

Northwestern University faces a myriad of legal challenges

By Martin J. Greenberg and Danelle A. Welzig

I. Introduction

For nearly the past decade we have represented student-athletes and their parents to take on the issue of college coaching abuse. We have warned universities, who often times exist in a state of denial, that a time would come when universities and their administrators would be held accountable, and that the seriousness of abuse would become front page news. Abuse allegations take the form of mental, physical, and/or sexual abuse.

Now hazing, which is often times criminal in nature, has come to the forefront of abuse in college athletics. The most high-profile examples of hazing in college athletics are currently taking place at Northwestern University which has seen the firing of its baseball coach and football coach along with hazing allegations in other athletic programs on campus. Since June of 2023 approximately twenty-two cases have been filed in Cook County Circuit Court.

II. Cases

Below is a list of cases that have been either been filed with the Cook County Circuit Court:

1. John Doe 1 vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007098, filed 7/18/23
2. John Doe 2 vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007221, filed 7/20/23
3. John Doe 3 vs Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007226, filed 7/20/23
4. Jane Doe #1 vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L00_____, filed 7/24/23¹
5. Lloyd Yates vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007300, filed 7/24/23
6. Simba Short vs. Northwestern University, Cook County Circuit Court, Case Number 2023L007396, filed 7/26/23
7. John Doe #1 vs. Northwestern University, Cook County Circuit Court, Case Number 2023L007455, filed 7/27/23
8. John Doe #2 vs. Northwestern University, Cook County Circuit Court, Case Number 2023L007499, filed 7/28/23
9. Warren Miles-Long vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007485, filed 7/28/23

¹ Multiple news outlets have reported the existence of this case; however, we have been unable to confirm its filing through the Cook County Clerk of Court's website search. We have reached out to the Plaintiff's attorney but have not received a response.

10. John Doe vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007705, filed 8/2/23
11. John Doe vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007707, filed 8/2/23
12. Ramon Diaz vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007712, filed 8/2/23
13. Tom Carnifax vs. Northwestern University, Cook County Circuit Court, Case Number 2023L007713, filed 8/2/23
14. John Doe #3 vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L007711, filed 8/2/23
15. John Doe 5 vs. Northwestern University, et al. Cook County Circuit Court Case Number 2023L007813, filed 8/4/23
16. John Doe vs. Northwestern University, et al., Cook County Circuit Court Case Number 2023L007898, filed 8/8/23
17. John Doe 5 vs. Northwestern University, et al., Cook County Circuit Court Case Number 2023L007904, filed 8/8/23
18. John Doe 7 vs. Northwestern University, et al., Cook County Circuit Court Case Number 2023L7910, filed 8/8/23
19. Christopher M. Beacom, Michael Dustin Napoleon, and Jonathan R. Strauss vs. Northwestern University, et al., Cook County Circuit Court, Case Number 2023L008072, filed 8/14/23 (Baseball)
20. John Doe 4 (RB) vs. Northwestern University, et al., Cook County Circuit Court Case Number 2023L008858, filed 9/1/23
21. John Doe 4 vs. Northwestern University, et al., Cook County Circuit Court Case Number 2023L008859, filed 9/1/23
22. John Doe 5 (RB) vs. Northwestern University, et al., Cook County Circuit Court Case Number 2023L008860, filed 9/1/23

III. Causes of Action

What follows are the causes of actions from a selection of the above referenced cases:

- A. John Doe 1 vs. Northwestern University, Michael Schill, Morton Schapiro, Northwestern University's Board of Trustees, official capacity only, Dr. Derrick Graff, and Patrick Fitzgerald, Cook County Circuit Court Case 2023L007098, filed 7/18/2023

Causes of Action: Negligence, Willful and Wanton

Attorney: Patrick A. Salvi, II of Salvi, Schostok & Pritchard, P.C.

