

Northwestern University Football Hazing Scandal Cracks Open a Culture of Hazing in the Athletics Department

By Martin J. Greenberg and Margaret Williams

I. Who is Pat Fitzgerald?

Pat Fitzgerald (“Fitzgerald”) was the head coach for Northwestern University (“Northwestern”) until he was terminated on July 11, 2023 following hazing allegations.¹ Fitzgerald played for Northwestern while he was in college, before beginning his coaching career in 1998.² He was head coach at Northwestern from 2006 to 2023.³

Fitzgerald played for Northwestern from 1993 to 1996.⁴ He was named “one of the best players in Northwestern history.”⁵ Fitzgerald was a linebacker for Northwestern and won numerous accolades as well as appearing in multiple championships with the team.⁶ During his college career, he twice won the Nagurski Trophy and Chuck Bednarik Award for the best defensive player in college football.⁷ In 1997, he won the Big Ten Medal of Honor.⁸ While on the team, Northwestern appeared in two Big Ten Championships and the Rose Bowl.⁹ In 2008, Fitzgerald

¹ Cobb, David, *Northwestern fires Pat Fitzgerald: Wildcats coach out amid hazing scandal as culture issues exposed*, CBS Sports, July 11, 2023, <https://www.cbssports.com/college-football/news/northwestern-fires-pat-fitzgerald-wildcats-coach-out-amid-hazing-scandal-as-cultural-issues-exposed/>

² Dan and Susan Jones Family Head Football Coach Pat Fitzgerald, Northwestern Athletics, 2023, <https://nusports.com/sports/football/roster/coaches/pat-fitzgerald/2575>

³ *Id.*

⁴ Al-Khateeb, Zac, *Pat Fitzgerald hazing scandal, explained: Why Northwestern fired football coach over ‘vile and inhumane’ allegations*, The Sporting News, July 12, 2023, <https://www.sportingnews.com/us/ncaa-football/news/pat-fitzgerald-northwestern-football-hazing-scandal-coach/pa95vojh5emxxcaxvzixvqmi>

⁵ *Fitzgerald Inks New Contract Through 2030*, Northwestern Athletics, Jan. 27, 2021, <https://nusports.com/news/2021/1/27/football-FitzForever.aspx?print=true>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

was inducted into the College Football Hall of Fame.¹⁰ He started in 23 career games.¹¹ He accomplished 299 tackles, five forced fumbles, and intercepted three passes.¹²

Fitzgerald began coaching in 1998 at the University of Maryland as the Defensive Graduate Assistant.¹³ In 1999, he moved to the University of Colorado as the Defensive Graduate Assistant.¹⁴ In 2000, Fitzgerald was the Linebackers and Special Teams coach for the University of Idaho.¹⁵ His career as a Northwestern coach began in 2001 as the Defensive Backs coach.¹⁶ From 2002 to 2003, Fitzgerald was the Linebackers coach.¹⁷ From 2004 to 2005 he was the Linebackers coach and the Recruiting Coordinator.¹⁸ After former head coach Randy Walker suddenly passed in 2006, Fitzgerald was promoted to head coach, where he resided from 2006 to 2023.¹⁹

While coaching at Northwestern, Fitzgerald led the team to multiple division championships, bowl games, and winning seasons.²⁰ Northwestern won two Big Ten West Division titles in 2018 and 2020.²¹ His team appeared in the Alamo Bowl, Outback Bowl in 2009 and 2015, TicketCity Bowl, Meineke Car Care Bowl, Gator Bowl, Pinstripe Bowl, Music City Bowl, Holiday Bowl, and Citrus Bowl.²² Northwestern won five of these bowl games.²³ Fitzgerald holds the Northwestern

¹⁰ *Id.*

¹¹ *Pat Fitzgerald: Football*, Northwestern, 2013, <https://www.northwestern.edu/magazine/fall2013/feature/top-cats-sidebar/pat-fitzgerald-football.html>

¹² *Id.*

¹³ *Dan and Susan Jones Family Head Football Coach Pat Fitzgerald*, *supra* note 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Fitzgerald Inks New Contract Through 2030*, *supra* note 5.

²¹ *Dan and Susan Jones Family Head Football Coach Pat Fitzgerald*, *supra* note 2.

²² *Id.*

²³ *Id.*

record for the most wins as a coach for the team with a 110-101 record.²⁴ In 2008, Fitzgerald was named the Big Ten Coach of the Year.²⁵

Fitzgerald's impact on the Northwestern football team is demonstrated in player success as well. Sherrick McManis, Anthony Walker Jr., Justin Jackson, Dean Lowry, Tyler Lancaster, Ifeadi Odenigbo, Blake Hance, Joe Jones, and Nate Hall are among the list of professional football players that are Northwestern alumnus who played for Fitzgerald.²⁶ Fitzgerald's team also has earned honors in the academic realm with multiple Academic All-Big Ten honors, an average team grade-point-average of 3.24, and nine players posting a 4.0 as student-athletes.²⁷

II. Northwestern University Contract

Since Northwestern University is a private institution, it is not subject to Open Records laws or Freedom of Information Act requests and therefore Fitzgerald's contract could not be obtained. Newspapers have reported that Fitzgerald signed in 2021 a massive extension of his contract worth \$57 million over the next ten years.²⁸ Fitzgerald was to embark on the fourth year of his ten-year term. It has been estimated that over \$40 million was left under the contract and reported that Fitzgerald was fired 'for cause' over team culture.²⁹ In order to be absolutely certain of a 'for cause' termination, the contract provisions enumerating what constitutes cause would have to be reviewed.

