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## COMMENTS

# THE COST OF GOLD: HOW GENERALIZED WHISTLEBLOWING POLICIES ARE FAILING ATHLETES

HANNAH M. DAVIS\*

### INTRODUCTION

If you have ever played a sport, you certainly understand how impactful it was in your personal development. From time management and leadership skills to building self-esteem and lifelong friendships, sports impact an athlete's life in more ways than one. However, there is a dark side to sports. Numerous athletes are not able to associate any sort of positive with their experience. As a culture so engrossed with winning, there is a tendency to turn a blind eye when something unethical is happening. In doing so, athletes continually face abuse and notice the effects of that abuse for the rest of their lives. Unfortunately, emotional, physical, and even sexual abuse among athletes has become quite prevalent. USA Gymnastics ("USAG") has been under fire for all three of these abuses.

This Comment will explore the history of whistleblowing in Gymnastics. First, it will look at athletes who have tried to come forward about their abuse and the subsequent retaliation taken against them for doing so. This will include a discussion of the long-established culture in USAG and how Larry Nassar, former USAG team doctor, was able to abuse USAG athletes for so long, and how even after Larry Nassar, the sport is still riddled with abuse. Second, it will establish what whistleblowing is and what steps should be taken to adopt a better policy. Third, it will look at how gymnasts should be considered employees in order to gain full protection from abuse. Finally, this Comment will propose solutions for change in the sport. The simple whistleblowing policies which already exist are not cutting it, and abuse will continue if change does not occur.

## I. HISTORY AND BACKGROUND

USAG continues to exploit their gymnasts for the sake of winning gold medals, and without proper protections in place, this abuse will continue to happen for many years to come. Larry Nassar, the former team doctor for Michigan State University (“MSU”) and USAG, sexually abused gymnasts for nearly three decades.<sup>1</sup> When performing “treatments” on the athletes, Nassar would penetrate the athletes with his ungloved hand.<sup>2</sup> A long-established culture of abuse at USAG, along with the lack of any education or support for the athletes, subjected hundreds to Nassar’s abuse. Maggie Nichols, known as “Athlete A,” was the first survivor to publicly come forward with accusations against Larry Nassar, and it is believed that this cost her a spot in the Rio 2016 Olympics.<sup>3</sup> There have been numerous discoveries about the mental and physical abuse that has been a part of the sport as well. Laurie Hernandez, an Olympic gold medalist, has recently come forward about the abuse she suffered under her coach while training for the Olympics.<sup>4</sup> Laurie states that she believed that this kind of mistreatment was “the way Olympians were made.”<sup>5</sup> The culture at USAG was so focused on winning that the well-being of so many athletes was sacrificed as a result. Olympic medalist McKayla Maroney was paid for her silence on Larry Nassar’s abuse.<sup>6</sup> Former USAG president Steve

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1. Dwight Adams, *Victims Share What Larry Nassar Did to Them Under the Guise of Medical Treatment*, INDYSTAR (Jan. 25, 2018, 1:44 PM), <https://www.indystar.com/story/news/2018/01/25/heres-what-larry-nassar-actually-did-his-patients/1065165001/>.

2. Kerry Howley, *Everyone Believed Larry Nassar: The Predatory Trainer May Have Just Taken Down USA Gymnastics. How Did He Deceive So Many for So Long?*, CUT (Nov. 19, 2018), <https://www.thecut.com/2018/11/how-did-larry-nassar-deceive-so-many-for-so-long.html>.

3. Rachel Blount, *A Netflix Documentary Tells the Whole Story of ‘Athlete A,’ Maggie Nichols*, STARTRIBUNE (July 5, 2020, 6:10 PM), <https://www.startribune.com/a-netflix-documentary-tells-the-whole-story-of-athlete-a-maggie-nichols/571456382/>.

4. Juliet Macur, *Olympic Gymnast Recalls Emotional Abuse ‘So Twisted that I Thought It Couldn’t Be Real,’* N.Y. TIMES (May 1, 2020), <https://www.nytimes.com/2020/05/01/sports/maggie-haney-gymnastics-abuse.html>.

