

SOMEWHERE OVER THE RAINBOW:
FROM JUDY GARLAND TO SIMONE BILES, A HISTORY OF EMOTIONAL,
PHYSICAL, AND SEXUAL ABUSE OF AMERICA'S MOST FAMOUS WOMEN

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TABLE OF CONTENTS

Introduction	3
The History	6
I. Judy Garland: a case study	6
II. Patricia Douglas	8
A. The Facts of the Case	9
B. The Lawsuit	10
Present Day	12
I. #MeToo: Stars, They're Just Like Us	13
II. Larry Nassar Scandal	15
A. Nassar's Trial	16
B. FBI Coverup and Subsequent DOJ Investigative Report and Judiciary Committee Hearing	17
The Law As it Stands	19
I. Title IX Protections for Women and Girls	19
II. Codification and Ratification of International Protections for Women and Girls	21
Recommendations for the US Government	23
Conclusion	25

INTRODUCTION

The United States of America claims exemption from the necessity of ratifying international treaties, conventions, and agreements drafted and enacted in order to protect women from gender-based violence. This country claims to be ahead of the curve, a haven for women without need for external control or affirmation.¹ Many women in this country, I believe, would disagree.

Every 68 seconds an American is sexually assaulted, with an average of 463,634 victims of sexual assault above the age of 12 every year.² The statistical probability of assault shifts depending on race, nationality, age, and gender identity. Women ages 16-19 are four times more likely to be assaulted, and women ages 18-34 are three times as likely.³ 54% of victims are ages 18-34, and the rate is much higher for women than for men. About one in every six women in America has been the victim of an attempted or completed rape in her lifetime. Native American women are at the greatest risk, and as of 2004 Native Americans are twice as likely than all other races to experience rape or sexual assault.⁴ Further, only 9% of rape cases in the United States get prosecuted, and only 3% of perpetrators see even a day of incarceration. The other 97% of perpetrators of sexual assault face no consequences from the state.⁵

The United Nations defined “violence against women” in Article 1 of the Declaration on the Elimination of Violence against Women (DEVAW), proclaimed in December 1993 — 14 years after the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The definition is as follows:

¹ President Carter signed the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980 and the Senate has since held five hearings on ratification — in 1988, 1990, 1994, 2000 and 2010. Ratification has never been brought to the floor for a vote. One of the fundamental arguments keeping the vote from occurring is the cost to the United States. Counterintuitively, proponents for ratification argue that there will be little change to existing policy, while those opposed see it as a way to force policy that would otherwise not be considered. Lisa Baldez, *Why Hasn't the US Ratified the UN Women's Rights Convention?*, APSA 2011 ANNUAL MEETING PAPER (Aug. 1, 2011), <https://ssrn.com/abstract=1900265>.

² See RACHEL E. MORGAN, PH.D. & ALEXANDRA THOMPSON, DEPT. OF JUSTICE, *Criminal Victimization, 2020*, CRIMINAL VICTIMIZATION (2021), and RAINN, VICTIMS OF SEXUAL VIOLENCE: STATISTICS, <https://www.rainn.org/statistics/victims-sexual-violence> (last visited Nov. 27, 2021).

³ TBS Report, *Countries with the Highest Rape Incidents*, BUSINESS STANDARD (Apr. 8, 2021), <https://www.tbsnews.net/world/countries-highest-rape-incidents-144499>. It is important to note that these statistics rely on data reported to the police. Only 310 out of every 1000 rapes are reported, meaning more than 60% of cases go unreported. Some estimate that up to 90% of rapes are not reported to authorities. RAINN, *supra* note 2.

⁴ STEVEN W. PERRY, DEPT. OF JUSTICE, AMERICAN INDIANS AND CRIME, 1992-2002, (2004).

⁵ Rape Statistics by Country 2021, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/country-rankings/rape-statistics-by-country>.

“For the purposes of this Declaration, the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”⁶

This definition expands the circle of state responsibility to encompass not only public acts but also acts undertaken by private individuals and private entities.⁷ In making the state responsible for private acts, DEVAW broadens the scope of protection for women, allowing for more opportunities for remedial action and providing victims with more avenues of support.

The United States does not protect its women from violence in the public nor the private sphere. Once a court deems the length of a woman’s skirt, her sexual history, or even the military service of the man who assaulted her to be valid reason to acquit, the state has made its position clear.⁸ By utilizing international definitions of gender-based violence, and expanding avenues of support, the United States can work to both respond appropriately to allegations of violence and to prevent future acts. I argue that the United States does not have a robust system to prevent and respond to gender-based violence, as exemplified by the way even powerful and famous women in our society have been treated, as well as by the sheer number of cases of gender-based violence and specifically of sexual assault in the United States. I lay out why the United States should ratify CEDAW and look to additional international laws, like the Convention of Belém do Pará, to create that robust system. I also argue that the United States should read a bodily autonomy right into existing Constitutional law, and reconsider Congress’s authority to regulate gender-based violence in the private sphere.

I begin by laying out the circumstances faced by powerful, known women in the United States. These stories are presented without the legal standards to first display the prevalence of sexual assault against women, and the lack of persecution for their perpetrators. If these women,

⁶ Declaration on the Elimination of Discrimination Against Women Article 4(c), A/RES/48/104 at 2 (Feb 23, 1994), [hereafter DEVAW].

⁷ *Id.*

⁸ See Alinor C. Sterling, *Undressing the Victim: The Intersection of Evidentiary and Semiotic Meanings of Women's Clothing in Rape Trials*, 7 Yale J.L. & Feminism 87 (1995); Nat'l Crime Victim Law Inst., *Excluding Evidence of Specific Sexual Acts Between the Victim and Defendant Under Rape Shield*, NCVLI Violence Against Women Bulletin (Nat'l Crime Victim Law Inst., Portland Or.), Sept. 2010, at 2 & n.18, <http://law.lclark.edu/live/files/11816-excluding-evidence-of-specific-sexual-acts-between>; and *McKinney v. Caldera*, 141 F. Supp. 2d 25, 27 (D.D.C. 2001) (a post-evidentiary trial hearing stating the verdict in which Sergeant Major Gene C. McKinney was acquitted of 18 charges of sexual misconduct after his lawyer used the “good soldier” defense). See also Bill McAllister, *Defense Cites McKinney's Record*, Wash. Post, Mar 11, 1998, <https://www.washingtonpost.com/archive/politics/1998/03/11/defense-cites-mckinneys-record/06fdf1ca-405d-49a7-9555-aec1c8881452/>. See generally Elizabeth Lutes Hillman, *The "Good Soldier" Defense: Character Evidence and Military Rank at Courts-Martial*, 108 YALE L. REV. 879 (1999).

who by and large have financial and social support on their side, can be publicly victimized but remain unable to find justice, how can the rest of the women of the United States, those who occupy lower socioeconomic spheres and do not have the means to even begin the fight for justice, trust that they will be protected and able to remain safe from harm?

I then go through the current legal standards in place in the United States designed to prevent gender-based violence. I lay out why these standards are simply not rigorous enough, and have not prevented the violence against women that has been prevalent for centuries.

Finally, I lay out the international protections, treaties, conventions, and covenants that address gender-based violence, violence against women, and sexual assault as a form of said violence. These systems are borne out of necessity.⁹ They are crucial to ensure human rights are universal, and that these rights are available to women everywhere. I explain my recommendations for the United States in relation to these international agreements, with special attention to those this country has signed but refused to ratify. I also lay out the potential for a Constitutional right to bodily autonomy, and the further Constitutional complications that will need to be remedied to allow for the protection of women in the United States.

The fact remains: women are not protected in the United States. The rules and regulations, which America agrees are necessary in other countries, should be applicable to the United States as well.¹⁰ By ratifying international conventions, we are not only able to fill in critical gaps in protection, but the United States also becomes accountable to a larger international body. The inclusion of the United States in these treaties allows for external oversight, providing victims with more opportunity for recompense while simultaneously pressuring the United States's enforcement arm to prevent and prosecute abuse. The adoption of international law's emphasis on state responsibility for private actions undergirds this increased protection. Injustice anywhere is injustice everywhere, and all humans should be entitled to the same baseline of human rights. The United States Declaration of Independence calls for the unalienable "right to life, liberty, and the pursuit of happiness."¹¹ It is well past time for this phrase to ring true.