²⁴ Al-Khateeb, *supra* note 4.

²⁵ Dan and Susan Jones Family Head Football Coach Pat Fitzgerald, *supra* note 2.

²⁶ Fitzgerald Inks New Contract Through 2030, *supra* note 5.

²⁷ *Id.*

²⁸ Nagel, Cody, *Pat Fitzgerald releases statement after Northwestern firing, amid hazing scandal*, 247 Sports, July 11, 2023, <https://247sports.com/article/pat-fitzgerald-releases-statement-after-northwestern-firing-amid-212665718/>

²⁹ Rittenberg, Adam, *Pat Fitzgerald attorney says Northwestern fired coach for cause*, ESPN, July 11, 2023, https://www.espn.com/college-football/story/_/id/37996312/attorney-says-northwestern-fired-coach-pat-fitzgerald-cause

Fitzgerald has hired Attorney Daniel Webb of Winston & Strawn, who charges an estimated \$2000/hour, to represent his interests.³⁰ Attorney Webb has indicated that Fitzgerald has at least two defenses to his firing, including breach of contract and significant reputational damage.³¹ Fitzgerald's contract would have to be consulted as to what due process procedures are in place relative to termination, and who makes the determination of cause.

I am somewhat familiar with Northwestern as I, along with Thom Park, negotiated Randy Walker's contract. While Walker agreed to all the proposed economic terms of his contract, he would not agree to the methodology for a determination of a 'for cause' termination. After eight months of negotiation, the following clause was negotiated and utilized in Walker's contract:

Prior to any contemplated suspension or termination of Employee, University shall be required to provide Employee with written Notice of contemplated suspension or termination of employment and a statement of the reasons and factual basis and support therefor. Employee, from the date of receipt of said written Notice, shall have five (5) calendar days from receipt thereof to deliver a written Request for a hearing on the contemplated action. Written Request shall be delivered to the office of the Chancellor or President of the University. If no written request is received by the Chancellor or President as provided herein, a contemplated suspension termination shall become final five (5) calendar days following the Employee's receipt of said Notice. Upon receipt of a written Request for hearing, the Chancellor or President shall appoint a three (3) person Hearing Panel composed of the Chief Judge of the County in which the main office of the University is located, the President of the local Bar Association who in turn shall select a third arbitrator to consider the matter and hear reasons for and against the contemplated suspension or termination. The Employee shall have the right to appear before the Hearing Panel with a representative, if he desires, including legal representation, to comment on the reasons given for the contemplated action and to present evidence. The Hearing Panel shall not be bound by formal or technical rules of evidence but shall be governed by the arbitration rules of the American Arbitration Association. The decision of the Hearing Panel shall be final and conclusive as to the employment status of the Employee. Employee shall be afforded any and all necessary due process including the right to hire counsel, call witnesses, conduct

³⁰ Priyadarshi, Ashish, "*Pat Fitzgerald Might End Up With a Bit More Than the Contract*": *Fired Northwestern Coach Hires \$2,000 Per Hour Attorney Has College Football Fans In a Frenzy on Twitter*, The Sports Rush, July 11, 2023, <https://thesportsrush.com/nfl-news-pat-fitzgerald-might-end-up-with-a-bit-more-than-the-contract-fired-northwestern-coach-hires-2000-per-hour-attorney-has-college-football-fans-in-a-frenzy-on-twitter/>

³¹ Florio, Mike, *Pat Fitzgerald ponders litigation over his firing by Northwestern*, NBC Sports, July 12, 2023, <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/pat-fitzgerald-ponders-litigation-over-his-firing-by-northwestern>

discovery, examine documentation and cross examine witnesses so that Employee is given a fair and unbiased hearing as to his employment status. The cost of arbitration shall be borne by the University.³²

It would be interesting to see if this line of thinking continued through to Fitzgerald's contract, who followed Walker after Walker's sudden death in 2006.

