

GAME CHANGER: FBI INVESTIGATION INTO COLLEGE BASKETBALL PROGRAMS HIGHLIGHTS NEW RISKS

This week, the Acting U.S. Attorney for the Southern District of New York announced the arrest of ten people tied to college basketball, including assistant coaches at four universities. Those arrested are accused of soliciting and providing bribes to steer basketball players to specific university programs, agents, and businesses. Two additional unnamed universities are also discussed in the complaints, with the Acting U.S. Attorney noting that more interviews are taking places and more arrests may be forthcoming. The University of Louisville also announced that it has placed head coach Rick Pitino and Athletic Director Tom Jurich on administrative leave as a result of their alleged involvement in the broader set of allegations. Every major college sport program involved in national recruiting is subject to the risk of similar misconduct, and institutions should take prompt steps to assess their individual risks and to ensure that they are properly mitigated.

The arrests sent shockwaves throughout the college sports world by shining a light on what has been referred to in media reports as the "dark underbelly" of college sports. The FBI investigation should also have university general counsels taking a hard look at their own affairs because the coaching staff at virtually every college and university with a major sports program is at risk of having been exposed to the kinds of issues that gave rise to the probe: relationships with agents, marketing firms, and apparel companies.

In three criminal complaints, the Department of Justice charged the ten men caught up in the investigation with, among other charges, bribery conspiracy, conspiracy to commit wire fraud, and conspiracy to commit honest services fraud. These charges are akin to those faced by corporate wrongdoers and carry with them substantial fines or potential jail sentences.

The complaints and subsequent media accounts point out the ubiquity of "handlers" in athletic recruiting, where people looking to capitalize on a student-athlete's potential may approach athletic staff seeking compensation in return for

delivering a particularly talented prospect. The rise of elite youth sports organizations, often sponsored by athletic apparel manufacturers, has also been cited as an area where the lines between aggressive recruitment and legally culpable conduct can be blurred. Quite simply, every major college sport program involved in national recruiting is subject to the risk of similar misconduct. Colleges and universities involved in intercollegiate athletics should take steps promptly and systematically to assess their relative risk, consider the effectiveness of their existing risk control and assurance mechanisms to mitigate such risk, and to ensure that they do not have any potential exposure necessitating remediation, investigation or other action.

A comprehensive risk assessment should involve, for example, reviewing contacts between an institution and outside sponsors, athletic agents, financial advisors, and others who may stand to profit from student-athletes. Of course, particular emphasis should be given to agreements or the exchange of items of value between an institution and a representative of a student-athlete, but a comprehensive

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risk assessment should focus on the overall set of contacts and the nature of these relationships. Document retention policies should be reviewed and records should be inspected to ensure compliance. Coaches and athletic department staffers should be interviewed and counseled. Codes of conduct should be reviewed and updated where appropriate. Going forward, these issues should be added on a risk basis to the institutions periodic audit plan.

Major investigations into college athletics from the National Collegiate Athletic Association ("NCAA") have become increasingly common. In the last year, the NCAA has [levied penalties against at least 21 universities](#), including Rutgers, the University of Louisville, and the University of Notre Dame, for "major infractions," typically involving violations of recruiting rules or impermissible benefits.¹ While these investigations can and do result in fines for the institutions involved—as well as substantial negative media attention—the NCAA is ultimately a voluntary association with no compulsory process or law enforcement ability.

Legal counsel and compliance staff at major colleges and universities are often well versed in identifying and remedying NCAA infractions, but the behavior identified in the criminal complaints is qualitatively different. Ensuring tailored risk assessments and compliance assurance, as well as early identification of failings—prior to the involvement of law enforcement—and robust and timely remediation efforts by an institution are key to mitigating both risk and exposure.

¹ <https://web3.ncaa.org/lstdbi/search?types=major&q=>

CONTACTS

Joshua Berman
Partner

T +1 202 912 5174
E joshua.berman
@cliffordchance.com

Jeff Golimowski
Associate

T +1 202 912 5053
E jeff.golimowski
@cliffordchance.com

David DiBari
Partner

T +1 202 912 5098
E david.dibari
@cliffordchance.com

Glen Donath
Partner

T +1 202 912 5138
E glen.donath
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 2001 K Street NW,
Washington, DC, 20006-1001, USA

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