

BILL GIBBONS: A STUDENT-ATHLETE FINALLY TAKES THE COACH TO COURT

By: Martin J. Greenberg

I. INTRODUCTION

2013 was a year of alleged mental and physical abuse on the part of college coaches. It almost seems as if there has been an epidemic of this type of behavior, or maybe it has just been brought to public light: Rutgers' basketball coach Mike Rice's ESPN exposure and subsequent dismissal, followed by Oakland University's women's basketball coach Beckie Francis "pray to play" antics and subsequent termination for cause, have highlighted a year in which student-athletes claimed mental and physical abuse, as well as an infringement upon their rights as student-athletes. The only episode left in the story was a student-athlete filing suit in a court of law.

On October 15, 2013, Ashley Cooper (Cooper) as plaintiff filed a lawsuit in the Supreme Court of State of New York, County of New York, against the Trustees of the College of Holy Cross d/b/a College of Holy Cross (Trustees); College of the Holy Cross (Holy Cross); Coach Bill Gibbons (Gibbons); Athletic Director Richard M. Regan, Jr. (Regan); and Assistant Athletic Director Ann Zelesky (Zelesky).¹

Gibbons was entering his 29th season as the head basketball coach of the Holy Cross women's program in 2013–14, and was part of the Holy Cross basketball program for the last thirty-three years.² On Dec. 3, 2011 Gibbons earned his 500th win as a head coach, becoming the 24th active Division I coach to record 500 victories or

¹ Verified Complaint, Cooper v. Trustees of the Coll. of the Holy Cross d/b/a Coll. of the Holy Cross, No. 1 (N.Y.S. Oct. 15, 2013).

² *Bill Gibbons*, HOLY CROSS, http://www.goholycross.com/sports/w-baskbl/coaches/gibbons_bill00.html, (last visited Jan. 6, 2013).

more.³ His win–loss record stands at 533–315 overall and 278–98 in Patriot League regular season game play.⁴ Gibbons has led the Holy Cross women's basketball program to more victories than any other coach, and is the coach with the most wins in Holy Cross basketball history.⁵

Gibbons received the prestigious Paul N. Johnson Award, given to a member of the Worcester community who has greatly contributed to Worcester area basketball.⁶ He has led the Crusaders to eleven Patriot League Championships and has also made thirteen postseason appearances (eleven NCAA Tournaments, one WNIT and one WBI).⁷ With sixteen 20-win seasons, Gibbons fetes have cemented him as well as the women's basketball program at Holy Cross as one of the best in the East. During his career, Gibbons has averaged 19.1 wins per season.⁸

Cooper, who now lives in New York, played guard and was enrolled at Holy Cross from September 2011 to May 2013.⁹ She accepted a full scholarship to play at Holy Cross after a high school basketball career that featured two state championships at Rumson-Fairhaven High School.¹⁰

Cooper, a 5-foot-10-inch guard from Colts Neck, New Jersey, who would have been a junior at Holy Cross, is the daughter of former University of Louisville basketball player Tim Cooper, and attended Rumson-Fairhaven High School.¹¹

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Scott J. Croteau and Jennifer Toland, *Holy Cross Women's Basketball Coach Steps Aside; Ex-Player Alleges Abuse*, BOS. GLOBE (Oct. 17, 2013), <http://www.bostonglobe.com/sports/2013/10/17/holy-cross-women-basketball-coach-steps-down-player-alleges-abuse/hvIRyMXKFbT8dbt7yYlWgl/story.html>.

¹⁰ *Id.*

¹¹ *Id.*

In the 2012–2013 season, Cooper played in twenty-one of Holy Cross's thirty-two games, starting in five.¹² She averaged 4.7 points and 1.6 rebounds.¹³ As a freshman, Cooper averaged 3.0 points and 1.6 rebounds in 26 games.¹⁴

II. LAWSUIT

In her lawsuit, Cooper alleged that:

28. During the period plaintiff Cooper was on The Team until plaintiff Cooper was forced to leave Holy Cross, which was a period of approximately two years, defendant Gibbons was verbally, emotionally and physically abusive to plaintiff Cooper as well as to other players on The Team.

29. At an initial team meeting in the Fall of 2011, a psychological professional was brought in purportedly to meet with The Team to deal with team chemistry. Subsequently it was revealed that the only "team chemistry" issues were the players' distress with defendant Gibbons' outrageous and abusive behavior, of which Holy Cross was aware.

30. Defendant Gibbons, especially during games, including those in the State of New York, would act in an outrageous manner in his yelling, ranting, screaming and hysterics directed towards the Holy Cross players as well as game referees, which prompted players on opposing teams to remark: "your coach is crazy", among other comments.

31. Defendant Gibbons physically hit players, including plaintiff Cooper.

34. On an ongoing and frequent basis, defendant Gibbons engaged in inappropriate aggressive physical contact with plaintiff Cooper and other players during practice sessions and games.

35. Defendant Gibbons repeatedly and in anger deliberately physically shook plaintiff Cooper and other players by the shoulders.

36. Defendant Gibbons repeatedly and violently yanked and pulled plaintiff Cooper by her shirt collar and strongly squeezed the back of her neck causing pain while barking instructions in her face at close range.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

41. Defendant Gibbons deliberately and in anger physically struck plaintiff Cooper on the back on more than one occasion, including but not limited to, during the Holy Cross game against Brown University in January 2012 wherein plaintiff Cooper experienced pain and sustained a red hand-print mark on her skin.

43. Defendant Gibbons struck another female player on the back during a game against Lehigh in March 2013 ("Lehigh incident") in front of hundreds of witnesses, including but not limited to the player's parents, plaintiff Cooper's mother and defendant Zelesky.¹⁵

Gibbons voluntarily stepped aside from his coaching duties one day after he was accused in a lawsuit of verbally and physically abusing his players at games and practices.¹⁶ A spokesperson for Holy Cross indicated that Gibbons would be placed on administrative leave with pay and his assistant coaches would assume all coaching duties.¹⁷

In addition to her claims against Gibbons, Cooper also sued the Trustees, Holy Cross, Regan, and Zelesky. In Cooper's lawsuit, she alleged that:

32. Defendant Zelesky was present during many if not all of the games during which defendant Gibbons engaged in this out of control, outrageous and abusive behavior.

33. Upon information and belief defendant Zelesky did nothing to address defendant Gibbons' outrageous and abusive conduct despite having actual knowledge.

39. Upon information and belief, other players made complaints to defendant Zelesky regarding defendant Gibbons' conduct and were retaliated against by the coaching staff for "going over their heads."

47. Upon information and belief, defendants took no disciplinary action against defendant Gibbons. Defendant Gibbons remains the head women's basketball coach at Holy Cross to this very day.