III. What is hazing?

Illinois statute defines hazing as:

(a) a person commits hazing when he or she knowingly requires the performance of any act by a student or other person in a school, college, university, or other educational institution of this State, for the purpose of induction or admission into any group, organization, or society associated or connected with that institution, if: (1) the act is not sanctioned or authorized by that educational institution; and (2) the act results in bodily harm to any person.³³

Northwestern defines hazing as:

any action taken 'to produce mental, physical, or emotional discomfort; servitude; degradation; embarrassment; harassment; or ridicule for the purpose of initiation into, affiliation with, or admission to, or as a condition for continued membership in a group, team, or other organization, regardless of an individual's willingness to participate.' This policy prohibits, among other things, any physical abuse expected or inflicted on another person, sexual violations or other required, encouraged or expected sexual activity whether actual or simulated, engaging in degrading or humiliating games, activities, stunts or buffoonery, and requiring or compelling the consumption of liquid, food, drinks or other substances.³⁴

³² Martin J. Greenberg, *Termination of College Coaching Contracts: When Does Adequate Cause to Terminate Exist and Who Determines its Existence?*, 17 Marq. Sports L. Rev. 197 (2006) Available at: <http://scholarship.law.marquette.edu/sportslaw/vol17/iss1/8>.

³³ 720 ILL. COMP. STAT. 5/12C-50.

³⁴ Markus, Nicole, Brown, Alyce, Reynolds, Cole, Bhardwaj, Divya, *Former NU football player details hazing allegations after coach suspension*, The Daily Northwestern, July 8, 2023, <https://dailynorthwestern.com/2023/07/08/sports/former-nu-football-player-details-hazing-allegations-after-coach-suspension/>

The psychological effects of hazing may be short- or long-term.³⁵ Examples of such effects include decrease in confidence, depression, suicidal thoughts, inability to be friends with people on their sports team, quitting their sport, difficulty in school, and damaging relationships with family.³⁶

Three steps can be used to create an environment that deters hazing.³⁷ First, there needs to be a clear, written zero-tolerance policy that outlines consequences for conduct that violates the policy.³⁸ Second, pre-season meetings should take place to explain the policy and students should sign an acknowledgment that says that they understand the policy and consequences for violating it.³⁹ Third, immediate investigations with consistent action for such claims should be conducted.⁴⁰ These administrative efforts are one way to both deter hazing incidents and handle hazing claims.

Hazing as a form of “team bonding” or “team building” can also be combatted in sport team-building activities as a proactive measure.⁴¹ Examples of such measures include team dinners, team community service, and other whole team activities that do not force athletes “to engage in risky and dangerous behaviors.”⁴²

IV. Student claims of the hazing culture in the football program.

Reports have indicated that players displayed an array of ways that people dealt with the practices that were alleged stating, “[w]hile some student-athletes believed the hazing was in jest

³⁵ Waldron, Jennifer J., *Reducing Hazing in Sport Teams*, Association for Applied Sport Psychology, <https://appliedsportpsych.org/resources/resources-for-coaches/reducing-hazing-in-sport-teams/>

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

and not harmful, others viewed it as causing significant harm with long-term consequences.”⁴³ A former player explained the serious effects that hazing can have on a player stating, “I’ve had friends reach out to me in the middle of the night having very suicidal tendencies.”⁴⁴

Northwestern football players reportedly attend biannual training centering on hazing, but former players have alleged hazing incidents that took place while they were athletes for the team.⁴⁵ A former player said, “[i]t’s done under this smoke and mirror of ‘oh this is team bonding,’ but no, this is sexual abuse.”⁴⁶ It was reported that the hazing would often occur in the locker room.⁴⁷ It was also alleged that the training camp called “Camp Kenosha” located in Kenosha, Wisconsin was where the activities would start.⁴⁸

The most significant form of hazing reported that occurred on the team was a practice called “running.”⁴⁹ It was alleged that upperclassmen would “dry-hump” team members, primarily freshmen, in a dark locker room for making mistakes on the field and at practice.⁵⁰ Allegations stated, “football players had a whiteboard labeled ‘Runsgiving’ and ‘Shrek’s list’ which contained the names of all the players who they planned to ‘run.’”⁵¹ According to a former player, clapping above the heads of a player would indicate that a player should join what was called “Shrek’s List,” specifically dedicated to identify who needed to be “ran.”⁵² It was reported that this practice was

⁴³ Schill, Michael, *Decision to Relieve Head Football Coach Pat Fitzgerald of His Duties*, Northwestern, July 10, 2023, <https://www.northwestern.edu/leadership-notes/2023/decision-to-relieve-head-football-coach-pat-fitzgerald-of-his-duties.html>

⁴⁴ Markus, et al., *supra* note 34.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Executive Summary: Northwestern Football Hazing Investigation*, <https://news.northwestern.edu/assets/Docs/Executive-Summary-FINAL.pdf>

⁴⁸ Markus, et al., *supra* note 34.

⁴⁹ *Executive Summary: Northwestern Football Hazing Investigation*, *supra* note 47.