⁹ See Convention on the Elimination of All Forms of Discrimination Against Women, at 15, (Dec. 18, 1979), 1249 U.N.T.S. 13 [hereinafter CEDAW]. (stating, "...despite these various instruments extensive discrimination against women continues to exist,

Recalling [sic] that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity...").

¹⁰ The United States signed CEDAW in 1980 but has yet to ratify it. G.A. RES. 34/180, at 193 (Dec. 18, 1979). The United States has yet to sign the Convention of Belém do Pará. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, June 9, 1994. 27 U.S.T. 3301, 1438 U.N.T.S. 63. [hereinafter Belém do Pará].

¹¹ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

THE HISTORY

Women and girls have been at the forefront of the film and entertainment industry since the early days of silent films and talking pictures. The faces of major motion pictures, Hollywood darlings were instrumental in the success of big studios like Metro Goldwyn Mayer (MGM), Paramount, and Columbia Pictures. Behind the scenes, however, these women, or, more realistically, young girls, were subject to abuse at the hands of the executives — the men in charge. 20th Century Fox's cherub-faced Shirley Temple, for example, was said to have been chased by Producer and Executive David O. Selznick around his desk as he attempted to get her into bed.¹² Judy Garland, one of America's most famous faces, died of a barbiturate overdose in 1969 after a long struggle with drug abuse that began with pep pills administered to keep her performing as a child.¹³ Patricia Douglas, a less recognizable name who graced the silver screen in the early part of the 20th century as a dancer and a film extra, was not only the first woman to officially bring suit against a movie executive for rape, but also the first woman to bring any Federal civil suit for rape, after she was assaulted at a party for a studio convention.¹⁴ As for the many nameless women Hollywood abused, their stories were swept away with the rest of the production studio dust.

I. JUDY GARLAND: A CASE STUDY

Judy Garland began her career at the extremely young age of 2 ½ as a vaudeville performer, made her film debut at age 14 in *Pigskin Parade* (Butler, 1936), and three years later, at just 17, skyrocketed to stardom with the release of the American classic *The Wizard of Oz* (Fleming, 1939).¹⁵

¹² See *The Studio Torture and Abuse of Shirley Temple; Chased Around Desk by Selznick; Kicked George Jessel in the Groin*, THE LIFE AND TIMES OF HOLLYWOOD BLOG (July 29, 2021), <https://thelifeandtimesofhollywood.com/the-studio-torture-and-abuse-of-shirley-temple-chased-around-desk-by-selznick-kicked-george-jessel-in-the-groin/>, and Radar Staff, *Tragic Tale: Inside Shirley Temple's Secret Life Of Torment*, RADAR ONLINE (July 26, 2017), <https://radaronline.com/videos/shirley-temple-secret-life/>

¹³ GERALD CLARKE, *GET HAPPY: THE LIFE OF JUDY GARLAND* 422 (United Kingdom: Random House Publishing Group 2009)

¹⁴ Martin A. Grove, *'Girl 27' recalls how MGM called shots in 1937*, THE HOLLYWOOD REPORTER (July 27, 2007), <https://www.hollywoodreporter.com/business/business-news/girl-27-recalls-how-mgm-145255/>.

¹⁵ JUDY GARLAND & RANDY SCHMIDT, *JUDY GARLAND ON JUDY GARLAND: INTERVIEWS AND ENCOUNTERS* 325 (Chicago Review Press, 2014), and Jaycub Howard, *Judy Garland COMPLETE 1967 Interview*, YouTube (Apr. 6, 2014), https://www.youtube.com/watch?v=NHJujYMvY30&t=764s&ab_channel=JaycubHoward.

Garland was exposed to abuse from a young age. The vaudeville theaters Garland performed in held 19 shows day and night, interspersing film with live performance, and Garland's mother would threaten her with physical punishment if she did not feel well enough to perform.¹⁶ According to some reports, Garland's mother was the first to give her pills to keep her performing, at not yet 10 years old.¹⁷

To maintain Garland's weight on *Pigskin Parade*, studio head Louis B. Mayer kept her on a strict diet of chicken soup, black coffee, cigarettes, and "pep pills".¹⁸ On the set of *Wizard of Oz*, Garland was encouraged to use stimulants and sleeping pills to keep her energetic and thin.¹⁹ The studio also taped down her breasts and had her in a corset for these long, strenuous shooting days. By the time the film wrapped, Garland was addicted to amphetamines and barbiturates.²⁰ This addiction finally took her life at the age of 47, after multiple survived suicide attempts.²¹

Garland was sexually harassed in and outside the studio by studio executives. In her ex-husband Sidney Luft's posthumous memoir he claims the Munchkins, played by grown men,

¹⁶ See Jaycub Howard, *id.* (Garland states that if she felt ill and unable to perform her mother would say, "you get on that stage or I'll rap you around the bed post and break you off short").

¹⁷ Studio executives sometimes referred to Garland as a "fat little pig with pigtails." Colin Bertram, *Judy Garland Was Put on a Strict Diet and Encouraged to Take "Pep Pills" While Filming 'The Wizard of Oz'*, BIOGRAPHY (Dec. 10, 2020), <https://www.biography.com/news/judy-garland-pills-diet-wizard-of-oz>.

¹⁸ *Id.* These so called "pep pills" were the drug Benzedrine, also called "speed." These are still available today, sometimes called "bennies," and are an amphetamine. Chronic abuse can produce, "a psychosis that resembles schizophrenia and is characterized by paranoia, picking at the skin, preoccupation with one's own thoughts, and auditory and visual hallucinations. Violent and erratic behavior is frequently seen among chronic users of amphetamines and methamphetamine." DRUGS OF ABUSE: A DEA RESOURCE GUIDE, (2017), https://www.dea.gov/sites/default/files/drug_of_abuse.pdf.

¹⁹ Garland told biographer Paul Donnelly, "They had us [Mickey Rooney and Judy] working days and nights on end. They'd give us pills to keep us on our feet long after we were exhausted. Then they'd take us to the studio hospital and knock us out with sleeping pills — Mickey (Rooney) sprawled out on one bed and me on another. Then after four hours they'd wake us up and give us the pep pills again so we could work 72 hours in a row. Half the time we were hanging from the ceiling but it was a way of life for us" WILLIAM J. BIRNES & RICHARD A. LERTZMAN, *THE LIFE AND TIMES OF MICKEY ROONEY* 115 (Gallery Books 2015).

²⁰ Bertram, *supra* note 17.

²¹ Garland's death by overdose, in a bathroom in London, England, was ruled to not be a suicide by Scotland Yard. According to her third husband, she attempted suicide 20 times over the course of their 13-year marriage. In 1950 she was fired by MGM after not showing up for work, and at the age of 28 slashed her own throat with a broken water glass. She survived this attempt. Dial Torgerson, *From the Archives: Judy Garland Dies in London at 47; Tragedy Haunted Star*, L.A. TIMES (June 23, 1969), <https://www.latimes.com/local/obituaries/archives/lame-judy-garland-19690623-story.html>.

would put their hands up Garland's dress on set.²² Garland herself said that studio executives routinely propositioned her, and Mayer would routinely grab her left breast under the guise of a compliment to her voice coming from her heart. He did this for years, until one day she forcefully told him to stop, to which he replied with tears and expressions of love.²³ Benny Thau, former Vice President of MGM, saw Garland at a resort, grabbed her, and tried to kiss her.²⁴ Another unnamed executive once called her to his office and demanded she have sex with him. When she refused, he screamed, "I'll ruin you and I can do it. I'll break you if it's the last thing I do."²⁵

Judy Garland's lasting fame came at great cost. Forced drug abuse, extreme diet limitation, lack of sleep, and sexual harassment were physical and psychological abuses used against a child for profit, which clearly had a lifelong effect on her. She made twelve films as a teenager, underwent psychiatric treatment by the time she was 18, and had three nervous breakdowns by the age of 23. Garland struggled with pill addiction, alcoholism, and personal relationships for the rest of her short life.²⁶

If these abuses were happening to MGM's favorite young star, one can only imagine how the other young women on the studio lots were treated. Patricia Douglas, story told below, was one of the young women outside the spotlight, forced to suffer abuse at the hands of the studio without a platform to later tell her story.

II. PATRICIA DOUGLAS

Patricia Douglas was still a minor when she was raped by an MGM salesman at a studio convention party in Los Angeles in 1937. Despite police presence at the scene, her assailant was able to flee, evidence was washed away, and a police report was never filed. Douglas sued the studio, filing the first federal sexual assault case. The studio used every tool they had to systematically destroy Douglas's credibility, story, and case. Her assailant was acquitted and she was left to anonymity until Vanity Fair reporter David Stenn came across her story by happenstance and decided to do some digging. This case is a clear record of state suppression of evidence, failure to apply due diligence, and negligence in the acquittal of a guilty man at the expense of a young woman, who faced serious emotional turmoil as a result.

