

**HEARING BEFORE THE UNITED STATES SENATE COMMITTEE
ON COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY,
INSURANCE AND DATA SECURITY**

June 5, 2018

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I. INTRODUCTION

Chairman Thune, Subcommittee Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Subcommittee, thank you for the opportunity to submit this written testimony for the Subcommittee's hearing on "Preventing Abuse in Olympic and Amateur Athletics: Ensuring a Safe and Secure Environment for Our Athletes." Unfortunately, because of circumstances related to my health, I will not be appearing to testify in person.

I served as the CEO of the United States Olympic Committee (the "USOC") from January 2010 through February 2018. In addition to my eight years as CEO, from 1999 through late 2001 I was employed by the USOC in a variety of capacities, including general counsel, deputy executive director, chief of sport and acting executive director. From 1992 to 1998, I represented the USOC on commercial matters as a lawyer in private practice.

As human beings, we should all be ashamed of the existence of sexual abuse. It is abhorrent in any setting. But the case of Larry Nassar is especially abhorrent. He had hundreds of victims and his victims included children. His abuse went undetected not just for years, but for decades. The abuse happened in sports, which are meant to bring out the best in us, not the worst. And perhaps most abhorrent, within the community of his victims, he occupied a position of the highest possible trust. He wore a badge of trust given to him by everyone who licensed him, hired him or credentialed him.

I am deeply sorry for those who were harmed and horrified that this happened on my watch. The suffering and brave testimony of the victims and their families will be a painful memory for the rest of my days. Like millions of others, I applaud the courage of the athletes who have come forward. I believe the USOC is responsible for leading the efforts of our National Governing Bodies (“NGBs”) to protect their athletes from abuse, efforts which failed in this case. I am profoundly sorry for this failure, and I am grateful to the Committee for addressing this problem and considering additional steps that can be taken to ensure the safety of America’s Olympic and Paralympic athletes and hopefuls.

In this testimony, I would like to address three issues. First, I believe it is important to understand the relationship between the USOC and its NGBs, which oversee each sport and have direct relationships with the athletes and coaches. Second, I will discuss the significant programmatic changes that the USOC made both before and after anyone was made aware of the extent of Nassar’s crimes. Third, I will address questions that have been raised regarding the USOC’s knowledge and actions relating to USA Gymnastics and Nassar.

II. THE USOC AND THE NGBs

Under the Ted Stevens Olympic and Amateur Sports Act (the “Act”), the U.S. Olympic Committee is tasked with overall governance and coordination of Olympic sports in the United States. As part of its responsibilities, the USOC is authorized to designate a National Governing Body for each sport on the program of the Olympic and Pan American Games. The USOC is also one of only four National Olympic Committees in the world that oversees Paralympic sport in its country. The USOC takes that role very seriously and extends the same safe sport protections to Olympic and Paralympic athletes alike.

The USOC also has the authority to establish responsibilities and obligations that must be met by an NGB as a condition of being designated as an NGB. The NGBs are independent entities with their own missions and their own governance and management structures. They not only need to satisfy requirements established by the USOC, but they need to abide by responsibilities and obligations established by the respective international federations that oversee each sport. The USOC does not have the right to direct or control the day-to-day management and affairs of an NGB. Although the USOC can exert influence on NGB decisions, it does not have the legal authority to fire the CEO of an NGB or to require an NGB to fire or suspend a coach. Unlike professional leagues and the NCAA, it does not have the authority to suspend coaches, teams or athletes and does not have the authority to fine wrongdoers. Unlike teams in professional leagues, which exist only in order to compete in the league, NGBs have a reason for being that is completely independent of the USOC, and their priorities may have nothing to do with the Olympic games or the Olympic movement.

Both in the United States and in the rest of the world, NGBs exist to oversee and grow their sports in their countries. In the United States, there are currently 49 separate NGBs, for sports ranging from gymnastics, swimming and skiing to curling and team handball. Seven of the NGBs are responsible for sports that are part of the Pan American Games but not the Olympic Games. Each NGB is an independent non-profit organization established under state law. The resources and capabilities of the NGBs vary significantly. Some have budgets of less than \$1 million; others have budgets that exceed the USOC's. Some NGBs have more than a million members who participate in their sport; others have fewer than 1000. Some NGBs care deeply about the Olympic Games and regard it as their most important competition; others regard the Olympic Games as less important and not of competitive or strategic importance.

Each NGB seeks to promote participation in its sport and is responsible for selecting and training national teams which compete in international competition. Some of those teams train at the two USOC-controlled facilities (Colorado Springs and Lake Placid), but most do not. Olympic athletes in each sport are chosen based upon criteria established by the individual NGB and approved by the USOC. The U.S. Olympic Committee has a role in credentialing NGB athletes and coaches who are members of the Olympic Team, but only during the two-week period of the Olympic Games every four years. The U.S. Olympic Committee does not employ individual-sport coaches or physicians. But at its training centers it does have multi-sport coaches and physicians on its staff (strength and conditioning experts, nutrition experts, etc.), who are made available to NGBs.

