.<sup>1339</sup> In the end, it took three and a half years of concerted, dedicated effort by dozens of women, together with the power of the press, to reach a result that a solitary, private complaint rarely achieved.

## CONCLUSION

During Nassar’s sentencing hearing, a survivor poignantly stated: “this is what it looks like when the adults in authority do not respond properly to disclosures of sexual assault. This is what it looks like when institutions create a culture where a predator can flourish unafraid and unabated, and this is what it looks like when people in authority refuse to listen, put friendships in front of the truth, fail to create or enforce proper policy, and fail to hold enablers accountable.”<sup>1340</sup>

Together with many others, this survivor has captured eloquently, and searingly, the complex array of factors underpinning Nassar’s nearly 30-year run of serial sexual assault. In seeking to understand what happened, there is no single answer. What happened cannot be explained by Nassar, whose conduct, however reprehensible, was a manifestation of a far broader constellation of factors and conditions in elite gymnastics and Olympic sport that left young athletes vulnerable to abuse and led Olympic organizations astray from the priority of athlete safety.

In setting forth in detail in this Report the multi-layered and multi-faceted set of contributing factors – from casual disregard to affirmative inaction, from cultural conditions to governance choices, from inadequate policies and procedures to the delayed response overall to the risk of sexual abuse in sport – it was our aim to get to the bottom of what went wrong, and it remains our sincere hope that these factual findings will inform efforts going forward to protect young athletes and will help to ensure that a predator like Nassar can never again find so accommodating a home in sport.

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<sup>1</sup> Compendium of Survivor Statements Maintained By Ropes & Gray; Eric Levenson, *MSU reaches \$500 million settlement with Larry Nassar victims*, CNN (May 17, 2018), <https://www.cnn.com/2018/05/16/us/larry-nassar-michigan-state-settlement>; Catherine Shaffer, *Number of Nassar accusers approaches 500*, MICH. RADIO (Oct. 19, 2018), <http://www.michiganradio.org/post/number-nassar-accusers-approaches-500>

<sup>2</sup> Compendium of Survivor Statements Maintained By Ropes & Gray; Matt Mencarini, *Inside the investigation and prosecution of Larry Nassar*, LANSING STATE J. (Apr. 7, 2018), <https://www.lansingstatejournal.com/story/news/local/2018/04/05/larry-nassar-inside-prosecution-investigation/472506002>

<sup>3</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>4</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>5</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>6</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>7</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>8</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>9</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>10</sup> *What is Osteopathic Manipulative Treatment?*, AM. OSTEOPATHIC ASS'N, <https://osteopathic.org/what-is-osteopathic-medicine/osteopathic-manipulative-treatment/> (last visited Dec. 5, 2018)

<sup>11</sup> Tim Evans et al, *How Larry Nassar abused hundreds of gymnasts and eluded justice for decades*, INDIANAPOLIS STAR (Apr. 4, 2018), <https://www.indystar.com/story/news/2018/03/08/larry-nassar-sexually-abused-gymnasts-michigan-state-university-usa-gymnastics/339051002>; Compendium of Survivor Statements Maintained By Ropes & Gray; USAG\_HR\_O00006085

<sup>12</sup> Tim Evans et al, *How Larry Nassar abused hundreds of gymnasts and eluded justice for decades*, INDIANAPOLIS STAR (Apr. 4, 2018), <https://www.indystar.com/story/news/2018/03/08/larry-nassar-sexually-abused-gymnasts-michigan-state-university-usa-gymnastics/339051002>

<sup>13</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>14</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>15</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>16</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>17</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>18</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>19</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>20</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>21</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>22</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>23</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>24</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>25</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>26</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>27</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>28</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>29</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>30</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>31</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>32</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>33</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>34</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>35</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>36</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>37</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>38</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>39</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

<sup>40</sup> Indictment, United States v. Nassar, No. 1:16-cr-242 (W.D. Mich. Dec. 14, 2016); Dec. 21, 2016 Arraignment Tr., United States v. Nassar, No. 1:16-cr-242 (W.D. Mich. Dec. 23, 2016)