49. Defendants The Board of Trustees, Holy Cross, Regan and Zelesky have actual knowledge and have possessed that knowledge for

¹⁵ Verified Complaint, *supra* note 1, at 5–7.

¹⁶ Croteau and Toland, *supra* note 9.

¹⁷ *Id.*

years that defendant Gibbons is verbally, emotionally and physically abusive to the players.

50. When the women's basketball players graduate, exit interviews are conducted by defendant Regan and/or defendant Zelesky.

51. Upon information and belief, many graduating seniors have complained to the defendants during their exit interviews about defendant Gibbons' behavior, yet nothing was done since Gibbons' behavior has not changed and Gibbons remains as head coach of the Holy Cross women's basketball team.

52. Defendants The Board of Trustees, Holy Cross, Regan and Zelesky continue until the present time to protect, cover-up and otherwise ignore defendant Gibbons' outrageous conduct to the detriment of all the players past and present.

53. It is unclear why the Defendants refuse to remove or discipline defendant Gibbons, and why defendant Gibbons' father and son manage the scorer's table and concessions, respectively, during home games.

55. As a result of the conduct of defendant Gibbons and the remaining defendants' failure to take any action or to remediate the toxic environment that permeated the Holy Cross basketball program for years, plaintiff Cooper had no choice but to transfer to another school thereby giving up her full scholarship at Holy Cross and is now required to expend funds for the balance of her college education.¹⁸

The complaint states eight (8) causes of action, including:

(1) Actions against Gibbons for intentionally striking Cooper, for assault and battery, emotional abuse, engaging in extreme and outrageous physical, emotional and verbal abuse, for bullying, and for which Cooper suffered mental anguish and distress, emotional distress, and loss of self-esteem, for which she was damaged therefor.¹⁹

(2) Actions against Holy Cross, Regan and Zelesky for reckless, careless and negligent conduct in failing to properly supervise Gibbons; in failing to prevent Gibbons' abuse and outrageous behavior; in failing to take remedial measures to protect Cooper

¹⁸ Verified Complaint, *supra* note 1, at 5–8.

¹⁹ See *id.* at 12–13.

and other Holy Cross basketball players; by failing to recognize that Gibbons' behavior violated the rules, regulations, policies, procedures, and guidelines mandated by the Patriot League and International Association of Basketball Coaches Code of Ethics, and Holy Cross' own internal Mission Statement; by attempting to cover up Gibbons' activities; by failing to properly and adequately train Gibbons; by failing to reprimand Gibbons; by failing to follow Holy Cross' own policies and procedures; and by being negligent in its behavior toward Gibbons.²⁰

As a result of the defendants' conduct, Cooper alleged that she had been damaged in that: (1) she was forced to leave Holy Cross and enroll in another college to escape defendant Gibbons' abuse; (2) she had to give up her full scholarship; (3) she incurred the costs of college tuition and room and board; (4) she suffered mental anguish, emotional stress, and loss of self-esteem; (5) her love of basketball has been affected and she is unable to continue to mentor and coach the young people she met in the Holy Cross-sponsored summer basketball camp; and (6) she will not graduate with her Holy Cross classmates.²¹ By reason of defendants' conduct, Cooper claims she is entitled to recover punitive damages as well as actual damages, costs and attorney's fees.²²

With respect to the lawsuit brought by Cooper, Cooper said, "I don't want this to happen to anyone else ever again. I want to stop it. I'm doing this for other people. I'm taking a stand for others, for every freshman that walks through the door."²³ In the suit, Cooper reiterates that she is commencing legal action "not only on her own behalf but

²⁰ See *id.* at 14.

²¹ See *id.* at 15.

²² See *id.*

²³ Gerry Wagschal and Josh Margolin, *Suit Alleges Holy Cross Women's Basketball Players Were Abused By Coach*, ABCNEWS, (OCT. 15, 2013), <http://abcnews.go.com/story?id=20581039>.

also on behalf of all women athletes who are abused by their coaches under grossly offensive rationale that the abusive behavior is 'motivational.'"²⁴

In a statement to ABC News, a Holy Cross spokesperson said: "The physical, mental and emotional well-being of our students is our highest priority at Holy Cross. We just received the lawsuit and are in the process of reviewing it. Ms. Cooper had brought her concern to the college and we investigated at that time. The lawsuit we received today includes a series of new allegations and we will now bring in outside counsel to review them."²⁵

"When I heard this story, as a former Division 1 athlete, lawyer and -- most importantly -- a mother, I was outraged to learn that this was going on," said Cooper's lawyer, Elizabeth Eilender.²⁶ "Most importantly, the college was doing nothing about it."²⁷

Gibbons, however, has received overwhelming support from players and former coaches. More than 50 former players, managers and coaches signed a letter that refers to Gibbons as a "father figure" and someone they consulted when facing critical life decisions. The letter states as follows:

The lawsuit recently filed against Bill Gibbons alleges incidents of verbal and physical abuse. If there is any truth to these allegations, then we trust the College of the Holy Cross will take appropriate action. However, Ashley Cooper is not the voice of the more than one hundred women that have played for Coach Gibbons in his nearly 30 year tenure. These allegations are far from the Coach Gibbons that we know. Our hope in writing this letter is to tell the story that the media has, thus far, ignored. From the moment we set foot on the Holy Cross campus as recruits, the

²⁴ Associated Press, *Lawsuit Alleges 3 Types of Abuse*, ESPN (Oct. 16, 20130), http://espn.go.com/womens-college-basketball/story/_/id/9832856/ex-holy-cross-women-basketball-player-alleges-abuse-coach.

²⁵ Wagschal and Margolin, *supra* note 23.

²⁶ *Id.*

²⁷ *Id.*

idea of being a part of something bigger than ourselves took hold. Each year we had one goal – to become a “true team.” While wins and losses were a barometer of our success, what mattered most was how we treated our teammates, our opponents, and our family and friends. The familiar words of post-game locker room speeches after a loss resound, “we tip our hats to the other team.” It was always about sportsmanship, and understanding the bigger picture of moving through life with determination and integrity. And it was always about us becoming our best selves. He was, and still is, a father figure for those of us without fathers, and a sounding board for some of us with critical life decisions. His family took each and every one of us in and made us feel at home. Above all, he was a leader who always taught us to do right and – more importantly – to be “men and women for others” in the Jesuit tradition. There were never just fifteen players on a team each year. There were always the stories of those who came before and an understanding of the legacy we had the responsibility to leave for those yet to come. It does not matter that many of us never set foot on the court together – the bond that brought us together as Holy Cross Women’s Basketball players transcends ages and the person who brought us together and guided us every step of the way was Bill Gibbons, a man that we will forever call “Coach.” The signatures gathered below represent only those able to be contacted within the last twenty four hours. The sheer number does not indicate that we are ‘demoralized’ and absent alumnae.