Unlike most countries, the United States does not have a sports ministry that provides financial and other support for elite sport. The USOC's budget of approximately \$250 million per year is funded privately from broadcast rights income, sponsorship income and philanthropy. A substantial majority of the USOC's expense budget is dedicated to direct financial support of NGBs and American athletes (grants) and to sports programming for the benefit of American athletes (Olympic training centers, sports medicine resources, sport science resources, nutrition resources, strength and conditioning resources). One of the USOC's priorities is to help American athletes win medals at the Olympic and Paralympic Games, and its sports performance resources are allocated with that in mind. But the USOC also invests substantially in programs that are not related to medal counts, but instead exist to protect and support athletes (e.g., safe sport, athlete career and education services, and media). The administration costs of the USOC are less than 7% of its budget.

The USOC has gone back and forth for years over how to balance its oversight and support of the 49 NGBs. The USOC regularly conducts audits of NGBs to ensure compliance with the requirements of the Act and the USOC's bylaws, including requirements related to programs to combat sex abuse. When the USOC becomes aware of noncompliance, whether through the audits or otherwise, it does not have the statutory or other authority to mandate operational changes. Other than its powers of influence and persuasion, it has only two levers: take away an NGB's designation as an NGB or, for those NGB's that receive USOC funding, withhold funding. Both options have potentially serious negative consequences for the athletes participating in the sport, and for that reason the USOC has exercised those options only rarely. Specifically, decertification could leave a successor NGB with no sponsors, no donors, no member database, no volunteer database, and no membership in the applicable International Federation, yet with no assurance that the same coaches and administrators would not inhabit the new organization. Decertification does not generally fix problems. There is not a bullpen of qualified organizations waiting to take over the responsibilities of a National Governing Body. Finally, I should note that it is not only the USOC that has the right to bring an action for decertification. Under the USOC's bylaws, third parties have the right to initiate those proceedings as well.

The bottom line is that, because of the structure of the Olympic Movement, the USOC did not employ Nassar, nor did it have any regular contact with the athletes whom he abused. Leaving aside the millions of Olympic-sport athletes who are not at the national team or elite level, there are thousands of national team athletes in the United States who are supported by thousands of coaches, physicians and trainers. The USOC has a number of important duties, but it does not directly screen or manage NGB staff and volunteers. What the USOC does do is:

- Generate revenue from broadcast rights, sponsorship and private donations.

- Make financial grants to American NGBs and athletes in support of its mission.
- Manage sport and non-sport programs to support American NGBs and athletes, including programs targeted at abuse.
- Manage the U.S. delegations at the Olympic, Paralympic and Pan American Games.
- Establish requirements and standards that must be met by NGBs, including requirements and standards related to anti-abuse programs.
- Seek to enforce NGB compliance with those requirements and standards.

III. THE SAFE SPORT PROGRAM AND THE US CENTER FOR SAFE SPORT

I took over as CEO of the USOC in January of 2010. During my first three months on the job, we were consumed with the Vancouver Games. When we left Vancouver after the 2010 Paralympic Winter Games, we returned to national news reports of coaches abusing athletes in swimming. It was apparent that fighting sexual abuse had not been a programmatic priority for the USOC. Since that time, however, anti-abuse programming has been one of the USOC's highest priorities, having been addressed at almost every meeting, if not every meeting, of the USOC's board of directors in my tenure.

In the spring of 2010, I formed a working group to develop recommendations regarding sexual and other abuse in sports. The working group consisted of ten people, including athletes, representatives of law enforcement and child welfare experts. The working group was chaired by Nina Kemppel, a four-time Olympian and member of the USOC's board of directors. The working group first presented its 21-page report to the USOC's board of directors on September 28, 2010. The board adopted all six of the working group's recommendations at its next meeting in December of 2010.

In April 2011, the USOC hired a director of safe sport to develop a prevention and education program providing information, training and resources. In the spring of 2012, the U.S. Olympic Committee launched its Safe Sport program, providing all of the resources recommended by the 2010 working group, including training and sample anti-abuse policies for NGBs to implement.

At this point, though, the best practices recommendations developed by the program were just that, recommendations, and not requirements. In December of 2012, the USOC's board adopted a new policy requiring all NGBs, if they wanted to continue to be recognized by the USOC, to adopt an athlete safety program that prohibited all forms of abuse and misconduct, to conduct criminal background checks, to provide education on abuse issues, and to establish reporting and enforcement mechanisms. NGBs were given one year to adopt these policies and procedures only because the changes required member approval in most cases and the members often only meet once per year.

