

Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar

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EXECUTIVE SUMMARY

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Introduction and Factual Findings

The U.S. Department of Justice (Department, DOJ) Office of the Inspector General (OIG) initiated this investigation based on allegations that Federal Bureau of Investigation (FBI) employees in the FBI's Indianapolis Field Office mishandled allegations of sexual abuse of athletes by former USA Gymnastics physician Lawrence Gerard Nassar. Nassar was employed as an Osteopathic Physician and Associate Professor at Michigan State University's (MSU) Department of Family and Community Medicine, where he treated patients from 1996 through 2016. For most of that time, Nassar also was employed as the USA Gymnastics National Medical Coordinator and a treating physician for gymnasts. Among the places where Nassar treated athletes was at the USA Gymnastics National Team Training Center in Texas. In addition, Nassar worked in Michigan as the team physician for the Twistars USA Gymnastics Club and at Holt High School.

USA Gymnastics Reports Sexual Assault Allegations to the FBI's Indianapolis Field Office in July 2015; Indianapolis's Investigative Response

In July 2015, following a USA Gymnastics internal investigation into allegations of sexual assault by Nassar against multiple gymnasts, USA Gymnastics President and Chief Executive Officer Stephen D. Penny, Jr., reported the allegations to the FBI's Indianapolis Field Office. During the meeting, among other things, Penny described graphic information that three gymnasts (Gymnasts 1, 2, and 3), all of whom were minors at the time of the alleged sexual assaults, had provided to USA Gymnastics. Penny further informed the FBI that the three athletes were available to be interviewed. Penny noted during the meeting that Nassar told USA Gymnastics that he was performing a legitimate medical procedure during his treatments of the gymnasts and denied sexually assaulting them. Further, Penny provided the FBI with a thumb drive containing PowerPoint slides and videos that Nassar had provided to USA Gymnastics of Nassar performing his purported medical technique on athletes.

Shortly after the meeting, USA Gymnastics advised Nassar that he should no longer attend USA Gymnastics events, and Nassar retired from his USA Gymnastics position in September 2015. However, Nassar continued to maintain his positions at MSU, Twistars USA Gymnastics Club, and Holt High School.

Over the next 6 weeks, the Indianapolis Field Office conducted limited follow-up, which involved conducting a telephonic interview on September 2 of one of the three athletes, reviewing the thumb drive provided by Penny, and discussing the allegations with the U.S. Attorney's Office (USAO) in the Southern District of Indiana and the FBI's Detroit Field Office. The Indianapolis office did not formally document any of its investigative activity, including its July meeting with USA Gymnastics and its September 2 telephonic interview of one of the victim gymnasts. The office also did not formally open an investigation or assessment of the matter. The only 2015 Indianapolis Field Office documentation located by the OIG consisted of five pages of handwritten notes taken by two of the FBI attendees at the July 2015 meeting with USA Gymnastics, three pages of notes taken by the two agents at the September 2 interview of the one athlete, a handful of email exchanges between Penny and the FBI Indianapolis Field Office, and approximately 45 emails and text messages among agents and prosecutors.

In September 2015, following the September 2 interview of the victim gymnast, the Indianapolis Field Office, as well as the USAO for the Southern District of Indiana, concluded that there was no venue in Indianapolis since Indianapolis had no connection to any of the alleged illegal activity. Further, both offices

had serious 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 about the allegations and did not take any action to mitigate the risk to gymnasts that Nassar continued to treat. Instead, the Indianapolis agents and Assistant U.S. Attorney (AUSA) determined that, if the FBI had jurisdiction, venue would likely be most appropriate in the Western District of Michigan and the FBI's Lansing Resident Agency, where MSU is located and where Nassar treated patients. Accordingly, the AUSA advised the Indianapolis Field Office on September 2 to transfer the case to the FBI's Lansing Resident Agency. However, the Indianapolis Field Office failed to do so, despite informing USA Gymnastics on September 4 that it had transferred the matter to the FBI's Detroit Field Office (of which the FBI's Lansing Resident Agency is a part).

USA Gymnastics Reports Sexual Assault Allegations to the FBI's Los Angeles Field Office in May 2016; Los Angeles's Investigative Response

After 8 months of FBI inactivity, USA Gymnastics officials contacted the FBI's Los Angeles Field Office and met with that office in May 2016 to report the same allegations concerning Nassar that it had provided to the Indianapolis Field Office in July 2015. The Los Angeles Field Office then contacted a Supervisory Special Agent (SSA) in the Indianapolis Field Office (Indianapolis SSA) to learn what the Indianapolis office had done in response to the USA Gymnastics complaint. The Indianapolis SSA told the Los Angeles SSA that he had created a formal FBI complaint form (FD-71) in 2015 to transfer the Nassar allegations from the Indianapolis office to the Lansing Resident Agency; however, the Los Angeles Field Office, the Indianapolis SSA, and other FBI employees stated that they searched for the FD-71 in the FBI's computer system but could not find it. The OIG also found no evidence that such a document had been sent to the Lansing Resident Agency in 2015.

Following its May 2016 meeting with USA Gymnastics, the Los Angeles Field Office, in contrast to the Indianapolis Field Office, opened a federal sexual tourism investigation against Nassar and undertook numerous investigative steps, including interviewing several of Nassar's alleged victims. However, like the Indianapolis Field Office, the Los Angeles Field Office did not reach out to any state or local authorities, even though it was aware of allegations that Nassar may have violated state laws and was unsure whether the evidence would support any federal criminal charges, and did not take any action to mitigate the risk to gymnasts that Nassar continued to treat.

The MSU Police Department Learns of Nassar's Alleged Abuse and Executes a Search Warrant on Nassar's Residence in September 2016; the FBI Lansing Resident Agency Subsequently Learns of the Allegations

In August 2016, the Michigan State University Police Department (MSUPD) received a separate complaint from a gymnast who stated that she was sexually assaulted by Nassar when she was 16 years old. Two weeks later, *The Indianapolis Star* ran a news story describing sexual assault allegations against Nassar by former gymnasts. The MSUPD then received similar sexual abuse complaints against Nassar from dozens of additional young females, and, on September 20, 2016, the MSUPD executed a search warrant at Nassar's residence and discovered child pornography.

As a result of the news stories and MSUPD investigative activity, the FBI's Lansing Resident Agency first learned of the Nassar allegations and opened its Nassar investigation on October 5, 2016 (neither the FBI's Indianapolis Field Office nor the FBI's Los Angeles Field Office had previously informed the Lansing Resident Agency of the Nassar allegations). The Lansing Resident Agency ultimately discovered over 30,000 images of child pornography on the devices seized by the MSUPD during its search of Nassar's residence.

The September 2016 news reports and MSUPD investigative activity also resulted in Nassar being removed from his positions at MSU, Twistars USA Gymnastics Club, and Holt High School. According to civil court documents, approximately 70 or more young athletes were allegedly sexually abused by Nassar under the guise of medical treatment between July 2015, when USA Gymnastics first reported allegations about Nassar to the Indianapolis Field Office, and September 2016. For many of the approximately 70 or more athletes, the abuse by Nassar began before the FBI first became aware of allegations against Nassar and continued into 2016. For others, the alleged abuse began after USA Gymnastics reported the Nassar allegations to the Indianapolis Field Office in July 2015.

Nassar Is Prosecuted, Convicted, and Sentenced

Nassar was arrested and charged by the Michigan Attorney General in November 2016 with multiple counts of criminal sexual conduct related to his sexual

assault of gymnasts. In December 2016, the FBI arrested Nassar on federal possession of child pornography charges related to the images seized during the search of his residence. Nassar was not charged with child sexual tourism, the federal offense that the Indianapolis Field Office had considered and the Los Angeles Field Office had investigated.

In July 2017, Nassar pleaded guilty to Receipt and Attempted Receipt of Child Pornography, Possession of Child Pornography, and Destruction and Concealment of Records and Tangible Objects, and he was sentenced to 60 years in federal prison in December 2017. In November 2017, Nassar pleaded guilty in Michigan state court to seven counts of First Degree Criminal Sexual Conduct, and an addendum to the plea agreement indicated that there were 115 alleged victims. In January 2018, Nassar was sentenced to 40 to 175 years in Michigan state prison. In February 2018, after pleading guilty to 3 additional counts of criminal sexual conduct, Nassar was sentenced in Michigan state court to an additional 40 to 125 years in prison.

The FBI is Questioned by Reporters in 2017 and 2018 about Its Alleged Lack of Investigative Action Following the USA Gymnastics Referral in July 2015

In early 2017, reporters questioned FBI and USA Gymnastics officials about the time that elapsed between when USA Gymnastics first reported the sexual assault allegations to the FBI in July 2015 and the MSUPD search of his residence in September 2016. These inquiries prompted Indianapolis Field Office Special Agent in Charge (SAC) W. Jay Abbott to propose that the FBI release a statement indicating that the FBI had expeditiously responded to the Nassar allegations (the FBI did not issue the statement) and resulted in FBI headquarters drafting a white paper (relying on Indianapolis Field Office information) that was intended to summarize the FBI's handling of the Nassar allegations but omitted information about the FBI's failure to timely interview the victim gymnasts.

These 2017 press questions also resulted in FBI officials discussing the Indianapolis Field Office's receipt of the Nassar allegations and investigative steps taken in 2015, which the Indianapolis SSA described in an electronic communication (EC) that he drafted and is dated February 1, 2017. The EC includes a claim that the Indianapolis SSA had drafted an FD-71 report and sent it to the Lansing Resident Agency in 2015, "but to date [it] cannot be located." Additionally, on February 2, the Indianapolis SSA drafted an interview summary (FD-302) of the one gymnast interview he had conducted 17 months earlier in September 2015. In drafting the FD-302, the Indianapolis SSA used only his one page of limited notes and memory and did not consult with his FBI co-interviewer or review her notes. The FD-302 includes statements purportedly made by the gymnast during her Indianapolis interview that she later told the OIG she did not make, that are not contained in the Indianapolis SSA's notes, that the co-interviewer did not recall the gymnast making, and that conflict with statements the gymnast made during her Los Angeles Field Office interview in 2016 and USA Gymnastics interview in 2015.

Similar questions in early 2018 about the timeliness of the FBI's handling of the Nassar allegations resulted in Abbott (who had recently retired from the FBI) providing a reporter with an inaccurate statement that claimed, among other things, that "there was no delay by the FBI on this matter" and that the Indianapolis Field Office had provided a "detailed report" to both the FBI Detroit and Los Angeles Field Offices. Further, these inquiries resulted in an official with the Indianapolis Field Office proposing factually inaccurate changes to the white paper created in 2017 that sought to place blame on others for the Indianapolis Field Office's failures.

Abbott Engages with Penny Regarding a U.S. Olympic Committee Position While Continuing to Participate in FBI Discussions Regarding the Nassar Investigation

During the course of the OIG investigation, we learned that in the fall of 2015, after the Indianapolis Field Office decided to refer the Nassar allegations to the FBI's Lansing Resident Agency but while the matter was still pending at the FBI, Abbott met with Penny at a bar and discussed a potential job opportunity with the U.S. Olympic Committee. Thereafter, Abbott engaged with Penny about both his interest in the U.S. Olympic Committee position and the Nassar investigation, while at the same time participating in discussions at the FBI related to the Nassar investigation. These discussions included Penny expressing concern to Abbott about how USA Gymnastics was being portrayed in the media and whether Penny might be "in trouble" and Abbott proposing to his colleagues an FBI public statement that would place USA Gymnastics in a positive light. At the same time, Abbott was aware that Penny appeared willing to put in a good word on Abbott's behalf. Abbott applied for the U.S. Olympic Committee position in 2017 but was not selected. Despite evidence confirming that Abbott had applied for the job, Abbott denied to the OIG during two interviews that he had

applied for the position and told the OIG that applying for the job would have presented a conflict of interest.

Results of the Investigation

The OIG found that, despite the extraordinarily serious nature of the allegations and the possibility that Nassar's conduct could be continuing, senior officials in the FBI Indianapolis Field Office failed to respond to the Nassar allegations with the utmost seriousness and urgency that they deserved and required, made numerous and fundamental errors when they did respond to them, and violated multiple FBI policies. The Indianapolis Field Office did not undertake any investigative activity until September 2—5 weeks after the meeting with USA Gymnastics—when they telephonically interviewed one of the three athletes. Further, FBI Indianapolis never interviewed the other two gymnasts who they were told were available to meet with FBI investigators.

This absence of any serious investigative activity was compounded when the Indianapolis Field Office did not transfer the matter to the FBI office (the Lansing Resident Agency), where venue most likely would have existed had evidence been developed to support the potential federal crimes being considered, even though the Indianapolis office had been advised to do so by the USAO and had told USA Gymnastics that the transfer had occurred. Additionally, the Indianapolis office did not notify state or local authorities of the sexual assault allegations even though it questioned whether there was federal jurisdiction to pursue them. As a result, the Lansing Resident Agency did not learn of the Nassar allegations until over a year after they were first reported to the FBI and then learned of them only from the MSUPD. Moreover, the FBI conducted no investigative activity in the matter for more than 8 months following the September 2015 interview. During that period of time, as alleged and detailed in numerous civil complaints, Nassar's sexual assaults continued.

Further, when the FBI's handling of the Nassar matter came under scrutiny from the public, Congress, the media, and FBI headquarters in 2017 and 2018, Indianapolis officials did not take responsibility for their failures. Instead, they provided incomplete and inaccurate information in response to FBI internal inquiries (and Abbott, after he retired, provided inaccurate information to the media) to make it appear that the Indianapolis office had been diligent in its follow-up efforts and they did so, in part, by blaming others for their own failures.

The OIG identified multiple failures and policy violations by the Indianapolis Field Office in connection with its handling of the Nassar allegations. Among other things, the OIG found that the Indianapolis Field Office did not properly document the July 2015 meeting with USA Gymnastics, the Indianapolis SSA failed to properly handle and document receipt and review of the thumb drive provided by USA Gymnastics during the July 2015 meeting, the Indianapolis SSA did not document the September 2015 victim interview alleging criminal sexual assault by Nassar in an FD-302 report until 17 months after the interview occurred, the FD-302 of the September 2015 victim interview that was drafted by the Indianapolis SSA in February 2017 included materially false information and omitted material information, and the FBI Indianapolis Field Office did not coordinate with state or local authorities although it believed that the allegations it received likely did not fall within federal jurisdiction. In addition, although the Indianapolis SSA told the OIG that he completed and forwarded an FD-71 complaint form in the FBI's electronic case management system to the FBI's Lansing Resident Agency, we determined that an FD-71 form never reached the Lansing Resident Agency and the Indianapolis SSA, the FBI Inspection Division, and other FBI employees stated they could not find an FD-71 in the FBI's case management system or elsewhere.

The OIG also found that, while the FBI Los Angeles Field Office appreciated the utmost seriousness of the Nassar allegations and took numerous investigative steps upon learning of them in May 2016, the office did not expeditiously notify local law enforcement or the FBI Lansing Resident Agency of the information that it had learned or take other action to mitigate the ongoing danger that Nassar posed. Indeed, precisely because of its investigative activity, the Los Angeles Field Office was aware from interviewing multiple witnesses that Nassar's abuse was potentially widespread and that there were specific allegations of sexual assault against him for his actions while at the Karolyi Training Camp (also known as the Karolyi Ranch) in Huntsville, Texas. Yet, the Los Angeles Field Office did not contact the Sheriff's Office in Walker County, Texas, to provide it with the information that it had developed until after the MSUPD had taken action against Nassar in September 2016. Nor did it have any contact with the FBI Lansing Resident Agency until after the Lansing Resident Agency first learned about the Nassar allegations from the MSUPD and public news reporting. Given the continuing threat posed by

Nassar, the uncertainty over whether the Los Angeles Field Office had venue over the allegations, and the doubt that there was even federal jurisdiction to charge the sexual tourism crime that the Los Angeles Field Office was seeking to pursue, we found that prudence and sound judgment dictated that the Los Angeles Field Office should have notified local authorities upon developing the serious evidence of sexual assault against Nassar that its investigative actions were uncovering.

In addition, we concluded that the Indianapolis SSA, in an effort to minimize or excuse his errors, made false statements during two OIG-compelled interviews regarding his interview of one of Nassar's victims. Similarly, we found that Abbott, in an effort to minimize or excuse his own and his office's actions, falsely asserted in two separate OIG interviews that he communicated with both the Detroit SAC and the Los Angeles SAC about the Nassar allegations and sent ECs to both field offices in the fall of 2015. We found no evidence to support these claims.

Separately, the OIG found that Abbott violated the FBI's conflicts of interest policy by meeting with Penny to discuss the U.S. Olympic Committee job and later communicating with Penny about the job opportunity in the midst of the other communications and the proposed FBI public statement described above. We further found that, under federal ethics regulations, Abbott exercised extremely poor judgment by failing to consult with a designated agency ethics official regarding his ongoing involvement in Nassar investigation discussions at the same time he was seeking Penny's help and guidance about a U.S. Olympic Committee job opportunity. Abbott should have known—and in fact did know according to the evidence we found—that his actions would raise a question regarding his impartiality. We further concluded that Abbott made false statements to the OIG about the job discussion, his application for the position, and his handling of the Nassar allegations.

The Department declined prosecution of Abbott and the Indianapolis SSA in September 2020. Just prior to and following these declinations, the OIG was able to compel interviews of the Indianapolis SSA and several other FBI witnesses who had declined voluntary interviews and whom we were previously unable to compel to participate in interviews due to the ongoing criminal investigation and their Fifth Amendment privilege against self-incrimination. Following these interviews, we were able to complete our administrative investigation. In addition, on May 14, 2021, the Department notified the OIG that it was not opening a new matter to investigate whether the Indianapolis SSA made false statements during his compelled OIG interviews.

During our investigation, the OIG reviewed thousands of documents and interviewed more than 60 witnesses, several on more than one occasion. These included Penny, several victims of Nassar's abuse and their parents, employees of three USAOs, and numerous current and former FBI employees. A Special Agent from the Lansing Resident Agency (the Lansing SA) retired from the FBI in December 2018 and declined to be interviewed. In addition, Penny declined to participate in a second voluntary OIG interview and instead had his attorneys provide a proffer to the OIG. The OIG lacks testimonial subpoena authority over non-DOJ employees and therefore was unable to compel interviews of the Lansing SA and Penny.

Abbott retired from the FBI in January 2018.

The OIG has completed its investigation and is providing this report to the FBI for appropriate action.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The U.S. Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B) and 5 C.F.R. § 1201.56(b)(1)(ii).[1]

Recommendations

The OIG makes four recommendations to improve the FBI's processes to address the concerns we identified.

[1] During our investigation, the OIG also received allegations concerning the FBI's handling of Nassar's detention hearing. We will address these allegations separately.

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Chapter 1: Introduction

The U.S. Department of Justice (Department, DOJ) Office of the Inspector General (OIG) initiated this investigation based on allegations that Federal Bureau of Investigation (FBI) employees in the Indianapolis Field Office mishandled allegations of sexual abuse of USA Gymnastics athletes by former USA Gymnastics physician Lawrence Gerard Nassar. Additionally, during the OIG's investigation, the OIG obtained information indicating that former Indianapolis Field Office Special Agent in Charge (SAC) W. Jay Abbott may have violated FBI policy and government ethics rules by engaging in discussions with USA Gymnastics President and Chief Executive Officer (CEO) Stephen D. Penny, Jr., about a job opportunity at the U.S. Olympic Committee while also participating in conversations at the FBI about the ongoing Nassar investigation. Finally, the OIG developed information during the course of our investigation that Abbott and an Indianapolis Field Office Supervisory Special Agent (Indianapolis SSA) may have made false statements.[2]

From 1996 through 2016, Nassar was employed as an Osteopathic Physician and Associate Professor at Michigan State University's (MSU) Department of Family and Community Medicine, where he treated patients. For most of that time, Nassar also was employed as the USA Gymnastics National Medical Coordinator and the treating physician for gymnasts. Among the places where Nassar treated gymnasts was the USA Gymnastics National Team Training Center in Texas. In addition, Nassar worked in Michigan as the team physician for the Twistars USA Gymnastics Club and at Holt High School. Before the OIG initiated its investigation, the FBI Inspection Division (INSD) conducted its own "Special Review" of the FBI's handling of the Nassar allegations.

In July 2015, USA Gymnastics reported allegations to the FBI's Indianapolis Field Office that Nassar may have sexually abused multiple athletes but stated that Nassar claimed that he was performing a legitimate medical procedure. Indianapolis agents conducted limited follow-up related to these allegations, which involved reviewing a thumb drive provided by Penny, conducting one victim interview in September 2015, and coordinating with the U.S. Attorney's Office (USAO) in the Southern District of Indiana and the FBI's Detroit Field Office.

In September 2015, FBI agents in Indianapolis and Detroit, as well as Assistant U.S. Attorneys (AUSA) in the Southern District of Indiana and the Eastern District of Michigan, discussed the allegations and questioned whether the allegations against Nassar were sufficient to support federal jurisdiction. The Indianapolis and Detroit agents and prosecutors determined that, if the FBI had jurisdiction and opened an investigation, venue would likely be most appropriate in the Western District of Michigan and the FBI's Lansing Resident Agency, in whose venue MSU is located. Accordingly, the AUSA in the Southern District of Indiana advised the Indianapolis Field Office to transfer the case to the Lansing Resident Agency. However, the Indianapolis Field Office never routed a formal complaint to the Lansing Resident Agency and the FBI did not again investigate this matter until May 2016, after USA Gymnastics filed a new complaint with the FBI's Los Angeles Field Office due to its frustration with the FBI's inactivity. While the Los Angeles Field Office undertook numerous investigative steps, including interviewing a number of witnesses, it too had doubts about whether there was federal jurisdiction over Nassar's alleged sexual assaults, as well as whether venue existed in the Los Angeles Field Office's geographic area. Despite these federal jurisdictional concerns of both FBI field offices, neither took timely action to notify state or local officials of Nassar's alleged sexual

[2] During our investigation, the OIG also received allegations concerning the FBI's handling of Nassar's detention hearing. We will address these allegations separately.

assaults and neither made any efforts to mitigate the ongoing threat that Nassar posed due to his continuing employment by MSU, Holt High School, and Twistars. The FBI's Lansing Resident Agency did not ultimately become aware of the Nassar allegations until September 2016, after the Michigan State University Police Department (MSUPD) received separate criminal sexual assault allegations against Nassar in August 2016 and executed a state search warrant on Nassar's residence. According to civil court documents, approximately 70 or more young athletes were allegedly sexually abused by Nassar under the guise of medical treatment between July 2015, when the first complaint against Nassar was filed with the FBI Indianapolis Field Office, and August 2016, when the MSUPD received a separate complaint of sexual abuse by Nassar.

After the FBI received media inquiries in early 2017 about its handling of the Nassar allegations and whether it had promptly and appropriately responded to them, FBI officials discussed the Indianapolis Field Office's receipt of the Nassar allegations and investigative steps taken in 2015, which the Indianapolis SSA described in an electronic communication dated February 1, 2017 (February 2017 EC). The Indianapolis SSA also prepared an interview summary (FD-302) dated February 2, 2017 (February 2017 FD-302) of the victim interview he conducted in 2015.

The OIG identified multiple failures and policy violations by the Indianapolis Field Office in connection with its handling of the Nassar allegations. In addition, the OIG concluded that Abbott and the Indianapolis SSA made false statements about the FBI's handling of the Nassar allegations during their OIG interviews.

Separately, in the fall of 2015, after the Indianapolis Field Office and the USAO for the Southern District of Indiana decided to refer the Nassar allegations to the Western District of Michigan but while the matter was still pending before the FBI, Abbott met with Penny at a bar and discussed a potential job opportunity with the U.S. Olympic Committee. Thereafter, Abbott engaged in conversations with Penny about both his interest in the U.S. Olympic Committee employment opportunity and the Nassar investigation, while at the same time participating in discussions at the FBI related to the Nassar investigation. These communications included Penny expressing concern to Abbott about how USA Gymnastics was being portrayed in the media and whether Penny might be "in trouble" and Abbott proposing an FBI public statement to his FBI colleagues that would place USA Gymnastics in a positive light. At the same time, Abbott was aware that Penny appeared willing to put in a good word on Abbott's behalf. Abbott applied for the U.S. Olympic Committee position in 2017 but was not selected. Despite evidence confirming that Abbott had applied for the job, Abbott denied to the OIG in two interviews that he had applied for the position and told the OIG that applying for the job would have presented a conflict of interest. The OIG concluded that Abbott's failure to consult with an ethics official, as provided for in federal ethics regulations, showed extremely poor judgment and violated FBI policy. We also concluded that Abbott made false statements to the OIG about the job discussion, his application for the position, and his handling of the Nassar allegations.

The Department declined prosecution of Abbott and the Indianapolis SSA in September 2020. Just prior to and following these declinations, the OIG was able to compel interviews of the Indianapolis SSA and several other FBI witnesses who had declined voluntary interviews and whom we were previously unable to compel to participate in interviews due to the pending criminal investigation and their Fifth Amendment privilege against self-incrimination. Following these interviews, we were able to complete our administrative investigation. In addition, on May 14, 2021, the Department notified the OIG that it was not opening a new matter to investigate whether the Indianapolis SSA made false statements during his compelled OIG interviews.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The U.S. Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B) and 5 C.F.R. § 1201.56(b)(1)(ii).

In Chapter 2 of this report, we provide background information, including a description of significant entities and individuals, a summary of our methodology, and explanations of the relevant laws and FBI policies. In Chapter 3, we set forth our findings of fact and analysis related the FBI's handling of the Nassar allegations. In Chapter 4, we set forth our findings of fact and analysis related to Abbott's interactions with Penny, job application with the U.S. Olympic Committee, and related false statements to the OIG. Finally, Chapter 5 contains our Conclusions and Recommendations.

Chapter 2: Background

I. Significant Entities and Individuals

USA Gymnastics is the national governing body for gymnastics in the United States and is responsible for selecting and training national gymnastics teams for the Olympic Games and World Championships. USA Gymnastics is headquartered in Indianapolis, Indiana. From April 4, 2005, through March 16, 2017, Stephen D. Penny, Jr., served as the President and Chief Executive Officer (CEO) of USA Gymnastics.[3]

Lawrence Gerard Nassar received his medical degree from the University of Michigan in 1993. Nassar was employed as an Osteopathic Physician and Associate Professor at Michigan State University's (MSU) Department of Family and Community Medicine, where he treated patients from 1996 through 2016. For most of that time, Nassar also was employed as the USA Gymnastics National Medical Coordinator and the treating physician for gymnasts. Among the places where Nassar treated athletes was the USA Gymnastics National Team Training Center in Texas. In addition, Nassar worked in Michigan as the team physician for the Twistars USA Gymnastics Club and Holt High School. Nassar retired from USA Gymnastics in September 2015, but he continued to treat patients through his positions at MSU, Twistars USA Gymnastics Club, and Holt High School until August 2016. In July 2017, Nassar pleaded guilty to federal charges of Receipt and Attempted Receipt of Child Pornography, Possession of Child Pornography, and Destruction and Concealment of Records and Tangible Objects, and he was sentenced to 60 years in federal prison in December 2017. On January 24, 2018, Nassar was sentenced to 40 to 175 years in Michigan state prison after pleading guilty to seven counts of state charges for criminal sexual conduct, and on February 5, 2018, Nassar was sentenced in Michigan state court to an additional 40 to 125 years in prison after pleading guilty to three additional counts of state charges for criminal sexual conduct.

The U.S. Olympic Committee (now called the U.S. Olympic and Paralympic Committee) is responsible for supporting, entering, and overseeing U.S. teams for the Olympic Games. It is headquartered in Colorado Springs, Colorado. The U.S. Olympic Committee and USA Gymnastics are separate but affiliated entities in that USA Gymnastics receives its designation as the national governing body for amateur gymnastics from the U.S. Olympic Committee.

W. Jay Abbott joined the FBI as a Special Agent in 1987, and from July 2014 through his retirement in January 2018 he was the Special Agent in Charge (SAC) of the FBI's Indianapolis Field Office.[4] As the SAC, Abbott was the highest-ranking official in the Indianapolis Field Office and was involved in handling the Nassar allegations. The Indianapolis Field Office Assistant Special Agent in Charge (Indianapolis ASAC) and a Supervisory Special Agent in the Indianapolis Field Office (Indianapolis SSA) were also involved in handling

[3] In October 2018, Penny was arrested by a U.S. Marshals Service fugitive task force following an indictment charging him with tampering with evidence in violation of Texas law in connection with a Nassar-related local investigation. Penny pleaded not guilty, and his case is pending trial.

[4] As discussed in Chapter 3, Abbott, having recently retired from the most senior position in the FBI's Indianapolis Field Office, made a voluntary statement on the record to a *New York Times* reporter for a February 3, 2018 article. Abbott's statement to the reporter included several factual inaccuracies about the FBI's handling of the allegations regarding Nassar. Abbott's on-the-record statement is quoted in the *New York Times* article, and we refer to Abbott by name in this report.

the Nassar allegations. The Indianapolis SSA supervised the Indianapolis Field Office's Violent Crimes Against Children (VCAC) Squad. The Indianapolis SSA began working for the FBI in September 2002 and primarily worked on violent crimes and crimes against children between that time and the time period relevant to this investigation. Prior to his involvement in the Nassar investigation, the Indianapolis SSA spent a portion of his time at the FBI working at FBI headquarters as a Program Manager in the Violent Crimes Against Children Unit (VCACU).[5]

There are three gymnasts that USA Gymnastics brought to the attention of the FBI Indianapolis Field Office in 2015 and that are discussed in this report. Because this report largely focuses on the FBI's interactions with one gymnast, we refer to that gymnast as Gymnast 1. We refer to the other two gymnasts as Gymnasts 2 and 3.

II. Methodology

During the course of this investigation, the OIG interviewed more than 60 witnesses, several on more than one occasion. These included Penny, several victims of Nassar's abuse and their parents, employees of three U.S. Attorney's Offices (USAO), and numerous current and former FBI employees. The FBI employees we interviewed included employees involved in various aspects of the Nassar investigation, personnel knowledgeable on FBI processes and systems, and other individuals. A Special Agent from the FBI's Lansing Resident Agency (Lansing SA) retired from the FBI in December 2018 and declined to be interviewed. In addition, while Penny agreed to the OIG's initial interview request, he declined to participate in a second follow-up interview that the OIG requested.[6] The OIG lacks testimonial subpoena authority over non-DOJ employees and therefore was unable to compel the interview of the Lansing SA or the follow-up interview of Penny.

We also collected over 1.5 million documents. Among these were FBI documents, including interview reports (FD-302s), agent notes from witness interviews and other meetings, and electronic communications (EC), as well as text messages and emails of FBI employees. The OIG also obtained records from various private parties, including Penny, USA Gymnastics, and the U.S. Olympic Committee. In addition, the OIG reviewed digital media, including a thumb drive containing videos and PowerPoint presentations of Nassar's purported medical techniques that the Indianapolis Field Office had received from Penny. We also reviewed civil and criminal court records, including the civil complaints of Gymnasts 1, 2, and 3, and numerous other athletes.

[5] There is a VCACU within FBI headquarters' Criminal Investigations Division (CID). In addition, several field offices have their own VCAC Squads.

[6] Penny's attorneys agreed to provide the OIG with an attorney proffer instead.

III. Applicable Law and DOJ and FBI Policies

A. False Statements and Lack of Candor

1. 18 U.S.C. § 1001

Generally, "whoever, in any matter within the jurisdiction of the executive…branch of the Government of the United States, knowingly and willfully—

(1) falsifies conceals or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry"

violates 18 U.S.C. § 1001.

The terms "knowingly and willfully" require only that the subject knew the statement was false and deliberately made the false statement. There is no requirement that the subject acted with specific intent to deceive or defraud the Government.[7]

2. Lack of Candor

FBI Offense Code 2.6, Lack of Candor–Under Oath, prohibits FBI employees from "[k]nowingly providing false information in a verbal or written statement made under oath." "False information" under this offense code includes "false statements, misrepresentations, the failure to be fully forthright, or the concealment or omission of a material fact/information."

3. False or Misleading Statements in Documents

The FBI also has an offense code for providing false or misleading information in documents, which applies a lower standard of proof than that required for lack of candor. An FBI employee violates FBI Offense Code 2.3, False/Misleading Information–Investigative Activity, by "[k]nowingly providing false or misleading information in an investigative document; or signing or attesting to the truthfulness of the information provided in an investigative document in reckless disregard of the accuracy or completeness of the pertinent information contained therein." FD-302s and ECs are listed as examples of documents involving investigative activity.

B. Ethics Laws and Policies

FBI Offense Code 2.12, Violation of Ethical Guidelines, sets forth administrative penalties for "[e]ngaging in any activity or conduct prohibited by the uniform Standards of Conduct of Employees of the Executive Branch (5 C.F.R. Part 2635), the supplemental regulations (5 C.F.R. Part 3801), DOJ or FBI policy."

[7] See *U.S.* v. *Yermian*, 468 U.S. 63, 73 (1984) and *United States* v. *Ranum*, 96 F.3d 1020, 1028-29 (7th Cir. 1996).

1. The Basic Obligation of Public Service and the Requirement to Avoid the Appearance of a Conflict of Interest

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct) contain a list of "general principles [that] apply to every employee and may form the basis for the standards" that follow. Included among these are the general principles that federal employees "shall not hold financial interests that conflict with the conscientious performance of duty" or "engage in outside employment or activities, including seeking or negotiating for employment, that conflict with Government duties and responsibilities."[8] In addition, federal employees "shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards" set forth in Part 2635.[9] "Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."[10]

The FBI Ethics and Integrity Program Policy Directive and Policy Guide (FBI Ethics Policy) reiterates the basic obligation of public service set forth in 5 C.F.R. § 2635.101, including that employees "shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities" and "shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards." In addition, the FBI Ethics Policy states that the standards of conduct "not only prohibit actual violations of the rules, but also proscribe any acts or decisions that could reasonably be expected to create the appearance of impropriety." Based on this appearance restriction, the FBI Ethics Policy sets forth four activities that FBI employees should avoid:

> (A) Permitting the prospect of employment to affect the performance or nonperformance of your official duties.
>
> (B) Communicating nonpublic or privileged information to a prospective employer.
>
> (C) Taking any action that would affect the public's confidence in the integrity of the government even if it is not an actual violation of the law.
>
> (D) If serving as a senior official (above the grade of GS-15), contacting a firm concerning future employment opportunities if the firm is prominently involved with the FBI in an issue of major public importance, since doing so creates the impression that the firm has undue influence with the FBI. Such action must be avoided because the negative appearance is not wholly eliminated by mere disqualification.

The federal employee Standards of Ethical Conduct also contain specific prohibitions, three of which are described in the next three subsections.

2. The Criminal Prohibition Against Participating in a Matter in Which an Employee, or an Entity with Which an Employee is Negotiating for Employment, Has a Financial Interest

Federal employees may not participate personally and substantially in a matter in which they have a financial interest. It is a crime for an officer or employee of the executive branch of the federal government

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[8] 5 C.F.R. §§ 2635.101(b)(2) and (10).

[9] 5 C.F.R. § 2635.101(b)(14).

[10] 5 C.F.R. § 2635.101(b)(14).

to participate "personally and substantially…through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding…controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, …or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest," unless the officer or employee "makes full disclosure of the financial interest and receives in advance a written determination…that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from" the officer or employee.[11]

The criminal prohibition described above is reiterated in 5 C.F.R. § 2635.402, which states that an employee is "prohibited by criminal statute, 18 U.S.C. § 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest."[12] The regulations define "direct and predictable effect" to include the following:

> A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter.[13]

The definition of "direct and predictable effect" further states that, "A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial."[14]

"To participate personally means to participate directly" and "includes the direct and active supervision of the participation of a subordinate in the matter."[15] In addition, "[t]o participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter."[16] However, substantial participation "requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue."[17]

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[11] 18 U.S.C. §§ 208(a), (b)(1).

[12] 5 C.F.R. § 2635.402(a).

[13] 5 C.F.R. § 2635.402(b)(1)(i).

[14] 5 C.F.R. § 2635.402(b)(1)(ii).

[15] 5 C.F.R. § 2635.402(b)(4).

[16] 5 C.F.R. § 2635.402(b)(4).

[17] 5 C.F.R. § 2635.402(b)(4).

3. Rules Concerning Participating in a Matter Impacting the Financial Interest of an Entity with Which a Federal Employee Is Seeking Employment

A federal employee "may not participate personally and substantially in," and therefore must recuse from, "a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom the employee is seeking employment."[18] The term "direct and predictable effect" has the same meaning in this provision as above in 5 C.F.R. § 2635.402(b)(1).[19] The requirement to recuse does not apply when either the employee receives agency authorization, or all of the following circumstances exist:

> (i) The employee's only communication with the prospective employer in connection with the search for employment is the submission of an unsolicited resume or other employment proposal;
>
> (ii) The prospective employer has not responded to the employee's unsolicited communication with a response indicating an interest in employment discussions; and
>
> (iii) The matter is not a particular matter involving specific parties.[20]

Seeking employment includes making "an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person," provided the communication is not for the sole purpose of requesting a job application.[21] Seeking employment also includes making "a response, other than rejection, to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person."[22] An employee is no longer seeking employment when, "[t]he employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated."[23]

4. Standards of Conduct Concerning Participating in a Matter Involving a Person with Whom an Employee Has a Covered Relationship or When Facts Would Cause a Reasonable Person to Question an Employee's Impartiality

The federal employee standards of conduct also contain a section addressing appearance issues that arise in situations other than when the government employee is seeking outside employment. An employee should not participate in a particular matter involving specific parties without authorization where the employee knows that a particular matter is "likely to have a direct and predictable effect on the financial interest of…a person with whom [the employee] has a covered relationship" and "where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality."[24] An employee has a covered relationship with, among others, a person "with

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[18] 5 C.F.R. § 2635.604(a)(1).

[19] 5 C.F.R. § 2635.603(d).

[20] 5 C.F.R. § 2635.604(a)(2).

[21] 5 C.F.R. § 2635.603(b)(1)(ii).

[22] 5 C.F.R. § 2635.603(b)(1)(iii).

[23] 5 C.F.R. § 2635.603(b)(2)(i).

[24] 5 C.F.R. § 2635.502(a).

whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction."[25] In addition, "[a]n employee who is concerned that circumstances other than those specifically described in [Section 2635.502] would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter."[26]

The process described in Section 2635.502 involves the employee first informing the designated agency ethics official of the impartiality question.[27] If the designated agency ethics official determines that the employee's impartiality is not likely to be questioned, he may advise the employee that the employee's participation in the matter would be proper.[28] If the designated agency ethics official makes a determination that the employee's impartiality is likely to be questioned, the agency ethics official must determine whether to nonetheless authorize the employee to participate in the matter.[29] The designated agency ethics official "may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations" and the employee's participation does not create a criminal conflict of interest.[30] Factors to be considered in making this determination include:

> (1) The nature of the relationship involved;
>
> (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
>
> (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
>
> (4) The sensitivity of the matter;
>
> (5) The difficulty in reassigning the matter to another employee; and
>
> (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.[31]

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[25] 5 C.F.R. § 2635.502(b)(1)(i).

[26] 5 C.F.R. § 2635.502(a)(2).

[27] See 5 C.F.R. §§ 2635.502(a) and (c). According to the FBI Ethics Policy, the Assistant Director of the FBI's Office of Integrity and Compliance is the Deputy Designated Agency Ethics Official for the FBI. In addition, an FBI field office's Chief Division Counsel (CDC) is considered an FBI Ethics Counselor who may provide guidance to employees on ethics questions.

[28] 5 C.F.R. § 2635.502(c)(2).

[29] 5 C.F.R. § 2635.502(c)(1).

[30] 5 C.F.R. § 2635.502(d).

[31] 5 C.F.R. § 2635.502(d).

C. FBI Policies Concerning Conducting and Documenting Case Activities

The Attorney General's Guidelines for Domestic FBI Operations (AGG-Dom) and the FBI's Domestic Investigations and Operations Guide (DIOG) contain guidelines for FBI employee operations, including when FBI employees may engage in particular activity, the procedures for conducting such activity, and how they must document the activity.[32] The DIOG contains different guidelines for Pre-Assessment activities, Assessments, Preliminary Investigations, and Full or Predicated Investigations. According to FBI Offense Code 1.8, Investigative Deficiency–Violation of Operational Guidelines and Policies, Other, an FBI employee may be disciplined for "[k]nowingly or recklessly failing to enforce or comply with an FBI or DOJ operational guideline or policy." In addition, according to FBI Offense Code 5.2, Dereliction of Supervisory Responsibility, a supervisor may be disciplined for "failing to exercise reasonable care in the execution of his duties or responsibilities."

As a general matter, FBI policy requires FBI agents to document information gathering and investigative activities, whether such activities are conducted before an Assessment is opened or as part of an Assessment, Preliminary Investigation, or Predicated Investigation.

> Every FBI component is responsible for the creation and maintenance of authentic, reliable, and trustworthy records…. Without complete and accessible records, the FBI cannot conduct investigations, gather and analyze intelligence, assist with the prosecution of criminals, or perform any of its critical missions effectively.

