

Gregg Marshall: How Universities Should Respond to Allegations of Coaching Abuse

I. Who is Gregg Marshall?

Gregg Marshall (Marshall) began his coaching career as an assistant coach at his alma mater, Randolph-Macon College in 1985 after playing on the men's basketball team for four years.¹ He was an assistant coach for the 1985-86 and 1986-87 seasons before becoming an assistant coach for a year at Belmont Abbey College during the 1987-88 season.² Marshall was then hired to be an assistant coach under John Kresse (Kresse) at the College of Charleston.³ Marshall spent eight years (1988-96) learning under Kresse, helping the College of Charleston make the transition from NAIA to Division I and then to a mid-major power.⁴

Marshall was eventually lured to Marshall University serving as an assistant coach and top recruiter for the Thundering Herd from 1996-98.⁵ He helped the Thundering Herd make the Southern Conference Championship in 1997 and helped the school have a top-40 nationally ranked (ESPN) recruiting class.⁶ Over the thirteen years he served as an assistant coach, Marshall's teams finished with a record of 255-118 (.689).⁷

Marshall's first head coaching opportunity came in 1998 when he became the head coach at Winthrop University. Ever since becoming a head coach, Marshall has been successful. He excelled at the mid-major level of college basketball and quickly became one of the most

¹ Gary Williams, *R-MC Alum Gregg Marshall '85 Leads Wichita State Men's Basketball to Division I Final Four*, RMC ATHLETICS (Apr. 1, 2013), https://www.rmcatletics.com/sports/mbkb/2012-13/releases/Marshall_Story.

² *Gregg Marshall*, GOSHOCKERS.COM, <https://goshockers.com/sports/mens-basketball/roster/coaches/gregg-marshall/780> (last visited Jan. 6, 2021)

³ *Id.*

⁴ Andrew Miller, *Charleston Classic Brings Wichita State's Gregg Marshall Back to His Coaching Roots*, POST AND COURIER (Nov. 15, 2020), https://www.postandcourier.com/sports/charleston-classic-brings-wichita-states-gregg-marshall-back-to-his-coaching-roots/article_f05b41fc-e2df-11e8-8b5a-afe74cc0969c.html.

⁵ https://www.wvgazette.com/sports/marshall_university/coaches-fondly-remember-gregg-marshalls-basketball-tenure-at-marshall/article_0887f843-54eb-521d-9f82-b185eba1facc.html

⁶ *Gregg Marshall*, *supra* note 2.

⁷ *Id.*

powerful coaches in college basketball. Marshall spent nine seasons at Winthrop (1998-2007) and went 194-83 (.700) over the course of that period.⁸ Moreover, Marshall led the Eagles to six Big South Conference regular season championships⁹ and seven Big South Conference tournament championships.¹⁰ With five twenty-plus win seasons at Winthrop, Marshall had a 104-24 record (.813) in Big South games and a 19-2 record in nine Big South Conference tournaments.¹¹ His dominance in the Big South Conference earned him the Big South Conference Coach of the Year in 1999, 2003, 2005, and 2007.¹²

More importantly, Winthrop appeared in the NCAA tournament seven out of the nine seasons Marshall coached.¹³ In the 2006-07 season, Marshall led the Eagles to a NCAA first round victory over the No. 6th seed Notre Dame.¹⁴ This was the first NCAA tournament win in Winthrop's and the Big South Conference's history.¹⁵ Because of the countless wins and conference championships he was able to achieve at Winthrop, Marshall was ultimately inducted into the Big South Conference Hall of Fame in 2012.¹⁶

His success at Winthrop started to draw the attention of various schools and eventually Marshall was hired by Wichita State University (WSU) in 2007. The first year as the Shockers head coach, Marshall could not carry over the success he experienced at Winthrop. The Shockers finished 11-20 for the 2007-08 season.¹⁷ However, the next two seasons saw major improvement

⁸ *Id.*

⁹ *Big South Regular Season Champions*, COACHES DATABASE, <https://www.coachesdatabase.com/big-south-regular-season-champions/> (last visited Jan. 6, 2021).

¹⁰ *Gregg Marshall*, WINTHROP ATHLETICS, <https://winthropeagles.com/honors/hall-of-fame/gregg-marshall/45> (last visited Jan. 6, 2021).

¹¹ *Id.*

¹² *Id.*

¹³ *Gregg Marshall*, *supra* note 2.