²² SID LUFT, *JUDY & I: MY LIFE WITH JUDY GARLAND*, (Omnibus Press, 2018).

²³ Clarke, *supra* note 13.

²⁴ The attempt was thwarted when he slipped on the incline between the tennis court and the pathway from the pool to the hotel, falling down the hill. *Id.*

²⁵ *Id.*

²⁶ According to her *Los Angeles Times* obituary, "She had suffered from hepatitis, exhaustion, kidney ailments, nervous breakdowns, near-fatal drug reactions, overweight, underweight and injuries suffered in falls." Torgerson, *supra* note 21.

A. The Facts of the Case

Patricia Douglas was a Hollywood unknown. A girl from Kansas City, Missouri she moved to Los Angeles at a young age, dropping out of school at 14 and finding her way to the movies as a dancer and extra.²⁷ She danced in two films at age 16, *Gold Diggers of 1933* (LeRoy, 1933) and *So This is Africa* (Cline, 1933).²⁸ Her short-lived film career ended when a casting call came in May 1937. The call was not for a film, but, unbeknownst to Douglas, a studio convention party thrown by Louis B. Mayer, aforementioned MGM studio head, for which girls were hired to pin carnations on the lapels of the men in attendance. The men, with liquor on their breath, would grope these women, merely part of the decor, the entertainment, the party favors.

On May 5, Douglas joined over a hundred other young women on location, with the understanding that she would be dancing in a film just as she had in 1933. The women were bussed to the location, with no means of egress once they had arrived. The men arrived, under a very different impression, and “mistook the professional dancers for party favors and treated them accordingly.” David Ross, a salesman from MGM’s Chicago office, tried to “cop a feel” on the dance floor, and later that night, once the men were drunk, enlisted the help of another man to hold Douglas down. They pinched her nose, forcing her to open her mouth, and poured scotch and champagne down her throat, laughing as she fought against them. Once freed from their grasp, she immediately went to the bathroom to vomit and then stepped outside to breathe. Ross came up behind her, clamped a hand over her mouth, and threatened to harm her if she screamed. He forced her to a car, pinned her down, and said, “I’m going to *destroy* you.” When she started to black out he slapped her awake, ensuring that she would be conscious as he raped her. He fled, and she managed to stumble toward a parking attendant who got her help.

The story is already one of abuse and assault. A horrible story, and one that is familiar to far too many.²⁹ Up until this point every violent act was perpetrated by a private actor.³⁰ The state, however, played its own role in the hindrance of justice.

²⁷ David Stenn, *It Happened One Night . . . at MGM*, VANITY FAIR, April 1, 2003, <https://www.vanityfair.com/news/2003/04/mgm200304>. (David Stenn came across this story and researched much of it by interviewing Douglass directly. As such, the majority of my recounting comes directly from this one article).

²⁸ Produced by Warner Bros. Studios. IMDB, *Gold Diggers of 1933*, https://www.imdb.com/title/tt0024069/?ref_=nm_film_act_1 (last visited Nov. 27, 2021). Produced by Columbia Pictures. IMDB, *So This is Africa*, https://www.imdb.com/title/tt0024581/?ref_=nm_film_act_2 (last visited Nov. 27, 2021). IMDB, *Patricia Douglas*, <https://www.imdb.com/name/nm2918204/> (last visited Nov. 27, 2021).

²⁹ See Morgan & Thompson, *supra* note 2.

³⁰ It should be noted, however, that there are reports that police were aware of this convention and the way the women were to be utilized. Mayer is quoted as saying “Our fine Chief of Police [James] Davis remarked to me a moment ago [that I] must think a lot of these

From the assault Douglas was taken to Culver City Community Hospital by a police officer in attendance at the party, where she was subjected to a cold-water douche — a washing out of the vagina — before she was examined. As expected, this washed away any biological evidence of the assault. The doctor who performed the examination was Dr. Edward Lindquist, a hospital co-owner with strong ties to MGM. He stated that he believed she had not been raped, and that, in fact, no intercourse had occurred at all. No police report was ever filed. Her rapist returned to Chicago unhindered.

B. The Lawsuit

Douglas went to the Los Angeles County District Attorney's office to file suit against Ross and MGM. The District Attorney (DA), Buron Fitts, was considered a close friend of Louis B. Mayer.³¹ When Douglas didn't hear from Fitts, she contacted attorney William J. F. Brown, who issued Fitts an ultimatum: either he file suit or Douglas was going public. The Los Angeles Examiner ran the story on June 4, 1937; the studio was unnamed, but Douglas's name, photo, and home address were printed.³²

The studio began a smear campaign.³³ They tracked down the other girls hired for the party and bribed or threatened them into telling much more savory accounts, and worse accounts of Douglas herself. Private detectives were sent to trail her but came back with the truth, that Douglas had been a sober virgin before the party. When Fitts showed Douglas a picture of the

men to have sent the beauty that he sees before him." 11 police officers from four police departments were in attendance at the party, one of whom drove Douglas to the hospital. No police report was ever filed. Stenn, *supra* note 27.

³¹ Fitts had recently dropped a case in which a wealthy real estate developer, John P. Mills, was accused of paying a local madam to supply him with "young virgin[s] each week." The madam admitted that she and an accomplice would kidnap young girls from the orphanage and bring them to Mills. One of these girls, only 16 years old, brought suit against Mills for statutory rape. Despite the confessions of the madam and other witnesses Fitts dropped the case, claiming insufficient evidence. Fitts then brought suit against the madam, who was convicted and became the only one to go to prison. Cecilia Rasmussen, *D.A. Fitts Was Good Match for Scandalous '30s*, L.A. TIMES (Sept. 19, 1999), <https://www.latimes.com/archives/la-xpm-1999-sep-19-me-12084-story.html>. Fitts was later looked into by Superior Court Judge Fletcher Bowron, and was indicted for bribery and perjury after it was revealed that he had sold Mills an orange grove for significantly more than it was worth as a bribe to drop the rape case. Two years later, he was acquitted. L.A. DISTRICT ATTORNEY'S OFFICE, Office History, <https://da.lacounty.gov/about/history?page=2>.

³² E.J. FLEMING THE FIXERS: EDDIE MANNIX, HOWARD STRICKLING AND THE MGM PUBLICITY MACHINE 171 (McFarland, Incorporated, Publishers, 2015).

³³ Stenn stated, "if they could prove she was a slut, then she wasn't capable of being raped; 'sluts can't be raped' was the mindset at the time." Stephen Galloway, *How a Hollywood Studio Got Away With Rape in 1937*, THE HOLLYWOOD REPORTER (Nov. 13, 2017), <https://www.hollywoodreporter.com/movies/movie-news/how-a-hollywood-studio-got-away-rape-1937-1057432/>.

party she was able to immediately identify Ross as the man who raped her. Fitts was forced to convene a grand jury.

Ross was supplied with Mayer's personal attorney Mendel Siberberg, and the hearing was held on June 16, 1937. Only two of the 120 girls at the sordid party testified on Douglas's behalf. After recounting the story of her assault, the defendant's team employed the argument, "Look at her, who could want *her*?" Outside the courthouse, she was shoved into a photograph with her attacker as he casually smoked a cigarette. When the parking attendant who had helped Douglas was called to testify he changed his story, and it was later revealed that he had been offered any job he wanted in exchange for the perjury. Ross was not indicted.

Douglas appealed and filed suit in the Los Angeles County Superior Court against David Ross, Eddie Mannix, Hal Roach, casting assistant Vincent Conniff, and fifty John Does for unlawful conspiracy to defile, debauch, and seduce her and other dancers for the immoral and sensual gratification of male guests. She asked for \$500,000 in remuneration. The studio continued to bribe witnesses with jobs in exchange for their perjury. A judge dismissed the case.

Douglas filed suit in the U.S. District Court, the first case in which a woman, as plaintiff, brought federal suit for rape based on a violation of her civil rights.³⁴ Brown, still serving as Douglas's lawyer, chose this moment to run against Fitts in the DA election. He knew that he would be unable to win the position without the support of MGM, one of the largest studios of the day, and intentionally threw Douglas's case. Neither he, nor opposing counsel, showed up to court on any of three consecutive court dates, and the Judge dismissed the case for want of prosecution.