Some of the goals of the FBI's record management program include facilitating the "timely retrieval of needed information," ensuring "continuity of FBI business," safeguarding the "FBI's mission-critical information," and preserving the "FBI's corporate memory and history."

Pursuant to the DIOG, the Special Agent is responsible for creating and maintaining records and files while supervisors are responsible for ensuring that FBI employees create and maintain records and files. When supervisory approval is required for investigative actions or documentation, a supervisor may not self-approve his or her own work.

1. Conducting and Documenting Activities Before Opening an Assessment or Investigation

The DIOG lists activities that are authorized before an Assessment, Preliminary Investigation, or Predicated Investigation is opened, including conducting records checks or a voluntary clarifying interview of the complainant or the person who initially furnished the information. Conducting records checks or a clarifying interview before opening an Assessment or Predicated Investigation allows the FBI to potentially resolve a matter "without the need to conduct new investigative activity, for which an Assessment or a Predicated Investigation must be opened."

FBI employees are permitted to retain records checks or other information collected while processing a complaint before opening an Assessment or investigation, provided "there is a law enforcement,

[32] The DIOG has been updated several times since 2015. Because most of the events relevant to the OIG investigation occurred in the summer and fall of 2015, the DIOG provisions described in this report are those set forth in the 2015 version, unless otherwise stated.

intelligence, or public safety purpose." When such information is collected, "documentation must be completed as soon as practicable, but not more than five business days from the receipt of the information" and retained in a file. Specifically, the documentation must be retained in a "[z]ero classification file, when no further investigative activity is warranted," or in a relevant open, closed, or new Assessment or Predicated Investigation file. If, during authorized activities taken before an Assessment, the FBI employee obtains information that meets the standard for opening an Assessment or Predicated Investigation "and the employee intends to continue pursuing the matter, an Assessment or a Predicated Investigation must be opened."

2. Conducting and Documenting Activities as Part of Assessments and Use of the FD-71

According to the AGG-Dom, Assessments "may be carried out to detect, obtain information about, or prevent or protect against federal crimes." Assessments "require an authorized purpose but not any particular factual predication." The AGG-Dom lists nine methods that FBI agents are authorized to use in conducting Assessments, including conducting interviews.

There are five types of Assessments. The first type of Assessment is called the "Type 1 & 2 Assessment."[33] A Type 1 & 2 Assessment "[s]eek[s] information, proactively or in response to investigative leads, relating to activities—or the involvement or role of individuals, groups, or organizations relating to those activities—constituting violations of Federal criminal law or threats to the national security." "All Assessments must be documented in the appropriate form, to include an FD-71" and the form must be placed in a file, such as an "Investigative classification as an Assessment file" or a "zero classification file."

According to the DIOG, "[a]n FBI employee may open a Type 1 & 2 Assessment without supervisor approval." However, the employee must complete an FD-71 as soon as "practicable" after receiving the complaint or other information. The SSA then assigns the FD-71 to an FBI employee. According to the FBI, the FBI's Criminal Investigative Division (CID) used the FD-71 to document "initial complaint information," which included "anything which constituted violations of federal criminal law or threats to national security." The "authorized purpose(s)" and "clearly defined objective(s)" of the Type 1 & 2 Assessment, as well as the results of the use of "authorized investigative methods" during a Type 1 & 2 Assessment, must be documented in the FD-71. In addition, the completed FD-71 requires supervisor approval before being serialized.

The DIOG states that there is no time limit for the Type 1 & 2 Assessment, but it is expected to be relatively short. If a Type 1 & 2 Assessment is not concluded within 30 days, the SSA must "conduct a justification review every 30 days" until the Assessment is closed. The justification review "may be documented" in the FD-71 or in an EC.

3. Conducting and Documenting Interviews

An interview is the questioning of an individual to gain information that is relevant to an authorized Assessment or Investigation or "otherwise within the scope of FBI authority." The "initial questioning of a

[33] In the original 2008 DIOG, there were separate Type 1 and Type 2 Assessments. However, these types of Assessments were merged in later versions of the DIOG.

complainant is not an interview, nor is re-contacting a complainant to clarify information that was initially provided."

"When it is anticipated that the results of an interview may become the subject of court testimony, the interview must be recorded on an FD-302." The FBI must retain "[o]riginal notes of an interview when the results may become the subject of court testimony. All original handwritten interview notes must be retained as 'original note material' in the 1A section of a file." The FD-302 "must contain a record of statements made by the interviewee. Analysis or contextual comments regarding an interviewee's statements should be documented in a companion EC or other appropriate format."

According to the 2015 DIOG, all investigative documents, including FD-302s, "must be referenced, attached, or linked electronically to the appropriate FD-71…or Assessment file and serialized into the case consistent with the instructions for the use of an FD-71…or the Assessment case opening process." A later version of the DIOG states that the FD-302 "must be initiated as soon as practicable, but no later than five (5) business days following the conclusion of the interview or other activity that may be testimonial." The version of the DIOG in place in the fall of 2015 did not contain this requirement.

4. Forwarding an FD-71 to Another Jurisdiction

The FBI told the OIG that there is no requirement that an FBI employee follow up with another field office after forwarding that field office an FD-71. The FBI further told the OIG that an agent must attach any investigative documents, such as FD-302s and ECs, to the FD-71.

D. FBI Policies Concerning Handling Evidence

It is a violation of FBI Offense Code 1.6, Investigative Deficiency – Improper Handling of Document(s) or Property in the Care, Custody, or Control of the Government, to fail to "properly seize, identify, package, inventory, verify, record, document, control, store, secure, or safeguard documents or property under the care, custody, or control of the government…. This offense includes, but is not limited to, the unauthorized or improper use, loss, damage, destruction, or improper disposal of documents or property."

The FBI has a Field Evidence Management Policy Guide that applies generally to the collection, handling, and documenting of evidence, as well as a Digital Evidence Policy Guide that specifically applies to digital evidence.[34] Digital evidence is data that is "obtained with the intent to assist in proving or disproving a matter at issue in a case or investigation" and is "stored or transmitted in binary form." Digital evidence includes flash drives.

All FBI personnel, including agents, who handle digital evidence during the course of their duties must ensure that all digital evidence is handled, marked, and has a content review in accordance with relevant polices. Digital evidence "must be stored and secured and/or sealed to prevent data or evidentiary loss, cross-transfer contamination, or other deleterious change." Only certified digital evidence personnel, such as Computer Analysis Response Team members, may image digital evidence. Imaging is "the act of making a bit-for-bit copy of the original [digital evidence] to serve as an accurate reproduction of the original [digital

[34] The Digital Evidence Policy Guide was updated on July 31, 2016. Unless otherwise noted, all provisions described in this report are included in both the 2015 and 2016 versions of the Digital Evidence Policy Guide.

evidence]." Investigative personnel can review digital evidence for content only after it has been processed by an authorized method. "This review may be conducted using such methods as kiosks and Case Agent Investigative Review (CAIR)."

According to the FBI's Field Evidence Management Policy Guide, evidence must be documented into the FBI Central Recordkeeping System no later than 10 calendar days after receipt. Similarly, the Digital Evidence Policy Guide states that, "Undocumented, 'off the record' searches or reviews of [digital evidence] are not permitted."

> FBI personnel must document all reviews and searches of [digital evidence] from the point of the receipt of [the digital evidence] through completion of the search.... The documentation must be serialized to the investigative case file. Such documentation must identify, at a minimum, the general nature and manner in which the search of the media was conducted, major steps taken during the search, and forensic tools employed during the search.

The documentation must contain specific information detailed in the Digital Evidence Policy Guide, including the name of the reviewer, the location where the review was completed, and a report of the responsive content found. In addition, "[i]f evidence is being transferred from one [field office] to another, a record of the evidence must first be entered into the FBI central recordkeeping system" and the field office must send, along with the evidence, a printout of the evidence log, an original chain of custody, and an EC requesting the transfer.

While FBI employees must create documentation of their receipt and review of digital evidence, the digital evidence itself must not be uploaded into the FBI's central recordkeeping system or any other FBI administrative records management system. The Digital Evidence Policy Guide states, "Under no exception may contraband material be serialized into the FBI's central recordkeeping system." Thus, FBI personnel may not upload digital evidence into Sentinel or FBINet, which is the FBI's unclassified email system.

In addition, according to the FBI's Removable Electronic Storage (RES) Media Protection Policy Directive, non-FBI owned removable electronic storage media, such as thumb drives, must not be used with FBI information systems, without the approval of the Information System Security Officer. Before a non-FBI owned thumb drive may be used with FBI information systems, the Information System Security Officer must "ensure that the [removable electronic storage] media is scanned for malicious code." During the time period relevant to this review, all FBI employees were required to sign the FBI Information Technology and Information Systems Rules of Behavior for General Users Agreement Form. The form required employees to acknowledge that they are "responsible for all IT" that they introduce into FBI space.

E. FBI Crimes Against Children Policy

The FBI has a policy that specifically addresses crimes against children. According to this policy, crimes against children Assessments and Predicated Investigations "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." The policy requires field offices to, among other things, maintain regular contact with Violent Crimes Against Children Unit (VCACU) personnel and request assistance and guidance whenever necessary; initiate contact with field office victim specialists, as appropriate, for matters related to the Victim Assistance Program; and

maintain, in coordination with VCACU, cooperative relationships with state and local law enforcement agencies, nongovernmental organizations, and social service agencies. In addition, the policy states that the VCACU and FBI field offices are "to develop working relationships with relevant outside agencies," including "federal, state, and local agencies charged with enforcing laws pertinent to combating crimes against children threats." The policy further states:

> Investigative partners serve as a force multiplier for investigative matters that have federal, state, and local jurisdiction by coordinating investigations with [field offices], participating in task forces, and assisting in prosecutions. This partnership allows for multiple venues to prosecute these cases, and circumstances of each case will dictate the resources brought to bear by partner agencies.

F. Victims' Rights

There are both federal laws and policies that protect victims' rights. These include the Victims' Rights and Restitution Act,[35] which details mandatory services for victims; the Crime Victims' Rights Act,[36] which contains court enforceable rights for victims; 28 C.F.R. § 45.10, which sets forth procedures to promote compliance with crime victims' rights obligations; the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines); and the FBI's Victim Assistance Policy Implementation Guide (FBI Victim Policy Guide). Department responsibilities to crime victims begin "at the earliest opportunity after the detection of a crime," provided the relevant actions may be taken without interfering with the criminal investigation.[37]

According to the AG Guidelines, cases "with a large number of victims present unique challenges in affording victims' rights and services." Nonetheless, "Department personnel should use new technology and be creative, with the goal of providing rights and services to the greatest extent possible given the circumstances and resources available."

According to the AG Guidelines, investigative agencies should provide "reasonable protection" to victims, which includes taking "reasonable measures to address victims' legitimate security concerns." In addition, "The responsibility of arranging for reasonable victim protection remains with the responsible official of the investigative agency throughout the criminal justice system." The "responsible official" at the FBI is the field office Special Agent in Charge (SAC). The responsible official should provide the identified victims with information about available services at the earliest opportunity after detection of a crime and should provide the victim with the "earliest possible notice concerning…the status of the investigation of the crime, to the extent that it is appropriate and will not interfere with the investigation."

The AG Guidelines contain guidelines specific to child victims because they are considered "particularly vulnerable victims." The guidelines state, consistent with 18 U.S.C. § 3509(g)(1), that "[a] multidisciplinary child abuse team shall be used when feasible" and Department personnel "should use existing multidisciplinary teams in their local communities." A multidisciplinary child abuse team is "a professional

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[35] 34 U.S.C. § 20141.

[36] 18 U.S.C. § 3771.

[37] 34 U.S.C. § 20141(b).

unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse."[38] According to the AG Guidelines:

> The goals of the multidisciplinary team are (1) to minimize the number of interviews to which the child is subjected to reduce the risk of suggestibility in the interviewing process, (2) to provide needed services to the child, and (3) to monitor the child's safety and well-being.

The FBI Victim Policy Guide reiterates the requirements contained in the laws and policies described above. The FBI Victim Policy Guide also contains additional guidelines. The SAC is responsible for ensuring the case agent identifies victims of crime and affords victims the services required. The SAC's duties include "ensur[ing] that the assigned agent provides the [Victim Specialist] with the information and cooperation necessary to carry out victim assistance duties, from initial victim contact to updates on the status of the investigation." Among the case agent's responsibilities are to "identify all victims and provide each victim's name and complete contact information to the [Victim Specialist]."

The FBI's Victim Policy Guide does not indicate whether victim services should be offered before or during an Assessment. The policy indicates that licensed clinical social workers from the Child/Adolescent Forensic Interview (CAFI) Program "conduct particularly difficult or sensitive interviews with young children and adolescents." The policy does not address whether this guideline applies to young adults who report abuse they experienced as children. In addition, there are no guidelines in the FBI's policy regarding ensuring that victims' rights are protected when an initial complaint is transferred from one field office to another, such as confirming whether the transfer was effective.

G. Federal Law and FBI Policy Regarding Mandatory Reporting of Child Abuse

1. Federal Mandatory Reporting 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.[39] According to a May 29, 2012 DOJ Office of Legal Counsel opinion, this statute applies to incidents that federal law enforcement officers learn about while in the course of their duties on federal land or in a federal facility, even if the child abuse itself did not occur on federal land or in a federal facility. In addition, federal law

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[38] 18 U.S.C. § 3509(a)(7).

[39] 34 U.S.C. § 20341(a). The law further states: "For all Federal lands and all federally operated (or contracted) facilities in which children are cared for or reside and for all covered individuals, the Attorney General shall designate an agency to receive and investigate the reports described in subsection (a). By formal written agreement, the designated agency may be a non-Federal agency. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by social services and law enforcement personnel, with a view toward avoiding unnecessary multiple interviews with the child." 34 U.S.C. § 20341(d).

enforcement officers "shall receive periodic training in the obligation to report, as well as in the identification of abused and neglected children."[40]

2. FBI Policy on Mandatory Child Abuse Reporting

Appendix K of the DIOG sets forth the FBI's policy on reporting of suspected child abuse, neglect, and sexual exploitation (FBI Mandatory Reporting Policy). This policy is based on the AG Guidelines, which require DOJ personnel, including FBI personnel, to report suspected child abuse. The FBI Mandatory Reporting Policy states that its policy is "in addition to, not in place of, mandatory reporting requirements under state, tribal and federal law with which [FBI Personnel] shall also comply."

The FBI Mandatory Reporting Policy explains:

> The FBI's role as a law enforcement agency necessitates several reporting requirements for FBI personnel who have reasonable cause to believe a child is suffering from abuse, neglect and/or sexual exploitation.
>
> While certain FBI employees (e.g. law enforcement personnel and social workers) are defined as mandated reporters under state, tribal and federal law, all FBI employees shall 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.

According to the FBI Mandatory Reporting Policy, the report must be "immediate." The policy further states that "FBI personnel should consult with the Chief Division Counsel (CDC) or the Office of General Counsel (OGC) to determine the child abuse reporting laws applicable in their area of responsibility." However, the policy states that certain crimes against children matters "already fall within the primary investigative jurisdiction of the FBI" and that suspected child abuse or sexual exploitation "in these areas, which are already the subject of an FBI investigation, do not warrant additional reporting unless such reporting is necessary to further protect the child."

IV. Timeline of Key Events

July 28, 2015 — USA Gymnastics officials, including President and Chief Executive Officer Stephen D. Penny, Jr., meet with the FBI's Indianapolis Field Office Special Agent in Charge W. Jay Abbott, the Indianapolis Assistant Special Agent in Charge (ASAC), and an Indianapolis Supervisory Special Agent (SSA) to report allegations that USA Gymnastics physician Lawrence Gerard Nassar sexually abused multiple gymnasts.

September 1, 2015 — The Indianapolis SSA discusses the Nassar allegations with an Assistant U.S. Attorney (AUSA) from the U.S. Attorney's Office (USAO) for the Southern District of Indiana and an SSA from the Detroit Field Office. They determine that, if there is federal

[40] 34 U.S.C. § 20341(h).

jurisdiction, venue is likely most appropriate in the Western District of Michigan and the FBI's Lansing Resident Agency.

September 2, 2015 The Indianapolis SSA and another Special Agent from the Indianapolis Field Office interview Gymnast 1 by telephone. The interview is the only one conducted by the Indianapolis Field Office and is not formally documented by the Indianapolis SSA contemporaneous with the interview. Later that same day, the Southern District of Indiana AUSA advises the Indianapolis SSA to transfer the Nassar allegations to the FBI's Lansing Resident Agency. However, the FBI Lansing Resident Agency is never informed about the allegations by the FBI Indianapolis Field Office.

September 4, 2015 Abbott emails Penny, copying the Indianapolis SSA and Indianapolis ASAC, and informs him that "pertinent interviews have been completed and the results have been provided to the FBI and the USAO in Michigan (Detroit) for appropriate action if any." However, no such information is provided to the FBI or USAOs in Michigan and appropriate state or local authorities are not notified. Nassar continues to treat patients.

October 2, 2015 Abbott meets Penny at a bar, and Penny suggests a potential job opportunity for Abbott with the U.S. Olympic Committee as the U.S. Olympic Chief Security Officer when the current Chief Security Officer retires. Thereafter, Abbott and Penny have periodic communications about the U.S. Olympic Committee job opportunity and the FBI's ongoing Nassar investigations.

May 11, 2016 After approximately 8 months of inactivity by the FBI in investigating the Nassar allegations, USA Gymnastics officials meet with the Los Angeles Field Office to provide the office with the same information they had given to the Indianapolis Field Office in July 2015.

May 11, 2016 Los Angeles Field Office officials interview Gymnast 1 and learn that she had previously been interviewed by agents in the Indianapolis Field Office. The Los Angeles Field Office contacts the Indianapolis SSA, who states that he submitted an electronic complaint to transfer the Nassar allegations to the Lansing Resident Agency in 2015. However, FBI officials are unable to find the complaint in the FBI's electronic case management system.

May 11, 2016 The Los Angeles Field Office opens a federal sexual tourism investigation against Nassar. Over the next several months, the Los Angeles Field Office conducts numerous interviews and obtains additional evidence regarding the sexual assault allegations against Nassar. However, appropriate state or local authorities are not notified, and Nassar continues to treat patients.

August 20, 2016 The Michigan State University Police Department (MSUPD) receives a complaint from a former gymnast that she was sexually assaulted by Nassar when she was 16 years old.

September 12, 2016	*The Indianapolis Star* publishes an article that details allegations of sexual abuse made against Nassar by two former gymnasts. In connection with the article, USA Gymnastics issues a public statement that, "immediately after learning of athlete concerns about" Nassar, USA Gymnastics "notified law enforcement." That same day, Penny emails the article to Abbott, who replies: "Thanks Steve, Hang in there. You'll be all right." Following these media reports, the MSUPD received similar sexual abuse complaints from dozens of additional young females.
September 20, 2016	The MSUPD executes a search warrant at Nassar's residence and discovers over 37,000 images of child pornography.
October 5, 2016	The FBI's Lansing Resident Agency, after first learning of the Nassar allegations from the MSUPD, opens a federal child pornography investigation of Nassar.
November 21, 2016	Nassar is arrested by the MSUPD for criminal sexual conduct. Nassar is released on bond.
December 16, 2016	Nassar is arrested by the FBI for possession of child pornography.
January 17, 2017	A *Wall Street Journal* reporter sends an inquiry to the FBI regarding the apparent delay in the investigation that led to Nassar's arrest, stating, among other things, "Either USA Gymnastics is lying, and didn't report the Nassar complaints to the FBI 'immediately,' or the FBI didn't contact the complainants/victims for at least a year, which seems like a very long time for such serious accusations."
February 1, 2017	Penny, after also having been contacted by *The Wall Street Journal,* asks the FBI to confirm that USA Gymnastics reported the Nassar allegations to the FBI in July 2015. Abbott proposes to his FBI colleagues a public FBI statement regarding USA Gymnastics' and the FBI's handling of the Nassar allegations that implies the FBI had initiated its investigation following the July 2015 meeting with USA Gymnastics. The FBI does not issue the statement.
February 1, 2017	FBI employees have internal discussions about an electronic communication drafted by the Indianapolis SSA and dated February 1 that describes the Indianapolis Field Office's receipt of the Nassar allegations and summarizes the investigative steps taken in 2015. The electronic communication also includes an assertion that, in September 2015, the Indianapolis SSA drafted an FD-71 complaint form summarizing the Nassar allegations and information from the Gymnast 1 interview and sent it to the Lansing Resident Agency, but that it cannot be located.
February 1, 2017	After the FBI receives an inquiry from *60 Minutes* regarding the FBI's handling of the Nassar matter, the FBI's Criminal Investigative Division begins drafting a document called the "Nassar White Paper" to document the FBI's handling of the Nassar allegations. The Nassar White Paper relies on information provided by the

	Indianapolis Field Office that does not fully or accurately describe the office's efforts to interview the victim gymnasts.
February 2, 2017	The Indianapolis SSA formally documents for the first time the September 2, 2015 interview of Gymnast 1 in an FBI FD-302 report. In preparing the FD-302, the Indianapolis SSA relies on his memory and his one page of limited notes from the interview. The FD-302 report conflicts with the information that Gymnast 1 provided to USA Gymnastics in 2015 and the Los Angeles Field Office in 2016, and attributes statements to Gymnast 1 that Gymnast 1 tells the OIG that she did not make.
February 16-17, 2017	Abbott and Penny discuss the Nassar investigation and the U.S. Olympic Committee Chief Security Officer job opportunity in the same email exchange.
February 20, 2017	Abbott applies for the position of Chief Security Officer with the U.S. Olympic Committee that Penny had suggested in October 2015. Abbott does not receive an interview and is not hired by the U.S. Olympic Committee.
July 11, 2017	Nassar pleads guilty in federal court to Receipt and Attempted Receipt of Child Pornography, Possession of Child Pornography, and Destruction and Concealment of Records and Tangible Objects. None of the charges relate to child sexual tourism, the federal offense the Indianapolis Field Office considered investigating and the Los Angeles Field Office had investigated.
November 22, 2017	Nassar pleads guilty in Michigan state court to seven counts of First Degree Criminal Sexual Conduct. An addendum to the plea agreement indicates that there were 115 alleged victims.
December 7, 2017	Nassar is sentenced to 60 years in federal prison.
January 24, 2018	Nassar is sentenced to 40 to 175 years in Michigan state prison.
January 25, 2018	The U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Manufacturing, Trade and Consumer Protection (Senate Subcommittee) initiates an investigation regarding the response to the Nassar allegations by various institutions, including USA Gymnastics, the U.S. Olympic Committee, Michigan State University, and the FBI.
February 2, 2018	Abbott, who is now retired from the FBI, informs an Indianapolis Field Office public affairs official about an on-the-record statement that Abbott had provided to a *New York Times* reporter in response to the reporter's inquiry about the FBI's handling of the Nassar case. Abbott's statement contained several factual inaccuracies, including that "there was no delay" by the FBI in pursuing the investigation and that the Indianapolis Field Office had provided "a detailed report" about the Nassar allegations to the FBI's Detroit and Los Angeles offices.

February 3, 2018	*The New York Times* publishes an article entitled, "As FBI Took a Year to Pursue the Nassar Case, Dozens Say They Were Molested," noting, among other things, the FBI's failure to interview Gymnast 2 or Gymnast 3 for nearly a year after the July 2015 meeting with USA Gymnastics and the large number of athletes who were allegedly sexually assaulted by Nassar between July 2015 and September 2016. In response to a question about the FBI's failure to notify people of the potential threat that Nassar presented while the FBI investigation was ongoing, Abbott is quoted as stating: "That's where things can get tricky. There is a duty to warn those who might be harmed in the future. But everyone is still trying to ascertain whether a crime has been committed. And everybody has rights here."
February 5, 2018	Nassar is sentenced to an additional 40 to 125 years in Michigan state prison after pleading guilty to an additional three counts of criminal sexual conduct.
February 8, 2018	A revised version of the Nassar White Paper, first created in February 2017, is circulated within the FBI. The revised version includes factually unsupportable statements, including its claim that the Indianapolis Field Office provided its findings to the Detroit Field Office.
February 9, 2018	The Indianapolis ASAC proposes additional language be added to the Nassar White Paper regarding the Indianapolis Field Office's 2015 investigative activity that does not fully or accurately describe that activity.
February 19, 2018	The FBI's Inspection Division commences a Special Review "to assess the FBI handling of allegations regarding" Nassar, at the direction of the FBI Director.
April 19, 2018	A *Wall Street Journal* reporter seeks comment or clarification from the FBI on questions regarding the FBI's handling of the Nassar allegations. According to the article, the FBI responds that it is "reviewing our role in the investigation of Mr. Nassar. We are unable to comment further." The Indianapolis SSA emails the Indianapolis ASAC, "I wish just 1 person would state the obvious…lack of FEDERAL violation" (emphasis in original).
December 10, 2018	The law firm Ropes & Gray, LLP, which was retained by the U.S. Olympic Committee, issues its *Report of the Independent Investigation: The Constellation of Factors Underlying Larry Nassar's Abuse of Athletes*.
July 30, 2019	The Senate Subcommittee issues its report, *Senate Olympics Investigation: The Courage of Survivors, A Call to Action*.

Chapter 3: The FBI's Handling of the Nassar Allegations

On July 28, 2015, USA Gymnastics officials met with FBI Indianapolis Field Office Special Agent in Charge (SAC) W. Jay Abbott, the Indianapolis Field Office Assistant Special Agent in Charge (Indianapolis ASAC), and the Indianapolis Field Office Supervisory Special Agent (Indianapolis SSA) to report serious allegations of sexual abuse by USA Gymnastics physician Lawrence Gerard Nassar of multiple gymnasts following a USA Gymnastics internal investigation. After the meeting, the Indianapolis Field Office conducted limited Pre-Assessment activities related to the Nassar allegations, including reviewing digital evidence that USA Gymnastics had provided during the meeting, an activity which was not documented or performed consistent with FBI policy; consulting with the U.S. Attorney's Office (USAO) in the Southern District of Indiana and the FBI's Detroit Field Office; and conducting one telephonic victim interview on September 2, 2015, which was not formally documented until February 2017.

The Indianapolis agents questioned whether the allegations against Nassar were sufficient to support federal jurisdiction but did not refer the Nassar allegations to state or local authorities. Instead, the Indianapolis agents and prosecutor decided that, if federal jurisdiction could be established, venue would be most appropriate in the Western District of Michigan and the FBI's Lansing Resident Agency and that the matter should be transferred to the Lansing Resident Agency. However, Indianapolis agents never routed a formal complaint to the Lansing Resident Agency and the FBI did not again investigate the Nassar allegations until May 2016, over 8 months later, when USA Gymnastics filed a new complaint with the FBI's Los Angeles Field Office because of the FBI's inaction since September 2015. The Los Angeles Field Office opened a child sexual tourism investigation and conducted numerous interviews that uncovered serious allegations of sexual abuse by Nassar, but the Los Angeles Field Office also did not refer the Nassar allegations to state or local authorities, take other action to mitigate the ongoing threat that Nassar represented, or notify the Lansing Resident Agency about a case that was likely within its venue. It was not until September 2016, after the Michigan State University Policy Department (MSUPD) received a separate sexual assault complaint about Nassar by another former gymnast, that law enforcement action was taken against Nassar, with the execution by the MSUPD of a search warrant at Nassar's home that resulted in the seizure of child pornography and other evidence. The FBI's Lansing Resident Agency first learned of the allegations against Nassar as a result of the MSUPD search warrant and thereafter worked with the MSUPD on what became state and federal investigations that resulted in Nassar's arrest and conviction on state and federal charges.

In this chapter, we describe the chronology of events that led to more than a yearlong delay in bringing Nassar to justice.

I. The Nassar Allegations Are Reported to the Indianapolis Field Office in July 2015

The FBI was first contacted by USA Gymnastics about allegations concerning Nassar on July 27, 2015, when USA Gymnastics President and Chief Executive Officer (CEO) Stephen D. Penny, Jr., contacted Abbott at the FBI's Indianapolis Field Office to request a meeting. The prior month, on June 17, according to a report prepared by the law firm retained by the U.S. Olympic Committee, a gymnastics coach notified USA Gymnastics' then-Senior Vice President that Nassar had made a gymnast (Gymnast 2) feel uncomfortable

during one of Nassar's medical treatments.[41] The gymnastics coach also provided the then-Senior Vice President with the names of two other gymnasts that Nassar may have abused.[42] The then-Senior Vice President, after receiving this information, provided it to Penny, who, according to the law firm report, informed a USA Gymnastics attorney and some members of the USA Gymnastics Board of Directors of the allegations against Nassar.[43] On July 3, USA Gymnastics engaged a private investigator to conduct an internal investigation into the allegations.[44] The USA Gymnastics private investigator completed her investigation on or about July 25 and advised USA Gymnastics that a gymnast she interviewed (Gymnast 1) provided "an unambiguous claim of sexual abuse" by Nassar.[45] The USA Gymnastics private investigator further advised USA Gymnastics to immediately report the allegations to law enforcement.[46] Penny told the OIG that USA Gymnastics decided that the FBI was the most appropriate law enforcement agency to contact because the alleged sexual misconduct potentially occurred in multiple places throughout the United States, as well as in other countries.

On July 28, 2015, USA Gymnastics officials met with the FBI Indianapolis Field Office. However, no one from the FBI formally documented the meeting and therefore the only contemporaneous FBI records of the meeting are five pages of handwritten notes taken by the FBI attendees. Attending the meeting for USA Gymnastics were Penny, the USA Gymnastics attorney, and the USA Gymnastics Board of Directors Chairman. Attending the meeting for the FBI Indianapolis Field Office were Abbott, the Indianapolis ASAC, and the Indianapolis SSA. The Indianapolis ASAC and the Indianapolis SSA told the FBI's Inspection Division (INSD) that the Chief Division Counsel of the Indianapolis Field Office (Indianapolis CDC) also attended this meeting, but the Indianapolis CDC told the OIG that he did not recall being in attendance and we found no documentary evidence (such as notes or calendar entries) reflecting his attendance.[47] Further, a USA Gymnastics document referencing the FBI meeting on July 28 noted that it was attended by Abbott and "two special agents."[48]

During the July 28 meeting, according to multiple witnesses and documents, Penny outlined the nature of the allegations against Nassar and the steps USA Gymnastics had taken to investigate the gymnasts' claims. In addition, Penny told the OIG that he provided the FBI a memorandum captioned from the USA

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41 Ropes & Gray, *Report of the Independent Investigation: The Constellation of Factors Underlying Larry Nassar's Abuse of Athletes* (December 2018), 58, www.nassarinvestigation.com/en (accessed June 14, 2021).

42 Ropes & Gray, *Report of the Independent Investigation,* 58.

43 Ropes & Gray, *Report of the Independent Investigation,* 58–60.

44 Ropes & Gray, *Report of the Independent Investigation,* 62.

45 Ropes & Gray, *Report of the Independent Investigation,* 67.

46 Ropes & Gray, *Report of the Independent Investigation,* 67.

47 The Indianapolis CDC told the OIG that he believed he participated in internal FBI "morning briefings" and monthly meetings with the U.S. Attorney's Office (USAO), during which the Nassar allegations were briefed at a high level. He also stated that he sat in on in two telephone calls between Penny and Abbott after the Indianapolis Field Office was no longer handling the allegations. These calls are described later in this report.

48 Senators Jerry Moran and Richard Blumenthal, *Senate Olympics Investigation: The Courage of Survivors, A Call to Action* (July 2019), Exhibit D, www.moran.senate.gov/public/_cache/files/c/2/c232725e-b717-4ec8-913e-845ffe0837e6/FCC5DFDE2005A2EACF5A9A25FF76D538.2019.07.30-the-courage-of-survivors--a-call-to-action-olympics-investigation-report-final.pdf (accessed June 14, 2021).

Gymnastics attorney and the USA Gymnastics Board of Directors Chairman to Penny dated July 27, 2015, with the subject, "Notes for Report to the FBI" (USA Gymnastics Memorandum). We were unable to locate a copy of the USA Gymnastics Memorandum in the FBI's records and instead obtained a copy of it from Penny. The Indianapolis SSA told the OIG that he did not recall whether Penny shared the USA Gymnastics Memorandum with him during the July 28 meeting or whether he had ever seen the memorandum. We noted that the USA Gymnastics Memorandum, which reflected what USA Gymnastics was aware of at that time and was therefore likely orally conveyed to the FBI during the July 28 meeting, was very similar in content to what the Indianapolis SSA ultimately included in the February 2017 electronic communication (EC).

The USA Gymnastics Memorandum contained an Executive Summary stating that USA Gymnastics had recently been made aware of "potential sexual misconduct committed against one or more of its national team athletes by a member of its medical staff" and that "[s]uch misconduct likely occurred at international competitions held overseas and various locations in the United States." The memorandum also noted that Nassar treated athletes at the "USA Gymnastics National Team Training Center in the middle of the Sam Houston National Forest," which is located in Texas, among other U.S. locations. The USA Gymnastics Memorandum stated that "within the week" of receiving the allegations about Nassar, USA Gymnastics "secured a private investigator," who then interviewed three female gymnasts identified.

The USA Gymnastics Memorandum included the following information regarding the interviews of Gymnasts 1, 2, and 3:

- "[Gymnast 2] revealed her discomfort with therapeutic touching into the groin/pelvic area, inclusive of pulling and manipulating. This therapy technique occurred in a less than desired manner without draping a towel and Gymnast 2 indicated she had experienced this on more than one occasion."

- "[Gymnast 3] indicated familiarity with the 'technique' and felt the touch was innocent but weird. No digital penetration reported, but she said Dr. Nassar did engage her vaginal [sic] during the massage.

- "[Gymnast 1] reported that she was treated many times by Dr. Nassar. While aware of the general treatment technique in the pelvic floor, she indicated her treatment was different—rougher, more aggressively pulling in the vaginal area. Gymnast 1 reported digital penetration three times—in Japan 2011, London 2012, Belgium 2013…. Thereafter Dr. Nassar frequented her with special attention and even gifts, albeit as small as coffee, etc. Gymnast 1 reported no therapeutic effect, but indicated that Dr. Nassar might be getting some sexual gratification."

The Indianapolis SSA wrote in his February 2017 EC that on July 28, 2015, Penny told the FBI that:

- Nassar allegedly had been "Facebook stalking [Gymnast 2] over the years and made her extremely uncomfortable during therapy sessions";

- Gymnast 3 had "similar concerns" as Gymnast 2 related to purported therapy sessions she received from Nassar, but Nassar reportedly "went further with her" than with Gymnast 2; and

- Gymnast 1 told the USA Gymnastics investigator about "hundreds of times" Nassar performed the purported therapy on her, including three occasions when Nassar "digitally penetrated her," that Nassar performed the technique on her in hotel rooms in Japan and England, and that she believed Nassar was "more aggressive with her than others."

Gymnasts 1, 2, and 3 were all minors at the time the alleged sexual misconduct occurred.

Additionally, during the meeting, Penny provided the FBI with a thumb drive containing PowerPoint slides and videos that Nassar had provided to USA Gymnastics of Nassar performing his purported medical technique on athletes. The USA Gymnastics officials told the FBI that Nassar had stated that the slides and videos were used for training purposes with students and that Nassar was trying to have his technique sanctioned by the medical community. Nassar had provided the slides and videos to USA Gymnastics through a link to a file transfer account which Nassar referenced in a July 22, 2015 email to the USA Gymnastics attorney. In the email, Nassar stated that he performed "treatments" on gymnasts in which he touched them in "sensitive areas" to address back problems and "stress urinary incontinence." Nassar did not specifically refer to rectal penetration in the email but referenced the "pelvic floor" and the "sacrotuberous ligament."[49]

Penny further informed the FBI during the meeting, according to the Indianapolis SSA's February 2017 EC, that Nassar had defended his method of pain relief as "documented and proven." Additionally, according to the EC, USA Gymnastics told the FBI that, according to Nassar, the procedure performed by Nassar "was intended to alleviate pain caused by a strained nerve commonly experience[d] by gymnasts." The FBI also was informed, according to the USA Gymnastics Memorandum, that USA Gymnastics' counsel had told Nassar about the allegations and that it would be best for him not to attend a competition scheduled for July 26, 2015. Nassar reportedly agreed not to attend the upcoming competition.

During a September 2020 OIG-compelled interview, the Indianapolis SSA stated that the July 28 meeting lasted about an hour. The Indianapolis SSA described the original allegations reported by Penny and the USA Gymnastics attorney as "very vague." The Indianapolis SSA explained, "Dr. Nassar had some sort of procedure that he would do to alleviate pain very specific to gymnasts and…it was a procedure that he had been performing for quite some time, and it had become alleged now, at this point, that it was inappropriate behavior with the athletes." The Indianapolis SSA told the OIG that the meeting was "odd," because "it felt like a dump and run, where they gave us information like they're reporting to us, but they didn't give us much information to go on." The Indianapolis SSA stated that Penny "does not exude trustworthiness when you talk to him. He's kind of a snake oil salesman kind of guy." The Indianapolis SSA further stated that, based on the information provided by Penny, he and his colleagues were unsure whether there had been a federal crime. The Indianapolis SSA explained that they considered child pornography, whether the conduct had occurred on federal property, or whether Nassar crossed state lines with a minor.[50] In addition, the Indianapolis SSA stated that there did not appear to be venue in Indiana,

[49] Based on open-source information, the sacrotuberous ligament is situated at the posterior, or back part, of the pelvis on either side of the body.

[50] Based on our evidence review, the Indianapolis Field Office, and later the USAO for the Southern District of Indiana, considered the applicability of the federal law prohibiting child sexual tourism. See 18 U.S.C. § 2423. However, they believed that this law was likely inapplicable because one element is that the purpose of the travel is to engage in

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because none of the alleged crimes occurred in Indiana. The Indianapolis SSA believed that the only reason Penny reported the allegations to the Indianapolis Field Office was that USA Gymnastics was headquartered in Indianapolis.

Similarly, the Indianapolis ASAC told the INSD that he was confused as to why Penny reported the allegations to the Indianapolis Field Office because there did not appear to be clear violations of federal law or a nexus to Indianapolis. Consistent with this statement, the Indianapolis ASAC wrote in his notes, "assess if there is investigation/federal nexus" and "where does the venue fall?"

Both the Indianapolis ASAC and the Indianapolis SSA told the OIG that Penny was instructed twice during the July 28, 2015 meeting to report the Nassar allegations to local law enforcement where the violations were committed, as no apparent violations occurred in Indiana. The Indianapolis ASAC stated that when the meeting ended they educated Penny and the others on the FBI's role, "reiterated…that we're not first responders," and, thus, told them that the allegations should be reported to local law enforcement. The Indianapolis ASAC thought that it was the Indianapolis SSA who initially brought up the subject of reporting to local law enforcement, while the Indianapolis SSA told the OIG that either the Indianapolis ASAC or SAC Abbott provided the instruction to Penny. An entry of the Indianapolis ASAC's notes contained Penny's name and phone number along with the notation, "report to local LE?" The Indianapolis ASAC and the Indianapolis SSA both stated that they believed the Indianapolis CDC provided similar guidance to Penny; however, as noted above, there is no evidence that the Indianapolis CDC was at the meeting, and the Indianapolis CDC told the OIG that he did not recall any discussions within the FBI or with USA Gymnastics about reporting the Nassar allegations to local law enforcement.[51]

Penny and the USA Gymnastics Board of Directors Chairman both contradicted this claim by the Indianapolis ASAC and the Indianapolis SSA. Penny told the OIG that no one at the FBI—not Abbott, the Indianapolis SSA, or the Indianapolis ASAC—told him to notify local law enforcement about the Nassar allegations. To the contrary, Penny stated that during the July 28, 2015 meeting the FBI "emphasized the value and importance of confidentiality." Similarly, the USA Gymnastics Board of Directors Chairman told the OIG that no one from the FBI Indianapolis Field Office told USA Gymnastics to contact local law enforcement. According to the USA Gymnastics Board of Directors Chairman, Abbott told them during the meeting that USA Gymnastics had "come to the right place," meaning the FBI, and that Abbott had complimented USA Gymnastics on how it had handled the matter. Further, the USA Gymnastics Board of Directors Chairman told a Senate committee investigating the Nassar allegations that Abbott said on several occasions during the meeting that USA Gymnastics should not take any actions that would interfere with the FBI investigation.[52]

As noted above, the FBI did not formally document the July 28 meeting and therefore there is no FBI documentary record of instructions that FBI officials did or did not give to USA Gymnastics officials during the meeting. However, the OIG reviewed a contemporaneous summary of the meeting prepared by USA

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unlawful sexual activity. They reasoned that the purpose of Nassar's travel was his work as a doctor with USA Gymnastics.

[51] In addition, the Indianapolis CDC told the OIG that agents who work child sexual abuse cases are aware of the mandatory reporting requirements and, as CDC, he was never involved in that process.

[52] Moran and Blumenthal, *Senate Olympics Investigation,* 53.

Gymnastics, which made no mention of an instruction to USA Gymnastics officials to notify state or local officials and stated:

> USA Gymnastics briefed the agents about the circumstances and much of the discussion centered around Gymnast 1 and the proper jurisdiction for investigation. The FBI concurred with USA Gymnastics that there was some question as to how best to proceed but also felt that the [FBI] was in fact the best place to start. Following this meeting the FBI was to consult with the U.S. Attorney on next steps, but felt strongly that the [FBI] would at the very least conduct an interview with Gymnast 1.