Respectfully,

1-2-3 Team Together²⁸

No current or former Holy Cross players have publicly substantiated Cooper’s allegations.²⁹ At the Crusader’s 2013-14 season opener in early November 2013, a group of approximately forty Holy Cross basketball alumni filled a section of the Hart Center bleachers.³⁰ They wore purple t-shirts with the slogan “Team Together” and raised signs that said “We Stand United for Coach Gibbons.”³¹

²⁸ John Hill, *Holy Cross Basketball Alumni Support Coach Bill Gibbons in Letter*, MASSLIVE.COM, http://www.masslive.com/news/worcester/index.ssf/2013/10/holy_cross_basketball_alumni_s.html (last updated Oct. 18, 2013).

²⁹ Jennifer Toland, *Holy Cross’ Bill Gibbons Remains Sidelined*, TELEGRAM.COM (Oct. 12, 2013), <http://www.telegram.com/article/20131211/NEWS/312119585/0/SEARCH>.

³⁰ *Id.*

³¹ *Id.*

In December 2013, several members of the Worcester Area College Basketball Association, of which Gibbons serves as president, came out in support of their colleague.³²

“WPI men's basketball coach Chris Bartley, WPI women's coach Cherise Galasso, Clark men's coach Paul Phillips -- who was among the first to publicly back Gibbons -- Clark women's coach Pat Glispin, and Worcester State women's coach Karen Tessmer signed their names to the following statement[.]”³³

As members of the Worcester Area College Basketball Association (WACBA) we support the immediate reinstatement of Coach Gibbons. He has served The College of the Holy Cross and the Worcester community with integrity and dignity for more than three decades (29 as head coach). We have witnessed first-hand his practices and games over the years, and we know Coach Gibbons to be a caring and compassionate mentor focused on creating a positive and supportive environment for his student-athletes.

The outpouring of support by his alumna, current players, staff, parents and colleagues is a strong indication of the true value, character and behavior he has demonstrated to his student-athletes day in and day out, on the court and off. We believe the allegations made against him are simply not true and to our knowledge not one person has corroborated the allegations to date.

We believe Bill remains unjustly sidelined after 29 years of exemplary and loyal service, and we feel if he is not reinstated immediately his reputation and the wonderful things he has done for college basketball and as a community servant will continue to be harmed. We urge The College of the Holy Cross to reinstate Coach Gibbons immediately and place him back where he belongs and has served the college well — leading and mentoring his team and representing the best of The College of the Holy Cross.³⁴

Cooper's lawsuit, which was originally filed in the New York State Supreme Court, was removed in November 2013 to the US District Court for the Southern

³² *Id.*

³³ *Id.*

³⁴ *Id.*

District of New York.³⁵ An initial pretrial conference has been scheduled for January 28, 2014, before Judge Katherine Polk Failla.³⁶ Cooper's lawyer, Elizabeth Eilander, said she is preparing to file a motion to have the case remanded back to the New York State Supreme Court.³⁷ Furthermore, Eilander has added Benjamin Brafman as co-counsel. Brafman has represented Sean P. Diddy Combs, former NFL wide receiver, Plaxico Burress, and Dominic Strauss-Kahn, former head of the International Monetary Fund.³⁸

III. ANTI-ABUSE PROVISIONS

Cooper, in her lawsuit, alleges that Gibbons' behavior violated a number of anti-bullying and anti-abuse provisions, rules and regulations, including:

1. The College of the Holy Cross Student Handbook and Planner 2013-2014 ("The Student Handbook")[, which] clearly states that all students are members of the Holy Cross community and are thus entitled to certain rights which include:

The right to be treated as an individual member of the community, which includes the right to be free of discrimination based upon age, sex, religion, ethnic or national origin, handicap, or status as a veteran, and the right to be free from harassment of any type.

The right of peaceful coexistence, which includes the right to be free from violence, force, threats, and abuse, and the right to move about freely. The right to be free of any action that unduly interferes with a student's rights and/or learning environment.³⁹

2. The Holy Cross Student Handbook, [which] promulgates a Code of Student Conduct [and] which expressly prohibits the following:

EMOTIONAL ABUSE: Issuing harassing, degrading or abusive threats or statements that cause emotional injury, and/or causing emotional injury through careless or reckless behavior. Emotional abuse also includes

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Revised Complaint, *supra* note 1, at 9.

willful damage to the reputation or psychological well-being of another. This covers all forms of communication including, but not limited to, written or electronic media.

PHYSICAL ABUSE/VIOLENCE: Physically assaulting any person, including but not limited to fighting, relationship violence, and physical harm to one's self. Self-defense may only be used to the limited degree necessary for self-protection.⁴⁰

3. In its filings with the IRS as an organization exempt from income tax, defendant Holy Cross describes its mission as:

Holy Cross is a private, Jesuit liberal arts college dedicated to the pursuit of excellence in teaching, learning, service of faith and promotion of justice . . . dedicated to forming a community which supports the intellectual growth of all its members while offering opportunities for spiritual and moral development.⁴¹

4. The Code of Conduct for the Patriot League, of which Holy Cross is a member, [and] prohibits:

Striking, attempting to strike, or otherwise physically abusing an official, coach, staff member, student-athlete, cheerleader, mascot or other person in attendance at an athletic event. This includes throwing objects at an individual or onto the playing surface.⁴²

5. In addressing the issue of verbal, physical and psychological abuse of athletes, The Women's Sports Foundation issued a position statement in an effort to prevent its occurrence:

[a] The verbal, physical or psychological abuse of athletes subverts the mission of sports organizations and educational institutions to provide leadership and resources for the purpose of improving the physical, mental and emotional well being of all females through sport and physical activity participation.

[b] Any type of abuse has debilitating consequences both for its victims and for the society as a whole. In the context of athletic programs it lowers the self-esteem and limits the ability of participants to develop their full potential in sports and physical activities. It impairs the future capacity of its victims to experience full athletic participation and to pursue employment and leadership roles in athletics. This, in turn, deprives the society as a whole of

⁴⁰ *Id.*

⁴¹ *Id.* at 9–10.

⁴² *Id.* at 10.

the contributions of these individuals and damages a genuine appreciation of participants' athletic achievements and contributions.

[c] Abusive behavior of coaches and/or teammates toward other players undermines the professionalism of organized sport, taints the atmosphere of mutual trust and respect between coach and athlete and between teammates, and hinders the fulfillment of the overall educational mission of athletics.

[d] In some instances, abuse may expose a school to liability.

[e] The Women's Sports Foundation recognizes that this type of abuse occurs in sport as it does in other institutional contexts. In order to effectively deal with cases of abuse in athletics, as well as to prevent future abuse of female athletes, the Foundation encourages officers of sports governance bodies, athletic directors and school administrators to formulate policy guidelines and procedures that include training, distribution of the policy and subsequent evaluation of its effectiveness.

