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Feds Flag Potential BigLaw Conflicts In 'Varsity Blues'

By **Chris Villani**

Law360, Boston (June 6, 2019, 9:52 PM EDT) -- Federal prosecutors in the "Varsity Blues" case flagged several potential conflicts for BigLaw firms representing multiple parents in the college admissions cheating scandal, including Boies Schiller Flexner LLP, Latham & Watkins LLP, Nixon Peabody LLP and Ropes & Gray LLP.

The Boston U.S. Attorney's Office flagged several potential conflicts that could arise from dual representation of parents in the headline-grabbing case and expressed concerns about defense attorneys' ability to guard against overlap. They are asking the judge overseeing the case for a hearing to sort it out. Among the issues is that Latham & Watkins represents "Full House" actress Lori Loughlin and her husband, fashion designer Mossimo Giannulli, as well as the University of Southern California, the school they are charged with defrauding.

The situation "poses foreseeable conflicts because it is possible that USC may have civil disputes with one or both sometime in the future," a footnote in the government's motion states.

In a letter to the government, Latham & Watkins attorney William J. Trach acknowledged the dual representation and the assertion made by USC, but downplayed any potential conflict in the college admissions case, in which Loughlin and Giannulli are accused of bribing their daughters' ways into the school.

"USC has suggested that Latham's representation of Ms. Loughlin and Mr. Giannulli may conflict with USC's interests in possible future civil litigation with these individuals," Trach wrote. "But any such future civil litigation is completely speculative, Latham is not proposing to represent Ms. Loughlin or Mr. Giannulli in any such civil litigation, USC has never articulated how Latham's representation of the defendants in this case would bear on any such civil litigation, and the possibility that Latham might help secure an acquittal that creates a precedent that proves unhelpful to USC in future civil litigation would not qualify as direct adversity in any event."

Latham noted that it is not representing Loughlin and Giannulli's daughters in disciplinary proceedings that USC has brought against them. Who would be suing whom in any future civil action between the couple and the school is unclear. A student tied to Varsity Blues sued Georgetown University last month over his dismissal from the school.

That case was just one of the potential red flags the government raised. Ropes & Gray and Nixon Peabody also represent USC on unrelated matters and have clients accused of bribing their children's ways into the school. Their clients are aware and have waived any conflict, and the firms' representation of USC is totally separate from this case, the law firms have told the government.

"Here, USC is both an alleged victim and a likely prosecution witness," the government countered. "Its representatives are expected to testify that the university was defrauded by the defendants and their co-conspirators. Its interests are thus 'directly adverse' to those of the defendants."

In another example, Boies Schiller represents parent Robert Zangrillo as well as alleged co-conspirator Davina Isackson, who is cooperating with the government and will likely testify at trial.

Several law firms represent multiple accused parents, including in cases where the defendants are married. Latham represents Loughlin and Giannulli. Hooper Lundy & Bookman PC represents both Amy Colburn and Gregory Colburn. Todd & Weld LLP and Duane Morris LLP represent both Diane Blake and Todd Blake.

In addition, Ropes & Gray represents Douglas Hodge and Elizabeth Henriquez, and Boston defense lawyer Martin G. Weinberg is on the legal team for David Sidoo and Robert Zangrillo.

While the parents are all accused of **similar conduct** — greasing their children's way into elite colleges through fraudulent athletic or academic credentials — there are instances in which the same firm is representing a parent who is fighting the charges and one who has agreed to plead guilty. This poses a conundrum the court should examine, the government argued.

"On the one hand, counsel will presumably seek to challenge the conspiracy's existence and their clients' knowledge of its scope and operation; on the other, they will represent witnesses who will testify that the conspiracy existed and will describe its scope and operation," the motion states.

"On the one hand, counsel will presumably challenge the credibility of the government's other potential witnesses, including the architect of the conspiracy, William 'Rick' Singer; on the other, counsel will represent witnesses who corroborate Singer's testimony," the government said.

Weinberg filed a response agreeing with the government that the hearing is the proper forum to hash out any potential conflict issues, but he expressed confidence that Zangrillo, one of his two clients, would emerge from the hearing with his full legal team intact.

"These issues are the result of the government joinder of so many defendants who have no relationship to one another in a single charging document and will be the subject of future motions to sever," Weinberg told Law360 on Thursday.

Attorneys for other parents either did not respond to comment requests or declined to comment Thursday afternoon. But they have sought to ease the government's conflict concerns, which were noted **during a hearing** Monday, in communications with prosecutors. Boies Schiller, for example, told prosecutors that it has established a "wall" to prevent the flow of confidential information between and among the attorneys representing Zangrillo and Isackson.