Moreover, as detailed below, subsequent press statements prepared by USA Gymnastics noted that USA Gymnastics had refrained at FBI Indianapolis's request from "making further statements or taking any other action that might interfere with the agency's investigation."

The Indianapolis SSA told the OIG that he did not contact local law enforcement himself because he had received "fourth-hand information" and he "wouldn't even know what to go to law enforcement about." The Indianapolis SSA stated that the "onus" was on USA Gymnastics to report the allegations to local law enforcement, and he believed that advising Penny to report the allegations to local law enforcement was adequate. The Indianapolis ASAC stated that the Indianapolis Field Office would have reported the allegations to state and local partners "if we were certain of an allegation" or if "the facts had led to…a criminal act going on." The Indianapolis ASAC further stated that they were "awaiting guidance from the United States Attorney's Office" on whether there was a federal crime or venue and whether the FBI could conduct "some initial Assessment activity."

The Indianapolis SSA also stated during his OIG interview that he did not formally document the July 28 meeting because "at this point, I did not know what we had…and I didn't really have a repository to put that to." He further stated that, if documentation was required, he did not know whose responsibility it was to create it between Abbott, the Indianapolis ASAC, and himself. The Indianapolis ASAC told the OIG that, "Whatever limited information we have, in my mind, it was documented in the appropriate form at the time, which was an FD-71," referring to the FD-71 that the Indianapolis SSA claimed he created subsequent to the meeting to refer the Nassar allegations to the Lansing Resident Agency. However, FBI INSD concluded in its Special Review that the Indianapolis Field Office's failure to document the July 28 meeting violated FBI policy.

Abbott told the OIG that he and the other FBI employees who participated in the meeting "huddled" in Abbott's office "for a good hour" after the meeting and that they questioned why Penny had not immediately reported the allegations to the authorities. Abbott stated that they further questioned why Penny brought the allegations to Indianapolis as opposed to where the acts occurred or where the victims or alleged perpetrator lived. Abbott stated that this caused his and his colleagues' "suspicions" to rise as to whether Penny was "fully cooperating" and to question, "What's he protecting? Why is he bringing it to us in this fashion?"

After the July 28, 2015 meeting, Abbott directed the Indianapolis SSA to contact the three athletes identified by Penny and for the Indianapolis ASAC to coordinate with the U.S. Attorney's Office (USAO) for the Southern District of Indiana.

II. Indianapolis Field Office Actions Following the July 28 Meeting

A. Contact with the USAO for the Southern District of Indiana

Shortly after the July 28 meeting with USA Gymnastics, the Indianapolis Field Office was in contact with the USAO for the Southern District of Indiana about the Nassar allegations, as we discuss below. However, we determined that the USAO first learned of the Nassar allegations on or about July 27, 2015, when an Assistant U.S. Attorney with the Southern District of Indiana (Southern District of Indiana AUSA) was contacted by a then-Sergeant over the Indianapolis Metropolitan Police Department's Child Abuse Unit (Indianapolis Sergeant). The Southern District of Indiana AUSA stated that in late July 2015 he was working with several FBI agents and FBI task force officers on the Jared Fogle child pornography case. On July 27, the Indianapolis Sergeant emailed the Southern District of Indiana AUSA informing him that Penny, a family friend, had contacted the Indianapolis Sergeant the previous day, July 26, because Penny wanted to report a child sexual abuse allegation.

The Indianapolis Sergeant told the OIG that he reached out to the Southern District of Indiana AUSA after Penny had asked him where he could report allegations against a USA Gymnastics doctor that involved more than one state and possible international conduct. The Indianapolis Sergeant stated that Penny, who knew that the Indianapolis Sergeant handled child abuse matters, referred to the allegations as something within the Indianapolis Sergeant's "profession" or "realm." The Indianapolis Sergeant further stated that, after learning that none of the alleged events occurred in Indianapolis, he believed that a report to the FBI, rather than the Indianapolis Metropolitan Police Department, would be most appropriate; offered to connect Penny with the Southern District of Indiana AUSA; and sent the Southern District of Indiana AUSA an email about his conversation with Penny.

The evidence we reviewed is unclear as to whether the Southern District of Indiana AUSA communicated with Penny about Nassar.[53] However, the Southern District of Indiana AUSA told us that in late July 2015, within days of receiving the email from the Indianapolis Sergeant, the Southern District of Indiana AUSA began communicating with the Indianapolis SSA about the Nassar allegations. The Indianapolis SSA stated

[53] During our review, we identified conflicting recollections among witnesses as to whether Penny met with the Southern District of Indiana AUSA to discuss the allegations against Nassar. According to the Southern District of Indiana AUSA, within a few days after he received the email from the Indianapolis Sergeant, he and one or more of the investigators in the Fogle investigation met with Penny at a child advocacy center where the Fogle investigative team was interviewing victims in the Fogle case. The Southern District of Indiana AUSA could not recall which specific FBI agents or task force officers participated in this meeting. The Southern District of Indiana AUSA described the meeting as brief as they had multiple victim interviews to conduct that day in the Fogle case, and the Southern District of Indiana AUSA believed that one of the investigators documented the meeting. The Southern District of Indiana AUSA recalled that Penny discussed concerns that Nassar may have inappropriately touched athletes but added that Nassar was insistent that he was using valid medical techniques. The OIG interviewed five individuals that the Southern District of Indiana AUSA identified as possibly attending the Penny meeting with him at the child advocacy center, including the Indianapolis Sergeant. Of those five individuals, the Indianapolis Sergeant was the only one who recalled a meeting with Penny in July 2015; but the Indianapolis Sergeant said that the meeting was about a USA Gymnastics coach and not Nassar. Similarly, Penny told us of a meeting with the Southern District of Indiana AUSA at the child advocacy center in August 2015 but said that the meeting concerned a USA Gymnastics coach and not Nassar. We were unable to locate any documents relating to the meeting.

that he and the Southern District of Indiana AUSA had several conversations about the Nassar allegations both before and after the Indianapolis SSA's interview with Gymnast 1 on September 2, 2015.

As described below, according to the Indianapolis SSA's February 2017 EC, following the interview of Gymnast 1 on September 2, the Indianapolis SSA contacted the Southern District of Indiana AUSA and advised him of what occurred during the interview. The Indianapolis SSA wrote in the February 2017 EC that the Southern District of Indiana AUSA "reluctantly declined" the case due to venue and advised the Indianapolis SSA to transfer the matter to the Lansing Resident Agency. Additionally, the Indianapolis ASAC and the Indianapolis SSA both told the OIG that on July 29, the day after the meeting with USA Gymnastics, the Indianapolis ASAC met with the Southern District of Indiana First Assistant U.S. Attorney (Southern District of Indiana FAUSA) to discuss the Nassar allegations. According to the Indianapolis ASAC, the Southern District of Indiana FAUSA stated that he did not see a clear violation of federal law but agreed to conduct legal research.

The Southern District of Indiana FAUSA told the OIG that he did not recall discussing the Nassar allegations with anyone at the FBI but said that he knew the Southern District of Indiana AUSA was handling the matter. We identified a meeting with the Indianapolis ASAC scheduled on the Southern District of Indiana FAUSA's calendar for July 29, 2015, with the location "FBI initiative"; but the calendar entry did not reference the Nassar allegations.

B. Efforts to Interview Gymnasts 1, 2, and 3

On July 28, 2015, following the meeting at the Indianapolis Field Office, Penny emailed Abbott and the Indianapolis ASAC with contact information for Gymnast 2's mother, Gymnast 3, Gymnast 1, and Gymnast 1's mother. From July 29 through September 1, 2015, Penny exchanged emails with Abbott, the Indianapolis SSA, and the Indianapolis ASAC regarding scheduling interviews of the athletes.

Abbott wrote in a July 29, 2015 email to Penny:

> As telephonically discussed earlier today, an interview of the athlete in question on or about August 13 at Indianapolis would be the most advantageous. At the conclusion of that interview, the FBI will determine next steps with referral to the Western District of Michigan and the FBI Detroit Division, if necessary, as per counsel from the USAO here in the Northern District of Indiana. We will also provide an update to you at that time.

Later that same day, Penny emailed Abbott to inform him that he had "spoken with the mother of Gymnast [1]" and "explained the steps we have taken." Penny further stated that the mother "was very grateful to hear that the FBI will be willing to interview her daughter" and that the mother "is going to speak with her daughter and hopefully get back to me as soon as possible."

On the evening of August 4, Penny emailed Abbott asking whether Penny could "catch up with you and your team as soon as possible regarding" Gymnast 1. Abbott responded by copying the Indianapolis ASAC and the Indianapolis SSA, informing Penny that he (Abbott) was out of town that week, and asking the Indianapolis SSA to contact Penny the following morning.

The next day, August 5, according to the Indianapolis SSA's February 2017 EC, the Indianapolis SSA discussed with Penny the status of the interview of Gymnast 1, as well as a possible interview of Gymnast 3. According to the EC, Penny told the Indianapolis SSA that Gymnast 3 would be traveling to Indianapolis for a competition and offered to "set a time" for her interview with the FBI. The Indianapolis SSA further wrote in the EC that on that same day he contacted Gymnast 1's mother to discuss arranging an interview of Gymnast 1 and that Gymnast 1's mother agreed to discuss the matter with her daughter.

The following day, August 6, Penny emailed Abbott, the Indianapolis ASAC, and the Indianapolis SSA, "As we have discussed I appreciate you contacting [Gymnast 1] directly about an interview in [her home state] in the very near future. Also, [Gymnast 3] would be available for an interview at about 1:00pm on Sunday, August 16 prior to returning home" from her gymnastics competition in Indianapolis. On August 7, the Indianapolis SSA replied to Penny, with a courtesy copy to Abbott and the Indianapolis ASAC, "Thank you for setting up the interview with [Gymnast 3]. That time will work out perfectly. We will reach out to [Gymnast 1] and find an amenable time for the interview in [her home state]."

However, on August 9, Penny emailed the Indianapolis SSA, the Indianapolis ASAC, and Abbott to inform them that he had "received a note from [Gymnast 3] that the thought of the interview is just a little too overwhelming for her right now as we head into the [gymnastics competition in Indianapolis]. For now we have postponed." The email went on to state that the FBI should "contact [Gymnast 1] at your earliest convenience." On August 12, Penny emailed the Indianapolis SSA, with a courtesy copy to Abbott and the Indianapolis ASAC, stating, "I received a call from [Gymnast 1's mother] last night and she was curious as to when she might here [sic] from you." The email went on to state that "we are getting close to next steps with Dr. Nassar following our [gymnastics competition in Indianapolis] this week so one way or another it would be helpful to have more perspective on this at your earliest convenience." About 90 minutes later, the Indianapolis ASAC replied:

> [The Indianapolis SSA] has been working a violent crime initiative over the course of the past 10 days, which has him leading his team until 2 am most nights. Per our telcal last week, as an agency, we could have sent a lead to our LA office and had them conduct the interview. However, given the sensitivities of this matter, and [the Indianapolis SSA's] experience, we reached a consensus [the Indianapolis SSA] and his agent with this specialty should be the ones to conduct the interview in the near future. We've made it a priority and will ensure the interview gets scheduled and conducted.

The following week, on August 20, the Indianapolis SSA texted the Indianapolis ASAC: "Just wanted to give you a quick update. I tried calling [Gymnast 1] 2x this evening, but her phone goes directly to a message that the person is not accepting calls at this time. I will try again tomorrow afternoon to set up the interview." During the INSD investigation, the Indianapolis SSA told the INSD that he made several attempts to contact Gymnast 1 before he finally made contact with Gymnast 1 on or about August 25 and that he left voicemail messages when his attempts were unsuccessful. The Indianapolis SSA stated that after August 25 he communicated directly with Gymnast 1's mother to coordinate Gymnast 1's interview. However, we found no records at the FBI of attempts by the Indianapolis SSA to contact Gymnast 1 between August 5 and August 25, other than the August 20 text message from the Indianapolis SSA to the Indianapolis ASAC referencing two calls that evening. The Indianapolis SSA told the INSD that he did not contemporaneously document any of his conversations with Gymnast 1's mother.

On the morning of August 27, the Indianapolis ASAC wrote to Penny that the Indianapolis SSA had "attempted on three occasions to set up the interview" with Gymnast 1, but Gymnast 1 had not returned the Indianapolis SSA's calls. The Indianapolis ASAC further wrote: "At this point I have the following recommendation: can you ask that individual if she is still willing to be interviewed, and if so contact [the Indianapolis SSA] directly on his cell phone.... We cannot compel her to meet with us, but we're more than willing to do our due diligence." Penny sent an email in response that same morning asking whether the Indianapolis SSA had tried to reach Gymnast 1 directly or through her mother. The Indianapolis SSA responded 3 minutes later: "To clarify, I have attempted to call mom's phone on several occasions, as I believe that was the direction given. Her phone rings and goes to a message that the caller is not accepting calls at this time." Later in the day, Penny emailed the Indianapolis SSA and the Indianapolis ASAC regarding Gymnast 1, stating: "Mom has resurfaced. let me take one more shot at trying to get them to Indy." According to the Indianapolis SSA's February 2017 EC, Penny stated that Gymnast 1's mother had failed to answer her phone because Gymnast 1's family had been on travel the previous 3 weeks and that he (Penny) had made arrangements to fly Gymnast 1 and her mother to Indianapolis on Thursday, September 3.

In the August 27, 2015 email, Penny further wrote that, "Gymnast 3 has reconnected and wonders if the FBI would still like to speak with her and if so, would they travel to [the city near where she lives]."

On August 31, 2015, Penny emailed the Indianapolis SSA and the Indianapolis ASAC to inform them that "[w]e are looking at getting [Gymnast 1 and her mother] here Thursday night and flying home Friday evening." On the same date, Penny emailed Gymnast 1's mother and provided Gymnast 1's travel itinerary for her flight to Indianapolis on September 3. The following day, September 1, at around 6 p.m., the Indianapolis ASAC texted the Indianapolis SSA: "Also, what's the status with gymnastics? You interviewing athletes [3] and [1] on Thursday [September 3] here in Indy?" The Indianapolis SSA replied: "I spoke with the gymnastics mom again, as well as the SSA in Detroit. [The agent] and I are doing a telephonic interview tomorrow afternoon. We will then package it up and ship it off."

Later on September 1, Penny again wrote to the Indianapolis SSA to inform him that Gymnast 1 and her mother were scheduled to arrive in Indianapolis on Thursday evening, September 3, and asked whether the interviews could be scheduled for Friday morning. Approximately 15 minutes later, the Indianapolis SSA wrote back to Penny informing him that he had spoken with "the Supervisor in Detroit" and stating that, "the Detroit Office of the FBI will inherit the case and investigative purview will lie with them, as they have prosecutorial venue." The Indianapolis SSA went on to tell Penny that the purpose of the initial interview would be to "establish the violation and initiate the investigation" and that "it is foreseeable that [Gymnast 1] will need to be recontacted for a more in depth, perhaps forensic interview." The Indianapolis SSA relayed to Abbott that he had "discussed these facts, along with other procedural matters" with Gymnast 1's mother and that, "[a]fter considering these facts, the inconvenience of the travel involved, the potential for a more in depth intetview [sic] in the near future and the comfort level of [Gymnast 1], the decision was made to conduct the initial interview telephonically." The Indianapolis SSA further wrote that the interview was "tentatively scheduled for tomorrow afternoon/evening" and that, "[o]nce the interview is conducted and

memorialized, the case will be packaged and sent to the Detroit office who will take full ownership of the case and proceed where the evidence leads."[54]

As detailed below, on September 2, the Indianapolis SSA and another agent with the Indianapolis Field Office interviewed Gymnast 1 by telephone.

Two days later, on September 4, Penny sent Abbott an email regarding scheduling the Gymnast 3 interview:

> [Gymnast 3] is located in [city]. We had hoped she would stay [in Indianapolis] following the Championships for an interview on that Sunday [August 16]. That became a distraction to her so we cancelled the Sunday interview so that she could still focus on the competition. I did not know whether or not the agents would follow up with her by phone or otherwise.... Her mother has contacted me several times for updates and I just tell her I don't have much information. She has informed me that her daughter has not been contacted by the FBI.

The OIG identified no evidence that the Indianapolis SSA attempted to reschedule Gymnast 3's interview or reach out to her or Gymnast 2 directly. During OIG interviews, Gymnasts 2 and 3 both stated that they were never contacted by the Indianapolis SSA or anyone else at the Indianapolis Field Office. When asked by INSD about his failure to interview Gymnast 3, the Indianapolis SSA told the INSD that Gymnast 3's family had canceled the August 2015 interview that Penny had scheduled.

In that same September 4 email, Penny identified for Abbott another athlete ("Gymnast 4") whom Penny thought the FBI might wish to interview, stating:

> [Gymnast 4] is an athlete that has not been involved but was a member of the team in 2011 in Japan. [Gymnast 1] reported that when she went into the hotel room in Tokyo, [Gymnast 4] was receiving treatment and left the room when [Gymnast 1] arrived. I do not know if this was mentioned during the interview conducted by the FBI but wanted to share it in case it is helpful.

In response to Penny's email, Abbott informed Penny in a September 4 email, with a courtesy copy to the Indianapolis ASAC and Indianapolis SSA, that "pertinent interviews have been completed and the results have been provided to the FBI and the USAO in Michigan (Detroit) for appropriate action if any." However, as detailed below, contrary to Abbott's representation, the Indianapolis Field Office had conducted only one interview (of Gymnast 1) and had not provided any information to the FBI or USAO in Michigan about the results of the interview.

[54] Gymnast 1's mother told the OIG that Gymnast 1's interview with the Indianapolis Field Office was conducted telephonically because Gymnast 1 was not "willing or able at the time to travel" due to health problems. In addition, she stated that she did not recall anyone at the FBI offering to conduct the interview where Gymnast 1 lived. We found that Gymnast 1's mother's recollection of Gymnast 1's willingness to travel to Indianapolis was likely inaccurate because, as noted above, Penny had already arranged a flight for Gymnast 1 to travel to Indianapolis before the Indianapolis SSA scheduled Gymnast 1's interview to take place by phone.

C. The Telephonic Interview of Gymnast 1 on September 2 and Issues Regarding the FBI's Documentation of It

1. The Decision to Conduct the Interview Telephonically

The Indianapolis SSA provided slightly different accounts at different times of the decision to conduct Gymnast 1's interview telephonically. In his September 1, 2015 email to Penny, the Indianapolis SSA wrote that the reasons for conducting Gymnast 1's interview telephonically included that "the Detroit Office of the FBI will inherit the case," the "inconvenience of travel involved," the "potential for a more in depth interview in the near future," and the "comfort level" of Gymnast 1. In his February 2017 EC, the Indianapolis SSA explained the decision for conducting Gymnast 1's interview telephonically by writing only that it was "[d]ue to travel complications."

During his FBI INSD interview, the Indianapolis SSA acknowledged that telephonic interviews of juvenile victims are rare and there is usually a Child/Adolescent Forensic Interviewer (CAFI) present. The Indianapolis SSA further told the INSD that he knew it would be difficult to get the victim to fully disclose any victimization through a telephonic interview.[55] The Indianapolis SSA stated that he originally intended to conduct Gymnast 1's interview near where she lived but the in-person interview was never scheduled due to scheduling conflicts between Gymnast 1's family and the FBI. The Indianapolis SSA further said that his management directed him to interview Gymnast 1 by telephone after his attempts to arrange an in-person interview were unsuccessful but he could not remember whether SAC Abbott or the Indianapolis ASAC made the decision. Additionally, the Indianapolis SSA said that the decision from FBI management to conduct the interview telephonically may also have been due to pressure by USA Gymnastics to conduct the interviews. However, as noted above, emails reflect that USA Gymnastics had arranged for an in-person interview of Gymnast 1 in Indianapolis on September 3 or 4 only to have the FBI cancel that in-person interview on September 1 in favor of the telephonic interview that occurred on September 2.

The Indianapolis SSA told the OIG that he and the Indianapolis ASAC decided that the interview of Gymnast 1 would be telephonic because they were treating the interview as a complaint intake interview, to determine whether there was a federal violation, rather than a forensic interview; they were not looking for an initial "disclosure"; and they knew they did not have venue. He explained that, "if somebody could make a federal violation out of this, then she would have to be forensically interviewed, you know, more deeply interviewed." The Indianapolis SSA stated that otherwise he would not have conducted the interview telephonically. Despite his statement that he was treating the interview as a complaint intake interview rather than a forensic interview, the Indianapolis SSA stated during the OIG interview that he probed Gymnast 1 by trying "every angle" and "seven ways to Sunday" to get her to disclose allegations of sexual abuse. The Indianapolis SSA further stated that they were trying to get Gymnast 1 to "repeat these egregious allegations she had made before, that made this such a high priority" for USA Gymnastics.

The Indianapolis SSA also told the OIG that "the delay between the time" Penny talked to the Indianapolis Field Office and the telephonic interview of Gymnast 1 was "largely caused by" Penny, who would cancel scheduled interviews for one reason or another. The Indianapolis SSA stated that he was able to schedule the Gymnast 1 interview only after he "cut" Penny out of the process. According to the Indianapolis SSA, Penny was in constant contact with Abbott and, as a result, the Indianapolis Field Office was "pushing to get"

[55] According to a representative of the FBI's Child Victim Services Unit, there is no FBI policy regarding telephonic interviews of adults who were victims of sexual abuse as a child.

the Gymnast 1 interview done to get USA Gymnastics "off of our back." The Indianapolis SSA told the OIG that the Indianapolis ASAC was "getting pretty tired of Mr. Penny, as well, so our push was to get this done and moving along, to where it could grab some legs somewhere else, because it wasn't in our shop." The Indianapolis SSA further told the OIG that the Indianapolis ASAC was a "very squared-away, organized guy" and that the Indianapolis ASAC "would always ask what the status was." In addition, the Indianapolis SSA stated that he and his colleagues were "really, really, really busy" with other matters, "so we knew we had to get this thing moving."

The Indianapolis ASAC told the INSD that he was advised by the Indianapolis SSA that the Indianapolis SSA's attempts to interview the athletes were hampered by Penny's interventions and role as a middle person. The Indianapolis ASAC told the OIG that the Indianapolis SSA had trouble getting in contact with one of the athletes, but the Indianapolis ASAC could not remember which one. The Indianapolis ASAC further told the OIG that he did not remember the Indianapolis SSA actually interviewing any of the athletes, other than "a very generic kind of telephonic interview, maybe to just go over ancillary facts." The OIG asked the Indianapolis ASAC whether he directed the Indianapolis SSA to conduct interviews by telephone. The Indianapolis ASAC stated that he told the Indianapolis SSA to "ascertain any facts, so we understand what's going on, and if we have to do this by phone, let's do it by phone, so we can package this up and then send it off to whatever division it would be in." In addition, the Indianapolis ASAC stated that he had told the Indianapolis SSA, "we'll pay for you and [your co-interviewer] to go" to Gymnast 1's home state to conduct the interview. He further stated, however, that because they had not opened a full investigation, it made "the most sense to just do an initial kind of conversation by phone [and] figure out what we had."

The INSD, as part of its Special Review After Action Report, determined that given Gymnast 1's "age at the time of victimization and the nature of the allegations…it would have been more appropriate to conduct" her interview in person and with the assistance of a [Victim Specialist] or CAFI." The INSD further determined that Gymnast 1 should have been provided victim services following the September 2015 interview.

2. Agents' Recollections of the Interview and the Failure to Timely Document It

On September 2, 2015, the Indianapolis SSA and a Special Agent from the Indianapolis Field Office (Indianapolis co-interviewer) telephonically interviewed Gymnast 1, who was an adult at the time of the interview but was a minor during the events in question. The Indianapolis SSA told the INSD and the OIG that he selected the Indianapolis co-interviewer to conduct the interview with him because she is a female agent and former gymnast.[56] The Indianapolis SSA stated that the Indianapolis co-interviewer's only involvement in the Nassar allegations was the interview of Gymnast 1.

During the interview, the Indianapolis SSA and the Indianapolis co-interviewer took a total of one and two pages of notes, respectively, and the OIG found no other contemporaneous record of the interview. The Indianapolis SSA provided several reasons for not drafting an FBI FD-302 report of the interview in 2015. First, the Indianapolis SSA said that he instead documented the interview in the FD-71 he claimed he drafted to forward the Nassar allegations to the Lansing Resident Agency. However, as discussed in Part III of this chapter, the FBI has no record that the Indianapolis SSA in fact drafted the FD-71 or forwarded it to the

[56] The Indianapolis co-interviewer told the OIG that the Indianapolis SSA was her supervisor in the Violent Crimes Against Children Squad at the Indianapolis Field Office.

Lansing Resident Agency. Second, the Indianapolis SSA told the INSD that he did not want to create conflicting documents involving Gymnast 1's statements about Nassar and therefore documented the interview on only the FD-71. Third, the Indianapolis SSA stated to the OIG that an FD-302 "is for testimony purposes," while an FD-71 is a "complaint form" for allegations that have not yet been substantiated, and he told the INSD that Gymnast 1 did not disclose any information in the interview that he believed constituted a violation of federal law. Fourth, he told the OIG that, because he did not formally open an Assessment or Investigation in Indianapolis, he had no file number and therefore no file into which to place an FD-302.

On February 2, 2017, 17 months after conducting the interview of Gymnast 1, the Indianapolis SSA drafted an FD-302 of the 2015 interview.[57] The Indianapolis SSA told the INSD that he used only his notes and his memory to draft the FD-302. He stated that he did not have the Indianapolis co-interviewer assist him with drafting the FD-302 or reviewing it and he did not rely on the Indianapolis co-interviewer's contemporaneous notes. As described below, the February 2017 FD-302 includes statements purportedly made by Gymnast 1 during the telephonic interview that:

- Gymnast 1 told the OIG that she did not make;
- are not contained in the Indianapolis SSA's notes;
- the Indianapolis co-interviewer did not recall Gymnast 1 making and that are not in the Indianapolis co-interviewer's notes; and
- conflict with statements made by Gymnast 1 during her interviews with the FBI Los Angeles Field Office in 2016 and a USA Gymnastics investigator in 2015.

The Indianapolis SSA wrote in the February 2017 FD-302 that during the interview of Gymnast 1 she described the "treatments" provided by Nassar and stated that the treatments "made her very uncomfortable, as the procedure involved Nassar pushing on her leg and glute muscles while inserting finger(s) in the rectum." The Indianapolis SSA further wrote that Gymnast 1 stated that Nassar administered the treatments to her "on several occasions" and that the treatments "did provide some pain reduction." According to both the Indianapolis SSA's February 2017 EC and his February 2017 FD-302 of Gymnast 1's

[57] Although the FD-302 indicates that the "date of entry" and "date drafted" were February 2, 2017, and an audit conducted by the FBI of the Indianapolis SSA's Sentinel activity confirmed that the Indianapolis SSA created the draft FD-302 on February 2, 2017, the Indianapolis SSA told the OIG that he drafted the FD-302 after receiving a call from an FBI Los Angeles Field Office SSA (Los Angeles SSA) in April 2016 and thereafter discussing the matter with the Violent Crimes Against Children Unit (VCACU). During the call with the Los Angeles SSA (discussed in Part V of this chapter), the Indianapolis SSA learned that the Los Angeles Field Office had received a referral regarding the Nassar allegations, that Gymnast 1 had told the Los Angeles Field Office that she was previously interviewed by the Indianapolis SSA, and that the Los Angeles Field Office could not find any records related to Gymnast 1 in the FBI's Sentinel case management system. The Indianapolis SSA told the OIG that, after hearing from the Los Angeles SSA, a decision was made to belatedly draft an FD-302 of Gymnast 1's interview; but he could not remember whether it was his idea to do so or whether the Indianapolis ASAC or someone else instructed him to do so. The Indianapolis SSA further told the OIG that the February 2, 2017 date reflects the date he printed the FD-302 rather than the date he created it. However, an audit conducted by the FBI of the Indianapolis SSA's Sentinel activity confirmed that the Indianapolis SSA created the draft FD-302 on February 2, 2017.

interview, Gymnast 1 identified a massage therapist who worked with Nassar but stated that the massage therapist was usually not in the room with Nassar during the therapy sessions. The Indianapolis SSA wrote that Gymnast 1 stated she believed that other gymnasts would share similar stories of Nassar and did not believe Nassar took pictures or videos during treatment sessions. According to the Indianapolis SSA's February 2017 EC, the interview of Gymnast 1 was "cursory" and conducted "to determine which, if any violations could be charged federally and an appropriate venue for prosecution."

The Indianapolis SSA's one page of notes from the telephonic interview contained very little information and essentially consisted of the following:

- Gymnast 1's name, contact information, and birthdate;
- Nassar's name underneath a phone number;
- a list of foreign cities and countries, along with associated gymnastics competitions, such as "Tokyo (Worlds) Japan";
- a few names of people, including other athletes and the massage therapist;
- the words "room?" and "procedure?"; and
- phrases identifying the age of a minor and "in Japan," "more intense," and "never with [female] in room."

Unlike the February 2017 FD-302, the Indianapolis SSA's notes did not contain the word "rectum." The Indianapolis SSA's notes also did not contain the word "butt," or the names of any other body parts. In addition, the Indianapolis SSA's notes did not contain any reference to Gymnast 1 stating that the procedure provided "some pain reduction."

The Indianapolis co-interviewer's two pages of notes contained more information than the Indianapolis SSA's notes, including references to specific gymnastics competitions and dates; several domestic and international locations, including Mexico, Italy, London, Japan, Minnesota, Texas, and Belgium; and the names of a massage therapist and other gymnasts. The Indianapolis co-interviewer's notes also included the following language:

- "Ask questions, look at body";
- under the heading "Japan" and an age, "curfew at 10 pm sprained ankle and sore back from the plane ride invited up to room, sign up for last appt so I can spend more time";
- "Japan-Tokyo plus another city";

- "Never did it with [female name] in room. Only touch feet or diff body part that didn't need to be worked on";
- "[Initials] never did this procedure";
- "loosen and relieve back pain";
- "didn't ask beforehand";
- "gold anklet box with jewelry box necklace with cross or rosary";
- "happened every day at world comp during afternoon break (last) or after 2nd w/o";
- "30 days-World Team Camp–everyday"; and
- "Sneak food and treats to the girls."

The Indianapolis SSA told the INSD that Gymnast 1 did not provide information during her interview that described federal violations. The Indianapolis SSA further told the INSD that he did not need to interview the other athletes because he had been told by USA Gymnastics that Gymnast 1's allegations were the most substantive. The Indianapolis SSA stated that he did not offer Gymnast 1 access to victim services following the interview.

During a September 3, 2020 OIG-compelled interview, the Indianapolis SSA stated that he and the Indianapolis co-interviewer tried "every angle" to get Gymnast 1 to make a disclosure of sexual misconduct. He stated that, "we even specifically asked, was there any other touch—did he touch anywhere besides, like did he touch your vagina? And she said no." Asked whether Gymnast 1 told him that Nassar inserted his fingers into her vagina, the Indianapolis SSA responded, "No. She specifically said that he did not." During a February 4, 2021 OIG-compelled interviewed, the Indianapolis SSA stated that he and the Indianapolis co-interviewer tried "seven ways to Sunday" to get Gymnast 1 to disclose the sexual misconduct that they had understood she previously disclosed. The Indianapolis SSA stated that they asked her whether Nassar penetrated her anywhere other than her rectum, such as orally or vaginally, and whether Nassar had touched her breasts. The Indianapolis SSA told the OIG that Gymnast 1 responded by giggling and saying, "no, it was my butt," and that she said the procedure wherein Nassar penetrated her rectum made her feel uncomfortable but alleviated her pain. Neither the Indianapolis SSA's February 2017 FD-302 nor his notes from the interview indicated that Gymnast 1 denied vaginal penetration, denied that Nassar touched her breasts, or giggled. The Indianapolis SSA told the OIG that Gymnast 1 stated during the interview that Nassar gave her gifts and snuck her food and treats. The Indianapolis SSA acknowledged that these facts were not reflected in his FD-302, even though they were evidence of "grooming" behavior that is common among child sexual abusers. Asked whether the evidence about gifts and sneaking treats raised a red flag, the Indianapolis SSA responded, "Yeah. A little bit. But also the way she was approaching it was…with gymnastics being like a pressure cooker, these adults were mean, and he was nice to the girls."

The Indianapolis SSA told the OIG that after the Gymnast 1 interview he and the Indianapolis co-interviewer discussed their surprise that Gymnast 1 had not made a "disclosure, so to speak, of anything." The Indianapolis SSA further told the OIG that the interview was "not at all what we expected," and he described Gymnast 1 as "kind of giddy" and "almost like a 12-year-old."

The Indianapolis co-interviewer told the INSD that the interview of Gymnast 1 lasted about 45 minutes and that Gymnast 1 referred to Nassar's treatment as the "procedure." The Indianapolis co-interviewer further stated that Gymnast 1 struggled to describe what had actually happened during the procedure and talked around the issue. The Indianapolis co-interviewer told the INSD that she surmised that Gymnast 1 was uncomfortable talking about what had happened because of the sensitivity of the topic and the fact that Gymnast 1 was talking to two strangers on the telephone. The Indianapolis co-interviewer further told the INSD that, although Gymnast 1 never used the word "rectum" in the interview, the Indianapolis co-interviewer and the Indianapolis SSA both concluded that Gymnast 1 was describing Nassar inserting his fingers into Gymnast 1's rectum. However, the Indianapolis co-interviewer's contemporaneous notes of Gymnast 1's interview did not contain the word "rectum." The only reference to a body part in the Indianapolis co-interviewer's notes was: "Never did it w/ [female] in room. Only touch feet or diff body part that didn't need to be worked on." The Indianapolis co-interviewer further told the INSD that Gymnast 1 stated that no one else and no cameras were present during the procedures with Nassar. The Indianapolis co-interviewer added that Gymnast 1 stated that Nassar generally kept the procedure away from other adults.

The Indianapolis co-interviewer told the OIG that Gymnast 1 was "ambiguous" in her descriptions but that the Indianapolis co-interviewer understood her to be talking about "digital penetration" by Nassar. The Indianapolis co-interviewer stated that she did not ask Gymnast 1 to clarify where Nassar inserted his fingers, but stated, "I believe [the Indianapolis SSA] did." However, the Indianapolis co-interviewer's further testimony to the OIG indicated that the Indianapolis co-interviewer did not hear the Indianapolis SSA ask clarifying questions and that the Indianapolis SSA may have made an assumption based on prior knowledge. The Indianapolis co-interviewer explained to the OIG that she looked to the Indianapolis SSA for clarification regarding what Gymnast 1 was describing and that the Indianapolis SSA indicated to the Indianapolis co-interviewer that Gymnast 1 was referring to her rectum. The Indianapolis co-interviewer further explained: "[A]s opposed to vaginal [sic] or rectum, [the Indianapolis SSA] already knew that, and when I looked at him, that seemed like that was, like, okay, you already know that. I'm not going to make her say it again." In response to the OIG asking how the Indianapolis SSA knew that Gymnast 1 was referring to her rectum, the Indianapolis co-interviewer said: "I don't really know. I don't think it's appropriate for me to speculate, but I believe he had a little bit more background before we had interviewed her." When asked by the OIG whether there were any "clarifying questions asked" of Gymnast 1, the Indianapolis co-interviewer responded, "No." The OIG further asked the Indianapolis co-interviewer whether "being penetrated in her rectum" were words that came out of Gymnast 1's mouth, and the Indianapolis co-interviewer responded, "She did not use those words, to my knowledge."

The Indianapolis co-interviewer stated that she believed a face-to-face interview with Gymnast 1 would have been preferable because in-person interviews are better for "rapport-building" and it is difficult to obtain a complete narrative from a victim during a telephonic interview. In addition, the Indianapolis co-interviewer stated that they did not offer Gymnast 1 a victim witness coordinator or victim witness services because the Southern District of Indiana did not have venue to continue with the investigation.

The Indianapolis co-interviewer told the OIG that based on the interview she believed that Gymnast 1 was assaulted by Nassar. Asked whether she was concerned about future sexual misconduct by Nassar, the Indianapolis co-interviewer responded that she was and that she discussed those concerns with the Indianapolis SSA. The Indianapolis co-interviewer stated that she kept the notes that she took during the interview in her desk drawer. She stated that there was no administrative file in which to place her notes and that it "was decided that [the Indianapolis SSA] was going to handle the administrative process for documenting the interview." She said that the Indianapolis SSA stated that he was going to "write it up and send it up to Detroit." The Indianapolis co-interviewer stated that the Indianapolis SSA "was taking responsibility for moving it along, within our agency." However, she stated that the Indianapolis SSA did not ask her for her notes until "approximately a year later," when questions arose about what happened to the purported FD-71.

3. Gymnast 1's Recollection of the Indianapolis Interview and Her Prior Testimony to USA Gymnastics and the FBI's Los Angeles Field Office

The OIG interviewed Gymnast 1 regarding her interview with the Indianapolis SSA and the Indianapolis co-interviewer, as well as other topics. Gymnast 1 stated that during the interview the Indianapolis SSA and the Indianapolis co-interviewer asked her to "tell them everything," asked few questions, ended the interview by saying they would get back to her, and then never reached out to her again.

Gymnast 1 further stated that she told the Indianapolis SSA and the Indianapolis co-interviewer that Nassar had sexually assaulted her "hundreds of times" between approximately 2009 and July 2015. Gymnast 1 stated that during these incidents Nassar inserted his finger into her vagina, not her rectum. She stated that she may have told the Indianapolis SSA and the Indianapolis co-interviewer only that Nassar "put his fingers in me" but they did not ask her to clarify where he inserted them. Gymnast 1 acknowledged that it was "hard for me to tell it in graphic detail" and that she may have gotten "clearer" over time. However, she denied that she told the Indianapolis SSA and the Indianapolis co-interviewer that Nassar put his fingers inside her rectum or that the treatments were "helpful" or provided pain reduction. Specifically, when the OIG asked Gymnast 1 whether Nassar ever placed his fingers inside her rectum, she responded, "Not inside, like no." She further stated that Nassar "would do this thing where he sort of had his fingers there, like on top of, but I never said that he put his fingers inside my rectum." She later went on, "No, I didn't say that. I didn't say that he put his fingers in my rectum. I didn't ever say that."

Gymnast 1 told the OIG that she described to the Indianapolis SSA and the Indianapolis co-interviewer a specific instance when Nassar sexually assaulted her in his hotel room during a competition in Tokyo, Japan, when she was a minor. She stated that she specifically told them about the Tokyo incident because it was "super intense" and that she told them it was "the scariest night of [her] life." Gymnast 1 stated that during this incident Nassar, while clothed, laid on top of her, while she was on her stomach without clothes. She stated that Nassar had given her a pill to help her sleep on the plane so she was "out of it." She further stated that Nassar was "humping" her and, unlike the other incidents, he did not pretend to perform a medical treatment. Consistent with Gymnast 1's OIG testimony, the Indianapolis SSA's notes referenced a "hotel room" in Tokyo, the approximate date of the incident, and the phrase "more intense," while the Indianapolis co-interviewer included in her notes under the heading, "Japan-[age of a minor]" what appear to be details about a specific incident, including "invited up to room, sign up for last appt so I can spend more time."

Gymnast 1's testimony to the OIG regarding her statements during the September 2 Indianapolis interview was consistent with what she told both the USA Gymnastics private investigator on July 24, 2015, a little over a month before the Indianapolis SSA's interview, and what she told the FBI's Los Angeles Field Office on May 11, 2016, just over 8 months after the Indianapolis SSA's interview. Of the interview records from these four interviews—the USA Gymnastics private investigator's interview, the Indianapolis SSA's interview, the FBI Los Angeles Field Office's interview, and the OIG's interview—the Indianapolis SSA's FD-302 is the only one that states that Gymnast 1 alleged rectal penetration or that the procedure alleviated her pain. Moreover, the Indianapolis SSA's statement to the OIG that Gymnast 1 specifically denied having been vaginally penetrated by Nassar's fingers during the September 2 interview does not appear in either the Indianapolis SSA's notes or his 2017 FD-302 and is contradicted by statements made by Gymnast 1 during interviews with the USA Gymnastics private investigator, the FBI's Los Angeles Field Office, and the OIG.

The USA Gymnastics private investigator advised the OIG that Gymnast 1 told her about multiple incidents when Nassar penetrated her vagina with his fingers under the pretext of medical treatment. The USA Gymnastics private investigator also stated that Gymnast 1 did not state that Nassar placed his finger in her rectum. The USA Gymnastics private investigator further reported to the OIG that Gymnast 1 told her that Nassar would turn out the lights and "breathe hard" during the treatment. Additionally, according to the USA Gymnastics private investigator, Gymnast 1 described two incidents that occurred in Europe and one in Japan. The USA Gymnastics private investigator stated that Gymnast 1 was "very credible. She was very clear. She was very specific." Asked whether Gymnast 1 said that Nassar's purported medical procedure relieved pain, the USA Gymnastics private investigator responded, "She said it did not work." The USA Gymnastics private investigator stated that there was "no question whatsoever" in her mind that Gymnast 1 had been sexually assaulted by Nassar. The USA Gymnastics private investigator stated that following the interview she immediately called USA Gymnastics President and CEO Penny and within an hour had a call with Penny and the USA Gymnastics attorney and "instructed them to contact the FBI immediately."

