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"Varsity Blues" Reversal Demonstrates Limitations of Conspiracy Allegations

On May 10, 2023, the First Circuit dealt a major blow to the Department of Justice's wide-ranging "Varsity Blues" investigation by reversing convictions of two defendants. Individuals, companies, and federal contractors in particular should take note because the decision includes important analysis and guidance regarding the legal limitations of criminal conspiracies. In particular, an accused or suspected co-conspirator may be engaged in similar or even identical conduct as other alleged co-conspirators, but this does **not** necessarily mean that each member of the conspiracy is liable for the conduct of every other member. Rather, each alleged co-conspirator should focus on the scope of his, her, or its own agreement to participate—assuming there was one—and what the accused's understanding of the objectives of the conspiracy were.

Prosecutors and government investigators often use the threat of a conspiracy charge as leverage in driving cooperation or plea agreements, asserting that a member of a conspiracy becomes liable for all of the criminal conspiracy's conduct, even if that member was not directly involved. Law enforcement can apply this pressure because conspiracy charges allow prosecutors to introduce evidence regarding other alleged co-conspirators that would not ordinarily be admissible if the defendant was not charged with participating in a conspiracy. The consequences of conspiracy convictions can also be extraordinary, as convicted defendants may be subject to enhanced penalties and fines, far beyond what they would face without the conspiracy element. While the First Circuit's recent opinion is based on long-standing legal principles, it reinforces the importance of strong defense advocacy and thorough fact development, which can dramatically limit—perhaps even remove—the scope and impact of a conspiracy allegation.

The First Circuit reviewed appeals filed by two "Varsity Blues" defendants, Gamal Abdelaziz and John Wilson, both of whom had been convicted at trial on federal criminal charges including wire and mail fraud and also for participating in an overarching conspiracy to "corruptly influence university employees through payments to university accounts," in violation of the federal programs bribery statute, 18 U.S.C. § 666. Both Abdelaziz and Wilson were parents of college applicants who were accused of working with a third man, Rick Singer, and allegedly coordinated with Singer to make monetary payments to certain universities with the expectation that the payments would help get children of each defendant into that particular school. Interestingly, according to the appellate court's summary, Singer had already pled guilty but did not testify at the Abdelaziz-Wilson trial. Additionally, in support of the conspiracy charges, prosecutors introduced evidence and testimony from other parents who had also pled guilty to engaging in similar conduct. Neither Abdelaziz nor Wilson testified at trial. Both were ultimately convicted.

As it pertained to the government's conspiracy theories and evidence presented at trial, the opinion delivered by the First Circuit provides a reminder that each accused member's role in a conspiracy may be nuanced, which can have important limitations on the accused's exposure to criminal penalties. The Court focused on the Supreme Court's decision in *Kotteakos v. United States*, 328 U.S. 750 (1946), as well as several more recent lower court decisions that probed the concept of the improper "rimless wheel" conspiracy.

The decision reached by the First Circuit noted that, in *Kotteakos*, "the government alleged that a single hub figure had assisted otherwise unrelated clients or groups of clients in fraudulently obtaining separate loans" and indicted the hub figure and his clients as part of a single overarching conspiracy; however, the Supreme Court determined that the evidence showed only that each client acted independently of every other, such that the Government's case proved not a single conspiracy, but several distinct conspiracies. The *Kotteakos* court also warned of the prejudicial danger of introducing evidence about the broad conspiracy because of the risk that juries would consider evidence against a single defendant that actually relates only to the separate conspiracies of other defendants.

Unlike a common narcotics conspiracy where low-level members may be deemed to be part of the larger conspiracy based on a common understanding that the goal of the conspiracy is to sell illegal narcotics and make a profit, the First Circuit found that the conspiracies in which Abdelaziz and Wilson became involved were specific to them. Indeed, the court noted that, as parents trying to get their own children into competitive universities that had limited seats available, Abdelaziz and Wilson could not only be described as "buyers" in the alleged scheme, the evidence supported the inference that they likely "were indifferent or even adverse" to each other. The Court held that, while there was evidence sufficient to prove that Abdelaziz conspired with Singer and that Wilson conspired with Singer, the evidence did not prove a broader, overarching conspiracy in which Abdelaziz and Wilson

conspired with each other, Singer, and the multitude of other parents who were each trying to get their own children admitted into colleges.

The Court emphasized that, for a criminal conspiracy to exist, the co-conspirators must share a “common goal.” Based on the evidence presented at Abdelaziz’s and Wilson’s trials, however, that shared goal did not exist. The Court explored several cases to support the concept that, while multiple accused persons may be engaged in misconduct that is similar—even identical misconduct—they cannot be deemed to be conspiring with each other if they are unaware of or indifferent to each other. There must be a “rim” as well as a “hub” that unites the various spokes on the wheel of an alleged conspiracy; otherwise, each spoke may present its own conspiracy, but, without proof of a common goal, it is not necessarily linked to every other spoke.

What this means to you

It remains to be seen whether DOJ will challenge the First Circuit’s decision or seek to retry Abdelaziz and Wilson. Regardless of the outcome, the *Abdelaziz* decision reminds us that persons and entities that are involved in conspiracy investigations should carefully evaluate their own unique facts and circumstances. Narrowing or limiting the scope of a conspiracy allegation can have important consequences on the admissibility of evidence at trial and the penalties that may be imposed.

Contact us

If you have questions related to the implications of this case for white collar and criminal defense, please contact Cormac Connor or your Husch Blackwell attorney.