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- <sup>41</sup> U.S. Sentencing Mem., *United States v. Nassar*, No. 1:16-cr-242 (W.D. Mich. Nov. 30, 2017)
- <sup>42</sup> Civil Complaint, Court Filings on file with the Independent Investigators
- <sup>43</sup> Marisa Kwiatkowski et al., *A blind eye to sex abuse: How USA Gymnastics failed to report cases*, INDIANAPOLIS STAR (Jan. 31, 2018), <https://www.indystar.com/story/news/investigations/2016/08/04/usa-gymnastics-sex-abuse-protected-coaches/85829732>
- <sup>44</sup> Mark Alesia et al., *Sexual abuse trial: Larry Nassar's downfall started with an email to IndyStar*, INDIANAPOLIS STAR (Jan. 19, 2018), <https://www.indystar.com/story/news/nation-now/2018/01/19/larry-nassars-downfall-started-email-tip-newspaper-indystar/1047203001>; Article on file with the Independent Investigators
- <sup>45</sup> Mark Alesia et al., *Sexual abuse trial: Larry Nassar's downfall started with an email to IndyStar*, INDIANAPOLIS STAR (Jan. 19, 2018), <https://www.indystar.com/story/news/nation-now/2018/01/19/larry-nassars-downfall-started-email-tip-newspaper-indystar/1047203001>
- <sup>46</sup> Compendium of Survivor Statements Maintained By Ropes & Gray
- <sup>47</sup> *Munford Aff., People v. Nassar*, No. 17-20217-FC (Eaton Cty., Mich. Feb. 21, 2017); *Munford Aff., People v. Nassar*, No. 17-526-FC (Ingham Cty., Mich. Feb. 21, 2017)
- <sup>48</sup> MSU-USOC-0007077; MSU-USOC-0007081; Mark Alesia et al., *Timeline: Former USA Gymnastics doctor Larry Nassar*, INDIANAPOLIS STAR (Feb. 14, 2017), <https://www.indystar.com/story/news/2016/09/20/larry-nassar-timeline/90733320>; MSU-USOC-0007080
- <sup>49</sup> Dec. 21, 2016 Arraignment Tr., *United States v. Nassar*, No. 1:16-cr-242 (W.D. Mich. Dec. 23, 2016); *2016 Larry Nassar Police Interrogation*, YOUTUBE (June 13, 2018), <https://www.youtube.com/watch?v=BgPtIQGCPzE>
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- <sup>51</sup> *2016 Larry Nassar Police Interrogation*, YOUTUBE (June 13, 2018), <https://www.youtube.com/watch?v=BgPtIQGCPzE>
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- <sup>54</sup> USAG\_00268715–USAG\_0268721
- <sup>55</sup> USAG\_00268716
- <sup>56</sup> USAG\_00268717
- <sup>57</sup> USAG\_00268718–USAG\_00268721
- <sup>58</sup> USAG\_00268718; USAG\_00268722–23
- <sup>59</sup> Compendium of Survivor Statements Maintained By Ropes & Gray
- <sup>60</sup> USAG\_00259242; USAG\_00313584
- <sup>61</sup> Tim Evans, *Larry Nassar was sometimes arrogant, sometimes nervous, during only interview on sex abuse*, INDIANAPOLIS STAR (Jan. 24, 2018), <https://www.indystar.com/story/news/2018/01/23/larry-nassar-sometimes-confident-sometimes-arrogant-sometimes-nervous-during-only-interview-sex-abus/1054686001>
- <sup>62</sup> Tim Evans, *Larry Nassar was sometimes arrogant, sometimes nervous, during only interview on sex abuse*, INDIANAPOLIS STAR (Jan. 24, 2018), <https://www.indystar.com/story/news/2018/01/23/larry-nassar-sometimes-confident-sometimes-arrogant-sometimes-nervous-during-only-interview-sex-abus/1054686001>
- <sup>63</sup> Civil Complaint, Court Filings on file with the Independent Investigators; Tim Evans, *Larry Nassar was sometimes arrogant, sometimes nervous, during only interview on sex abuse*, INDIANAPOLIS STAR (Jan. 24, 2018), <https://www.indystar.com/story/news/2018/01/23/larry-nassar-sometimes-confident-sometimes-arrogant-sometimes-nervous-during-only-interview-sex-abus/1054686001>
- <sup>64</sup> Tim Evans et al., *Former USA Gymnastics doctor accused of abuse*, INDIANAPOLIS STAR (Jan. 24, 2018), <https://www.indystar.com/story/news/2016/09/12/former-usa-gymnastics-doctor-accused-abuse/89995734>
- <sup>65</sup> Marisa Kwiatkowski et al., *How the USA Gymnastics scandal unfolded*, INDIANAPOLIS STAR (Mar. 2, 2017), <https://www.indystar.com/story/news/2017/03/16/indianapolis-star-indystar-usa-gymnastics-steve-penny-child-sexual-abuse/99270916>; Marisa Kwiatkowski et al., *16 more women accuse former USA Gymnastics doctor of sexual abuse*, INDIANAPOLIS STAR (Oct. 27, 2017), <https://www.indystar.com/story/news/investigations/2016/09/25/16-more-women-accuse-doctor-sexual-abuse/90410436>
- <sup>66</sup> *Munford Aff., People v. Nassar*, No. 17-20217-FC (Eaton Cty., Mich. Feb. 21, 2017)
- <sup>67</sup> Catherine Shaffer, *Number of Nassar accusers approaches 500*, MICHIGAN RADIO (Oct. 19, 2018), <http://www.michiganradio.org/post/number-nassar-accusers-approaches-500>
- <sup>68</sup> Compendium of Survivor Statements Maintained By Ropes & Gray
- <sup>69</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