¹⁴ *Gregg Marshall*, *supra* note 10.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Gregg Marshall*, *supra* note 2.

with the team winning seventeen and twenty-five games, making it to the Missouri Valley Conference Championship game and earning a spot in the National Invitation Tournament (NIT) during the 2009-10 season.¹⁸ The 2010-11 season was another great step in Marshall's program as the team went 29-8 and capped the season off by winning the NIT, beating Alabama in the championship game.¹⁹

Over the next seven seasons at WSU (2011-18), Marshall led the Shockers to six straight NCAA tournament appearances.²⁰ Some highlights over those six seasons included:

- A NCAA Tournament Final Four appearance, the school's first since 1965,
- Two NCAA Tournament Sweet-Sixteen Appearances,
- An undefeated regular season and conference tournament, becoming the first team in NCAA history to open 35-0 when the team won their first game in the NCAA tournament, and
- Five regular season Missouri Valley Conference championships and two Missouri Valley Conference tournament championships.²¹

WSU moved to the American Athletic Conference beginning in the 2017-18 season, but that did not stop Marshall's success as WSU recorded their ninth straight season with twenty-five or more wins.²²

In the 2018-19 and 2019-20 seasons, WSU failed to reach twenty-five wins, however the team went 22-15 and 23-8 respectively.²³ Marshall finished with a record of 331–121 (.732) at WSU, becoming the winningest coach in WSU history, while his career head coaching record is currently 525–204 (.720). Marshall has received various awards such as the 2014 AP Coach of the Year Award, then 2014 Naismith Coach of the Year Award, and the 2014 NABC Coach of

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Gregg Marshall, supra note 2.*

the Year Award, among others.²⁴ He also earned the title of Missouri Valley Coach of the Year for three straight years in 2012, 2013, and 2014.

As shown, winning came naturally to Marshall throughout his coaching career, and he always proved that his mid-major teams could contend with the bigger schools. Marshall's career record and credentials proves that he is an elite coach and one of the best in college basketball. Marshall has been compared to some of the best college coaches. In fact, at the time Marshall won his 500-career game, he was one of only ten coaches in college basketball history to reach 500 career victories before the end of their 21st season.²⁵ He joined the likes of Mark Few, Roy Williams, John Calipari, Bill Self, Jerry Tarkanian, Jim Boeheim, Bob Huggins, Tom Izzo, and Billy Donovan.²⁶ With being one of the best and most powerful coaches, Marshall is a coach that you would not expect to engage in abusive behavior.

II. What is he accused of? Examples of abuse.

Allegations of Marshall's abusive behavior came into the limelight after former WSU forward, Shaq Morris (Morris), told Stadium that he was punched twice by coach Gregg Marshall during a 2015 practice.²⁷ The Stadium's Jeff Goodman reported several allegations from more than thirty former and current members of the WSU's men's basketball program. The members alleged that Marshall routinely physically and verbally abused members of the program and demeaned his players with ethnic and racial slurs.²⁸ As one former assistant put it, "[Marshall is] a maniac, a bully . . . [h]e disrespects people,

²⁴ *Gregg Marshall*, COACHES DATABASE, <https://www.coachesdatabase.com/gregg-marshall/> (last visited Jan. 6, 2021).

²⁵ Taylor Eldridge, *Wichita State's Gregg Marshall One of the 10 Fastest Coaches in History to 500 Career Wins*, *Wichita Eagle* (Mar. 24, 2019), <https://www.kansas.com/sports/college/wichita-state/article228347789.html>.

²⁶ *Id.*

²⁷ Jeff Goodman, *Sources: Wichita State's Gregg Marshall Punched Player, Choked Assistant*, *STADIUM* (Oct. 9, 2020), <https://watchstadium.com/sources-wichita-states-gregg-marshall-punched-player-choked-assistant-10-08-2020/>.

²⁸ *Id.*

brings up personal stuff, family, girlfriends.”²⁹ These allegations are events that cross a line that cannot be impeded. The detailed abusive behaviors that were alleged include:

- Marshall punched WSU forward, Morris, in the head during a practice in October of 2015. After a block attempt in practice, Morris knocked down his teammate resulting an awkward landing on the player’s back. Morris went over to help his teammate up and was struck on his left side of his face. Morris turned and saw Marshall standing there and other players claim that Marshall was cursing at Morris.³⁰
- Marshall choked an assistant coach, Kyle Lindsted, at a practice during the 2016-17 season after he was frustrated with his assistant coach.³¹
- Marshall taunted a current WSU player, Isaiah Poor Bear-Chandler who is of Native American descent, to “get back on his horse” and made “Indian howling noises” while in practice during the 2018-19 season.³²
- During a practice in the 2015-16 season, Marshall body-shamed a former player by lifting his shirt up, grabbing the player’s stomach and then mocking the player’s girth.³³
- Jaime Echenique, who is from Colombia, was told by Marshall that he would be “a great coffee bean picker” because he struggled to catch the ball at times.³⁴
- In the 2019 pre-season, Josaphat Bilau collapsed after running sprints during a workout, needing assistance from the training staff. Marshall mocked him by falling on the court and stumbling around as if he was disoriented.³⁵
- In a 2018 practice, Morris Udeze ran a play incorrectly and Marshall demanded that Udeze call himself “stupid.” When the player did not do it, the whole team had to run.³⁶
- More recently during the 2019-20 season, Erik Stevenson was wide open in practice but did not shoot the ball. The player closing out on him defensively was black. While in film session, Marshall paused the film. “I think you’re afraid of brothers, guys raised by their grandparents eating PB&J’s.”³⁷
- One student-athlete allegedly parked in Marshall's spot one day. "[Marshall] followed the student's car, eventually blocking his car at an intersection in the parking lot. . . . Marshall got out of his car and started yelling at the student, asking 'Do you know who the f--k I am?'" After the student responded saying “I don't give

