



September 15, 2021

Hon. Richard C. Durbin, Chairperson
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

**TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE FOR THE
OVERSIGHT HEARING ON THE FBI'S DERELICTION OF DUTY ON THE LARRY
NASSAR CASE**

Dear Chairperson Durbin and Distinguished Members of the Senate Committee on the Judiciary,

Thank you for allowing me to submit testimony regarding the Federal Bureau of Investigation's gross mishandling of the Larry Nassar Investigation after three victims came forward.

By way of introduction, I am the Founder and CEO of CHILD USA, the leading nonprofit interdisciplinary think tank dedicated to the prevention of child abuse and neglect. CHILD USA pairs high-level legal analysis with cutting edge social science to reach the best policies to end child abuse and neglect. I am also a Professor in the Fels Institute of Government at the University of Pennsylvania. and the Chairperson I am also the Chairperson of CHILD USA's Game Over: Commission to Protect Youth Athletes, ("Game Over Commission), an independent commission of some of the nation's leading experts on child abuse to examine how so many institutions could fail to prevent the sexual abuse of hundreds of girls by former USA Gymnastics doctor Larry Nassar. The Commission will be publishing its Case Study and its Recommendations for Prevention in the near future.

Established in 2018, the CHILD USA Game Over Commission is comprised of 15 leading experts in the field of child sex abuse from the medical, social science, legal, and public policy arenas. This independent commission engaged in fact-finding and data collection, conducted public hearings, and established a publicly available database on the Nassar scandal. The preliminary findings of our survey of Nassar abuse survivors are chilling: **42% were abused by Nassar more than 10 times, and 58% felt too confused to tell anyone.** This finding is illustrative of the ever-growing paradigm of systemic failures to prevent child sexual abuse.

The children whose lives were destroyed by Nassar were let down by many institutions along with the FBI, including the United States Olympic and Paralympic Committee, USA Gymnastics, MSU University, the Karolyi Ranch, medical oversight boards, and even families. The FBI and its



supervising government entity, the Department of Justice, let all of America's children down with their abject failure to act in a child-protective and child-centered way and their failure investigate a serial sexual predator.

I. THE FBI'S FAILURE TO PROVIDE A TIMELY, EFFECTIVE, & PROFESSIONAL INVESTIGATIVE RESPONSE TO ALLEGATIONS OF SEXUAL ABUSE BETRAYED THEIR RESPONSIBILITY TO PROTECT CHILD SEX ABUSE VICTIMS

Child sexual abuse cases have unique characteristics that make them different from other types of cases. Child sexual abuse victims typically do not report the abuse for decades, and there is no physical evidence that the abuse occurred by the time a victim reports, even if they do so during childhood. Here, three victims bravely came forward at an early age. While they did not have physical evidence, their corroborating reports should have set off alarm bells for the FBI. Children do not understand sex abuse, especially when the perpetrator is someone they trust and love, as these athletes trusted and loved Nassar. They needed immediate support; the FBI did nothing to make that happen. They also deserved a full investigation, which the FBI miserably failed to pursue. While the FBI dithered, Nassar continued to abuse others. The Game Over Commission has identified three critical ways in which the FBI failed to protect these child victims:

1. The FBI agents abdicated their role as mandated reporters to alert the appropriate law enforcement agencies of the allegations against Nassar and failed to refer the victims to a Child Advocacy Center.
2. The FBI agents failed to timely and effectively interview the three victims.
3. The FBI failed to follow an interdisciplinary approach.

A. FBI Agents Abdicated Their Role as Mandated Reporters by Failing to Report Allegations to State and Local Authorities

FBI agents at the Indianapolis office were first notified of allegations of sexual misconduct against Nassar on July 27, 2015, and shortly thereafter briefed on the athlete concerns regarding Nassar's treatments, and on the results of the internal investigation at MSU. In September 2015, the Indianapolis Field Office, as well as the USAO for the Southern District of Indiana, concluded that there was no venue in Indianapolis and raised questions as to whether the allegations against Nassar were sufficient to support federal jurisdiction. Yet, the Indianapolis Field Office did not advise state or local authorities in either Michigan or Texas about the allegations and did not take any action to mitigate the risk to gymnasts that Nassar continued to treat. Considering that research establishes that **70% of child sex offenders have between 1 and 9 victims and 20% have 10 to**

40,¹ their inaction all but assured that more young women would be victimized by Nassar in the future.