- B. John Doe 2 vs. Northwestern University, Michael Schill, Morton Schapiro, Northwestern University's Board of Trustees, official capacity only, Dr. Derrick Graff, James J. Phillips, and Patrick Fitzgerald, Cook County Circuit Court Case 2023L007221, filed 7/20/2023

Causes of Action: Negligence, Willful and Wanton

Attorney: Patrick A. Salvi, II of Salvi, Schostok & Pritchard, P.C.

C. John Doe 3 vs. Northwestern University, Michael Schill, Morton Schapiro, Northwestern University's Board of Trustees, official capacity only, Dr. Derrick Graff, James J. Phillips, and Patrick Fitzgerald, Cook County Circuit Court Case 2023L007226, filed 7/20/2023

Causes of Action: Negligence, Willful and Wanton

Attorney: Patrick A. Salvi, II of Salvi, Schostok & Pritchard, P.C.

D. Lloyd Yates vs. Northwestern University, an Illinois Not-For-Profit Corporation, Cook County Circuit Court Case 2023L007300, filed 7/24/2023

Causes of Action: Negligence, Willful and Wanton, Gender Violence Act

Attorneys: Steven M. Levin, Margaret Battersby Black, Andrew J. Thut of Levin & Perconti and Ben Crump of Ben Crump Law Firm

E. Simba Short vs. Northwestern University, an Illinois Not-For-Profit Corporation, Cook County Circuit Court Case 2023L007396, filed 7/26/2023

Causes of Action: Negligence, Willful and Wanton, Gender Violence Act

Attorneys: Steven M. Levin, Margaret Battersby Black, Andrew J. Thut of Levin & Perconti

F. John Doe 1 vs. Northwestern University, an Illinois Not-For-Profit Corporation, Cook County Circuit Court Case 2023L007455, filed 7/27/2023

Causes of Action: Negligence, Willful and Wanton, Gender Violence Act

Attorneys: Steven M. Levin, Margaret Battersby Black, Andrew J. Thut of Levin & Perconti

G. John Doe vs. Northwestern University, Patrick Fitzgerald, Henry S. Bienen, Mark Murphy, and Northwestern University's Board of Trustees, Cook County Circuit Court Case 2023L007705, filed 8/2/2023

Causes of Action: Negligence (v. Northwestern University), Willful and Wanton (v. Northwestern University), Negligence (v. Patrick Fitzgerald), Negligence (v. Henry S. Bienen), Negligence (v. Mark Murphy), Negligence (v. Northwestern University's Board of Trustees)

Attorneys: Steven A. Hart, Brian Eldridge, John W. Chwarzynski, Jr. of Hart McLaughlin & Eldridge, LLC and Antonio M. Romanucci, Bhavani K. Raveendran, and Javier Rodriguez, Jr. of Romanucci & Blandin, LLC

H. John Doe vs. Northwestern University, Patrick Fitzgerald, Henry S. Bienen, Mark Murphy, and Northwestern University's Board of Trustees, Cook County Circuit Court Case 2023L007707, filed 8/2/2023

Causes of Action: Negligence (v. Northwestern University), Willful and Wanton (v. Northwestern University), Negligence (v. Patrick Fitzgerald), Negligence (v. Henry S. Bienen), Negligence (v. Mark Murphy), Negligence (v. Northwestern University's Board of Trustees)

Attorneys: Steven A. Hart, Brian Eldridge, John W. Chwarzynski, Jr. of Hart McLaughlin & Eldridge, LLC and Antonio M. Romanucci, Bhavani K. Raveendran, and Javier Rodriguez, Jr. of Romanucci & Blandin, LLC

- I. Ramon Diaz vs. Northwestern University, Northwestern University's Board of Trustees, official capacity only, Dr. James J. Phillips, and Patrick Fitzgerald, Cook County Circuit Court Case 2023L007712, filed 8/2/2023

Causes of Action: Negligence, Willful and Wanton, Fraudulent Inducement

Attorney: Patrick A. Salvi, II and Jennifer M. Cascio of Salvi, Schostok & Pritchard, P.C.