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Goodman, *supra* note 27.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

a f--k who you are.” Marshall approached the car and attempted to punch the student through the driver's window.³⁸

However, the abusive behavior did not start at WSU. According to a report by The Athletic, seven former Winthrop basketball players that played under Marshall alleged he crossed the line.³⁹ The Winthrop players allegations in The Athletic’s reporting included:

- Marshall allegedly referred to his players using a derogatory term for a woman’s vagina. Sheldon Bailey, a former player, said Marshall would “fix his fingers like an OK sign, but real small . . . [a]nd then he’d say, ‘You’re a big, wet, soft, (expletive) gash.’”⁴⁰
- Marshall ridiculed a player who took prescription medication for his mental health. After the player struggled with a drill in practice, Marshall screamed at the player “Did you take your medication today?” and then “Are you stupid or just retarded?”⁴¹
- Marshall screamed at a player who was underperforming and yelled that he would “send him back to Africa.” One player said to The Athletic in response to this allegation that “[Marshall is] a white guy, in South Carolina where the Confederate flag is still flying on the statehouse, and you’re telling a proud African man you’re going to send him back to Africa?”⁴²

Winthrop’s former Athletic Director, Tom Hickman (Hickman), said that Marshall was suspended at least once for his behavior.⁴³ However, Hickman could not recall what the specific behavior that Marshall engaged in for his suspensions.⁴⁴ Hickman felt comfortable with how Winthrop handled things with Marshall and said “[n]ow, not all of the players

³⁸ Scott Polacek, *Report: Gregg Marshall Investigated by Wichita State for Alleged Misconduct*, BLEACHER REPORT (Oct. 8, 2020), <https://bleacherreport.com/articles/2912650-report-gregg-marshall-investigated-by-wichita-state-for-alleged-misconduct#:~:text=Moore%20and%20O'Neil%20detailed,intersection%20in%20the%20parking%20lot>.

³⁹ Chance Swaim and Taylor Eldridge, *Gregg Marshall's Verbal Abuse of Players Started Before His Time at WSU*, *Report Says*, WICHITA EAGLE (Oct 21, 2020), <https://www.msn.com/en-us/sports/ncaabk/gregg-marshalls-verbal-abuse-of-players-started-before-his-time-at-wsu-report-says/ar-BB1aevis>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Alex Zietlow, *Basketball Coach Gregg Marshall Suspended at Least Once While at Winthrop, Former AD Says*, THE HERALD (Oct. 21, 2020), <https://www.heraldonline.com/sports/college/big-south/winthrop-university/article246605823.html#:~:text=Tom%20Hickman%2C%20former%20Winthrop%20athletic,Marshall%20was%20abusive%20or%20racist>.

⁴⁴ *Id.*

liked the atmosphere that he had. He was tough. He was hard. He conditioned them hard, and that was particularly true early on, when he first came in.”⁴⁵

III. Abuse

Our country has experienced a national epidemic of incidents of abuse by coaches in college athletics, ranging from major revenue generating sports to minor sports in both men’s and women’s athletics by both male and female coaches. Having handled in excess of 20 cases involving abuse allegations, some or all of the following activities seem to be present with respect to the presence of mental, physical, or sexual abuse and bullying:

- Utilizing homophobic or racial slurs
- Embarrassing student-athletes in front of peers
- Threatening loss of scholarship
- Forcing play or training when injured
- Demeaning statements
- Slapping, grabbing, hitting, shoving, throwing equipment at student athlete
- Demanding excessive exercise as a means of punishment
- Denial of fluids
- Not sending potentially injured student-athlete to team doctor
- Imparting unreasonable requests as a form of punishment
- Weight loss requirements
- Religious dictates
- Unwarranted yelling and screaming
- Criticizing the student-athletes abilities
- Taunts, name-calling, threats, intimidation
- Exclusion from peer groups, isolation
- Retaliation
- Bullying
- Sexual Harassment
- Sexual Abuse - Violence

IV. Marshall Contract

Gregg Marshall executed a Contract for Employment with WSU on September 23, 2015. With respect to the term of employment (Paragraphs 1.1–1.2), stated that employment was for a term of seven years with roll-over provisions:

⁴⁵ *Id.*

1.1 The term of this Contract for Employment shall be on a seven-year rolling basis beginning on the first day of the third to the final pay period of the pay cycle of each fiscal year and initially ending on the last day of the fourth to the final pay period of the pay cycle of fiscal year 2022. The parties agree and understand that as of April 24, 2016, and each year following, another year will be added to the contract for employment to provide for a continuing seven-year term; provided, however, that on May 7, 2017, May 6, 2018, and every other first day of the third to the final pay period of the pay cycle of each fiscal year thereafter, ICAA may provide Mr. Marshall with written notice that the automatic extension of one additional year will not occur.