5. *Id.*

6. Colin Dwyer, *McKayla Maroney Sues USA Gymnastics for Trying To ‘Conceal’ Doctor’s Sexual Abuses*, NAT’L PUB. RADIO (Dec. 20, 2017, 3:35 PM), <https://www.npr.org/sections/thetwo->

Penny was indicted on a charge of concealing and destroying documents from the infamous Karolyi Ranch.<sup>7</sup> The structure of the organization was set up in a way where predators like Larry Nassar could thrive.<sup>8</sup> This could have been prevented had there been proper procedures in place to protect athletes who came forward about abuse.

To understand how Larry Nassar was able to abuse athletes for years, we first look at the type of environment that these athletes were in. The United States Women's Gymnastics Team was led by National Team Coaches Martha and Bela Karolyi.<sup>9</sup> They controlled every aspect of the athletes' lives and had the final say on who was to make an Olympic team.<sup>10</sup> Once a month, national team members would travel to southeast Texas to the Karolyi Ranch, the former official training center for the national team.<sup>11</sup> This camp was so remote that if there were any emergency, you would need to be helicoptered to the closest hospital because it was so far away.<sup>12</sup> Additionally, there was no cell phone service at the camp.<sup>13</sup> This camp was completely detached from the outside world, which made it an environment where abuse could thrive.

Several athletes have spoken out about the environment of the Karolyi Ranch and how it was a place set up in a way for abusers to thrive. One former athlete recalled a time where she was so afraid to go to the camp that when she got out of the shower one night, she faked a fall and purposefully banged her head against the bathtub, hard enough to leave a bump, so others would assume she had a concussion and could not attend camp.<sup>14</sup> The athlete returned to camp at a later date and recalled Martha Karolyi ridiculing her for missing camp, noting other athletes had "worse" injuries, but they did not miss practice.<sup>15</sup>

Athletes at the camp would train and perform routines with fractures in their feet and legs because they were not getting proper medical treatment.<sup>16</sup>

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way/2017/12/20/572280105/mckayla-maroney-sues-usa-gymnastics-for-trying-to-conceal-doctor-s-sexual-abuses.

7. *Raisman v. U.S. Olympic Comm.*, No. 18-CV-02479-BLF, 2018 WL 6067254, at \*3 (N.D. Cal. Nov. 20, 2018).

8. Holly Yan, *Karolyi Ranch Produced Champions and a Culture of Fear, Ex-Gymnasts Say*, CNN (Feb. 2, 2018, 1:47 PM), <https://www.cnn.com/2018/02/02/us/karolyi-ranch-gymnastics-abuse-allegations/index.html>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Sally Jenkins, *Aly Raisman: Conditions at Karolyi Ranch Made Athletes Vulnerable to Nassar*, WASHINGTON POST (Mar. 14, 2018), <https://www.washingtonpost.com/sports/olympics/aly-raisman->

Furthermore, even if proper medical treatment was an option, they would have been too scared to ask for it.<sup>17</sup> Many athletes also said that they would barely eat while at the camp because if they were to perform poorly, then the coaches would blame it on how much they had been eating.<sup>18</sup> However, those who were not afraid to eat would describe the food as “lacking” and “inedible.”<sup>19</sup> Olympic Gold Medalist Alexandra “Aly” Raisman recalled that the food was “so repulsive that it seemed calculated to give them eating disorders.”<sup>20</sup> She also talked about how the showers at the Karolyi Ranch were moldy, and the bunk beds were covered with stained blankets and crawling with bugs.<sup>21</sup> In addition to that, she said the athletes were not even provided with bottled water, and when the bathrooms ran out of soap, they were too scared to ask for more because no one wanted to risk being labeled as a complainer and being left off the Olympic team because of it.<sup>22</sup>

Now that you understand the environment of the camps, it should be clear how Larry Nassar was able to get away with abusing these athletes for so long. The strict and harsh environment of the Karolyi Ranch made it a perfect place for abusers like Larry Nassar to thrive. At night, when the coaches and staff would leave the ranch and go into town for dinner and back to a hotel, Nassar would stay behind and perform “treatment” on the girls.<sup>23</sup> Aly recalls when she had an ankle injury and his “treatment” for this injury was to use his fingers to penetrate Aly.<sup>24</sup> Aly recalls thinking that the treatment was weird, but she never questioned it.<sup>25</sup> Numerous athletes received this “treatment” from Nassar, but they still recalled thinking of him as a friend.<sup>26</sup> He would sneak treats to them, and they described him as being a great listening ear for all the athletes.<sup>27</sup>