- J. John Doe 7 vs. Northwestern University, Morton Schapiro, Northwestern University's Board of Trustees, official capacity only, Dr. James J. Phillips, and Patrick Fitzgerald, Cook County Circuit Court Case 2023L007910, filed 8/8/2023

Causes of Action: Negligence, Willful and Wanton, Fraudulent Inducement, Gender Violence Act

Attorney: Patrick A. Salvi, II and Jennifer M. Cascio of Salvi, Schostok & Pritchard, P.C.

- K. Christopher M. Beacom, Michael Dustin Napoleon, and Jonathan R. Strauss vs. Northwestern University, Derrick Gragg, James Thomas Foster, Monique Holland, and Rachel Velez, Cook County Circuit Court Case 2023L008072, filed 8/14/2023

Causes of Action: Breach of Contract (Northwestern), Negligent Hiring (Northwestern and Gragg), Negligent Supervision – Willful and Wanton (Northwestern, Gragg, Holland, and Velez), Negligence - Willful and Wanton (All Defendants), Negligent Infliction of Emotional Distress (All Defendants), Intentional Infliction of Emotional Distress (Foster), Fraudulent Inducement (Northwestern), Respondeat Superior (Northwestern)

Attorneys: Christopher J. Esbrook, David F. Pustilnik, Heather A. Bartels of Esbrook P.C.

IV. Defendants

Some of the party defendants among the above listed complaints include:

- a. current President Michael Shill;
- b. former President Morton Shipiro;
- c. former President Henry S. Bienen;
- d. Northwestern University's Board of Trustees,
- e. Athletic Director Derrick Gragg;
- f. former Head Coach Patrick Fitzgerald;
- g. current ACC Commissioner/Former Athletic Director Dr. James J. Phillips; and
- h. former Athletic Director Mark Murphy.

Due to the number of decades covered by these complaints, we are not surprised that former employees of Northwestern have been named as party Defendants.

V. 2021 Cheerleading Case

In January of 2021, Hayden Richardson, a former Northwestern cheerleader, filed a complaint in the United States District Court for the Northern District of Illinois, Eastern Division, against Northwestern University, Deputy Title IX Coordinator Amanda DaSilva, Associate Athletic Director for Marketing Heather Van Hoegarden Obering, Deputy Director of Athletics Michael Polisky, and Head Cheerleading Coach Pamela Bonnevier.² The Complaint alleged that as a condition of being a female Northwestern Cheerleader, they

were required to attend fundraising events, tailgate parties and other events in their skimpy cheerleading uniforms in order to titillate high net worth donors. At these events, team members were frequently separated by their coach and prohibited from speaking with one another. They were required to participate in photo ops and directed to smile and act enthused regardless of how they were being treated. As a result, Plaintiff, and her team members, were forced to tolerate degrading and wholly inappropriate behavior.³

Additionally, Richardson,

a Truman Scholar, was encouraged by her coach and the University to suppress her intellect and instead flaunt her body as if she were just a commodity. Northwestern essentially defiled its cheerleaders and encouraged them to be temptresses and courtesans. The University forced its cheerleaders to behave in a degrading and demeaning manner intended to entice and captivate wealthy donors.⁴

Richardson's Complaint details how the administration of the Athletic Department and the Title IX office worked to silence her and sweep the allegations under the rug.⁵ Her Complaint also gives a history of Northwestern allegedly silencing students who bring complaints of sexual harassment and sexual assault.⁶ Further the Complaint discusses that Male Cheerleaders were not required or forced to attend events in the same manner as the Female Cheerleaders.⁷

The causes of action brought by Richardson included: Violation of Title IX of the Education Amendments of 1972 (Against Northwestern); Violation of Title IX of the Education Amendments of 1972-Hostile Environment (Against Northwestern); Trafficking in Violation of 18 U.S.C. § 1590 (Against Northwestern, DaSilva, Obering, Polisky and Bonnevier); Trafficking in Violation of 18 U.S.C. § 1591 (Against Northwestern, DaSilva, Obering, Polisky and Bonnevier); Trafficking in Violation of 18 U.S.C. § 1589 (Against Northwestern, DaSilva, Obering, Polisky and Bonnevier); Breach of Contract (Against Northwestern); Estoppel and Reliance (Against

² Complaint, *Hayden Richardson vs. Northwestern University, et al.*, Case No. 1:21-CV-00522 (N.D. Ill filed Jan. 29, 2021).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Northwestern); and Intentional Infliction of Emotional Distress (Against DaSilva, Obering, Polisky and Bonnevier). The Complaint also details a timeline of Northwestern’s alleged lack of support for sexually harassed and assaulted students.