1.2 This contract for employment in no way grants Mr. Marshall a claim to tenure in employment at WSU or with ICAA, nor shall Mr. Marshall's service as Head Coach pursuant to this agreement count in any way toward a continuous appointment at WSU.⁴⁶

Marshall had certain responsibilities and duties as a head basketball coach (Paragraphs 2.1-2.7) including:

2.5 Mr. Marshall agrees to know, recognize, abide by and comply with all rules, regulations, policies or requirements which have been or may be promulgated by or applicable to ICAA, WSU, the Conference or the NCAA; supervise and take appropriate steps to ensure that Mr. Marshall's assistant coaches, any other employees for whom Mr. Marshall is administratively responsible and the Program athletes know, recognize, abide by and comply with all such rules, regulations, policies or requirements; and immediately report to the AD and to the ICAA's Director of Compliance if Mr. Marshall has reasonable cause to believe that any person or entity, including by way of example and not by limitation, representatives of WSU or ICAA's athletic interests, has violated or is likely to violate any such rules, regulations, policies, or requirements. Mr. Marshall cooperate fully with the ICAA's Director of Compliance at all times.

2.6 Mr. Marshall shall avoid any business, professional or personal activities or pursuits that would prevent Mr. Marshall from devoting full time to performance of the duties as Head Coach as set forth in this Contract for Employment, or which would otherwise detract in any manner from the duties outlined herein, or that, in the opinion of ICAA, would reflect adversely upon the Program, ICAA or WSU.

2.7 Mr. Marshall's failure to complete with this paragraph 2 shall constitute and be considered as a specific and material breach of this contract for employment. ICAA agrees that it will notify Mr. Marshall in writing of any actions or activities that are in violation of this paragraph 2 and that Mr. Marshall shall have an opportunity to meet with the AD to discuss said actions or activities. Mr. Marshall

⁴⁶ Contract for Employment of Men's Head Basketball Coach between Gregg Marshall and Wichita State University, September 23, 2015. On file with the author.

will likewise be given a reasonable opportunity to terminate or end any actions or activities that are in violation of this paragraph 2.⁴⁷

Marshall's contract also contains a Termination Without Cause provision (Paragraph 8) with a Liquidated Damages section:

8. Liquidated Damages to Mr. Marshall

8.1 ICAA recognizes that employment as the head basketball coach for the men's intercollegiate basketball team of Wichita State University is a unique opportunity. ICAA recognizes that the removal of Mr. Marshall from this position for reasons other than good cause would create an inherent loss for Mr. Marshall. Both parties agree that the actual losses that would be suffered by Mr. Marshall are difficult to ascertain. Therefore, this liquidated damages provision has been negotiated, in good faith, and agreed to by the parties in consideration of this fact, with both parties agreeing that the liquidated damages provision is reasonable.

8.2.1 Should ICAA terminate Mr. Marshall for any reason other than those set forth under paragraph 7.2 above, prior to the completion of the Contract for Employment, it is agreed that ICAA will be obligated to pay Mr. Marshall either the sum of Fifteen Million and No/1.00 Dollars (\$15,000,000.00) or the amount remaining under this Contract of Employment (calculated by multiplying the number of years remaining on the contract by the total compensation set forth in Paragraph 3.1.1), whichever is less.

For example, if Mr. Marshall's Contract for Employment was terminated without cause by ICAA with three of the first seven years employment remaining on his contract, Mr. Marshall would receive \$10,000,000.00 as and for liquidated damages [\$10,500,000.00/GM]

For example, if Mr. Marshall 's Contract for Employment was terminated without cause by ICAA with two of the first seven years employment remaining on his contract, Mr. Marshall would receive \$7,000,000.00.

8.2.2 The payment of any liquidated damages to Mr. Marshall, as specified by Paragraph 8.2.1., shall be paid by ICAA over no more than a three year period (with equal amounts paid each year at a time reasonably determined by the parties, but if no agreement can be reached, annual payments would be as of April 16 of each succeeding year). If however, there was two or fewer years remaining on the Contract for Employment, the payment shall be made in one lump sum.

⁴⁷ Contract for Employment of Men's Head Basketball Coach between Gregg Marshall and Wichita State University, September 23, 2015. On file with the author.

Any payment made pursuant to paragraphs 8.2.1 or 8.2.2 shall be subject to appropriate withholding for any applicable taxes as determined by the parties.⁴⁸

Paragraph 7 of the Contract for Employment also provides for termination or suspension of the Contract for Employment for good cause and is defined as follows:

7.2 ICAA may, in its discretion, suspend Mr. Marshall from some or all of Mr. Marshall's duties as Head Coach, temporarily or permanently, and with or without pay; or terminate this contract for employment at any time, as determined by the ICAA to be in the best interests of the Program and WSU, upon the occurrence of good cause.