6. The National Association of Basketball Coaches Code of Ethics sets forth, *inter alia*:

Coaches are accountable to the highest standard of honesty and integrity. All practices should be consistent with the rules of the game and the educational purposes of the institution...

Coaches treat all persons with dignity and respect providing a model of fair play and sportsmanship...

Coaches have a primary concern for the health, safety and personal welfare of each athlete. The athlete's education is also held foremost.⁴³

IV. DEFINING A BULLYING AND ABUSIVE COACH

Bullying has been defined as “[a] conscious, willful, deliberate and repeated hostile activity marked by an imbalance of power, intent to harm, and/or a threat of

⁴³ *Id.* at 10–11.

aggression. Severe bullying can lead to a feeling of terror on the part of the person being bullied.”⁴⁴

Forms of bullying include:

1. Verbal: taunts, name-calling, put-downs, threats, and intimidation.
2. Social: exclusion from peer groups, ganging up, or group teasing.
3. Physical: hitting/kicking victims and/or taking/damaging personal property.
4. Cyber: using the computer or other technology to harass or threaten.⁴⁵

Bullying before, during or after sports may appear as:

1. Unwarranted yelling and screaming directed at the target.
2. Continually criticizing the target's abilities.
3. Blaming the target for mistakes.
4. Making unreasonable demands related to performance.
5. Repeated insults or put downs of the target.
6. Repeated threats to remove or restrict opportunities or privileges.
7. Denying or discounting the target's accomplishments.
8. Threats of, and actual, physical violence.
9. E-mails or instant messages containing insults or threats.⁴⁶

Dr. Joel D. Haber created a chart that provides a clear definition of bullying and a distinction between fair play and foul play. “Bullying is when one or more team members (the bully or bullies) target a single other person (the victim) and use behavior that has the intention to hurt that person. The bully must: have power over the victim and have intent to harm the victim through this power.”⁴⁷

⁴⁴ *Bullying Prevention in Sports*, ALBERTA, <http://www.cces.ca/files/pdfs/Bullying%20Prevention%20in%20Sports.pdf> (last visited Jan. 7, 2013).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Dr. Joel Haber, *Bully-Spotter: What is Bullying In Sports?*, RESPECT U, <http://respectu.com/assets/BullyingDefinitionsSports.pdf> (last visited Jan. 8, 2013).

Bully-Spotter: What is Bullying in Sports?

	MILD	MODERATE	SEVERE
P H Y S I C A L	<ul style="list-style-type: none"> • Hitting, slapping, heckling with intent to hurt • Head butting • Towel snapping • Throwing objects at someone • Taking possessions (clothes, equipment, etc.) 	<ul style="list-style-type: none"> • Illegal use of arms, legs, hands on playing field • Throwing ball at player with intent to hurt • Tripping • Striking with equipment • Spitting on purpose • Holding someone in shower or taking clothes with intent to harm 	<ul style="list-style-type: none"> • Physical violence to deliberately inflict pain • Holding player down against his/her will • Breaking/damaging property • Graffiti that defaces property • Locking in a room • Inappropriate, unwanted touching
R E L A T I O N A L	<ul style="list-style-type: none"> • Locker room bullying to target an individual • Critical comments meant to hurt • Blame-placing; gossiping • "Talking trash" • Dirty looks meant to hurt • Excluding or isolating another player 	<ul style="list-style-type: none"> • Exclusion more than once • Embarrassing in front of others • Setting up to look foolish/take blame • Threatening to reveal personal information • Gossiping with intent to isolate • Mild ethnic slurs • Obscene gestures • Using Internet for any of the above 	<ul style="list-style-type: none"> • Shunning a player from a team; isolating someone through rumors (or untrue comments to media) • Hurtful ethnic slurs • Using Internet for any of the above
V E R B A L	<ul style="list-style-type: none"> • Poking fun • Inappropriate language towards others; comments on sexual preferences • Name calling without hurtful intent • Use of a nickname when told not to • Verbal rudeness to authority • Unwanted sexual comments • Verbally insulting fans 	<ul style="list-style-type: none"> • Verbal threats of aggression against person, property or possessions • Making fun of others • Name calling with hurtful intent or rudeness • Taunting • Using Internet for any of the above 	<ul style="list-style-type: none"> • Verbal threats to harm person or possessions • Threats of/or retaliation for reporting bullying • Verbal threats of violence or inflicting bodily harm • Escalating rudeness towards others • Ongoing sexual harassment • Verbal abuse toward coach, ref, fans • Using Internet for any of the above⁴⁸

On the other hand, an abusive coach has been described as fitting any number of the following characteristics:

- Regularly uses public embarrassment and humiliation on his/her athletes

⁴⁸ *Id.*

- Is disinterested in the feelings and sensitivities of his/her players
- Rarely uses praise or positive feedback
- Is a yeller
- Demeans his/her players
- Plays “head games” with his/her athletes
- Is personally dishonest and untrustworthy
- Creates a team environment based on fear and devoid of safety
- Is never satisfied with what his/her athletes do.
- Is overly negative and a pro at catching athletes doing things wrong
- Is more interested in his/her needs than those of his/her players
- Over-emphasizes the importance of winning
- Tends to be rigid and over-controlling, defensive and angry
- Is not open to constructive feedback from players or other parents
- Uses excessive conditioning as punishment
- Can be physically abusive
- Ignores his/her athletes when angry or displeased
- Is a bully (and therefore a real coward)
- Coaches through fear and intimidation
- Is a “know-it-all”
- Is a poor communicator
- Only cares about his/her athletes as performers, not as individuals
- Consistently leaves his/her athletes feeling badly about themselves
- Kills his/her athletes’ joy and enthusiasm for the sport
- Is a bad role model
- Is emotionally unstable and insecure
- Earns contempt from players and parents
- Coaches through guilt
- Is a master of DENIAL!!!!⁴⁹

The Women's Sports Foundation (WSF) has defined and categorized types of abusive behavior as follows:

⁴⁹ Alan Goldberg, *Coaching Abuse: The Dirty, Not-So-Little Secret In Sports*, COMPETITIVE ADVANTAGE, <https://www.competitivedge.com/coaching-abuse-dirty-not-so-little-secret-sports> (last visited Jan. 7, 2013).

1) VERBAL ABUSE – The most commonly occurring type of abuse in sports includes:

- a) name calling,
- b) hurtful comments regarding performance,
- c) swearing at players or game officials, and
- d) comments meant to demean a person's integrity.

Examples:

- a) Trainer to player: "Fatty, lose some weight so you can actually get down the court."
- b) Coach to team: "You all suck. I thought you were better than that, but I guess I was wrong."
- c) Any and all expletives.
- d) Coach to player: "I hope you aren't proud of yourself. You shouldn't be."