This case is still pending. The above-referenced Defendants filed a Motion to Dismiss all causes of action except the two counts of Title IX violations.⁸ In its 35-page Order, the Court dismissed the causes of action for Breach of Contract (Against Northwestern) and Estoppel and Reliance (Against Northwestern), but let the remaining causes of action stand. Defendants have been ordered to now answer the Complaint and engage in disclosures and discovery.⁹

To maintain the causes of action regarding trafficking at the pleadings stage, the Court found that the Defendants coerced Richardson through the threat of withdrawal of her scholarships and demand for repayment of said scholarships and other costs.¹⁰ The Court also held that “[w]ith the benefit of the pleading stage standard of review, Richardson has adequately alleged that she was coerced into performing the commercial sex acts.”¹¹ Pursuant to Richardson’s Complaint, Northwestern Cheerleaders had to sign ‘Spirit Squad’ contracts detailing additional events the female cheerleaders had to attend or be subjected to financial consequences if fired for non-compliance.¹² The Court further held that Northwestern Administrators should have known what the Cheerleading Coach was engaging in with respect to these contracts as it was provided timely notice by Richardson.¹³

Given the severity of the allegations in this Complaint, and the reporting by Richardson in the two years prior to filing of the Complaint, along with the lack of response from Northwestern’s Administrators, it is no wonder that Northwestern finds itself in its current predicament.

VI. Baseball Complaint

On August 14, 2023, Christopher M. Beacom (former Director of Baseball Operations), Michael Dustin Napoleon (former Assistant Baseball Coach), and Johnathan R. Strauss (former Assistant Baseball Coach) filed a Complaint in the Circuit Court of Cook County against Northwestern University, Derrick Gragg (Vice President for Athletics and recreation), James Thomas Foster (former Head Baseball Coach), Monique Holland (Deputy Director of Athletics – Chief of Staff), and Rachel Velez (Associate A.D. for Human Resources).¹⁴ The Complaint alleges that Defendants failed “to address the sustained environment of toxicity, abuse, and harassment that the Plaintiffs suffered throughout the 2022-2023 baseball season at Northwestern particularly

⁸ Memorandum Opinion and Order dated Sep. 21, 2023, *Hayden Richardson vs. Northwestern University, et al.*, Case No. 1:21-CV-00522 (N.D. Ill filed Jan. 29, 2021).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Complaint, *Christopher M. Beacom, et al. vs. Northwestern University, et al.*, Case No. 2023L008072 (Ill. Cir. Ct. Aug. 14, 2023).

at the hands of Northwestern’s former Head Baseball Coach, Jim Foster.”¹⁵ The Complaint alleges Breach of Contract against Northwestern, Negligent Hiring against Northwestern and Gragg, Negligent Supervision (Willful and Wanton) against Northwestern, Gragg, Holland, and Velez, Negligence (Willful and Wanton) against all Defendants, Negligent Infliction of Emotional Distress against all Defendants, Intentional Infliction of Emotional Distress against Foster, Fraudulent Inducement against Northwestern, and *Respondeat Superior* against Northwestern.¹⁶

The Plaintiffs theory is based upon information that Foster was well-known as a bully and that “his departure from Army West Point for allegations of abuse and misconduct made against him by student-athletes at Army West Point, allegation that were apparent upon a proper investigation and vetting of Foster prior to his being hired by Northwestern.”¹⁷ Defendant Foster was hired by Northwestern in June of 2022.¹⁸ By October of 2022, the Plaintiffs had already begun the formal reporting process against Defendant Foster.¹⁹ Additionally, on November 20, 2022, the Plaintiffs submitted a Human Resources Complaint detailing Defendant Foster’s alleged behavior, including:

- a. The toxic work environment created by Foster that not only lacked professionalism but subjected the staff and players to abuse and bullying.
- b. Foster discouraging players from seeking medical attention for injuries.
- c. Foster’s racially insensitive comments regarding recruits to the Northwestern baseball team.
- d. Foster’s derogatory and sexist comments regarding a female student manager.²⁰

While the HR Complaint was pending for two months without communication from HR, Defendant Foster was allegedly free to retaliate against the Plaintiffs.²¹ In February of 2023, Defendant Holland advised the Plaintiffs that they were “just facing a little adversity.”²² Thereafter, Plaintiff Strauss attempted to engage Dr. Gragg in the process.²³ On February 22, 2023, after advising Plaintiffs that there was sufficient evidence to substantiate their complaints, Dr. Gragg confirmed that the three Plaintiffs would not be returning to Northwestern and that Northwestern was hiring new coaches.²⁴ The Plaintiffs view this as an act of retaliation against them for blowing the whistle.²⁵

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

It is telling that Deputy Director of Athletics Holland stated that “sometimes the right thing to do isn’t the best thing.”²⁶ This is after investigating Plaintiffs’ allegations, without interviewing any student-athletes, and finding sufficient evidence to support Plaintiffs’ case, but still retaining Defendant Foster as the Head Baseball Coach.²⁷ Finally in July of 2023, Defendant Foster was terminated, nine months after the Plaintiffs’ first Complaint.²⁸

During the past several years we have advised universities that there would come a time when they would be held accountable for their hiring and Human Resources practices. It will be interesting to see if all of the causes of action survive challenges from the Defendants and what changes this may make to the hiring practices employed by universities.

VII. 2023 Fitzgerald Complaint

On October 5, 2023, Patrick Fitzgerald filed a Complaint in the Circuit Court of Cook County against Northwestern University and President Michael Schill.²⁹ The Complaint alleges Breach of Oral Contract, Breach of Written Contract, Intentional Infliction of Emotional Distress, Defamation and Defamation *Per Se*, False Light, and Interference with a Business Expectancy.³⁰

Fitzgerald included the following allegations in his Complaint:

2. Northwestern received allegations of hazing involving the football team in November 2022. Fitzgerald was shocked and disappointed about these allegations because he had no knowledge of any hazing conduct among Northwestern’s football players. With Fitzgerald’s full support and cooperation, Northwestern conducted a thorough, monthslong investigation with an experienced and independent third-party investigative law firm, ArentFox Schiff, and lawyer, Maggie Hickey, resulting in a report (hereinafter, “the Hickey Report”). The Hickey Report confirmed that Fitzgerald did not know of the alleged hazing until the allegations were reported in late 2022.

3. Northwestern accepted that conclusion and, on July 6, 2023, entered into a binding, legal, oral contract with Fitzgerald whereby, if Fitzgerald accepted a two-week suspension without pay and without any legal challenge, and made a public statement that was supportive of Northwestern’s football program, Northwestern agreed that Fitzgerald would remain head coach with no further discipline related to the Hickey Report and the hazing subject matter investigated. Fitzgerald accepted Northwestern’s terms and performed his obligations under the oral contract.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Complaint, *Patrick Fitzgerald. vs. Northwestern University, et al.*, Case No. 2023L010135 (Ill. Cir. Ct. Oct. 5, 2023).

³⁰ *Id.*

4. But almost immediately, within four days thereafter, Northwestern breached its oral contract with Fitzgerald and terminated Fitzgerald as Northwestern's head football coach "for-cause." By doing so, Defendants irreparably and permanently damaged Fitzgerald's reputation and destroyed his ability to maintain the football coaching career he had spent his entire professional life creating. As a result, Fitzgerald is entitled to substantial compensatory damages for the harm Northwestern has caused him and an award of punitive damages flowing from Northwestern and Schill's callous and outrageous misconduct in destroying his career.³¹

Fitzgerald alleges no knowledge of the hazing while many of the Complaints from student-athletes that have been filed alleged that he knew what was going on and seemingly sanctioned the hazing incidents.

