

Loss of Balance: Destructive Legal Mechanisms Within USA Gymnastics Policy and their Contributions to a Toxic and Abusive Environment

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Less than a month after the 2016 Summer Olympics in Rio de Janeiro, in which the USA women's gymnastics team took home a total of nine medals, news broke that an anonymous Olympian had filed a sexual assault lawsuit against former team physician Larry Nassar. In the months that followed, hundreds of other gymnasts, including all but one member of the 2016 team, came forwards as victims of Nassar's systemic assault. Almost all of these gymnasts confessed to a culture of fear and organizational silencing that characterized governing body USA Gymnastics (USAG) and prevented them from coming forward about their abuse and maltreatment, but what exactly about these policies were so harmful? Lack of awareness as to this matter could potentially provoke future instances of abuse, or even allow for the continuation of such mistreatment that could still be going on today. The policies put in place by USA Gymnastics were designed in a way that discriminated against athletes by making it difficult or unworthwhile for them to come forward about abuse, and those same policies governed the culture that made USA Gymnastics a breeding ground for abuse in the first place.

Larry Nassar's systemic abuse on gymnasts and other athletes dates back to the 1990's, when he was first reported to have assaulted a twelve year old gymnast in Michigan. Nassar was working on obtaining his medical education from Michigan State University's College of Osteopathic Medicine at the time. In addition, he was working both on the USA Gymnastics medical staff and at several gyms in the greater Michigan area- thus, his access to patients and potential victims of abuse at this time was unknowable ("Why does abuse continue to plague USA Gymnastics?"). Many women have come forward to say that they were abused during this time, and some even made reports to law enforcement during that time, which they claimed were ignored or mishandled and dismissed as a result. In 2016, however, two events launched Nassar's abuses into the spotlight: former Michigan club gymnast Rachael Denhollander came forward about her experiences being abused by Nassar in an *Indianapolis Star* article, and 2000 Olympic gymnast Jamie Dantzscher filed a civil lawsuit in California court alleging that Nassar had inflicted the same abuse on her while she was a gymnast (Armour & Axon 2018). These athletes would be the first in a long line of accusers, and their testimonies would launch a sort of reckoning in the sport of gymnastics and, most importantly, the USAG organization as a whole.

Since the 1980s, USA Gymnastics has been the national governing body for the sport of gymnastics in the United States. In the wake of the Nassar scandal and the

impending amount of damning testimonies, more and more gymnasts began to come forward about their experiences of abuse. In late 2016, USAG hired legal consultant and former federal prosecutor Deborah Daniels to create a report that outlined any changes she felt should be made for the betterment of the organization. Daniels did so through a thorough analysis of USAG policies and bylaws, as well as other relevant documents, and by conducting over 160 interviews with various coaches, athletes, staff members, and other individuals involved in the sport of gymnastics in the United States (Daniels 2018). The report, known as the Daniels report, outlined instances in which USAG policies had directly or indirectly influenced gymnasts wishing to come forward about any instance of abuse, and showed that the policies in place were discriminatory in that they were clearly ineffective at preventing abuse, or at ensuring that those actors who were the most abusive were removed from any gymnastics-related work.

The discrimination against gymnasts is a form of organizational discrimination. These gymnasts were discriminated against based on their place in the power structure of the USA Gymnastics hierarchy. Anti-abuse and other organizational policies did not specifically target gymnasts in a negative manner, but the consequences of their implementation were wholly malicious in nature. According to the Stanford Encyclopedia of Philosophy, such indirect discrimination can be just as harmful: “In some cases, a discriminator will adopt a policy that, on its face, makes no explicit

reference to the group that he or she aims to disadvantage. Instead, the policy employs some facially-neutral surrogate that, when applied, accomplishes the discriminator’s hidden aim” (Altman 2015). In the case of USA Gymnastics, its hierarchy, though not explicitly placing gymnasts at the bottom, was designed and supported by policies that were in favor of the organization and not those gymnasts who did its greatest bidding. Though the gymnasts were essentially the basis of the USA Gymnastics organization, without whom it would have no purpose, they were consistently held to have less value and were often taken less seriously. Subsequently, though gymnasts competed for the organization and represented the United States at its bidding on the international stage, the policies put in place by the organization were wholly stacked against them, particularly in instances of abuse and other mistreatment. Though the gymnasts were carrying out important athletic work, they were still treated in a way that held them above their years. “The athletes, who were mostly under the age of 18...were treated like adults when it came to competing and children without agency when it came to virtually every other aspect of their lives. They bore all the responsibility, and enjoyed none of the freedom” (“Faehn’s Olympic Experience”). One must question how a gymnast would have felt confident in reporting abuse knowing that this was the way they were treated on a regular basis within the organization.