The FBI did not open a full investigation until May 2016, after USAG contacted agents at the Los Angeles office to re-report athlete concerns regarding Nassar’s treatments. Likewise, the LA office also failed to notify the FBI Lansing office or state or local authorities of the allegations against Nassar. Over the 14-month period that the FBI was aware of the allegations of abuse but failed to take protective action, including failing to notify local authorities in Michigan or contacting the medical board, at least 40 additional victims were abused by Nassar.²

The actions of the FBI branch officers raise questions as to why, if they believed they lacked jurisdiction over the case, they would not report the allegations to the local law enforcement in the appropriate jurisdiction as FBI officials are obligated to report child sexual abuse under Federal law and per the agencies own policies.

1. FBI Officials Are Mandated Reporters of Child Abuse Under Federal Law

Under federal law, law enforcement personnel who, “while engaged in a professional capacity...on Federal land or in a federally operated (or contracted) facility,” learn of “facts that give reason to suspect that a child has suffered an incident of child abuse,” including sexual abuse or exploitation, “shall as soon as possible make a report of the suspected abuse” to the appropriate law enforcement agency.³ According to a May 29, 2012 Department of Justice Office of Legal Counsel opinion, this statute applies to incidents that federal law enforcement officers learn about while in the course of their duties, even if the child abuse itself did not occur on federal land or in a federal facility.⁴

Federal law also requires FBI officials to receive period training regarding their obligation to report as well as in the identification of abused and neglected children.⁵ This begs the question—did the FBI agents assigned to the Nassar case receive such training? Assuming so, their failure to report the allegations against Nassar to state and local authorities amounts to a willful disregard of the law.

¹ Finkelhor, D., & Jones, L. (2012). *Have sexual abuse and physical abuse declined since the 1990s?* Durham, NH: Crimes against Children Research Center, available at http://www.unh.edu/crcr/pdf/CV267_Have%20SA%20%20PA%20Decline_FACT%20SHEET_11-7-12.pdf

² Julie Mack, *FBI under scrutiny for its role in Larry Nassar investigation*, MICHIGAN NEWS (Sep. 5, 2018), available at https://www.mlive.com/news/index.ssf/2018/09/fbi_under_scrutiny_for_its_rol.html.

³ U.S.C. § 20341(a).

⁴ 34 U.S.C. § 20341(h).

⁵ Id.

2. The FBI Maintains a Mandatory Reporting Policy

FBI policy states that “in addition to, not in place of, mandatory reporting requirements under state, tribal and federal law with which [FBI Personnel] shall also comply” that **all FBI employees shall immediately report suspected child abuse, neglect and/or sexual exploitation to the state, local or tribal law enforcement agency or child protective services agency that has jurisdiction to investigate such reports or to protect the child.**⁶

The FBI did not report the alleged abuse to local or state law enforcement or child protective services. The victims were left to fend for themselves.

B. FBI Agents Failed to Timely and Effectively Interview Child Victims

Most child abuse investigations begin with a forensic interview of the child. They are best conducted by trained professionals implementing evidence-based and trauma-informed methods, who can capture the interview so that the child does not have to be re-traumatized by multiple interviews. Child Advocacy Centers (“CACs”) are the preferred venue for child sexual abuse cases, which the FBI recognized in its 2015 agreement with the National Children’s Alliance (“NCA”).