According to the Los Angeles Field Office's FD-302 of Gymnast 1's May 11, 2016 interview, which was written on May 18, 2016, Gymnast 1 stated that that during Nassar's many purported treatments of her, he "inserted one or two fingers into [her] vagina" and did not use gloves. Gymnast 1 told the Los Angeles Field Office Special Agents about an incident in Tokyo when Nassar penetrated her vagina "forcefully" while she was alone with him in a hotel room. According to the Los Angeles FD-302, Gymnast 1 stated that during this incident Nassar was breathing heavily, she believed that Nassar was penetrating her for his sexual gratification rather than medical treatment, and she was scared. There is no mention in the Los Angeles FD-302 of Nassar inserting fingers into Gymnast 1's rectum. In addition, Gymnast 1 told the Los Angeles Field Office agents that Nassar bought her gifts and sent her text messages that did not pertain to her medical conditions or treatment.

The Indianapolis SSA told the OIG that what Gymnast 1 said to the Los Angeles Field Office was "far different" from what Gymnast 1 had told the Indianapolis Field Office.

D. The Indianapolis and Detroit USAOs Determine that the Western District of Michigan Has Venue and Advise the Indianapolis Field Office to Send the Nassar Allegations to the FBI's Lansing Resident Agency in September 2015

According to the Indianapolis SSA's February 2017 EC, after the interview of Gymnast 1, the Indianapolis SSA contacted the Southern District of Indiana AUSA and advised him of what occurred during the interview.

The Indianapolis SSA wrote in the February 2017 EC that the Southern District of Indiana AUSA "reluctantly declined" prosecution due to venue issues and advised the Indianapolis SSA to transfer the matter to the Lansing Resident Agency.

However, even before the Gymnast 1 interview, both the Indianapolis USAO and the Detroit USAO had determined that they did not have venue over the matter and that it should be sent to the Western District of Michigan. According to the Indianapolis SSA's February 2017 EC, on September 1, the day before the Gymnast 1 interview, the Southern District of Indiana AUSA "determined [that the Indianapolis Field Office] had no venue to try the case in the Southern District of Indiana, since the only nexus to Indiana was USA Gymnastics. No chargeable events occurred in Indiana. The Southern District of Indiana AUSA contacted a colleague in Michigan and conveyed the merits of the case." The Southern District of Indiana AUSA told the OIG that his initial assessment was that the Nassar matter should be transferred to Michigan because "if Nassar is flying in and out of his home every time, that home district has that best venue" and Nassar's home was a possible crime scene to search. The Southern District of Indiana AUSA stated that he shared this view with the Indianapolis Field Office.[58] However, the Southern District of Indiana AUSA told the OIG, "I did say what could change is if they want to talk to one or two, or three of the girls, they might be able to develop some venue." The Southern District of Indiana AUSA explained that, if one of the victims stated that an incident had occurred during a trip to Indianapolis, "we could do something, at least as to that victim."

The Southern District of Indiana AUSA told the OIG that on or about September 1 he called an AUSA in the Eastern District of Michigan (Eastern District of Michigan AUSA) to discuss the Nassar matter. The Eastern District of Michigan AUSA told the OIG that the conversation with the Southern District of Indiana AUSA focused on the basic allegations of the case and the fact that the FBI would have additional information. Later that same day, the Eastern District of Michigan AUSA emailed the Southern District of Indiana AUSA thanking him for discussing the potential investigation into Nassar and requesting that the Southern District of Indiana AUSA ask the Indianapolis Field Office to forward him and an SSA in the FBI Detroit Field Office (Detroit SSA), who was copied on the email, "whatever information" it can about the matter. The Detroit SSA was the then-supervisor of the FBI Detroit Field Office's Violent Crimes Against Children (VCAC) Squad, which the Detroit SSA had helped to create in December 2014. The Detroit SSA told the OIG that part of his job was "to triage many of the intakes" the Detroit Field Office received related to crimes against children, which amounted to "approximately 300 to 400 tips per year."

The Southern District of Indiana AUSA told the OIG that the reason he contacted the Eastern District of Michigan AUSA specifically was not only because he was an AUSA in Michigan, but also because the Eastern District of Michigan AUSA is a "subject matter expert" in cases involving crimes against children. The Southern District of Indiana AUSA stated that in contacting the Eastern District of Michigan AUSA he was "making sure that the referral doesn't just randomly go to Michigan. I'm referring it to the guy I know is the

[58] The Southern District of Indiana AUSA stated that three factors affected his assessment that the Nassar matter should be transferred to Michigan. The first and primary reason was that he did not believe that the Southern District of Indiana had venue because neither the subject nor the known victims lived in Indiana and there was no indication that the crimes occurred in Indiana. Second, based on the information he was initially provided, he did not know whether Nassar had engaged in criminal conduct or a legitimate medical procedure. Third, consistent with the "vertical prosecution model," he wanted to make sure that the victims were not interviewed by multiple interviewers and, thus, subject to revictimization. In sum, the Southern District of Indiana AUSA explained his analysis as follows: "I don't know that we have a crime here, we just have an allegation, it's very clear to me we don't have venue, and even if we did, we don't have the best place to investigate this for this vertical prosecution model."

best federal prosecutor in Michigan, one of the best in the Mid-West, and I know he will handle this appropriately." The Southern District of Indiana AUSA further stated that "the really weird thing about the Nassar case…is the intake of it went through extremely experienced federal prosecutors in the first two steps." He explained that he (the Southern District of Indiana AUSA) had prosecuted or collaborated on about 500 cases involving crimes against children. The Southern District of Indiana AUSA stated that he decided from the outset that he would "check on this" and not "let it drop."

The Detroit SSA told the INSD that he first became aware of the Nassar allegations on September 1, when he received a text message from the Eastern District of Michigan AUSA. The text message was soon followed by the September 1 email described above from the Eastern District of Michigan AUSA to the Southern District of Indiana AUSA, courtesy copying the Detroit SSA, in which the Eastern District of Michigan AUSA requested that the Indianapolis Field Office forward information regarding the allegations to the Detroit SSA. Also that same day, the Indianapolis SSA forwarded to the Detroit SSA the July 29, 2015 email in which Abbott told Penny that after interviewing "the athlete in question" the FBI would "determine next steps with referral to the Western District of Michigan and the FBI Detroit Division, if necessary, as per counsel from the USAO here in the Northern District of Indiana." The Detroit SSA told the OIG that he also spoke with the Indianapolis SSA by telephone on September 1 about the Nassar allegations. The Detroit SSA stated that the Indianapolis SSA told him during that call that USA Gymnastics was interfering with the scheduling of victim interviews. According to the Detroit SSA, he and the Indianapolis SSA further discussed potentially applicable federal statutes and that the Indianapolis SSA did not believe there was federal jurisdiction.[59] The Detroit SSA told the OIG that the Indianapolis SSA and the Southern District of Indiana AUSA had determined that the Indianapolis Field Office did not have venue, "because nothing had happened in the Indianapolis area." The Detroit SSA told the FBI INSD that the Indianapolis SSA nonetheless stated that he planned to interview Gymnast 1 to further assess the allegations, which the Indianapolis SSA did the following day, September 2.

Later on September 1, the Detroit SSA texted the Eastern District of Michigan AUSA: "Talked to my counterpart in indy…they are conducting a number of the victim interview [sic] and will forward after that. Only problem is it looks like the doctor works out of lansing, which would make this a western district case right?"[60] The Eastern District of Michigan AUSA texted back, "But if he traveled out of Detroit, we'd have jurisdiction." The following day, the Detroit SSA forwarded to the Eastern District of Michigan AUSA the September 1 email that the Detroit SSA had received from the Indianapolis SSA forwarding the July 29, 2015 email from Abbott to Penny. The Eastern District of Michigan AUSA told the OIG that the Detroit SSA also briefed him on his conversation with the Indianapolis SSA regarding the Nassar allegations. Later in the day on September 2, the Eastern District of Michigan AUSA emailed the Detroit SSA: "It sounds like a WDMI [Western District of Michigan] case, as you suggested via text, but we'll have to find out how he traveled (i.e.

[59] The Indianapolis SSA and the Detroit SSA discussed the potential applicability of the federal law prohibiting child sexual tourism. See 18 U.S.C. § 2423. As described in a previous footnote, the Indianapolis SSA told the OIG that he believed that this law was inapplicable because one element is that the purpose of the travel is to engage in unlawful sexual activity. He reasoned that, in Nassar's case, the purpose of his travel was his work as a doctor with USA Gymnastics.

[60] The FBI Detroit Field Office is located in the Eastern District of Michigan. However, the Lansing Resident Agency, which reports to the Detroit Field Office, is located in the Western District of Michigan.

through DTW or somewhere else). If there DTW [Detroit Metropolitan Airport], then we can handle the case (and it wouldn't be an RA [Resident Agency] I don't think). Thanks."

During his OIG interview, the Eastern District of Michigan AUSA explained this email by stating that, if Nassar had traveled to or from the Detroit Metropolitan Airport in transit to any of the places where the abuse occurred, the Eastern District of Michigan AUSA's office might have had venue for the investigation since the airport is within the Eastern District of Michigan. The Eastern District of Michigan AUSA told the OIG that he had a follow-up telephone conversation with the Detroit SSA, during which they agreed that venue was most appropriate in the Western District of Michigan, where the Lansing Resident Agency is located, as that was the physical location of Nassar's residence and workplace. The Eastern District of Michigan AUSA stated that he did not know what the Detroit SSA did with the allegations after this conversation.

The Detroit SSA told the OIG that he also discussed with the Eastern District of Michigan AUSA the issue of federal jurisdiction. He stated, "neither one of us could find an underlying violation, federal violation, given the circumstances." He stated that they needed additional information to assess the jurisdictional issue and that the Indianapolis SSA's planned interview of Gymnast 1 was for the purpose of gathering such information.

During his INSD interview, the Detroit SSA stated that he and the Indianapolis SSA had another telephone conversation in which they discussed content provided to the FBI by USA Gymnastics in a file transfer account that belonged to Nassar. The Detroit SSA told the INSD that he asked the Indianapolis SSA whether the content of the file transfer account contained child pornography or evidence of federal violations. According to the Detroit SSA, the Indianapolis SSA said that the content included a leotard Nassar was developing for gymnasts and no indication of illegal activity. The Detroit SSA told the OIG that he reviewed digital material related to Nassar but he could not remember the platform through which he reviewed the material. The Detroit SSA stated that the digital material he reviewed was a "training video" of Nassar's purported medical technique and that it "muddied the waters pertaining to this particular matter, because [Nassar] was very vocal about his procedure and how effective it was." The Detroit SSA told the OIG that he did not remember viewing any video of a partially undressed Gymnast 1 covered with a towel, but he recalled viewing PowerPoint presentations. The Detroit SSA said that nothing in the presentations "stood out" as concerning to him, but he gave the materials only "a cursory look" since he did not believe the "Detroit Field Office Headquarters City" (i.e., the primary Detroit Field Office as opposed to the Lansing Resident Agency) had venue.

The Detroit SSA and the Indianapolis SSA both told the OIG that the Detroit SSA informed the Indianapolis SSA that, if there was federal jurisdiction, there did not appear to be venue in the Eastern District of Michigan where the Detroit Field Office is located, because Nassar lived and worked in Lansing, which is in the Western District of Michigan. The Detroit SSA therefore told the Indianapolis SSA to refer the Nassar allegations to the Lansing Resident Agency. The Detroit SSA also told the Indianapolis SSA that, if the Indianapolis SSA learned anything from the interview with Gymnast 1 that indicated a nexus to Detroit, the Indianapolis SSA should let the Detroit SSA know and he would discuss the information with the Eastern District of Michigan AUSA. The Detroit SSA further stated that he told the Indianapolis SSA that, if no nexus to Detroit came out of the interview, the Indianapolis SSA should send an FD-71 (complaint form) directly to the Lansing Resident Agency. The Detroit SSA stated that he did not expect to hear anything further from either the Indianapolis SSA or the Lansing Resident Agency "unless they needed something." The Detroit SSA explained to the OIG that, while the Lansing Resident Agency is considered part of the Detroit Field

Office, it has the authority to open its own investigations. The Detroit SSA further explained that he did not feel the need to follow up on the Nassar allegations because his office reviewed approximately 400 complaints per year; he trusted both the Indianapolis SSA and the Lansing Resident Agency to handle the matter or reach out to him if there were "extenuating circumstances"; and the Nassar complaint, while serious, was not a complaint that he believed should "take precedence over other matters," especially since there were no "definitive federal violations."

The Detroit SSA stated that the Indianapolis SSA did not contact him regarding the results of the interview with Gymnast 1. The Detroit SSA further stated that, because he did not hear from the Indianapolis SSA, he assumed the Indianapolis Field Office created an FD-71 for the Lansing Resident Agency or there was nothing actionable that resulted from the interview of Gymnast 1. The Detroit SSA told the INSD that he did not contact the Lansing Resident Agency following his conversations with the Indianapolis SSA, both because he believed the Indianapolis Field Office would do so and because he knew that the Eastern District of Michigan AUSA would want to pursue the case if a nexus to Detroit was identified. The Detroit SSA stated that he did not notify anyone in his Detroit chain of command about the allegations, and the Detroit ASAC who supervised the Detroit SSA at the time told the INSD that the Detroit SSA never informed her of the allegations.

The OIG found no evidence that the Indianapolis SSA or any other Indianapolis Field Office employees contacted the Lansing Resident Agency to let FBI employees there know about the Nassar allegations or that an FD-71 might be coming their way.

The Eastern District of Michigan AUSA told the OIG that he did not recall any additional conversations regarding the Nassar investigation and that his office did not open a case. The Eastern District of Michigan AUSA did not recall discussing the Nassar allegations with anyone in the USAO for the Western District of Michigan, and we found no evidence that anyone from the FBI or the USAOs for the Eastern District of Michigan or the Southern District of Indiana reached out to the USAO for the Western District of Michigan in 2015 regarding the Nassar allegations.

E. Communications with the FBI Violent Crime Against Children Unit in 2015

The FBI's headquarters has a Violent Crimes Against Children Unit (VCACU). According to the FBI's website, the mission of the VCACU is to:

- provide a rapid, proactive, and comprehensive ability to counter all threats of abuse and exploitation to children when those crimes fall under the authority of the FBI;

- identify, locate, and recover child victims; and

- strengthen relationships between the FBI and federal, state, local, tribal, and international law enforcement partners to identify, prioritize, investigate, and deter individuals and criminal networks exploiting children.[61]

In addition, several field offices have their own VCAC Squads, and, as noted above, the Indianapolis SSA was the supervisor of the Indianapolis Field Office's VCAC Squad. As discussed in Chapter 2 of this report, the FBI's Crimes Against Children Policy requires field offices to maintain regular contact with VCACU personnel and request assistance and guidance whenever necessary; initiate contact with field office victim specialists, as appropriate, for matters related to the Victim Assistance Program; and maintain, in coordination with the VCACU, cooperative relationships with state and local law enforcement agencies, nongovernmental organizations, and social service agencies.

The Indianapolis SSA told the INSD that in August 2015 he notified the VCACU of the allegations against Nassar and the proposed interview of Gymnast 1. The Indianapolis SSA further stated that he told the VCACU that he intended to send the allegations to the FBI Detroit Field Office. According to the Indianapolis SSA, he did not receive any guidance or feedback from the VCACU at that time.

A Special Agent assigned to the VCACU told the INSD that he spoke with the Indianapolis SSA in July 2015 about the allegations made by USA Gymnastics against Nassar. The VCACU agent stated that, during a briefing for the VCACU agent about the status of the Jared Fogle investigation, the Indianapolis SSA made a passing reference near the end of the discussion about allegations made by USA Gymnastics against one of its doctors. According to the VCACU agent, the Indianapolis SSA did not provide any additional details but stated that the FBI Indianapolis Field Office was looking into the matter. The VCACU agent told the INSD that the VCACU agent followed up with the Indianapolis SSA twice about the allegations over the following 3 months. According to the VCACU agent, the Indianapolis SSA stated during those follow-up conversations that the FBI Indianapolis Field Office was still looking into the allegations but did not believe it had venue.

These oral communications between the Indianapolis SSA and the VCACU agent were the only evidence we identified reflecting contact in 2015 between Indianapolis agents and the VCACU. As described below, the Indianapolis Field Office and the VCACU had further communications about the Nassar matter in 2017.

F. The Indianapolis SSA's Handling of the Thumb Drive Provided by Penny

As noted above, during the July 28, 2015 meeting, Penny provided the FBI with a thumb drive of material that he stated USA Gymnastics had received from Nassar. However, the Indianapolis SSA did not contemporaneously document the receipt of the thumb drive, as required by the FBI's evidence handling policy, or reference it in his February 2017 EC. He also did not image, review, or otherwise handle it in accordance with the FBI's Digital Evidence Policy Guide.

The Indianapolis SSA stated that he copied the contents of the thumb drive received from Penny to another thumb drive using the Indianapolis ASAC's computer, returned the original thumb drive to Penny, and retained in his office the thumb drive onto which he had transferred the content until he provided it to the

[61] FBI, "What We Investigate: Crimes Against Children/Online Predators," www.fbi.gov/investigate/violent-crime/cac (accessed June 14, 2021).

INSD in 2018 during the INSD's Special Review. The Indianapolis SSA told the INSD that he believed he was the only person in the Indianapolis Field Office to have reviewed the thumb drive's content. The Indianapolis SSA stated that the thumb drive contained PowerPoint presentations of Nassar's procedures and a "body suit" Nassar was developing to assist with nerves commonly injured during gymnastics, as well as videos of Nassar performing his medical procedures on female patients. The Indianapolis SSA described the files in the thumb drive as "innocuous" and "underwhelming" and stated that there was nothing apparent in the videos which was illegal or in violation of any federal statutes. The Indianapolis SSA stated that one of the videos depicted the lower torso of a young female, but her genitalia were covered.

During a February 4, 2021 compelled interview, the OIG asked the Indianapolis SSA whether he considered the thumb drive to be "digital evidence." He initially responded, "I think, yes, it could be considered digital evidence" and acknowledged that he should handle digital evidence within the FBI by "enter[ing] it under a case." However, he then caveated his response by noting that he did not have a case number and by saying: "first of all, it was garnered through an open source that was given to us from Penny, that came from Nassar. But it's also—I don't know if there's any evidentiary value." The Indianapolis SSA explained that he thought the thumb drive "was probably germane to the case, but I don't know if I would call it evidence." After reviewing a portion of the FBI's Digital Evidence Policy Guide during the interview, the Indianapolis SSA stated that the policy did not apply to the thumb drive because "I don't think it's necessarily digital evidence. That's open source. That's something that, from my understanding, you could have gone onto YouTube and pulled down, and that's where they got it from, from Nassar." The OIG conducted a detailed online search and did not find evidence that the video content from the thumb drive was on YouTube.com or any other website.[62]

The Indianapolis SSA told the OIG that he did not contemporaneously document his receipt or review of the thumb drive or log the copy he retained into evidence because he did not "have a case open," a "violation to open a case under," or "a repository to put any of this to." He explained that he was planning on interviewing two gymnasts for the purpose of establishing a violation. He stated that he, therefore, kept the copied thumb drive in a locked safe next to his desk for a period of time and then moved it to his desk drawer until he provided it to the INSD. The Indianapolis SSA said that he mentioned the thumb drive in the FD-71 complaint form that he asserted he created in September 2015 to transfer the Nassar allegations from the Indianapolis Field Office to the Lansing Resident Agency. However, as discussed in Part III of this chapter, no one at the FBI has been able to locate such an FD-71 complaint form and there is no evidence that an FD-71 complaint form was ever received by the Lansing Resident Agency. The Indianapolis SSA told the OIG that he did not send the thumb drive to the Lansing Resident Agency because he thought the agents there would ask for the thumb drive if "they wanted those files." The Indianapolis SSA also did not document the thumb drive in the February 2017 EC or any other documentation in connection with the Nassar matter. Even after he learned in the spring of 2016 that an FD-71 complaint form was never received by the Lansing Resident Agency, the Indianapolis SSA still did not forward the thumb drive to any other office—not the Los Angeles Field Office that opened an investigation in May 2016 nor the Lansing Resident Agency that opened an investigation in September 2016. Instead, he continued to keep the thumb drive in his office desk drawer until the INSD asked for it during the INSD's internal review in February 2018. Penny had separately provided a copy of the thumb drive to the Los Angeles Field Office in May 2016, but the

[62] We identified a website containing videos associated with Nassar that did not include the videos on the thumb drive, but did include four blank rectangles each with the caption "Deleted video." The website did not indicate when the deleted videos were posted, when they were deleted, or what they contained.

Lansing Resident Agency received the thumb drive only in September 2020, when the OIG, upon realizing that the Lansing Resident Agency did not have it, requested that the INSD transfer the thumb drive information to the Lansing Resident Agency.

The Indianapolis ASAC told the OIG that he recalled watching with the Indianapolis SSA a video of Nassar giving a presentation, but he could not recall whether the video was provided by USA Gymnastics or something he and the Indianapolis SSA found on the Internet. According to the INSD's report of the Indianapolis ASAC's interview, the Indianapolis ASAC described the video as "a one-minute instructional video of Nassar in a clinical setting discussing his pain therapy technique." The Indianapolis ASAC told the INSD that the video he watched did not raise any concerns. The Indianapolis ASAC also told the OIG that he did not remember the Indianapolis SSA uploading the contents of a thumb drive to the Indianapolis ASAC's computer. The Indianapolis ASAC further told the OIG that when a video is received by the FBI it should be documented in an FD-71 and sent to the field office with venue.

We noted that Abbott told *The New York Times,* according to a February 3, 2018 article, that, although he did not watch the videos of Nassar performing his technique, he remembered the reactions of his agents who had watched them. Contrary to the Indianapolis SSA's and the Indianapolis ASAC's testimony to the OIG, Abbott told *The New York Times:* "I will never forget sitting around the table thinking, What?… And the reaction of my special agents who were very well versed in this was one of disgust. That is why we worked it with such urgency." Abbott further told *The New York Times:* "At the time, it was being portrayed as a legitimate medical procedure. But to the layman, like ourselves we were—'You've got to be kidding me.'"[63]

The OIG reviewed the contents of the thumb drive and determined that it contained several videos that showed Nassar placing his bare, ungloved hands on female athletes with partially exposed buttocks. The athletes' genitalia and rectum were covered with what appeared to be a towel. Many of the videos showed Nassar placing his ungloved hands under the towel and into the area of the buttocks and groin of the athletes while narrating his actions to the person recording the videos. In one video, Nassar stated that some people use gloves for the procedure but it is not necessary. One of the PowerPoint presentations incorporated the opening scene of a TV series with a caption stating, "To Boldly Go Where No Man Has Gone Before (in most of our young gymnasts—hopefully)." Other language on the flash drive that did not appear to be consistent with medical terminology included "Yippy Skippy," "Tushy," "PP Problem," "Houtchie," "Koutchie," "Jiggly Butt," and "WhoHaa" in reference to female anatomy; "Anatomy in More Detail 'The No Fly Zone,'" along with a diagram depicting the female pelvic area; and "PP intervention."

The Indianapolis SSA told the OIG that he did not recall the TV series reference or "seeing anything else that stood out" on the flash drive. He further stated, "I don't remember that thumb drive itself raising any flags that we didn't already have up."

63 "As FBI Took a Year to Pursue the Nassar Case, Dozens Say They Were Molested," *The New York Times,* February 3, 2018, www.nytimes.com/2018/02/03/sports/nassar-fbi.html (accessed June 14, 2021).

III. The Indianapolis Field Office Fails to Refer Allegations or Maintain Records

A. No Record Exists of a Referral from the Indianapolis Field Office to the Lansing Resident Agency

The Indianapolis SSA claimed to the OIG and the INSD that he documented Gymnast 1's interview in an FD-71 and sent the FD-71 to the Lansing Resident Agency. However, the Indianapolis SSA and others at the FBI have been unable to locate the purported Nassar FD-71 or any hard copy or electronic evidence that it ever existed, and there is no evidence that the document was received by the Lansing Resident Agency.

The Indianapolis SSA told the OIG that he began drafting the FD-71 complaint form in the FBI's Sentinel electronic case management system immediately after the interview of Gymnast 1; saved the FD-71; and, "within a day or two after the interview," completed the FD-71 and submitted it through Sentinel to transfer the Nassar allegations to the Lansing Resident Agency. According to the Indianapolis SSA, the FD-71 described the meeting with USA Gymnastics, the allegations against Nassar, and a summary of the interview with Gymnast 1. The Indianapolis SSA stated that he drafted the FD-71 based on both his and the Indianapolis co-interviewer's notes. The Indianapolis SSA further stated that the Indianapolis co-interviewer gave him a copy of her notes at the end of the interview and he still had his original notes and a copy of the Indianapolis co-interviewer's notes in his desk drawer. While the Indianapolis SSA told the INSD that he included his notes as an attachment to the FD-71, he told the OIG that he did not send his notes, the Indianapolis co-interviewer's notes, or the thumb drive to the Lansing Resident Agency. The Indianapolis SSA stated that he mentioned the thumb drive in the FD-71 and thought the agents in the Lansing Resident Agency would ask for the thumb drive if "they wanted those files." The Indianapolis SSA further stated that he did not send the thumb drive because "that was the only copy we've got." The Indianapolis SSA did not explain why he could not make another copy of the thumb drive to send to the Lansing Resident Agency.

Contrary to the Indianapolis SSA's testimony, the Indianapolis co-interviewer stated that the Indianapolis SSA did not ask her for her notes until approximately a year after Gymnast 1's interview, when questions arose about what happened to the purported FD-71. Consistent with the Indianapolis co-interviewer's recollection, the Indianapolis co-interviewer texted the Indianapolis SSA on February 3, 2017: "Found notes on [Gymnast 1]. Yes, he did it to her." We told the Indianapolis SSA that, according to the Indianapolis co-interviewer, the Indianapolis SSA did not ask for the Indianapolis co-interviewer's notes until approximately a year after Gymnast 1's interview. The Indianapolis SSA responded that he did not recall asking the Indianapolis co-interviewer for her notes a year after Gymnast 1's interview but that he may have reached out to her to confirm that she still had her notes for records retention reasons. The Indianapolis co-interviewer told the OIG that she never saw the FD-71 that the Indianapolis SSA purportedly created and forwarded to the Lansing Resident Agency.

When the OIG asked the Indianapolis SSA whether there was a possibility that he did not actually complete the FD-71 but just thought he did, the Indianapolis SSA responded: "Oh, no, no, no. I completed it… [I]s there a possibility that it didn't upload correctly or something like that? Sure." The Indianapolis SSA further stated, "we don't even use the FD-71 anymore" because it was "a terrible system." The Indianapolis SSA stated that he was unsure whether the Indianapolis ASAC approved the FD-71 or whether he self-approved the document. He further said that he believed self-approving an FD-71 was probably not proper procedure, but that he may have self-approved the FD-71 "inadvertently." While an FBI official told us that in 2015 it was possible for an FBI employee to self-approve an FD-71, FBI policy did not permit supervisors to "self-approve" their own work or investigative activity.

The Indianapolis ASAC told the OIG that he never saw the FD-71, but he would not normally approve an FD-71 because this was the SSA's responsibility. The Indianapolis ASAC explained to the OIG that he felt his office handled the Nassar allegations as a routine complaint by conducting Pre-Assessment activities and forwarding the information in an FD-71 to the appropriate office for review. The Indianapolis ASAC contrasted the Nassar allegations, for which he believed a "soft hand off" was appropriate, with circumstances for which he would personally call the receiving office, such as a "threat to conduct a mass shooting," "a major counterterrorism assault," or "an immediate threat to life." He stated that he did not view the Nassar allegations, based on the Indianapolis Field Office's preliminary assessment, as "an emergent situation." Like the Indianapolis SSA, the Indianapolis ASAC stated that the FBI's case management system was "problematic, at best" and the FD-71 process was "clunky" and "not easy to use."

The Detroit SSA similarly described the FD-71 process as "clunky," because FD-71s were difficult to "track." The Detroit SSA stated that, "in the business of crimes against children…I felt it was our duty to make sure that we were following up with each [complaint] appropriately." However, the Detroit SSA stated that he never experienced losing an FD-71 "once it [was] in the system."

FBI internal audits of the Indianapolis SSA's activity in the FBI's electronic systems, including Sentinel and the FBI's Guardian electronic case management system, which was used in 2015 primarily for counterterrorism matters, found no evidence that any complaint form related to Nassar or USA Gymnastics was created in 2015. These were the only electronic case management systems used by the FBI at that time. The only pertinent 2015 activity the FBI found in its internal Sentinel audit were the Indianapolis SSA's searches for Gymnast 1's name on the day of her interview, September 2, 2015. The OIG interviewed the FBI Information Technology (IT) Specialist in charge of Sentinel, who told us that he was not aware of an FD-71 ever being "lost" in Sentinel. He stated that, if an agent completes an FD-71 and does not save it, the document would not be uploaded into Sentinel. The IT Specialist further stated that, if an FBI employee creates and saves an FD-71 but does not route it to the proper field office or other location, the FD-71 might be "orphaned." However, in such a scenario, there would still be a record of the FD-71 in Sentinel.[64]

The Indianapolis SSA told the OIG that he both saved the FD-71—because he completed it over the course of two or more days—and sent the FD-71. Regarding his specific process, he stated: "I think I started it, saved it, came back, finished it, and sent it. That's the best of my recollection." The OIG also collected and analyzed an image of the office computer on which the Indianapolis SSA stated he drafted the FD-71 in 2015 to determine, given the absence of any evidence in Sentinel that the Indianapolis SSA had created an FD-71 in 2015, whether there was any evidence on his computer that he had begun drafting the FD-71 in 2015. We found no evidence on the computer that the Indianapolis SSA ever created an FD-71 related to Nassar, Gymnast 1, or USA Gymnastics. However, an Indianapolis Field Office IT Specialist told the OIG that this

[64] After reading a draft of this report, the Indianapolis SSA stated, "The 'orphaned' document theory [the OIG] presented failed to include a key fact [the OIG] presented to me during the interview wherein the system routinely purged 'orphaned' documents if not recovered." However, the Indianapolis SSA misunderstood what the OIG conveyed during the interview. The IT Specialist did not state that orphaned documents are routinely purged from the system. Rather, the IT Specialist told the OIG that when the FBI converted its electronic case management system from Sentinel to Guardian, orphaned FD-71s that remained in Sentinel "were pushed out to the field offices and the divisions to kind of re-enter in Guardian or close them." The IT Specialist further told the OIG that "the Sentinel servers themselves have always been available, redundant, backed up," and that if a document was orphaned, "it would be something we would find" and "we should be able to track that down."

computer was being prepared for reassignment to another employee and had most likely been forensically wiped as normal protocol for reassignment of electronic devices.

The Indianapolis SSA told the OIG that he did not contact the Lansing Resident Agency to alert it to the Nassar allegations, to inform it that he had sent it an FD-71 report, or to confirm receipt of the FD-71 after he had sent it. The Indianapolis SSA further stated that he did not believe any further communication with the Lansing Resident Agency was required because SAC Abbott told him that he informed the Detroit SAC (who supervised the Lansing Resident Agency) that the FD-71 was completed. As noted below, Abbott told the OIG that he recalled informing the Detroit SAC of the Nassar referral in 2015. However, the Detroit SAC told the OIG that neither Abbott nor anyone else notified him of the Nassar allegations in 2015. We found no evidence that Abbott, the Indianapolis ASAC, the Indianapolis SSA, or anyone else from the FBI Indianapolis Field Office notified anyone from the FBI Detroit Field Office or the Lansing Resident Agency that the FD-71 was on its way or followed up to make sure it arrived.

On September 4, 2015, Abbott emailed Penny, stating, "it is my understanding that pertinent interviews have been completed and the results have been provided to the FBI and the USAO in Michigan (Detroit) for appropriate action if any." According to the Indianapolis SSA, this email confirmed the Indianapolis SSA's belief that Abbott had notified the Detroit SAC. The Indianapolis SSA stated that he assumed the Lansing Resident Agency would contact him if it had any questions pertaining to the FD-71. The Indianapolis SSA told the OIG that if he had it to do over, he would "call and follow-up" with the Detroit Field Office. However, he stated that doing so would be "bucking the chain of command" because the SACs were involved.

The Indianapolis SSA told the OIG that during this time his VCAC squad was involved in several high-profile investigations and other matters that kept him preoccupied and he never heard anything further regarding the Nassar investigation until May 2016. He explained, "So, my mind was off of this, after I thought my part was done in it." He further explained:

> Now, right after that, we went into a series of events, it kept us very busy, and I was done. Quite frankly, we in-took it as a complaint. I wrote it up, sent it to Detroit, and I was done. Which, any other complaint I would intake is the same way. It's not my investigation. Quite frankly, we get more investigations than we could handle at this time. I mean, we had all kinds of stuff going on, and we were busy.

The Indianapolis SSA told the OIG that he has never followed up on an FD-71 and he does not know anyone at the FBI who does so. However, he stated that, if Gymnast 1 had made a disclosure of significant sexual abuse during her telephonic interview, he would have handled things differently. He stated that he would have contacted an FBI agent in the field office where Gymnast 1 was living at the time and had a CAFI interview her there.

B. The Absence of Formal Documentation for Any Indianapolis Field Office Investigative Activities

The OIG found, and the Indianapolis SSA confirmed to the OIG, that there were no formal FBI records created related to the July 28, 2015 meeting with USA Gymnastics or the thumb drive provided to the FBI by Penny, aside from the purported FD-71. The Indianapolis SSA also did not document details about any of his investigative activities, including his attempts to contact the athletes and his communications with

prosecutors and others, until he authored the February 2017 EC. Additionally, as noted above, the Indianapolis SSA did not formally summarize the Gymnast 1 interview in an FD-302 until February 2017.

The OIG examined the Indianapolis Field Office's records related to the Nassar allegations and found that they consisted of five pages of handwritten notes from the July 28, 2015 meeting, three pages of handwritten notes from Gymnast 1's interview, a handful of email exchanges between Penny and the Indianapolis Field Office, and a handful of emails and text messages among agents and prosecutors.

C. SAC Abbott Claims that He Notified the Detroit Field Office SAC and the Los Angeles Field Office SAC in 2015 About the Referral of the Nassar Allegations

Abbott told the OIG in two separate interviews that in the fall of 2015 he coordinated the Nassar allegations with the SACs of both the Detroit Field Office and the Los Angeles Field Office (Detroit SAC and Los Angeles SAC). Abbott stated that his office referred the allegations to the Detroit Field Office and the Los Angeles Field Office in the same EC in the fall of 2015 and that he was "confident" that he emailed and called both the Detroit SAC and the Los Angeles SAC to alert them of the impending EC. In addition, Abbott stated that he reached out to the Los Angeles SAC at least once after the Indianapolis Field Office had referred the matter to Los Angeles to inquire about the status of the investigation and to ask why the investigation had not "moved forward." Abbott similarly told *The New York Times,* according to a February 3, 2018 article, that "his agents conducted some interviews" and "written reports were sent within weeks to FBI offices in Michigan and Los Angeles."[65]

Abbott also told the OIG that in the fall of 2015 he learned that an Indianapolis "administrative error" resulted in a delay in referring the matter to Los Angeles. Abbott stated that he learned of this delay when he called the Los Angeles SAC about the progress of the investigation and the Los Angeles SAC responded that Los Angeles had not received the case. When we asked Abbott what the "administrative error" concerned, Abbott told the OIG that the Indianapolis ASAC told him that "apparently it didn't load up," referring to the FD-71 complaint form in the FBI system. Abbott stated that he "lost a gasket" about the failure but that once he raised the issue with the Indianapolis ASAC "that got corrected in a hurry" and the investigation was delayed only "by about a month."

However, the Indianapolis ASAC told the OIG that he did not recall anything about either an "administrative error" in 2015 or Abbott becoming angry about an administrative delay in 2015. He stated that he recalled Abbott directing him and the Indianapolis SSA to follow up when they learned that the FD-71 had never made it to the Lansing Resident Agency, but that was in 2016.

The Indianapolis SSA told the OIG that he would not have discussed with Abbott any type of delay regarding information sent to the Los Angeles Field Office as the only potential venues he ever discussed were Indianapolis, Detroit, and Lansing. The Indianapolis SSA stated that he did not discuss an information delay to the Detroit office with Abbott in 2015 because the Indianapolis SSA was unaware of any delay until May 2016, when he was contacted by an SSA in the Los Angeles Field Office (the Los Angeles SSA) regarding the interview of Gymnast 1.

[65] "FBI Took a Year," *The New York Times.*

The Detroit SAC told the OIG that he first became aware of the Nassar allegations when the Michigan State University Police Department (MSUPD) reached out to the FBI Detroit Field Office after being contacted by the FBI Los Angeles Field Office regarding separate Nassar investigations the MSUPD and the FBI Los Angeles Field Office were conducting. As described below, both the MSUPD and the FBI Los Angeles Field Office investigations began in 2016. The Detroit SAC told the OIG that he did not "at all" recall discussing the Nassar allegations with Abbott before then. Consistent with the Detroit SAC's testimony to the OIG, on February 3, 2018, the same day as the above-referenced *New York Times* article quoting Abbott, the Detroit SAC texted the ASAC of the FBI Detroit Field Office (Detroit ASAC): "[Another individual] read me parts of the story. J Abbott said [Indianapolis] conducted investigation and sent reports to MI (FBI) within weeks. Try months or a year. Ridiculous."

The Los Angeles SAC told the OIG that he did not begin his position in Los Angeles until March 2016 and that he first became aware of the Nassar allegations later that spring when briefed about the then-ongoing Los Angeles Field Office investigation of Nassar (described below). The Los Angeles SAC stated that prior to the spring of 2016 he never discussed the Nassar allegations with Abbott or anyone else.

During Abbott's second OIG interview, we told him that, according to all of the other records we reviewed and witnesses we interviewed, he did not have any communications in 2015 with either the Los Angeles or Detroit Field Offices about the Nassar allegations. The OIG added that the facts supported that the Los Angeles Field Office did not become aware of the Nassar allegations until April 2016, when a new complaint was filed with the Los Angeles Field Office by USA Gymnastics. However, Abbott continued to insist that he coordinated with both the Detroit and Los Angeles Field Offices in 2015. He stated:

> Now, that's incorrect. That's absolutely incorrect. I mean, I remember even sending an email and making a phone call to both SACs at the time that we were going to be sending—at the time that we were sending this communication to them. You know, that's incorrect. I mean, if you have my emails, I mean, I'm very confident of the fact that, at the very least, I sent both SACs an email and had CC'd everybody, you know, that was involved with the case in our office, and you know, I felt that it was so important.

Abbott further denied that he could be confusing what he believed happened in 2015 with communications that actually happened in 2017 after questions arose about the FBI's handling of the Nassar allegations (described in Part IX of this chapter). Asked whether there was any reason he would not be able to remember certain events or provide accurate information, Abbott responded that there was not.

The OIG found no evidence to support the assertion that the Indianapolis Field Office ever referred or attempted to refer the Nassar allegations to the Los Angeles Field Office or that any administrative error delayed any such referral. Moreover, the OIG found no evidence to corroborate Abbott's claims that he emailed and spoke with the Detroit SAC or the Los Angeles SAC about the allegations in 2015.

IV. An FBI Portland Resident Agency Special Agent Receives an Allegation About Potential Abuse of a USA Gymnastics Athlete in December 2015

In December 2015, an attorney for Gymnast 3 became concerned that the Indianapolis Field Office may have been "burying" the matter, so the lawyer decided to contact the FBI's Portland Resident Agency, located

in Portland, Maine, given the office's proximity to the lawyer's client.[66] During an OIG interview, the lawyer said that he spoke with an agent in the Portland Resident Agency and explained that his client (the lawyer did not recall whether he gave the agent his client's name) had reported sexual assault allegations regarding Nassar to USA Gymnastics officials in Indianapolis and that they were advised that the FBI was investigating. The lawyer said that he told the agent that he wanted to know whether the FBI was actually investigating the allegations against Nassar, and the agent said he would have to get back to him. According to the lawyer, approximately 1 to 2 weeks later, he was contacted by the agent and advised that the agent could not confirm whether the FBI was investigating the allegations. The agent also told the lawyer that the Portland Resident Agency would be willing to interview the athlete. The lawyer told us that he informed the agent that his client would be available for an interview but that the lawyer wanted to be present during the interview. According to the lawyer, the agent said that he could not allow the lawyer to be present during the interview so the lawyer told the agent that they were done talking and the Portland Resident Agency did not interview the athlete.