The environment within USA Gymnastics, though productive of incredible success on many levels, was incredibly destructive mentally to gymnasts and wholly conducive to abuse on widespread levels. A sobering exhibit of just how low gymnasts ranked among the priorities of USAG officials can be seen in a 2000 issue of the now defunct USA Gymnastics magazine. In his magazine-opening letter, former USAG president Bob Colarossi informed readers that the organization had undergone a sort of policy shift:

We have worked hard to ensure that all of our resources and programs have been better aligned to achieve our three major objectives: **medals, growth, and visibility**. This means that, when our teams don't perform in the manner which we expect, they are held to a higher standard and changes are made to ensure that standard will be met in the future. (5)

This damning statement establishes a culture in which medals and success on the international stage were prioritized over the well-being of the athletes themselves, and this mentality, alongside the destructive policies put in place by USAG, were the ingredients needed for a toxic and abusive environment in which abuse by actors like Nassar could easily thrive.

Throughout the history of the organization, USA Gymnastics consistently advocated its reporting system for sexual abuse, which they felt was adequate for reporting and preventing abuse. Though this

reporting system existed, however, there was almost no incentive to take advantage of it, and that showed during the Nassar investigations. Moreover, the reporting systems put in place by USA Gymnastics were ineffective and a form of discrimination in that they were designed knowing that people would be afraid to use them. If anyone wished to report an allegation of abuse, their report had to fall in line with general misconduct guidelines; there was no separate reporting procedure for something as serious as sexual abuse. The complaint had to be “submitted in writing to the President [of USAG] at the Corporation’s principal place of business” and “be signed by the complainant” (Daniels 2018). This process had the potential to cause undue stress; it is hard to imagine an athlete wanting to come forward in such a way, and that the only acceptable complaint was in such a strict and rigid format.

This process was also highly problematic, as can be seen in the instance that resulted in the first official report to a USAG official. In June of 2015, Sarah Jantzi, coach of national team member Maggie Nichols, reported to Rhonda Faehn, senior vice president of the women’s program at the time, that she (Jantzi) had overheard Nichols having a conversation with two other gymnasts regarding Nichols’s discomfort with treatment techniques being used on her by Nassar. After Jantzi reported her athlete’s comments to Faehn, USAG did not immediately contact law enforcement. Rather, they opted to hire an investigator (who had no

affiliation with law enforcement, instead representing a private practice) to interview the athlete and the two others Jantzi reported as having made similar comments about Nassar's treatment. USAG reported that the purpose of this was to determine if it "would be appropriate to notify law enforcement." As a result, five weeks passed between Jantzi's call to Faehn and any contact with law enforcement regarding Nassar ("Why Does Abuse Continue"). Steve Penny's discussion of such an investigator, here taken from an email to Faehn, is a clear display of how he wanted her investigations to go.

Both athletes are adults and we are going to need you to reach out to them and find out how we can arrange for them to have a conversation. Our preference is for them to meet privately with the interviewer and not involve their coach or their parents. If they had to involve someone, the preference would be the parents (personal communication, July 13, 2015).

From this sort of language, it is clear that Penny wished to keep the matter of Nassar's abuse within the confines of the USAG hierarchy for as long as possible. Clearly, he and other upper-level officials sought to circumvent any issues of complaints where they could, rather than address it head on.

In addition, there is further evidence that complaints like this were not even taken seriously by upper-level officials. Emails submitted to the Senate by Faehn show that,

of the fifteen upper-level members of the USA Gymnastics hierarchy who were seemingly aware of Nassar's misconduct, not a single one (Faehn included) submitted any sort of independent report to law enforcement regarding Nassar. This is in part due to the minimum requirement of gymnastics staff being to report to their supervisor when they came across any knowledge of sexual assault. Such was not only the legal policy of USAG, but it also had grounding in Indiana's family and juvenile law. According to Title 31 of Indiana code, "an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this article" (31 U.S.C. § 35-5-1). USAG placed emphasis on the term *individual* and argued in court that, though the organization as a whole had not taken steps to report Nassar, the fact that individuals within it had done so should have been seen as substantial in the eyes of the law, and should absolve USAG from any related punishment ("Why does abuse continue to plague USA Gymnastics?"). Faehn, too, argued in the Senate that she stayed silent and did not take any of Jantzi's comments to law enforcement since she believed Penny was doing the right thing by hiring an "investigator," and thus didn't feel it was her place to be involved any further (Meyers 2018b). The fact that she did not know her responsibilities as an upper level administrator within USAG is more evidence to the lack of seriousness the organization applied to abuse prevention

awareness, and to the discriminatory policies against athletes that ensued as a result.