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- <sup>70</sup> Compendium of Survivor Statements Maintained By Ropes & Gray
- <sup>71</sup> Compendium of Survivor Statements Maintained By Ropes & Gray
- <sup>72</sup> Compendium of Survivor Statements Maintained By Ropes & Gray
- <sup>73</sup> Compendium of Survivor Statements Maintained By Ropes & Gray
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431 Penny Interview  
432 Blackmun Interview  
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628 Penny Interview  
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634 USAG\_01353644  
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1333 USAG\_04146693

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<sup>1340</sup> Compendium of Survivor Statements Maintained By Ropes & Gray

## **APPENDIX**

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# **Report of the Independent Investigation**

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**The Constellation of Factors  
Underlying Larry Nassar's  
Abuse of Athletes**

Joan McPhee | James P. Dowden

**ROPES & GRAY**

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## Exhibit A

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# An Open Letter To Survivors of Larry Nassar's Abuse

We are leading an independent investigation into the abuse of hundreds of gymnasts by Larry Nassar. We are applying our investigative skills as former federal prosecutors and tapping the resources of our global law firm to conduct an exhaustive and independent investigation. Our mission is to produce and publicly issue an unvarnished, definitive report that addresses individual and institutional accountability—and helps ensure that such an outrage can never happen again.

**We are writing this Open Letter because you play a critical role in our independent investigation and we feel it is essential that we make every effort to hear from those affected by Nassar's abuse. We want to underscore the breadth of our mandate and encourage you to participate in our fact-finding process.**

## THE INVESTIGATION IS COMPLETELY INDEPENDENT

Before accepting this assignment, we made sure our work would be completely independent from the United States Olympic Committee (USOC), USA Gymnastics (USAG) and any other organization or individual. Specifically:

- We alone direct the investigation and the writing of our report—no one else will have input or influence into the questions we ask, the findings we make, or our ultimate conclusions.
- We have broad access to documents, witnesses and other information from USOC and USAG, and we determine what is relevant to our investigation.
- We will directly issue our report to the public in its entirety upon completion of our work.