Some athletes did try and report Nassar, but they were always told to be

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conditions-at-karolyi-ranch-made-athletes-vulnerable-to-nassar/2018/03/14/6d2dae56-26eb-11e8-874b-d517e912f125\_story.html.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. SI Staff, *Aly Raisman on ‘Uncomfortable’ Treatment Sessions with Former Team Doctor: ‘I Would Grit My Teeth,’* SPORTS ILLUSTRATED (Nov. 14, 2017), <https://www.si.com/olympics/2017/11/14/aly-raisman-treatment-sessions-former-team-usa-doctor-larry-nassar>.

26. Jason Silverstein, *Three Former USA Gymnasts Detail Alleged Abuse from Team Physician Lawrence Nassar*, N.Y. DAILY NEWS (Feb. 20, 2017), <https://www.nydailynews.com/news/national/3-usa-gymnasts-detail-alleged-abuse-team-physician-article-1.2977198>.

27. *Id.*

grateful that they had a doctor of such high caliber willing to work on them.<sup>28</sup> So, many of the athletes would withdraw after reporting it, and most just never said anything.<sup>29</sup> It was not until Maggie Nichols' report on Nassar came out that the abuse started to get some attention.<sup>30</sup> However, it still took a long time, and Maggie's report likely cost her an Olympic spot.<sup>31</sup> No one was looking out for these athletes, and unfortunately, this is just one example of a sport that is riddled with abuse. Proper protection must be in place for all athletes, as it is clear no one is looking out for them.

Elite-level athletes are less likely to report if they think there is a chance their Olympic spot could be taken.<sup>32</sup> As described above, many were too scared to even ask for soap because they believed it could threaten their chance at an Olympic spot.<sup>33</sup> A former athlete described this reality regarding why no one felt they could speak up: "If you do, there's a chance you're going to get in trouble, and the last thing you want to do is bring more trouble onto yourself on purpose. You just do not cause trouble. That's one of the first rules of being an athlete."<sup>34</sup>

Unfortunately, Nassar is not the only person accused of abuse in the Gymnastics world. Even after Larry Nassar, numerous coaches are still being reported for abuse. John Geddert, former coach to Olympic Gold Medalist Jordan Weiber, had also been accused of abuse from countless athletes.<sup>35</sup> There were numerous athletes that said Geddert would constantly make sexual comments towards them.<sup>36</sup> Along with that, Geddert was physically and emotionally abusive to the athletes.<sup>37</sup> One of his athletes even tried to take her own life because she was so scared of him.<sup>38</sup> He would pull them off of equipment, strike them, throw items at them and even refuse medical treatment.<sup>39</sup> One athlete fell off of a high bar and landed on her neck. Geddert, being mad at her for falling, made her sit in the splits for an hour and a half until

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28. Justin L. Mack, *A List of the Gymnasts Who Have Publicly Accused Dr. Larry Nassar of Sexual Assault*, INDYSTAR (Dec. 7, 2017, 2:07 PM), <https://www.indystar.com/story/news/2017/12/07/list-gymnasts-who-have-publicly-accused-dr-larry-nassar-sexual-assault/930136001/>.