In addition, though the protocol in instances of abuse was for whoever heard of the abuse to report it to the person hierarchically above him or her, there was also a tendency for upper-level officials to take those claims less seriously depending on what they deemed to be an athlete's credibility, which they often held in less regard than that of their coaches. Steve Penny himself gave a concrete reason for his wariness, and the wariness of his staff, to look into claims of abuse too closely: the fact that doing so could put the coach in question in jeopardy if the rumors turned out to be false. In interviews with Penny that were part of a 2014 lawsuit against USA Gymnastics, "...the potential for...a witch hunt, becomes very real. And so it's possible that someone may make a claim like this because they don't like someone or because they heard a rumor..." (Kwiatkowski, Alesia, & Evans 2016). This directly aligns with the Daniels report, which found that these reporting procedures unfairly favored the rights of the accused in comparison to the rights of the accuser.

In her report, Daniels also purported that there could be "an unnecessary and disproportionate concern that reports of abuse might be filed by representatives of one club in order to disadvantage a very capable coach at another club. This may or may not have led to undue caution on the part of USA Gymnastics in reviewing reports of abuse" (Daniels 2016). This "undue caution" was discriminatory in that it

almost always favored the coaches over the gymnasts who did the reporting. This, again, has both legal and discreet origins.

Gymnastics, in general, is a very coach-driven sport; none of the incredibly difficult skills could be learned without some sort of training, and it so happens that much of that training is done on a highly individual basis as the athletes advance further in the sport, since there are so few competing at that level in the first place. Thus, gymnasts grow to rely on their coaches for everything, especially at the elite level when it often seems that coach is the only one who is able to help a gymnast achieve her dreams. This can be justification for maltreatment in that gymnasts (and even parents) could have thought it was all for a greater goal- namely, reaching the highest levels of success in the sport.

If the aforementioned policies were in place on their own, there is a chance that much of the abuse propagated by Nassar and other coaches could have been stopped earlier due to a higher likelihood of reporting and better outcomes of doing so. However, this does not take into account the characteristics of the culture that USA Gymnastics and gymnastics as an entire sport, created over time. In addition to the sexual abuse that has been found to be so common at the elite levels of gymnastics, abuse of power in sports has long been a pervasive issue. Thus, in addition to the legal mechanisms put in place to silence the gymnasts, more covert methods embedded within the culture of the sport worked in tandem to create a toxic environment for

gymnasts. It was an environment in which gymnasts would not have felt comfortable coming forward about any abuse or even recognizing that such behavior could be classified as such. Gymnasts testifying against Nassar during the victim impact statement portion of his trial told stories in which the people around them in the gymnastics world were incredibly toxic and demoralizing, and that they trusted Nassar because his behavior seemed kind and friendly; in short, exactly the opposite of all those around them. Because of the environment of the highest levels of USAG being so discriminatory against athletes and their well-being, they had no choice but to confide into those who showed any inkling of kindness; in this case, even someone with even more malicious intentions.

The abusive behavior on the part of coaches and administrators within USA Gymnastics is even more unfair and oppressive when considering the lack of autonomy that gymnasts have in trying to advocate for themselves. Gymnasts competing at the various levels of the USAG hierarchy are most often not professional athletes, earning no compensation for their performance (usually in hopes of obtaining an athletic scholarship to compete in the sport at the college level). Often, gymnasts have no need for an agent since the National Collegiate Athletic Association (NCAA) eligibility requirements prevent them from taking advantage of any financial sponsorship benefits. Thus, the majority of gymnasts are often left to defend themselves in any instance of mistreatment or

unfairness. Combined with ideals pushed by the organization that medals were the most important outcome of a gymnast's career, and that gymnasts could be ostracized without chance of those medals if they spoke up, this made for a highly negative combination.

In spite of such malicious treatment, gymnasts were consistently instructed to hold their coaches and national team staff in the highest regard, since they were theoretically the only individuals who the gymnast could possibly expect to lead them to their Olympic dream of glory, or to similarly high levels. This, too, led to discriminatory policies and practices. Deborah Daniels remarked on this in the first few paragraphs of the Daniels report:

Because of the subjectivity of the scoring in gymnastics and the even more subjective method of team selection, the coaches and national team staff have an unusual amount of control over whether a young athlete will be permitted to participate in a competition. And in a sport such as gymnastics, in which falls and injuries are common, the athletes are taught at an early age to "tough it out" and not to complain or demonstrate weakness... only the athletes who are perceived to be able to withstand the physical and emotional strain of competition will rise to the top of their craft and be selected for inclusion on a team

competing with the top athletes from other jurisdictions (11).