In his Prayer for Relief, Fitzgerald demands

A. Compensatory damages to Fitzgerald that will represent compensation for the loss of Fitzgerald's Northwestern employment contract through 2031, the expiration date on his employment contract. In addition, compensatory damages for his lost ability to obtain similar employment during the prime of his professional coaching career after 2031 for a reasonable period of time. This amount will exceed \$130,000,000; and

B. In addition to the above, compensatory damages for emotional distress suffered by Fitzgerald and his family because of Defendants' conduct; and

C. Separate and apart from compensatory damages, punitive damages based on Defendants' intentional or willful and wanton conduct described in paragraphs 125–164 in this Complaint; and

D. Fitzgerald's costs and disbursements incurred in connection with this litigation with such other relief as the Court may deem fair and appropriate.³²

As this case progresses, we are interested to see if this case will result in the revision of university coaching contracts to include clauses detailing for-cause termination for substantiated allegations of student-athlete abuse and hazing.

³¹ *Id.*

³² *Id.*

VIII. Commentary

The current world of college sports is marred by “[m]illion-dollar lawsuits, ‘toxic’ cultures facilitating harassment and sexual abuse, and college sport programs [being] suspended.”³³ Universities and colleges across the country host a prevalent amount of hazing, sometimes with deadly consequences, that have placed many “sports programs in particular under growing scrutiny.”³⁴

The National Collegiate Athletic Association (NCAA) defines hazing as

any act committed against someone joining or becoming a member or maintaining membership in any organization that is humiliating, intimidating or demeaning, or endangers the health and safety of the person. Hazing includes active or passive participation in such acts and occurs regardless of the willingness to participate in the activities. Hazing creates an environment/climate in which dignity and respect are absent.³⁵

“According to a 2018 survey of seven US universities published by the Journal of Student Affairs Research and Practice, 42.7% of respondents said that they had experienced hazing in varsity athletic teams.”³⁶

As of late, hazing has garnered a lot of media attention with examples of allegations of hazing in the Swimming and Diving program at Boston College, the Men’s Basketball program at New Mexico State University, and the Women’s Hockey program at Harvard University, in addition to the scandals at Northwestern.³⁷

University rules typically prescribe a prohibition for hazing. Currently 44 states carry anti-hazing laws in which the usual conviction is considered a misdemeanor.³⁸ At least 12 of those 44 states have tougher statutes on hazing making a conviction a felony if it results in death or serious injury.³⁹

An ESPN article details 68 alleged and confirmed incidents on the high school, college and professional levels that received media attention between 1980 and 2000 with the help of Hank Nuwer.⁴⁰ Mr. Nuwer has been compiling a database of hazing-related fatalities since 1975 and has

³³ Ramsey, George, *What is hazing and how is it affecting student athletes in the US?* CNN-SPORTS, Sep. 29, 2023, <https://keyt.com/sports/national-sports/cnn-sports/2023/09/29/what-is-hazing-and-how-is-it-affecting-student-athletes-in-the-us/>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Staff, *Sports Hazing Incidents*, ESPN.com, <https://www.espn.com/otl/hazing/list.html>.

authored five book on the issue of hazing.⁴¹ In his interview with Athletic Business, Mr. Nuwer discussed the President's role in the Northwestern scandal.⁴² The President allegedly justified the firing of Coach Fitzgerald as to what the Coach 'should' have known.⁴³ Mr. Nuwer posits the question as to why the Board of Trustees of Northwestern do not seem to be considering disciplining the President by that same logic.⁴⁴

IX. Conclusion

The main mission of universities is education. Universities that are facing a toxic culture of abuse are not only facing numerous legal challenges, but costs that do not fit the mission of the university. Let this be a good lesson that administrators and university boards of trustees must take allegations of hazing and abuse seriously.