29. *Id.*

30. Blount, *supra* note 3.

31. *Id.*

32. *Id.*

33. Jenkins, *supra* note 16.

34. Silverstein, *supra* note 26.

35. Majlie De Puy Kamp, *A Gym Built on Fear*, CNN (Mar. 29, 2018), <https://www.cnn.com/interactive/2018/03/investigates/john-geddert-abuse/>.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

practice was over and did not report the accident to her father when he arrived.<sup>40</sup> Later that night, the athlete was unable to move from her couch and was rushed to the emergency room.<sup>41</sup> The doctor said it was a miracle that she was not paralyzed.<sup>42</sup> Ironically, Larry Nassar would also perform his “treatments” on the athletes at Geddert’s gym.<sup>43</sup> Once again, Nassar had unrestricted access to the athletes, and Geddert had cultivated such a terrifying environment for the athletes that they described Nassar as their “safe haven.”<sup>44</sup>

Most recently, Maggie Haney, coach to Olympic Gold Medalist Laurie Hernandez, was suspended for reports of abuse from her athletes.<sup>45</sup> Once again, there was abuse in the form of maintaining unsafe training conditions, forcing athletes to train on broken limbs, and even pushing one athlete so far to do a skill she was not ready for, which caused her to suffer a skull fracture.<sup>46</sup> Haney was yet another coach who failed to create a safe and positive environment for her athletes. She would ridicule her athletes and be extremely aggressive towards them.<sup>47</sup> Athletes recall numerous accounts of body shaming and how Haney would pull the gymnasts around by their hair.<sup>48</sup> Haney was also extremely manipulative and would threaten to kill herself if one of her top athletes left her gym.<sup>49</sup>

While this background is lengthy, it does not even come close to fully describing the types of environments these athletes were forced into and how adults around them failed to protect them. The environment created by USA Gymnastics and the Karolyi Ranch allowed abuse to run rampant, hurting countless athletes. Former USA Gymnastics President, Steve Penny, was notified of Nassar multiple times.<sup>50</sup> Penny was even notified about the abuse done by other coaches, but he never did anything about it.<sup>51</sup> In fact, he is accused of trying to cover the abuse up.<sup>52</sup> USA Gymnastics became engulfed with

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40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. Katie Kausch, *Abusive Coaching Was the Norm at Elite N.J. Gymnastics Gym, Suits Allege*, NJ (Nov. 16, 2020, 4:00 PM), <https://www.nj.com/sports/2020/11/abusive-coaching-was-the-norm-at-elite-nj-gymnastics-gym-suits-allege.html>.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Serge F. Kovaleski & Juliet Macur, *Steve Penny Asked F.B.I. to Help Protect U.S.A Gymnastics’ Image During Sex Abuse Case*, N.Y. TIMES (Oct. 18, 2018), <https://www.nytimes.com/2018/10/18/sports/steve-penny-usa-gymnastics-fbi.html>.

51. *Id.*

52. *Id.*

winning at the expense of countless athletes' well-being.

## II. WHISTLEBLOWING EXPLAINED

Generally, “whistleblowing” refers to the raising of a concern about something going on within or outside of the workplace.<sup>53</sup> Whistleblowing can arise in many areas like match fixing, doping, or discrimination, however, this Comment is concerned with whistleblowing in terms of athlete abuse.<sup>54</sup> It is extremely important that those who are experiencing abuse feel safe to come forward without the risk of repercussions.<sup>55</sup> Unfortunately, this is usually not the case, especially with elite athletes. Athletes whose life goal is to make it to the Olympics do not want to risk that chance of coming forward about any abuse they are experiencing. This is what keeps the cycle of abuse going, and unless there are proper protections in place for these athletes, abuse will continue to run rampant in many sports.

## III. ADOPTING AND STICKING WITH A WHISTLEBLOWING POLICY

USAG already has a whistleblowing policy, however, it is lacking in many areas.<sup>56</sup> Their policy is very generalized, stating that it is the responsibility of directors, officers, and employees to report any violation or suspected violation of USA Gymnastics' policies.<sup>57</sup> This policy also has a “no retaliation” clause, guaranteeing anyone who reports in good faith will not be retaliated against, and if the reporter is retaliated against, there will be consequences in accordance with USAGs policies and procedures.<sup>58</sup> However, the policy does not even mention athletes specifically but rather is geared towards employees of the organization.<sup>59</sup> USAG also talks about how the policy was put in place with the hope of encouraging those with serious concerns to be able to come forward without fear of retaliation.<sup>60</sup> Considering what we learned from the athletes speaking out about the Karolyi Ranch, it is a far-fetched idea that this

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53. Sir Anthony Hooper & Andrew Smith, *Whistleblowing in Sport – Part 1: Maintaining Public Confidence in the Integrity of Sport*, LAWINSPO (Dec. 15, 2014), <https://www.lawinsport.com/topics/item/whistleblowing-in-sport-part-1-maintaining-public-confidence-in-the-integrity-of-sport>.

