

# **TOUGH LOVE – CROSSING THE LINE**

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# TOUGH LOVE - CROSSING THE LINE

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# ***GREENBERG'S COACHING CORNER***



Martin J. Greenberg

Martin J. Greenberg is a Milwaukee sports and real estate lawyer and Adjunct Professor of Law at Marquette University Law School.

- He is the founder of the National Sports Law Institute at Marquette University Law School and has served on the Athletic Board of Marquette University.
- He represented Conference USA in the negotiation of its Commissioner's Agreement, Formation Agreement, and Conference Bylaws.
- He teaches a course at Marquette University Law School entitled Representing Athletes and Coaches in Contract Negotiations.
- He has been a featured speaker on college athletics for American Football Coaches Association (AFCA), the National Association of Collegiate Directors of Athletics (NACDA), the American Bar Association, and the NCAA Men's Coaches Academy.

# ***GREENBERG'S COACHING CORNER***

- Greenberg's years of writing on college coaching contracts and college athletics can be seen on Greenberg's Coaching Corner:
  - <http://www.law.marquette.edu/national-sports-law-institute/greenbergs-coaching-corner>
- Books include Sport\$Biz; Sports Law Practice; and The Stadium Game.
- He has hosted his own television about the business of sports entitled Sport\$Biz.
- He has represented college coaches for years and handled the largest deal before Nick Saban's University of Alabama deal.
- He has acted as an expert witness in coaching and collegiate athletic issues.
- He represented Joey Meyer of DePaul University in his contract formation and termination.
- Best Lawyers in America – Sports Law



# TOUGH LOVE -- CROSSING THE LINE

Mike Rice, Rutgers former Head Men's Basketball Coach



<http://www.youtube.com/watch?v=0wZ3z0HeLq4>



# OFFENSES



1. The video opens with Coach Rice throwing a basketball at a player while yelling expletives. Rice throws a chest pass at the players legs/feet followed by forcefully shoving the player out of the way, apparently so Rice could demonstrate the correct positioning he demanded of the player. At time 00:02.
2. Rushing up to a player who is looking the other way and forcefully shoving him. At time 00:04.
3. Shoving another player after stopping practice. At time 00:07.
4. Running up behind a player while the player was running and pushing the player from behind. The player stumbled several steps before catching himself and almost falling face first into the court floor. At time 00:08.
5. Throwing another ball at the legs/feet of two players guarding each other, seemingly to get their attention. At time 00:12
6. Throwing a basketball full force at a player's midsection while yelling an expletive at him. At time 00:14.
7. Pushing a player from behind then following and screaming in the player's ear. At time 00:15
8. Grabbing a player by the practice jersey and forcefully pulling and pushing him into position (without any resistance by the player for the duration of the pushing). At time 00:20
9. Yelling at a player then sprinting over to him and putting him in a headlock dragging him several feet by the head and neck. At time 00:24
10. During a drill with a blocking pad, hitting a player multiple (three) times with the pad after the player had already lost the ball and the drill had ended. At time 00:28.
11. Throwing a basketball at a player. At time 00:58.
12. Punching/hitting a player on the upper arm while yelling at him. At time 01:00.
13. Grabbing a player's jersey and shirt from behind and forcefully pulling him backwards. At time 01:02.
14. Kicking a player. At time 01:04.
15. Rice quoted as using a homophobic slur "flip-flops are for faggots" to demoralize 10 year old basketball camp attendees for wearing flip-flops. At time 01:43.
16. Video of Rice himself using homophobic slurs "fairy" and "faggot" while screaming at the entire team during Rutgers practice. At time 01:57.
17. Video showing Rice violently screaming in players faces to "shut the fuck up...shut the fuck up" during Rutgers practice. At time 02:07.
18. Throwing a basketball at the feet/legs of a player while yelling an expletive. At time 02:36.
19. Series of quotes claiming Rice specifically targeted and belittled a Lithuanian player consistently and more often and more harshly than others. At time 02:35.
20. Video depicting the abuse of the Lithuanian player during practice. At time 02:50.
21. Video of commentators watching Rice throw a basketball at his Lithuanian player despite the player performing the play correctly. At time 03:30.
22. Rice throwing a ball full force directly at the back of a player's head while the player was facing the other direction during practice. At time 04:39.
23. Forcefully ripping a ball from a player's hands and screaming expletives at him from within inches of that player's face. At time 04:45.
24. Hitting a player on the back of their head while he walked past the coach during practice. At time 04:50.
25. Throwing a ball at a player's legs. At time 04:54.