⁵⁰ *Id.*

⁵¹ Complaint at 7, *John Doe v. Northwestern University*, filed (Ill. Cir. Ct. July 18, 2023) Available at: <https://www.documentcloud.org/documents/23879849-northwestern-hazing-lawsuit>

⁵² *Executive Summary: Northwestern Football Hazing Investigation*, *supra* note 47.

dubbed “the Shrek clap.”⁵³ Fitzgerald allegedly would make that signal above players during practices, which was interpreted as Fitzgerald participating in “Shrek’s List.”⁵⁴ A former player stated, “[e]veryone would just be looking at each other and be like ‘bro, Fitz knows about this.’”⁵⁵ It was reported that “Shrek’s list” was also mentioned as a means of intimidating freshmen into keeping hazing rituals silent, threatening, “if anyone snitched, then Shrek would get you.”⁵⁶

Other alleged practices of hazing involved players forced to be naked and perform other activities, such as bear crawling, slingshotting, “the carwash,” and the center-quarterback exchange.⁵⁷ Allegations of slingshotting involved players being forced to use exercise bands to throw themselves across the floor.⁵⁸ In a complaint filed by a John Doe, allegations described “the carwash” as “players lining up, standing naked, and spinning around the entrance of the showers so that all freshman players were forced to rub up against the line of men to get to their showers.”⁵⁹ It further alleged that “‘the carwash’ also consisted of players with a hose spraying the freshman as they walked through the tunnel of naked men.”⁶⁰ It was alleged that the center-quarterback exchange involved the freshman quarterback taking an under-snap from a freshmen center while both were naked.⁶¹ A player stated that anyone who vocally objected to the naked activities were threatened with “being ran,” so they had no other option but to participate.⁶² The John Doe complaint stated, “the social pressure and hazing was so severe that unwilling participants were

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Cronin, Bob, *After Hazing Investigation, Northwestern Suspends Coach*, Newser, July 11, 2023, <https://www.newser.com/story/337449/after-hazing-investigation-northwestern-suspends-coach.html/>

⁵⁶ Markus, et al., *supra* note 34.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Complaint at 7, *John Doe v. Northwestern University*, *supra* note 51.

⁶¹ *Executive Summary: Northwestern Football Hazing Investigation*, *supra* note 47.

⁶² *Id.*

forced to take part in acts that were assaultive, illegal, and often sexual in nature.”⁶³ Another alleged practice involved having freshmen drink “as many Gatorade shakes as they could within 10 minutes.”⁶⁴ A former player stated that this challenge would cause “physical discomfort to the extent of sickness and vomiting.”⁶⁵ In response to the allegations, a former player said, “[d]id I feel comfortable? Not really. But did I feel like I had a choice? No.”⁶⁶

It was reported that the hazing extended beyond sexual humiliation and included claims of racial abuse by coaches dating back to 2005.⁶⁷ A former player said, “[t]he stuff that refers to how Black players are treated, in my mind, that was a form of hazing.”⁶⁸ The former player alleged that during his 2009 season Fitzgerald “would ask Black players and coaches to cut off longer hairstyles – including dreadlocks – so that they were more in line with what Fitzgerald called the ‘Wildcat Way.’”⁶⁹ The player said that this hairstyle requirement did not extend to white players.⁷⁰ It was also alleged that the team was divided by race, with white players on offense and Black players on defense.⁷¹ Ramon Diaz, Jr., a 2005 to 2008 Latino offensive lineman said, “a former offensive line coach joked about how Diaz’s family must know how to clean houses.”⁷² Diaz also alleged that other players and coaches asked him why he did not play soccer instead.⁷³ Jon Yates, the

⁶³ Complaint at 8, John Doe v. Northwestern University, *supra* note 51.

⁶⁴ Rittenberg, Adam, *Ex-Northwestern player says coach Pat Fitzgerald ‘failed’ by not stopping hazing*, ABC 7 Chicago, July 10, 2023, <https://abc7chicago.com/sports/ex-northwestern-player-says-coach-pat-fitzgerald-failed-by-not-st/13483581/>

⁶⁵ McCoppin, Robert, *Former Northwestern football players retain lawyers for expected legal action in hazing scandal*, Chicago Tribune, July 17, 2023, <https://www.chicagotribune.com/sports/college/ct-northwestern-players-retain-lawyers-20230717-buuwnnrexvdxnb6o2h6n76hjau-story.html>

⁶⁶ Rittenberg, *supra* note 64.

⁶⁷ Markus, Nicole, Brown, Alyce, Reynolds, Cole, *Former NU players describe racist environment in football program*, The Daily Northwestern, July 10, 2023, <https://dailynorthwestern.com/2023/07/10/sports/former-nu-players-describe-racist-environment-in-football-program/>

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

Northwestern spokesperson, stated that Northwestern was unaware of the race allegations.⁷⁴ In response to the historical allegations of hazing, Northwestern’s former athletic director felt compelled to respond by saying

“Over my thirty-year career in intercollegiate athletics, my highest priority has always been the health and safety of all student-athletes,” [Jim] Phillips said in a statement posted on Twitter by Nicole Auerbach of The Atlantic. “Hazing is completely unacceptable anywhere, and my heart goes out to anyone who carries the burden of having been mistreated. Any allegation that I ever condoned or tolerated inappropriate conduct against student-athletes is absolutely false. I will vigorously defend myself against any suggestion to the contrary.”⁷⁵