Douglas was the victim not only of the man who raped her, David Ross, but also of a corrupt system built on bribery. At each turn, the state betrayed her: erasing evidence, negligently failing to file a police report, leaning into the perjury of the witnesses MGM bought off, and throwing away her case in pursuit of political gain. The case was buried for decades before Douglas spoke again at 86, telling David Stenn the story she hadn't shared since the last case was dismissed. The story was published on April 1, 2003.³⁵ Douglass died on November 11 that same year.³⁶

³⁴ I was unable to track down the text of this case, however Douglas herself discusses it in *Girl 27*. IMDB, *Girl 27*, <https://www.imdb.com/title/tt0912586/>, (last accessed Nov. 27, 2021).

³⁵ For more information on Douglas's story watch *Girl 27*, a posthumous documentary produced by David Stenn recounting the 1937 rape and subsequent legal battle in which he interviews Douglas and the children of others involved in the scandal. *Id.*

³⁶ One important thing to note is just how little the actions of the men involved in these stories affect their legacies. Many of their names are recognizable not only because of their cultural significance, but because there are buildings and landmarks named for them. Louis B. Mayer is immortalized in the studio name Metro Goldwyn Mayer, Alexander Pantages, involved in the underage prostitution ring mentioned in footnote 38, remains alive through the Pantages Theater on Hollywood Blvd, and publisher William Randolph Hearst, who wrote a letter to

PRESENT DAY

These abuses are far from dusty stories of the past. Abuse remains pervasive in the industry, with stories emerging seemingly constantly, and without consistent condemnation from the state. Singer Kesha “Ke\$ha” Rose Sebert came forward with stories of horrific abuse from producer Lukasz “Dr. Luke” Sebastian Gottwald in 2014, filed civil suit, and was subsequently dragged through multiple court battles that have continued into 2021.³⁷ Singer and performer Britney Spears was placed under a legal conservatorship in 2008, with every choice about her life and finances being made by her father. The battle to end the conservatorship made headlines with the #FreeBriney movement that rose in popularity in 2019. Spears’s father was removed in late September 2021, and the conservatorship was lifted in November of 2021, after 13 years.³⁸

Abuse is so pervasive in this industry because it has been understood as “paying your dues” for far too long.³⁹ Women have suffered in silence, knowing that their stories were neither private nor unique, but without means of recourse. The tides, it seems, are very slowly turning. Public discourse disavows assaulters to a new degree, and the #MeToo movement is infamous.

Unfortunately, the laws have not kept up, and the court of public opinion is not as judicious as it may seem. “Canceled” celebrities who perpetrated assault have retained their access to public platforms, the FBI covered up evidence in the Larry Nassar scandal, and justice

Mayer saying “Shut this down, make her stop. Do you realize how damaging this is to the whole movie picture industry?” is enshrined in Hearst Castle on the California Coast. Douglas you’ve likely never heard of before, but these abusive men remain as cultural and physical landmarks today. See History, MGM, <https://www.mgm.com/corporate/history> (Last visited Nov. 29, 2021); Pantages Theatre, L.A. CONSERVANCY, <https://www.laconservancy.org/locations/pantages-theatre> (last visited Nov. 29, 2021); Hearst Castle History & Art, HEARST CASTLE, <https://hearstcastle.org/history-behind-hearst-castle/> (last visited Nov. 29, 2021); and Stenn, *supra* note 27.

³⁷ *Gottwald v. Sebert*, 193 A.D.3d 573, 148 N.Y.S.3d 37 (2021)

³⁸ Anastasia Tsioulcas, *Britney Spears’ Conservatorship has Finally Ended*, NATIONAL PUBLIC RADIO (Nov. 12, 2021), <https://www.npr.org/2021/11/12/1054860726/britney-spears-conservatorship-ended>.

³⁹ Liz Alper, *I’m Sick of “Pay Your Dues” So I Created #PayUpHollywood (Guest Column)*, THE HOLLYWOOD REPORTER (Dec. 9, 2019), <https://www.hollywoodreporter.com/news/general-news/im-sick-pay-your-dues-i-created-payuphollywood-guest-column-1260480/>.

is rare.⁴⁰ More importantly, prevention is still framed as the responsibility of the women being targeted, rather than an issue of centuries of masculine misbehavior.⁴¹

I. #METOO: STARS, THEY'RE JUST LIKE US

The “Me Too” movement was founded by Tarana Burke in 2006, with a mission to bring resources, support, and healing to sufferers and survivors of sexual violence.⁴² On October 5, 2017 the New York Times published a moment-defining story chronicling decades of abuse perpetuated by television and film producer Harvey Weinstein.⁴³ Ten days later, on October 15, actress Alyssa Milano tweeted, “If you’ve been sexually harassed or assaulted write ‘me too ’as a

⁴⁰ Comedian Louis C.K. was “canceled” after five women came forward with allegations of sexual misconduct, to which C.K. admitted but was never charged, in 2017. Melena Ryzik, Cara Buckley & Jodi Kantor, *Louis C.K. Is Accused by 5 Women of Sexual Misconduct*, N.Y. TIMES (Nov. 9, 2017), <https://www.nytimes.com/2017/11/09/arts/television/louis-ck-sexual-misconduct.html>. Musician Marilyn Manson has a long history of assaulting, harassing, and torturing women. Multiple lawsuits are currently being pursued for allegations including sexual assault and wrongful imprisonment. Kory Grow & Jason Newman, *Marilyn Manson: The Monster Hiding in Plain Sight*, ROLLING STONE (Nov. 14, 2021), <https://www.rollingstone.com/music/music-features/marilyn-manson-abuse-allegations-1256888/>. Both C.K. and Manson were nominated for Grammy awards in November of 2021. See Gabe Cohn, *Grammy Awards 2022: The Full List of Nominees*, N.Y. TIMES (Nov. 24, 2021), <https://www.nytimes.com/2021/11/23/arts/music/grammys-nominee-list.html>; Saba Hamedy, Louis C.K., *Marilyn Manson score Grammy nominations after allegations of misconduct*, NBC NEWS (Nov. 23, 2021), <https://www.nbcnews.com/pop-culture/pop-culture-news/louis-ck-marilyn-manson-score-grammy-nominations-allegations-misconduct-rcna6532>; and Andy Greene, Kory Grow, Jeff Ihaza, Julyssa Lopez, & Hank Shteamer, *Louis C.K. and Marilyn Manson: Accused Sexual Predators, Grammy Nominees*, ROLLING STONE (Nov. 23, 2021), <https://www.rollingstone.com/music/music-news/grammy-nomination-fails-marilyn-manson-louis-ck-1261312/>.

⁴¹ See, e.g., Reduce the Risk of Becoming a Sexual Assault Victim, CHARLOTTE POLICE & PUBLIC SAFETY, <https://police.charlotte.edu/safety/sexual-assault-prevention/reduce-risk-becoming-sexual-assault-victim> (last visited Nov. 29, 2021); Sexual Assault Risk Reduction Strategies, CORNELL COLLEGE, <https://www.cornellcollege.edu/counseling/sexual-assault/risk-reduction-strategies.shtml> (last visited Nov. 29, 2021); and *Ways to Reduce Your Risk of Sexual Assault*, University of Hawai’i Community College, http://www.hawaii.hawaii.edu/sites/default/files/assets/security/docs/sexualassault_prevention.pdf (last visited Nov. 29, 2021).

⁴² Tarana Burke, History & Inception, ME TOO MOVEMENT, <https://metoomvmt.org/get-to-know-us/history-inception/> (last visited Nov. 29, 2021).

⁴³ Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html>.

reply to this tweet.”⁴⁴ The movement went viral, with millions of women tweeting about their sexual assault stories for the first time.

The Me Too movement shifted the stigma of guilt from those who had suffered the abuse to those who had perpetrated it. Most women did not share the specifics of their stories, but in tweeting the simple, five letter, two word hashtag #metoo they told other women, “you are not alone,” and thereby created a community. The social media storm also brought to light just how many women in the industry had suffered abuse at the hands of the men in positions of power, with actresses like Lady Gaga, Gabrielle Union, Anna Paquin, Debra Messing, Rosario Dawson, and many more tweeting the phrase.⁴⁵

Me Too put a spotlight on just how pervasive and common sexual assault is among women. The strength of the movement ushered in a new era of identifying abusers, no longer allowing them to behave that way without reproach, and has now become ubiquitous with the revelation of celebrity sexual harassment, assault, and abuse. Comedian Louis CK was accused of sexual misconduct the November after the Weinstein story broke, and actor and comedian Aziz Ansari just two months later in January.⁴⁶

⁴⁴ Alyssa Milano (@Alyssa_Milano), TWITTER (Oct. 15, 2017, 4:21 PM), https://twitter.com/Alyssa_Milano/status/919659438700670976.