# DEFINING AN ABUSIVE COACH

*An abusive coach has been described as fitting any number of the following characteristics:*

- Regularly uses public embarrassment and humiliation on his/her athletes
- Disinterested in the feelings and sensitivities of his/her players
- Rarely uses praise or positive feedback
- A yeller
- Demeans his/her players
- Plays “head games” with his/her athletes
- Personally dishonest and untrustworthy
- Creates a team environment based on fear and devoid of safety
- Never satisfied with what his/her athletes do
- Overly negative and a pro at catching athletes doing things wrong
- More interested in his/her needs than those of his/her players



Mike Rice

# DEFINING AN ABUSIVE COACH

- Over-emphasizes the importance of winning
- Tends to be rigid and over-controlling, defensive and angry
- Not open to constructive feedback from players or 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
- A master of DENIAL!!!!



Beckie Francis



# DEFINING AN ABUSIVE COACH

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

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."

The logo for the Women's Sports Foundation, featuring the words "WOMEN'S", "SPORTS", and "FOUNDATION" stacked vertically in a bold, white, sans-serif font. The text is centered within a solid green rectangular background.

# DEFINING AN ABUSIVE COACH

## 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.



# BULLYING



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

Forms of bullying include:

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

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.

# BULLYING

**Dr. Joel D. Haber, Ph.D. , has created a chart that provides a 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.





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

# CROSSING THE LINE

***Washington Post reporter Alex Prewitt discusses in a Post article going beyond the fine line of "tough love"***



Mike Rice

“But rare is the college coach who has never lost his composure or raised his voice to drive home a point. And as the 2013-2014 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?”

# LACEY REPORT

- ▶ “Based on the credible information provided to us, we find that many of the actions of Coach Rice, while sometimes unorthodox, politically incorrect or very aggressive, were within the bounds of proper conduct and training methods in the context of preparing for the extraordinary physical and mental challenges that players would regularly face during NCAA Division I basketball games. This permissible training includes screaming at players, cursing, using other foul and distasteful language and expressing frustration and even anger at times. It also includes physical contact during drills and unorthodox training methods.”
  - Rice was passionate, energetic, and demanding and his intense tactics seemed genuinely aimed at improving his team and were in no way motivated by animus.
- ▶ “In sum, we believe there is sufficient evidence to find that certain actions of Coach Rice did ‘cross the line’ of permissible conduct and that such actions constituted harassment or intimidation within Rutgers’ Policy, Section 60.1.13.”



Mike Rice and Athletic  
Director Tim Perneti

# LACEY REPORT



Rutgers President  
Dr. Robert Barchi

- “Furthermore, due to the intensity with which Coach Rice engaged in some of the misconduct, we believe that AD Perneti could reasonably determine that Coach Rice’s actions tended to embarrass and bring shame or disgrace to Rutgers in violation of Coach Rice’s employment with Rutgers.”
- “Accordingly, we find that the conduct of Coach Rice did not create a hostile work environment as that term is understood in connection with anti-discrimination and anti-harassment policies.”
- Rice “did engage in certain conduct that went beyond mere cursing, including occasions where Coach Rice used coarse, inappropriate and insulting language during practices and workouts, verbally attacked players in a manner outside the bounds of proper coaching, shoved and grabbed players on multiple occasions and engaged in other boorish and immature behavior.”
- “These improper actions constitute grossly demeaning behavior directed at players and occasionally at coaches that did not appear necessary to build a high quality basketball program or to build a winning Division 1 basketball team.”
- Murdock’s assertion that he was wrongly terminated from his position at Rutgers is without merit.