In the aftermath of Fitzgerald’s firing, eight former football players of the Northwestern program hired attorney Ben Crump and Levin & Perconti law firm, specializing in civil rights and personal injury law, to represent them in legal action.⁷⁶ Crump said, “[w]hether the coaches at Northwestern approved or participated in the harassment of these players or not, they are responsible for allowing and enabling a toxic, disgusting, and damaging culture in their program.”⁷⁷ Yates responded that “the school protects student welfare ‘with the utmost seriousness,’” as the school looks into all of the allegations and works with the administration, the board of trustees, faculty, and student body to protect Northwestern student life.⁷⁸

It was reported that despite hazing allegations by former players, current players defended Fitzgerald.⁷⁹ One current player said that a former player “wanted to ‘absolutely seek action to get Fitz out of the program.’”⁸⁰ The current team also wrote a letter to the Northwestern community stating,

“Northwestern Football players DO NOT tolerate hazing... These fabrications have been made with the intention of harming our program and tarnish the reputation of

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ McCoppin, *supra* note 65.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Rittenberg, *supra* note 64.

⁸⁰ *Id.*

our dedicated players and coaching staff... Coach Fitzgerald had no knowledge of these allegations until they were brought to his attention during the investigation... Coach Fitzgerald has consistently prioritized the well-being and development of his players, and we stand behind him in his unwavering commitment to our team.”⁸¹

V. Investigation of the hazing claims.

Northwestern released an Executive Summary of the hazing allegations made about the football program.⁸² After hazing allegations were received on November 30, 2022, Northwestern immediately enlisted an outside investigator, Maggie Hickey (“Hickey”) of ArentFox Schiff LLP to investigate.⁸³ Hickey and the rest of the investigation team “interviewed more than 50 people affiliated or formerly affiliated with the football program and reviewed, among other things, hundreds of thousands of emails and player survey data dating back to 2014.”⁸⁴ There was not enough evidence to demonstrate that the coaching staff knew about any hazing activities.⁸⁵ However, the team determined that, “there had been significant opportunities to discover and report the hazing conduct.”⁸⁶

Upon learning of the findings from the investigation, Northwestern made significant changes to the program to discourage any future hazing conduct.⁸⁷ First, “Camp Kenosha” was permanently discontinued.⁸⁸ Second, someone who does not report to the football coaching staff will monitor the locker room.⁸⁹ Third, an online reporting tool will be created to report hazing concerns by

⁸¹ Gallardo, Michelle and Cauguiran, Cate, *Northwestern football players speak out on hazing allegations*, ABC 7 Chicago, July 10, 2023, <https://abc7chicago.com/northwestern-football-hazing-pat-fitzgerald-news-university-fitzgerald/13484596/>

⁸² *Executive Summary: Northwestern Football Hazing Investigation*, *supra* note 47.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

student-athletes anonymously.⁹⁰ Fourth, anti-hazing training will continue, with an emphasis on reporting and discipline for violations.⁹¹ Fifth, a report on policy development, organization culture, communication, training and enforcement will be open to the entire community.⁹² Sixth, the annual student-athlete-survey process will be better utilized to bring student concerns to the attention of coaches.⁹³ Finally, “Northwestern will work with the NCAA and Big Ten Conference to ensure all processes and rules are followed.”⁹⁴ Northwestern’s Executive Summary gave the public an opportunity to see how Northwestern was taking hazing allegations seriously and making necessary changes to protect student-athletes.

The investigation yielded insignificant evidence to prove Fitzgerald’s knowledge, but a former player insisted, “‘the assistant coaches and everybody else knew,’ emphasizing that particularly those who had been at Northwestern longer ‘definitely know about it.’”⁹⁵

VI. Actions taken by the University following the investigation.

Following the investigation, Fitzgerald was placed on a two-week unpaid suspension, effective immediately.⁹⁶ After the allegations went public, Northwestern President Michael Schill (“Schill”) said, “I may have erred in weighing the appropriate sanction. In determining an appropriate penalty for the head coach, I focused too much on what the report concluded he didn’t know and not enough on what he should have known.”⁹⁷ Schill later stated, “[t]he head coach is ultimately

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Locker, Bradley, *Recent former Northwestern player: Allegations of hazing are “100% true,”* SBNation, July 10, 2023, <https://www.insidenu.com/2023/7/10/23789970/recent-former-northwestern-player-allegations-of-hazing-are-100-true>

⁹⁶ *Id.*

⁹⁷ Rittenberg, *supra* note 64.

responsible for the culture of his team.”⁹⁸ Despite the investigation’s determination that coaches did not know about hazing activities, the school focused on the fact that “they had opportunities to discover and report problematic conduct.”⁹⁹

Two days after reporting that Fitzgerald was suspended, he was subsequently fired.¹⁰⁰

Fitzgerald then released the following statement:

Last Friday, Northwestern and I came to a mutual agreement regarding the appropriate resolution following the thorough investigation conducted by Ms. Hickey. This agreement stipulated a two-week suspension. Therefore, I was surprised when I learned that the president of Northwestern unilaterally revoked our agreement without any prior notification and subsequently terminated my employment. Given this unexpected turn of events, I have entrusted my agent, Bryan Harlan, and legal counsel, Dan Webb from Winston & Strawn LLP, to take the necessary steps to protect my rights in accordance with the law.¹⁰¹

There are multiple ways that the situation may resolve itself as time moves forward. One report stated, “his official firing on Monday [July 10] was just the beginning of the journey. Some lawsuits between the two parties are expected to be on the way.”¹⁰² Given that there is an estimated \$42 million left on his contract, it is unsurprising that Fitzgerald hired an attorney to “protect [his] rights.”¹⁰³ Fitzgerald’s legal counsel, Dan Webb, stated that Northwestern “breached an oral agreement.”¹⁰⁴ Whether or not he will receive that money will likely be the topic of conversation while attorneys determine if the firing was or was not “for cause.”¹⁰⁵

⁹⁸ Schill, *supra* note 43.

⁹⁹ *Id.*

¹⁰⁰ Al-Khateeb, *supra* note 4.

¹⁰¹ *Id.*

¹⁰² McVeigh, Griffin, *Pat Fitzgerald releases statement following his firing from Northwestern*, July 10, 2023, On3, <https://www.on3.com/college/northwestern-wildcats/news/former-head-coach-pat-fitzgerald-statement-firing-hazing-allegations/>

¹⁰³ *Id.*

¹⁰⁴ Raby, John, *Legal headaches could just be starting at Northwestern, WVU with Fitzgerald, Huggins, experts say*, kxan, July 13, 2023, <https://www.kxan.com/sports-general/ap-legal-headaches-could-just-be-starting-at-northwestern-wvu-with-fitzgerald-huggins-experts-say/>

¹⁰⁵ McVeigh, *supra* note 102.

NCAA Bylaw 11.1.2.1 states,

Responsibility of Head Coach. It shall be the responsibility of an institution's head coach to promote an atmosphere for compliance within the program supervised by the coach and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.¹⁰⁶

Under NCAA Bylaw 11.1.2.1, all actions by assistant coaches and administrators that report either directly or indirectly to the head coach are the responsibility of the head coach. The Bylaw is related to the concept of vicarious liability.¹⁰⁷ Vicarious liability is a tort doctrine which imposes responsibility upon one person for the failure of another, with whom the person has a special relationship to exercise such care as a reasonably prudent person would use under similar circumstances.¹⁰⁸ What will likely be a key feature in comparing the Bylaw to the current hazing allegations is whether or not assistant coaches or administrators were aware of any hazing allegations, regardless of Fitzgerald's first-hand knowledge. If an assistant coach or administrator did have knowledge of any hazing allegations, Fitzgerald would be held responsible under this Bylaw.

The knowledge that any assistant coach may have had is important when examining the future coaching situations following Fitzgerald's firing.¹⁰⁹ A commentator examining the coaching situation stated, "[i]n a perfect world, everyone associated with what's being alleged, or allowed what's being alleged, would be gone. But there are football games to be played and money to be made."¹¹⁰ Another reporter announced that "no punishments occurred for the 17 members of the

¹⁰⁶ NAT'L COLLEGIATE ATHLETIC ASS'N, DIV. I Proposal 2004-102, art. 11.1.2.1, Legislative Services Database, <https://web3.ncaa.org/lstdbi/search/proposalView?id=1130>

¹⁰⁷ Martin J. Greenberg, *Coach Accountability reduces vicarious liability*, The Law Office of Martin J. Greenberg, Sept. 6, 2013, Available at: <https://www.greenberglawoffice.com/coach-accountability-reduces-vicarious-liability/>

¹⁰⁸ *Id.*

¹⁰⁹ Phillips, Carron, J., *Northwestern's decision to keep Pat Fitzgerald's assistants is proof that Northwestern isn't a serious place*, Deadspin, July 13, 2023, <https://deadspin.com/northwestern-football-hazing-pat-fitzgerald-staff-1850636294>

¹¹⁰ *Id.*

Northwestern football support staff listed on the Northwestern athletics website.”¹¹¹ Due to the Bylaw and doctrine of vicarious liability, any assistant coaches with knowledge would not be responsible. Any further action by Northwestern would be the decision of the University itself.