## THE INVESTIGATION IS BROAD IN SCOPE

The scope of our investigation extends far beyond “who knew what when” at USOC and USAG about Nassar's abuse and what was and was not done in response. We also are examining contributing factors and circumstances, including systemic deficiencies, failures of oversight and cultural conditions in elite athletics and Olympic sports.

Over the last seven months, we have made substantial progress. We have interviewed gymnasts and elite athletes in other sports who are survivors of abuse. We have had access to more than one million documents, including reports, files, emails, notes and text messages. We also have interviewed more than 60 individuals at USOC and USAG, from the most senior leadership to junior employees.

## WE WANT TO HEAR FROM YOU

We have sought from the beginning of our investigation to speak with the survivor community, but we have not attempted to contact you directly out of respect for your privacy and because some athletes have retained counsel. We believe strongly in doing everything we can to make sure we have heard from every survivor who is interested in speaking with us before we complete our investigation, including those who wish to remain anonymous.

If you would like to learn more, please visit our website, [NASSARINVESTIGATION.COM](https://nassarinvestigation.com), or call us confidentially at **(833) 458-8316**. Our team would also be happy to speak with you or your attorney to answer any questions you may have.

We respect how difficult it is to talk about such painful events. If you need to talk with a trained support specialist, RAINN (The Rape, Abuse & Incest National Network) is available to provide information and crisis intervention services to any survivor 24 hours a day, 7 days a week. RAINN can be reached confidentially at (800) 656-4673 or [online.rainn.org](https://online.rainn.org).

We admire your courage and sincerely hope to hear from you.



Joan McPhee  
Partner



James P. Dowden  
Partner

**ROPES & GRAY**



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## Exhibit B

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**STROZ FRIEDBERG**  
an Aon company

# USOC Email Investigation Summary Report

*Prepared for:*

**Covington & Burling LLP**

*Prepared by:*

**Stroz Friedberg, an Aon Company**

**December 4, 2018**

**Risk Resilience**

Cyber

Diligence + Compliance

Intellectual Property

Discovery

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## **I. EXECUTIVE SUMMARY**

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On or about October 24, 2018, Covington & Burling LLP (“Covington”), on behalf of its client the United States Olympic Committee (“USOC”), engaged Stroz Friedberg LLC (“Stroz Friedberg”) for digital forensic and analysis services in relation to potential issues with its production of electronic data for an investigation. Specifically, Covington instructed Stroz Friedberg to utilize available data sources and information to investigate a specific email (the “Email”) believed to have been received by two USOC employees from an employee of USA Gymnastics (“USAG”). Covington advised Stroz Friedberg that the Email (which would have been responsive to search criteria used by Covington) had not been found within the possession of the USOC by Covington in the course of the investigation. The Email was produced to Ropes by USAG.

Stroz Friedberg analyzed various data sources as part of its work, specifically: the email data sets initially collected for processing; the devices and network shares used by the USOC employees; and information about the email system in use at the USOC. Based on its analysis, Stroz Friedberg has determined:

- The Email or fragments of it were not present on any of the data sources reviewed by Stroz Friedberg.
- The Email was not part of the initial collection of data from the two USOC employees that Covington reviewed and processed for production. As such, the Email was not excluded during the processing, searching or review stages of electronic discovery.
- After considering a number of possible scenarios to explain the fact that the Email was not included in the collection of data, the most likely explanation is that the Email was deleted shortly after it was received in 2015.

## **II. BACKGROUND AND SCOPE**

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### **A. COMPANY BACKGROUND**

Stroz Friedberg is a specialized risk management firm built to help clients solve the complex challenges prevalent in today’s digital, connected, and regulated business world. A global leader in the fields of cybersecurity, with leading experts in digital forensics, incident response, and security science; investigations; and eDiscovery, Stroz Friedberg works to maximize the health of an organization, ensuring its longevity, protection, and resilience. Founded in 2000 and acquired by Aon in 2016, Stroz Friedberg has thirteen offices, including offices in nine cities across the United States and international locations in London, Zurich, Dubai, and Hong Kong. Stroz Friedberg serves Fortune 100 companies, 80% of the AmLaw 100, and the Top 20 UK law firms.

