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IT'S A SLAM DUNK: TAKE STEPS NOW TO AVOID TOUGH LESSONS LEARNED BY SEVERAL NCAA BASKETBALL PROGRAMS

By Laurel Brandstetter and Benjamin D. Wanger

The recent indictment of at least 10 individuals associated with college basketball should alert every university, and many businesses, to the importance of operating strong ethics and compliance programs and conducting internal investigations at the first sign of trouble.

On September 26, 2017, federal prosecutors in New York announced charges of fraud and corruption arising from an alleged conspiracy in which basketball coaches from several Division I universities conspired with outside interests to funnel money to recruits in order to entice them to play for their programs. While there will be a great deal of fallout from these charges in the days, weeks, and months to come, the first major aftershock occurred when the University of Louisville effectively fired Athletic Director Tom Jurich and legendary Head Basketball Coach Rick Pitino due to their involvement in the alleged scheme, by placing them on unpaid administrative leave.

The more critical aftershock, however, will be the effort undertaken by the universities to work toward changing their culture and improving compliance. Indeed, as of this writing, the U.S. House Energy and Commerce Committee has requested that the NCAA and the entities involved brief the Committee "on the actions they are taking to ensure that similar schemes are not

happening in other sports, and how they intend to prevent it from happening in the future."

Those universities not implicated by these charges would also do well to examine their own culture and compliance efforts in order to avoid scandal. Tone at the top matters and was likely the motivating force behind University of Louisville's immediate employment changes. Tone at the top is set and enforced by ethics and compliance programs that apply equally to all members of the organization.

An effective ethics and compliance program is comprised of: (1) a clear code of conduct; (2) effective internal controls; and (3) regular training mandated for all members of the organization. The code of conduct sets expectations. Internal controls regulate and monitor behavior. Training ensures that everyone understands the rules, the conduct expected, and the consequences.

As demonstrated by the recent indictments, the alleged crimes were knowingly committed by people familiar with the strict NCAA regulations relating to payment to recruits. In this instance, simply providing education or training concerning industry regulations is not enough. The fraud schemes were complex and involved multiple individuals internal and external to the entities involved. Internal controls such as auditing and monitoring are critical and may have assisted in

identifying the fraudulent invoices and other practices employed by the participants.

There may have also been warning signs along the way or personnel with knowledge of the scheme who did not feel empowered to act. An effective code of conduct sets expectations with respect to reporting obligations and provides safe methods to report misconduct, such as an ethics hotline. If misconduct is reported, the organization must be poised to respond efficiently and decisively. Timely action aids in developing an overall culture of ethics and compliance because it establishes for all employees both a mechanism to address wrongdoing and a demonstration that such behavior will not be tolerated. Using the additional tool of quickly performing a well-respected internal investigation can root out problems, prevent further scandal, and enable an organization to heal, which is well worth the cost and potential for disruption.

If history has taught us anything, it is that giving unsupervised responsibility for following the rules to those facing tremendous pressure to produce winning results on the court and on the field, entices many to bend or ignore the rules. The solution, both for universities and in business, is a robust and effective ethics and compliance program with adequate resources for implementation and monitoring. ♦

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