⁴⁵ See Lady Gaga (@ladygaga), TWITTER (Oct. 15, 2017, 6:57 PM), <https://twitter.com/ladygaga/status/919698717392887808>; Gabrielle Union (@itsgabrielleu), TWITTER (Oct. 15, 2017, 7:18 PM), <https://twitter.com/itsgabrielleu/status/919704129295077377?s=20>; Anna Paquin (@AnnaPaquin), TWITTER (Oct. 15, 2017, 4:27 PM), <https://twitter.com/AnnaPaquin/status/919661075150159872?s=20>; Debra Messing 🍷 (@DebraMessing), TWITTER (Oct. 15, 2017, 4:57 PM), <https://twitter.com/DebraMessing/status/919668578357452800?s=20>; and Rosario Dawson (@rosariodawson), TWITTER (Oct. 15, 2017, 8:23 PM), <https://twitter.com/rosariodawson/status/919720337729662977?s=20>.

⁴⁶ See Twohey & Kantor, *supra* note 43; and *All Things Considered: The Fine Line Between A Bad Date And Sexual Assault: 2 Views On Aziz Ansari*, NATIONAL PUBLIC RADIO (Jan. 16, 2018), <https://www.npr.org/2018/01/16/578422491/the-fine-line-between-a-bad-date-and-sexual-assault-two-views-on-aziz-ansari>. A new phrase that has come into common parlance is “got metood,” used when a man has been accused of sexual misconduct or assault and has faced backlash from the public. This phrase, though built on the incredibly impactful and important work of the me too movement, perpetuates the idea that the men who have committed these assaults are somehow the victim of the acts. The reality is that these men made the decision to carry out a sex act without the consent of their partner, committing assault, and were merely held accountable for their actions. To appropriate a term used to show solidarity for the victims of these men as a cute way of saying that these men have finally faced accountability is unsettling, deeply harmful, and incredibly dismissive of the trauma these women faced. See, e.g. David Butow, ‘Being wrongly #MeToo’d has ruined my life’, N.Y. POST (Feb. 1, 2020), <https://nypost.com/2020/02/01/being-wrongly-metood-has-ruined-my-life/>.

Crucially, this movement illustrated the facts that statistics have shown for years: sexual assault and harassment against women is pervasive in our society, and most victims suffer in silence. The sheer volume of tweets made it clear to the general public that, statistically, every individual, and especially every woman, either is or knows someone who is a survivor of sexual violence.⁴⁷ For men, it put a spotlight on the problem that women face, and for women it provided a megaphone. Without the support of public community, and the safety that support provides, most women are either afraid of being honest or, in some cases, lack the resources needed to recognize their experience as an assault.⁴⁸

While the Me Too movement has brought about big and important change in the public discussion on sexual assault, it also serves as a reminder that assault and abuse in Hollywood is still alive and well. The movement clarified another known, but easily forgotten, reality: wealth and fame are not enough to protect a woman from assault. While this is an important truth, it is perhaps more important to emphasize that wealth and fame *do* provide opportunity, options, and a possibility of redress. They provide the ability to hire help, they provide the time and space to heal and fight, however they do not ensure action or justice. If these women in Hollywood, with all their support, wealth, and influence are still able to be assaulted and made to suffer in silence, a woman without those privileges has even less opportunity to both stay safe and to find justice and healing after the fact.

II. LARRY NASSAR SCANDAL

Larry Nassar served as team doctor for the United States Women's Gymnastics (USAG) team for eighteen years.⁴⁹ He was fired in 2015 and began working at Michigan State University. Then, in September 2016, former gymnast Rachael Denhollander contacted the *Indianapolis Star* to come forward with her story of abuse suffered at the hands of Nassar.⁵⁰ She filed suit, and

⁴⁷ RAINN, *supra* note 2.

⁴⁸ See Shaila Dewan, *Why Women Can Take Years to Come Forward With Sexual Assault Allegations*, N.Y. TIMES (Sept. 18, 2018), <https://www.nytimes.com/2018/09/18/us/kavanaugh-christine-blasey-ford.html>. See also Beverly Engel L.M.F.T., *Why Don't Victims of Sexual Harassment Come Forward Sooner?*, PSYCHOLOGY TODAY (Nov. 16, 2017), <https://www.psychologytoday.com/us/blog/the-compassion-chronicles/201711/why-dont-victims-sexual-harassment-come-forward-sooner>.

⁴⁹ Nassar was the team doctor when Kerri Strugg famously competed on a broken ankle while under the coaching of the Karolyis. *Larry Nassar Case: The 156 Women Who Confronted a Predator*, BBC NEWS (Jan. 25, 2018), <https://www.bbc.com/news/world-us-canada-42725339>.

⁵⁰ Robert Scheer, *Gymnast Accuses Former USAG Doctor of Abuse*, INDYSTAR (Sept. 12, 2021), <https://www.indystar.com/videos/news/2016/09/12/90274492/>. Nassar was fired from his position at Michigan State University in September of 2016. A former patient Amanda Thomashow complained to MSU in 2014 that Nassar had assaulted her. The university's Office of Institutional Equity (OIE) investigated the accusations on Title IX grounds, and found no

Nassar was charged with 22 counts of first-degree criminal sexual conduct in Michigan in February 2017.⁵¹ His victims were as young as 6 years old.

A. Nassar's Trial

As team doctor, Nassar had access to every young girl on Team USA. As a respected sports medicine doctor, he also had access to anyone brought to him for treatment at his home and at his Michigan State University clinic. He would assault the girls under the guise of medical treatment, sometimes with their parent in the room, inserting his fingers in their vagina or anus while angling his body to conceal the act.⁵² Nassar was convicted in Lansing, Michigan and sentenced to 40 to 175 years in prison, in a rare public serving of justice.⁵³ 156 girls and women testified over 7 days that they were victims of Nassar, including Olympic gold medalists Aly Raisman, Jordan Wieber, McKayla Maroney, and Simone Biles.⁵⁴ The first to testify was Kyle Stephens, to whom Nassar was a family friend. He began molesting her at six years old, sometimes in the same room as the rest of their families and always discreetly. Rachael Denhollander, the first to come forward, was the last to testify.⁵⁵

While it is admirable that, in this horrific case of serial assault, the perpetrator was faced with his actions and held accountable, it is an ongoing tragedy that the system allowed for these

inappropriate behavior, relying on the word of a single doctor. *Denhollander v. Michigan State Univ.*, No. 1:17-CV-00029, 2019 WL 5697817 (W.D. Mich. Feb. 1, 2019). During the investigation, “[Nassar] defended the integrity of his medical treatments. ‘I do this on a regular basis,’ he insisted, suggesting that if he ever ‘did something wrong,’ the news would spread ‘like wildfire.’” Eren Orbey, *The Victims of Larry Nassar Who Dared to Come Forward First*, NEW YORKER (May 25, 2019), <https://www.newyorker.com/culture/culture-desk/the-victims-of-larry-nassar-who-dared-to-come-forward-first>.

⁵¹ Victor Mather, *Former USA Gymnastics Doctor Faces New Sexual Assault Charges*, N.Y. TIMES (Feb. 22, 2017), <https://www.nytimes.com/2017/02/22/sports/olympics/usa-gymnastics-doctor-larry-nassar-sexual-assault-charges.html>.

⁵² Many sexual assault survivors don't realize they have been assaulted because they lack the tools, knowledge, or resources to comprehend. “If you're the kid in this situation, the one who's having this so-called ‘treatment’ happen to you, the fact that your parent is right there makes you think: ‘Well, this must be OK.’” *Believed: The Parents*, NATIONAL PUBLIC RADIO (Nov. 26, 2018), <https://www.npr.org/2018/11/20/669669746/the-parents>.

⁵³ This sentence was in addition to a 60 year sentence for federal child pornography charges, and a guilty plea to three charges of criminal sexual conduct in Eaton County, Michigan. Eric Levenson, *Larry Nassar sentenced to up to 175 years in prison for decades of sexual abuse*, CNN (Jan. 24, 2018), <https://www.cnn.com/2018/01/24/us/larry-nassar-sentencing/index.html>.

