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'Varsity Blues' Ruling May Cut The Heart Out Of Bribe Case

By **Chris Villani**

Law360 (September 16, 2022, 7:02 PM EDT) -- A judge's decision to grant a new trial to a coach convicted in the "Varsity Blues" college admissions scandal could severely undermine the government's effort to affirm guilty verdicts after other parents convicted in the scheme launched a closely watched first appeal, experts told Law360.

U.S. District Judge Indira Talwani spent 60 pages **dissecting the issues** argued by former University of Southern California coach Jovan Vavic as he asked a Massachusetts federal court for his conviction to be wiped away and to get a second bite at the judicial apple.

The judge agreed with Vavic that USC could not be considered a "victim" of the alleged scheme to have wealthy children admitted by falsely passing them off as athletic recruits, since the payments orchestrated by ringleader William "Rick" Singer went to a university program with no hint that the money was misused.

Judge Talwani's reasoning **mirrors some of the arguments** made by parents John Wilson and Gamal Abdelaziz, who are getting set to argue their First Circuit appeals in November. Attorneys say the judge's take on the case, while not the final word on the issues, deals the two men a stronger hand as they make their case to the appellate panel.

"There is no question they are going to be using this order because it's a sitting federal judge examining the same legal theory and really cutting the heart out of it," said DLA Piper litigation partner Eric Christofferson. "The First Circuit is going to have to look at that, they are going to need to consider what she has said."

The government will also be going into the appellate arguments with a Massachusetts federal judge in their legal corner. U.S. District Judge Nathaniel M. Gorton — who presided over Wilson's and Abdelaziz's cases, which also involve USC — agreed with prosecutors, and split with Judge Talwani, on two key legal issues.

First, he found that college admissions slots could be considered property under the fraud statutes. And second, he ruled that USC could have been legally deprived of the honest services of its employees if they took bribes from Wilson and Abdelaziz.

The First Circuit will have the task of sorting out which of the two "very distinguished federal judges" got it right, said Martin G. Weinberg of Martin Weinberg Law.

"Judge Talwani is enormously respected and certainly there is a thoughtfulness to her analysis. It's helpful but not dispositive," Weinberg said. "The logic is strong, but until it's adopted on an appellate basis, it really is the judgment of a single district court judge."

Christofferson agreed that Judge Talwani's order is not a panacea for the two parents in challenging their convictions, but added, "If you're Wilson and Abdelaziz's lawyers, you're feeling pretty good today about what Judge Talwani has handed you."

Unsurprisingly, attorneys for the two parents extolled Judge Talwani's order granting Vavic a new trial. Wilson's lawyer, Noel Francisco of Jones Day, said the judge "correctly rejects the prosecution's claim that John Wilson's donations were bribes."

"Indeed, the prosecution cannot identify a single example in all of American legal history where the victim and beneficiary of a 'bribe' were one and the same," Francisco said in a statement. "We look forward to presenting this and other issues to the Court of Appeals on November 7."

Lawyers for Abdelaziz, Brian T. Kelly and Joshua C. Sharp of Nixon Peabody LLP, said in a statement that Judge Talwani "reached the correct result," adding, "As we have said from the outset, these donations are not bribes and do not violate federal criminal law."

U.S. Attorney Rachael Rollins said her office — which tried Vavic — does not believe the new trial win is "grounded in the facts or the law."

"The jury convicted Mr. Vavic on every single count and we believe they got it right," Rollins said.

The sweeping "Varsity Blues" case ensnared 57 defendants and resulted in dozens of guilty pleas by corporate executives, Hollywood stars and even a BigLaw attorney. But the scrutiny Judge Talwani has given the novel issues before her provides what Weinberg called a "paradigm example of the benefits of going to trial."

"Trials are meaningful, they have consequences," he said. "Particularly in a district that is not penalizing defendants for going to trial with significantly longer sentences."

In addition to challenging the government's theory of the case, Wilson and Abdelaziz are also expected to argue that Judge Gorton wrongly excluded much of their evidence during their trial, which ended in convictions last October. The pair had hoped to show the Boston jury that USC was in the business of effectively selling admissions slots through its so-called "VIP" list and that one of the ways to get on the list was the ability to donate large sums of money to the school.

Ilene Jaroslaw, white collar defense lawyer and a founding partner of Elliott Kwok Levine & Jaroslaw LLP, pointed out that Judge Talwani went to great lengths in the opinion to recite many of those facts. One interpretation, Jaroslaw said, is that USC just wanted its coaches to raise money and did not care or provide guidance as to how they did it.

The judge wrote in the opinion, "However distasteful, there is nothing inherently illegal about a private institution accepting money in exchange for a student's admission." She also wrote that there was no evidence to suggest that USC benefited more from Singer's so-called "side door" admissions scheme than it would have from admitting students through the VIP list.

Those points are likely going to catch the appellate court's attention, Jaroslaw said.

"I don't think the order has legal or authoritative weight, but it does have persuasive weight," Jaroslaw said. "The First Circuit is not going to ignore this opinion. While they are not compelled to see it as a legal authority, its reasoning is persuasive."

The government is represented by Alexia R. De Vincentis, Stephen E. Frank, Carol E. Head, Raquelle L. Kaye, Kristen A. Kearney, Donald C. Lockhart, Justin D. O'Connell, Ian J. Stearns and Leslie Wright of the U.S. Attorney's Office for the District of Massachusetts.

Wilson is represented by Noel J. Francisco, Yaakov M. Roth, Marco P. Basile and Harry S. Graver of Jones Day, Michael Kendall and Lauren M. Papenhausen of White & Case LLP and Andrew E. Tomback of McLaughlin & Stern LLP.

Abdelaziz is represented by Brian T. Kelly, Joshua C. Sharp and Lauren A. Maynard of Nixon Peabody LLP.

The cases are U.S. v. Wilson, case number 22-1138, and U.S. v. Abdelaziz, case number 22-1129, in the U.S. Court of Appeals for the First Circuit.

--Editing by Michael Watanabe.