# TERMINATION WITH OR WITHOUT CAUSE PROVISIONS

*Article XV of Rice's Employment Agreement Section B, Discipline and Termination for Cause, outlines the reasons as to why Rice could be terminated for cause by Rutgers.*

## B. Discipline and Termination for Cause.

1. Termination of employment for cause or other discipline may occur for any of the following: material breach of this Contract (won-loss record shall not constitute material breach), neglect of duty, willful misconduct, act(s) of moral turpitude, conduct tending to bring shame or disgrace to the University as determined in good faith by the Director of Intercollegiate Athletics, violation of University regulations, policies, procedures or directives not remedied after thirty (30) days written notice, violation of Mr. Rice's responsibilities set forth in Section XV. A (Compliance Standards), criminal conviction, or unapproved absence from duty, other than for a bona fide use of sick leave in accordance with University policy, without the consent of the Director.

3. Notwithstanding anything in this Contract to the contrary, if Mr. Rice is terminated for cause, the University shall not be liable for payment of base salary, additional guaranteed compensation, bonuses, benefits or any other items that would or could have been earned after the date of termination.

# TERMINATION WITH OR WITHOUT CAUSE PROVISIONS

*Section C of Article XV also indicates the contractual requirements for Termination without Cause.*

## C. Termination without Cause.

In case of termination of Mr. Rice by the University without cause, Rutgers shall continue to pay Mr. Rice his base salary and annual additional guaranteed compensation at seventy-five percent (75%) of the levels set forth in this Contract for the remaining term of the Contract. In such event, Mr. Rice will have an obligation to exert reasonable efforts to secure other employment. Should Mr. Rice subsequently accept a position as a head coach or assistant coach in the NBA or college basketball (Division I-A), Rutgers shall be entitled to offset the amounts it owes Mr. Rice pursuant to this Section XV.C by income earned by Mr. Rice in those positions. Accordingly, as a condition of Rutgers paying the foregoing amounts, Mr. Rice shall upon Rutgers' written request, promptly furnish then current information to Rutgers in order to implement this offset provision.

## **TERM SHEET**

WHEREAS, the University and Michael T. Rice wish to amicably resolve all issues between them concerning Mr. Rice's employment with and separation from employment with the University, they agree to the following terms:

- Within 45 days after Mr. Rice's execution and delivery of this Term Sheet or at such other dates mutually agreed upon in writing by the parties, the University will pay to Mr. Rice the sum of \$375,000.00, less lawful and required deductions, in lieu of all compensation, benefits and other obligations due to Mr. Rice under his Employment Contract, except contractual bonuses.
- Within 45 days after the execution of this Term Sheet or at such other dates mutually agreed upon in writing by the parties, the University will pay to Mr. Rice the sum of \$100,000.00, less lawful and required deductions, in lieu of all unpaid bonuses otherwise due to Mr. Rice under his Employment Contract.
- The foregoing payments shall not be cause for recomputation of any of Mr. Rice's benefits that may have been provided by the University.
- Mr. Rice shall not be entitled to any fringe benefits provided by the University. Under separate correspondence, Mr. Rice will be advised of his rights under COBRA to seek continued medical coverage.
- The University and Mr. Rice each agree to hereby mutually release all claims against the other.
- Mr. Rice agrees that, for a period of two years from the date of execution of this Term Sheet, he will not solicit any current employees of the University's Athletic Department to leave their employment for another position.
- Mr. Rice shall assist and provide reasonable cooperation with the University in connection with any administrative, legal, internal, NCAA proceeding or other matters in which the University requires his assistance; all of Mr. Rice's reasonable out-of-pocket expenses related to such cooperation shall be paid by the University in accordance with the University's travel and business expense reimbursement policy. The University will reimburse Mr. Rice for any reasonable and necessary expenses incurred by him in connection with such cooperation. Such expenses must be pre-approved by the University. If the University does not approve such reasonable and necessary expenses, Mr. Rice will be relieved of his duty to cooperate only with respect to the matters related to such expenses.
- Mr. Rice agrees to return to the University within 30 days after the execution of this Term Sheet all University property in his possession, custody or control.