⁵⁴ Though they did not testify, Jordan Weiber's testimony implies that the other members of the 2012 Women's Gymnastics Team, dubbed the “Fierce Five”, were also assaulted by Nassar while in London. BBC NEWS, *supra* note 49.

⁵⁵ It should be noted that 156 women *testified*, but the number of victims may be, and is likely, much higher.

assaults for nearly two decades, and that Nassar was able to continue his assaults while working at Michigan State University.⁵⁶ Worse, the Federal Bureau of Investigation (FBI) knew about Nassar's crimes in 2015, did nothing to stop him, and was complicit in covering them up.

B. FBI Coverup and Subsequent DOJ Investigative Report and Judiciary Committee Hearing

In 2015 Michael Langeman, a supervisory special agent in the FBI's Indianapolis office, interviewed McKayla Maroney about her allegations of Nassar's abuse, fifteen months prior to the publishing of the article that broke the story. FBI agents are considered mandatory reporters under Federal law, and therefore must report any suspected child abuse to the proper law enforcement agency "as soon as possible."⁵⁷ An investigatory report from the Department of Justice's (DOJ) Office of the Inspector General (OIG) found that Langeman, and Special Agent in Charge W. Jay Abbott, conducted "limited follow up" in response to Maroney's allegations, only interviewing one victim, Maroney herself, and failing to transfer the case to the proper jurisdiction, despite informing USAG that they had.⁵⁸ Langeman was fired in September 2021, days before a Senate Judiciary Committee hearing called to examine the FBI's mishandling of the case.⁵⁹

Four of Nassar's victims testified at the Judiciary Committee hearing: Aly Raisman, McKayla Maroney, Maggie Nichols, and Simone Biles.⁶⁰ Aly Raisman's testimony states that, after the mishandling, "[former president and CEO of USAG] Steve Penny, FBI agent Jay Abbott and their subordinates worked to conceal Nassar's crimes."⁶¹ She testified to being

⁵⁶ See Levenson, *supra* note 53.

⁵⁷ 34 U.S.C. § 20341(a).

⁵⁸ U.S. D.O.J. O.I.G., 21-093, *Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar* at 17-18 (July 2021), <https://oig.justice.gov/sites/default/files/reports/21-093.pdf>.

⁵⁹ Devlin Barrett, *FBI fires agent who failed to pursue tips about sex abuse by USA Gymnastics doctor Larry Nassar*, WASHINGTON POST (Sept. 14, 2021), https://www.washingtonpost.com/national-security/fbi-agent-nassar-investigation/2021/09/14/f4fed85a-158a-11ec-9589-31ac3173c2e5_story.html.

⁶⁰ *Dereliction of Duty: Examining the Inspector General's Report on the FBI's Handling of the Larry Nassar Investigation Before the Committee on the Judiciary*, 117th Cong. (2021), <https://www.judiciary.senate.gov/meetings/dereliction-of-duty-examining-the-inspector-generals-report-on-the-fbis-handling-of-the-larry-nassar-investigation>; and PBS NewsHour, *WATCH LIVE: Simone Biles, Aly Raisman, other gymnasts testify about Larry Nassar abuse investigation*, YOUTUBE (Sept. 15, 2021), https://www.youtube.com/watch?v=OTZJ4SOYx6c&ab_channel=PBSNewsHour.

⁶¹ *Dereliction of Duty: Examining the Inspector General's Report on the FBI's Handling of the Larry Nassar Investigation Before the Committee on the Judiciary*, 117th Cong. (2021),

interviewed in a controlled environment in which she did not feel free to speak openly. She also testified that the special agent in charge of investigating the matter had casually met with Penny to discuss job opportunities.⁶² Maggie Nichols testified that the FBI failed to interview her for over a year following her complaint, and that Penny told her to “keep quiet” so as to not “hurt the FBI investigation,” despite no investigation actually occurring.⁶³ Maroney testified that, when she reported her experiences of abuse, the FBI both falsified her statements and concealed Nassar’s crimes, not documenting the statement until 17 months after the fact.⁶⁴ Biles was never contacted, despite Nichols indicating that she believed Biles was likely a victim.⁶⁵

The Justice Department declined to prosecute the agents involved in the cover up following the OIG report. After the Judiciary Committee hearing, DOJ has decided to review this decision. It is likely that, without the heavy hand of Congress, these agents would never face prosecution. Moreover, without the public attention on this matter due to the fame of these incredible, talented women who testified, this matter would never have been reviewed at all.

To this day, despite their long history of knowingly allowing sexual abuse to occur in their facilities, perpetrated by their employees against children in their charge, USAG and the US Olympic and Paralympic Committee (USOPC) have faced no federal consequences for the scandal.⁶⁶ Biles has stated that the only reason she chose to return to competition in the 2020

<https://www.judiciary.senate.gov/imo/media/doc/Raisman%20Testimony.pdf> (Testimony of Alexandra “Aly” Raisman, victim of Larry Nassar).

⁶² *Id.*

⁶³ *Dereliction of Duty: Examining the Inspector General’s Report on the FBI’s Handling of the Larry Nassar Investigation Before the Committee on the Judiciary*, 117th Cong. (2021), <https://www.judiciary.senate.gov/imo/media/doc/Nichols%20Testimony.pdf> (Testimony of Margaret “Maggie” Nichols, victim of Larry Nassar).

⁶⁴ *Dereliction of Duty: Examining the Inspector General’s Report on the FBI’s Handling of the Larry Nassar Investigation Before the Committee on the Judiciary*, 117th Cong. (2021), <https://www.judiciary.senate.gov/imo/media/doc/Maroney%20Testimony.pdf> (Testimony of McKayla Maroney, victim of Larry Nassar).

⁶⁵ *Dereliction of Duty: Examining the Inspector General’s Report on the FBI’s Handling of the Larry Nassar Investigation Before the Committee on the Judiciary*, 117th Cong. (2021), <https://www.judiciary.senate.gov/imo/media/doc/Biles%20Testimony1.pdf> (Testimony of Simone Biles, victim of Larry Nassar).

⁶⁶ USAG has faced civil suits filed by victims of the abuse. In August of 2021 USAG and Nassar filed a plan to settle with victims for \$425 million. This settlement would allow USAG to emerge from bankruptcy, and involves no criminal charges. The settlement would also include the Karolyi’s and the United States Olympic and Paralympic Committee. USAG will also be required to implement new provisions geared towards reform and athlete safety. Juliet Macur, *U.S.A. Gymnastics and Abuse Survivors Propose a \$425 Million Payout*, N.Y. TIMES (Aug. 31, 2021), <https://www.nytimes.com/2021/09/01/sports/olympics/usa-gymnastics-payout-sexual-abuse.html>.

Summer Olympics, despite having reached the pinnacle of the sport, was to use the platform to be a voice for the abused.⁶⁷

THE LAW AS IT STANDS

The U.S. does have some protections in place addressing violence against women and girls, but they are few. The Title IX of the Education Amendments of 1972 protections for education and Title VII of the Civil Rights Act protections for employment are two of the most well understood and frequently utilized. Title VII protections are intended to protect against discrimination on the basis of race, color, religion, sex, and national origin.⁶⁸ Title IX specifically addresses sex-based discrimination. These laws are focused on women in school and women in the workplace, but do not necessarily extend beyond those bounds to greater society.

International law, however, has a much more robust structure tailored directly to the prevention of gender-based violence and violence against women within society as a whole. These treaties and conventions, like CEDAW and the general comments updating it and the Declaration on the Elimination of Discrimination Against Women (DEVAW) expressly define sexual assault and domestic violence as gender based violence. The focus of these international vehicles is on elevating women, to achieve true equality; the elimination of gender-based violence is recognized as a crucial part of reaching that goal.

I. TITLE IX PROTECTIONS FOR WOMEN AND GIRLS

⁶⁷ Scott Stump, *Simone Biles returning to Olympics to be a voice for abuse survivors*, TODAY, April 14, 2021, <https://www.today.com/news/simone-biles-competing-tokyo-olympics-be-voice-abuse-survivors-t214955>. The public was shocked when Biles decided not to compete in the Summer 2020 Olympic final in August of 2021. Biles explained that she was suffering from the “twisties,” a dangerous condition in which a gymnast’s mind and body are not communicating correctly, and did not feel it was safe to compete. She used the publicity to advocate for the importance of mental health, and the toll that pressure can have on Black female athletes and Black women in general. Sharon Pruitt-Young, *Simone Biles Says She Wasn't Going To Let Larry Nassar Take Her Joy Away*, NATIONAL PUBLIC RADIO, Sept 28, 2021, <https://www.npr.org/2021/09/28/1041173873/simone-biles-quit-tokyo-olympics-larry-nassar>.

