



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

4 Years On, Unraveling The Lessons Of 'Varsity Blues'

By **Chris Villani**

Law360 (September 27, 2023, 11:34 AM EDT) -- Featuring Hollywood stars and titans of the corporate industry, the "Varsity Blues" case captured the nation's attention when it first broke in early 2019, sparking a broader conversation about the intersection of wealth and the college admissions process.

This is Part 2 of a three-part retrospective on the "Varsity Blues" case.

Missed the first part? **Read it here.**

But, as the case draws to a close, its legal legacy is complex. On one hand, dozens of people pled guilty and celebrities like Lori Loughlin and Felicity Huffman spent time in prison. But prosecutors pushed the envelope with novel legal theories that fell apart under appellate scrutiny, while defense attorneys may have found grounds to reshuffle the risk calculus when assessing whether to go to trial and put the government through its paces.

One of the highest-profile cases ever to come out of the Boston U.S. attorney's office has now become one of the most polarizing white collar prosecutions in recent memory.

"From the 30,000-foot view, the case was a resounding success," said Eric Rosen, the former lead "Varsity Blues" prosecutor who is now in private practice with his own firm, Dynamis LLP.

"Putting aside the convictions — and more than 50 convictions still stand — it was a sea change for college admissions, and I think for the better," Rosen said. "It was an impact case."

But David Schumacher of Hooper Lundy & Bookman PC, who represented two parents charged in the sweeping case, said the First Circuit reversal following the convictions of parents John Wilson and Gamal Abdelaziz undercut the government's victories.

"It was always an aggressive legal theory and the case looks a lot different now than it did in March of 2019," Schumacher said. "The government probably ended up making bad law with the Wilson and Abdelaziz cases. It was a mixed bag for them, legally."

A Huge Case Lands in Boston

The "Varsity Blues" prosecution began with **Morrie Tobin**, a suspect in a \$15 million pump-and-dump stock scheme. Tobin tipped the government off to Yale soccer coach Rudy Meredith, who was working with a man who would be known as the ringleader of the scheme, William "Rick" Singer.

"When Morrie was meeting with Rudy Meredith in a hotel room in April 2018, we didn't know it was bigger than Rudy Meredith," Rosen recalled. "At the very end, Rudy mentions a guy in LA he has been talking to, Rick Singer."

Rosen added, "I think the 'oh shit' moment was when we got Rudy's bank records back and it showed massive payments to him from what is now known infamously as the Key Worldwide Foundation," Singer's nonprofit.

"To come up with that kind of money," Rosen said, "we knew it had to be big."

The case was shrouded in secrecy as prosecutors approached Singer, got him to cooperate, and gathered evidence against dozens of parents. Two separate alleged schemes, both flowing through Singer, began to take shape.

Some parents paid six-figure sums through Singer to pay off corrupt coaches and administrators and pass their children off as recruited athletes, the government claimed, thereby guaranteeing their admission to selective schools like the University of Southern California, Georgetown University, or the University of California, Los Angeles. Singer dubbed this the "side door" admissions method.

Other parents paid smaller amounts to grease the admissions process by falsely inflating their children's test scores by using testing centers and officials controlled by Singer, some of whom would end up getting charged and pleading guilty themselves.

Dozens of reporters swarmed the waterfront Boston courthouse the day the case was unveiled, as **Singer pled guilty** and "Varsity Blues" made headlines around the world. But defenses also began to take shape. Parents argued that they thought they were making legitimate donations, in good faith, to give their children a leg up in the admissions process.

Many of the parents found themselves in a so-called rimless conspiracy with no connection to the other people lumped together in the same case. The First Circuit in May **found** that Wilson and Abdelaziz were severely prejudiced by a mountain of evidence compiled by the government and presented to the jury about other parents' dealings with Singer.

"If the government was honest with themselves, and maybe they were, they knew bringing the case the way they did was going to maximize the odds that they would get a lot of guilty pleas and also maximize the odds that any trial convictions would be disturbed on appeal," said Aaron Katz of Aaron Katz Law LLC, whose client Elizabeth Henriquez pled guilty in the case.

"Even at the time, we were all telling our clients, 'There is a real question as to whether anything you did in this case is illegal,'" Katz said.

Ratcheting Up the Pressure

Even with questions about the validity of the government's theory, dozens of parents, coaches and officials admitted guilt, some of them right away. Stanford sailing coach John Vandemoer was the first to be sentenced after pleading guilty the day the case was announced.

Vandemoer, who later wrote a book about his experience, maintained that he never intentionally broke the law when he accepted donations from Singer with the promise that Singer could use his "side door" scheme at Stanford. But the overwhelming cost of defending himself, coupled with the fact that he would be lumped in with numerous other defendants, swayed him to admit guilt.