# RANDALL vs. RUTGERS, RICE, ET AL.

(December 2013)

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

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

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



VS





# RANDALL vs. RUTGERS, RICE, ET AL.

## Randall Alleges:



Mike Rice communicating  
with a player on the  
sideline

- ▶ He was subjected to Rice hurling basketballs at his head and legs and hitting, grabbing, striking and shoving him. Rice further 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.
- ▶ Rutgers administration and the named defendants knew of the abusive conduct and stood by and allowed it to continue. 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.
- ▶ 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 suffered physically, mentally and emotionally.
- ▶ 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. Such chronic abuse and damaging conduct occurred after Randall joined the Rutgers basketball team as a freshman and continued throughout his sophomore year. Randall was subjected to grossly demeaning behavior at the hands of Rice.

# **RANDALL vs. RUTGERS, RICE, ET AL.**

The complaint has several causes of action including:

- Negligence - against all defendants;
- Negligent Hiring, Training, Supervision and Retention -- against Rutgers, Perneti, Barchi, Purcaro, and Hershorn;
- 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 Emotional 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

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."

\*\*\*NOTE: Subsequent to the filing of the Randall case, two more former Rutgers University basketball players, Jerome Seagears and Robert Lumpkins, filed suit against Rutgers, Mike Rice, and current coach Eddie Jordan claiming similar causes of action to what Randall claimed in his lawsuit.



# OAKLAND UNIVERSITY FIRES BECKIE FRANCIS FOR CAUSE

- Francis was suspended on May 30, 2013, without pay after what Oakland said was an “internal review.” Two weeks later on June 12, 2013, she was fired just two hours after Oakland announced that her husband, University President Gary Russi (Russi), would be stepping down as of July 1, 2013. Oakland issued a statement about the firing which said in part: “Indication of conduct and behavior of the women’s basketball head coach, that if true could be malfeasance and materially adversely affect the orderly or efficient operation of the women’s basketball program, came to the attention of an Oakland University administrator in April.”
- Shortly after Francis was fired, more light began to be shed on the incidents leading to Oakland taking decisive action. At least 15 former players and persons familiar with the Oakland program came forward to the Detroit *Free Press* in interviews, where they expressed very critical views of Francis and her coaching practices.



Beckie Francis

# OAKLAND UNIVERSITY FIRES BECKIE FRANCIS FOR CAUSE

## Common complaints included:

- 1) Fixated on player's weight, to a point that photos were taken of players in their sports bras and Spandex to chart body changes and that some players developed eating issues and only skinny girls played.
- 2) Pushed her religious beliefs by insisting players attend church services on trips and showing Christian-based videos on bus rides, resulting in religious intimidation and bullying.
- 3) Instituted an unspoken but enforced "pray to play" rule.
- 4) Engaged in intimidation and emotional abuse, "head games" far beyond common motivational methods used by coach resulting in an abuse of power.
- 5) Obsessed with girls' sexual purity -- "No fat sluts" rule, and penalized players with social lives by benching them.

A common theme amongst those interviewed was that they felt powerless because Francis was married to the president of the university. They felt as if they could not complain because it was useless. According to the interviews, no one challenged Francis because she had the ultimate job security. "The problem was she was the wife of the president," said a former player who remained anonymous. "It was so frustrating because you couldn't run to anyone. Tracy (AD) couldn't do anything; the assistant coaches couldn't do anything because at the end of the day, their boss went home to her."



# OAKLAND UNIVERSITY FIRES BECKIE FRANCIS FOR CAUSE



Beckie Francis

- Stacey Farrell (Farrell), Karli Harris (Harris), and Jenna Bachrouche (Bachrouche) were the three former players who publicly came forward with accounts of the abuse they suffered under Francis as players. All three players left the program early.
- Farrell was an incoming freshman at Oakland in the summer of 2007 and was an All-State guard from St. Claire Michigan High. According to Farrell, Francis called her in along with the other freshman players to give them some handouts on expectations for the upcoming season. While in this meeting with the freshman, Francis reportedly told them, “We don’t fraternize with the men’s team. By the way, are you guys Virgins? You guys are virgins, right? You haven’t had sex, right?” Farrell stated that she later learned from the older players this was a recurring message aimed at incoming freshman by Francis. Five former players also stated in interviews that they were part of similar meetings in which this message was advanced.