7.2.1 The term "good cause," by way of example and not by way of limitation, would include the following:

[i] Mr. Marshall's refusal to perform the duties required as Head Coach;

[ii] Mr. Marshall's knowing and deliberate failure to properly supervise his coaching staff and provide oversight of the basketball program;

[iii] conviction of a felony;

[iv] insubordination, as reasonably determined by the AD;

[v] as reasonably determined by the President of the University, in consultation with the AD, an act of dishonesty or discreditable conduct by Mr. Marshall that is inconsistent with the professional standards expected of a head coach of an intercollegiate sports team that results in material injury to the reputation of Wichita State University, the ICAA or the Program and/or conduct that offends public decency or morality as measured by the community standard prevailing in Wichita and the State of Kansas; or

[vi] any knowing and deliberate major violation or a pattern of secondary violations of rules and regulations of the NCAA, any knowing and deliberate violation of rules and regulations of the Conference or any knowing and deliberate violation of any applicable rule, policy or procedure of the ICAA or WSU;

No termination for alleged "good cause" shall occur without first giving Mr. Marshall notice in writing of the "good cause" actions alleged and an opportunity to be heard. Mr. Marshall will not be held accountable for the decisions or actions of the prior head coach or a member of the prior head coach's coaching staff, including violations of rules and regulations of the NCAA, including academic performance penalties.⁴⁹

⁴⁸ Contract for Employment of Men's Head Basketball Coach between Gregg Marshall and Wichita State University, September 23, 2015. On file with the author.

⁴⁹ Contract for Employment of Men's Head Basketball Coach between Gregg Marshall and Wichita State University, September 23, 2015. On file with the author.

The kinds of conduct that Marshall is being accused of would fall under the definition of good cause, re “discreditable conduct that is inconsistent with professional standards expected of a head coach of an intercollegiate sport that results in the material injury of the reputation of WSU or conduct that offends public decency or morality.”⁵⁰ The determination as to continued employment with WSU is determined by the President of the University in consultation with the Athletic Director. However, Marshall does receive some due process procedures including a notice in writing of the good cause actions alleged and an opportunity to be heard.

V. Independent Investigation

WSU has chosen to conduct an outside investigation rather than an internal investigation and has executed an engagement letter with Tueth Keeney Cooper Mohan & Jackstadt P.C., a St. Louis based law firm, on August 25, 2020 to do an investigation of the Marshall accusations.⁵¹ The engagement letter with the WSU is signed by WSU General Counsel Stacia Bowden who reports directly to the President.⁵² The engagement letter makes clear that the WSU leaders will decide whether to impose any potential sanctions on Marshall and what happens with the findings and investigation materials turned up by the investigation, not the law firm.⁵³ The engagement letter also indicates that the investigation and its existence would be confidential and privileged.⁵⁴ The law firm is well known for its specialty in education law, including conducting investigations of personnel, student matters, and compliance issues.⁵⁵ Heading up the investigation is Attorney Michelle H. Basi, whose background is described as follows:

⁵⁰ Daniel McCoy, *Here’s How Gregg Marshall Is Being Paid to Leave WSU*, WICHITA BUS. J. (Nov. 19, 2020), <https://www.bizjournals.com/wichita/news/2020/11/19/how-gregg-marshall-is-being-paid-to-leave.html>.

⁵¹ Swaim and Eldridge, *supra* note 37.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Kyle Boone, *Wichita State Coach Gregg Marshall, Under Investigation for Allegedly Abusing Players, Denies Allegations*, CBS SPORTS (Oct. 20, 2020), <https://www.cbssports.com/college-basketball/news/wichita-state-coach-gregg-marshall-under-investigation-for-allegedly-abusing-players-denies-allegations/>.

Michelle H. Basi practices primarily in the areas of education, special education, litigation, and labor and employment law. Michelle regularly advises school districts and charter schools on student matters, including special education and Section 504 compliance, First Amendment rights, Title IX compliance and student discipline. Michelle also advises schools districts and charter schools on employment matters, including Title VII, the ADA, the ADEA, the FMLA, and the Teacher Tenure Act. Michelle works with boards of education on a wide range of matters, including governance procedures, Sunshine Act compliance, and constitutional matters. Michelle has successfully represented school districts and charter schools in student and employment matters before State and Federal Courts and administrative agencies, including the Equal Employment Opportunity Commission, Missouri Commission on Human Rights, and the United States Department of Education Office for Civil Rights. In addition, Michelle represents private schools with respect to personnel and student matters. Michelle is a member of the Council of School Attorneys and is a regular speaker at statewide and regional school law conferences.⁵⁶

“Many players, current and former, were interviewed. The investigation hit a deeper stage of probing once many former players became willing to be interviewed after the allegations became public via media reports.”⁵⁷ With respect to the investigation, Marshall indicated that: “I’m aware the university conducted interviews and I fully participated in the process,”⁵⁸ Marshall told The Athletic. “I look forward to having it wrapped up as I continue to focus my energy on our team.”⁵⁹ Marshall maintained that the allegations are not true and that he is a victim of character assassination.⁶⁰ “In response to the allegations put forward in the media, I simply state unequivocally that I have never physically struck a player or colleague,” Marshall says ...