## **B. PROJECT SCOPE**

In 2018, Covington coordinated the collection, processing, and review of electronic documents from its client the USOC, and the production of documents to respond to requests to the USOC from Ropes & Gray LLP (“Ropes”), the law firm conducting the independent investigation into the abuse of gymnasts and other athletes by Larry Nassar. Stroz Friedberg learned from Covington that Ropes had informed Covington about a document produced by a third party. The document appeared (in form) to be an email dated September 8, 2015, with the “From” field listing Steve Penny of USAG, the “To” field listing Alan Ashley and Scott Blackmun, executives at the USOC, and the “Subject” field listing “FYI – Larry Nassar” (the “Email”). Ropes asked Covington to investigate why this email was not included in USOC’s productions in the independent investigation, although the Email should have been responsive to the search criteria used. Covington engaged Stroz Friedberg to analyze available data sources and information about USOC’s email system to determine the possible reasons the Email was not included in available USOC email data sources or the USOC productions to Ropes.

## **III. INFORMATION AND DATA EXAMINED**

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Stroz Friedberg obtained and reviewed the following items:

- Copies of the email files (in PST file format) of the two USOC employees that were collected as part of the initial collection in early 2018. These were provided by Innovative Discovery, LLC, the electronic discovery provider that assisted Covington with the processing of these emails.
- Forensic images created by Stroz Friedberg of:
  - An HP Desktop with serial number MXL7191PZ4, reported to be used by Scott Blackmun (“Blackmun Desktop”);
  - A Lenovo Thinkpad laptop with serial number R9-XNCC413/03, reported to be used by Scott Blackmun (“Blackmun Laptop”);
  - An Apple MacBook Pro laptop with serial number C02QVENCFVH5, reported to be used by Alan Ashley (“Ashley Laptop”);
- Contents of the (personal) network share drive used by Scott Blackmun<sup>1</sup>.

Stroz Friedberg also conducted an interview of David Zodikoff, Chief Technology Officer (“CTO”) of USOC to understand the email systems in use and availability of associated logs.

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<sup>1</sup> Alan Ashley’s personal network share was reviewed by Stroz Friedberg and found to not contain any data.

## **IV. ANALYSIS AND FINDINGS**

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Stroz Friedberg analyzed the available data sources to determine if the Email was present or if there were artifacts that provided some information about the Email even if it was not currently present. This section summarizes this review and Stroz Friedberg's observations.

### **A. EMAIL SYSTEMS INFORMATION**

Stroz Friedberg understands from the interview of Mr. Zodikoff and subsequent information provided by him that the USOC has been using Microsoft's cloud-based email system known as Office 365 since 2015. Prior to this, USOC maintained their own Exchange servers within their environment where users' mailboxes resided. The migration of mailboxes from the Exchange servers to the Office 365 environment started in the spring of 2015 and was completed by September 2015 (prior to the date of the Email). While the servers that previously hosted the Exchange servers are still available, the space used by the mailboxes was re-purposed in the spring of 2017 to be used for other data needs<sup>2</sup>.

Stroz Friedberg also learned from the interview of Mr. Zodikoff that the USOC uses Proofpoint with their email system to scan for potential spam messages. While the Proofpoint system does not retain an archive of every message, all incoming messages pass through Proofpoint and are quarantined there if Proofpoint determines the messages to potentially be spam. Stroz Friedberg understands from USOC that Proofpoint retains at most 30 days of email. As such, this system does not have the historical record going back to the September 2015 timeframe.

Through its discussions with Mr. Zodikoff, Stroz Friedberg learned that the Exchange email system suffered certain corruption issues in 2015, potentially leading to some email loss. This outage occurred in early 2015 (before the Email) and prompted the migration to Office 365 to avoid such issues.