2) PSYCHOLOGICAL OR EMOTIONAL ABUSE – such as but not limited to:

- a) having unrealistic goals or expectations of athletes,
- b) keeping athletes from participating in games or practices because of assumed limits or underdeveloped skills,
- c) issuing threats, or
- d) continually making demeaning statements.

Examples:

- a) A coach putting the success of a team on the shoulders of one "superstar."
- b) Before putting a non-starter in the game, a coach says, "I guess we will have to let you play, you're the only one left."
- c) Coach to team: "If we lose any games this season, none of you will be invited back next year."

3) PHYSICAL ABUSE –

- a) When coaches use any type of hurtful touch causing physical pain;
- b) The use of excessive exercise, denial of fluids and/or imparting unreasonable requests as a form of punishment or a way of creating team discipline.

Examples:

- a) Slapping, grabbing, spitting, shoving, hitting or throwing equipment.
- b) A team loses and the coach demands that his or her players run around the track until they vomit or pass out.
- c) Team returns late at night after an away contest and goes right to the gym for a punishment practice.

- 4) BULLYING – Bullying is a form of verbal, physical or psychological abuse and includes the deliberate, repeated and sometimes health-endangering mistreatment of one or more persons (the target(s)) by a perpetrator (the bully) whose destructive actions are fueled by the bully's need to control the target(s).

Example:

Bullying is usually an ongoing physical or verbal mistreatment where a "game" of usurping control is an attempt to win while the other loses. Bullying coaches or players may often target more passive players. When the assaulted person appears to be upset, the bully often says things like, "What's the big deal?" or "She asked for it."

- 5) HAZING - Any activity expected by existing team members or coaches themselves of someone joining a team or to maintain full status on a team that humiliates, degrades or risks emotional and/or physical harm, regardless of the person's willingness to participate.

Example:

Instances in which coaches or other players know about or are participants in any harmful or degrading initiation rituals involving new players. Examples of these rituals include walking in cooked spaghetti, running through a line of players who mildly assault the player, performing lewd acts or drinking excessive amounts of alcohol.⁵⁰

In June of 2010, Oregon State Athletic Director Bob De Carolis fired women's basketball coach LaVonda Wagner (Wagner) without cause, which ended a turbulent five-year reign and has left the program with too few players to field a team, and a university obligated to pay her for \$1.2 million subject to mitigation of damages.⁵¹ The firing without cause was in part to avoid legal complications and extended litigation.

Wagner was accused of creating a climate of fear and intimidation in the five seasons at Oregon State and aimed to control players' lives. Wagner was accused of:

- Bullying or ignoring injured athletes (including one with a concussion), pressuring them to practice and play anyway.

⁵⁰ *Addressing the Issue of Verbal, Physical and Psychological Abuse of Athletes*, WOMEN'S SPORTS FOUND., http://www.womenssportsfoundation.org/sitecore/content/home/advocate/title-ix-and-issues/title-ix-positions/verbal_psychological_physical_abuse.aspx (last visited Jan. 25, 2014).

⁵¹ Cyd Zeigler, *Oregon State Fires Brutal LaVonda Wagner*, SBNATION (June 4, 2010), <http://www.outsports.com/2010/6/4/4049850/oregon-state-fires-brutal-lavonda-wagner>.

- Throwing a chair during a locker room tirade (it barely missed a player)
- Psychologically intimidating and belittling players' skills and effort.
- On a trip with the team, being removed from an airplane because she refused to get off her cell phone when directed to by the flight attendant.
- Ordering players to attend Weight Watchers and pay for it themselves because she thought they were too fat.
- Demoralizing some players so much they needed to get counseling.
- On road trips, refusing to allow players out of their rooms except to practice and play games (even on a trip to Hawaii.)⁵²

The WSF has created guidelines for administrators charged with hiring and supervising coaches relative to prohibiting verbal, psychological or physical abuse:

1. Formulate a written policy that details appropriate and inappropriate behavior of coaches and athletes. The policy should clearly describe potential violations and the sanctions for such abuse. In addition, job descriptions for coaching staff and volunteers should address the issue.
2. Develop and distribute clear rules that prohibit inappropriate behavior of coaches toward athletes or of athletes toward their peers to all coaches and related personnel, potential and actual student-athletes, families, teachers, guidance counselors and others to whom students may tell of such abuse.
3. Provide coaches with information, training and continuing education about how power and dependence can influence relationships and abusive behavior. Upper-level administrators need to take responsibility for organizing educational and training sessions for coaches, staff and players.
4. Develop a complaint procedure for reporting such abusive treatment. Athletes should be given multiple opportunities to report cases of abuse to neutral persons, that is, officials from outside the athletic department; e.g. guidance counselors, school psychologists, school nurses, the campus Health Center, campus Crisis Hotline and Student Affairs might be identified as referral agents. Ensure that these persons have training and know how to respond to such complaints. Procedural guidelines should also recognize that, in addition to needing direction and assistance in order to process the complaint itself, victims may benefit from personal counseling.

⁵² Pat Griffin, *Coach Bullying Gay Athletes At Oregon State*, OPPOSINGVIEWS (June 2, 2010), <http://www.opposingviews.com/i/coaches-bullying-gay-athletes-at-oregon-state>.

5. As much as possible, ensure that procedures for reporting abuse protect the privacy of the athletes and coaches involved. It is helpful to distinguish between informal and formal procedures for reporting such incidents. Informal procedures may involve initial discussion of alleged incidents with athletes, clarification of circumstances and perceptions, counseling and resolution accepted by the harassed person without formal hearings and investigations. Formal procedures incur the filing of an official complaint against the alleged perpetrator usually followed by an investigation and formal finding. Athletes and coaches should be advised of their rights at this time and limitations on confidentiality must be explained. Confidentiality should be retained to the fullest extent possible for both informal and formal reports. Information should be released only on a need to know basis.
6. Ensure that procedures for determining whether abuse has occurred protect the legal rights of coaches and players until an investigation has been completed.
7. An appeals procedure should be developed in the event that the accused or the alleged victim is dissatisfied with the outcome of the investigation or hearing, if appropriate. Coaches or athletes cannot be denied their right to pursue legal redress in a court of law. Administrators need to inform those involved about statutes of limitations, although institutions are at liberty to set longer timeframes for reporting abuse.
8. Policy guidelines must protect coaches and athletes from retaliation during and after a hearing or appeals process. Retaliatory behavior should be viewed as seriously as abuse itself and can occur independently of whether a charge of abuse is substantiated.
9. Respond quickly to allegations of abuse. Take immediate action to ensure that the environment is free of abuse and ensure that an investigation proceeds in a timely manner. Have time frames for how soon an investigation begins, how long it should take, how soon parties should be notified of the findings and how soon sanctions, if any, should be decided and implemented. Have investigatory guidelines to ensure that investigators follow proper procedures for a fair and effective investigation. Provide training for investigators.
10. Prepare a press statement that specifies your organization's verbal, physical and psychological abuse policy. This statement should be posted in prominent places, distributed to all athletes at the start of their season and distributed to staff.