⁶⁸ Title VII provides, in part, “(a) Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment. (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.” 29 CFR Ch. XIV § 1604.11. This provides some protection for women in the workplace against sexual harassment, which is a pervasive problem. Had this provision been in effect during the early 1900s women like Garland and Douglass may have had a more solid basis upon which to lodge a formal complaint, however looking to the Me Too movement it is clear that this statute has not been enough to protect women in the industry.

Sexual assault is pervasive in higher education, with nearly 1 in 5 women experiencing sexual assault during their time at college.⁶⁹ Title IX is designed to protect from discriminatory or hostile acts based on sex. Title IX states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”⁷⁰ This applies to every school that receives federal funding, accounting for the vast majority of U.S. institutions. Under the act, schools must respond to hostile educational environments, which includes responding quickly to acts of sexual harassment and sexual violence. Schools should provide counseling to victims, and be able to inform these victims of their rights to protective orders, police reports, etc.

Despite these protections, assault is pervasive. In August of 2021, nationwide anti-rape protests broke out after 19-year-old University of Nebraska-Lincoln (UNL) student who was a member of the Phi Gamma Delta Fraternity (also called Fiji) brutally raped a 17-year-old girl.⁷¹ This brought to light other assaults, perpetrated by other members of the fraternity at multiple universities, that had been swept under the rug. University of Iowa students started a petition to shut down Fiji following the UNL story. On their campus, a sophomore girl was drugged, raped, videotaped, and photographed by Fiji brothers in August 2020. These videos were sent to the entire fraternity’s group chat. The Iowa City county attorney told the girl that her case would not be taken to court.⁷² Discussions of fraternity culture perpetuating gender based violence and sexual assault are not new, but the system still stands.

Many protections in the U.S. are retaliatory, rather than prevention-based. Even then, rape persecution is uncommon. Among the top reasons given for not reporting sexual assault are: fear of retaliation, no confidence that the police will help, personal embarrassment or privacy concerns, perceived lack of importance, and concern for protecting the perpetrator.⁷³ The mistrust of law enforcement is not unfounded. Out of every 1000 sexual assaults only about 300 are reported, only 50 reports lead to arrest, only 28 cases lead to a felony conviction, and only 25

⁶⁹ Christopher P. Krebs, Ph.D. et al., *The Campus Sexual Assault (CSA) Study Doc. No. 221153*, xviii (2007), <https://www.ojp.gov/pdffiles1/nij/grants/221153.pdf>.

⁷⁰ 20 U.S. Code § 1681.

⁷¹ See Li Cohen, *University of Nebraska fraternity with history of sexual harassment suspended over alleged rape of teen*, CBS NEWS (Aug. 21, 2021), <https://www.cbsnews.com/news/phi-gamma-delta-fraternity-fiji-university-nebraska-suspended-rape-minor-alleged/>. Fiji’s University of Nebraska-Lincoln chapter has been suspended for five years. Ryan Swanigan, *Fiji Fraternity Suspension Extended Through 2026*, WOWT (Oct. 12, 2021), <https://www.wowt.com/2021/10/12/fiji-fraternity-suspension-extended-through-2026/>.

⁷² Abby Joe, FIJI - University of Iowa, CHANGE.ORG, <https://www.change.org/p/everyone-fiji-university-of-iowa>.

⁷³ Michael Planty, Ph.D, et al., *Special Report: Bureau of Justice Statistics, Female Victims of Sexual Violence, 1994-2010* NCJ 240655 at 7, D.O.J. (2013), Office of Justice Programs, <https://bjs.ojp.gov/content/pub/pdf/fvsv9410.pdf>.

perpetrators will be incarcerated.⁷⁴ Only about 20% of female college students report their assaults at all because the system is so unreliable, untrustworthy, and focused on blaming the victim.⁷⁵ Moreover, over 500 cases of sexual assault committed by law enforcement agents were reported between 2005 and 2007; the majority of the victims were under the age of 18.⁷⁶ An officer is accused of sexual misconduct at least every five days, often using their position of power as a form of coercion.⁷⁷ Not only do the police often do little when a rape is reported, but for many they also represent the perpetrators.

Not much has changed in the decades since Patrica Douglas experienced the complicity of the police firsthand, when the doctor they brought her to erased all DNA evidence of the assault. Today, it is estimated that thousands of rape kits sit untested in police department and crime lab storage facilities nationwide.⁷⁸ This is a state effort to hinder the administration of justice.

II. CODIFICATION AND RATIFICATION OF INTERNATIONAL PROTECTIONS FOR WOMEN AND GIRLS

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international convention designed to protect the human rights of women. The convention itself does not address the issue of violence, but General Comments published after the drafting provide a basis for enforcing and establishing significant protections in both the public and private spheres. General Comment 35 lays out the essential reality and understanding that, “[gender-based] violence as a social - rather than an individual - problem, requiring comprehensive responses, beyond specific events, individual perpetrators and

⁷⁴ *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> (last accessed Dec. 3, 2021). It should also be noted that incarceration should not be the only means of recourse available, however criminal justice reform is a much larger topic outside the scope of this paper.

⁷⁵ Sofi Sinozich & Lynn Langton, Ph.D., *Special Report: Bureau of Justice Statistics, Rape and Sexual Victimization Among College-Aged Females, 1995-2013* NCJ 248471 at 1, D.O.J.(2014), Office of Justice Programs, <https://bjs.ojp.gov/content/pub/pdf/rsavcaf9513.pdf>.

⁷⁶ The modal category for victims was ages 14-15. Philip M. Stinson, et al., *Police Sexual Misconduct: A National Scale Study of Arrested Officers*, CRIMINAL JUSTICE FACULTY PUBLICATIONS 30 (2014), <https://www.bwjp.org/assets/documents/pdfs/webinars/dhhs-police-sexual-misconduct-a-national-scale-study.pdf>.

⁷⁷ Andrea J. Ritchie, *How some cops use the badge to commit sex crimes*, WASHINGTON POST (Jan. 12, 2018), https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html.

⁷⁸ Rape kits are evidence collection kits that contain forensic evidence collected from the victim following the immediate reporting of a rape. *What is the Rape Kit Backlog?*, END THE BACKLOG, <https://www.endthebacklog.org/backlog/what-rape-kit-backlog> (last accessed Nov. 29, 2021).

victims/survivors.”⁷⁹ Under the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém Do Pará, it is stated that, “violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public *or the private* sphere.”⁸⁰ This acknowledgement that violence incorporates not only state violence but also violence carried out by private actors is critical in addressing the acts laid out in the examples above. The United States has not ratified Belém do Pará, and is the only country to have signed but not ratified CEDAW.⁸¹ Furthermore, in 2000 the United States Supreme Court held that Congress has no power to legislate against private acts of gender-based violence against women.⁸² This leaves women vulnerable to the actions, or inactions, of the state with no means of appeal.

Abuse by a private actor — i.e. the MGM studio executives and the studio itself, Harvey Weinstein, Larry Nassar and USAG, and the brothers of Phi Gamma Delta — is violence that the state should have the power to act against, using due diligence to prevent and investigate. These cases of abuse should not be only remedied via civil lawsuit. Due diligence is one of the most crucial aspects of international law protections against gender-based violence against women. Article 4 of DEVAW requires party states to, “Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;”⁸³ Under that rule, the state would have been required to properly investigate the abuses suffered by the women in these cases in point. General Recommendation No. 19 of CEDAW also establishes a due diligence standard under article 2(e), stating, “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁸⁴

The courts in Douglass did not exercise any due diligence, in fact obstructing evidence; Garland never had a day in court because those abuses were considered simply part of “playing the game” in Hollywood; the FBI’s covering up of the Nassar scandal would be in clear violation

⁷⁹ General Recommendation 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, Committee on the Elimination of Discrimination Against Women, CEDAW/C/GC/35 (July 26, 2017).

⁸⁰ Belém Do Pará, *supra* note 10 (emphasis added).

⁸¹ G.A. RES. 34/180, *supra* note 10.