# OAKLAND UNIVERSITY FIRES BECKIE FRANCIS FOR CAUSE

- Farrell was given advice from the older players. "If anyone asks, you are a virgin. You are Christian. You do not drink. You do not smoke. You do not talk to guys. You sit in your dorm room and study. And, above all, you also watch what you eat."
- Harris, who transferred after one season under Francis, said the coach's behavior was borderline harassment. According to Harris, Coach Francis focused her attention on the player's weight, GPA, social life, and whether or not they attended church services. "Every single person, whether they played 40 minutes or two minutes, went through something with her. No one was immune." "It was everyday," Harris said. "It was so stupid. Looking back, it had nothing to do with basketball. The focus on basketball was eight percent of her energy. The rest is wasted on other stupid trivial things. It was just head games -- constant head games." Harris transferred to Davenport where she became an All-American as a senior.



# OAKLAND UNIVERSITY FIRES BECKIE FRANCIS FOR CAUSE

Bachrouche, who transferred after two seasons, stated she was emotionally abused by Francis and endured religious intimidation because she was Muslim and Francis was Christian. She also stated that her weight was constantly criticized by Francis, who even challenged her to a weight loss contest. “I got stressed out just thinking about talking to her or going to practice or having something to do with basketball. My academics suffered.” Weight became such an issue with Francis that last summer, players were asked by an assistant coach, under orders from Francis, to take off their clothes and pose for pictures flexing their muscles, front and back, wearing only underwear. They were told these were to be before-and-after photos to show body changes.

Bachrouche believed that Francis was trying to convert her from being a Muslim to being a Christian. The team was forced to watch religious movies on the road, including testimony of Francis given at her church. The team was encouraged to attend church services with Francis on the road and stated they would not play if they did not attend the services. Bachrouche also said she was forced to attend a Christmas party at Francis’ home where Bible verses were read. Many players, including Bachrouche and Harris, reported that endorsing Francis’ religious overtones was directly related to playing time. “If you’re not a devout Christian that goes to FCA (Fellowship of Christian Athletes) and goes to church every week and wants to pray constantly,” Harris said, “you’re not going to play if you’re different in any way.”

Bachrouche recalled instances of Francis exercising religious intimidation.



Jenna Bachrouche

# FRANCIS SUES OAKLAND

(November 2013)

- On May 30, 2013 Defendant suspended Plaintiff without pay pending "further review".
- On June 12, 2013 Plaintiff was terminated "for cause".
- No explanation was listed on the school's personnel action form that documented the contract termination.
- More than a week later, on June 21, 2013, Defendant issued a statement to the Associated Press that maligned Plaintiff.
- Since Late June 2013, Defendant Oakland University has maintained the position in the media that the findings of an "internal review" provided "cause" for Plaintiff's termination.
- Plaintiff requested her personnel record in accord with the Bullard-Plawecki Employee Right to Know Act ("the Act"), M.C.L.A. §423.501 et. seq. in mid-June 2013. See Exhibit C.
- On June 20, 2013 Defendant produced Plaintiff's record but excluded any record of the "internal report" which allegedly contains the reasons for Plaintiff's for-cause termination.



VS





# FRANCIS SUES OAKLAND



Beckie Francis

- Shortly thereafter, Defendant's Interim President, Betty J. Youngblood, issued a "Campus Advisory" on July 24, 2013 suggesting that Plaintiff's abrupt termination was due to allegations of religious discrimination.
- On September 16, 2013 Plaintiff again requested a complete copy of her personnel record.
- On September 18, 2013 Defendant denied Plaintiff's request, mischaracterizing Plaintiff's request as a FOIA request and associating Plaintiff's request for her personnel record with requests from "media outlets seeking disclosure."
- On October 2, 2013 Defendant provided Plaintiff a purported copy of the internal review report from her personnel record.
- The report was redacted to the point that only the headings of the report were legible.
- Plaintiff has requested now her personnel record five times.
- After nearly five months, Plaintiff has not been provided the cause of her termination.