11. Screen all applicants for coaching staff and volunteer positions. The policy on verbal, physical and psychological abuse between coaches and athletes or among athletes should be explained in all pre-employment interviews with all prospective staff or volunteers. Such persons can also sign a statement agreeing not to engage in any physical or psychological abuse or sexual harassment.⁵³

V. ANTI-BULLYING LEGISLATION

Many states have enacted anti-bullying legislation. Maybe the toughest of them all is the law known as the "Anti-Bullying Bill of Rights Act," passed by the State of New Jersey and effective September 2, 2011, which was an expansion of the state's anti-bullying law which was enacted in 2002.⁵⁴ "The Anti-Bullying Bill of Rights Act was enacted as the state was reeling from the death of Tyler Clementi, an 18-year-old freshman at Rutgers University. Clementi committed suicide after his roommate allegedly took a video of his romantic encounter with a man and streamed it on the Internet."⁵⁵

The New Jersey Anti-Bullying Bill of Rights Act applies to public schools including institutions of higher learning.⁵⁶ The Act more clearly defines bullying and requires every public school to report all cases of bullying by notifying families as well as superintendents of schools. Schools must adopt an anti-bullying plan.⁵⁷

"U.S. Sen. Frank R. Lautenberg (D-NJ) and U.S. Rep. Rush Holt (D-NJ-12), the authors of the 'Tyler Clementi Higher Education Anti-Harassment Act,' [have] renewed

⁵³ *Addressing the Issue of Verbal, Physical and Psychological Abuse of Athletes*, *supra* note 50.

⁵⁴ See *New Jersey Anti-Bullying Bill of Rights Act*, WIKIPEDIA, http://en.wikipedia.org/wiki/New_Jersey_Anti-Bullying_Bill_of_Rights_Act (last visited Jan. 8, 2013). See also, Winnie Hu, *Bullying Law Puts New Jersey Schools on Spot*, NY TIMES (Aug. 30, 2011), http://www.nytimes.com/2011/08/31/nyregion/bullying-law-puts-new-jersey-schools-on-spot.html?pagewanted=all&_r=0.

⁵⁵ Adam Cohen, *Why New Jersey's Antibullying Law Should Be a Model for Other States*, TIME (Sept. 6, 2011), <http://ideas.time.com/2011/09/06/why-new-jerseys-antibullying-law-should-be-a-model-for-other-states/>.

⁵⁶ *New Jersey Anti-Bullying Bill of Rights Act*, *supra* note 53.

⁵⁷ *Id.*

their call for Congress to pass the bill, which would directly apply to the type of behavior exhibited by Rutgers' Mike Rice by prohibiting harassment of students by students, faculty and staff.”⁵⁸ Lautenberg and Holt stated:

This incident shows us that physical and emotional abuse of college students by faculty is occurring right under our noses. Our Tyler Clementi Higher Education Anti-Harassment Act would require colleges to implement policies strictly prohibiting faculty from bullying students and this incident highlights the need for Congress to support our bill. Rutgers made the right decision by finally firing Mike Rice for his deplorable actions and homophobic slurs, but more needs to be done to make sure this type of abuse is stopped and a strong code of conduct protecting students from such harassment is enforced. We will keep working to stop bullying and ensure that no parent has to worry that his or her child is being abused by their leaders or peers when they are on a college campus.⁵⁹

For the first time, the bill would require colleges and universities to have in place anti-harassment policies.⁶⁰ The bill, which was recently re-introduced in this session of Congress, would provide funding for a competitive grant program to support schools seeking to establish or expand programs to prevent harassment of students.⁶¹

VI. MORE RECENT INCIDENTS

Georgetown's head women's basketball coach, Keith Brown, resigned in October 2013 after allegations that he consistently verbally abused his players over the last several seasons.⁶² “Brown's resignation comes after ABC7 News obtained audio of

⁵⁸ Office of Senator Frank Lautenberg, *Rutgers Coach Firing Highlights Need For Lautenberg, Holt College Anti-Bullying Bill*, POLITICKERNJ (April 3, 2013), <http://www.politickernj.com/64418/rutgers-coach-firing-highlights-need-lautenberg-holt-college-anti-bullying-bill>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Jay Korff, *Georgetown Coach Keith Brown Resigns After Verbally Abusing Players*, WJLA (Oct. 10, 2013), <http://www.wjla.com/articles/2013/10/georgetown-coach-keith-brown-resigns-after-verbally-abusing-players-95194.html>.

the second-year head coach belittling and cursing out players as part of what several current and former players called a pattern of verbal abuse."⁶³

After the audio was released, Georgetown officials reviewed the audio and stated, "That behavior does not meet the expectation and standards for the university and its leaders. It's inconsistent with our values and has no place in our community."⁶⁴

In the tape, Brown can be heard shouting profanities in the audio recordings provided to ABC7. Brown referred to some of his players as "dumb f**" or "dumb m***fer***."⁶⁵ While some players admitted that Brown swears at them when they made mistakes, many attributed his demeanor to his demanding attitude and do not take it personally.⁶⁶

Another case of abuse was reported in October of 2013, when Louisville Cardinals women's lacrosse coach Kellie Young was accused of being abusive toward her players.⁶⁷ The University of Louisville has not taken any disciplinary action against Young, and according to the Louisville Courier-Journal, "school administration have no planned 'next steps' for dealing with the allegations."⁶⁸

In yet another instance of alleged abuse, former Rutgers University defensive back Jevon Tyree and his parents accused the school of "protecting another bullying coach" in defensive coordinator Dave Cohen, just seven months after men's basketball coach Mike Rice was "fired for bullying his players."⁶⁹ Tyree and his parents, Mark and

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Rutgers Football Coach Accused Of Bullying Former Player, AD Hermann Faces Scrutiny*, SPORTSBUS.DAILY (Nov. 18, 2013), <http://m.sportsbusinessdaily.com/Daily/Issues/2013/11/18/Colleges/Rutgers.aspx>.