Any gymnast who demonstrated being unable to handle the intensity of the sport is often placed under scrutiny; in the case of Nassar's abuse, that includes reporting that a coach is being abusive. This was a process that came under the microscope when it came to selecting teams for important competitions. Daniels found issue with the fact that one of the members of the selection committee, as designated by USAG policy, was to be the athlete representative; i.e., the individual (usually a former gymnast) within USAG who was designated to check up on athletes and ensure their well-being during national team training events. This made for a conflict of interest in that the athlete representative could potentially take issue with a gymnast's complaints of abuse and leave her off a team because of it; Daniels wrote in the report that, through interviews, she had reason to believe that this had happened on multiple occasions. Thus, the structure of the USAG selection committee was also constructed in a discriminatory way against athletes who reported abuse because they allowed for potentially biased actors to take part in selecting teams (Daniels 2018). Since there were no rules prohibiting "unbiased" actors from taking part on selection committees, USA Gymnastics opened the door for selection bias that could be stacked against those who brought forward claims of misconduct or abuse.

The gymnasts who were arguably impacted the most by policies like this were those who competed at the very top of the

USAG hierarchy, the national team members from whom World Championship and Olympic team members were chosen. Until this year, those gymnasts trained at the Karolyi ranch, the US National Team Training Center located near Huntsville, Texas that also served as one of the locations in which Nassar was able to carry out the most instances of his abuse. The rules and regulations regarding the Ranch were designed in a way that athletes who went there could focus only on the gymnastics they'd be performing there, and they also created a toxic environment where abuse could go completely unnoticed. In this way, the rules of the ranch were equally discriminatory towards athletes and were especially constructed to prevent athletes from coming forward about abuse, or even allow them to know that what was happening to them could be classified as such.

According to rules governing the national team, top gymnasts attending monthly camps at the ranch (while training at their club gyms at home at all other times) were not allowed to attend with anyone other than their coach- no other parent or chaperone was allowed to join them for the duration of the camp (usually a few days in length). In addition, the Karolyi ranch (now serving only as the home of former women's program coordinators Bela and Marta Karolyi) was located in a very isolated stretch of forest in Texas, miles away from any city. There is no hospital within reasonable driving distance; a gymnast would have to be airlifted in the case of any

serious injury (LeBlanc 2018). In addition, there was minimal cell service and no payphones on site, so gymnasts had little means of contacting their parents, guardians, or anyone from the outside world in case something went wrong. In this instance, the isolation worked as a discriminatory practice against gymnasts by putting them in a different sort of mentality in which they had no choice but to focus on anything other than their gymnastics. There was also minimal food available for the athletes, and many testified that that which was available was of a low quality that would discourage them from eating it; this can be tied to the idea that body weight and performance are highly correlated in gymnastics, which led many coaches to strictly monitor their athletes' diets (LeBlanc 2018). Many gymnasts stated that Nassar would bring them food during these camps, giving it to them in secret so their coaches wouldn't see, creating a grooming relationship that facilitated his abuse.

Institutional policies related to national team camps, and the resulting culture they created at camps, were structured in a way that athletes were placed at the very bottom of the hierarchy. "[Administrators]...would search the girls' rooms, looking for snacks that might be stashed away, according to the lawsuit and interviews with former gymnasts. The Karolyis, their coaching staff and sometimes other visiting coaches would publicly ridicule girls about their weight or bodies and force the gymnasts to work through devastating injuries" (Weiss & Mohr

2018).” In this sort of demeaning environment, it must be questioned whether the training policies and regimens instituted by USA Gymnastics were even conducive to showing them what did and what did not constitute as abuse. According to Deborah Daniels, gymnasts' “all-encompassing training regimen can isolate an athlete from the rest of society, and limit his or her exposure to and comprehension of the normal boundaries of adult and child interaction; so it can be hard for a young athlete to recognize what constitutes acceptable conduct and what does not.” (Daniels 2018). Thus, gymnasts not only might have been afraid to inform their coaches of any abuse, but likely would not have been able to identify such abuse in the first place. Policies against abuse that can't even be understood by gymnasts in certain circumstances must be discriminatory in some sort of way, as were policies like those governing the Ranch that ensured gymnasts were still kept in the dark.