"For me, it goes beyond innocence or guilt: It is, 'What can you prove and do I have a defense to prove my innocence?' I didn't have that evidence to be able to do it," Vandemoer told Law360 in a 2021 interview. "No one was going to speak up for me. It wasn't the case where I was going to be put on the stand — that's for the movies, it doesn't happen."

But Vandemoer did not get the prison time prosecutors hoped for. Instead of the year that Rosen

requested, U.S. District Judge Rya W. Zobel sentenced Vandemoer to time served. It started a trend of judges, and the U.S. Probation Office, rejecting the notion that the schools were victimized by Singer's scheme and made clear that the vast majority of prison terms would be measured in months, not years.

"I think the government was floored when this happened," said Miranda Hooker of Goodwin Procter LLP, who represented former PIMCO CEO Douglas Hodge, a parent who pled guilty. "It sort of forced them to pivot in a way they were not expecting whatsoever."

The government turned up the heat, especially when superseded indictments landed a large group of parents before U.S. District Judge Nathaniel M. Gorton, who was universally seen as a good draw for prosecutors. The defense **penned a letter** to then-Chief District Judge Patti B. Saris saying that they were being unfairly lumped together. Then-U.S. Attorney Andrew Lelling responded by writing that the parents were unhappy only because they were before Judge Gorton. But Schumacher said the judicial draw played into the government's tack.

"Within a couple of days, prosecutors were telling the defense, 'You have 24 hours to plead; if not you're going to be superseded into Judge Gorton's session and we are going to be adding money laundering charges,'" Schumacher recalled. "We wanted to speak with the prosecutors and explain some of the exculpatory information that was out there. They were not willing to meet with us, they just wanted to know 'yes or no.'"

"That was very aggressive. Everyone was put in a very difficult position," Schumacher said.

Prosecutors also sent **target letters** to some of the children who they said were aware of and may have participated in their parents' dealings with Singer, a development first reported by Law360 in April 2019, just weeks after the case was unveiled.

"I think the government was extremely aggressive at every turn, unapologetically, and they view that as their job," Hooker said. "But I thought it went beyond what it needed to in many instances."

Even U.S. District Judge Indira Talwani said during one hearing that the government seemed to tack on new charges when it received an unfavorable ruling.

Rosen, who said he worked 15- to 18-hour days in the early stages of the prosecution, believes the office pursued the case appropriately.

"We did not charge any children. We tried to evaluate the evidence as to each person: Were the husband and wife both in on it? We tried to distinguish them and figure out who was the unwitting co-conspirator," he said. "One of the things you have to realize is a lot of it was not done in reaction to various court rulings."

A Lengthy Battle

With dozens of well-heeled defendants able to shell out big bucks for their respective defenses, the "Varsity Blues" case was particularly contentious.

"I am not sure whether they anticipated the white collar response they got," said Nixon Peabody LLP's Robert Fisher, who represented Vandemoer. "Maybe they did, but it was definitely overwhelming. You had a lot of defendants of means who were able to hire the best white collar attorneys in the country and fight this a little bit."

The legal battles took place on several fronts. There were allegations that the government withheld exculpatory information in contemporaneous notes penned by Singer, as well as questions of whether admissions slots counted as property under the fraud statutes, and whether Singer's "side-door" method was actually in line with what the schools were already doing.

Marty Weinberg of Martin G. Weinberg Law was the first to subpoena admissions records from USC as he defended several parents, including Robert Zangrillo, who was bound for trial before

being pardoned by then-President Donald Trump.

"USC was pretending that the admissions department was sealed off from the development office and had no knowledge that candidates were being supported because their families were wealthy and prominent," Weinberg said. "That just wasn't so. I was able to demonstrate that the VIP program [Zangrillo's] daughter was admitted through was at the heart of the admissions policies of USC, rather than being in some dark corner."

The admissions evidence did not go before the jury in the Wilson and Abdelaziz trials before Judge Gorton. Evidence relating to Georgetown's admissions practices was allowed by Judge Saris in the trial of parent Amin Khoury, who the government said bribed his daughter's way into the university through Gordon Ernst, the former tennis coach who worked with Singer and also ran his own bribery side hustle.

While Wilson and Abdelaziz were convicted, Khoury was cleared by the jury. Schumacher said the pretrial rulings by the respective jurists played a role.

"In any trial, which judge you draw matters, and this one is no different," he said. "It became apparent before Judge Gorton that defense motions were being denied, and government motions were being allowed. That had an impact for sure."

Eoin Beirne of Mintz Levin Cohn Ferris Glovsky and Popeo PC, an attorney for Khoury and parent Elisabeth Kimmel, who pled guilty, agreed that the judicial draw helped the government in tallying up guilty pleas.