⁸² *United States v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000) (holding the civil remedy provision of the Violence Against Women Act unconstitutional).

⁸³ DEVAW, *supra* note 6 at 4.

⁸⁴ See CEDAW Article 2(e) at 16, *supra* note 9 (requiring states, “To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”); *and* General Recommendation No. 19 on Violence Against Women, Committee on the Elimination of Discrimination Against Women, A/47/38 at 2 (1992).

of these protections; and the abuse of young women and girls on college campuses would be subject to rigorous scrutiny. Without the requisite due diligence, law enforcement faces no legal accountability and is free to dispose of or ignore evidence, delay investigation, and deny justice to victims. In fact, the Supreme Court has held on multiple occasions that the police have no duty to protect citizens, even in cases in which abuse has been reported, nor in cases in which a restraining order has been filed.⁸⁵

RECOMMENDATIONS FOR THE US GOVERNMENT

The United States should ratify CEDAW. It is clear that protections for women in the United States are not rigorous enough, and the idea that our laws are sufficient in the protection of the human rights of women is, therefore, unsupportable by the evidence. Again, the United States is the only country that has signed but not ratified the convention.⁸⁶ In signing, the United States indicates that these regulations are necessary for the safety and protection of women, however, by not ratifying the same, the United States implies that these rights are not necessary for its own citizens. Human rights anywhere are human rights everywhere, and the incongruence between what the United States is willing to say and what the United States is *not* willing to do or enforce shows a structural fault in our human rights goals as a country.⁸⁷

CEDAW General Comment 13 recognizes, “violence as a social - rather than an individual- problem, requiring comprehensive responses, beyond specific events, individual

⁸⁵ See, e.g., *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (2005) (holding that the police had no duty to enforce a restraining order against the father of Gonzales’s children. The children were allegedly kidnapped from her home and were found dead in the backseat of the father’s car that evening.); and *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) (holding that the State has no constitutional duty to protect a child from his father after receiving multiple reports of abuse).

⁸⁶ The other UN Member States that have not ratified the Convention are: Afghanistan, Bahrain, Brunei Darussalam, Democratic People's Republic of Korea, Federated States of Micronesia, Iran, Marshall Islands, Mauritania, Monaco, Oman, Palau, Qatar, San Marino, Sao Tome & Principe, Saudi Arabia, Solomon Islands, Somalia, Sudan, Swaziland, Syrian Arab Republic, and United Arab Emirates. CEDAW, *supra* note 9.

⁸⁷ This is especially frustrating when we consider the United States’s frequent use of Women’s Rights as justification for warfare. This has been especially egregious in the “War on Terror,” which former First Lady Laura Bush claimed was, in part, a war to “fight for the dignity and rights of women.” Laura Bush, *Text: Laura Bush on Taliban Oppression of Women*, WASHINGTON POST (Nov. 17, 2001), https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/laurabushtext_111701.html. The reality is that the United States is steadfastly remaining on the same side of women’s rights issues as Afghanistan, as neither have ratified the Convention. CEDAW *supra* note 9. See also, Kim Berry *The Symbolic Use of Afghan Women in the War on Terror*, 27.2 Humboldt J. of Social Relations 137, (2003), <http://www.jstor.org/stable/23524156>.

perpetrators and victims/survivors.”⁸⁸ With some external oversight, provided by the UN and its relevant committees, the United States may eventually be able to create a society that meets the standard it seems to believe is necessary in other countries. Regular reporting, quantifiable data, and a requirement to provide due diligence and advocate for the affected parties may compel the forces in power to directly face the consequences of the current lack of both legislation and due diligence faced by vulnerable communities and disadvantaged identities.

Further, I believe that the Supreme Court should read a right to bodily autonomy into the right to liberty afforded in the United States Constitution. Many of our fundamental civil rights — e.g. the right to marriage, the right to intimate relations, and the right to reproductive planning — are currently rooted in a jurisprudential understanding of a fundamental right to privacy.⁸⁹ This right is borne out of the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments. The right, however, only protects rights that “can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty,’”⁹⁰ Because of this framework, once a right is not deemed fundamental, which is frequently defined by historic understanding, it can easily lose protection as a personal privacy guarantee. Justice Scalia, in his dissent in *Lawrence v. Texas*, 539 U.S. 558, posits a slippery slope argument in which he compares homosexual sodomy to other acts he has deemed “immoral and unacceptable.” Within this, he lists: fornication, bigamy, adultery, adult incest, bestiality, and obscenity.⁹¹ Despite J. Scalia’s concerns as to the consequences of a relaxed morality standard, the majority of these issues could still be regulated through a system built to

⁸⁸ CEDAW General recommendation No. 35, *supra* note 85.

⁸⁹ *See, e.g. Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967) (holding that miscegenation laws are unconstitutional under the Equal Protection and Due Process Clauses of the Fourteenth amendment); *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015) (holding that marriage is a fundamental right and the prohibition thereof is a violation of the Due Process Clause of the Fourteenth Amendment); *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003) (overruling *Bowers v. Hardwick*, 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986), *overruled by Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003) and holding that the right to liberty under the Due Process Clause of the Fourteenth amendment encompasses a right to private intimate relations); *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965) (holding that marriage is a relationship lying within a “zone of privacy” guaranteed by the First, Third, Fourth, Fifth, and Ninth amendments and therefore married persons are entitled to contraceptive information); *and Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), *holding modified by Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992) (holding that a right of personal privacy exists in the Constitution under the First, Fourth, Fifth, Ninth, and Fourteenth amendments and the penumbras of the Bill of Rights, and that this privacy right “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy”).

⁹⁰ *Roe v. Wade*, 410 U.S. 113 at 152 (quoting *Palko v. Connecticut*, 302 U.S. 319,325 (1937)).

⁹¹ *Lawrence v. Texas*, 539 U.S. 558 at 599.

protect bodily autonomy and consent rather than one built to shelter and perpetuate Christian standards of morality. That is to say, morality is not the only standard available to protect the interests he puts forward.

International bodies have recognized and codified this right to bodily autonomy. CEDAW General Recommendation 24 requires that health services be consistent with the human rights of women, “including the rights to autonomy... [and] informed consent.”⁹² General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights recognizes, “the central importance to human dignity of personal autonomy.”⁹³ General Recommendation 35 on CEDAW aligns this right specifically with sexual assault, recommending that measures in the pursuit of prevention, protection, prosecution, and punishment and redress be implemented, “with a victim/survivor-centred [sic] approach, acknowledging women as subjects of rights and promoting their agency and autonomy.”⁹⁴

The right to bodily autonomy, the accessibility of protection and redress, and the requirement of due diligence could create radical change in the area of sexual assault and harassment, under the larger penumbra of gender-based violence. I believe that these changes are both possible to implement and critical to the success of women in the United States. The international bodies seem to agree.

CONCLUSION

Physical, emotional, and sexual abuse has been the norm in Hollywood since the inception of motion pictures. Frequently, the women who face abuse are also among the upper echelon of society, yet even these women face structural and systemic barriers to self-advocacy, safety, recompense, and the pursuit of justice.

The United States claims status as a leader in social and political justice. Governments justify war under the auspices of female liberation and women’s rights. The country refuses external oversight with the argument that it is unnecessary, that we have a functional, representative, and judicial system which allows for safety and provides avenues of justice. The reality is more bleak. Sexual assault statistics, coupled with a lackadaisical national law enforcement arm at best, are indications of a non-functional human rights protection system. There is no oversight requiring that all assault be treated as violence. Further, the burden to prove sexual assault falls all too often on the victim, with irrelevant matters, such as choice of attire, intoxication level, and previous sexual contact, constituting valid defense for the perpetrator; that burden is too frequently impeded by the authorities meant to be investigating.

⁹² CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health) at 8, A/54/38/Rev.1, chap. I (1999).

⁹³ General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life at 15, CCPR/C/GC/36 (Oct. 30, 2018).

⁹⁴ General Recommendation No. 35, *supra* note 79.

The current system is not functional. However, with the implementation of international oversight through ratification of international treaties and conventions on the rights and protections of women, as well as reasonable constitutional interpretations providing for bodily autonomy and federal regulation of the private sphere in cases of gender-based violence, the United States may be able to remedy these societal ills over time and provide its women with the, “life, liberty, and the pursuit of happiness” that the United States has claimed to stand for since 1776.

The Pledge of Honesty

On my honor, I submit this work in good faith and pledge that I have neither given nor received improper aid in its competition.

Keaton Shapiro