⁵⁶ *Michelle Basi*, TUETH KEENEY, <https://tuethkeeney.com/attorney/michelle-basi/> (last visited Jan. 9, 2021).

⁵⁷ Matt Norlander and David Cobb, *Gregg Marshall Resigns as Wichita State Coach Amid Allegations of Physical, Verbal Abuse Against Ex-players*, CBS SPORTS (Nov. 17, 2020), <https://www.cbssports.com/college-basketball/news/gregg-marshall-resigns-as-wichita-state-coach-amid-allegations-of-physical-verbal-abuse-against-ex-players/>.

⁵⁸ Chris Bumbaca, *Wichita State Investigating Men's Basketball Coach Gregg Marshall for Alleged Misconduct*, USA TODAY (Oct. 9, 2020), <https://www.usatoday.com/story/sports/ncaab/aac/2020/10/09/gregg-marshall-investigation-wichita-state-misconduct/5934820002/>.

⁵⁹ *Id.*

⁶⁰ Larry Brown Sports, *Gregg Marshall, Wichita State Parting Ways Amid Investigation?*, MSN (Nov. 11, 2020), <https://www.msn.com/en-us/sports/ncaabk/gregg-marshall-wichita-state-parting-ways-amid-investigation/ar-BB1aTBuo>.

“Allegations claiming otherwise are false.”⁶¹ He added, “It is important that the investigation conclude its work without outside influence. An unrelenting character assassination by a member of the media that repeatedly targets me and my family threatens to undermine the impartiality of the investigation.”⁶² “I am devoted to my team and the entire Shocker community. I value my players and believe in their potential.”⁶³

While the results and findings of the investigation were kept private and confidential, Marshall on November 17, 2020 announced his resignation from his position. He stated that

“This was a difficult decision, but one I feel was necessary for my family, the university and, most importantly, the student-athletes,” Marshall said. “I remain grateful for my years spent at Wichita State. I wish to thank the coaches, student-athletes, the university, the community, and all of Shocker Nation for their unending dedication, support and loyalty. I am incredibly proud of this men’s basketball program and all it has achieved over the past 14 years and am confident of its continued success.”⁶⁴

WSU retorted:

“Our student-athletes are our primary concern,” said Director of Athletics Darron Boatright. “While the university acknowledges the success of the basketball program under Coach Marshall, this decision is in the best interest of the university, its student athletes and the WSU community. WSU will continue its pursuit of excellence with the help of its student-athletes, staff and loyal supporters of the basketball program.”⁶⁵

The resignation resulted in Separation Agreements containing the following terms:

1. A \$7.75 million buyout that will be paid out in 156 annual payments of \$48,076.92 every two weeks beginning December 11th.
2. A separate agreement pays the remaining \$250,000 in a lump sum.

⁶¹ Alex Seats, *Wichita State's Gregg Marshall Responds to Allegations*, 247SPORTS (Oct. 13, 2020), <https://247sports.com/Article/Gregg-Marshall-statement-Wichita-State-Shockers-basketball-player-abuse-investigation--152952853/>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Chris Lilly, *Wichita State Coach Gregg Marshall Resigns After Misconduct Probe*, KAKE (Nov. 17, 2020), <https://www.kake.com/story/42924202/wichita-state-basketball-coach-gregg-marshall-resigns-effective-immediately>.

⁶⁵ *Id.*

3. WSU will not release the findings or evidence from the investigation, claiming they are confidential.
4. The separation agreement including standard non-disclosure and non-disparagement clauses, which means neither side can disclose any confidential information or say anything that might directly or indirectly harm the other party.
5. That the separation agreement does not constitute an admission by WSU “of any liability or unlawful conduct of any kind.” There is no similar clause for Marshall in the agreement.
6. There is also no mitigation obligation on the part of Marshall, which is common in separation agreements. That means WSU still has to pay Marshall if the coach is hired by another program in the next six years.
7. The separation agreement also revealed that Marshall was allowed to meet with WSU’s players at 9 am Tuesday – about an hour before his resignation went public. According to the separation agreement, Marshall was allowed to “address reasons for resignation and say farewell to his players” but only on previously agreed-upon talking points from the administration that were included in the press release.
8. WSU will continue to pay for Marshall’s club membership at Flint Hills National Golf Club and Crestview Country Club through December 31, 2020. He must return all WSU-issued property and he has until December 16, 2020 to return his WSU-issued vehicle. ⁶⁶

⁶⁶ A copy of the Separation Agreements are on file with the author.