Universities need to divest from the notion that hazing and abuse are not taking place on their campuses. In an article entitled *Gregg Marshall: How Universities Should Respond to Allegations of Coaching Abuse*, we set forth sixteen suggestions on how universities could improve their response to allegations of abuse:

1. Universities should undertake extensive background checks of coaches that are to be hired to determine whether or not there is any history of alleged or actual abuse as once an abuser always an abuser.
2. The days of "bully-coaching" should be in the past. Universities and coaches should move away from this style of coaching.
3. Contracts for coaches regardless of whether they are major or minor sports, men's or women's, should have the contractual language and protections as contained in the Dabo Swinney/Clemson contract.
4. Abuse is a national epidemic, and it is happening in every sport whether generating revenue or not, and whether men's or women's sports.
5. Program success is not a factor in eliminating abuse. Marshall was one of the most successful coaches, but had a history of abuse prior to his hiring, through and including his termination.

⁴¹ Steinbach, Paul, *Longtime Database-Keeper Hank Nuwer on Hazing: It's Not Going Anywhere*, Athletic Business, Sep. 5, 2023, <https://www.athleticbusiness.com/leadership/article/15544248/longtime-databasekeeper-hank-nuwer-on-hazing-its-not-going-away>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

6. Your first notice is your best notice. University AD's and Administrators must act quickly and affirmatively to bring allegations to a conclusion rapidly.
7. Suspension until there is a determination as to whether or not the acts alleged were committed is a necessity.
8. Abuse could involve Title IX violations. Any reports of abuse should be reported pursuant to the reporting responsibilities and guidelines with respect to Title IX compliance.
9. Internal investigations do not work. They raise questions of objectivity relative to loss of reputations, jobs, or money as to their own conflicted employees.
10. Alleged abuse, whether physical, mental, or sexual, is a public matter, and will receive public attention and scrutiny.
11. An independent investigation undertaken by an uninterested party who has the qualifications and understands the area is the only way to go, much as what happened in the Marshall case.
12. Abuse training and education for coaches and athletic administrators should be undertaken as a contractual responsibility and done immediately upon their hiring.
13. Once the independent report is delivered to university administrators, immediate action must be taken in the form of a firing or a negotiated resolution.
14. University administrators are being watched; their jobs are on the line.
15. By permitting abuse with full knowledge of it, administrators are complicit and part of the problem which requires a solution similar to what the coaches' fate might be.
16. Universities should resist the temptation of hiring an elite coach with past allegations of abuse, like Marshall, for the betterment of the University and its student-athletes.⁴⁵

We would like to add the following suggestion to the above list:

17. The coach should be held personally liable for damages and be required to obtain any form of professional liability insurance that may be available to coaches.

⁴⁵ Greenberg, Martin, *Gregg Marshall: How Universities Should Respond to Allegations of Coaching Abuse*, GREENBERG'S COACHING CORNER, Jan. 3, 2021 <https://law.marquette.edu/assets/sports-law/pdf/20210113-gregg-marshall.pdf>.

18. Unless a student-athlete has a known medical ailment that is not the result of training by the university coaches, the university should honor their commitment. This could also help slow down early recruiting of student-athletes at such a young age. Coaches and universities should be responsible for the student-athletes they recruit.
19. There must be penalties for retaliation by coaches and other student-athletes against student-athletes that report alleged abuse.
20. Discussions between university psychologists and student-athletes should remain confidential. In one case, we found numerous instances where the sports psychologist reported back to the gymnastics coaches about their discussions with the student-athlete. Where was the safe place for a student-athlete to express her concerns and gain insight into her dealings with her coaches? Why are university psychologists not required to automatically report to administration in cases where they suspect alleged abuse? Doctor-patient confidentiality should be sacrosanct, regardless of the personal relationships that a sports psychologist may have with coaches.