Clarice, have "sought disciplinary action" against Cohen, who during a spring study hall session, got in Tyree's face, verbally abused him, and threatened to head-butt him during a spring study hall session.⁷⁰ Tyree quit the team on November 6, 2013.⁷¹ Rutgers, in a released statement, said that Cohen "apologized 'the following day for his participation in the escalation of the banter' and head coach Kyle Flood reprimanded him."⁷² The statement also said that Flood "met with Tyree and his parents" and that AD Julie Hermann spoke to Tyree's father and "confirmed that the matter was resolved to his satisfaction."⁷³

Lastly, Cooper isn't the only student-athlete who is now seeking redress against a coach for physical and emotional abuse. Derrick Randall (Randall), a student and varsity basketball player on Rutgers' men's varsity basketball team from the fall of 2011 through the spring of 2013, filed suit against his former coach Mike Rice.⁷⁴

Randall was a highly rated basketball player who was afflicted and diagnosed with learning disabilities at an early age.⁷⁵ When he accepted his scholarship at Rutgers, the University was made aware of Randall's disabilities and related issues and specifically agreed to make special accommodations to address Randall's needs.⁷⁶

Randall seeks redress against Rutgers coach Rice, athletic director Timothy Perneti (Perneti), assistant coach James Martelli (Martelli); Janine Purcaro (Purcaro), chief financial officer; Mark Hershhorn (Hershhorn), chairman of the Rutgers University

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See Complaint and Jury Demand, *Randall v. Rutgers*, Case 3:13-cv-07354-FLW-DEA (N.N.j. Civ., Dec. 6, 2013), <https://s3.amazonaws.com/s3.documentcloud.org/documents/889173/derrick-randall-lawsuit.txt>.

⁷⁵ See *id.* at 7.

⁷⁶ See *id.* at 2.

board of Governors; and Robert L. Barchi (Barchi), University president in a case filed in the United States District Court, District of New Jersey, on December 6, 2013.⁷⁷

Randall alleges that he was placed “in a hostile environment in which he was regularly and continuously subjected to physical, mental, verbal, and emotional abuse of the outrageous nature.”⁷⁸ Such chronic abuse and damaging conduct, according to the complaint, occurred after Randall joined the Rutgers basketball team as a freshman and continued throughout his sophomore year.⁷⁹ In his complaint, Randall also argues that he was subjected to grossly demeaning behavior at the hands of Rice.⁸⁰

Randall alleges that he was subjected to “Rice hurling basketballs at his head and legs and hitting, grabbing, striking and shoving him.”⁸¹ Moreover, Rice “verbally, mentally, and emotionally abused Randall through violent screaming, cursing and other humiliation tactics, including the use of homophobic slurs and other shockingly derogatory and discriminatory name calling.”⁸²

Randall claims that the Rutgers administration and the named defendants knew of the abusive conduct and stood by and allowed it to continue.⁸³ It is alleged that the named defendants ignored reports and complaints and deliberately concealed evidence of Rice's pervasive and continuous abusive conduct from Randall's family and the public at large.⁸⁴

⁷⁷ *See id.*

⁷⁸ *Id.* at 8.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 9.

⁸² *Id.*

⁸³ *Id.* at 8.

⁸⁴ *Id.*

Rutgers was apprised of Randall's disabilities and related issues and agreed to make special modifications to accommodate his needs. As a result of Rice's actions, Randall argues that he suffered physically, mentally and emotionally.

The complaint has several causes of action including:

- Negligence -- against all defendants;
- Negligent Hiring, Training, Supervision and Retention -- against Rutgers, Perneti, Barchi, Purcaro, and Hershhorn;
- Gross Negligence -- against all defendants;
- Breach of Fiduciary Duty -- against all defendants;
- Assault and Battery -- against Rice;
- Intentional Infliction of Emotional Distress -- against Rice;
- Negligent Infliction of Emotion Distress -- against all defendants;
- Interference with Prospective Economic Advantage -- against all defendants;
- New Jersey Law against Discrimination -- against all defendants;
- Title II of the Americans with Disabilities Act -- against Rutgers;
- Violation of Section 504 of the Rehabilitation Act of 1973 -- against Rutgers.⁸⁵

One excerpt from the 31-page complaint reads, "Coach Rice and Perneti received severance packages including at least \$475,000 and \$1,200,000, respectively; Rutgers moved to the Big Ten Conference; and Derrick and other players were left to live with the damage caused by two traumatic seasons fending for themselves against Coach Rice's abuse."⁸⁶

⁸⁵ See *id.* at 17–27.

⁸⁶ *Id.* at 11.

Rutgers already has paid more than \$3.6 million in settlements, lawyer fees, search firms, and crisis management assistance related to the men's basketball controversies and to quell the ensuing fallout since November 2012.⁸⁷

VII. NCAA AND ABUSE

The NCAA may not have a specific rule or bylaw relating to mental, physical, or psychological abuse by a coach, but has what is generally referred to as "catch-all" provisions.⁸⁸

Bylaw 2.2.3 (Health and Safety) covers the health and safety of student-athletes. "It is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes."⁸⁹

Bylaw 2.2.4 (Student-Athletes/Coach Relationship) focuses on the relationship between athlete and coaches and states, "It is the responsibility of each member institution to establish and maintain an environment that fosters a positive relationship between the student-athlete and coach."⁹⁰

The issues of institutional control, monitoring, and oversight would also come into play as they relate to an abusive coach and a University's responsibility. Bylaws 2.1.1 (Responsibility for Control) and 2.1.2 (Scope of Responsibility) indicate:

2.1.1: It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The Institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures.

⁸⁷ See Jerry Carino and Keith Sergeant, *Rice Scandal May Cost More As Rutgers Faces Lawsuit*, APP.COM (Dec. 9, 2013), <http://www.app.com/article/CN/20131209/NJSPORTS/312090027/>.

⁸⁸ See NCAA, 2013–14 Division I Manual (2013) [hereinafter NCAA Manual].

⁸⁹ *Id.* at 2.2.3.

⁹⁰ *Id.* at 2.2.4.

2.1.2: The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in promoting the athletics interests of the institution.⁹¹

Liz Clarke (Clarke), in an article in the Washington Post entitled "Rutgers Abuse Case Offers Window into an Imbalance of Power," stated that, "The NCAA has no rule that says a physically abusive coach can no longer coach. But a player fleeing an abusive coach is penalized one year of eligibility. There is a vast difference in terms of basic protection."⁹²

In reflecting on the Mike Rice case, Clarke states:

On one level, the ugly episode serves as yet another wake-up call for college administrators who demand coaches win yet plead ignorance of their methods. On another, it sheds light on the broad power of head coaches and the limited options available to student-athletes when subject to abusive behavior.

While football and men's basketball players may generate millions for athletic-department coffers at Division I schools, they're not classified as employees and have little choice but to transfer elsewhere, forced to sit out one year of competition under NCAA rules, if they feel mistreated by their coach.