In the meantime, a number of NGBs were expressing concerns about whether they had the expertise, independence and resources to properly investigate and adjudicate allegations of sexual abuse. In 2013, the USOC convened a second working group to evaluate options for case management. The 2013 working group recommended, and in June 2014 the USOC board approved, the creation of an independent entity to investigate and resolve complaints of abuse. The idea was to model this new entity on the U.S Anti-Doping Agency, which has been a success in addressing problems of performance-enhancing drugs. This became the U.S. Center for Safe Sport (the "Center").

The Center did not get up and running as quickly as I would have liked. There were a number of issues that the USOC's board had to address, and that the Center's board had to address

after it first got up and running in January of 2016. These included sources of funding, whether the Center would deal with all types of abuse or just sexual abuse, what the balance would be between enforcement and education, whether the new entity should be wholly independent or under USOC board oversight, and whether liability insurance would be available.

Another issue, which survives today, is whether a program like the Center should cover all youth sport programs, or just those under the USOC's mandate. Abuse exists everywhere. It exists in Olympic sports organizations and non-Olympic sports organizations. The USOC's preference would have been to support, financially and otherwise, an independent entity that had jurisdiction over all youth sports, not just those programs falling under the USOC's jurisdiction. But pursuing that option would have required federal legislation. It is a direction that I hope will be explored further.

Once the Center was created as a legal entity in 2015, the Center's independent board of directors had to be populated. It had its first meeting in January of 2016. And then the Center's board needed to hire a CEO, adopt a budget and finalize the terms of its jurisdiction and funding. The Center opened in March of 2017. I believe that its creation has significantly strengthened the Olympic community's ability to prevent abuse and to investigate and take enforcement action if abuse occurs. The ability to find adequate funding sources will be critical to the Center's continuing efforts to protect athletes. I know the USOC has already doubled its financial commitment to the Center.

The horrific reports of abuse by Nassar should not obscure the commitment that the USOC made to safe sport in 2010, the steady progress that has been made since then, and the significant reforms that have been implemented for the protection of athletes. The Center, which was approved

but was not operational before Nassar, is a game changer that will only get stronger over time as more is learned and more resources are committed.

IV. USA GYMNASTICS

The Nassar situation was first brought to my attention in July 2015, through a phone call from Steve Penny, who was then the CEO of USA Gymnastics. I cannot recall whether Mr. Penny told me Nassar's name during that call, or whether he just referred to him as the team doctor. Mr. Penny told me that after interviewing three athletes and the team doctor, they were concerned the doctor's "treatments" were not legitimate. Mr. Penny said that he was going to report this to law enforcement, a decision I fully supported. Mr. Penny also told me that the doctor would no longer have contact with athletes. I spoke to the USOC's safe sport staff after talking to Mr. Penny. My understanding was that reporting the doctor to law enforcement was the most aggressive thing that could be done. I also understood that once it was reported, the issue should be left in the hands of law enforcement—we did not want to interfere with their investigation in any way.

In August and September of 2016, the Indianapolis Star published its articles about Nassar. I believe that those articles, along with additional contact by USA Gymnastics with the FBI, spurred the investigation along.

The new information about the scope of the problem made it clear to the USOC's board of directors that USA Gymnastics needed to take a new direction. Our board contacted the board of USA Gymnastics and requested that it ask Mr. Penny to resign. The USA Gymnastics board agreed, and Mr. Penny resigned in March 2017.

The Deborah Daniels report, issued in June 2017, found that there were significant cultural issues within USA Gymnastics. In January 2018, I wrote to the board of USA Gymnastics, detailing the additional governance reform steps that USA Gymnastics needed to take, including

resignation of the entire USAG board. We also offered assistance to USA Gymnastics in implementing the necessary reforms.

In addition, we launched an independent investigation by a national law firm to examine how an abuse of this proportion could have gone on for so long, who knew and who should have known of the reports of abuse, why they were not investigated sooner, and what systemic failures may have contributed to the failure to report. When the investigation is completed, the U.S. Olympic Committee will make its results public.

IV. CONCLUSION

During my tenure as CEO of the U.S. Olympic Committee, the USOC made anti-abuse programming an organization-wide priority. For the first time, the USOC established minimum compliance standards for NGBs in the area of sexual abuse and created dedicated staff resources to combat sexual abuse. The USOC made free education resources, as well as sample policies, available for use by NGBs and other sports organizations. The USOC created an independent entity, modeled after the U.S. Anti-Doping Agency, to investigate and adjudicate claims of abuse within NGBs. And as Ms. Pfohl described in her testimony to the House Subcommittee on Oversight and Investigations on May 23, the Center has already seen over 800 cases, trained hundreds of thousands of people, issued 169 sanctions and imposed 142 permanent bans.

Unfortunately, these programs came too late to have any effect on Nassar's abuse. And no program can guarantee that there will never be misconduct. I have no doubt that the USOC will continue to work to build and improve programs that are designed to prevent abuse. I appreciate the Committee's efforts to shine light on this problem and to look at ways to enhance the protections for America's Olympic and Paralympic athletes.

I will be happy to respond to any questions members of the Committee may have.