On Monday, July 17, 2023, Northwestern announced that David Braun (“Braun”), defensive coordinator for Northwestern, would be the interim coach for the upcoming season.¹¹² One reporter responded to the announcement with concerns, given that Fitzgerald was the one that hired Braun, stating, “if Northwestern truly wants to start over ... it has no choice but to bring in a coach with no ties to Fitzgerald.”¹¹³

In the aftermath of allegations against Fitzgerald and hazing in the football program, multiple lawsuits by former players have begun.¹¹⁴ The John Doe complaint added allegations that Fitzgerald “took part in the harassment, hazing, bullying, assault, and/or abuse of athletes.”¹¹⁵ Further it alleged that “members of the football team would watch” as Fitzgerald participated in the alleged activities.¹¹⁶ However, this complaint is not just against Fitzgerald, but has extended to Schill and other administrators who “could have stopped the problem.”¹¹⁷ It was alleged that “[t]here’s nothing that a head coach doesn’t know about.”¹¹⁸ It was reported that Fitzgerald’s attorney Dan Webb continues to state that the Northwestern investigation was “in-depth, time

¹¹¹ Trocchi, Bill, *Northwestern finds its scapegoat in Pat Fitzgerald after hazing incidents come to light*, The Sporting News, July 16, 2023, <https://www.sportingnews.com/us/ncaa-football/news/northwestern-scapegoat-pat-fitzgerald-after-hazing-incident/et1pvcbpkp60yrl10ufwpdt>

¹¹² *Former Northwestern football players hire civil rights attorney to investigate hazing*, NBC 5 Chicago, July 17, 2023, <https://www.nbcchicago.com/news/sports/big-ten/former-northwestern-football-players-hire-civil-rights-attorney-to-investigate-hazing/3188428/>

¹¹³ Locker, Bradley, *After firing Pat Fitzgerald, Northwestern must hire an outside head coach to reset program*, SBNation, July 12, 2023, <https://www.insidenu.com/2023/7/12/23792166/after-firing-pat-fitzgerald-northwestern-must-hire-an-outside-head-coach-to-reset-program>

¹¹⁴ Bratley, Madison, *Second lawsuit filed against Northwestern in football hazing case*, The Daily Northwestern, July 19, 2023, <https://dailynorthwestern.com/2023/07/19/top-stories/second-lawsuit-filed-against-northwestern-in-football-hazing-case/>

¹¹⁵ Complaint at 9, John Doe v. Northwestern University, *supra* note 51.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Bratley, *supra* note 114.

intensive and independent” and that it did not find that Fitzgerald had any knowledge of hazing in his program.¹¹⁹

VII. **How the termination has affected the football program.**

The firing of Fitzgerald sent concerns beyond the football program. The Northwestern faculty senate president said,

“I’d like to think this will not hurt our academic reputation. But it’s concerning. The question it could raise in prospective students’ parents’ minds is, does this university respond adequately to concerns or allegations that impact the safety of my child, not just the athletic students, but all students?”¹²⁰

The Chicago Sun-Times polled people on Twitter to find out the general public’s opinion about what was happening at Northwestern. With only 7.9% of responders caring about Northwestern football, 66% said that Northwestern did the right thing in firing Fitzgerald.¹²¹ As for the general impact on the football program, the poll further found that 60.1% of responders said that the plan to renovate Northwestern’s football stadium is not a good idea given the timing of everything.¹²²

The program has also seen an impact on the players. Whether their reasons be about Northwestern culture, the football program hazing allegations, or choosing Northwestern by wanting to learn from Fitzgerald, out of the fourteen members of the 2024 class, four have since decommitted from Northwestern: offensive linemen Payton Stewart and Julis Tate, wide receiver

¹¹⁹ *Id.*

¹²⁰ Chicago Tribune Staff, *Fallout at Northwestern: What to know about the football hazing scandal, firing of Pat Fitzgerald – and what’s next for the university*, Chicago Tribune, July 17, 2023, <https://www.chicagotribune.com/sports/college/ct-northwestern-football-hazing-scandal-20230713-wzaq53hse5grrjf5liadm3xpsa-story.html>

¹²¹ Greenberg, Steve, *Polling Place: Did Northwestern do the right thing in firing football coach Pat Fitzgerald?*, Chicago Sun Times, July 15, 2023, <https://chicago.suntimes.com/2023/7/15/23795802/northwestern-pat-fitzgerald-football-hazing-ryan-field>

¹²² *Id.*

Brett Eskildsen, and defensive tackle Dillan Johnson.¹²³ Nigel Glover was the first Northwestern player on the current roster to enter the transfer portal.¹²⁴ “Northwestern football players have 30 days from Fitzgerald’s termination to enter the transfer portal with no penalty,” so Northwestern fans are watching to see which current players stay or leave the team.¹²⁵

VIII. Beyond Fitzgerald

As more lawsuits, allegations, and information comes out, more sports are being included in hazing and abuse allegations which reports suggest demonstrates a need to “examine closely the culture of Northwestern athletics.”¹²⁶ Indeed, another lawsuit has been filed by a former Northwestern volleyball player against the University alleging hazing. “The lawsuit, filed on behalf of ‘Jane Doe 1,’ alleges Northwestern’s volleyball program has ‘long-standing issues involving hazing, harassment, bullying and retaliation.’”¹²⁷

