

March Madness: Universities Must Prepare For NCAA Inquiries

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Universities and their college basketball programs are facing pressure on both ends of the court: first from the U.S. Attorney's Office for the Southern District of New York and the FBI, and second from the National Collegiate Athletic Association. It is likely that some of those universities may not be fully aware of the battles they face.

In September 2017, the SDNY announced the arrest of 10 individuals involved in alleged college basketball-related corruption schemes. The allegations are explosive — that four assistant coaches at prominent Division I basketball programs accepted bribes to push college basketball players to sign with particular agents, financial advisers and apparel companies. In parallel with the SDNY's investigation, the NCAA has opened similar inquiries into a number of schools and their basketball programs. The charges are the result of an ongoing, multiyear investigation by the FBI that included recorded conversations, cooperating witnesses, and reams of financial data that show purported illegal payments.

On Feb. 23, 2018, a Yahoo Sports article further rocked Division I basketball programs by detailing the "dark underbelly" of college basketball. Yahoo Sports reviewed documents from the SDNY's investigation, and those documents show what appear to be illegal payments to current and former players and coaches from over 20 collegiate basketball programs. If the allegations are true, the payments likely violate more than one federal law. They also almost certainly violate NCAA rules.

This investigation is not over. In fact, it appears that both federal investigators, and presumably the NCAA, are ramping up their investigations beyond the initial wave of charges into specific individuals in an effort to uncover additional evidence of wrongdoing. What is clear is that any university that has even the potential of being swept into these investigations should take swift action to be in a position to respond to inquiries from the SDNY and the FBI and the NCAA.

1. Universities should anticipate receiving a federal grand jury subpoena and prepare a subpoena response plan in coordination with outside counsel.

The most important thing to do is to be prepared and proactively investigate whether



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there is any conduct that could implicate the university. Even if a university is not aware of any information showing that its program, coach or player has done anything wrong, there are still additional steps that should be taken to be prepared for a knock on the door from law enforcement.

Because this investigation involves the FBI and the SDNY, universities with potential exposure should seriously consider engaging experienced and credible outside counsel to assist in navigating the response process. The government will expect complete cooperation from a university, and anything less can result in heightened scrutiny and additional questions and requests from law enforcement. Outside counsel can balance the required cooperation with a university's concerns about disclosing sensitive information in a way that is difficult, if not impossible, for a university general counsel to accomplish. For better or worse, a university potentially implicated in the scandal should be prepared to go above and beyond its regular course of business in responding to a subpoena.

With stakes this high, retaining experienced counsel should be a primary consideration.

2. A university's initial reaction to self-impose penalties will not avoid future NCAA punishment.

The proactive suspension of current players and coaches by universities at the center of the probes demonstrates that the school takes the allegations of potential NCAA infractions seriously. However, in today's climate of heightened NCAA enforcement and the NCAA's full-court press to play by the rules, self-imposing such penalties in the wake of allegations is hardly enough to avoid a NCAA investigation.

Look no further than last week's news that Louisville was forced to vacate 123 wins, including both its 2013 NCAA Tournament title and 2012 Final Four appearance, after an assistant coach allegedly paid women in cash and tickets in exchange for sexual favors to players and recruits. Notably, Louisville cooperated in the NCAA's investigation and prohibited its men's basketball team from participating in all 2016 post-season tournaments. Nevertheless, the NCAA Committee on Infractions hammered Louisville with the most serious penalty for its violation of NCAA rules.

What's the point? The NCAA wants to wipe the slate clean in college basketball. In doing so, the NCAA will demand more from universities implicated in this investigation, including action from universities that view themselves as victims because third parties have gone to great lengths to conceal payments to players or their friends and families. Identifying the origin of these payments can be difficult and universities can help themselves, as well as the NCAA, by conducting proactive independent examinations to identify potential improper conduct, take appropriate corrective action as needed, and implement measures to prevent future misconduct. The result should impose guidelines that resemble a model compliance and ethics program similar to what corporations have in place to abide by federal laws and regulations.

3. Universities have the opportunity and obligation to "know what we don't know."

Cursory and defensive investigations into potential misconduct are short-sighted and, as demonstrated by the Louisville example, no longer carry weight with the NCAA.

With the NCAA Committee on Enforcement circling and preparing to swoop in as soon as the SDNY concludes the fact-finding stage of its investigation, a proactive approach by universities and their general counsel's offices can help calm a crisis in college sports.

The alleged misconduct has permeated college basketball for decades, and the time is now for

universities to seek answers to hard questions. In doing so, universities must thoroughly review their basketball programs to determine whether players or coaches were in any way involved in the wide-ranging misconduct being investigated by the SDNY and the NCAA.

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