

INSIGHTS

Closing the Side Door – The Imperative of the College Admission Scandal

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On March 12, 2019, the Justice Department unveiled its [indictment and charges](#) of 50 individuals involved in one of the most sweeping admissions scandals to hit higher education. Eight universities have been implicated in the initial charges, with the Government suggesting that this initial announcement is the “tip of the iceberg” of an even larger scandal. *Id.* While each of the named institutions have taken swift measures in response to the allegations, including by terminating or placing culpable personnel on administrative leave, the scandal has triggered widespread calls for systemic change and increased internal regulation.

The allegations, among other things, draw focus on a so-called “side door” loophole in college admissions processes that offered parents of prospective students the “opportunity” to guarantee admission to selective universities. As described in the indictment, the “front door” is for students admitted on their own, and a “back door” exists for parents, usually alums, who seek admission through “institutional advancement,” or sizeable donations. *Affidavit in Support of Criminal Complaint*, ¶ 31(a)–(g). In contrast, the “side door” alternative involves an array of schemes from securing higher scores on standardized testing through cheating to the outright bribery of university athletics personnel, namely coaches and athletic directors, to reserve recruitment spots on lower profile athletic teams for faux athletes. *Id.*

With respect to the bribery scheme, under the guise of a charitable donation, parents would make payments to William “Rick” Singer, the founder of a purportedly charitable non-profit corporation, Key Worldwide Foundation (“KWF”). The indictment alleges that Mr. Singer would then funnel those payments to programs controlled by the athletics personnel, and those personnel would designate students for special admission to the school as recruited athletes. *Id.* As part of the scheme, Singer directed his employees to fabricate athletic “profiles” for students, which included falsified credentials and fake honors as well as, in some cases, staged or manipulated photographs, to support the students’ applications. *Id.* Because Singer targeted lower profile sports, including tennis, water polo, soccer, volleyball, and sailing, the coaches’ designations appeared to fly under the radar of the admissions office or received little scrutiny. This “side door” is alleged to have granted admission to selective universities such as Yale, Stanford, Georgetown, USC, UCLA, and Wake Forest, for candidates who may not have otherwise have been selected.

Although not all of the universities allegedly received disguised donations – some of the coaches allegedly kept the money – USC, Stanford, Wake Forest and others apparently [received substantial payments](#) from Singer through KWF. For instance, USC allegedly

received more than \$1.5 million between 2014 and 2018, Stanford \$770,000, and Wake Forest \$150,000. These universities, and others, are looking into ways of redirecting the funds in a variety of fashions, including applying such funds to scholarships for underprivileged students. *Id.*

In response to the growing scandal, Texas Governor Greg Abbott [advised every Texas university](#) to “re-evaluate, to study, and to investigate, their admissions processes to make sure that nothing like this either is happening or can happen,” and that “all universities . . . make sure they have procedures and policies” in place going forward. Likewise, since late 2018, Georgetown has been requiring more descriptions regarding recruited athletes, and, [in response to the indictment](#), the school stated that it will conduct audits on its sports programs to determine which recruits participate and which do not. Yale University has also [made policy changes](#), now requiring its athletic director to review coaches’ proposed recruits before they are sent to the admissions office.

Potential Exposure for Universities

With ‘side door’ vulnerabilities now exposed, including the apparent corruption of the college board process, it has become quite clear that universities face significant challenges with potential criminal, civil, and reputational liability at stake. Renewed focus on integrity controls within the admission and development processes will be required to confront and mitigate these risks.

Criminal Liability. To date, 10 university-related coaches and athletic administrators are [facing criminal charges](#) related to the admissions scheme, including conspiracy to commit wire fraud and honest services wire fraud, honest services wire fraud, and conspiracy to commit mail fraud – and, most commonly, racketeering conspiracy, which provides for a sentence of up to 20 years in prison. Notably, at this time, the Justice Department has largely viewed the implicated universities as victims rather than perpetrators (see, e.g., [here](#)); however, as the investigation continues, other universities and their personnel may face criminal exposure depending on their level of involvement in the scheme.

Civil Liability. As of this writing, at least two class action lawsuits have been filed against the named universities, alleging fraud and civil RICO claims, with very novel theories. The first suit, filed in the Northern District of California by two current Stanford students, alleges that they were denied a “fair admissions process” at Yale and USC and thus deserve to recoup their application fees because, they allege, had they known of the scheme, they would not have spent the money to apply. The second lawsuit seeks \$500 billion in damages from 45 defendants for defrauding and inflicting emotional distress on all those whose “rights to a fair chance” to enter college was stolen through the scheme. Both these current cases are a significant stretch of existing legal theories, but present a cautionary tale.

Reputational Damage. In addition to any potential criminal and civil liability that could stem from the underlying scheme, universities risk reputational damage through mere accusations and negative publicity regarding the validity of their admissions processes. The significant national media attention to this scandal exacerbates the reputational impact on any institution actually named. Indeed, the entire process seems under siege and will require some effort across the board to reassure the public of the foundational integrity of the college admission process.

Universities Should Take Action in Response to the Scandal

In the wake of this scandal, what can universities do to maintain the integrity of their admissions processes?

Make sure there is a risk assessment process in place. Colleges and universities should actively seek out weaknesses and vulnerabilities in their admissions processes. A rigorous, holistic, and comprehensive review should be conducted to identify potential weak links in the admission process, such as the recruitment of athletes and the overall role of financial donations in the process. A review of the checks and balances imbedded in the decision making process, along with regular, dynamic and critical auditing should be considered. While internal investigations are important, during this period of close public scrutiny, academic institutions should consider the benefits of hiring outside counsel to identify latent vulnerabilities and recommend enhanced controls. Wake Forest is among the universities to have tasked outside counsel with conducting an internal review. (See [here](#)).

The headlines of this scandal will begin to diminish over time, and with it, the intense public interest. The challenge for colleges and universities across the country is to maximize the lessons learned from these events, and recognize that improving the integrity of the admission and development processes is an on-going and critical imperative. Today, many view the academic institutions as the victim of this fraud. Should this happen again, public sentiment may not be so forgiving. If the scheme identified to date is only the “tip of the iceberg” as prosecutors suggest, then colleges and universities should be proactive indeed in auditing, reviewing and upgrading all aspects of the admission process to avoid the potential for a titanic surprise down the road.