An FBI Special Agent assigned to the Portland Resident Agency (Portland SA) told the INSD that in December 2015 or January 2016 he received an allegation from an attorney about a USA Gymnastics athlete who may have been abused by a USA Gymnastics physician. According to an email the Portland SA wrote in 2018 about this contact, the lawyer did not disclose the name of the athlete to the Portland SA. The Portland SSA told the INSD that following the call with the lawyer, he contacted the Indianapolis Field Office to report the allegation. The Portland SA recalled talking to the case agent handling the matter in Indianapolis, but the Portland SA could not recall the case agent's name. According to the Portland SA, the case agent told the Portland SA that he was aware of the allegations. The Indianapolis SSA told the INSD that he did not recall having such a conversation with the Portland SA.

According to the Portland SA's supervisor at the time, the Portland SA did not inform his supervisor of the call from the attorney who expressed concerns about the alleged abuse of the gymnast, and we found no evidence that the Portland SA documented either the call that he received from the attorney reporting the alleged abuse or his purported call to the Indianapolis Field Office.

V. The Los Angeles Field Office Is Notified by USA Gymnastics of the Nassar Allegations in May 2016, Opens a Full Investigation, and Contacts the Indianapolis Field Office

As a result of Abbott's representation to Penny in a September 4 email, described above, that the Indianapolis Field Office had provided the results of its investigative efforts "to the FBI and the USAO in Michigan (Detroit) for appropriate action if any," USA Gymnastics leadership was under the incorrect impression that the Nassar investigation was being handled by the FBI's Detroit Field Office and had "languished in the Detroit [FBI] office with no action for over seven months."[67] During the 7-month period between September 2015 and April 2016, according to the U.S. Olympic Committee law firm report, USA

[66] The Portland Resident Agency is part of the FBI's Boston Field Office.

[67] Ropes & Gray, *Report of the Independent Investigation,* 98.

Gymnastics unsuccessfully attempted to obtain information from the FBI about the status of its handling of the investigation.[68]

In late April 2016, USA Gymnastics decided to report the Nassar allegations to the FBI's Los Angeles Field Office because one of the athletes was from Southern California and the Los Angeles Field Office was one of the FBI's largest offices.[69] On April 28, 2016, according to FBI records, the USA Gymnastics Board of Directors Chairman called the FBI Los Angeles Field Office to report the alleged sexual assault of Gymnast 1 by Nassar. At that time, the Los Angeles Field Office was unaware that USA Gymnastics had previously reported the same Nassar allegations to the Indianapolis Field Office in July 2015. The USA Gymnastics Board of Directors Chairman and USA Gymnastics President and CEO Penny requested a meeting with the Los Angeles Field Office, which took place on May 10, 2016, to further discuss the allegations.

According to an FD-302 of the May 10 meeting, the USA Gymnastics Board of Directors Chairman and Penny provided two Special Agents of the FBI Los Angeles Field Office (Los Angeles Special Agent 1 and Los Angeles Special Agent 2) with similar information, including the flash drive with the PowerPoint and videos, that had been provided to the Indianapolis Field Office in July 2015. According to Los Angeles Special Agent 1, Penny and the USA Gymnastics Board of Directors Chairman "laid out all the facts" and told Los Angeles Special Agent 1 that they had previously provided the same information to the Indianapolis Field Office. Penny told the OIG that Los Angeles Special Agent 1 "requested a lot more information regarding athletes and lists of names of athletes than we had provided to the Indianapolis office."

The following day, May 11, Los Angeles Special Agent 1 and Los Angeles Special Agent 2 interviewed Gymnast 1 in person. Los Angeles Special Agent 1 stated that during the interview he learned that Gymnast 1 had previously been interviewed by agents in the Indianapolis Field Office. He stated that following the interview he discussed this with his supervisor, the Los Angeles SSA, and they searched to no avail through the FBI's Sentinel case management system for any record of the prior interview.

Los Angeles Special Agent 1 stated that later in the day on May 11 he spoke with an Assistant U.S. Attorney (AUSA) in the USAO for the Central District of California about the Nassar allegations and "what venue we would need," given that the alleged sexual contact took place overseas and there were potential violations of the federal law prohibiting child sexual tourism.[70] According to Los Angeles Special Agent 1, the AUSA agreed that there were potential child sexual tourism charges and advised Los Angeles Special Agent 1 that the Los Angeles Field Office and the USAO for the Central District of California would have venue if the victim or subject flew through the Los Angeles International Airport. According to Los Angeles Special Agent 1, based on this guidance and the fact that there had apparently been a prior complaint to the Indianapolis Field Office that could not be found, the Los Angeles SSA advised Los Angeles Special Agent 1 to open a full investigation, begin investigating, and they would determine later whether another office should continue the investigation. The Los Angeles SSA told the OIG: "[W]e never really thought we had jurisdiction. But my position was since it had lagged, you know, stalled, if you will, that let us work it…this is

[68] Ropes & Gray, *Report of the Independent Investigation,* 98.

[69] Ropes & Gray, *Report of the Independent Investigation,* 98.

[70] See 18 U.S.C. § 2423.

what I told my bosses. Let us work this case and then we will find where it needs to go and reassign the case at that time."

Thus, on May 11, the Los Angeles Field Office opened a full investigation with an FD-71 complaint form to address the Nassar allegations.[71] Also on May 11, the Los Angeles SSA contacted the Indianapolis SSA and informed him that Gymnast 1 had stated during her Los Angeles Field Office interview that she had previously spoken with the Indianapolis SSA. The Indianapolis SSA stated that he told the Los Angeles SSA that he had completed an FD-71 after the Indianapolis interview of Gymnast 1. The Indianapolis SSA further stated that, after the call with the Los Angeles SSA, he conducted a search in Sentinel for the FD-71 he believed he drafted in September 2015 but that he was unable to find it. The Indianapolis SSA stated that he did not recall the exact search terms he used, but he believed that he searched for Gymnast 1's name and "Nassar." However, an FBI Sentinel audit found no evidence that the Indianapolis SSA conducted such a search on May 11 and that the Indianapolis SSA did not conduct any searches in Sentinel for Nassar, Gymnast 1, or any other search terms related to USA Gymnastics until January 2017.[72]

The Los Angeles SSA told the OIG that an Indianapolis Field Office agent or supervisor (whose name she could not recall but we determined was the Indianapolis SSA) told her that he had "forwarded everything" to the FBI in Michigan after the Indianapolis Field Office determined that it did not have "jurisdiction." According to both the Los Angeles SSA and the Indianapolis SSA, the Los Angeles SSA stated during this call that she had searched for Gymnast 1's name in Sentinel without success. The Los Angeles SSA explained to

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[71] According to the report from the INSD's internal review, the Los Angeles Field Office "manually restricted their investigation" without proper authorization. According to the INSD, this action prevented the Lansing Resident Agency from locating information within the FBI's system about Nassar when, in September 2016, the Lansing Resident Agency received a request from the MSUPD for assistance in executing a search warrant of Nassar's home (described below). The FBI Lansing Resident Agent in Charge (Lansing RAC) told the OIG that after he was contacted by the MSUPD he searched in Sentinel for a matter related to Nassar and could not find one. The Lansing RAC stated that he then called a supervisor in the Los Angeles Field Office who confirmed that the Los Angeles Field Office had an open investigation of Nassar.

However, Los Angeles Special Agent 1 noted that, while the Los Angeles Field Office restricted access to its file "based on the sensitivity of the victims in the case," the restriction did not prevent FBI employees without access from determining that the Los Angeles Field Office Nassar investigation existed or which FBI employees were handling the investigation but rather only prevented FBI employees without access from viewing substantive content within the electronic case file. Similarly, the FBI Sentinel Team told the OIG, in a written response to an OIG inquiry:

> If an FBI employee, who did not have access to [the Los Angeles Field Office's file] as a Case Manager or Case Participant due to the case restriction, searched Nassar's name between May and October 2016, they would see a search result for [the Los Angeles Field Office's case number]. However, all content, including the case title would be redacted. Therefore, a user would not know if Nassar was specifically the subject of the investigation.

We did not find that the Lansing RAC's initial inability to find the Los Angeles Field Office's case in Sentinel caused a significant delay or otherwise undermined the FBI's investigation of Nassar.

[72] The audit indicated that, on May 5, 2016, the week prior to the call from the Los Angeles Field Office, the Indianapolis SSA accessed eight FD-71s in an electronic file which we determined, by the case number, to be an FBI Indianapolis "zero classification file" for child pornography cases that are no longer being investigated. None of those files concerned the Nassar matter.

the OIG, "All I can say is when we…started looking into it, there was no electronic copy of anything in the system to indicate that anybody was doing anything."

Between June and September 2016, the Los Angeles Field Office interviewed 13 witnesses, including 6 victims. Two of the victims interviewed during this time period were minors who were interviewed by a Child/Adolescent Forensic Interviewer (CAFI) while agents in the Los Angeles Field Office observed, and five of the interviews took place outside of California.[73] According to a white paper of the FBI's Nassar-related investigative activities that was prepared in 2017 and 2018 by the FBI headquarters' Criminal Investigation Division (CID) (described below), the interviews resulted in information being provided "similar" to what Gymnast 1 had reported to the Los Angeles Field Office but Gymnast 1 "was the only minor who had potential evidence of a violation of federal law." Further, according to an INSD timeline, the Los Angeles SSA notified the VCACU of the Los Angeles Field Office's Nassar investigation in June 2016.

Los Angeles Special Agent 1 told the OIG that in August or September 2016 he reached out to the MSUPD, after he saw news reporting that the MSUPD had received a separate complaint of sexual abuse by Nassar (as described below, the news reporting occurred in September 2016). Los Angeles Special Agent 1 stated that this was the first time he contacted a state or local law enforcement agency in connection with the Nassar allegations. He said that at some point later in 2016 or in 2017 he also contacted the Sheriff's Office in Walker County, Texas, after receiving testimony from gymnasts about sexual abuse they had experienced there. According to the Los Angeles Field Office's records, Penny told Los Angeles Special Agent 1 during the May 10, 2016 meeting that Gymnast 2 had alleged that Nassar had touched her "private parts" during purported medical treatments at the USA Gymnastics National Team Training Center, known as "Karolyi Ranch," in Huntsville, Texas. The Los Angeles Field Office's records indicate that thereafter the Los Angeles Field Office interviewed at least two additional witnesses who alleged sexual abuse by Nassar in Texas. Los Angeles Special Agent 1 told the OIG that there were two purposes for contacting state authorities in Texas: to make them aware of potential state violations and to coordinate interviews in Texas as part of the assessment of whether the FBI had federal jurisdiction.

We asked Los Angeles Special Agent 1 why he did not contact Texas authorities sooner, given that Penny informed him of possible sexual abuse in Texas at the initial May 10 meeting. Los Angeles Special Agent 1 stated that he wanted to make sure the allegations were "legitimate," and not solely a medical licensing issue, before reporting the allegations elsewhere. He explained, "Before going out and potentially wrongfully accusing somebody of something, I think it's due diligence on our part to do at least some verification of the information that we are receiving before we potentially go out and unnecessarily ruin somebody's career." Los Angeles Special Agent 1 stated that, after the May 11 interview of Gymnast 1, he believed that "it was more likely than not that this is going to be a criminal offense and it warranted further investigation." However, at that point he did not know whether there was a violation of state law because the abuse alleged by Gymnast 1 occurred outside of the United States and the other athletes had not alleged penetration by Nassar. Asked whether he was aware of any FBI protocol requiring an agent to contact local law enforcement, he stated, "I'm not aware of a protocol for it. It seems like a good thing to do

[73] The Los Angeles Field Office also sought an interview of a victim who declined to be interviewed in June 2016. Between January 2017 and March 2018, the Los Angeles Field Office conducted five additional interviews, including four victim interviews, related to allegations against Nassar.

though." He explained that the "more cooperation that we have between law enforcement agencies, the better."

According to Los Angeles Special Agent 1, the Los Angeles child sexual tourism investigation was later consolidated with a child pornography investigation opened by the Lansing Resident Agency on October 5, 2016 (described below). Los Angeles Special Agent 1 stated that ultimately the child sexual tourism charges were not pursued once Nassar agreed to plead guilty to federal child pornography and obstruction charges.

VI. Sexual Abuse of Patients by Nassar Continues

In September 2015, Nassar retired from his position at USA Gymnastics. However, Nassar continued to treat patients as a doctor specializing in sports medicine at Michigan State University (MSU), a team doctor at Holt High School in Michigan, and the team physician for the Twistars USA Gymnastics Club until news reports appeared in September 2016 describing the sexual assault allegations against him. According to civil court documents, approximately 70 or more young athletes were allegedly sexually abused by Nassar under the guise of medical treatment between July 2015, when USA Gymnastics first reported the Nassar allegations to the FBI, and August 2016, when the MSUPD received a separate complaint of sexual abuse by Nassar from a different former gymnast and later involved the Lansing Resident Agency (described below). For many of these athletes, the alleged abuse by Nassar began before the FBI became aware of allegations against Nassar and continued into 2016. For others, the alleged abuse began after USA Gymnastics reported the Nassar allegations to the Indianapolis Field Office.

VII. The MSUPD Receives a Sexual Assault Complaint Against Nassar in August 2016, Executes a Search Warrant of Nassar's Residence Resulting in the Seizure of Large Amounts of Child Pornography, and Notifies the FBI Lansing Resident Agency

On August 20, 2016, the MSUPD received a complaint from a former gymnast who stated, among other things, that she was sexually assaulted by Nassar when she was 16 years old. The next day MSU suspended Nassar from clinical and patient duties pending the MSUPD's investigation. According to documents we reviewed, following media reports in September 2016 containing additional sexual assault allegations against Nassar, the MSUPD received similar sexual abuse complaints from dozens of additional young females. In addition, the Los Angeles Field Office contacted the MSUPD in September 2016 after media reports that the university was investigating Nassar.

On or about September 20, 2016, the MSUPD executed a search warrant issued by a state court judge and seized computers, external hard drives, cell phones, and other devices from Nassar's residence. The seized items included four hard drives that were located in the trash outside Nassar's residence. According to several witnesses, the MSUPD discovered "child sexual abusive material," which is the terminology for child pornography under Michigan law, within the seized evidence. Based on this discovery, the MSUPD reached out to the FBI's Lansing Resident Agency for assistance.

One week later, on September 28, 2016, the Lansing SA contacted an AUSA in the Western District of Michigan (the Western District of Michigan AUSA), who assisted with obtaining a federal search warrant to search the seized electronic media for additional evidence of child pornography. On September 29, 2016, a federal magistrate judge signed a federal search warrant authorizing a search of the electronic media seized

in connection with the September 20, 2016 state search warrant. According to an EC, the Lansing SA opened an investigation of Nassar within the Lansing Resident Agency on October 5, 2016.

The FBI's review of the evidence seized by the MSUPD from Nassar's residence identified approximately 37,000 pornographic images of children.

The Detroit SAC, the Detroit ASAC, and the FBI Lansing Resident Agent in Charge (Lansing RAC) all stated that they first became aware of the Nassar allegations after the FBI Detroit Field Office was contacted by the MSUPD. The Lansing RAC stated that the MSUPD advised him about the MSUPD's ongoing investigation and communication with the Los Angeles Field Office and the Lansing RAC shared that information with the Detroit ASAC. The Lansing RAC then contacted the Los Angeles Field Office and first learned of the Indianapolis Field Office's actions in 2015.

The Western District of Michigan AUSA, who ultimately handled the federal prosecution of Nassar, told the OIG that he first became aware of the Nassar allegations in September 2016, when he was notified by the Lansing SA. The Western District of Michigan AUSA stated that he never discussed the Nassar allegations with anyone from the USAO in the Southern District of Indiana, the USAO in the Eastern District of Michigan, or any FBI offices besides the Lansing Resident Agency.

VIII. FBI Communications in 2015 and 2016 with Penny Regarding Media Issues and the FBI's Nassar Investigation

A. Penny Emails Abbott in July 2015 Regarding USA Gymnastics' Communication Strategy and Nassar's Status with USA Gymnastics

On July 29, 2015, at 4:38 p.m., the day after the meeting at the FBI Indianapolis Field Office, Penny sent an email to Abbott regarding "two pieces" of USA Gymnastics' "communication strategy" to ensure that they were "consistent with FBI preferences." First, Penny stated that USA Gymnastics was proposing a media statement, "should one be necessary." The proposed statement indicated that USA Gymnastics had determined that reporting "concerns related to certain athlete treatment" to "law enforcement" was "consistent with [USA Gymnastics] policies and procedures" but did not specifically reference the FBI. Penny asked SAC Abbott whether the FBI preferred that the statement indicate that USA Gymnastics "will cooperate" or "is cooperating" with law enforcement. Second, Penny provided the draft of a proposed email from USA Gymnastics to Nassar informing Nassar that he was not to attend USA Gymnastics events or communicate with USA Gymnastics athletes.[74]

Abbott responded at 5:44 p.m. that same day. Regarding the public statement, Abbott wrote that "will cooperate" was preferable "given the assessment stage of the FBI's involvement." Abbott further stated that he "did not see any issues with [USA Gymnastics'] proposed communication to Dr. Nassar." Abbott copied the Indianapolis ASAC, the Indianapolis SSA, and the Chief Division Counsel of the Indianapolis Field Office

[74] As noted above, Nassar, however, still continued to treat patients, including minors, through his work at MSU, Twistars, and Holt High School.

(Indianapolis CDC) on his response to Penny and wrote in the email, "I have cc'd my Chief Division Counsel in case he determines something to the contrary."

The following day, July 30, Penny again wrote Abbott about the USA Gymnastics' proposed communication with Nassar and forwarded to Abbott an email that Nassar had written to USA Gymnastics the previous evening concerning the allegations that had been made against him. In Penny's email to Abbott, Penny stated:

> [W]e have a very squirmy Dr Nassar. Our biggest concern is how we contain him from sending shockwaves through the community. In conversations with [the USA Gymnastics attorney], we are trying to make sure that any correspondence with him is consistent with FBI protocol. Right now, we are looking for a graceful way to end his service in such a manner that he does not "chase the story."

Abbott responded shortly thereafter that "[y]ou are certainly able to advise Dr. Nassar as you deem appropriate and we in no way want to hinder that or lead you to believe you must follow an 'FBI protocol' though the FBI will not confirm or deny any ongoing investigation or assessment." Approximately 2 hours later, Abbott sent a follow-up email to Penny informing him that Abbott had spoken with the Indianapolis CDC "who concurred with my previous e-mail to you regarding your way forward with Dr. Nassar."

B. FBI Communications with Penny in September 2016 About News Stories Regarding the Nassar Sexual Assault Allegations

In August and September 2016, *The Indianapolis Star* wrote a series of articles about sexual abuse allegations involving USA Gymnastics that included reporting on the Nassar allegations. Additionally, as noted above, in late August 2016 a former gymnast filed a police complaint with the MSUPD regarding Nassar's alleged sexual assaults. Further, on September 8, 2016, a different USA Gymnastics athlete filed a civil lawsuit for sexual assault, among other charges, against Nassar, and various charges, including sexual harassment and negligent supervision, against USA Gymnastics, Penny, and others.

On September 7, in response to a statement that had previously been provided to *The Indianapolis Star* by USA Gymnastics regarding allegations against Nassar, an *Indianapolis Star* reporter contacted USA Gymnastics with multiple questions concerning the USA Gymnastics statement. The USA Gymnastics statement had asserted, among other things, that "USA Gymnastics immediately notified law enforcement" upon learning of concerns about Nassar and that USA Gymnastics had "cooperated fully with the law enforcement agency, including refraining from making further statements or taking any other action that might interfere with the agency's investigation." The *Indianapolis Star* reporter noted in his email to USA Gymnastics that Nassar's attorney had told the reporter that Nassar had not been contacted by any law enforcement agency and that, "as a former federal prosecutor," Nassar's attorney "couldn't imagine a law enforcement agency not contacting the target of the investigation, which seemed to question whether any law enforcement agency had been notified." Accordingly, the reporter asked USA Gymnastics to "provide us with the name of the agency you reported this to."

That same day, Penny forwarded the reporter's email (which included the prior USA Gymnastics statement) to Los Angeles Special Agent 1. Penny told Los Angeles Special Agent 1: "We would like to answer a few of these [questions] as much as possible. We have been getting beat up and some help would be appreciated.

Want to continue doing the right thing and cooperating with you." Los Angeles Special Agent 1 responded, "I will call you soon."

That following day, September 8, Penny wrote in an email to Abbott, "Nassar story is breaking today. Los Angeles office has asked us to not divulge FBI as agency. Just an FYI. They are still investigating." Four days later, on September 12, *The Indianapolis Star* published an article entitled, "USA Gymnastic Doctor Accused of Abuse." The article detailed allegations of sexual abuse made against Nassar by two former gymnasts. In connection with the article, USA Gymnastics issued a public statement, which stated in part:

> Immediately after learning of athlete concerns about Dr. Nassar in the summer of 2015, Steve Penny, President and CEO of USA Gymnastics, notified law enforcement.... USA Gymnastics has cooperated fully with the law enforcement agency since we first notified them of the matter, including—at their request—refraining from making further statements or taking any other action that might interfere with the agency's investigation.

The *Indianapolis Star* article stated that "USA Gymnastics would not tell [*The Indianapolis Star*] which law enforcement agency it reported to."

That same day, Penny emailed the article to Abbott, who replied, "Thanks Steve, Hang in there. You'll be all right."

On September 20, 2016, the same day that the MSUPD executed the search warrant on Nassar's residence and MSU announced that it had fired Nassar, Penny wrote to Abbott: "[T]hanks for the chat this evening. I wanted you to know that I did speak with...the LA office...Any help or support you can lend is greatly appreciated right now." The following day, on September 21, at 10:22 p.m., Abbott wrote to Penny, "Left you a voicemail. FBI LA's SAC will be giving you a call tonight." Shortly thereafter, at 10:48 p.m., Penny wrote to Abbott: "Just landed in Denver. Will call you shortly if that is okay. Am I in trouble?" Later in the evening on September 21, 2016, Abbott wrote to Penny: "Hopefully you have chatted with LA's FBI SAC by now re our conversation last night. Catch up with you tomorrow during business hours if you desire."

Abbott told the OIG that, after the Nassar investigation was referred to Los Angeles, Penny "constantly" called Abbott to ask about the case. Abbott stated that in response to these contacts he "directed" Penny to the Los Angeles office.

The Indianapolis CDC told the OIG that he sat in on two phone calls between Penny and Abbott after the Indianapolis Field Office was no longer handling the allegations. He stated that one of these calls related to Penny's 2016 request for an update on the status of the Los Angeles Field Office investigation and the other related to Penny's February 2017 request for the FBI to provide a statement to the media in response to news reports by *60 Minutes* and *The Wall Street Journal* (discussed in the next section). The Indianapolis CDC stated that he advised Abbott to not discuss the investigation with Penny or the media. According to the Indianapolis CDC, during both calls Abbott referred Penny to the Los Angeles Field Office.

The Los Angeles SAC told the OIG that Abbott called him approximately three times in the summer or fall of 2016 inquiring about the status of the Los Angeles Field Office's Nassar investigation. According to the Los Angeles SAC, Abbott called the Los Angeles SAC on these occasions because "the contact that [Abbott] had

at USA Gymnastics," referring to Penny, "wanted to make some press statements or public releases about what USA Gymnastics may or may not be doing with regards to the allegations of misconduct by Mr. Nassar." The Los Angeles SAC stated that Abbott was calling "to find out if those types of press statements or public releases from USA Gymnastics would interfere with anything that [the] LA Field Office had going at the time." Penny told the OIG that he believed he had one conversation with the Los Angeles SAC, but he did not provide details about that conversation.

IX. Media Inquiries in Early 2017 Questioning the FBI's Handling of the Nassar Allegations Result in Inaccurate and/or Incomplete Documentation Being Drafted Regarding the Indianapolis Field Office's Handling of the Allegations

Beginning in early 2017, the FBI received media inquiries about its handling of the Nassar allegations and whether it had promptly and appropriately responded to them. These inquiries caused the Indianapolis SSA to search the FBI's databases for records related to the Nassar investigation and to draft an FD-302 of the interview of Gymnast 1 that he had conducted 17 months earlier. The media inquiries also prompted the FBI's Indianapolis Field Office, Detroit Field Office, and Lansing Resident Agency to discuss an EC that the Indianapolis SSA had drafted describing the Indianapolis Field Office's receipt of the Nassar allegations and the limited investigative steps it had taken in 2015. In addition, the media inquiries prompted Abbott to propose a draft media statement to respond to the inquiries and resulted in the VCACU drafting a white paper that was intended to summarize the FBI's handling of the Nassar allegations. As described below, each of the documents was incomplete and/or contained inaccuracies.

On January 17, 2017, the Indianapolis SSA received an email from the VCACU Section Chief forwarding an inquiry from a *Wall Street Journal* reporter. The reporter's inquiry stated, among other things:

> Either USA Gymnastics is lying, and didn't report the Nassar complaints to the FBI "immediately," or the FBI didn't contact the complainants/victims for at least a year, which seems like a very long time for such serious accusations.... I recognize that the FBI doesn't comment on, confirm, or deny criminal investigations, but in this case, it seems like somebody might want to explain or account for the 14-month gap between the complaint to USAG Gymnastics [sic] and the outreach by the FBI.

That same day, the Indianapolis SSA conducted searches in the FBI's Sentinel system for Steve Penny, Gymnast 1, and the case number for the Nassar investigation opened by the Lansing Resident Agency in October 2016.

FBI headquarters VCACU staff told the OIG that around this time they had a conference call with the Indianapolis SSA to learn more about what the Indianapolis Field Office did with the Nassar allegations in 2015. According to the VCACU staff, the Indianapolis SSA stated that he had drafted an FD-71 to transfer the Nassar allegations to Michigan when he realized that Indianapolis did not have venue, but the FD-71 was now missing. A senior VCACU official stated that she recommended that the Indianapolis SSA draft either an EC to document his July 2015 meeting with USA Gymnastics officials or an FD-302 of his interview of Gymnast 1.

A. Abbott Proposes a Press Statement Asserting that the FBI Initiated the Nassar Investigation Based on Information Provided at the July 2015 Meeting

On February 1 at 2:11 p.m., Penny sent an email to an FBI Los Angeles Field Office press officer and Abbott, requesting that the FBI confirm that USA Gymnastics reported the Nassar allegations to the FBI in July 2015. In the email, Penny wrote that, based on "recent conversations with both The Wall Street Journal and 60 Minutes," it "appears that the parents of some athletes are expressing their concern and disbelief that USA Gymnastics actually" reported the Nassar allegations to the FBI in July 2015. Specifically, Penny noted that the parents of Gymnast 2 and Gymnast 3 "are asserting that USA Gymnastics did not actually contact the FBI and if we had, there would have been more action taken sooner." Penny continued:

> We recognize the policy of the FBI to not comment regarding ongoing investigations. Our simple request would be to validate that USA Gymnastics did contact the FBI originally in July of 2015, and that we have cooperated with every request that has been made.

Later that day, the Los Angeles Field Office press officer forwarded the email from Penny to the Los Angeles SAC, Los Angeles Special Agent 1, and others in the Los Angeles Field Office.

At 4:38 p.m. that same day, the Indianapolis ASAC emailed the Detroit ASAC the February 2017 EC drafted by the Indianapolis SSA and copied the Indianapolis SSA and the Indianapolis CDC. In the email, the Indianapolis ASAC wrote:

> Attached is an EC drafted by [the Indianapolis SSA] to document FBI [Indianapolis Field Office] contacts with USA Gymnastics and contact with victim athlete. He references a communication via email with [the Detroit Field Office] on 09/01/2015 and I'll [ask the Indianapolis SSA] to look for any other formal or informal communications for discovery. Additionally, an FD-71 was generated, however, it cannot be located in Sentinel.
>
> I have a meeting with my SAC [Abbott] later this afternoon to get his take on putting out a statement (in coordination with [the Los Angeles and Detroit Field Offices]) which would address dates of first contact to [the Indianapolis Field Office], verifying USA Gymnastics made that contact, however we would most likely make no further comment on the ongoing investigation.

Later that same day, at 5:24 p.m., Abbott forwarded Penny's February 1 email to the Detroit SAC and the Los Angeles SAC seeking their concurrence to propose that the FBI issue the following statement:

> The FBI initiated an investigation into Dr. Lawrence Gerard Nassar based on information provided by officials at USA Gymnastics on July 28, 2015. The FBI has remained in contact with officials at USA Gymnastics during the investigation. The investigation is still pending and there is no other information available at this time.

Contrary to the implication of the draft statement that the Indianapolis meeting in July 2015 resulted in the FBI opening its Nassar investigation, as described previously, the FBI first opened an investigation in May 2016 following the USA Gymnastics meeting with the FBI's Los Angeles Field Office and that office's interview of Gymnast 1. Further, as discussed above, USA Gymnastics officials were frustrated by the FBI's lack of

continuing contact with them, which led USA Gymnastics to bring the Nassar allegations to the Los Angeles Field Office and Penny to seek information from Abbott about the FBI's handling of the matter.

One minute after Abbott sent the email to the Detroit SAC and the Los Angeles SAC, Abbott wrote to Penny: "I am conferring with my colleagues in Detroit and Los Angeles to determine the appropriate response. Will have an update for you in the next day or two at the latest." Penny wrote back at 6:11 p.m.: "Thanks Jay. This is critical right now."

The Detroit SAC shared Abbott's email with the Detroit ASAC and the Lansing RAC. The Detroit ASAC responded that he thought the proposed media statement was "good but it should probably be run my [sic] the AUSA handling the case." The Detroit SAC replied: "Can you do that. I'm going to call SAC Abbott on my way home. He apparently sent on high side a timeline of events."

The following morning, the Western District of Michigan AUSA emailed the Detroit SAC, the Los Angeles SAC, the Detroit ASAC, the Lansing RAC, and the Lansing SA advising them that he had spoken with the U.S. Attorney and stating, "**Please do NOT release any statement to the media**. FBI should adhere to its policy of not commenting on ongoing investigations/cases" (emphasis in original).

B. The Indianapolis SSA Drafts an Electronic Communication to Document Certain Actions in 2015 and a Report of the September 2015 Gymnast 1 Interview

In response to the media inquiries, on February 1, 2017, the Indianapolis ASAC, the Indianapolis SSA, the Detroit ASAC, and the Lansing RAC had a conference call to discuss the Nassar investigation. During the call, they discussed an EC prepared by the Indianapolis SSA and dated February 1, which described the Indianapolis Field Office's receipt of the Nassar allegations and a summary of the investigative steps taken in 2015.[75] As noted previously, the first part of the EC summarized the information provided by USA Gymnastics during the July 28, 2015 meeting about the Nassar allegations, and it very closely tracked the information included in the USA Gymnastics memorandum that Penny told us he provided to the FBI at the July 28 meeting. Among other things, the EC described the information provided by USA Gymnastics during the July 2015 meeting, including the allegations made by Gymnasts 1, 2, and 3 to USA Gymnastics. The EC noted that Gymnast 1 had told USA Gymnastics that Nassar had treated her "hundreds of times" and digitally penetrated her on three occasions, including in a hotel room in Japan. The EC indicated that the Indianapolis Field Office discussed the Nassar allegations with the Southern District of Indiana AUSA, who determined that the Indianapolis Field Office did not have venue "since the only nexus to Indiana was USA Gymnastics." The EC thereafter summarized the Indianapolis Field Office's September 2 telephonic interview of Gymnast 1 and stated that Gymnast 1 "outlined her experiences with Nassar, which were consistent with the version offered by USA Gymnastics at the original meeting." The EC concluded by asserting that, "In the week following the interview of [Gymnast 1], the Indianapolis SSA drafted an FD-71

[75] The EC is dated February 1, 2017. However, the FBI's Sentinel audit indicated that the Indianapolis SSA initially created the February 2017 EC on February 19, 2016, and printed it on February 1, 2017. The Indianapolis SSA explained to the OIG that when he drafted the EC he must have used a blank EC form that he had previously opened in Sentinel and that February 19, 2016, does not reflect the date he began drafting the EC. The Indianapolis SSA could not remember the exact date that he began drafting the EC but stated that it must have been after he first heard from the Los Angeles SSA in May 2016.

containing the background of the case…and the results of the [Gymnast 1] interview." The EC went on to state that the FD-71 was sent to the Lansing Resident Agency "but to date cannot be located."

The Lansing RAC stated that during the conference call on February 1 the Indianapolis ASAC and the Indianapolis SSA told the Lansing RAC that they would "draft up a [report of Gymnast 1's September 2, 2015 interview]…and we'll put it to your file." The Lansing RAC stated that he told them, "absolutely not." The Lansing RAC further stated that he asked the Indianapolis SSA whether he still had his notes from the interview. According to the Lansing RAC, the Indianapolis SSA replied that he "remembered most of" the interview and may have some notes. The Lansing RAC told the OIG that he was disconcerted by the suggestion of drafting an FD-302 (report of interview), because it was against policy and not proper to draft an FD-302 over a year and a half after the event. The Lansing RAC further stated that, "it seemed as if they were trying to, in a sense, they didn't want to just say they made a mistake, and didn't send it, but they wanted to put something to the file that said that they did send something they did not."[76] The Indianapolis SSA told the OIG that he did not recall this conversation with the Lansing RAC.

The next day, February 2, the Indianapolis SSA drafted the FD-302 of the telephonic interview he conducted of Gymnast 1 in September 2015.[77] In Section II.C above, we detailed the inconsistencies between what the Indianapolis SSA's FD-302 reported that Gymnast 1 said during her September 2015 interview and what Gymnast 1 told USA Gymnastics, the Los Angeles Field Office, and the OIG about Nassar's actions. Additionally, the Indianapolis SSA did not include the date of the interview in the FD-302 or any disclaimer that the FD-302 was written 17 months after the interview took place. The Indianapolis SSA acknowledged during his February 4, 2021 OIG interview that such a disclaimer should have been included. The Indianapolis SSA stated that he was not certain whether he came up with the idea to draft the FD-302 or he was told to draft it by the Indianapolis ASAC or someone else. However, he stated that after receiving the call from the Los Angeles SSA he thought, "I had better get it documented…sooner rather than later" because this was a "high profile case and this was an undocumented interview now that we can't find this FD-71." The Indianapolis SSA also stated that he believed an FD-302 of his interview was needed so that the Los Angeles Field Office would know what Gymnast 1 said during his interview "because what [Gymnast 1] told the [Los Angeles Field Office] that second time was far different than what she told us the first time."

According to an FBI Sentinel audit, the Indianapolis SSA conducted searches in Sentinel before drafting the FD-302. On February 2, 2017, the Indianapolis SSA conducted several searches in Sentinel alternating between lowercase and uppercase letters for Gymnast 1's name. On February 2, 2017, the Indianapolis SSA also retrieved several documents from the Los Angeles Field Office's Nassar file. Among other documents, he accessed on nine occasions the FD-302 documenting the Los Angeles Field Office's interview of Gymnast 1 and on three occasions the FD-302 of the Los Angeles Field Office's interview of the USA Gymnastics private investigator, which describes the USA Gymnastics private investigator's interview of

[76] The Lansing RAC told the INSD that the Western District of Michigan AUSA agreed that an FD-302 of the Indianapolis SSA's 2015 interview of Gymnast 1 should not be included in the Lansing case file, which pertained to a child pornography investigation. The Western District of Michigan AUSA told the OIG that he did not recall whether he ever saw an FD-302 or an EC drafted by the Indianapolis Field Office.

[77] The Indianapolis SSA told the OIG that he was not certain when he wrote the FD-302 but that that he believed it was shortly after he received the call from the Los Angeles SSA in the spring of 2016. However, as noted in a previous footnote, the FD-302 indicates that the "date of entry" and "date drafted" was February 2, 2017, and a Sentinel audit confirmed that the FD-302 was created on this date.

Gymnast 1. According to Sentinel records, the Indianapolis SSA accessed these documents between approximately 10:40 a.m. and 11:48 a.m. on February 2 and began drafting the Gymnast 1 FD-302 at approximately 10:49 a.m.

At 3:51 p.m. that same day, the Indianapolis SSA texted the Indianapolis co-interviewer: "Please give me a call as soon as you can. Quick question for you. Thanks." At 4:36 p.m., the Indianapolis co-interviewer replied: "I'm free. Call when you can." The Indianapolis co-interviewer told the OIG that the Indianapolis SSA called her when "questions had come up about where the FD-71 went, and he was wanting to know if I had my notes, so that he could document a 302 of the interview." The Indianapolis SSA then texted the Indianapolis co-interviewer at 4:45 p.m. on February 3, suggesting that the reason he was unable to locate the FD-71 in Sentinel was that the Lansing Resident Agency had never assigned the FD-71 to a case agent: "Done it 7 ways to Sunday. I think that if the [FD-71] was forwarded to the [Lansing Resident Agency], but never assigned, it is not a 'completed' document and is not searchable, as it technically isn't in the system." However, the Indianapolis SSA's suggestion to the Indianapolis co-interviewer is inconsistent with the Sentinel audit, which found no evidence that the Indianapolis SSA created an FD-71 of the Nassar allegations in 2015.

The next day, February 3, the Indianapolis co-interviewer texted the Indianapolis SSA: "Found notes on [Gymnast 1]. Yes, he did it to her."

The Indianapolis SSA told the INSD that he used only his notes and his memory to draft the FD-302 and did not refer to the Indianapolis co-interviewer's notes. The OIG asked the Indianapolis SSA about this statement to the INSD, and he explained that he had the Indianapolis co-interviewer's notes when he drafted the FD-302 but: "I probably did do most of it from my memory and my notes.... I might not have used her notes, but I did have her notes." The Indianapolis SSA also told the OIG that he did not have the Indianapolis co-interviewer assist him with drafting the FD-302 or reviewing it. The Indianapolis SSA acknowledged to the OIG that he would normally ask his co-interviewer to review an FD-302 but stated that this situation was different because "this was after the fact" and "we were also in limbo, where it wasn't going anywhere."

The OIG asked the Indianapolis co-interviewer whether she believed that the February 2017 FD-302, which she had reviewed during her INSD interview, was accurate. She responded, "I believe—I mean, without looking at it, but I think it was accurate when I reviewed it." However, as discussed above, the Indianapolis co-interviewer had told the OIG that Gymnast 1 did not use the word "rectum" during the interview and that it was the Indianapolis SSA who conveyed to the Indianapolis co-interviewer that Gymnast 1 was referring to rectal penetration. She stated that the Indianapolis SSA might have "caught a different word or a description from her that he understood better than I did. And that's how we confirmed it was anal."

According to FBI records, neither the 2017 EC nor the 2017 FD-302 were "serialized" in a case file, meaning that they were never attached to a file and given a serial number, which are steps the FBI requires before an investigative document can be finalized. As a result, both the 2017 EC and the 2017 FD-302 remain in draft format to this day. The Indianapolis SSA told the OIG that he kept both the 2017 EC and the 2017 FD-302 in draft form because FBI headquarters VCACU staff told him not to send the 2017 EC or the 2017 FD-302 to the Nassar file at the Lansing Resident Agency. The Indianapolis SSA told the OIG that he could not remember "exactly" why he was told not to put these documents into the Lansing file; but he said, "it had

something to do with, cause at that point, discovery had already been given" in connection with the federal prosecution of Nassar in Michigan. However, we interviewed three headquarters VCACU employees who were present for the conversation with the Indianapolis SSA, and none of them recalled giving the Indianapolis SSA such instructions. In addition, we identified no evidence indicating that these documents were provided to either state or federal prosecutors for an assessment of whether they were relevant to Nassar's prosecution.[78]

C. FBI Headquarters Prepares a White Paper Summary in February 2017 of the FBI's Nassar Investigation

In response to a *60 Minutes* inquiry regarding the FBI's handling of the Nassar matter, on February 1 an official in the FBI's National Press Office asked VCACU officials whether the VCACU had a "definitive timeline of events." On February 3, 2017, the Indianapolis SSA emailed a timeline of events related to the Indianapolis Field Office's handling of the Nassar allegations, which was nearly identical to the timeline contained in the February 1, 2017 EC, to two VCACU employees. Based on documents we reviewed, the VCACU employees used the timeline provided by the Indianapolis SSA, along with information they gathered about the FBI Los Angeles Field Office, MSUPD, and Lansing Resident Agency investigations, to prepare a document entitled, "Executive summary of the FBI investigation of Larry Nassar for sexual crimes against children while employed as a team doctor of the United States Gymnastics Association," which they referred to as the "Nassar White Paper." A section of a February 6, 2017 draft of the document with the heading "USA Gymnastics (USAG) receives allegations of impropriety of Larry Nassar," contained the following bullet:

- On 07/24/2015, [USA Gymnastics] interviewed [Gymnast 1] where she detailed therapy sessions where Nassar digitally penetrated her rectum without a glove, on three occasions. [This language was inconsistent with the USA Gymnastics Memorandum that Penny provided to the FBI in July 2015 and inconsistent with the USA Gymnastics private investigator's and Gymnast 1's testimony to the Los Angeles Field Office and the OIG, which indicated that Gymnast 1 had been vaginally, not rectally, penetrated.]

In addition, in a section of the February 6, 2017 draft with the heading, "FBI Indianapolis unsuccessful efforts to interview alleged victim gymnasts," the following were among the entries:

- On 08/09/2015, USAG CEO Penny told [the Indianapolis SSA] that [Gymnast 3's] mother felt the proposed interview would be too distracting for her daughter and postponed the interview. [The document did not mention, as noted above, Gymnast 3's willingness to reschedule the interview for after the Indianapolis competition.]