"It is unfortunate for the public and the defendants, after all the attention paid and resources expended in the 'Varsity Blues' cases, that there has not been and likely will not be a full-fledged trial with all the relevant evidence presented to a jury," Beirne said. "Many [parents] pled guilty after adverse pretrial rulings that greatly — and incorrectly, according to the First Circuit — restricted the evidence the defendants could present. Had the rulings been different, many of those defendants might have, and I believe should have, gone to trial."

Beirne added that "most critically, a jury will never get to hear the testimony of Rick Singer and what he actually told parents about the process."

Singer, replete with credibility issues, never took the stand. The government instead relied on intercepted phone calls and calls with parents and coaches recorded after he began cooperating, along with other correspondence between the mastermind and the dozens of defendants with whom he interacted. That prosecutors were able to bring the case without calling Singer as a witness did not sit well with Vandemoer.

"To me, it's extremely frustrating. It feels like the government gets away with this," he said. "They don't bring him in and have him cross-examined, and they are avoiding him being cross-examined because they feel like he is vulnerable. It's brutal."

A Complicated Legacy

After nearly four years of court battles, 50 people — parents, coaches, officials, Singer and his associates — pled guilty. A former Wake Forest coach was given a **deferred prosecution agreement**, and Zangrillo was pardoned.

The sentences ranged from 42 months for Singer, all the way down to time served. Only Singer and Ernst, who received a 30-month prison term, are still behind bars.

Wilson and Abdelaziz had their trial convictions mostly wiped away by the First Circuit. Abdelaziz's case was dropped altogether when the appeals court vacated the entire conviction and Wilson is awaiting sentencing on a lone tax count left intact.

The lone coach to go to trial, Jovan Vavic, was found guilty but then granted a new trial when **Judge Talwani ruled** that USC could not be considered a "victim" when its program received the

benefits of Vavic's alleged bribes. The government is appealing Judge Talwani's ruling.

Khoury, whom the government initially considered to be part of the "Varsity Blues" case before reversing course, **was acquitted**. A former Harvard fencing coach and a wealthy parent were also found not guilty in a case with echoes of "Varsity Blues," but no direct ties to the scandal.

The case was overwhelmingly successful for the government at the outset, but it also potentially created new avenues of defense for people engaged in "hub-and-spoke" conspiracies in which there is no connection between the various conspirators.

"I think the government sort of became enamored with itself and protecting the integrity of college admissions in a way when they brought some of the other cases that didn't have anything to do with Singer," said Hooker of Goodwin Procter. "That's where these prosecutions fell apart. They weren't the Singer case, and they didn't have the actual facts, much less the law."

Weinberg said his biggest takeaway was the success of the people who chose to put the government's theories to the test, though the overwhelming majority's opting to plead guilty is in line with recent nationwide statistics.

About 9 in 10 defendants in federal criminal cases in fiscal year 2022 admitted guilt, according to data from the Administrative Office of the U.S. Courts cited by Pew Research. Just over 2% went to trial and only 290 out of 71,954 defendants went to trial and were acquitted, including Khoury and former Harvard University fencing coach Peter Brand and his co-defendant, Jie "Jack" Zhao, in their **unrelated case**.

Weinberg said he wished more defendants would challenge the government.

"The default used to be that we had trial lawyers who went to trial and tried many cases year after year," he said. "Now the default seems to be for too many to walk to the ninth floor [the U.S. attorney's office] to proffer clients, which is a pathway to a plea."

Weinberg said age-old concerns about judges sentencing defendants who refuse to plead guilty are overblown and not something he sees coming from the Massachusetts federal bench. Still, most of the defendants, despite vast resources, opted for certainty instead of the reputational harm to them and their families that could have come with a trial.

Katz said the case turned into a "circus curiosity" and he was not sure that it had as much of a wide-ranging impact as it could have.

"At the end of the day, I don't think this case has done anything more than deter this sort of Rick Singer 'side door' avenue that very, very, very few people were using compared to the people who use the front door or back door," Katz said, referring to the practice of making massive donations to aid the admissions process.

While the practice of legacy and donor admissions has come under attack, it was the U.S. Supreme Court striking down affirmative action in the admissions process that reinvigorated that movement, more so than "Varsity Blues."

The case put the Boston U.S. attorney's office in the spotlight. Lelling, who stepped down in February 2021, told Law360 that the office has been doing sophisticated white collar work for years, citing major health care fraud cases and complex corporate fraud.

"What 'Varsity Blues' sort of did was pull the office out of the shadow of [the Southern District of New York], which everyone assumes is the only office in the country that can handle cases of this magnitude, and that's not true," Lelling said. "All you need for the next big case to come down the pike in Boston is luck — something interesting needs to happen where you have venue — and risk tolerance. You have to be willing to do the case."

--Editing by Robert Rudinger.

All Content © 2003-2023, Portfolio Media, Inc.