

INTERNAL INVESTIGATIONS, ETHICS AND COMPLIANCE

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Operation Varsity Blues: Insights on the College Admissions Scandal from a Former Prosecutor

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The massive criminal indictment by the U.S. Department of Justice (DOJ) concerning college admissions fraud holds many crucial lessons for higher education leaders. From my perspective as a former prosecutor, I found some of the most important takeaways to be hidden within the hundreds of pages of materials released by the U.S. Attorney's Office.

Basic Facts About the Case

On Monday, March 11, 2019, more than 30 people were indicted in connection with a widespread college admissions scandal. A stunning 200+ page affidavit of probable cause supported the indictment, describing in detail an overarching conspiracy to: (1) bribe college entrance exam administrators; (2) bribe coaches and officials at elite universities to designate student candidates as recruited athletes; and (3) funnel payoff money through nonprofit corporations.

College officials may want to read through the DOJ documents in this case, as the details shed light on conduct that should raise red flags for all universities going forward. See – <https://www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic>.

Three general approaches were used to effectuate the entrance exam conspiracy. In one approach an alleged co-conspirator posed as students and took exams for them. Many of the students also took the same exam and were unaware that someone else was simultaneously completing the test in their name. Another approach involved providing students with the answers to exam questions. Finally, there were instances where the proctor corrected the student's answers

after the student turned in the exam. Use of designated test sites, a gifted test taker, and proctors all linked to the conspiracy enabled the ACT and SAT exam fraud to occur.

The other conspiracy involved the false designation of student applicants as recruited athletes. This conspiracy garnered the highest value of bribe payments and involved university coaches and administrators. For a hefty price, a coach would designate the identified student as an athlete of a particular sport, even if they did not play the sport or were not qualified to play at the collegiate level. This allowed the student to receive early admission and admission where their grades may not have been strong enough to otherwise earn acceptance to the university. Most students were unaware that a fictitious athlete profile had been created in their name and used to ensure their admission. Once at the university, the students were removed from team rosters.

Crucial Facts Buried in the DOJ Documents

From the viewpoint of a former prosecutor, the criminal affidavit contains a treasure trove of critical information. It describes in detail the overt acts undertaken by the individuals named in the indictment, including whether the alleged fraud involved exam results or athletic designation, the timing, amount, and nature of bribe payments, and ultimately the university activities involved. The affidavit also includes transcriptions of audio recordings intercepted by the FBI.

Higher education leaders may want to pay careful attention to the following facts about this case that

have not yet received adequate public attention:

- More information will be released in the coming weeks and months. The affidavit is not an exhaustive description of the conspiracy or the potentially ongoing investigations. There are additional known and unknown conspirators not named in the criminal affidavit and the U.S. Attorney states specifically that there are additional relevant facts and investigative information not contained in the affidavit.

College officials may want to prioritize compliance actions and internal investigations to ensure they are not surprised as this case spreads over time.

- The number of colleges and universities involved or implicated by this scandal is likely to expand beyond the eight universities listed in the “Certain Relevant Persons and Entities” section of the affidavit. For example, Boston College, Boston University, Northeastern University, and Cornell University are also referenced in subsequent sections of the affidavit.
- In addition to the 32 indicted parents who are named, the following other persons are also under related indictments for racketeering conspiracy:
 - Two test administrators
 - A test proctor
 - Two tennis coaches
 - A senior associate athletic director
 - An assistant women’s soccer coach
 - A water polo coach
 - Two head women’s soccer coaches
 - A head men’s soccer coach
 - A sailing coach
 - A women’s volleyball coach.
- William Rick Singer, the architect of the scheme who pleaded guilty, made several significant statements during intercepted telephone conversations. Of particular note, Singer suggested that “nearly 800 other families” participated in the conspiracy; that he had secured the admission for “760 of these this year, 96 the year before;” and that “we’ve done it everywhere.”

- High school guidance counselors and college undergraduate advisors not involved in the conspiracy had questioned some of the student admissions and came close to uncovering the allegedly fraudulent conduct.

Universities should check to ensure their whistleblower processes are understood by all and work effectively to spot problems early on before they expand.

Potential Ongoing Legal Implications

Perhaps the most significant takeaway from the affidavit is that the DOJ investigation has probably not concluded. The indicted 32 parents represent a small fraction of those who may have participated in the conspiracy over the years. In addition to hundreds of additional families, it is likely that other universities, coaches, and administrators were involved in similar schemes. With heightened public awareness about the investigation and the potential for cooperation by individuals now under indictment, new charges may follow.

A possible area for additional criminal investigation and charges may involve the conspiracy related to the funneling of payments through nonprofit organizations identified by Singer. If true, the fraudulent payments made to the nonprofits should not have been treated as tax exempt charitable contributions. Accordingly, the IRS may very well pursue a parallel investigation involving tax fraud or tax evasion.

Next Steps for Universities, High School and Collegiate Admissions Offices, and Entrance Exam Administrators

Universities, high school and collegiate admissions offices, and entrance exam administrators would do well to get ahead of any potential additional indictments or parallel criminal investigations.

Even if you are confident that your organization is free of similar problems, this case presents a good opportunity to update relevant compliance systems, perform training, and review data to spot potentially weak operational areas.

Proactive organizations may want to consider taking the following actions:

1. Based upon the nature and scope of the conspiracies disclosed in the criminal affidavit, there are several key data sets available to educational entities which are critical to any internal review of current and past practices. Entrance exam administrators should consider reviewing records of students who received extra time to take their exams or tested at an alternative testing site. Although many of these students will have received an accommodation for legitimate reasons, a pattern may become evident by reviewing data about students who received extra time, where they tested, and ultimately what college they matriculated to.
2. High school and collegiate admissions offices should consider reviewing the files of students who were designated as athletic recruits. Some of the high schools in the criminal case had no record of a particular student playing a sport and questioned the veracity of their application. A closer review of that student's application would have revealed that their alleged participation in a "club sport" was false.
3. College admissions offices and athletic compliance departments may want to undertake a review of all sports and identify students who were considered as an athletic recruit but never ultimately played for the university. Once that data set is collected, it should be cross-referenced against the sport and coaches involved for any pattern or commonality.
4. In addition to these measures, universities should consider an audit of their admissions procedures in an effort to identify any potential weaknesses or red flags. One type of admissions audit can involve randomly selecting applications to verify and confirm information contained in prospective students' files, perhaps emailing and calling some students. Had the universities taken such precautions with the applications of "athletic recruits" referenced in the criminal affidavit, most of those students would have acknowledged they did not play the particular sport for which they were recruited. Others may have denied taking online courses listed in their applications as falsely completed by one of the indicted co-conspirators.
5. Another type of effective audit involves using a third party to verify university admissions data to ensure that applications, acceptances, and standardized-test scores are reported accurately. Such an audit may have revealed data anomalies, including gaps between the number of athletic recruits and those who actually played for the university.
6. Any entity concerned about these various issues would do well to undertake an internal investigation of any identified weakness. In light of the potentially ongoing nature of DOJ's criminal investigation, institutions may also find that reporting any significant findings and cooperating with law enforcement may go a long way toward preserving the entity's reputation and ensuring public trust in the admissions process.

Final Thoughts

It's never fun to look under rocks. But scandals like Operation Varsity Blues can also be a gift to college officials, giving them leverage and raising the urgency of the practical steps needed to protect against misconduct. This can be an important opportunity to set in motion the actions described above, among other needed next steps. Bringing in outside experts and investigators can also be useful to provide credibility and a neutral perspective. ♦

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