- On 08/27/2015, USAG CEO Penny told [the Indianapolis SSA] he arranged for [Gymnast 1] to travel to Indianapolis on 09/03/2015 for an FBI interview. This travel was subsequently canceled by

[78] During the OIG investigation, we asked the FBI to provide the FD-302 to both the federal and state prosecutors that handled Nassar's prosecution and we alerted both the federal and state prosecutors to the existence of the FD-302 so that they could request it.

[Gymnast 1's family]. [As noted above, FBI records reflect that the in-person interview was changed to a telephonic interview by the FBI.]

The summary also referenced Indianapolis's telephonic interview of Gymnast 1, stating that her "interview was consistent with her statement to the USA [Gymnastics]." The document went on to state:

- The interview did not result in opening a full investigation because [Gymnast 1's] interview did not substantiate a violation of federal law. When [the Indianapolis SSA] relayed the results of the interview, the case was declined by the USAO in Indiana.

The summary went on to note that the Los Angeles Field Office had interviewed seven athletes, including Gymnast 1, and that Gymnast 1 "was the only person who had potential evidence of a violation of federal law."

On February 6, 2017, a draft of the "Nassar White Paper" was emailed by VCACU to the then-Deputy Assistant Director of the FBI's CID. In the email, the VCACU employee stated: "Attached for your review is the latest draft of the White Paper concerning Nassar. We addressed all your requested edits, except your questions about Indianapolis providing an update to the [USA Gymnastics] after concluding their investigation. [The Indianapolis SSA] is on travel status, so we hope to get that answered as soon as possible."

On February 7, a senior VCACU official emailed the Indianapolis SSA with a question regarding the bulleted reference in the white paper to the USAO declination provided to the Indianapolis Field Office in September 2015. The senior VCACU official told the Indianapolis SSA that an FBI Deputy Assistant Director wanted to know whether it was "verbally declined or via email, letter?" The Indianapolis SSA responded: "It was verbally via telcal. There was no deciination [sic] letter, as it was never a case, simply an allegation we looked into." In response to the senior VCACU official's request for the name of the USAO that declined the case, the Indianapolis SSA stated that it was the Southern District of Indiana AUSA. The Indianapolis SSA added, "He determined we had no venue." The senior VCACU official responded, "But was the declination due to the lack of facts or only venue." Three minutes later, the senior VCACU official sent the Indianapolis SSA another email asking, "Is this accurate?":

- The interview did not result in opening a full investigation because [Gymnast 1's] interview did not substantiate a violation of federal law. When [the Indianapolis SSA] relayed the results of the interview to the [the Southern District of Indiana], the case was verbally declined by [the Southern District of Indiana AUSA] due to the facts and lack of venue.

We did not find a response from the Indianapolis SSA to the senior VCACU official's question. The senior VCACU official subsequently included the same bullet as indicated above in the next version but left out the language, "to the facts and."

Later that same day, the senior VCACU official sent the Indianapolis SSA an email, captioned "[Executive Assistant Director (EAD) over the FBI's CID] has follow up questions" and asking the Indianapolis SSA to send her the draft FD-302 of the Gymnast 1 interview. She stated, "We need to compare what was said to [the Indianapolis Field Office] and what she said to [the Los Angeles Field Office]." The Indianapolis SSA replied:

Seriously, enough is enough. There are three problems with the request:

1. The 302 is a draft and has not been published upon the request of the AUSA prosecuting the case. If he wants it disseminated, I will put it through the chain for public consumption.[79]
2. The story has been told, and told, and told and told, to include 10x today alone. The results of the interview were recorded in the comprehensive email sent earlier. The 302 only echoes those facts.
3. If the FBI is not participating in or commenting on the media onslaught that is impending, all this back and forth is continuing to beat a horse that died long ago. What one victim, which provided no prosecutable information in a very cursory interview with [the Indianapolis Field Office] said in comparison to a more in depth and complete interview in [the Los Angeles Field Office] is largely irrelevant, as her interview was, to the best of my knowledge, not used as the articulate facts foundation of any law enforcement action.

The next day, an FBI SSA on a temporary duty assignment with the headquarters VCACU (TDY SSA) responded to the Indianapolis SSA, in part, as follows:

> Let me start off by saying "I get it." You've been peppered with questions for days, thought you had the thing put to bed, and got ambushed when you got off the plane. It's frustrating and I understand that. I also know you run a good program and this is a distraction. I also want you to understand that in the meeting last night with the EAD, no one was casting aspersions about how this was handled. It was very business-like and the EAD is down to just a few more questions. The ones that effect [sic] you are as follows:
>
> First the [EAD] wants to reconcile why [the Los Angeles Field Office] thought there was a chargeable federal offense and [the Indianapolis Field Office] did not. I am guessing that [Gymnast 1] made more disclosures to [Los Angeles] than she did to [Indianapolis.] If that is the case, we need to assert that factually. I can't do that without your help. We want to compare your 302 with LA's 302 and identify the additional disclosures made to LA. The EAD also wanted to know if the facts of the case in [the Indianapolis Field Office's] possession at the time would have made it practical to refer Gymnast 1's information to a local law enforcement agency who may have not had the jurisdictional and statute issues that we did.
>
> The though [sic] is that we can provide some additional information to CBS off the record and avoid [USA Gymnastics] and Michigan State University from blaming the FBI. You and everyone else looks to have done a competent job. Let's be in a position to have that known.

[79] When we asked the Western District of Michigan AUSA whether he told anyone from the FBI to maintain the FD-302 or EC in draft form to avoid having to submit them for discovery purposes, he responded: "No. In fact, I explain to people, if they ever say something like that, that doesn't protect it from discovery. I still have to turn the thing over, whether it's draft or not." As noted in a previous footnote, the Western District of Michigan AUSA also told the OIG that he did not recall whether he ever saw an FD-302 or EC drafted by the Indianapolis Field Office.

The Indianapolis SSA responded to the TDY SSA by saying that he was not near his office, but that "the 302 contains little more than the facts already stated." The Indianapolis SSA further wrote that, "[t]here was insufficient information to open a federal case" and that the Los Angeles Field Office "did the best they could to shoehorn it into a violation." Regarding referring Gymnast 1's information to local law enforcement, the Indianapolis SSA wrote:

> Reporting to a local jurisdiction would also be impractical, as all acts, according to information we had, happened [outside the Continental United States]. The only potential local jurisdiction that would potentially have venue would be Lansing, Michigan/Michigan State University Police, as the Dr. was employed on staff there, but again, was separate and apart from the [USA Gymnastics] allegations. You would have to check with SAC Abbott, but I believe he also advised Steve Penny to reach out to [Michigan State University] personnel to inform them.

The Indianapolis SSA did not indicate in this email that he, the Indianapolis ASAC, or the Indianapolis CDC had advised Penny to report the allegations to local law enforcement, as he later told the OIG.

On February 8, 2017, the Indianapolis SSA texted the Detroit SSA, "Did you hear if Nassar accepted a plea or not?" The Detroit SSA replied, "We don't care about that, only if we covered or [sic] assess [sic]." The Detroit SSA then texted the Indianapolis SSA again about 20 seconds later, "Kidding I just fly [sic] back into town." The Indianapolis SSA replied to the Detroit SSA: "On my way back from DC now. You have no idea how much they have been lighting my ass up on this!!!" The Detroit SSA told the OIG that he sent these text messages in jest and due to "frustration," because at the time the FBI was "in the midst of asking a lot of questions." The Detroit SSA acknowledged that the text message he sent to the Indianapolis SSA "obviously was not the best way to communicate, so I apologize." The Detroit SSA further stated that he did not mean to imply that he or the Indianapolis SSA did anything wrong in connection with the Nassar allegations.[80]

X. Events in 2018, Including Abbott's Misleading Statements to a Reporter in Early 2018, the FBI Editing the White Paper, and the INSD's Initiation of a Special Review

In early 2018, a *New York Times* reporter contacted the FBI and Abbott, who had retired from the FBI the prior month, about allegations that the FBI had failed to expeditiously pursue allegations about Nassar, resulting in continuing sexual abuse of gymnasts by Nassar. Abbott spoke with the reporter at length. On February 2, 2018, an Indianapolis Field Office public affairs official emailed the Indianapolis ASAC and another FBI Indianapolis official to advise them that she had been contacted by Abbott, who relayed to her the comments that Abbott had made to the *New York Times* reporter. According to her email, Abbott told her the following about his conversation with the reporter:

> [The reporter] is looking for who to blame: Specifically, timeline 2015-2016, the FBI, et al, allegedly knew of possible abuse being conducted by Nasser [sic], yet at least 25 more

[80] The Detroit SSA told the INSD that in June 2017 he was on TDY to FBI headquarters and was tasked with assisting the VCACU with gathering information for the white paper that had been initiated in February 2017. The Detroit SSA stated that at that time he conducted searches for the FD-71 the Indianapolis SSA claimed he had created and could not find it.

> women/children were abused. Why was warning not provided? Who should have provided warning? Why the delay in the investigation?
>
> I went on the record to generally describe "the sense of urgency" the FBI adopts whenever the FBI works matters involving child exploitation. I also described Victim/Witness Coordinators and the FBI's paramount concern for victim's rights. I discussed the aggressiveness adopted by this judicial district and FBI Indy in child exploitation cases citing Jared Fogle as an example of our successes and aggressive action in these cases.
>
> I told [the reporter] there was no delay by the FBI on this matter. Also, the FBI, and/or other law enforcement entities, still must prove wrong-doing. Also, witnesses/victims may be very reluctant to be interviewed in these type of cases for a variety of reasons (i.e. fear, reliving abuse, parents custodial rights, never mind celebrity and reputation considerations, legal agreements, etc.). I described in general terms that a "deeply concerned" USA Gymnastics President Steve Penny brought his concerns to the FBI Indy Div. (…Could not comment on any other actions conducted by Penny or when, how or where he conducted other actions/steps he may have taken.) "Penny and I are NOT friends." This meeting, that I described, represented our first exposure to this incident….
>
> [W]e met for a couple hours with appropriate SA's, leadership, Div Counsel and myself present. We then began to work the issue assuming the worse [sic]. After consultation with the USAO (S. Dist.), it was determined FBI Indy did not have venue. Venue likely was in LA (where victims of info provided were located) or Michigan (where Nasser [sic] is). Thus, via phone calls, e-mails, and finally a detailed report, this info was communicated to FBI Detroit and FBI LA for appropriate action….
>
> I commented that I had at least several phone calls with my SAC counterparts over a year's timeframe on this matter. I commented that we were "discusted" [sic] by Nasser's [sic] supposed medical technique. Though I could not speak for them, in my 30 years of FBI experience, I had no doubt that my FBI colleagues in LA and Detroit handled this in the same way we would have, with a sense of urgency prioritizing concern for present victims and potential victims.[81]

Abbott's statement to the reporter contained several factual inaccuracies, including his assertion (1) that "there was no delay by the FBI on this matter"; (2) that "via phone calls, e-mails, and finally a detailed report, this info [about Nassar] was communicated [by FBI Indianapolis] to FBI Detroit and FBI LA for appropriate action"; and (3) "that I had at least several phone calls with my SAC counterparts over a year's timeframe on this matter."

On February 3, 2018, *The New York Times* published a story entitled, "As FBI Took a Year to Pursue the Nassar Case, Dozens Say They Were Molested." The article noted, among other things, the FBI's failure to interview Gymnast 2 or Gymnast 3 for nearly a year after the July 2015 meeting with USA Gymnastics and the large number of athletes who were sexually assaulted by Nassar between July 2015 and September 2016, when *The Indianapolis Star* published its story about Nassar. The story focused on particular victims of Nassar's sexual assaults and included comments that Abbott made to *The New York Times* about the FBI's handling of the investigation. For example, as noted previously, the story included Abbott's statement to the reporter

[81] "FBI Took a Year," *The New York Times.*

that, while he did not watch the videos on the thumb drive that USA Gymnastics had provided to the FBI during the July 2015 meeting, "he vividly remembered the reactions of his FBI colleagues who had. 'I will never forget sitting around the table and thinking, What?... And the reaction of my special agents who were very well versed in this was one of disgust. That is why we worked it with such urgency.'" The article also described Abbott's response to the reporter's question about why law enforcement officials failed to notify people of the potential ongoing threat that Nassar presented while the FBI investigation was ongoing. Abbott stated: "That's where things can get tricky. There is a duty to warn those who might be harmed in the future. But everyone is still trying to ascertain whether a crime has been committed. And everybody has rights here." According to the article, Abbott also stated that the Nassar case might have been further complicated by the fact that "there was a vigorous debate going on about whether this was a legitimate medical procedure."

Employees within the FBI Indianapolis Field Office, including the Indianapolis ASAC and the Indianapolis SSA, emailed one another about the article, and the Indianapolis ASAC complained that the article had inaccuracies and omitted information. For example, in a February 3, 2018 email, the Indianapolis ASAC wrote to an Indianapolis Field Office Public Affairs Officer, the Indianapolis SSA, and others in the Indianapolis office, "Not included...no federal nexus identified, USAO declination on no venue, USA Gymnastics repeatedly advised to ensure report local LE specifically in Michigan, several weeks to get contact information for first victim, who took weeks to agree to interview." About 20 minutes later, he wrote another email to the same individuals, stating: "We can discuss further on Monday. So many inaccuracies. The video, initial reaction to the details provided to us, to agents not travelling to LA for interview. I'm gonna stop now." Later that day, Abbott wrote to the Public Affairs Officer: "What would [the Office of Public Affairs (OPA)] think if I wrote a letter to the editor at NY Times to rebut the article? I'd provide it to OPA through you for editing and approval and [the Indianapolis ASAC] and [the Indianapolis SSA] could also provide editing before I submitted it."

A few hours later, Abbott wrote to the Public Affairs Officer again, reconsidering his proposed letter:

> [P]robably not a good idea, fraught with peril. FBI version vs victim version/perception=no win situation.
>
> Sorry...just dwelling on it and I know [the Indianapolis ASAC] and [the Indianapolis SSA] will feel very frustrated as I have, ...particularly given our actual aggressive efforts.
>
> I'll still do it but I can't see OPA ever concurring with such a rebuttal and it may have unintended consequences.
>
> Can't believe reporter omitted so much. He wasn't going to let the truth get in the way of a good story.

Shortly thereafter, the Public Affairs Officer wrote back to the Indianapolis ASAC stating that the OPA had advised her to have Abbott "hold off on any and all further action for now. OPA will discuss the piece and any after-action with CID."

On February 5, 2018, a VCACU supervisor emailed to the senior VCACU official a revised version of the white paper that had been initially drafted in February 2017 following critical news stories at that time. This revised version of the white paper ultimately was forwarded to the Indianapolis SSA by the Detroit SSA. The

Indianapolis SSA replied to the Detroit SSA referencing a portion of the white paper, which stated that the Los Angeles Field Office's interview of Gymnast 1 substantiated violations of the federal law prohibiting child sexual tourism, as follows:

> BTW…18 USC 2423(b) is not applicable. We researched it extensively. It states, "…who travels in foreign commerce, **for the purpose of engaging in any illicit sexual conduct** with another person…." It has to be the primary reason for travelling (emphasis in original).

The Indianapolis SSA forwarded the white paper to the Indianapolis ASAC that same day.

On February 8, 2018, a version of the white paper was circulated that differed both stylistically and, in some respects, substantively from the original version that the VCACU had emailed to the then-Deputy Assistant Director of CID on February 6, 2017. Some of the statements in the white paper were factually unsupportable. For example, the following bullet was added to the 2018 version of the white paper, which was not included in the February 2017 version: "FBI [Indianapolis] communicated the findings to FBI [Detroit], but the exact date of the communication is unknown and the there is no documentation in Sentinel." We saw no evidence that the Indianapolis Field Office communicated any "findings" to the Detroit Field Office.

On February 9, 2018, the VCACU Section Chief forwarded the white paper to the Indianapolis ASAC and wrote, "As discussed on phone." The Indianapolis ASAC replied to the VCACU Section Chief the next day and attached the white paper "with some additional information highlighted in yellow." The highlighted portions added by the Indianapolis ASAC were all within the section addressing the Indianapolis Field Office's investigative activity, and included inserting the following sentence to the bullet describing the July 28, 2015 meeting with USA Gymnastics:

> It should be noted, at various times throughout the meeting, both CDC and ASAC independently directed [USA Gymnastics] to notify local law enforcement if they hadn't already. (see ASAC's handwritten notes, corroborated by SSA … who was in the meeting)

As noted earlier in this report, the Indianapolis ASAC's notes stated only "report to local LE?" under Penny's name and phone number. Moreover, both Penny and the USA Gymnastics Board of Directors Chairman denied to the OIG that anyone at the FBI advised them to report the Nassar allegations to local law enforcement and the Indianapolis CDC told the OIG that he did not recall providing any such guidance to USA Gymnastics or even attending the July 28 meeting.

The highlighted portions included by the Indianapolis ASAC also consisted of the following:

- Adding the Indianapolis CDC's name to the list of individuals who attended the July 28, 2015 meeting with USA Gymnastics. (As noted above, there was no contemporaneous evidence that the Indianapolis CDC attended this meeting; the Indianapolis CDC told the OIG he did not recall attending the meeting; and Penny and the USA Gymnastics attorney identified only Abbott, the Indianapolis ASAC, and the Indianapolis SSA as having attended the meeting.)

- Editing a sentence that said, "[USA Gymnastics] CEO Penny offered to facilitate an interview with [Gymnast 3] since she was scheduled to travel to Indianapolis for a gymnastics competition on 8/16/2015" to "On 8/5/2015 FBI [Indianapolis] was willing to fly agents (and coordinate with FBI LA) to conduct the victim interview there. Rather, [USA Gymnastics] CEO Penny offered to facilitate an interview with [Gymnast 1 and Gymnast 3] since she was scheduled to travel to Indianapolis for a gymnastics competition on 8/16/2015." (The OIG found one email from the Indianapolis SSA to Penny indicating that the Indianapolis SSA would "reach out to [Gymnast 1] and find an amenable time for the interview in [her home state]"; however, we found no evidence the Indianapolis SSA in fact offered to Gymnast 1 or her mother to conduct the interview in Gymnast 1's home state, and Gymnast 1's mother told the OIG that she did not recall the Indianapolis Field Office offering to conduct an interview of Gymnast 1 in her home state. Further, the Indianapolis ASAC stated that the Indianapolis office did not ask the FBI office in Gymnast 1's home state to conduct the Gymnast 1 interview because the Indianapolis office preferred having the Indianapolis SSA conduct the interview given "the sensitivities of this matter" and the Indianapolis SSA's experience. We also found no evidence that Indianapolis agents considered flying to another location to interview Gymnast 3.)

On February 19, 2018, the FBI's INSD commenced its Special Review "to assess the FBI handling of allegations regarding" Nassar, at the request of the FBI Director.

On February 27, 2018, the Detroit SSA and the Indianapolis SSA engaged in a text exchange about the INSD's review. During this exchange, the Detroit SSA texted the Indianapolis SSA: "Plus all I'm gonna say is it is the Indianapolis SSA [sic] fault…. [I] don't even think he did the supposed 71." The Indianapolis SSA replied: "Go ahead…. I couldn't care less at this point." The Detroit SSA told the OIG that, like the February 2017 text message, he sent this text message in jest and acknowledged that sending it was "a poor choice of judgment." Asked whether he ever had concerns that the Indianapolis SSA did not complete the FD-71, the Detroit SSA responded: "No. No…. I don't have any doubt he did it…. Could he have hit delete instead of send? I don't know what the circumstances are. I don't think it was ever intentional." The Detroit SSA further stated that he knew that the Indianapolis SSA "feels horrible about it."

On April 19, 2018, a *Wall Street Journal* reporter emailed a Public Affairs Officer in the FBI's National Press Office seeking comment or clarification on three issues:

> 1. We are reporting the FBI's own response to the investigation (we call it a "failure to act"). Can you confirm that the FBI's Inspection Division is investigating how multiple field offices responded to the allegations, or handled the referrals, about Nassar.
>
> 2. We write, citing emails and people familiar, that after [USA Gymnastics] reported the Nassar matter to the FBI in July 2015, Steve Penny stayed in contact with three FBI agents there, including W.J. Abbott, seeking guidance about how to handle communications about the allegations, including with Nassar himself.
>
> —Mr. Penny also tried to arrange FBI interviews with at least two gymnasts, including [Gymnast 1], whom he called "the most aggrieved party." An in-person meeting never happened, but she was interviewed over the phone by an agent in the [Indianapolis] Field Office.

> —In September, an FBI agent told Mr. Penny the case would be transferred to Detroit, citing venue. The agent said the office would first interview [Gymnast 1] over the phone. Days later, Abbott (we don't name him in the story) wrote to Penny that "pertinent interviews" had been completed, and that the case had been transferred to the FBI and the USAO in Michigan.
>
> DOES THE FBI DISPUTE THIS? DO YOU HAVE A COMMENT?
>
> 3. Neither Indianapolis nor Detroit opened a formal investigation into the matter. Other gymnasts say the FBI didn't reach out to them—only [Gymnast 1]. Nor did the FBI reach out to MSU. In other words, between September 2015 and April/May 2016 (when a case was opened in LA), there was no FBI investigative activity on the matter.
>
> COMMENT? DISPUTE?

The National Press Office Public Affairs Officer emailed the FBI's planned response to the Indianapolis Field Office Public Affairs Officer. The planned response was:

> The FBI holds itself and our operations accountable to the highest of standards. When concerns are raised about our work, we take them seriously, and if warranted, the Bureau's Inspection Division conducts independent and thorough reviews of our actions. In keeping with that commitment, we are reviewing our role in the investigation of Mr. Nassar. Due to the ongoing nature of that review, we are unable to comment further.

The Indianapolis Field Office Public Affairs Officer forwarded the email from the National Press Office Public Affairs Officer to the Indianapolis ASAC, who forwarded it to the Indianapolis SSA. The Indianapolis SSA replied to the Indianapolis ASAC's email stating, "I wish just 1 person would state the obvious…lack of FEDERAL violation" (emphasis in original).

The OIG asked the Indianapolis SSA whether in retrospect he would have done anything differently with respect to the Nassar allegations. He responded: "[I]n retrospect, I would not have done the interview [of Gymnast 1] at all. I would have just shipped it all to…Lansing." In addition, we asked the Indianapolis ASAC whether anyone failed to act or impeded the Nassar investigation in any way, and the Indianapolis ASAC responded: "I can state, from my interactions with SAC Abbott, my own actions, those of [the Indianapolis SSA], absolutely not. We took it seriously, among the labyrinth of other—myriad of other things we were dealing with…we did everything we could at the time with what we had." The Indianapolis ASAC also stated that the Indianapolis SSA was "one of the best agents I've worked with…highly respected, strong leadership skills."

XI. Nassar's Prosecution, Conviction, and Sentencings on State and Federal Charges, and Civil Lawsuits

Nassar was prosecuted both federally and in Michigan state court. On November 21, 2016, Nassar was arrested by the MSUPD and charged by the Michigan Attorney General with multiple counts of criminal sexual conduct in Ingham County and Eaton County, Michigan. The Michigan charges related to Nassar's alleged sexual assault of gymnasts. On December 16, 2016, Nassar was arrested by the FBI on federal child pornography charges. The federal charges related to the 37,000 child pornographic images that Nassar was

found to have possessed as a result of the MSUPD's search of his residence. None of the federal charges related to child sexual tourism, the federal offense that the Indianapolis Field Office had considered investigating and that the Los Angeles Field Office had investigated due to the overseas conduct that Gymnast 1 had described.

On July 11, 2017, Nassar pleaded guilty to Receipt and Attempted Receipt of Child Pornography, Possession of Child Pornography, and Destruction and Concealment of Records and Tangible Objects, and he was sentenced to 60 years in federal prison on December 7, 2017. Nassar admitted to possessing thousands of images and videos of child pornography. According to the Lansing SA's testimony at Nassar's detention hearing, the majority of the images were of children who had not yet attained 12 years of age and some of the children appeared to be as young as 6 or 7.

On November 22, 2017, Nassar pleaded guilty in Michigan state court to seven counts of First Degree Criminal Sexual Conduct, each count involving a different child. An addendum to the plea agreement indicated that there were a total of 115 alleged victims in the criminal case. Gymnasts 1, 2, and 3 were not among the victims listed in the plea agreement or the addendum because Nassar's sexual assault of them did not occur in Michigan. However, they provided victim impact statements at Nassar's sentencing. On January 24, 2018, Nassar was sentenced to 40 to 175 years in Michigan state prison for these seven counts of Criminal Sexual Conduct. On February 5, 2018, Nassar was sentenced in Michigan state court to an additional 40 to 125 years in prison after pleading to guilty to three additional counts of Criminal Sexual Conduct.

In addition, there have been over 50 civil lawsuits related to the allegations against Nassar and others, including Penny, USA Gymnastics, the U.S. Olympic Committee, MSU, Twistars, and Karolyi Training Camps. Among the plaintiffs in these lawsuits were Gymnasts 1, 2, and 3. Several of these lawsuits alleged sexual abuse by Nassar occurring after USA Gymnastics reported concerns about Nassar to the FBI. Based on the OIG's review of civil complaints, approximately 70 or more young athletes were allegedly sexually abused by Nassar under the guise of medical treatment between July 2015, when USA Gymnastics first reported allegations about Nassar to the Indianapolis Field Office, and August 2016, when the MSUPD received a separate complaint of sexual abuse by Nassar. For many of these athletes, the abuse by Nassar began before the FBI first became aware of allegations against Nassar and continued into 2016. For others, the alleged abuse began after USA Gymnastics reported the Nassar allegations to the Indianapolis Field Office in July 2015.

XII. OIG Analysis of the FBI's Handling of the Nassar Allegations

The OIG found that senior officials in the FBI Indianapolis Field Office failed to respond to the Nassar allegations with the utmost seriousness and urgency that the allegations deserved and required, made numerous and fundamental errors when they did respond to them, and violated multiple FBI policies when undertaking their investigative activity. The allegations reported to the Indianapolis Field Office on July 28, 2015, by USA Gymnastics concerned years-long sexual assaults against multiple gymnasts, including underage gymnasts, by a long-time medical professional with USA Gymnastics who was still working for and treating athletes at USA Gymnastics, MSU, Holt High School, and Twistars. USA Gymnastics officials requested the July 28 meeting with the Indianapolis Field Office after conducting an internal investigation that resulted in USA Gymnastics concluding that Nassar had likely sexually assaulted multiple gymnasts. USA Gymnastics provided the findings of its internal investigation to the Indianapolis Field Office on July 28,

along with a thumb drive containing documentary and video evidence. The Indianapolis Field Office also was provided with the names of three gymnasts, all underage at the time of the alleged sexual assaults, who were prepared to describe for the FBI the assaults they alleged were perpetrated on them by Nassar.

Despite the extraordinary seriousness of the Nassar sexual assault allegations, and the possibility that Nassar's conduct could be continuing, the Indianapolis Field Office did not undertake any investigative activity until September 2, 5 weeks later, when Indianapolis Field Office agents telephonically interviewed one of the three athletes. Even then, USA Gymnastics had arranged to have the athlete travel to Indianapolis to be interviewed in person on September 3, an arrangement that the FBI declined at the last minute in favor of a telephonic interview. Further, the Indianapolis Field Office never interviewed the other two gymnasts and then sought to blame USA Gymnastics for its failure to do so. This absence of any serious investigative activity was compounded when the Indianapolis Field Office, following the one interview that it did conduct on September 2, did not transfer the matter to the FBI office (the Lansing Resident Agency) where venue existed for the potential federal crimes being considered, even though it had been advised to do so by the USAO and had told USA Gymnastics that the transfer had occurred. Additionally, the Indianapolis Field Office did not notify state or local authorities of the sexual assault allegations even though it questioned whether there was federal jurisdiction to pursue them. As a result, the Lansing Resident Agency did not learn of the Nassar allegations until over a year after they were first reported to the FBI by USA Gymnastics and the FBI conducted no investigative activity in the matter for more than 8 months following the September 2 interview. During that period of time, as alleged and detailed in numerous civil complaints, Nassar's sexual assaults continued.

Moreover, when the FBI's handling of the Nassar matter came under scrutiny from the public, Congress, the media, and FBI headquarters in 2017 and 2018, Indianapolis officials did not take responsibility for their failures. Instead, they provided incomplete and inaccurate information in response to internal FBI inquiries (and SAC Abbott, after he retired, provided inaccurate information to the media) to make it appear that the Indianapolis Field Office had been diligent in its follow-up efforts. They did so, in part, by blaming others for their own failures. For example, in February 2017, Abbott proposed a draft press statement—which ultimately was not issued by the FBI—that falsely implied that the FBI opened the Nassar investigation following the Indianapolis Field Office's July 2015 meeting with USA Gymnastics and kept in regular communication with USA Gymnastics officials. Similarly, a draft white paper (the "Nassar White Paper") prepared in 2017 and edited in 2018 wrongly suggested that the Indianapolis Field Office's limited efforts to interview the victim gymnasts were due to the reluctance of the gymnasts and interference by USA Gymnastics, rather than the fault of Indianapolis officials. Additionally, the white paper contained some of the same materially false information that was included in the Indianapolis SSA's FD-302 regarding Gymnast 1's alleged statements, which (if true) would have undercut the significance of Gymnast 1's testimony and the potential for federal jurisdiction, as we describe further below. Further, the white paper was edited by the Indianapolis ASAC to inaccurately assert that Indianapolis officials "directed [USA Gymnastics] to notify local law enforcement" during the July 28, 2015 meeting. Lastly, in 2018, Abbott made a number of inaccurate claims to *The New York Times* regarding the FBI's pursuit of the Nassar allegations, including that "there was no delay by the FBI" in handling the investigation.

The OIG also found that, while the FBI Los Angeles Field Office appreciated the utmost seriousness of the Nassar allegations and took numerous investigative steps upon learning of them in May 2016, including interviewing multiple gymnasts and documenting the interviews—in sharp contrast to the failures of the Indianapolis Field Office—the office did not expeditiously notify local law enforcement or the FBI Lansing

Resident Agency of the information that it had learned or take other action to mitigate the ongoing danger that Nassar posed. Indeed, precisely because of its investigative activity, the Los Angeles Field Office was aware from interviewing multiple witnesses that Nassar's alleged abuse was potentially widespread and that there were specific allegations of sexual assault against him for his actions while at the Karolyi Training Camp (also known as the Karolyi Ranch) in Huntsville, Texas. Yet, the Los Angeles Field Office did not contact the Sheriff's Office in Walker County, Texas, to provide it with the information that it had developed until after the MSUPD had taken action against Nassar in September 2016. Nor did it have any contact with the FBI Lansing Resident Agency until after the Lansing Resident Agency first learned about the Nassar allegations from the MSUPD and public news reporting. Given the continuing threat posed by Nassar, the uncertainty over whether the Los Angeles Field Office had venue over the allegations, and the doubt that there was even federal jurisdiction to charge the sexual tourism crime that the Los Angeles Field Office was seeking to pursue, prudence and sound judgment dictated that the Los Angeles Field Office should have notified local authorities upon developing the serious evidence of sexual assault against Nassar that its investigative actions were uncovering. During our review, we found a lack of clarity and understanding concerning DOJ and FBI policies regarding notification of local law enforcement agencies in child exploitation cases. Therefore, we recommend that FBI leadership review their notification and risk mitigation policies in child exploitation investigations to more particularly address the issues we identified in this investigation.

Finally, in addition to the Indianapolis Field Office's most basic failures in its law enforcement responsibilities as described above, we found that officials in that office violated numerous FBI policies in handling the Nassar allegations. As we detail in this part, officials in the Indianapolis Field Office: (1) failed to expeditiously notify state or local authorities or take other steps to mitigate the ongoing threat posed by Nassar; (2) failed to formally document the July 28 meeting with USA Gymnastics; (3) failed to properly handle and document receipt and review of the thumb drive provided by Penny containing videos and PowerPoint slides; (4) failed to document the September 2 witness interview alleging sexual assault by Nassar until over a year after the interview occurred; and (5) failed to transfer the Nassar allegations to the Lansing Resident Agency. While the OIG did not find evidence that these failures by Indianapolis Field Office officials were motivated by an intent to interfere with the Nassar investigation, their actions contributed to a delay of over a year in the proper FBI field office and local authorities initiating investigations that ultimately determined that Nassar had engaged in widespread sexual assaults of over 100 victims and possessed child pornography, led to convictions in both federal and state court, and resulted in jail sentences totaling over 100 years. In addition, we concluded that the Indianapolis SSA ultimately drafted an interview summary 17 months after the interview of Gymnast 1 that contained materially false statements and omitted material information. We further concluded that the Indianapolis SSA, in an effort to minimize or excuse his errors, made materially false statements during two OIG-compelled interviews regarding the interview of Gymnast 1. We also concluded that Abbott made materially false statements to minimize errors made by the Indianapolis Field Office in connection with the handling of the Nassar allegations.

A. The FBI Failed to Expeditiously Notify State or Local Authorities or Take Other Steps to Mitigate the Ongoing Threat Posed by Nassar; the FBI Should Strengthen Its Policies Related to These Concerns

The FBI's Policy on Crimes Against Children requires field offices to, among other things, maintain regular contact with Violent Crimes Against Children Unit (VCACU) personnel and request assistance and guidance whenever necessary; initiate contact with field office victim specialists, as appropriate, for matters related to the Victim Assistance Program; and maintain, in coordination with the VCACU, cooperative relationships

with state and local law enforcement agencies, nongovernmental organizations, and social service agencies. There are many good and important reasons for these requirements, which are intended to protect victims and ensure that child abuse allegations are investigated fully. As stated in the policy, "Investigative partners serve as a force multiplier for investigative matters that have federal, state, and local jurisdiction."

In addition, the protection of victims' rights is enshrined in federal law and DOJ policies. For example, the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) state that the responsible official—in the case of FBI field offices, the field office SAC—should ensure that the identified victims are provided with information about available services at the earliest opportunity after detection of a crime. The FBI's Victim Policy Guide reiterates these guidelines. The responsible official should also ensure that the victim is provided with the "earliest possible notice concerning…the status of the investigation of the crime, to the extent that it is appropriate and will not interfere with the investigation." In addition, FBI policy requires all FBI employees to "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."[82]

In this case, we determined that there were no law enforcement reasons for the Indianapolis Field Office or the Los Angeles Field Office to not promptly notify state and local authorities of the Nassar allegations; to the contrary, we believe that there were strong law enforcement reasons to do so. We found that neither FBI field office had any undercover operations or other sensitive law enforcement activities ongoing that might have argued against notification. This was a historical investigation, not a proactive one, and the FBI's investigative efforts involved trying to gather witness testimony and other corroborating information to determine (1) whether Nassar had performed legitimate medical treatments as he claimed or had engaged in widespread sexual assaults as multiple gymnasts alleged and (2) if he had committed sexual assaults, whether there was sufficient evidence of a federal offense. Under these circumstances, disclosure to state and local law enforcement would have both allowed for steps to be taken to address Nassar's ongoing interactions with gymnasts and served as a "force multiplier" for the investigation. That is particularly true here, where both FBI field offices had serious doubts about the viability of federal jurisdiction (and indeed the only federal charges filed against Nassar related to his possession of child pornography that was discovered during the MSUPD search of his home, not for any of the USA Gymnastics allegations). While we appreciate the concerns certain FBI agents raised with us about not bringing uncorroborated, serious allegations of this nature to other authorities before having an opportunity to assess them or taking steps that could unfairly interfere with and taint a person's employment due to unverified and unsubstantiated criminal allegations, in this case multiple gymnasts had alleged that Nassar had sexually assaulted them and the allegations had been deemed sufficient by USA Gymnastics to instruct Nassar, its long-time medical professional, to not attend future gymnastics competitions while the investigation was ongoing. Under these circumstances, we concluded that the FBI should have promptly informed local authorities for both investigative reasons and to mitigate the ongoing threat posed by Nassar.

[82] We did not conclude that Abbott, the Indianapolis ASAC, or the Indianapolis SSA intentionally violated federal or state criminal laws regarding mandatory reporting of child abuse, e.g., 34 U.S.C. § 20341(a), because (1) the Indianapolis SSA stated that he believed he completed the FD-71 to transfer the allegations to the Lansing Resident Agency for a possible criminal investigation and (2) both Abbott and the Indianapolis ASAC stated that they believed the transfer had happened. In addition, we did not find that anyone from the Los Angeles Field Office violated mandatory reporting laws because that office promptly initiated an investigation.

The FBI Indianapolis Field Office learned in July 2015 about the serious allegations of child sexual abuse of multiple victims by Nassar and that the alleged sexual abuse was potentially widespread and ongoing. In addition, the Indianapolis Field Office was aware that Nassar had treated patients, and potentially victims, in both Texas and Michigan. Despite this knowledge, the Indianapolis Field Office did not coordinate with state or local law enforcement agencies in Texas, Michigan, or elsewhere; victim specialists; nongovernmental organizations; or social service agencies. This was the case, even though the Indianapolis Field Office did not believe that the allegations against Nassar were likely sufficient to support federal jurisdiction. Indeed, even in 2018, in response to media inquiries about the FBI's handling of the allegations, the Indianapolis SSA wrote to the Indianapolis ASAC, "I wish just 1 person would state the obvious…lack of FEDERAL violation." (emphasis in original). Further, neither the Indianapolis SSA nor the Indianapolis ASAC believed that reporting the information to local law enforcement would have impeded the FBI investigation; to the contrary, both claimed that they told Penny at the July 2015 meeting to report the allegations to local law enforcement. However, under FBI policy, if a report to local law enforcement is required, FBI personnel are required to make that report rather than relying on third parties to do so. In this case, that did not occur.

The Los Angeles Field Office in 2016 received the same serious allegations of child sexual abuse by Nassar, including allegations that Nassar sexually abused victims in Texas. Yet, the Los Angeles Field Office also did not reach out to any state or local authorities for several months. It was not until September 2016, after news reporting that the MSUPD had received a separate complaint of sexual abuse by Nassar, that the Los Angeles Field Office contacted the MSUPD, and only later that the Los Angeles Field Office contacted Texas authorities.

According to FBI policy, certain crimes against children matters "already fall within the primary investigative jurisdiction of the FBI" and suspected child abuse or sexual exploitation "in these areas, which are already the subject of an FBI investigation, do not warrant additional reporting unless such reporting is necessary to further protect the child." In this case, we believe that prompt reporting of the Nassar allegations to local authorities was necessary to protect young gymnasts from the threat Nassar presented.

Nevertheless, we found during our investigation that FBI agents were uncertain about the circumstances under which they should report child abuse allegations to local authorities during the pendency of an open FBI investigation. To address this uncertainty, in Chapter 5 we recommend that the FBI reassess its policies to (1) more precisely describe for FBI employees when they are required to promptly contact and coordinate with applicable state and local law enforcement and social service agencies after receiving allegations of crimes against children that potentially fall under state jurisdiction, even when the allegations also potentially fall within the FBI's jurisdiction; (2) require FBI employees to confirm receipt of transfers between field offices of certain categories of complaints, such as complaints of serious or multi-victim sexual abuse; (3) clarify when interviews by Child/Adolescent Forensic Interviewers (CAFI) should be conducted of children and adults reporting allegations of abuse they experienced as children; and (4) describe the circumstances under which victim services should be offered during pre-Assessment or Assessment activities, such as when these phases take longer than expected, when a victim is interviewed as part of these activities, or when an initial complaint is transferred between field offices.

B. The Indianapolis Field Office Failed to Formally Document the July 28, 2015 Meeting; the FBI Should Clarify Its Policies and Provide Training on When an Assessment Should Be Opened and How to Document Pre-Assessment Activities

We concluded that the Indianapolis Field Office should have formally documented the July 28, 2015 meeting with USA Gymnastics, during which the FBI first received the Nassar allegations, in a file within 5 days of receiving the information. FBI policy allows FBI employees to receive information and conduct certain other activities before opening an Assessment or a Preliminary or Predicated Investigation. However, the policy requires FBI employees to document the receipt of such information "as soon as practicable, but not more than five business days from the receipt of information." According to the policy, the documentation must be retained either in a "zero classification file, when no further investigative activity is warranted," or in a relevant open, closed, or new Assessment or Predicated Investigation file. Pursuant to the DIOG, the Special Agent is responsible for creating and maintaining records and files, while supervisors are responsible for ensuring that FBI employees create and maintain records and files. In addition, the FD-71 requires supervisory approval before being serialized, and a supervisor may not self-approve his own activities or work that requires supervisory approval.

Penny stated that during the July 28 meeting he not only described the allegations of sexual misconduct by Nassar, but he also provided the Indianapolis Field Office a memorandum describing the allegations. We reviewed this memorandum and found that it set forth serious allegations of misconduct, including that Gymnast 1 had stated that Nassar digitally penetrated her three times in foreign countries, that the penetration had "no therapeutic effect," that Nassar "might be getting some sexual gratification," and that Nassar also "frequented her with special attention and even gifts," which the Indianapolis SSA later acknowledged is evidence of "grooming" behavior common among sexual abusers. The EC the Indianapolis SSA ultimately drafted in February 2017 similarly contained serious allegations of misconduct, including that Nassar had been "Facebook stalking" Gymnast 2 and that Gymnast 1 told the USA Gymnastics investigator about "hundreds of times" Nassar performed the purported therapy on her, including three occasions when Nassar "digitally penetrated her," that Nassar performed the technique on her in hotel rooms in Japan and England, and that she believed Nassar was "more aggressive with her than others." Penny also provided Indianapolis officials with a thumb drive containing relevant evidence. Based on these facts, we concluded that the FBI Indianapolis Field Office received significant allegations of sexual abuse and possible federal crimes that should have been recorded in a file within 5 days of receipt.