Another informal yet discriminatory barrier that could have prevented gymnasts from coming forward about their abuse was the ensuing backlash they might have faced for doing so. In a sport that emphasized perfection, gymnasts already had to pay the consequences at any sort of misstep. Mattie Larson was a Nassar victim and national team gymnast who fell on the floor exercise at the 2010 World Championships, resulting in the United States slipping from gold to silver medal position. Rather than supporting Larson, the coaches, national team staff, and even her teammates

(conditioned by fear of the adults around them) ignored Larson for the rest of the competition; Larson alleged that they refused to acknowledge her presence, let alone her performance (Meyers, 2018c). It would be her last competition on the elite stage- years later, Larson would come forward as a Nassar victim. It is difficult to imagine how a gymnast who might have been abused would want to come forward in a system where consequences like these were the norm. Thus, gymnasts were as victimized by the discriminatory policies of USAG as they were by the coaches who upheld them and manipulated them for their own benefit.

Even when gymnasts who had long been retired faced scrutiny if they dared say anything negative regarding the sport. For example, when Dominique Moceanu, 1996 US Olympian and gold medalist, was interviewed by journalist Bryant Gumbel regarding her new book, national team coach John Geddert reached out to her via email to convey his negative thoughts (Meyers, 2018a). “[Your] initial quotes and coverage...have me wondering how you could stab this sport in the back. The system (*sic*) that you malign is the same system that “petitioned” you onto the 96 team. The coaches that you malign are the very coaches responsible for your fame and notoriety (*sic*)” (personal communication, July 22, 2008). In spite of the mistreatment going on around them, gymnasts were still bullied into silence for fear of retribution, or public shame and rebuke for any sort of step out of line.

All of these coaching-related problems relate to the need for a serious culture change within the sport. The indiscreet nature of such a culture change made it somewhat difficult to write this paper, since many of the policies only became problematic in the presence of such a negative culture. In addition, since the Nassar atrocities only became exposed to the public on a large scale in 2016, little formal writing has been done on the subject. Much of the knowledge on how USA Gymnastics conducted itself on a discrete level comes not from the organization itself, but from testimonies of the gymnasts who suffered its abuse. Though these testimonies were certainly helpful, it would have been even more beneficial to have more academic or professional writing on the subject to use as sources. Paradoxically, however, more and more information comes out on the case on an almost daily basis which can render previous notions or judgements irrelevant. For example, while this paper was being written, USA Gymnastics announced its decision to file for Chapter 11 bankruptcy, which could potentially put a stop to any new depositions or discoveries on the case due to the legal “timeouts” that bankruptcy would entail (Davis O’Brien & Ferek 2018). New developments are consistently emerging regarding the case, and those could quickly impact future research.

Another limitation is the sheer scope of agencies involved in propagating both Nassar’s abuse and that of other coaches. In addition to USA Gymnastics, the US Olympic Committee and Michigan State

University, as well as countless other groups and organizations that can't be known, played a role in covering up abuse. While researching for this paper, it was difficult enough to pinpoint all the legal and structural ways USAG sought to conceal abuse, as was it to disentangle them from the twin efforts of the aforementioned other bodies, whose efforts were very similar. Thus, to write an entire paper that fully details all of these agencies and the roles they played would be extremely difficult to do, though it would be interesting to study the joint results of their efforts.

There were many factors contributing to the way in which Larry Nassar's abuse continued through the years. As often happens in cases of abuse of power, these policies were nothing more than a sort of figurehead that works only theoretically; when put into practice, the policies put in place by USA Gymnastics were discriminatory against athletes or anyone who wished to report sexual abuse because they were not conducive to the culture of fear that was already prevalent within the organization. Many critics of the organization have advocated for a "culture change" within not just the organization, but within the sport of gymnastics itself. Gymnastics, like other sports, was designed with good intentions in mind, and the benefits it can bring to competitors are often unmatched. However, it has been tainted by evil actors to the point that these accolades pale in comparison. Regarding the medals his daughter Madison (2016 Olympian and Nassar victim) garnered over her career,

father Thomas Kocian, stated that "You always want to protect your child and do what you can for them, and to me, at this point, no it was not worth it. There are still people at the top that I feel have overseen this issue for a long time" (as cited in Caplan 2018). Those "people" must work tirelessly to correct their wrongdoing. While this will be a Herculean task (coaches learn their ways and pass them down; programs adopt "traditions" and never really change; gymnasts fall in line with problematic behavior and learn to accept it), it will be necessary if any legal mechanisms further developed or changed by USA Gymnastics can ever expect to be effective at preventing abuse.

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