### **B. ANALYSIS OF EMAILS PREVIOUSLY COLLECTED**

Stroz Friedberg understands from Covington that in early 2018, USOC personnel collected electronic documents, including email, in response to requests from Ropes and other third parties. The collected data was processed, searched, reviewed and the responsive content was produced.

Stroz Friedberg received a copy of all the email files collected for Scott Blackmun and Alan Ashley from Innovative Discovery, LLC, the electronic discovery provider that assisted Covington with the processing

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<sup>2</sup> The hardware that previously hosted the Exchange Servers was not forensically imaged or reviewed as the transition to the Office 365 environment was completed prior to the date of the Email. As such, the Email would have never been in the mailboxes on the Exchange Servers.

of these emails. In all, Stroz Friedberg received eleven email files for Scott Blackmun totaling 72.7 gigabytes (“GB”) in size and five email files for Alan Ashley totaling 39GB in size.

Stroz Friedberg parsed the email files using forensic tools (including parsing for deleted emails within the container files) and did not find the Email to be present. Stroz Friedberg noted that the email messages present in the containers did span the timeframe before and after the time of the Email.

Based on this analysis, Stroz Friedberg determined that the Email was not present in the initial collection in early 2018. As such, the fact that the Email was not present in the production cannot be attributed to an omission or error when the email data was processed, reviewed or produced to Ropes.

**C. ANALYSIS OF DEVICES AND NETWORK SHARE**

Stroz Friedberg extracted and enumerated the contents of all email containers found on the imaged devices. Table 1 below lists the noted timeframe of usage of each device, as well as the date range of emails found to be present on each device.

Custodian	Type	OS Version	OS Install Date	OS Last Shutdown	Email_Earliest	Email_Recent <sup>3</sup>
Scott Blackmun	Desktop	Windows 10 Enterprise	02/07/2017	03/01/2018	03/15/2017	05/09/2018
Scott Blackmun	Laptop	Windows 7 Enterprise	05/14/2013	06/30/2017	01/10/2010	10/19/2017
Alan Ashley	Laptop	Mac OS X 10.13.6	10/23/2015	10/23/2018	06/14/2015 <sup>4</sup>	10/30/2018

**Table 1 - Timeframes of Device Usage**

Stroz Friedberg noted that only the Blackmun Laptop appears to have been in use during the timeframe of the Email. This device was found to contain other emails dated September 8, 2015, but not the Email.

Stroz Friedberg searched and parsed the forensic images of these devices to look for fragments of the Email. From its analysis, Stroz Friedberg did not find any artifacts indicating the presence of the Email on these devices. Stroz Friedberg did find other emails in a deleted state, but not the Email.

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<sup>3</sup> The most recent email present on a computer does not necessarily indicate the last date or time the computer was used to send or receive email. Rather, this date reflects the most recent email that was found to be present on the computer. A user can use a computer to interact with his/her mailbox (e.g., to send or receive email) without a copy being downloaded locally to the computer.

<sup>4</sup> This device had 45 items in email containers that pre-dated the install date of the system. Review of these items indicated all of them to be calendar-related items and not email messages

Stroz Friedberg did not find any email files in Scott Blackmun's network share.

#### **D. POSSIBLE EXPLANATIONS**

From its review of the available data sources and information, Stroz Friedberg noted four possible scenarios to explain why the Email was not present in the data that was collected and processed. This section summarizes these possibilities with Stroz Friedberg's estimation on the likelihood of each based on the facts known, observations from its analysis and its experience.

##### **1. LOSS DUE TO CORRUPTION**

The USOC reported to Stroz Friedberg that a known corruption event caused the loss of some email in 2015. Based on the recollections of the personnel involved, this event appears to have occurred in early 2015, before the date of the Email. USOC personnel interviewed by Stroz Friedberg were confident that the corruption event occurred in early 2015, and cited this event as one that accelerated the migration to Office 365, which began shortly thereafter. Given the timeframe of the known corruption issue relative to the date of the Email, Stroz Friedberg believes it is unlikely that this was the reason the Email was absent from the production and could not be located in those USOC email data sources reviewed by Stroz Friedberg.