54. *Id.*

55. *Id.*

56. Marc Edelman & Jennifer M. Pacella, *Vaulted into Victims: Preventing Further Sexual Abuse in U.S. Olympic Sports Through Unionization and Improved Governance*, 61 ARIZ. L. REV. 463, 483 (2019).

57. *USA Gymnastics Whistleblower Policy*, USA GYMNASTICS (Aug. 2014), <https://usagym.org/PDFs/About%20USA%20Gymnastics/Governance/whistleblowerpolicy.pdf>.

58. *Id.*

59. *Id.*

60. *Id.*



organization even remotely encouraged whistleblowing.<sup>61</sup>

Ironically enough, this policy was established in 2014, which was three years before Nassar's abuse finally came to light.<sup>62</sup> Maggie Nichols was not the first to report Nassar, but her report is what brought his abuse to light. Unfortunately for Maggie, this may have cost her a spot on the Olympic Team.<sup>63</sup> USAG needs to adopt a more thorough whistleblowing policy that does not just generally cover the basics. Furthermore, they need to have a specific committee in place that handles any allegations of misconduct that come through. The team needs to be comprised of individuals who are involved and understand gymnastics, but also those who have no connection to the sport whatsoever. That way, athletes can be sure that members of the team cannot be swayed by any bias from any USAG employees or coaches.

#### IV. GYMNASTS AS EMPLOYEES

In order to ensure protection for the gymnasts, they need to and should be considered employees. The Whistleblower Protection Act of 1989 provides federal employees relief for wrongful discharge or retaliation if they reasonably believe and disclose evidence of: (1) a violation of law, rule, or regulation; (2) gross mismanagement, (3) a gross waste of funds, (4) an abuse of authority, (5) or a substantial danger to public health or safety.<sup>64</sup> This act is extremely broad, however, it only covers those involved in an employee-employer relationship.<sup>65</sup> Whistleblowers are important because, without them, the public would remain unaware of large-scale abuse that occurs in the workplace.<sup>66</sup>

When determining whether or not someone is an employee, courts will look to see if there was a contract formed based on the objective standards of the parties' actions.<sup>67</sup> In *Waldrep*, the Court ruled that the plaintiff, a former student athlete at Texas Christian University, was not an employee of the college.<sup>68</sup> The court reasoned that he was not an employee because TCU had no intent to pay the plaintiff for his participation, and TCU had no exclusive right of control over the plaintiff.<sup>69</sup> Further, per NCAA policy, the amateur student athlete model

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61. Jenkins, *supra* note 16.

62. *USA Gymnastics Whistleblower Policy*, *supra* note 57.

63. Blount, *supra* note 3.

64. Whistleblower Protection Act of 1989, 5 U.S.C. § 2302(b)(8)-(9).

65. David Aron, Comment, "*Internal Business Practices?: The Limits of Whistleblower Protection for Employees Who Oppose or Expose Fraud in the Private Sector*," 25 ABA J. LAB. & EMP. L. 277, 279 (2010).

66. *Dolan v. Cont'l Airlines*, 563 N.W.2d 23, 26, 454 Mich. 373, 379 (Mich. 1997).

67. *Waldrep v. Texas Emps. Ins. Ass'n*, 21 S.W.3d 692, 699 (Tex. App. 2000).

68. *Id.* at 695.

69. *Id.* at 702.

would be harmed if student-athletes were seen as employees.<sup>70</sup>

Comparing USAG National Team Members to student-athletes at a university, one can quickly notice how they differ. USAG National Team Members sign a contract saying that they will oblige with all of the rules and duties of being a national team member.<sup>71</sup> The athletes are representatives of USAG, and their daily schedules are at the sole control of the USAG board.<sup>72</sup> They have to travel each month for national team practices, travel internationally for events, as well as any other appearances that come up.<sup>73</sup> The amount of work the athletes have to do to maintain their status as national team members goes far beyond the typical university student-athlete relationship. USAG does allow the athletes to take paid sponsorship roles.<sup>74</sup> However, if an athlete accepts any money, then they fore-go their NCAA eligibility, so most of them do not.<sup>75</sup> Further, elite athletes who are training for the Olympics often consider that to be their vocation, it certainly is not just an “after school activity” for them. These athletes' entire lives are run by the USAG, so it would be fair to characterize them as employees.