A year before the first three Nassar victims reported, the NCA and its accredited member CACs entered into a partnership with the FBI. Pursuant to their 2015 Memorandum of Understanding (MOU), the parties agreed that all FBI victim cases would be triaged by FBI Child/Adolescent Forensic Interviewers (CAFI), trained Agents and/or Task Force Officers (TFOs) in order to identify the best interviewer, location, and time for a forensic interview of a particular case.⁷ The agreement further clarified the use of CAC employees trained in forensic interviewing in the event a trained FBI interview resource were unavailable.⁸ The parties also agreed that all interviews would be conducted in accordance with the established FBI protocols including, but not limited to, a requirement that children that have not made a disclosure be interviewed and that interviews be recorded.⁹

Yet, the FBI agents in these cases did not send the children to CACs for their forensic interviews. Instead, untrained FBI agents at the Indianapolis office performed limited telephonic

⁶ DEP’T OF JUSTICE, *Investigation and Review of the Federal Bureau of Investigation’s Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar* at p.48 (July 2021), available at <https://oig.justice.gov/sites/default/files/reports/21-093.pdf>

⁷ *Memorandum of Understanding between the Federal Bureau of Investigation and the National Children’s Alliance Pertaining to The Use of Child Advocacy Centers in Support of Investigations of Crimes Against Children* at p.5, available at <https://www.nationalchildrensalliance.org/wp-content/uploads/2018/04/NCA-FBI-MOU.pdf>

⁸ *Id.*

⁹ *Id.*



interviews in violation of their agreement and own internal policies. Few, if any, statements were documented by the agents and no referral was made to law enforcement agencies in any of the counties in which the alleged abuse occurred, including Easton, Ingham, and Lansing counties, even after agents at the Indianapolis branch determined they lacked jurisdiction over the case. **At the time the FBI received the first allegations against Nassar, there were 27 NCA accredited CACs in the state of Michigan including 4 in the Detroit area (which covers Lansing), and 1 in Eaton and Ingham counties.**¹⁰

C. FBI Agents Failed to Deploy a Multidisciplinary Approach to Investigate Allegations of Child Sexual Abuse

Due to the complex nature of child abuse investigations, multidisciplinary teams are often used to enhance and improve investigations and responses for children. Effective investigations generally call for the formation of a child protection team that includes professionals from medicine, criminal justice, social work, and education who cooperate and coordinate their efforts. According to the FBI's own Crimes Against Children Policy, criminal investigations involving children "invariably require a broad, multijurisdictional, and multidisciplinary approach," because they "frequently cross legal and geographical jurisdictional boundaries, and involve extremely sensitive cases in which children are being brutally victimized."¹¹ The policy requires field offices to, among other things, maintain regular contact with victim advocacy centers and their personnel and request assistance and guidance of relevant experts when necessary.

Despite this longstanding policy, the FBI agents in the Nassar case failed to reach out to *any* expert to assist in their investigation. Especially problematic was their failure to seek guidance from physician experts regarding the legitimacy of Nassar's alleged treatment practices. Agents accumulated information including instructional videos of Nassar showing his ungloved hands touching the private areas of girls lying facedown on tables, and a powerpoint presentation in which Nassar purportedly explained his "procedure." Failing to interview any other practitioner about the medical basis of the procedure or to conduct any additional investigation led the agents to credit Nassar's outrageous explanations and conclude that Nassar had performed a legitimate medical procedure. Believing the procedure to be legitimate, law enforcement officials determined no crime had been committed and thus no criminal investigation pursued.

II. CONCLUSION

¹⁰ Nat'l Childrens Alliance, 2015 Interactive CAC Map, available at <https://oig.justice.gov/sites/default/files/reports/21-093.pdf>

¹¹ U.S. DEP'T. OF JUSTICE, Office of Juvenile Justice and Delinquency Prevention, *Law Enforcement Response to Child Abuse* (Mar. 2001), available at <https://www.ojp.gov/pdffiles/162425.pdf>



The FBI was a cog in the systemic failures that permitted 500 children to be sexually abused by Dr. Larry Nassar. That is shameful. The FBI failed to respond quickly and effectively or to intervene in Nassar's trail of predation even when presented with opportunities to do so. This was a systemic failure where the FBI didn't follow its own procedures and agreements or have the best practices in place. While the FBI dithered, children were being sexually abused.

Please do not hesitate to contact me with questions regarding these issues, the Game Over Commission's Case Study and Recommendations, and/or any other child protection issues.

Sincerely,

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