Latham has said it will recuse itself from any part of the trial that involves USC, saying its defense will focus on "the knowledge and intent" of Loughlin and Giannulli and on "legal deficiencies in the government's mail fraud and honest services theories" and will hand off any part of the criminal trial connected to USC to conflict counsel.

The government pushed back, saying, "It is difficult to imagine that defendants could, at the outset of this litigation, intelligently disclaim such critical lines of potential defense, or agree to hand them off to conflict counsel without any involvement from the rest of the defense team or any plan for whether and, if so, how they fit into an overall defense strategy."

"Nor, indeed, is it plausible that a defense team could even develop a coherent strategy when part of the team is walled off from certain defenses — or, alternately, that conflict counsel could prepare and coordinate such defenses in isolation, without involving the entire defense team in a manner that is adverse to the interests of USC," the government argued.

Plus, prosecutors note, Giannulli's conflict counsel is Donnelly Conroy & Gelhaar LLP, which also represents cooperating witness Isackson.

A spokeswoman for the U.S. Attorney's Office declined to comment Thursday afternoon.

The government is represented by Eric S. Rosen, Justin D. O'Connell and Leslie Wright of the U.S.

Attorney's Office for the District of Massachusetts.

Sidoo is represented by Martin G. Weinberg and by David Z. Chesnoff and Richard A. Schonfeld of Chesnoff & Schonfeld.

Gregory and Amy Colburn are represented by David S. Schumacher, Jordan R.C. Kearney and Patric Hooper of Hooper Lundy & Bookman PC.

Gamal Abdelaziz is represented by Brian T. Kelly and Joshua C.H. Sharp of Nixon Peabody LLP and by Donald J. Campbell of Campbell & Williams.

Diane and Todd Blake are represented by Stephen H. Sutro of Duane Morris LLP and by David E. Meier and Melinda L. Thompson of Todd & Weld LLP.

I-Hsin Chen is represented by Chase A. Scolnick, Jennifer L. Keller and Reuben Camper Cahn of Keller Anderle LLP.

Lori Loughlin is represented by Perry J. Viscounty, Sean M. Berkowitz and William J. Trach of Latham & Watkins LLP. Massimo Giannulli is additionally represented by George W. Vien and Joshua N. Ruby of Donnelly Conroy & Gelhaar LLP.

Elizabeth Henriquez is represented by Aaron M. Katz, Colleen A. Conry and Laura Gaffney Hoey of Ropes & Gray LLP.

Manuel Henriquez is represented by Melinda Haag, Robin Linsenmayer and Walter Brown of Orrick Herrington & Sutcliffe LLP.

Douglas Hodge is represented by Miranda Hooker of Pepper Hamilton LLP, and Brien T. O'Connor and Joan McPhee of Ropes & Gray LLP.

Michelle Janavs is represented by Thomas H. Bienert and John L. Littrell of Bienert Katzman PLC, and Jonathan L. Kotlier of Nutter McClennen & Fish LLP.

Elisabeth Kimmel is represented by R. Robert Popeo, Mark E. Robinson and Eoin P. Beirne of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

William McGlashan is represented by Jack W. Pirozzolo and Joan M. Loughnane of Sidley Austin LLP, and John C. Hueston and Marshall A. Camp of Hueston Hennigan LLP.

Marci Palatella is represented by Michael K. Loucks, Jack P. DiCanio and Allen J. Ruby of Skadden Arps Slate Meagher & Flom LLP.

John Wilson is represented by Andrew E. Tomback, Michael Kendall and Yakov Malkiel of White & Case LLP.

Homayoun Zadeh is represented by Tracy A. Miner, Megan A. Siddall and Seth B. Orkand of Miner Orkand Siddall LLP.

Robert Zangrillo is represented by Matthew L. Schwartz of Boies Schiller Flexner LLP, Nicholas C. Theodorou of Foley Hoag LLP and Martin G. Weinberg.

Davina Isackson is represented by Alexander K. Parachini and Peter E. Gelhaar of Donnelly Conroy & Gelhaar LLP and by David K Willingham and Michael V. Schafler of Boies Schiller Flexner LLP.

The cases are U.S. v. Sidoo et al., case number 1:19-cr-10080, and U.S. v. Isackson et al., case number 1:19-cr-10115, in the U.S. District Court for the District of Massachusetts.

--Editing by Haylee Pearl.