The athletes could argue that they have an implied contract with USAG. When determining whether or not there was a contract formed, the court will look at the parties' objective state of mind based on their actions.<sup>76</sup> With an implied-in-fact contract, the athletes would have to show that there was a “meeting of the minds.”<sup>77</sup> The athletes have a strong argument that there is an implied contract between them and USAG to be employees. There are several factors to a common law employee-employer relationship, and some of them are: (1) the employee is assigned to work specific days and hours, as needed by the employer; (2) the employee's decisions are subject to employer approval and the amount of employer oversight on decisions depends on the employee's length of service and experience; (3) and the employee must provide periodic reports to the employer.<sup>78</sup>

The national team members have a strong argument that they are actually employees under USAG. As members of the national team, the athletes must

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70. *Id.* at 699.

71. USA Gymnastics, *USA Gymnastics 2018-2019 National Team Funding and Support Agreement*, [https://usagym.org/PDFs/Pressbox/Selection%20Procedures/19natteam\\_agreement.pdf](https://usagym.org/PDFs/Pressbox/Selection%20Procedures/19natteam_agreement.pdf) (last visited Dec. 1, 2021).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*; *See also* Waldrep, 21 S.W.3d at 700.

76. Waldrep, 21 S.W.3d at 699.

77. Stepp v. Freeman, 694 N.E.2d 510, 514 (Ohio Ct. App. 1997).

78. Jean Murray, *What is a Common-Law Employee?*, BALANCE SMALL BUSINESS, (Oct. 03, 2020), <https://www.thebalancesmb.com/what-is-a-common-law-employee-4171936>.

sign a contract with strict guidelines.<sup>79</sup> USAG does not allow any friends or families to visit the athletes during any official team activities, whether it be at an exhibition, training camp, or competition.<sup>80</sup> If there is any outside socialization with friends or family during these events, it must be coordinated by the National Team Coordinator (“NTC”).<sup>81</sup> In addition to this, national team members must attend all national training camps, they must be in bed at “lights out,” and no phone calls can be made after this time.<sup>82</sup> They follow a strict daily schedule as set up by the NTC at any official events, like training camps.<sup>83</sup> National team members are subject to random “mock” meets for verification of their progress at any time.<sup>84</sup> Additionally, as members of the national team, the athletes must grant USA Gymnastics the right to use their name, image, and likeness.<sup>85</sup>

The effect of interstate commerce is enough in some situations for the NLRB to assert jurisdiction.<sup>86</sup> However, the NLRB does retain the right to not exercise jurisdiction over a group of individuals seeking to unionize if they believe it will not “promote stability in labor relations.”<sup>87</sup> In *Northwestern*, a group of football players from Northwestern, a private university, were seeking to unionize.<sup>88</sup> However, the NLRB declined to even hear or assert jurisdiction over the matter because Northwestern was a private school in a conference with public schools. Therefore, by allowing Northwestern players to unionize, the court decided such a union would create an unequal bargaining situation.<sup>89</sup>

## V. PROPOSED SOLUTIONS

It was not until 2018 that a federal law was enacted to protect athletes from sexual abuse. This is known as the “SafeSport Act.”<sup>90</sup> This bill requires authorized adults that interact with minor or amateur athletes to report suspected

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79. USA Gymnastics, *supra* note 71.

80. USA Gymnastics, *USA Gymnastics Women’s Responsibilities Manual*, [https://usagym.org/PDFs/Pressbox/Selection%20Procedures/w\\_14natteamresp.pdf](https://usagym.org/PDFs/Pressbox/Selection%20Procedures/w_14natteamresp.pdf).

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. USA Gymnastics, *supra* note 71.