# FRANCIS SUES OAKLAND

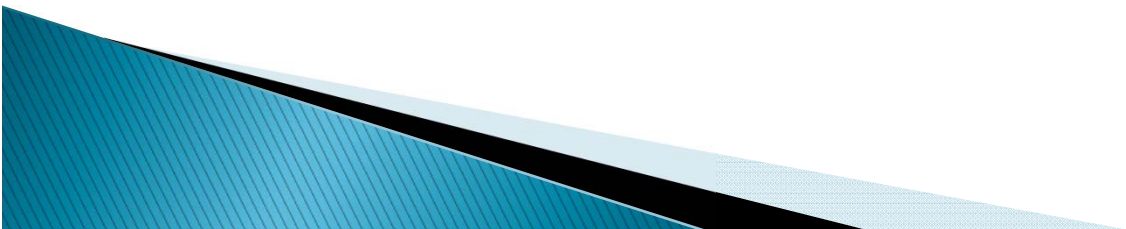
## REQUEST FOR RELIEF

*Thus, Plaintiff respectfully requests this court:*

- ▶ Enter a preliminary injunction enjoining Defendant to immediately produce to Plaintiff her complete personnel record including record of the internal review with appropriate redaction as provided by the Act.
- ▶ Schedule an emergency hearing on this matter in light of the shortened statute of limitations and equities involved, if a hearing need be held.
- ▶ Schedule an immediate in-camera review of Plaintiff's personnel record, including the internal report to determine legally appropriate redaction, if necessary.

*Enter an Order:*

- i. Declaring that Defendant is in violation of the Act because of Defendant's willful and knowing failure to honor Plaintiff's numerous requests for a complete personnel record.
- ii. Granting Plaintiff, in accord with MCLA §423.511(b) of the Act, costs, damages, and actual attorney's fees incurred in obtaining Plaintiff's personnel file, or, in the alternative, actual damages, plus costs under Section 11(a) of this Act in the amount of \$2,800.



# ASHLEY COOPER V. HOLY CROSS UNIVERSITY, BILL GIBBONS, ET AL.

(October 2013)

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.



vs



# ASHLEY COOPER V. HOLY CROSS UNIVERSITY, BILL GIBBONS, ET AL.



Bill Gibbons

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.

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.

# STUDENT-ATHLETES HAVE RIGHTS

**Cooper in her lawsuit alleges that Gibbons' behavior violated a number of anti-bullying/anti-abuse provisions, rules and regulations, i.e. a violation of student codified rights, including:**

**1.** The College of the Holy Cross Student Handbook and Planner 2013-2014 ("The Student Handbook") 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.

# STUDENT-ATHLETES HAVE RIGHTS



Bill Gibbons

2. The Holy Cross Student Handbook promulgates a Code of Student Conduct 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 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.



# STUDENT-ATHLETES HAVE RIGHTS

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 excellent 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.
4. The Code of Conduct for the Patriot League, of which Holy Cross is a member, 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.

# STUDENT-ATHLETES HAVE RIGHTS

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 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.

# STUDENT-ATHLETES HAVE RIGHTS



The National Association of Basketball Coaches Code of Ethics provides in pertinent part:

1. 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...
2. Coaches treat all persons with dignity and respect providing a model of fair play and sportsmanship.
3. Coaches have a primary concern for the health, safety and personal welfare of each athlete. The athlete's education is also held foremost.

# UNIVERSITY AND ITS ADMINISTRATORS HAVE EXPOSURE TOO

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

**Holy Cross Crusaders**



# UNIVERSITY AND ITS ADMINISTRATORS HAVE EXPOSURE TOO

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.



Ashley Cooper



# UNIVERSITY AND ITS ADMINISTRATORS HAVE EXPOSURE TOO



## In Randall's lawsuit, he alleged that:

93. Defendants Rutgers, Perneti, Barchi, Purcaro and Hershhorn (the "Supervising Defendants") directly and/or through their agents, were negligent and/or acted in a palpably unreasonable manner in hiring, retaining, training and supervising Rice and Martelli.

97. Supervising Defendants were provided with notice of Rice's outrageous conduct and his propensity for such outrageous conduct on numerous occasions, but failed to adequately address such behavior, further causing harm to Plaintiff.

98. Supervising Defendants, directly and/or through their agents, knew or had reason to know of the particular unfitness, incompetence and/or dangerous attributes of Rice and Martelli.

99. Supervising Defendants, directly and or through their agents, should have reasonably foreseen that hiring and/or retaining Rice and Martelli created a risk of harm to others, including Plaintiff.