##### **2. CUSTODIANS NEVER RECEIVED THE EMAIL**

With the use of spam filters and quarantine (such as Proofpoint), it is possible that the USOC employees never received the Email if it was caught in the spam filter. Stroz Friedberg understands from the interview of Mr. Zodikoff that Proofpoint only retains email for 30 days. Consequently, reviewing emails potentially caught in the spam filter from the relevant timeframe is not possible.

From its review of the Email, Stroz Friedberg noted that the Email itself does not have any characteristics that would be likely to cause it to be marked as spam (such as embedded links, large attachments or attachments with unusual extensions, different sender and reply addresses etc.). The Email only contains text characters. Further, from a review of all other email for these users, Stroz Friedberg noted that the sender of the Email was a known contact and the users received emails from this contact prior to and after September 8, 2015. Based on these observations, Stroz Friedberg believes this explanation is unlikely to be the reason for the Email to be missing.

##### **3. CUSTODIANS RECEIVED THE EMAIL AND DELETED IT RECENTLY**

This scenario involves the possibility that the users received the Email, had it in their mailboxes for a period and deleted it sometime before the initial collection that occurred in early 2018. If this had happened, Stroz Friedberg would have expected to see some remnants of the Email at least on the older system (Blackmun Laptop) which was in use on September 8, 2015. Stroz Friedberg would expect to find this email in a deleted state (as was seen for a handful of other emails from this timeframe), if the deletion



occurred shortly before the system was finally shut down. Stroz Friedberg understands that both USOC users' mailboxes were put on hold related to the Ropes investigation in early 2018, and materials related to allegations of misconduct or Nassar were under holds in 2017. Any email deleted after that time would have been still retained within the Office 365 environment and included in the collection effort. While it is possible that this situation occurred (i.e. the users deleted the Email subsequent to the fall of 2015 but prior to collection efforts), Stroz Friedberg believes it is less likely than the next scenario.

#### **4. CUSTODIANS RECEIVED THE EMAIL AND DELETED SHORTLY THEREAFTER**

In this scenario, the users received the Email and deleted it shortly thereafter. The Email would have never synchronized down to the newer systems (as it would not have been present in the mailbox when the new systems came online<sup>5</sup>) and the constant use of the older system for almost two more years would likely cause the deleted email to be overwritten, resulting in an absence of fragments. While still a hypothesis, from its review of system usage and for the reasons noted above for the other scenarios, Stroz Friedberg believes this scenario is the most likely explanation for why the Email was not available to be collected from the USOC data systems and then produced.

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<sup>5</sup> The newer systems had operating system install dates of October 23, 2015 for Alan Ashley's MacBook Pro and February 7, 2017 for Scott Blackmun's HP Desktop

# STROZ FRIEDBERG

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## About Stroz Friedberg

Stroz Friedberg, an Aon company, is a specialized risk management firm built to help clients solve the complex challenges prevalent in today's digital, connected, and regulated business world. A global leader in the fields of cybersecurity, with leading experts in digital forensics, incident response, and security science; investigation; eDiscovery; and due diligence, Stroz Friedberg works to maximize the health of an organization, ensuring its longevity, protection, and resilience. Founded in 2000 and acquired by Aon in 2016, Stroz Friedberg has thirteen offices across nine U.S. cities, London, Zurich, Dubai, and Hong Kong. Stroz Friedberg serves Fortune 100 companies, 80% of the AmLaw 100, and the Top 20 UK law firms. Learn more at <https://www.strozfriedberg.com/>.

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**Subject:** FYI - Larry Nassar

**Date:** Tuesday, September 8, 2015 at 9:22:26 AM Eastern Daylight Time

**From:** Steve Penny

**To:** Alan Ashley, Scott Blackmun

Greetings:

Just a quick follow-up note. Larry Nassar announced his retirement from USA Gymnastics this past weekend. I am not too sure what prompted this, however, it could have been a number of things. Will keep you posted as I learn more.

Steve