86. *N.L.R.B. v. Denver Bldg. & Const. Trades Council*, 341 U.S. 675, 684 (1951).

87. *See Northwestern Univ. & Coll. Athletics Players Ass’n*, 362 NLRB No. 167, at 6, 362 NLRB 1350, 1354 (Aug. 17, 2015).

88. *Id.* at 1.

89. *Id.* at 3.

90. Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act (Safe Sport Act) of 2017, 36 U.S.C. § 220541.

child abuse within twenty-four hours.<sup>91</sup> If they do not report suspected abuse, then they could be subject to criminal penalties.<sup>92</sup> While this is a step in the right direction, a lot still needs to be done before these athletes are fully protected. The USAG had a whistleblowing policy on the books prior to the fall of Larry Nassar. However, because the culture of the USAG was so corrupt, the policy was essentially useless.

For these athletes to reach full protection, a number of things need to be done. First, amateur Olympic athletes need to be treated as employees. Second, there needs to be a review committee in place, composed of both internal and external unbiased actors. Within that committee, it would be beneficial to have a mix of people who were former athletes and those who were not. As we have seen, people will take drastic measures to win. Those who do not have a sports background, or at least not an extensive one, could be helpful to fill this role. The sole concern of the committee will be promoting athlete safety, not winning gold medals.

However, a review committee is likely not enough for the athletes. An athlete's passion for their sport, coupled with the trust they instill in their coaches to get them to the highest level, typically would mean they never dare question anyone or anything, fearing that their Olympic dreams would be taken from them. We learned that many of the athletes did not report any abuse because they believed it was normal and it was how champions were made.<sup>93</sup> These athletes did not have the knowledge or education to know that they deserved better. Former gymnasts talk about how they spend so much time traveling and training that it isolates them from the outside world.<sup>94</sup> Thus, they rely on what others say to learn what is and what is not okay.<sup>95</sup> However, the only people they are surrounded by are other gymnasts and their coaches.<sup>96</sup> The other gymnasts are living the same reality they are, and they are all listening to the same coaches tell them that what is happening is okay.<sup>97</sup> So why would they think to question the same people with whom they are entrusting their entire athletic careers with? In addition to the review committee, I think compiling a group of retired athletes to provide education to the younger gymnasts would be extremely beneficial. Installing an educational program specifically for athletes and parents will teach skills regarding how to advocate for themselves if they were to find themselves in this situation. Activists within the sport, like six-time

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91. *Id.*

92. *See id.*

93. *See Kausch, supra* note 45.

94. SI Staff, *supra* note 25.

95. *Id.*

96. *Id.*

97. *Id.*

Olympic medalist Aly Raisman, would be a great addition to this. Again, Aly was one of Nassar's survivors and has been a major voice calling for change at USAG.<sup>98</sup> Former athletes could play a major role here because, unfortunately, they were subject to the same abuse for many years. For those that feel comfortable sharing, their experiences could help educate the next generation of athletes.

#### CONCLUSION

These athletes have endured physical, emotional, and sexual abuse for far too long. There have been too many instances where an athlete reported and faced retaliation or just simply did not report because they thought this type of behavior was acceptable.<sup>99</sup> This abuse will continue if proper whistleblowing protections for athletes are not established.

As a society that relies heavily on sports as a source of entertainment, we are failing these athletes if we do not provide them with proper protection. While the problem starts with USAG, it will not end with USAG. If we do not start protecting these athletes, the issue will begin to make its way into other sports. If we fail to fully recognize and tackle the issues here, they will start to make their way into other sports. We should not be sacrificing athlete health and safety at the cost of winning gold medals. USAG produces one of the most successful sports in our country. However, they exploited their athletes by sacrificing health and safety for the sake of winning gold medals. Without major change and proper whistleblowing protections in place, this abuse will continue to happen for many years to come.

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98. Jon LaPook, *Aly Raisman Speaks Out about Sexual Abuse*, CBS NEWS (Sep. 09, 2018), <https://www.cbsnews.com/news/aly-raisman-60-minutes-us-olympic-gold-medal-gymnast-i-am-a-victim-of-sexual-abuse/>.

99. See Kausch, *supra* note 45.