Beyond the university, we believe that conferences and communities can make a difference in the following ways:

1. State bullying statutes should include college and university coaches and cover the areas of mental, sexual and physical abuse.
2. Governing bodies such as the NCAA and Conferences should require participating universities to employ anti-bully, anti-abuse regulations that cite the need to protect a student-athlete from abusive coaching techniques which includes an oversight system of checks and balance to recognize non-compliance and hold administrators, as well as coaches, accountable for failures to comply. Those regulations must include punitive measures for coaches at all levels, along with stiffened penalties for apathy, concealment, or non-reporting. Coaches and university administrations should not be allowed to abdicate responsibility to student-athlete welfare; to the health and safety of complainants; and to university values. Universities should be eager to adopt rules and regulations that ensure the safety and wellbeing of their student-athletes and that promote values such as integrity, respect, responsibility, discovery, excellence, and community.
3. Universities need to adopt rules and regulations that ensure the safety and wellbeing of their student athletes and to promote values such as integrity, respect, responsibility, excellence, and community. All heads and assistant coaches should go through sensitivity training. This activity should be required by NCAA and Conferences.
4. The NCAA and Conferences also need to take the threat of loss of athletic scholarship out of the coaches' hands in some way, shape or form. This alone creates a huge power vacuum wherein a student-athlete may not report abuse for fear of losing their scholarship. Coaches can inspire athletes in other ways beyond the base tactic of threatening a student's very existence at an academic institution. Student athletes who are on scholarship and parents who are barely paying for their child's academic matriculation can hardly afford to fight a

university, its legal counsel, and large law firms in these types of cases. They have little or no affordable recourse.

5. NCAA and Conference student-athletes subjected to an abusive coach should be allowed to immediately transfer without any loss of eligibility. Coaches can make or break the student-athletes' college experience. Our athletes deserve a healthy environment to learn and grow without penalty.
6. The NCAA and Conferences should require that coaching contracts include specific language making physical and verbal abuse and bullying a basis for termination for cause. It is unjust for coaches to be fired without cause, or be allowed to resign, and then have the ability to collect money for the remainder of their contract term due to poor contract drafting — especially in cases where abuse is the foundation for the termination. Universities need to employ the use of coaching contracts with stronger language regarding expectations of their relationships with their student-athletes, including language that includes a for cause termination upon finding of abuse regardless of whether it is physical, mental, or sexual. Coaches who are determined to have committed acts of mental or physical abuse should be personally liable for damages and attorneys' fees. Coaches found to be engaging in abusive or bullying activities should be required on some prorated basis to participate in an action for damages monetarily, much the same way that Penn State's former Women's Basketball Coach was fined at least \$10,000 in 2007 for discriminatory practices.
7. The NCAA and Conferences should require that coaching contracts include language that makes it clear that resignation cannot be utilized as a means to skirt an investigation. Universities should not angle to be portrayed in a better light by letting coaches resign at the contract's end and wander off into the sunset to another university where this process might be repeated. The investigation should stand and continue regardless of the employment status of the accused coach. Universities need to take a hard line on the protection of the student-athletes. After all, first and foremost, universities are supposed to be a safe learning environment.
8. The NCAA and Conferences should require that where there is an accusation of abuse, the university must immediately involve an independent investigator that has no interest in the outcome but is willing to do an objective and complete investigation regardless of the consequences. They must also require that once a coach has been accused of abuse, he/she must be put on immediate leave while independent investigation is undertaken.
9. Require whistleblowing. Whistle blowing must be encouraged, not discouraged. When a student-athlete steps out of the darkness and reports abuse, above all, they must be taken seriously. In order for them to feel they can come forward, there must be steps taken to ensure there will be no retaliation or retribution from the alleged abuser. The NCAA and Conferences should have anti-retaliation rules for these situations. Student-athletes bring in a lot of crowds and money to universities and the NCAA, as such they should be afforded some protection. The university should create a culture that ensures that the reporting, investigation, and disciplinary actions involving student-athletes and athletics department

staff are managed in the same manner as all other students and staff on campus and that coaches are held accountable to the same standards as all university personnel.

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