The Indianapolis SSA and the Indianapolis ASAC both took notes during the July 28 meeting. However, they did not create any formal documentation of the meeting or place any documentation in a file. The FBI INSD concluded in its Special Review that the Indianapolis Field Office did not "document" the July 28 meeting, which was a violation of FBI policy. The Indianapolis SSA stated that he did not create formal documentation of the July 28 meeting at the time, or for other subsequent investigative activity, because there was no file under which to place documentation. The Indianapolis SSA also stated that he did not open an Assessment file in the summer or fall of 2015 because he did not believe that the Indianapolis Field Office had venue and he did not believe that he had received sufficient evidence of a federal crime to do so. In addition, the Indianapolis SSA stated that he did not document the July 28 meeting because he did not know whose responsibility it was to document the meeting, as between him, the Indianapolis ASAC, and Abbott, given that all three were supervisors.

We found that the Indianapolis SSA was effectively operating as the case agent for the Nassar matter from July 28 through September 2, the date of the Gymnast 1 interview. As such, under FBI policy it was his responsibility to document the investigative activity in an FBI file and it was the Indianapolis ASAC's and Abbott's responsibility, having in effect assigned the Indianapolis SSA to be the case agent on the matter, to ensure that this occurred. We also did not find persuasive the Indianapolis SSA's claim that he did not formally document the office's investigative activity because he did not have a file into which to place the documentation. Given the Indianapolis SSA's claim that, in his view, there was never sufficient federal jurisdiction in this matter and therefore no basis to open a file, the zero classification file would have been the appropriate location to place the formal documentation. Alternatively, if Indianapolis was still assessing whether there was federal jurisdiction—as they told us was the case and which seems consistent with the fact that the Indianapolis Field Office was later advised to transfer the allegations to the Lansing Resident Agency for further review—the Indianapolis SSA could have opened an Assessment file.[83] The option that the Indianapolis SSA instead chose—not formally documenting either the July 28 meeting or any of the office's investigative activity, even at the time he ceased conducting further investigative activity on September 2 and claimed he was transferring the file to the Lansing Resident Agency—was plainly inconsistent with FBI policy and basic law enforcement training. Thus, we concluded that by failing to document the July 28 meeting the Indianapolis SSA violated FBI Offense Code 1.8, which states that an FBI employee may be disciplined for knowingly or recklessly failing to enforce or comply with an FBI or DOJ operational guideline or policy.

We further determined that Abbott and the Indianapolis ASAC, as the Indianapolis SSA's supervisors, were responsible for ensuring that documentation of the July 28 meeting was completed. However, we found that the Indianapolis SSA likely told Abbott and the Indianapolis ASAC (incorrectly) that he had documented the July 28 meeting and his other investigative activities in an FD-71 that he forwarded to the Lansing Residency Agency in September 2015, because (1) the Indianapolis SSA told the OIG and others that he did so even after the FBI audit determined that he did not do so; and (2) on September 4, 2015, Abbott sent an email to Penny, with a courtesy copy to the Indianapolis ASAC and the Indianapolis SSA, in which he stated that "pertinent interviews have been completed and the results have been provided to the FBI and the USAO in Michigan (Detroit) for appropriate action if any." The Indianapolis ASAC told the OIG that, as an ASAC, he is not responsible for reviewing or approving investigative documentation, such as FD-71s and FD-302s. While the DIOG states that an SSA conducting investigatory work cannot self-approve his own documentation, the DIOG does not specifically require that the SSA's supervisor (ASAC or SAC), as opposed to another SSA, be the one to approve the SSA's documentation. Thus, we did not conclude that Abbott or the Indianapolis ASAC violated FBI policy by failing to review or approve documentation of the July 28 meeting or of the Indianapolis SSA's other investigative activity. We note, however, that had the DIOG been clear that review and approval by the ASAC or SAC were required, compliance by Abbott or the Indianapolis ASAC with such a policy would have required them to ask to review the Indianapolis SSA's FD-71 or other documentation, thereby putting them on notice that such documentation had not been completed.

Based on the foregoing, we found that some of the FBI's policies require further clarification, in particular the FBI's policies as to the type of approval that is required when investigative activity and documentation is completed by an SSA. In addition, we found that the FBI should clarify its policies regarding how long FBI

[83] Indeed, had a file been created, it might have resulted in the FBI identifying the Indianapolis SSA's failure to transfer the matter to the Lansing Resident Agency given that the creation of an Assessment file would have triggered a "justification review" every 30 days after opening the Assessment.

employees may conduct Pre-Assessment activities before either opening an Assessment or ending such activities. We further found that the policies should provide clearer guidance as to how to document Pre-Assessment activities when FBI employees are unable to determine within 5 days that either opening an Assessment or no further investigative activity is warranted.

Therefore, in Chapter 5 we recommend that the FBI clarify its policies regarding the type of approval required (including who is required to provide approval) when a supervisor conducts investigative activity or completes documentation that would require supervisory approval when conducted by a nonsupervisory Special Agent. We further recommend that the FBI clarify its policies as to (1) whether Pre-Assessment activities can continue for more than 5 days; (2) if so, what type of file FBI employees should use to retain documentation received during Pre-Assessment activities that continue for more than 5 days; and (3) if not, whether FBI employees should open an Assessment when the employees need more than 5 days to assess whether there are alleged violations of federal law and which field office has venue. In addition, the FBI should train FBI employees on these policies.

C. The Indianapolis SSA Failed to Properly Handle and Document Receipt of the Thumb Drive

We concluded that the Indianapolis SSA failed to properly handle and document receipt and review of the thumb drive from USA Gymnastics. FBI policies, including the FBI's Field Evidence Management Policy Guide and Digital Evidence Policy Guide, require agents to document the receipt of evidence and to follow special guidelines for imaging, reviewing, and storing digital evidence.

The Indianapolis SSA admitted that, after receiving the thumb drive from USA Gymnastics President and CEO Penny, he copied the contents onto another thumb drive using the Indianapolis ASAC's work computer, returned the original thumb drive to Penny, and retained the thumb drive on which he copied the contents in his office until he was asked for it by the INSD years later. He stated that he believed he was the only FBI employee to review the contents of the thumb drive, and he did not create any documentation related to the thumb drive other than allegedly mentioning it in the FD-71 he claimed he drafted to transfer the Nassar allegations to Michigan. The Indianapolis SSA further told the OIG that information on the thumb drive—PowerPoint presentations of Nassar's medical procedures and videos of Nassar performing his medical procedures on female patients—were "innocuous" and "underwhelming."

The Indianapolis SSA did not claim that his handling of the thumb drive was consistent with the FBI's Digital Evidence Policy Guide, but rather stated that he did not believe the thumb drive was digital evidence. He provided various justifications for his view that the thumb drive was not digital evidence, his handling of the thumb drive, and his failure to document it, including that he did not have a case number or case file under which to document the thumb drive; the thumb drive did not have "evidentiary value"; and the thumb drive was "open source." He stated, "That's open source. That's something that, from my understanding, you could have gone onto YouTube and pulled down, and that's where they got it from, from Nassar."

Contrary to the Indianapolis SSA's assertions, we determined that the thumb drive was digital evidence within the meaning of the FBI's Digital Evidence Policy Guide, which states that digital evidence is data that is "obtained with the intent to assist in proving or disproving a matter at issue in a case or investigation" and is "stored in binary form," such as on a thumb drive. We reviewed the material on the thumb drive and found, although it may not have been criminal in and of itself, that it depicted concerning conduct and language

that had potential relevance to proving that Nassar was not performing a medical procedure and was instead guilty of sexual misconduct. Specifically, the videos showed Nassar placing his bare hands in the area of the groin and buttocks of female athletes, and the PowerPoint presentations used nonmedical terminology, such as "Koutchie," to describe female body parts. Of particular concern, one of the slides contained a video with the caption, "To Boldly Go Where No Man Has Gone Before (in most of our young gymnasts—hopefully)." Even if the Indianapolis SSA did not view this content as potentially incriminating, he was told that Nassar provided the content to defend his actions as a medical technique, which was potentially relevant to disproving Nassar's guilt. The Indianapolis SSA had no reason to take custody of the thumb drive other than to help assess whether there was a criminal violation to investigate and prosecute. Thus, we found that the Indianapolis SSA took the thumb drive with "the intent to assist in proving or disproving a matter at issue in a case or investigation."

We further found the Indianapolis SSA's statement that the thumb drive material was "open source" and could be found on YouTube to be inaccurate. The OIG conducted a detailed online search and did not find evidence that the video content from the thumb drive was on YouTube.com or any other website.[84] However, even if at one time a portion or all of the thumb drive's content was on YouTube or otherwise "open source," we do not find that to be significant because the Indianapolis SSA did not obtain the content from YouTube. Rather, the Indianapolis SSA acknowledged that he obtained the thumb drive from Penny, who had obtained it from Nassar. The Digital Evidence Policy Guide has no exception for digital evidence obtained from a private individual containing content that may also be found through open sources.

Based on our conclusion that the thumb drive was digital evidence, we determined that it should have been handled in accordance with relevant FBI policies. The FBI's Field Evidence Management Policy Guide and Digital Evidence Policy Guide require that the receipt and review of all evidence, including digital evidence, be documented within 10 days of receipt. The Digital Evidence Policy Guide states, "Undocumented, 'off the record' searches or reviews of [digital evidence] are not permitted." The Digital Evidence Policy Guide further states that digital evidence may be imaged only by certified digital evidence personnel, may be reviewed only after the evidence is processed by an authorized method, and must be stored and secured to prevent data or evidence loss. In addition, according to the FBI's Removable Electronic Storage Policy Directive, employees may not connect non-FBI removable electronic storage, such as a thumb drive, to FBI equipment without authorization. Moreover, the FBI Offense Code subjects FBI employees to discipline if they fail to "properly seize, identify, package, inventory, verify, record, document, control, store, secure, or safeguard documents or property under the care, custody, or control of the government."

The Indianapolis SSA violated all of these policies. He failed to document his receipt or review of the thumb drive, connected the thumb drive to the Indianapolis ASAC's computer without special authorization, imaged it without the assistance of certified digital evidence personnel, reviewed the content without using an authorized method, and maintained his only copy of the thumb drive in his office for years, at first in his safe and then his desk drawer. We found this manner of handling the thumb drive to be particularly concerning given that he knew it depicted young females at best undergoing a medical procedure and at worst being sexually abused. Thus, we concluded that the Indianapolis SSA violated the FBI's Field Evidence Management Policy Guide, Digital Evidence Policy Guide, Removable Electronic Storage Policy Directive, and

[84] We identified a website containing videos associated with Nassar that did not include the videos on the thumb drive, but did include four blank rectangles each with the caption "Deleted video." The website did not indicate when the deleted videos were posted, when they were deleted, or what they contained.

FBI Offense Code 1.6 by failing to properly handle, image, document, and store the thumb drive he received from Penny.

D. The Indianapolis SSA Failed to Timely Document the September 2015 Interview of Gymnast 1 and Properly Maintain the Original Interview Notes

We concluded that the Indianapolis SSA failed to timely document his interview of Gymnast 1 as required by FBI policy. According to the 2015 version of the Domestic Investigations and Operations Guide (DIOG), an interview is the questioning of an individual to gain information that is relevant to an Assessment or Predicated Investigation or "otherwise within the scope of FBI authority." An interview must be recorded in an FD-302 "when it is anticipated that the results of an interview may become the subject of court testimony." In addition, the original notes of an interview must be maintained in the 1A section of a file. While the initial questioning of a complainant and re-contacting a complainant to clarify information are not considered interviews, initial complaint information must still be documented as soon as possible, whether it is obtained prior to or during an Assessment.

We found that the September 2, 2015 interview of Gymnast 1 was an interview that should have been recorded in an FD-302. The Indianapolis SSA questioned Gymnast 1 for the purpose of gathering information to either support opening a criminal investigation in Indianapolis or send the information to Michigan for a further assessment of possible federal charges. We found that this questioning was "within the scope of FBI authority." The Indianapolis SSA claimed that he was not trying to obtain an initial disclosure from Gymnast 1 and, therefore, he considered the questioning of Gymnast 1 to be an intake or a clarifying interview of a complainant. However, the Indianapolis SSA acknowledged that he did more than ask Gymnast 1 intake type questions. Rather, the Indianapolis SSA stated that he asked Gymnast 1 probing questions regarding alleged sexual abuse.

Moreover, based on the Indianapolis co-interviewer's and Gymnast 1's testimonies, we concluded that Gymnast 1 disclosed information that had a high probability of becoming the subject of court testimony. Specifically, Gymnast 1 told the OIG that she told the Indianapolis SSA and the Indianapolis co-interviewer that Nassar had "put his fingers in me" and denied that she stated that the treatments were helpful or provided pain reduction. The Indianapolis co-interviewer told the OIG that she believed based on the interview that Gymnast 1 had been sexually assaulted. Further, the Indianapolis co-interviewer wrote in her notes: "Never did it w/ [female] in room. Only touch feet or diff body part that didn't need to be worked on," indicating that Gymnast 1 believed that Nassar was trying to hide from another adult that he had touched her in a nontherapeutic manner. Based on these facts, we concluded that the questioning of Gymnast 1 was an interview that should have been documented in an FD-302 shortly after the interview took place.[85] We further found, as discussed in next section, that the Indianapolis SSA did not document the interview of Gymnast 1 in an FD-71 as he claimed to have done shortly after the interview took place.

[85] Even if we credited the Indianapolis SSA's claim that the telephonic questioning of Gymnast 1 on September 2 was not an interview that should have been documented in an FD-302, we concluded that FBI policy still required that it should have been documented as soon as possible, "but not later than five days from the receipt of the information," as provided for in the DIOG for activities authorized prior to opening an Assessment.

In addition, we found that the Indianapolis SSA violated FBI policy by keeping his interview notes in his desk drawer rather than retaining them in the 1A section of a file as required by FBI policy.

We concluded that by failing to properly document his interview of Gymnast 1 and failing to properly maintain his notes from the interview of Gymnast 1, the Indianapolis SSA violated FBI Offense Code 1.8, which states that an FBI employee may be disciplined for knowingly or recklessly failing to enforce or comply with an FBI or DOJ operational guideline or policy. The significance of the Indianapolis SSA's failure to properly document the Gymnast 1 interview in a timely manner became evident 17 months later, when the Indianapolis SSA created an FD-302 that was materially false, as discussed below.

E. The Indianapolis SSA Exercised Poor Judgment by Conducting Gymnast 1's Interview by Telephone

We concluded that the Indianapolis SSA exercised poor judgment when he decided to conduct the interview of Gymnast 1—an alleged child sexual abuse victim—by telephone on September 2 even though Penny had arranged for Gymnast 1 to be interviewed in person on September 4. Although there is no FBI policy prohibiting telephonic interviews of child sexual abuse victims, we reached this conclusion given that the victim gymnast was scheduled for an in-person interview just 2 days later, the Indianapolis SSA's recognition that it would be difficult to get the victim gymnast to fully disclose any victimization through a telephonic interview, and the Indianapolis SSA's acknowledgment that telephonic interviews of juvenile victims are rare and there is usually a CAFI present. Moreover, witnesses told us that conducting such interviews telephonically was not a best practice and the INSD, as part of its Special Review After Action Report, determined that given Gymnast 1's "age at the time of victimization and the nature of the allegations…it would have been more appropriate to conduct her interview in person and with the assistance of a [Victim Specialist] or CAFI." In Gymnast 1's case, in particular, the telephonic interview appeared to have had a negative impact on the quality of the interview. The Indianapolis co-interviewer stated that Gymnast 1 struggled to describe what had actually happened during the "procedure," and the Indianapolis co-interviewer attributed this to Gymnast 1 being uncomfortable describing sensitive information to two strangers on the telephone.

The Indianapolis SSA provided various reasons for the decision to conduct the interview telephonically, including the "inconvenience of travel involved," "travel complications," the "potential for a more in depth interview in the near future," the "comfort level" of Gymnast 1, scheduling conflicts between Gymnast 1's family and the FBI, direction from his management to interview Gymnast 1 by telephone after his attempts to arrange an in-person interview were unsuccessful, and pressure by USA Gymnastics. However, emails reflect that USA Gymnastics had arranged for an in-person interview of Gymnast 1 in Indianapolis on September 4, just 2 days later than the date the interview ultimately took place. While the Indianapolis SSA claimed that "the delay" in scheduling Gymnast 1's interview was "largely caused by" Penny, we found, to the contrary, that Penny made proactive efforts to schedule the gymnast interviews and the Indianapolis SSA made no efforts to schedule interviews of Gymnasts 2 and 3 and only minimal efforts to schedule the Gymnast 1 interview between the July 28 meeting with USA Gymnastics and the September 2 interview. Specifically, the Indianapolis SSA said that he spoke with Gymnast 1's mother on August 5 and called her twice without success on August 20 but there was no evidence that he made efforts to schedule the interview between those two dates. Given the Indianapolis SSA's awareness of the risks of a telephonic interview, how little time was saved by conducting the interview by telephone, and the delay that had

already occurred, we concluded that the Indianapolis SSA exercised poor judgment in choosing to conduct the Gymnast 1 interview by telephone.

In addition, in Chapter 5 we recommend that the FBI develop a policy describing the circumstances, if any, under which telephonic interviews of alleged child abuse victims, including adults who had allegedly been victims of abuse as children, are appropriate.

F. The Indianapolis SSA Included False and Misleading Statements in, and Omitted Material Information from, the FD-302 of Gymnast 1's Interview That He Drafted in February 2017

The OIG determined that the February 2017 FD-302 created by the Indianapolis SSA 17 months after his interview of Gymnast 1 contained at least two materially false statements and at least one material omission. An FBI employee violates FBI Offense Code 2.3, False/Misleading Information–Investigative Activity, by "[k]nowingly providing false or misleading information in an investigative document; or signing or attesting to the truthfulness of the information provided in an investigative document in reckless disregard of the accuracy or completeness of the pertinent information contained therein." The FD-302 is an investigative document subject to FBI Offense Code 2.3. During the Indianapolis SSA's interviews with the OIG, the Indianapolis SSA attested to the truthfulness of the February 2017 FD-302, which included the following two materially false statements and one material omission.

First, the Indianapolis SSA wrote in the February 2017 FD-302 that Gymnast 1 stated that the "treatments" by Nassar involved Nassar "inserting finger(s) in her rectum." Gymnast 1 told the OIG that Nassar inserted fingers into her vagina and did not insert fingers into her rectum. She stated that during the Indianapolis Field Office interview she may have stated only that Nassar "put his fingers in me" and may not have specified where, but that she did not state during the interview that Nassar placed his fingers in her rectum. Specifically, when the OIG asked Gymnast 1 whether Nassar ever placed his fingers inside her rectum, she responded, "Not inside, like no." She further stated that Nassar "would do this thing where he sort of had his fingers there, like on top of, but I never said that he put his fingers inside my rectum." The Indianapolis co-interviewer's testimony to the OIG was consistent with that of Gymnast 1. The Indianapolis co-interviewer stated that Gymnast 1 described "digital penetration" by Nassar but did not use the word "rectum." The Indianapolis co-interviewer further stated that she looked to the Indianapolis SSA for clarification and he was the one who indicated that Gymnast 1 was referring to her rectum. In addition, neither the Indianapolis SSA's nor the Indianapolis co-interviewer's contemporaneous notes contain the word "rectum" or any other words that would indicate that Nassar penetrated Gymnast 1's rectum. Moreover, Gymnast 1's testimony to the OIG that Nassar penetrated her vagina, not her rectum, is consistent with what she told both the USA Gymnastics private investigator before the Indianapolis Field Office's interview and the Los Angeles Field Office after the Indianapolis Field Office's interview. Thus, we do not believe that Gymnast 1 changed her account of Nassar's sexual abuse over time. Based on these facts, we credited Gymnast 1's testimony that she did not tell the Indianapolis SSA that Nassar penetrated her rectum.

Second, the Indianapolis SSA wrote in the FD-302 that Gymnast 1 stated that the procedure performed by Nassar "did provide some pain reduction." Gymnast 1 denied that she said this and told the OIG that the procedure did not help her. Again, Gymnast 1's testimony to the OIG was consistent with what Gymnast 1 told the USA Gymnastics private investigator before the Indianapolis SSA's interview and the Los Angeles

Field Office after the Indianapolis SSA's interview. Moreover, neither the Indianapolis SSA's nor the Indianapolis co-interviewer's contemporaneous notes indicated that Gymnast 1 stated that Nassar's procedure provided "some pain reduction." Thus, we credited Gymnast 1's testimony that she did not tell the Indianapolis SSA that Nassar's procedure alleviated her pain.

We found that the above two statements in the FD-302 were material because Nassar claimed that he was using a legitimate medical technique that involved massaging or applying pressure to a ligament in the rectal area. Thus, statements regarding whether Nassar inserted his fingers into Gymnast 1's rectum or vagina, and whether the technique provided some pain reduction, were highly relevant to rebutting or supporting Nassar's criminal defense.

We also found that the Indianapolis SSA omitted from the FD-302 the statements by Gymnast 1 that Nassar had given her gifts and snuck her treats. Gymnast 1 consistently provided this testimony to multiple interviewers, the Indianapolis co-interviewer's notes reflected this testimony, and the Indianapolis SSA did not deny the testimony. Moreover, the Indianapolis SSA admitted that the testimony about gifts and sneaking treats was evidence of "grooming" behavior that is common among child sexual abusers. Thus, we concluded that this omission was material. We further concluded that the Indianapolis SSA's explanation for omitting the information—"the way she was approaching it was…with gymnastics being like a pressure cooker, these adults were mean, and he was nice to the girls"—was not believable. Specifically, given that the purpose of the interview was to discuss Gymnast 1's allegations of sexual assault by Nassar, we did not find it credible that the Indianapolis SSA, who was an experienced child sexual abuse investigator, believed that Gymnast 1 was providing the information about gifts and treats to show that Nassar was nicer than other adults.

Finally, we concluded that the Indianapolis SSA included these two materially false statements in, and omitted the material information from, the FD-302 with reckless disregard for the accuracy of the FD-302. The Indianapolis SSA wrote the FD-302 17 months after the interview took place; drafted it despite being told by the FBI office then handling the investigation (the Lansing Resident Agency) to not do so; admitted that he relied mostly on his memory and his limited notes, rather than the Indianapolis co-interviewer's notes, to write it; admitted that he did not ask the Indianapolis co-interviewer to review the FD-302 despite that being his normal procedure; and did not include a disclaimer in the document regarding how long after the event he was writing it.

We found that the Indianapolis SSA should have recognized that his memory may have faded when he wrote the FD-302 so long after the event and that his incomplete and ambiguous interview notes were of little assistance to him in refreshing his recollection. This should have been particularly evident to the Indianapolis SSA given that he told the OIG that he recognized that what Gymnast 1 told him was "far different" from what she told the Los Angeles Field Office and that is what prompted him, at least in part, to write the FD-302 in February 2017. Despite believing that his undocumented recollection of Gymnast 1's testimony was materially different from a contemporaneously documented interview of Gymnast 1 by another FBI agent, the Indianapolis SSA did not consult with his co-interviewer to ensure that his memory was accurate, failed to carefully review his co-interviewer's notes prior to drafting the FD-302, and did not ask his co-interviewer to review the FD-302 after he drafted it, consistent with his usual practice. Had he done so, the Indianapolis co-interviewer might have refreshed his memory that Gymnast 1 did not specifically allege rectal penetration, but rather that this was an assumption of the Indianapolis SSA and the Indianapolis co-interviewer. Indeed, given the paucity of interview notes, the significant lapse in time since

the interview, and the Indianapolis SSA's awareness that a contemporaneously documented FBI interview of Gymnast 1 was inconsistent with his memory, we agree with the Lansing Resident Agent in Charge that it should have caused the Indianapolis SSA to consider whether it was even appropriate for him to prepare an FD-302 in February 2017.

The Indianapolis SSA's failures and shortcuts had detrimental consequences—the Indianapolis SSA wrote an FD-302 that was materially false, offensive to the victim, and could have jeopardized then-ongoing or future criminal investigations by providing false information to bolster Nassar's defense.[86] In addition, we found that the Indianapolis SSA's recklessness undermined the integrity of the FBI in a high-profile investigation.

G. The Indianapolis SSA Failed to Transfer the Nassar Allegations to the Lansing Resident Agency

We concluded that the Indianapolis SSA did not transfer the Nassar allegations to the Lansing Resident Agency as he should have done given his conclusion that the Indianapolis Field Office did not have venue to handle the matter and as he was advised to do by the USAO. The Indianapolis SSA claimed that he completed the FBI form (an FD-71) to transfer the complaint to the Lansing Resident Agency shortly after his September 2 interview of Gymnast 1, and he attributed the fact that the FD-71 later could not be located to a technical error with the FBI's Sentinel electronic case management system. For several reasons, described below, we did not credit the Indianapolis SSA's explanation and concluded that he did not complete the paperwork as he claimed.

First, there was no evidence in Sentinel or other FBI electronic systems that the Indianapolis SSA had created an FD-71. An FBI Sentinel expert explained to the OIG that he was not aware of an FD-71 ever being "lost" in Sentinel. He stated that, if an agent completes an FD-71 and does not save it, the document would not be uploaded into Sentinel and that, if an FBI employee creates and saves an FD-71 but does not route it to the proper field office or other location, the FD-71 might be "orphaned." However, if an FD-71 is orphaned, there would still be a record of it in Sentinel. The Indianapolis SSA told the OIG that he saved the purported FD-71 in Sentinel because he drafted it over the course of multiple days. Thus, there should have been a record of the FD-71 in Sentinel. The FBI conducted forensic searches for both orphaned and non-orphaned FD-71s created by the Indianapolis Field Office regarding the Nassar allegations to no avail.

Second, we determined that if the Indianapolis SSA actually had sought to transfer the Nassar allegations to the Lansing Resident Agency, he also would have sent the thumb drive provided by USA Gymnastics. We found that the thumb drive contained both videos of Nassar performing his purported medical technique on female athletes without gloves and PowerPoint slides of Nassar explaining his technique using nontechnical and possibly incriminating language. Based on this content, we determined that a review of this thumb drive would have been necessary for any law enforcement agency attempting to assess whether Nassar had engaged in criminal conduct as opposed to a legitimate medical technique.

The Indianapolis SSA claimed that he did not send the thumb drive because it was his only copy and he believed that agents at the Lansing Resident Agency would ask him for it if they wanted to see it. We found

[86] While Gymnast 1's allegations were not used as the basis for the Michigan state or federal prosecutions against Nassar, Michigan prosecutors informed the OIG that they relied on Gymnast 1's allegations as "prior bad act" evidence and Gymnast 1 ultimately provided a victim impact statement during Nassar's sentencing.

this explanation lacking in credibility. The Indianapolis SSA had already made a copy of the original thumb drive so that he could return the original to USA Gymnastics. Thus, he well knew that he could have made another copy (or had another copy made consistent with the policies identified in Part XII.C) and sent it to the Lansing Resident Agency. In addition, as noted above, this was important evidence and we determined that any law enforcement agency would have had to review the thumb drive to assess whether Nassar had engaged in criminal conduct; thus, we did not find it credible that the Indianapolis SSA did not send the thumb drive because he believed that the Lansing agents would have asked for it if they wanted it.

Third, the Indianapolis co-interviewer told us that the Indianapolis SSA did not ask for her notes of the Gymnast 1 interview until February 2017, when the Indianapolis SSA drafted the FD-302, and we identified a text message that corroborated the Indianapolis co-interviewer's account. The Indianapolis co-interviewer further told the OIG that she never saw or reviewed the purported FD-71, although she had participated in the interview of Gymnast 1, which the Indianapolis SSA claimed he described in the FD-71. We determined that, if the Indianapolis SSA had completed the FD-71 and included a description of Gymnast 1's interview in September 2015, he would have asked for the Indianapolis co-interviewer's notes at that time and asked the Indianapolis co-interviewer to review it, consistent with what he described to us as his usual practice.[87]

Fourth, no one beside the Indianapolis SSA told the OIG that they saw the FD-71. For example, the Indianapolis ASAC indicated that he never saw it. The Indianapolis SSA stated that either the Indianapolis ASAC approved the FD-71 or he (the Indianapolis SSA) self-approved the document. However, the DIOG does not permit supervisors to self-approve their own documents.

Based on these facts, we concluded that the Indianapolis SSA never completed the FD-71 to transfer the Nassar allegations to the Lansing Resident Agency. This led to a delay of over a year in serious allegations of sexual abuse by Nassar being investigated by the proper FBI field office and local authorities.

H. The Indianapolis SSA Made False Statements During His OIG-Compelled Interviews

The OIG concluded that the Indianapolis SSA made false statements during both his September 3, 2020 and his February 4, 2021 OIG-compelled interviews regarding his September 2, 2015 interview of Gymnast 1, in violation of both 18 U.S.C. § 1001 and FBI Offense Code 2.6, Lack of Candor–Under Oath.

On September 3, 2020, the Indianapolis SSA falsely told the OIG that during the Gymnast 1 interview he and the Indianapolis co-interviewer "specifically asked, was there any other touch—did he touch anywhere besides, like did he touch your vagina? And she said no." This was the first time the Indianapolis SSA or anyone else claimed that Gymnast 1 denied vaginal penetration by Nassar. Neither the Indianapolis co-interviewer's nor the Indianapolis SSA's contemporaneous notes reflected that Gymnast 1 denied vaginal penetration, and the Indianapolis co-interviewer told the OIG that she did not recall Gymnast 1 specifically describing where Nassar had inserted his fingers. In addition, the Indianapolis SSA did not write in his own February 2017 FD-302 that Gymnast 1 denied vaginal penetration. Moreover, we found that Gymnast 1 stated multiple times—both before and after her interview with the Indianapolis Field Office—that Nassar

[87] While the Indianapolis SSA did not ask the Indianapolis co-interviewer to review the FD-302 in February 2017, when he drafted it, the Indianapolis SSA told us that he did not follow his usual practice at that time because "this was after the fact" and "we were also in limbo, where it wasn't going anywhere."

had penetrated her vagina with his fingers on numerous occasions and Gymnast 1 denied to the OIG that she stated otherwise to the Indianapolis SSA. Gymnast 1 told the OIG that she may have told the Indianapolis SSA and the Indianapolis co-interviewer only that Nassar "put his fingers in me," but they did not ask her to clarify where he inserted them.

On February 4, 2021, the Indianapolis SSA furthered this false narrative by additionally claiming that he and the Indianapolis co-interviewer specifically asked Gymnast 1 whether Nassar penetrated her "anywhere else, orally, vaginally" or touched her breasts. The Indianapolis SSA told the OIG that Gymnast 1 responded by giggling and saying, "no, it was my butt," which he understood to be a reference to her rectum. Again, none of this information was contained in the Indianapolis SSA's or the Indianapolis co-interviewer's contemporaneous notes or the Indianapolis SSA's 2017 FD-302. In addition, Gymnast 1 told the OIG that she did not tell the Indianapolis SSA and the Indianapolis co-interviewer that Nassar penetrated her rectum, because that is not what happened. Moreover, the Indianapolis co-interviewer stated that it was the Indianapolis SSA, not Gymnast 1, who indicated to the Indianapolis co-interviewer that Gymnast 1 was referring to rectal penetration.

We found the Indianapolis co-interviewer's and Gymnast 1's statements about what happened during the September 2, 2015 interview to be credible because they were generally consistent with one another, they were consistent over time, and there was no apparent reason for either of them to fabricate. Specifically, the Indianapolis co-interviewer's testimony that she did not hear Gymnast 1 clarify where Nassar penetrated her—whether vaginally or rectally—was consistent with Gymnast 1's account that she stated only that Nassar "put his fingers in me." The Indianapolis co-interviewer's statements were consistent over time in that she told both the INSD and the OIG that Gymnast 1 never used the word "rectum" during the September 2 interview. Gymnast 1's statements were also consistent over time—she provided similar accounts about the alleged abuse by Nassar to the USA Gymnastics private investigator, Los Angeles Special Agent 1, and the OIG. We found that the Indianapolis co-interviewer had no reason to lie because her only involvement with the Nassar allegations was the September 2, 2015 interview and the evidence indicated that it was the Indianapolis SSA's responsibility, not hers, to transfer the matter to the Lansing Resident Agency or take other further action in connection with the allegations. We similarly found that Gymnast 1 had no motivation to lie. Rather, we found that she was a victim whose motivation was concern about how her allegations and the allegations of others regarding sexual abuse by Nassar were handled by the FBI.

We did not credit the Indianapolis SSA because his account became more embellished over time and was inconsistent with other evidence. In addition, we found that he had a motivation to misrepresent Gymnast 1's statements during the September 2015 interview in order to minimize the significance of his failure to transfer the Nassar allegations to the Lansing Resident Agency, his failure to properly handle the thumb drive, and his failure to properly document Gymnast 1's telephonic interview. The Indianapolis SSA knew that he could face serious consequences, including at a minimum administrative discipline for his failures. Indeed, the Indianapolis SSA knew from an email exchange with the FBI SSA on TDY with the headquarters VCACU (TDY SSA) that an FBI senior official wanted "to reconcile why [the Los Angeles Field Office] thought there was a chargeable federal offense and [the Indianapolis Field Office] did not" and that a more significant disclosure to the Los Angeles Field Office would help explain that discrepancy. The Indianapolis SSA therefore had a motivation to make it appear that the information that Gymnast 1 provided did not support a criminal violation and would not have advanced the Lansing Resident Agency's investigation.

In addition, the Indianapolis SSA provided several excuses for his conduct that hinged on Gymnast 1 not making a significant disclosure of sexual abuse during the September 2, 2015 interview. For example, the Indianapolis SSA told the OIG that he did not contact local law enforcement because he had received "fourth-hand information" and he "wouldn't even know what to go to law enforcement about." This excuse was bolstered by the Indianapolis SSA's false assertions that Gymnast 1 specifically denied vaginal penetration, stated that Nassar had only penetrated her "butt," and stated that the procedure alleviated her pain. The Indianapolis SSA's false assertions about the Gymnast 1 interview also bolstered the Indianapolis SSA's argument that he was not required by FBI policy to document the interview in an FD-302. The Indianapolis SSA stated that he did not draft an FD-302 of the Gymnast 1 interview because Gymnast 1 did not disclose any information that constituted a violation of federal law. Since the DIOG requires an interview to be recorded in an FD-302 when "it is anticipated that the results of [the] interview may become the subject of court testimony," the Indianapolis SSA had a motivation to make false statements about what Gymnast 1 disclosed during her interview. Finally, the Indianapolis SSA admitted that, if Gymnast 1 had made a disclosure of significant sexual abuse during her telephonic interview, he would have handled things differently. He stated that he would have contacted an FBI agent in the field office where Gymnast 1 was living at the time and had a CAFI interview her there. Again, the Indianapolis SSA's false statements bolstered his excuse for failing to take appropriate actions.

We further concluded that these false statements were material to the OIG's investigation of the Indianapolis Field Office's handling of the Nassar investigation because the nature of Gymnast 1's disclosures during her interview impacted the OIG's assessment of the steps the Indianapolis SSA and others should have taken next. In addition, the Indianapolis SSA's false statements had potential negative ramifications for other legal proceedings. As with the false and misleading statements and omissions in the FD-302 described above, these false statements supported Nassar's defense that he did not sexually abuse Gymnast 1 and other athletes but rather was conducting a legitimate medical technique. Moreover, we concluded that the Indianapolis SSA lied about the Gymnast 1 interview in an effort to help himself at the expense of Gymnast 1, whom he portrayed as inconsistent and immature to support his false narrative.

I. SAC Abbott Made False and Misleading Statements Regarding the Indianapolis Field Office's Handling of the Nassar Allegations During His OIG-Compelled Interviews

We concluded that Abbott made multiple false statements about the Indianapolis Field Office's handling of the Nassar allegations during his OIG interviews, in violation of 18 U.S.C. § 1001.[88]

Abbott claimed in two separate OIG interviews that he communicated with both the Detroit SAC and the Los Angeles SAC about the Nassar allegations and that he sent ECs to both field offices in the fall of 2015. However, both the Detroit SAC and the Los Angeles SAC denied that they had any such conversations with Abbott and stated that they did not learn about the Nassar allegations until 2016, after the Los Angeles Field Office received a separate referral from USA Gymnastics. Indeed, the Los Angeles SAC told the OIG that he did not even begin his position in Los Angeles until March 2016. In addition, we found no evidence of a 2015 EC or any other documentation reflecting that the Indianapolis Field Office had communications with

[88] We also concluded that Abbott made false statements regarding his application for a job with the U.S. Olympic Committee and related matters. These false statements are addressed in Chapter 4.

either the Detroit Field Office or the Los Angeles Field Office regarding the Nassar allegations in 2015, other than the Indianapolis SSA's communications with the Detroit SSA.

Abbott further claimed that he learned in the fall of 2015 of an administrative error in referring the Nassar allegations to Los Angeles but that the issue was corrected quickly after he "lost a gasket" about the failure. He further stated that the failure resulted in only about a month delay in the investigation of Nassar. Both the Indianapolis SSA and the Indianapolis ASAC stated that the only administrative delay was the missing FD-71 to the Lansing Resident Agency that came to their attention in 2016. The OIG found no evidence to support that the Indianapolis Field Office ever referred or attempted to refer the Nassar allegations to the Los Angeles Field Office or that any administrative error delayed such a referral.

We concluded that these false statements were material because they impacted the OIG's ability to assess whether the Indianapolis Field Office was responsible for the delay in investigating the Nassar allegations. Abbott's testimony reflected an effort to shift blame for the delay away from the Indianapolis Field Office, where it belonged. We further concluded that Abbott's false statements were knowing and intentional. Abbott had a motivation to be untruthful. As SAC, Abbott was ultimately responsible for the Indianapolis Field Office's failure to ensure that serious allegations of sexual abuse by Nassar were investigated. As such, he had an incentive to falsely claim that he communicated with other field offices, took the administrative error seriously, resolved it quickly, and did what was necessary to ensure that the Nassar allegations were investigated. In addition, even after being told that his testimony was inconsistent with the testimony of other witnesses and the records we reviewed, Abbott continued to insist that his recollection was accurate and denied that there was any reason he would have a faulty memory.

Chapter 4: Abbott's Attempt to Obtain Employment with the U.S. Olympic Committee While the Nassar Investigation Was Ongoing

As described in Chapter 3, in July 2015 USA Gymnastics President and Chief Executive Officer (CEO) Stephen D. Penny, Jr., contacted the Special Agent in Charge (SAC) of the FBI Indianapolis Field Office, W. Jay Abbott, to request an FBI investigation into alleged sexual abuse by then-USA Gymnastics physician Lawrence Gerard Nassar. Following a meeting between the FBI and USA Gymnastics on July 28 to refer the Nassar sexual abuse allegations, a meeting both Abbott and Penny attended, the Indianapolis Field Office conducted one interview of a USA Gymnastics athlete on September 2. Two days later, on September 4, 2015, Abbott emailed Penny, stating, "it is my understanding that pertinent interviews have been completed and the results have been provided to the FBI and the [U.S. Attorney's Office] in Michigan (Detroit) for appropriate action if any." Later that same month, as detailed below, Penny contacted Abbott to inform him about a possible high-level job opportunity with the U.S. Olympic Committee.[89] Abbott expressed his interest in the opportunity, engaged with Penny in discussions about the position over the next several months, and in February 2017 unsuccessfully applied for the position. During this entire period of time, the Nassar investigation remained ongoing with the FBI.

I. Abbott Communicates with Penny About a U.S. Olympic Committee Job Opportunity in September and October 2015

On September 26, 2015, Penny texted Abbott about a potential job with the U.S. Olympic Committee that he believed Abbott might be interested in pursuing after he retired from the FBI. Penny texted Abbott, "I have the absolutely perfect retirement gig for you," and Abbott replied: "Sounds like an interesting discussion. Hope all is well." Later that same day, Penny texted Abbott: "I think you would be more than intrigued. I go to San Jose next week and get home Thursday. Would be worth having that beer. All the best. Pays good too."

Both Abbott and Penny told the OIG, and text messages showed, that on October 2, 2015, Abbott and Penny met at a bar, Red Habanero, for a beer. In arranging the meeting, Penny texted Abbott: "Red Habanero. Just past 96th street burgers on the right. What is your beer of choice?" and Abbott replied, "Michelob or whatever is cold."

Abbott told the OIG that he consulted with the Chief Division Counsel of the Indianapolis Field Office (Indianapolis CDC) before agreeing to meet with Penny for a beer. He stated that he asked the Indianapolis CDC, "What the hell? Should I even do this?" The Indianapolis CDC, however, told the OIG that Abbott did not consult with him prior to meeting Penny at the bar.