“Jane Doe 1’s case is an example of how an enabled culture and an enabled coach had become accustomed to practices of hazing and abuse for years, if not decades,” attorney Patrick A. Salvi II, of Salvi, Schostok and Pritchard, said in a news release. “We see in Jane Doe 1’s story how hazing and abuse causes physical and emotional harm. Her story is sadly not uncommon, and it permeates across sports, men and women, and across campuses.”¹²⁸

¹²³ Taylor, Shakeia, *Will Northwestern football recruits stay or decommit? ‘College football coaches and teams are opportunistic.’* Chicago Tribune, July 17, 2023, <https://www.chicagotribune.com/sports/college/ct-northwestern-football-fitzgerald-recruiting-20230714-qmpodylysnhw5eggmtifvuvifi-story.html>

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Hill, Glynn A., *As Northwestern scandal grows, lawyer alleges hazing in softball, volleyball*, The Washington Post, July 19, 2023, <https://www.washingtonpost.com/sports/2023/07/18/northwestern-football-lawsuit-pat-fitzgerald/>

¹²⁷ The Athletic Staff, *Former Northwestern volleyball player suing university over hazing allegations*, The Athletic, July 24, 2023, <https://theathletic.com/4716592/2023/07/24/northwestern-volleyball-lawsuit-hazing-allegations/>

¹²⁸ *Id.*

The hazing allegations that were reported date back to 2021 when Northwestern suspended Davis and his staff while investigating allegations and confirmed hazing had taken place.¹²⁹ The University canceled two games and required a mandatory anti-hazing training to take place.¹³⁰ “The lawsuit mentions that a ‘culture meeting’ was held during the 2022-23 academic year following ‘multiple complaints’ against Davis, but that the school ‘took no actions.’”¹³¹ Moreover, “[f]our sources close to the Northwestern volleyball program — including three recent former players — confirmed that a hazing incident occurred in March 2021, as detailed in a lawsuit filed Monday morning on behalf of a former Northwestern volleyball player.”¹³²

It should also be noted that in July of 2023, Northwestern fired its first-year baseball coach, Jim Foster, for alleged abusive behavior. “Northwestern’s baseball program recently underwent a human resources investigation, which found that Foster engaged in ‘bullying’ and ‘abusive behavior,’ leading to a mass exodus of assistant coaches and players, per multiple reports.”¹³³

“Nothing will ever be more important to Northwestern than providing its students a place that allows them to develop in the classroom, in the community and in competition at the absolute highest level, and building a culture which allows our staff to thrive,” [Athletic Director Derrick] Gragg said in the statement. “This has been an ongoing situation and many factors were considered before reaching this resolution. As the director of athletics, I take ownership of our head coaching hires and we will share our next steps as they unfold.”

“Even as the football hazing investigation played out, another scandal rocked Northwestern’s athletics department: the baseball coach was fired shortly after Fitzgerald for abusive behaviors toward staff members. Since then, baseball and

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Locker, Bradley and Gold, David, *Three former Northwestern volleyball players confirm hazing occurred, share details about Shane Davis’ absence*, SBNation, July 24, 2023, <https://www.insidenu.com/2023/7/24/23805973/former-northwestern-volleyball-players-corroborate-lawsuit-details-discuss-punishment-shane-davis#>

¹³² *Id.*

¹³³ The Athletic Staff, *Northwestern fires baseball coach Jim Foster following allegations of ‘abusive behavior,’* The Athletic, July 13, 2023, <https://theathletic.com/4690121/2023/07/13/northwestern-fires-baseball-coach-jim-foster/>

softball players have also come forward with hazing allegations,” [Attorney Ben] Crump said at a press conference.¹³⁴

Cheerleaders at Northwestern have also alleged they were subjected to sexual harassment and groping at the hands of fans.¹³⁵ It appears from reporting that Northwestern may have a culture of hazing in their athletic department.

“Whether the coaches at Northwestern approved or participated in the harassment of these players or not, they are responsible for allowing and enabling a toxic, disgusting, and damaging culture in their programs,” said [Attorney] Ben Crump [. . . in a] press release. “Sadly, our research suggests that this kind of abuse of student athletes may be far more common on college campuses than we know, because there is tremendous pressure to keep quiet. It’s time for a reckoning to protect young athletes.”¹³⁶

We believe this is just the beginning of a long round of legal skirmishes to come. Lawsuits brought by student-athletes, a potential lawsuit from Fitzgerald, all of which will cost Northwestern money and be embarrassing. In addition, this may affect admissions, recruiting, job security, and donations. This should serve as a good lesson, even though an unfortunate lesson, that these types of activities, including abuse and hazing, should not be tolerated by collegiate athletics and that the ultimate price is not just the embarrassment of the university and the monetary cost, but the health and wellbeing of the student-athletes.

¹³⁴ Alonso, Johanna, *Northwestern Football Scandal Shines Spotlight on Hazing*, Inside Higher Ed, July 24, 2023, <https://www.insidehighered.com/news/students/safety/2023/07/24/will-northwestern-hazing-scandal-spark-broader-reckoning>

¹³⁵ *Id.*

¹³⁶ *Id.*

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