100. Upon information and belief, during the hiring process and/or course of employment, Supervising Defendants, directly and/or through their agents, had actual knowledge that Rice had inappropriate or dangerous characteristics, attributes or tendencies that made him an unacceptable candidate for his position.

101. Reasonable investigation would have disclosed Rice's and Martelli's undesirable characteristics, attributes or tendencies.

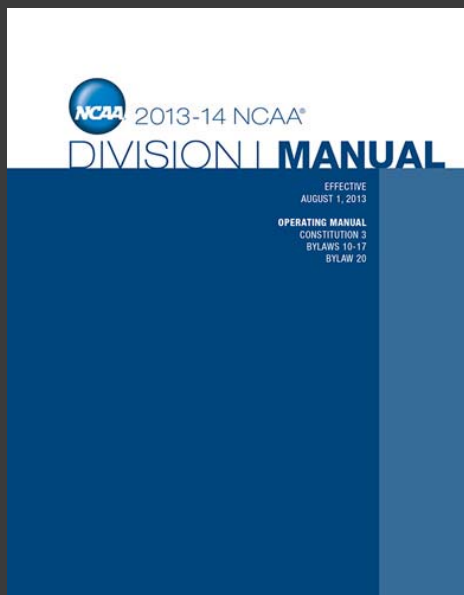
# THE NCAA AND ABUSE

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.

- 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."
- 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."



# THE NCAA AND ABUSE



NCAA Handbook

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.
- 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.

# THE NCAA AND ABUSE

*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."*

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.

# THE NCAA AND ABUSE

Ramogi Huma, a former UCLA football player who is president of the NCPA states:

- "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 watched the video but, also, the assistant coaches have a responsibility."



Ramogi Huma



# THE NCAA AND ABUSE

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."



Tom McMillen

# THE NCAA AND ABUSE

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

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



Jason Whitlock

- 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.
- 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?

# COACHES' SCANDALS ARE EXPENSIVE

Rutgers price for the Mike Rice scandal already is approaching \$4 million. Some of the expenses include:

- \$150,000 to Hill + Knowlton Strategies for crisis communication consultations
- \$70,000 paid to Parker Executive Search for AD search
- \$481,685 for Skadden Arps Report
- \$475,000 settlement for Mike Rice
- \$64,000 to Connel Foley for Lacey Report
- \$1.2 million settlement agreement for Tim Perneti to resign as athletics director
- \$420,000 payout to GC John Wolf



# LESSONS TO BE LEARNED

1. Physical and verbal abuse and bullying should be grounds for immediate termination with cause.
2. Every university needs to adopt a zero-tolerance policy.
3. Abusive behavior by high-profile university employees toward student-athletes doesn't merely merit a time-out and second chance, it merits dismissal.
4. The NCAA must take a stronger stance and provide rules sanctions for such kinds of conduct.
5. NCAA student-athletes subject to an abusive coach should be allowed to immediately transfer without loss of eligibility.
6. Coaching contracts should include specific language making physical and verbal abuse and bullying a basis for termination for cause.
7. 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.

# LESSONS TO BE LEARNED

8. 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.
9. Whistle blowing must be encouraged, not discouraged.
10. Abuse and anti-bullying laws must include coaches at all levels, with stiffened penalties for apathy, concealment, or non-reporting.
11. Universities need be more concerned with protecting their athletes from an abusive coach than protecting themselves from legal action.
12. Abuse is not good coaching, even when it results in winning.
13. Placing winning games or revenues above sportsmanship, decency, fairness and ethics is out of the question.
14. Coaches can make or break the student-athlete's college experience. Stop screaming and start teaching. Our athletes deserve a healthy environment to learn and grow.



Martin J. Greenberg, *A Bad Year for College Sports  
Raises Questions*, MILWAUKEE JOURNAL SENTINEL  
(Dec. 24, 2011)



“It is most difficult to claim incorruptibility when you're selling out for greed. Transparency, oversight, academic priorities and public accountability need to be the guideposts. Athletic programs need to take a step back and realize what their role is in the collegiate setting - an ancillary and extracurricular activity intended to enhance an educational experience.”

# THE END

Special thanks to Samir Nakhleh in helping to prepare this PowerPoint.