[89] The U.S. Olympic Committee and USA Gymnastics are separate but affiliated entities, and USA Gymnastics receives its designation as the national governing body for amateur gymnastics from the U.S. Olympic Committee. According to Penny's publicly available page on the website Linkedin.com, as President and CEO of USA Gymnastics Penny "manage[d] relationships with and report[ed] to the Board of Directors, U.S. Olympic Committee" and was responsible for "accountability" to the U.S. Olympic Committee. In addition, Penny told the OIG that, before becoming the CEO of USA Gymnastics in 2005, he served as the Senior Vice President of USA Gymnastics from 1999 to 2005. He stated that in that role he "oversaw a variety of marketing and public relations and business development relationships with the U.S. Olympic Committee."

Abbott further told the OIG that, when Penny asked to meet with him on this and other occasions, he knew that Penny "didn't want to meet with me just because he thought I was a nice guy." Rather, Abbott assumed that Penny wanted to meet with him "to gain insights into the investigation in some way." Abbott told the OIG that he nonetheless met with Penny because Penny was the President of USA Gymnastics, "so I didn't think I could blow him off." Abbott further told the OIG that he met with Penny because he was trying to facilitate an FBI interview with one of Nassar's victims and believed that Penny could help in that effort. However, as described above, the Indianapolis Field Office interviewed Gymnast 1 on September 2 and Abbott emailed Penny on September 4 to inform him that the Nassar matter was being transferred to Detroit, both nearly a month before Penny's invitation to meet Abbott at a bar. Moreover, the OIG found no evidence that the Indianapolis Field Office made any efforts to interview any witnesses following the September 2 interview of Gymnast 1.

Abbott told the OIG that, while he was with Penny at the bar on October 2, Penny mentioned a potential job as the U.S. Olympic Committee Chief Security Officer. Abbott further told the OIG that he was already aware of this opportunity from discussions with the then-FBI Deputy Director and other FBI colleagues. Abbott stated that he "thanked [Penny] very much for the offer" but did not apply for the job because "it was too much of a conflict of interest." As described below, contrary to Abbott's statement to the OIG, our investigation determined that Abbott did, in fact, apply for the job.

According to a proffer from Penny's attorneys to the OIG, the purpose of the October 2 meeting at the bar was to make Abbott aware of a U.S. Olympic Committee job opportunity as Chief Security Officer, because there was a rumor that the then-Chief Security Officer (Chief Security Officer) was retiring.[90] Penny's attorneys told us that Penny thought Abbott might be interested in the position and that Penny was impressed by Abbott. Penny's attorneys further told us that Penny saw the meeting with Abbott as a "simple, straight forward, networking meeting," and Penny did not see a conflict because Abbott had already notified him via the September 4 email that the Indianapolis Field Office was no longer involved in the Nassar matter. According to the proffer, Penny told the Chief Security Officer that Abbott might be a good replacement for him but Penny took no additional actions in support of Abbott being hired by the U.S. Olympic Committee.

Abbott told the OIG that after the October 2 meeting he discussed Penny's mention of the U.S. Olympic Committee job opportunity with the Indianapolis CDC and that they joked that even though Abbott was already aware of the job from other sources, the fact that Penny raised it meant that Abbott could never apply.

However, the Indianapolis CDC told the OIG that Abbott never told him that Penny and Abbott had discussed a potential job and that he was surprised when he read in the news media that they had done so. The Indianapolis CDC told the OIG that Abbott did consult with him after the investigation was no longer being handled by the Indianapolis Field Office because, according to what Abbott told the Indianapolis CDC, Abbott and Penny "had met socially one time" for a beer or coffee and thereafter Penny was contacting Abbott repeatedly and "pushing him [Abbott] to have another social meeting." According to the Indianapolis CDC, Abbott stated that he did not want to meet with Penny socially. The Indianapolis CDC stated that he advised Abbott not to meet with Penny; warned Abbott to avoid "even the appearance of impropriety"; and,

[90] Penny participated in one voluntary interview with the OIG. Penny declined to participate in a second voluntary interview but agreed to his attorneys providing a proffer to the OIG.

as discussed in Chapter 3, participated in two conference calls with Abbott and Penny in which Abbott referred Penny to the Los Angeles Field Office.

The Indianapolis SSA told the OIG that he was unaware that Abbott had met Penny at a bar. The Indianapolis SSA stated that he recalled seeing an email from Abbott to Penny, in which Abbott wrote something like "it was good catching up the other night. Thanks for the coffee or thanks for the beer, whatever it was." However, the Indianapolis SSA said he might have seen that email in the media. Similarly, the Indianapolis ASAC stated that, during the time he was involved with the assessment of the Nassar allegations, he was unaware of Abbott socializing with Penny. He stated that he learned later that Abbott met Penny "for lunch or something like that" but that it would not be unusual for Abbott to meet someone, such as a U.S. Attorney, for lunch.

On October 20, at 5:01 p.m., Abbott wrote an email to Penny about a local TV news interview he had participated in and suggested that Penny watch it. The news interview concerned violent crime and was unrelated to the Nassar allegations. Abbott further wrote:

> Also, just another quick "thank you" for the beer and conversation a few weeks ago. I very much appreciate what you did. Though I realize there would be many qualified applicants, the position with the [U.S. Olympic Committee] is truly a tantalizing and interesting possible opportunity post-[FBI] that I continue to think about.

Later that evening, at 10:56 p.m., Abbott sent Penny an email sharing the video from his local TV news interview. Penny wrote back: "This is great. Thanks for sharing. I am going to forward to [the Chief Security Officer]. Great piece. Thanks for everything you do," and Abbott replied, "Thanks Steve!"

II. Abbott's Nassar-Related Communications with Penny in 2016 and 2017 and Continued Communications Related to the U.S. Olympic Committee Job Opportunity

As discussed in Chapter 3, even after Abbott's September 4, 2015 email to Penny telling Penny (inaccurately) that the Indianapolis Field Office had transferred the matter to the FBI's Detroit Field Office, Abbott and Penny continued to have Nassar-related communications. Abbott told the OIG that, after the Indianapolis Field Office was no longer investigating the Nassar allegations, Penny "constantly" called Abbott to ask about the case. Abbott stated that in response to these contacts in 2016 he "directed" Penny to the Los Angeles Field Office (which had opened an investigation of Nassar in May 2016 after USA Gymnastics reported the matter to that office).

Despite this testimony, we found instances in which Abbott invited continued communication with Penny. In addition, we found that some of these case-related communications occurred close in time to discussions related to Abbott applying for the position with the U.S. Olympic Committee. Moreover, Abbott had these conversations notwithstanding the advice that he had been given by the Indianapolis CDC to not discuss the investigation with Penny. For example:

- On July 14, 2016, at 7:28 a.m., Penny emailed Abbott and told him that USA Gymnastics had made a report to the Los Angeles Field Office and that it was his understanding that a number of interviews

were taking place. Abbott wrote back at 11:31 a.m.: "Interesting and much appreciated. Do you have time for a call?" Later that same day, at 5:30 p.m., Penny wrote an email to the Chief Security Officer about Abbott, stating: "I wanted to let you know that I found a great guy who might be the perfect fit for your role when you decide to leave. His name is Jay Abbott and he is the senior agent in charge at the FBI office in Indianapolis. Let me know if you would like to speak with him." The Chief Security Officer wrote back to Penny that his position would be advertised "in June – August 2017…you can tell him to watch for the advertisement next year."

- On September 21, 2016, at 1:16 p.m., after Penny contacted Abbott about the Nassar story "breaking" in the news (on the previous day, the Michigan State University Police Department had executed a search warrant at Nassar's residence), Abbott emailed Penny to tell him that he would have the Los Angeles SAC call Penny. Later that same day, at 10:42 p.m., Abbott emailed Penny: "Hopefully you have chatted with LA's FBI SAC by now re our conversation last night. Catch up with you tomorrow during business hours if you desire." Penny replied at 10:48 p.m.: "Just landed in Denver. Will call you shortly if that is okay. Am I in trouble?"

- On November 21, 2016, at 9:45 p.m., Penny wrote to Abbott, "Nassar has been arrested." Less than 10 minutes later, Penny again wrote to Abbott: "Can I call you in a little bit. Apparently there is a press conference tomorrow. Wondering how it might portray us."

- On February 1, 2017, at 2:11 p.m., Penny sent an email to Abbott and other FBI officials requesting that the FBI confirm that USA Gymnastics had reported the Nassar allegations to the FBI in July 2015. In the email, Penny wrote that pending *60 Minutes* and *Wall Street Journal* reports would suggest that USA Gymnastics did not actually report the Nassar allegations to the FBI in July 2015. Later that same day, at 5:24 p.m., Abbott forwarded Penny's February 1 email to the Detroit SAC and the Los Angeles SAC seeking their concurrence to propose that the FBI issue the following statement:

  The FBI initiated an investigation into Dr. Lawrence Gerard Nassar based on information provided by officials at USA Gymnastics on July 28, 2015. The FBI has remained in contact with officials at USA Gymnastics during the investigation. The investigation is still pending and there is no other information available at this time.

  One minute later, Abbott wrote to Penny: "am conferring with my colleagues in Detroit and Los Angeles to determine the appropriate response. Will have an update for you in the next day or two at the latest." Penny wrote back at 6:11 p.m.: "Thanks Jay. This is critical right now." As discussed in Chapter 3, Abbott's proposed media statement had factual inaccuracies and the FBI ultimately made the decision not to make Abbott's proposed statement to the media.

- On February 16, 2017, at 9:51 p.m., Penny wrote to Abbott: "If you have a minute to call, please do. We have published our timeline of reporting." Early the next morning, on February 17 at 2:53 a.m., Penny emailed Abbott a link to the publicly available U.S. Olympic Committee job posting. Abbott responded to this email 5 minutes later, at 2:58 a.m., by writing: "Thanks Steve. Some colleagues also advised me of the job posting today. I'm also aware of your timeline reporting and will be happy to discuss further tomorrow morning." Later that same day, at 8:38 p.m., Penny wrote to

Abbott: "The us attorney is not helping. This is getting much worse for me." Abbott wrote back at 8:48 p.m., "Sorry to hear that re the [Assistant U.S. Attorney]. He must have his reasons."

III. Abbott Applies for the U.S. Olympic Committee Job in February 2017 but Does Not Receive an Interview for It

On February 17 and 21, 2017, Abbott emailed two different personal acquaintances from his FBI email account stating that he was applying and had applied for the U.S. Olympic Committee position, respectively. In the February 21 email, Abbott stated, "[The Chief Security Officer] and I spoke a long time ago but as you previously alluded to, he likely will favor recommending a USSS candidate."

According to records provided by the U.S. Olympic Committee, on February 20, 2017, Abbott registered for an account on the system the U.S. Olympic Committee uses to process job applications. Abbott uploaded his resume for the Chief Security Officer position and listed the then-FBI Deputy Director, a U.S. Attorney, and a detective as personal references. Abbott did not receive an interview for this position, and the U.S. Olympic Committee did not check his references.

On July 17, the U.S. Olympic Committee sent to Abbott's personal email account an email stating that the U.S. Olympic Committee had made a selection for the Chief Security Officer position. The email stated, "Although you were not selected for this specific opportunity, we appreciate your interest and were pleased to have had the opportunity to review your resume."

The OIG interviewed the Chief Security Officer, who had served as the Chief Security Officer for the U.S. Olympic Committee for approximately 25 years until his retirement in 2018. He explained that he was involved in the process to vet applicants to fill his position after he retired but that he did not remember the name Abbott and did not believe they had ever interacted.

IV. Abbott Considers Applying for the USA Gymnastics President Job in March 2017

On March 21, 2017, following Penny's resignation as USA Gymnastics President and CEO on March 16, 2017, Abbott emailed a friend from his FBI email account expressing an interest in applying for the "USA Gymnastics (USAG) President vacancy." In the email, Abbott noted that Penny had "resigned" the previous week. Abbott provided background regarding Penny and the Nassar allegations:

> For Background: [USA Gymnastics (USAG)] President Steve Penny resigned last Thursday. It is alleged he 'mis-handled' child sexual abuse reports provided to him. I know about this matter well. As reported in the media, Mr. Penny met with my division in late July 2015 to report the allegations against Dr. Larry Nasser [sic]. Dr. Nasser [sic] was eventually arrested in Michigan on child sexual exploitation charges. Steve Penny and USAG are being sued civilly over their handling of child sexual abuse reports within USAG. As a result, I've been very careful not to make comment on the matter due to the ongoing prosecution of Dr. Nasser [sic] in Michigan and the civil suit against Mr. Penny and USAG.

In the email, Abbott went on to describe his "conflict":

> Here's my conflict: Given the circumstances, I certainly do not believe it would be appropriate for me to contact Steve Penny regarding the position. [I've spoken with Steve on several occasions regarding the Nasser [sic] case allegations and it's clear to me that Steve was well-intentioned but now finds himself in a difficult circumstance.] I also believe it may be in "poor taste" or "unprofessional" to directly contact [the USA Gymnastics Board of Directors Chairman] regarding the position given the circumstances. However, I do believe that if [the USA Gymnastics Board of Directors Chairman] became aware of my availability and interest in the position that he too would see the potential benefits of my leadership to USAG. [The first and fourth brackets were in the original email.]

Abbott then asked: "Do you know of anyone who could alert [the USA Gymnastics Board of Directors' Chairman] of my availability and interest in the position? Any other advice or thoughts?"

We found no evidence that Abbott in fact applied for the USA Gymnastics President position.

V. Abbott Denies Applying for the U.S. Olympic Committee Job During OIG Interviews

During the OIG's first audio recorded interview of Abbott under oath on May 1, 2019, we asked Abbott questions about what action he took in relation to the U.S. Olympic Committee job, and he responded as follows:

> Q: And did you ever take any action related to that job?
>
> A: None.
>
> Q: Apply for?
>
> A: No.
>
> Q: Send a resume?
>
> A: Never applied for. Never—sent a resume. In fact, when the accusation first came up, I was worried—my God, I'd thrown a number of resumes out there, was that one I had done? And I went back and checked, no, absolutely not.

In a follow-up audio recorded interview under oath on June 23, 2020, we told Abbott that we had received information that was contrary to his prior testimony that he did not apply for the U.S. Olympic Committee position and asked him whether there was any reason he would not have been able to remember certain events or provide accurate information. Abbott responded that there was not, and he continued to deny that he applied for the U.S. Olympic Committee position. Abbott stated that, when Penny initially raised the issue of the U.S. Olympic Committee job with him, he gave a "non-committal response," because "we needed his cooperation." Abbott told the OIG that he did not apply because he believed that applying for the U.S. Olympic Committee position would have been a "conflict of interest." In addition, Abbott stated that he had seen "media excerpts from an email exchange that Steve Penny and I had, that has been portrayed as a

smoking gun of that Steve Penny and I were colluding to protect him from the investigation in some manner, and to secure a job for me, which is the furthest thing from the truth."[91]

After being told by the OIG that we identified an email he received thanking him for his interest in the U.S. Olympic Committee position, Abbott stated that he did not "recall" applying for the position and suggested that "Penny submitted something on my behalf or something." When we told Abbott that we identified evidence showing that he had registered for an account with the U.S. Olympic Committee, he stated that the confusion could be due to his application in approximately 2014 for a position as Director of USA Cycling. He stated that he had to place his resume on a website for the USA Cycling position, which has "got to be" why he had an account registered with the U.S. Olympic Committee. He then stated with respect to the U.S. Olympic Committee position:

> I just—I don't ever recall putting in for it or pursuing it. So, I mean, I'm surprised by that because, you know, I was putting in for a myriad of things, and I guess it's possible, but I just don't recall that being one of them…it's possible that early on, maybe I've put in for it, but then just determined not to pursue it.

Both Abbott and Penny through his counsel denied any exchange of anything of value or any discussion about such exchange. The OIG did not locate any evidence of any such conduct.

VI. OIG Analysis of Abbott's Alleged Conflict of Interest and False Statements

We concluded that Abbott exercised extremely poor judgment and violated FBI policy when, without prior authorization from a designated agency ethics official, he communicated with Penny about a potential job opportunity with the U.S. Olympic Committee, an entity with which Penny had professional connections, while Abbott continued to discuss the FBI's Nassar investigation with Penny and took an active role in conversations about the FBI's public statements regarding Penny's and USA Gymnastics' handling of the Nassar allegations. Abbott should have known—and we found that he in fact did know—that this conduct would raise questions regarding his impartiality and create the appearance of a conflict of interest. Making matters worse, Abbott applied for the position with the U.S. Olympic Committee and then falsely denied that he did so during two OIG interviews, in violation of 18 U.S.C. § 1001.[92]

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[91] In 2019, news articles referenced the October 20, 2015 email, described above, in which Abbott told Penny that he was continuing to "think about" applying for the position with the U.S. Olympic Committee, which he described as a "truly a tantalizing and interesting possible opportunity."

[92] The OIG did not identify any evidence that Abbott received or was offered anything of value from Penny in exchange for taking official action in, impeding, or delaying the FBI's investigation of Nassar, and thus we found no basis to conclude that Penny or Abbott may have committed bribery. See 18 U.S.C. § 201.

In addition, we did not conclude that Abbott unlawfully accepted a gift from Penny when he met Penny at a bar and Penny bought him a beer. Generally, a federal employee shall not accept a gift from a person "seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by the individual's employing entity" or "whose interests may be substantially affected by the performance or nonperformance of the individual's official duties." 5 U.S.C. § 7353(a); see also 5 C.F.R. § 2635.101(b)(4). However, as long as the gift is not being accepted in return for the employee being "influenced in the performance of any official act,"

Continued

A. Abbott Exercised Extremely Poor Judgment by Failing to Seek Guidance from an Ethics Official Regarding His Continued Involvement in the Nassar Investigation While Consulting with Penny About a U.S. Olympic Committee Job Opportunity

We concluded that Abbott exercised extremely poor judgment when he did not consult with a designated agency ethics official, consistent with 5 C.F.R. § 2635.502 ("Section 502"), before (1) engaging in ongoing conversations with Penny regarding a position with the U.S. Olympic Committee, an entity with which Penny had close connections; while at the same time (2) continuing to engage in case-related communications with Penny about the Nassar investigation and being actively involved in conversations about the FBI's response to media inquiries regarding the FBI's and USA Gymnastics' handling of the Nassar allegations.

Section 502(a) of the ethics regulations provide that a federal government employee should not participate in a particular matter involving specific parties where the employee knows that the matter is "likely to have a direct and predictable effect on the financial interest of…a person with whom [the employee] has a covered relationship" and "where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality," without receiving authorization from a designated agency ethics official. 5 C.F.R. § 2635.502(a).[93] In addition, Section 502(a)(2) states that "an employee who is concerned that circumstances other than those specifically described in [Section 502(a)] would raise a question regarding his impartiality should use the process described in [Section 502] to determine whether he should or should not participate in a particular matter." 5 C.F.R. § 2635.502(a)(2). The process described in Section 502 involves the employee seeking guidance from a designated agency ethics official and receiving authorization to continue working on the matter that presented the appearance of conflict. 5 C.F.R. § 2635.502(d).

We determined that, while Section 502(a) did not apply to these circumstances because Abbott did not have a "covered relationship" with Penny within the meaning of Section 502 (he was not, for example, Penny's relative or seeking a business, contractual, or other financial relationship with Penny), Section 502(d) was

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there is an exception for "gifts having an aggregate market value of $20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person…does not exceed $50 in a calendar year." 5 C.F.R. §§ 2635.204(a), 2635.205(a). We did not identify evidence that Abbott accepted anything more than one beer from Penny.

[93] Section 2635.502 does not apply to an employee who is seeking employment within the meaning of 5 C.F.R. § 2635.603. However, we did not find that Abbott was "seeking employment" within the meaning of that provision because Abbott was not seeking a position with Penny or his organization (USA Gymnastics) and we did not find evidence that Penny was serving as an agent for the U.S. Olympic Committee at the time of the conversations. 5 C.F.R. § 2635.603(b). We determined that Abbott's conduct raised a question about his impartiality, not because he was "seeking employment" with Penny but rather because of the appearance that was created when Penny appeared to help Abbott in his pursuit of employment with the U.S. Olympic Committee, with which Penny had close connections, while Abbott was discussing the Nassar investigation with Penny and proposed responding to media inquiries in a way that would help Penny.

For similar reasons, the criminal conflict of interest provision, 18 U.S.C. § 208(a), did not apply to Abbott's conduct. That provision makes it a criminal offense to participate "personally and substantially" in a particular matter in which "any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest" without advance approval. 18 U.S.C. § 208(a); see also 5 C.F.R. § 2635.402(a) (reiterating the criminal prohibition of 18 U.S.C. § 208(a)). Abbott never negotiated with or had an arrangement for employment with the U.S. Olympic Committee. Rather, he applied for a job there on February 20, 2017, and was ultimately rejected.

applicable because a reasonable person with knowledge of the relevant facts would question Abbott's impartiality. As a result, we concluded that Abbott exhibited extremely poor judgment by failing to act on the appearance of a conflict presented by continuing to participate in discussions related to the Nassar investigation while engaging in simultaneous conversations with Penny about the U.S. Olympic Committee employment opportunity and the Nassar investigation and failing to invoke the process described in Section 502(d).

This lapse in judgment was particularly egregious because the facts here demonstrate that Abbott was well aware of the possibility that his impartiality could be called into question. Abbott told the OIG that he had concerns about Penny after Penny initially reported the Nassar allegations in July 2015. Specifically, Abbott stated that he and his colleagues had "suspicions" about whether Penny was "fully cooperating" and that Abbott questioned, "What's he protecting?" Abbott further stated that, when Penny asked him to meet for a beer, he believed that Penny wanted to meet with him "to gain insights into the investigation in some way." Abbott told the OIG that he knew applying for the U.S. Olympic Committee position would pose a conflict of interest and that he and the Indianapolis CDC joked that, even though Abbott was already aware of the job from other sources, the fact that Penny raised it meant that Abbott could never apply.[94] Despite these concerns, Abbott—knowing that USA Gymnastics and the U.S. Olympic Committee were substantially related organizations and that Penny had connections at the U.S. Olympic Committee—met Penny for a beer and to discuss the U.S. Olympic Committee job opportunity. Abbott then continued to have communications with Penny about both the Nassar investigation and Abbott's interest in a job with the U.S. Olympic Committee while being aware that Penny appeared willing to put in a good word on Abbott's behalf. Indeed, in an October 2015 email exchange Abbott shared with Penny a news interview in which Abbott participated, and Penny told Abbott he would forward the interview to the individual at the U.S. Olympics Committee who was retiring and whose job Abbott was seeking.

Over the course of the approximately 17 months between meeting with Penny at a bar and applying for the U.S. Olympic Committee job, Abbott had periodic case-related communications with Penny, often using a very personal tone. We found that these communications were particularly problematic from an appearance perspective because they were sometimes interspersed with communications about the U.S. Olympic Committee job opportunity. Abbott even communicated about the Nassar investigation in the very same email exchange with Penny in which he discussed the position with the U.S. Olympic Committee. On February 16, 2017, at 9:51 p.m., Penny wrote to Abbott: "If you have a minute to call, please do. We have published our timeline of reporting." Early the next morning, on February 17 at 2:53 a.m., Penny emailed Abbott a link to the publicly available U.S. Olympic Committee job posting. Abbott responded to this email 5 minutes later, at 2:58 a.m., by writing: "Thanks Steve. Some colleagues also advised me of the job posting today. I'm also aware of your timeline reporting and will be happy to discuss further tomorrow morning." Just 3 days later, Abbott applied for the U.S. Olympic Committee position.

Perhaps most concerning, in the midst of conversations about the U.S. Olympic Committee job opportunity, Abbott communicated with Penny regarding Penny's concerns about media reporting and Penny's concern

[94] Abbott also told the OIG that he met with Penny in order to facilitate an interview of one of Nassar's victims. However, we found that Abbott's recollection in this regard was inaccurate because the interview of Gymnast 1 had already taken place on September 2 and there were no subsequent efforts by the Indianapolis Field Office to interview any of Nassar's victims or take other investigative steps related to Nassar. Moreover, on September 4, 2015, Abbott sent Penny an email in which he indicated that he believed that the Nassar matter had been transferred to Michigan.

that he was "in trouble" in connection with his handling of the Nassar allegations. Nearly simultaneous with a February 1, 2017 communication from Penny expressing concern that pending *60 Minutes* and *Wall Street Journal* reports would suggest that USA Gymnastics did not actually report the Nassar allegations to the FBI in July 2015, Abbott proposed to his FBI colleagues a media statement that would place Penny and USA Gymnastics in a positive light. Although part of Abbott's proposed media statement that concerned USA Gymnastics—that USA Gymnastics had reported the Nassar allegations to the FBI in July 2015—was accurate, other parts of it—that the FBI "initiated an investigation" based on the information provided by USA Gymnastics in July 2015 and that the FBI had "remained in contact with officials at USA Gymnastics during the investigation"—were inaccurate. Moreover, the proposed media statement as a whole presented an appearance problem. By February 2017, USA Gymnastics and Penny had already been sued civilly for sexual harassment, negligence, and other charges in connection with their alleged failure to report or concealment of sexual abuse allegations against Nassar. Thus, Penny had a financial, reputational, and possibly even a liberty interest in the FBI issuing a statement to the media that would place Penny and USA Gymnastics in a positive light.

In sum, Abbott wanted a job with the U.S. Olympic Committee and Penny at least appeared to have the ability to help him. At the same time, Penny sought assistance from the FBI in the form of helpful public statements that could counter media reporting and civil allegations that he and USA Gymnastics had concealed the Nassar allegations, and Abbott made an effort to make that happen. We concluded that a reasonable person in Abbott's position should have known—and indeed Abbott did know, as shown by his admission that applying for the Olympic Committee job posed a conflict of interest—that his actions would cause a reasonable person with knowledge of the relevant facts to question his impartiality. Moreover, subsequent events showed that Abbott's admitted concern about a conflict of interest was well founded. In 2019, news articles reported Abbott's communications with Penny about the U.S. Olympic Committee position in connection with concerns about the FBI's and USA Gymnastics' handling of the Nassar investigation. As Abbott stated, these articles "portrayed [the email exchanges] as a smoking gun that [Penny and Abbott] were colluding to protect [Penny] from the investigation, and to secure a job for [Abbott]."

In these circumstances, Abbott, at a minimum, should have sought guidance from a designated agency ethics official, consistent with Section 502. Abbott did not seek guidance about his involvement in the Nassar matter while having conversations with Penny about the U.S. Olympic Committee job or about ultimately applying for the job. Moreover, even when Abbott sought general guidance from the Indianapolis CDC regarding how to handle his interactions with Penny, he did not follow the Indianapolis CDC's guidance. In particular, the Indianapolis CDC stated that he advised Abbott not to discuss the Nassar investigation with Penny and warned Abbott to avoid "even the appearance of impropriety." Abbott, as his emails demonstrate, repeatedly ignored this advice.[95]

Based on these facts, we concluded that Abbott exercised extremely poor judgment by failing to consult with a designated agency ethics official, consistent with the process set forth in Section 502.

[95] Indeed, even when Abbott did refer Penny to the Los Angeles Field Office as suggested by the Indianapolis CDC, he also invited further communication with Penny. For example, in September 2016, Abbott told Penny that he would have the Los Angeles SAC call Penny but also stated to Penny, "Catch up with you during business hours tomorrow if you desire."

B. Abbott Created an Appearance of a Conflict of Interest in Violation of FBI Policy

The FBI policy regarding creating an appearance of a conflict of interest, as stated in the FBI Ethics and Integrity Program Policy Directive and Policy Guide, specifically provides that senior FBI officials should avoid "contacting a firm concerning future employment opportunities if the firm is prominently involved with the FBI in an issue of major public importance, since doing so creates the impression that the firm has undue influence with the FBI." We concluded that Abbott created an appearance of a conflict of interest in violation of FBI policy.

The Nassar investigation was undoubtedly an "issue of major public importance" that involved not only USA Gymnastics but also the U.S. Olympic Committee, given that the U.S. Olympic Committee was connected to both USA Gymnastics and the gymnasts who were victimized by Nassar. While the FBI's Nassar investigation was ongoing, Abbott contacted both of these entities—USA Gymnastics in the form of emails to Penny and the U.S. Olympic Committee in the form of a job application—regarding a future employment opportunity with the U.S. Olympic Committee. Moreover, Penny, USA Gymnastics, and the U.S. Olympic Committee all had potential financial and reputational interests in both the outcome of the Nassar investigation and how the FBI responded to media inquiries related to the Nassar investigation, due to potential civil liability and, for Penny, potential criminal exposure. Therefore, we concluded that Abbott created an appearance of a conflict of interest in violation of FBI policy.

C. Abbott Made False Statements to the OIG During Two Interviews

We concluded that Abbott made false statements about his application for a position with the U.S. Olympic Committee during OIG interviews on May 1, 2019, and June 23, 2020, in violation of 18 U.S.C. § 1001. Abbott denied that he had applied for a position with the U.S. Olympic Committee during both OIG interviews despite clear evidence to the contrary. Abbott's statements about whether he applied for the U.S. Olympic Committee job were material to the OIG's investigation of whether the FBI Indianapolis Field Office was improperly influenced in connection with its handling of the Nassar matter. In addition, we found that Abbott's false statements could not be explained by a memory lapse and were, thus, made knowingly and willfully for several reasons.

First, Abbott, by his own admission, was concerned that applying for a job with the U.S. Olympic Committee posed a conflict of interest with the FBI's handling of the Nassar investigation, which was a high profile, sensitive matter. Under this circumstance and given the risk involved, we found it highly unlikely that Abbott forgot about his ultimate decision to apply for the job.

Second, Abbott had numerous communications with multiple individuals for well over a year about applying for the U.S. Olympic Committee job. Specifically, on October 20, 2015, Abbott wrote to Penny that the position was "truly a tantalizing and interesting possible opportunity post-[FBI] that I continue to think about"; on February 16, 2017, Abbott wrote to Penny thanking him for sending him the job posting; on February 17, 2017, Abbott emailed an individual stating that he was applying for the position; on February 20, 2017, he applied for the position; on February 21, 2017, Abbott emailed an individual stating that he had applied for the position; and on July 17, 2017, Abbott received an email from the U.S. Olympic Committee notifying him that he had not been selected.

Third, Abbott acknowledged that he was aware of "media excerpts from an email exchange that Steve Penny and I had, that has been portrayed as a smoking gun that Steve Penny and I were colluding to protect him from the investigation, and to secure a job for me." We determined that the email exchange to which Abbott was referring was the October 20, 2015 email in which he told Penny that he was continuing to "think about" applying for the position with the U.S. Olympic Committee, which he described as a "tantalizing" opportunity. This email appeared in the media in 2019. Abbott's awareness of this email during his OIG interview is further evidence that Abbott could not have forgotten about the actions he took with respect to the U.S. Olympic Committee position.

Fourth, even after the OIG confronted him with the fact that the OIG had obtained documentary evidence confirming that he applied, Abbott acknowledged only that it was "possible" that he had applied for the position but forgot doing so and then suggested other possible explanations—that either Penny applied on his behalf or that the confusion somehow resulted from his application with USA Cycling in 2014. These possible explanations, however, do not account for the multiple communications Abbott had with others about applying for the Chief Security Officer position for well over a year, as described above, and the evidence that Abbott registered for an account with the U.S. Olympic Committee's job application system in 2017. In addition, even while acknowledging the possibility that he applied, Abbott minimized his conduct, stating that he might have put in for the position "early on" but "determined not to pursue it." Again, this acknowledgment does not account for the many communications showing that Abbott was actively pursuing the position through early 2017.

Finally, we determined that Abbott had a motivation to lie about the application with the U.S. Olympic Committee because he admitted that applying for the position posed a conflict of interest. Indeed, as noted above, Abbott acknowledged that media reports had portrayed the October 20, 2015 email as "a smoking gun that Steve Penny and I were colluding to protect [Penny] from the investigation, and to secure a job for me." Thus, Abbott was well aware that acknowledging he had applied for the position could have exposed him to additional public criticism and potential criminal or administrative liability.

Chapter 5: Conclusions and Recommendations

The OIG found that senior officials in the FBI Indianapolis Field Office failed to respond to the Lawrence Gerard Nassar allegations with the utmost seriousness and urgency that the allegations deserved and required, made numerous and fundamental errors when they did respond to them, and failed to notify state or local authorities of the allegations or take other steps to mitigate the ongoing threat posed by Nassar. Moreover, when the FBI's handling of the Nassar matter came under scrutiny from the public, Congress, the media, and FBI headquarters in 2017 and 2018, Indianapolis officials did not take responsibility for their failures. Instead, they provided incomplete and inaccurate information in response to internal FBI inquiries (and Indianapolis Field Office Special Agent in Charge (SAC) W. Jay Abbott, after he retired, provided inaccurate information to the media) to make it appear that the Indianapolis office had been diligent in its follow-up efforts and they did so, in part, by blaming others for their own failures.

The OIG also found that, while the FBI Los Angeles Field Office appreciated the utmost seriousness of the Nassar allegations and took numerous investigative steps upon learning of them in May 2016, including interviewing multiple gymnasts and documenting the interviews—in sharp contrast to the failures of the Indianapolis Field Office—the office did not expeditiously notify local law enforcement or the FBI Lansing Resident Agency of the information that it had learned or take other action to mitigate the ongoing danger that Nassar posed.

In addition to the Indianapolis Field Office's most basic failures in its law enforcement responsibilities, as described above, we found that officials in that office violated numerous FBI policies in handling the Nassar allegations. Specifically, the Indianapolis Field Office:

- failed to formally document the July 28 meeting with USA Gymnastics during which the Nassar allegations were first received;
- failed to properly handle and document receipt and review of the thumb drive provided by USA Gymnastics President and Chief Executive Officer Stephen D. Penny, Jr., containing videos and PowerPoint slides from Nassar;
- failed to document the September 2 witness interview alleging sexual assault by Nassar until over a year after the interview occurred; and
- failed to transfer the Nassar allegations to the Lansing Resident Agency.

These failures by Indianapolis officials contributed to a delay of over a year in the proper FBI field office and local authorities initiating investigations that ultimately determined that Nassar had engaged in widespread sexual assaults of over 100 victims and possessed child pornography, led to convictions in both federal and state court, and resulted in jail sentences totaling over 100 years. In addition, we concluded that the Indianapolis SSA ultimately drafted an interview summary 17 months after the interview of Gymnast 1 that contained materially false statements and omitted material information. We further concluded that the Indianapolis SSA, in an effort to minimize or excuse his errors, made materially false statements during two OIG-compelled interviews regarding the interview of Gymnast 1. We also concluded that Abbott made

materially false statements to minimize errors made by the Indianapolis Field Office in connection with the handling of the Nassar allegations.

In addition, we concluded that Abbott violated FBI policy and exercised extremely poor judgment under federal ethics rules when he, without prior authorization from a designated agency ethics official, communicated with Penny about a potential job opportunity with the U.S. Olympic Committee, an entity with which Penny had professional connections, while Abbott continued to discuss the FBI's Nassar investigation with Penny and took an active role in conversations about the FBI's public statements regarding Penny's and USA Gymnastics' handling of the Nassar allegations. Abbott should have known—and we found that he in fact did know—that this conduct would raise questions regarding his impartiality and create the appearance of a conflict of interest. Making matters worse, Abbott applied for the position with the U.S. Olympic Committee and then falsely denied that he did so during two OIG interviews.

Finally, we identified shortcomings in FBI policy that should be further assessed to ensure that the FBI can more effectively handle these types of matters. Therefore, we recommend that the FBI:

1. Reassess its policies to:

    a. more precisely describe for FBI employees when they are required to promptly contact and coordinate with applicable state and local law enforcement and social service agencies after receiving allegations of crimes against children that potentially fall under state jurisdiction, even when the allegations also potentially fall within the FBI's jurisdiction;

    b. require FBI employees to confirm receipt of transfers between field offices of certain categories of complaints, such as complaints of serious or multi-victim sexual abuse;

    c. clarify when interviews by Child/Adolescent Forensic Interviewers (CAFI) should be conducted of children and adults reporting allegations of abuse they experienced as children; and

    d. describe the circumstances under which victim services should be offered during Pre-Assessment or Assessment activities, such as when these phases take longer than expected, when a victim is interviewed as part of these phases, or when an initial complaint is transferred between field offices.

2. Clarify its policies as to:

    a. the type of approval required (including who is required to provide approval) when a supervisor conducts investigative activity or completes documentation that would require supervisory approval when conducted by a nonsupervisory Special Agent;

    b. whether Pre-Assessment activities can continue for more than 5 days;

c. if so, what type of file FBI employees should use to retain documentation received during Pre-Assessment activities that continue for more than 5 days; and

d. if not, whether FBI employees should open an Assessment when the employees need more than 5 days to assess whether there are alleged violations of federal law and which field office has venue.

3. Develop a policy describing the circumstances, if any, under which telephonic interviews of alleged child abuse victims, including adults who had allegedly been victims of abuse as children, are appropriate.

4. Train FBI employees on the policies discussed in the first three recommendations and any changes made to them.

The OIG has completed its investigation and is providing this report to the FBI for appropriate action.

Appendix: The FBI's Response

U.S. Department of Justice

Federal Bureau of Investigation

Inspection Division *Washington, D.C. 20535 - 0001*

July 13, 2021

Dear Inspector General Horowitz:

Thank you for the opportunity to review the Office of the Inspector General's report of its Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastic Physician Lawrence Gerard Nassar (Report). We accept in full the OIG's recommendations and take especially seriously the findings that certain FBI employees did not respond to allegations of sexual abuse adequately and with the utmost urgency in 2015 and 2016. At Director Wray's direction, the FBI has taken immediate action to ensure that the failures of the employees outlined in the Report do not happen again.

Beginning with the findings that an Indianapolis Field Office supervisory special agent failed to properly document complaints involving sexual abuse, mishandled evidence, and failed to report allegations of abuse, the actions and inactions identified by the OIG are completely unacceptable, and were violations of the policies in effect at the time of the initial complaint in 2015. This employee is no longer a supervisor. And, upon learning that the OIG determined that the individual made false statements and mishandled the allegations of sexual abuse, the FBI took immediate action to ensure that the individual is not working on FBI matters. The individual will remain in this status pending delivery of the OIG's results of the investigation and the ensuing adjudication by the FBI's Office of Professional Responsibility (OPR).

Likewise, the findings related to the former special agent in charge of the Indianapolis Field Office, who retired in January 2018, reflect a violation of the FBI's longstanding code of conduct and the ethical obligations of FBI employees, especially senior officials. The extent of his behavior as he sought employment is particularly troubling, as is the conclusion that he made false statements to the OIG. Simply put, the behavior described in the Report is not representative of the FBI or of our tens of thousands of retirees and current employees. To the extent the review reveals additional misconduct by FBI employees, we will similarly act promptly as warranted upon OPR's adjudication.

In addition to dealing with individual employees who failed to carry out their duties, Director Wray initiated a review of applicable policies, procedures, training, and programs prior to receiving the Report to strengthen the FBI's response and handling of allegations such as those involved here.

First, the FBI will implement improvements to the handling of certain complaints. The relevant section of the FBI's Domestic Investigations and Operations Guide (DIOG) will be updated to clarify the documentation and retention requirements for information regarding sexual abuse and sexual assault received prior to the opening of an investigation or the determination that further investigative activity is warranted. The DIOG will also be modified to mandate a 30-day recurrent review period for this type of information. Additional policy language will be added to emphasize that supervisors may not approve documentation that they drafted themselves. In addition, we will evaluate the FBI's technical infrastructure to identify improvements to enhance oversight capabilities that improve the visibility of information handling prior to the opening of an investigation.

Second, to enhance accountability, we will incorporate new language and documentation requirements into the DIOG for allegations of crimes against children to ensure that such complaints are handled expediently. Recognizing that law enforcement partnerships are essential, these improvements will focus on information dissemination practices to our partners. We will also implement improvements related to transferring complaints and investigations between field offices when they involve allegations of crimes against children.

Third, the FBI's Victim Services Division has thoroughly reviewed the report to ensure that our support of victims is robust and reflective of the critical obligation to care for individuals who have been traumatized, abused, and victimized. To that end, the FBI will update the DIOG to ensure that telephonic interviews of minor victims are only permitted in limited, exigent circumstances. The FBI also recently issued an updated policy guide for handling matters related to victims, including child victims or individuals who were minors at the time of the alleged criminal activity. With respect to training, the FBI has updated its annual training to ensure that FBI personnel are aware of their obligation to report child abuse and it is now mandated for all employees. In addition, the FBI is developing new mandatory supervisor training for all Headquarters and field supervisors who manage investigations related to the above.

As we introduce the changes that Director Wray ordered, we do not lose sight of the victims that suffered abuse and mistreatment because of potential missed opportunities to disrupt the further criminal behavior of the now-convicted Nassar in 2015 and 2016. The actions and inactions of the FBI employees described in the Report are inexcusable and a discredit to this organization and the values we hold dear. At the FBI, we consider our mission to protect and serve the American people to be the highest responsibility. The conduct and facts in the Report are appalling, and we appreciate your continued efforts to examine it and recommend further improvements and safeguards.

Sincerely,

Douglas A. Leff
Assistant Director