VI. Conclusion

A. Contract

While Marshall's Contract for Employment does provide a basis for firing by virtue of the accusations as made by student-athletes, WSU and every other NCAA university should adopt the Clemson model which expands the duties of the coach and provides grounds for termination if the coach engages in physical and/or emotional abuse of student-athletes "that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete."⁶⁷ The Clemson model as contained in Dabo Swinney's Contract is as follows:

Duties Clause Expanded – Swinney's contract requires him to refrain from the commission of emotional or physical abuse. We believe this is one of the first clauses in college coaching contracts prohibiting this type of behavior.

Description of Coach's duties (Section 2(b) of the Employment Agreement to be amended to include the following:

(xiv) Engaging in (and using his best efforts to ensure that every person under Coach's direct or indirect supervision is engaging in) safe and responsible treatment of student athletes on the Team. Coach shall refrain from any act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete. Without limited the preceding sentence, Coach shall comply with any and all applicable University Requirements pertaining to medical clearance for participation, including deferring to University sports medicine personnel in accordance with University Requirement.⁶⁸

Swinney also has a Baylor Clause – Reporting Obligation.

Description of Coach's reporting and compliance obligations (Section 4 of the Employment Agreement) to be amended to include the following:

(a) Coach shall adhere to all University Requirements adopted for purposes of compliance with Title IX of the Education Amendments of 1972, the Violence Against Women Act's amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and/or any similar state or local law (collectively, "Title IX Policies). Without limiting the preceding sentence, Coach shall specifically adhere to all reporting obligations under Title

⁶⁷ Term Sheet of Dabo Swinney, Head Football Coach, with Clemson University dated May 1, 2019, on file with the author.

⁶⁸ *Id.*

IX Policies, pursuant to which he must report matters immediately and directly to the University's Title IX Coordinator as required by the Title IX Policies.

Swinney finally could also get fired for failure to report and/or engage in the sanctioned conduct, including abuse.

Termination for Cause provision (Section 18(c) of the Employment Agreement) to be amended to, consistent with amendments to NCAA legislation and other applicable regulations, including the following:

(x) material breach of any Title IX Policy by Coach (it being understood that the foregoing shall not limit the University's right to terminate this Agreement for Cause based upon violations of other University Requirements otherwise constituting Cause under this Section [18(c)]);

(xi) failure by Coach to engage in (and/or to use his best efforts to ensure that personnel under Coach's direct or indirect supervision engage in) safe and responsible treatment of student athletes on the Team, including without limitation failure to comply with any University Requirement pertaining to medical clearance for participation, or any other act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete.⁶⁹

B. Investigative Procedure

WSU also, instead of utilizing an internal investigative procedure, went outside the university to an objective, experienced, and well-qualified law firm to engage an investigation of the allegations against Marshall and report to WSU the conclusions therefor. The use of an uninterested, independent third-party to investigate possible violations of the coach's contract, NCAA rules, States laws, and university policies and procedures is a necessity in coaching abuse matters. These investigators should also have the ability to instruct the university in how to ameliorate the situation and with corrective actions being taken by the university. An independent investigation should be conducted by a third-party who has the requisite qualifications to undertake an investigation into mental and physical abuse allegations, Title IX issues, and NCAA rules. The

⁶⁹ *Id.*

party contracted should have no prior relationship with the parties involved, including the university, whose firm has not been a beneficiary of compensation from the university, and who has no vested interest in the outcome. The party contracted should also not act under the guise of a risk manager for the university.

With respect to the investigation conducted by WSU, they followed the preferred format. That is, choosing an outside investigator that is qualified and does not have a directed interest in the outcome of the investigation. The investigation as undertaken was conducted by competent professionals who not only understand the workings of universities, but also the psychological, physical, and mental effects of abuse. The investigation was handled in an expeditious matter.

C. Encourage Whistleblowing – Monetary Consequences

Student-athletes, as you can see, are a vulnerable group at a university. Abusive coaches who win typically have strong support from the university and the community. Because of the atmosphere of fear that abusive coaches can create, student-athletes “avoid speaking up for fear of being seen as a complainer or a troublemaker, injuring their opportunity to play. The player's parents fear speaking up for fear of making a bad situation worse for their son or daughter, or invite censure from other parents who support the program.”⁷⁰ This however means that the situation never gets addressed and the abuse continues because of the silent consent of those who fear the coach. For many student-athletes, abusive coaching practices “cause psychological trauma, which has a cumulative effect on the person and may not be noticed until significant emotional damage has already occurred. Many athletes want to quit a sport in which they are very talented in order to avoid the coach.”⁷¹ Student-athletes having to “give up,” so that they can preserve their physical and mental health, is a situation that the NCAA should be actively invested in preventing.