That's a fundamental unfairness in the view of the National College Players Association, which since 2001 has pressed for greater rights and financial compensation for student-athletes. This week, the group called on the NCAA to pass emergency legislation requiring assistant coaches and athletic staff to report cases of abuse against athletes. It also renewed its call for allowing players to transfer without the penalty of missing a season.⁹³

"This is a moment when we ought to reflect and ask, 'Who has the responsibility to end this type of abuse?' Surely the college president, surely the athletic director who

⁹¹ See *id.* at 2.1.1–2.1.2.

⁹² Liz Clarke, *Rutgers Abuse Case Offers Window Into An Imbalance of Power*, WASH. POST (April 6, 2013), http://www.washingtonpost.com/sports/colleges/rutgers-abuse-case-offers-window-into-an-imbalance-of-power/2013/04/06/950785c2-9e20-11e2-a941-a19bce7af755_story.html.

⁹³ *Id.*

watched the video but, also, the assistant coaches have a responsibility," said Ramogi Huma, a former UCLA football player who is president of the NCPA.⁹⁴

Former U.S. Congressman Tom McMillen, a Rhodes scholar and 2013 inductee into the National College Basketball Hall of Fame stated, "If you're the student-athlete, how much of this abuse do you tolerate when you have such a disparity between the coach who is paid millions of dollars and the player who is told you get a scholarship and nothing else? It's a very skewed system. What is the role of the student-athlete in this system? Just pawns? Quasi-employees? What are they? If that were occurring in the workplace, you would have 20 suits against the university every day."⁹⁵

Jason Whitlock, in an article entitled "Rice case shows NCAA power corrupts," stated:

"There's an immoral and dangerous power imbalance at the roof of all the NCAA corruption."

Now let's look. Mike Rice was getting away with kicking the (spit) out of his ballplayers. That's a misdemeanor that cost him three games. Had one of those Rutgers players tired of the abuse and decided to transfer to another Division I institution where he might get treated with a modicum of respect, the NCAA would consider that a felony crime worthy of a one-year suspension of play.

There's a power imbalance, and it's not just economic.

What must happen for school presidents to address this imbalance? You don't have to be very smart or have the sharpest vision to see the corrosion of values driven by multi-billion-dollar television contracts laid at the feet of athletic administrators and coaches.

⁹⁴ *Id.*

⁹⁵ *Id.*

This isn't any different from Wall Street. The one percent, the privileged, the few, can't discipline themselves in a room full of naked Benjamin Franklins. Could you?⁹⁶

Liz Clarke, in another Post article, discussed going beyond the fine line of "tough love:"

But rare is the college coach who has never lost his composure or raised his voice to drive home a point. And as the 2013-14 college basketball season prepares to tip off, coaches, conferences and college administrators alike are grappling with the boundaries of the often-harsh language of the job. On this topic -- what exactly crosses the line in reprimanding, disciplining or dishing out what's known as "tough love" to players -- the terrain is rapidly shifting. And when extreme measures are captured on video or audio, what's the likely fallout from fans, as well as bosses, who clamor for victories yet cringe over the methods?⁹⁷

VIII. LESSONS TO BE LEARNED

- 1) Zero tolerance for physical, verbal, and relational bullying.
- 2) Subject to any University adopted due process procedure, mental, physical, verbal, and relational bullying should be grounds for termination with cause.
- 3) Coaching contracts should include specific language making physical, verbal, and relational bullying or abuse a basis for termination with cause. University should not have to rely on provisions for cause for coaches violating rules and regulations or discrediting the university's integrity.
- 4) Fair play versus foul play. This kind of behavior is unacceptable. Defining acceptable and unacceptable behavior is a must.
- 5) Reporting is a must, without repercussion.

⁹⁶ Jason Whitlock, *Rice Case Shows NCAA Power Corrupts*, FOX SPORTS, <http://msn.foxsports.com/collegebasketball/story/whitlock-mike-rice-rutgers-case-shows-again-ncaa-power-corrupts-040213> (last updated April 3, 2013).

⁹⁷ Liz Clarke, *2013 College Basketball Preview: Coaches Grapple With Line Between Discipline and Abuse*, WASH. POST (Nov. 1, 2013), http://www.washingtonpost.com/sports/colleges/2013-college-basketball-preview-coaches-grapple-with-line-between-discipline-and-abuse/2013/11/01/2d7e1b60-3a55-11e3-a94f-b58017bfee6c_story.html.

- 6) Silence and inaction must be punished as well. The AD and administrators are as much to blame.
- 7) This form of coaching may have worked for another generation, but not now. This form of behavior is equivalent to child abuse.
- 8) Finally, the topic demands a serious conversation between coaches and administrators, and dictates specific definition in policy manuals.
- 9) While most cases of this nature are settled because of their cost and exposure, how interesting it would be to find out what a judge or jury ultimately might determine as far as damages that an allegedly mentally and physically abused athlete could obtain by virtue of a bullying coach. We will see.
- 10) The Lautenberg-Holt legislation is something that should be seriously considered.
- 11) These kinds of cases have an unsettling effect on athletic programs and University reputations.

As previously referenced, Gibbons has been on administrative leave since October 17th, the day after Cooper commenced a civil lawsuit against him.

Holy Cross announced that they had reinstated Gibbons to his position as of January 14, 2014.

"After a thorough review, the college has concluded that there is no reason for Coach Gibbons' continued absence from the team," Holy Cross spokeswoman Ellen Ryder said. "The college believes the lawsuit's allegations have no legal merit. Over a 29-year span, Coach Gibbons has amassed an impressive track record. That's why so many players, parents and alumni support him and the college's women's basketball program. We are focused now on completing the season and the academic year as a team and a community."⁹⁸

⁹⁸ Jeniffer Toland, *Coach Gibbons 'Thrilled to be Resuming My Role At Holy Cross'*, TELEGRAM & GAZETTE (Jan. 14, 2014), <http://www.telegram.com/article/20140114/NEWS/140119929/0/SEARCH>.

Gibbons will be coaching on January 15th in the Patriot League game against Army.

"I am thrilled to be resuming my role at Holy Cross," Gibbons said in a statement. "I am excited to get back on the court, and to work alongside our stellar student-athletes and coaches to focus on the rest of the basketball season. While I feel confident that I will be fully vindicated, I cannot comment on the allegations in the lawsuit that has been filed against the College and me."⁹⁹

Elizabeth Eilender, Cooper's lawyer, had no comment on Gibbons' reinstatement, but said, "The lawsuit is proceeding. We plan to make a motion to remand the case back to state court. We believe it was improperly removed to federal court. The judge has set up a briefing schedule for that motion and the case is proceeding."¹⁰⁰

During Gibbons' absence, associate head coach Ann McNerney guided the Crusaders to a record of 11-4 (3-1 in the Patriot League).¹⁰¹

My thanks to second-year law student Angel G. Medina for his assistance in editing and footnoting this article.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*