Unfortunately, as was the case with [WSU athletes], there is currently little or no affordable recourse. Student-athletes who are on scholarship with 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. There must be penalties and sanctions built into the system wherein if abuse is found it becomes an automatic monetary claim against the university in which the coach will be required to financially participate.

⁷⁰ Carl E. Pickhardt, Ph.D., “Adolescents and Bullying Coaches,” *Psychology Today*, Jan. 30, 2012.

⁷¹ Dr. Jack Singer, “The Long Term Effects of Abusive Coaching Practices,” *Dr.JackSinger.com*, October 22, 2015.

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.

D. Outside . . . Administrators

Abusive coaching may have worked for another generation, but not now. Administrators who tolerate, are indifferent to, or who conceal this type of behavior must face the firing squad. Every time a university looks the other way or issues a dismissive punishment, it's like dispatching an abuser back into the home of a domestic violence victim. The time of administrators covering up alleged abuse by coaches is most likely coming to a close with universities being held liable for actions their coaches take against student-athletes. It is just a matter of time before universities start paying punitive awards to student-athletes for pain and suffering they experience at the hands of abusive coaches.

E. Separation Agreement

Should WSU have paid \$7.75 million dollars to Gregg Marshall for essentially committing for cause actions that would have entitled him to no payout pursuant to his contract? Settlement agreements are a tool used to resolve disputes in college coaching contracts. In most instances, colleges do not want to hang out their dirty laundry but settle under some form of an agreement where the coach does not receive everything and there is some form of a confidentiality and non-disclosure agreement.

Marshall had a seven-year rolling contract, which is commonly known as a rollover contract. This essentially means that the contract would always revert back to its original term of seven years. Therefore, if the termination was not justified for cause the university could have been responsible for 15 million dollars of liquidated damages for the full seven-year period.

Secondly, for cease litigation, which normally is public, is not only tricky but bears a standard of proof that may put all the secrets of the university out on the table, and more importantly, involves court action with a press eager to print every detail.

Termination for cause, in many instances, where high level coaches are involved, certainly exposes the university to litigation. Once again, coaches are well funded, protecting their reputations, and future job potential, and are willing in many instances to take on the university knowing that these cases often settle anyways.

Often coaches will totally and unequivocally deny the allegations and put the burden of proof therefor on the university. The definitions used to explain termination for cause are often murky, subject to interpretation, and in many instances difficult to prove. Settlement avoids a hearing, a circular of publicity, potential exposure of other parties in the athletic department, and the ability to make the problem go away quickly. A trial involving whether a coach was properly terminated for cause is always high profile, constantly being dissected and discussed by the media and fans, and may have an ultimate effect on the college in terms of recruiting, donations from alumni, and impede the general functionality of the athletics department and the program. Also there is the time factor. Rather than focusing on the raising money from alumni, putting winning teams on the playing field, athletics departments are forced to use their resources for a drawn out expensive and intense legal battle.

There is no case that is a slam dunk in a court of law. Litigation is unpredictable, expensive and time consuming. Ultimately there is not a winner or a loser, but two parties who basically walk away with wounds. The buyout negotiated almost one half of what Marshall would have received for the full length of a contract is also paid in installments and not a lump sum which gives the university the ability to plan for the next occurrence. The next coach will probably not receive what Marshall did in that Marshall was one of the highest paid coaches. What they pay Marshall and the new coach may keep the university even at what it would have had to pay if Marshall continued to be employed as the coach.

Greg Mitchell in an article entitled “Gregg Marshall could become the next great mid-major temptation” states as follows:

[. . .] one of college basketball’s most successful coaches [is] without a job. [. . .] Marshall is the winningest coach in WSU history with a Final Four under his belt and the development of multiple players from middle-of-the-road prep prospect to NBA player. [. . .] [the] slew of accomplishments isn’t meant to dilute the allegations that have reportedly led to his dismissal at WSU, but they bear repeating since they are the sort of promise that some athletic departments will likely be hard-pressed to not consider. [. . .] There will likely be no shortage of people throughout the industry vouching for Marshall in the coming years. And in a sport where Billy Gillespie can get another job, it’s no small leap to think Marshall will be given another chance.⁷²

F. Some final thoughts

After preparing and working through approximately twenty college coaching abuse cases, I have some general lessons that I think would behoove all universities to take to heart:

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.

⁷² Greg Mitchell, *Gregg Marshall Could Become the Next Great Mid-Major Temptation*, [WWW.MIDMAJORMADNESS.COM](https://www.midmajormadness.com/2020/11/11/21560235/gregg-marshall-investigation-scandal-hire-candidate-wichita-state-winthrop-rumor-shockers-wsu-ncaa), Nov. 11, 2020, <https://www.midmajormadness.com/2020/11/11/21560235/gregg-marshall-investigation-scandal-hire-candidate-wichita-state-winthrop-rumor-shockers-wsu-ncaa>.

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.
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.

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