

WHITE-COLLAR CRIME

Varsity Blues: First Circuit Overturns College Admissions Scheme Convictions—Part One

July 6, 2023

In 2019, the Department of Justice charged nearly 60 individuals with participating in a scheme to secure admission to private universities through fraud and bribery. The charges cast a spotlight on the murky world of money and connections in higher education. At the center of the web was Rick Singer, a corrupt fixer who cooperated with DOJ and secretly recorded conversations but did not end up testifying at any trials. The defendants included parents of high school students, coaches and university administrators, test preparation specialists and test administrators. Prosecutors boldly chose to charge one overarching conspiracy and scheme among parents and others who dealt with Singer rather than separate schemes tied to particular students and parents. See Elkan Abramowitz & Jonathan S. Sack, “Hub, Spokes and Rim: Revisiting ‘Kotteakos,’” N.Y.L.J., May 7, 2019.

The vast majority of defendants pleaded guilty to criminal charges. Of the remainder, three defendants were acquitted at trial, and one had his conviction set aside by the district court due to misstatements by prosecutors in summation. In the case we discuss below, the government went to trial in 2021 against Gamal Abdelaziz, a casino executive, and John Wilson, founder of a private equity firm, on fraud, bribery



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and conspiracy charges which arose from their efforts to secure admission for their children, through Singer, at Harvard, Stanford and the University of Southern California (USC). They were convicted at trial and were sentenced to one year and one day in prison (Abdelaziz) and 15 months in prison (Wilson).

On May 10, the U.S. Court of Appeals for the First Circuit vacated their convictions on the fraud, bribery and conspiracy charges, though it affirmed Wilson’s conviction on a single count of filing a false tax return relating to a deduction taken for payments to Singer. See *United States v. Abdelaziz*, 68 F.4th 1 (1st Cir. 2023). Given space limitations, we will discuss the First Circuit’s detailed 156-page decision in two articles.

In this article, we focus on the court’s holding in regard to the government’s overbroad conspiracy charge. In the court’s view, the government failed to prove that Abdelaziz and Wilson had joined a single “overarching conspiracy among Singer

and his clients,” which “allowed the government to introduce a significant amount of powerful evidence related to other parents’ wrongdoing ..., creating an unacceptable risk that the jury convicted Abdelaziz and Wilson based on others’ conduct rather than their own.” In the second article, we will address the court’s decision as to the underlying fraud and bribery charges, which sheds light on the proper scope of Section 666 bribery and mail/wire fraud liability.

Factual Background

In the scheme charged by the government, parents would typically “donate” tens of thousands of dollars to a “foundation” set up by Singer, who would redirect the money to collegiate athletic programs so that athletic coaches and administrators, many of whom received direct payments, would falsely label student applicants as athletic recruits. To support the students’ applications, Singer compiled fake athletic profiles, embellished accolades, invented statistics, edited pictures, and lied about biographical information. Some parents also arranged, through Singer, to inflate students’ entrance exam test scores; in these instances, Singer arranged for paid test proctors to change students’ answers or have third parties take exams in the students’ names. Abdelaziz and Wilson were tried pursuant to a superseding indictment that charged 15 parents with a single overarching conspiracy to defraud five universities and two standardized test firms by depriving them of property in the form of standardized tests and test scores and admission slots, and depriving them of the honest services of their employees through the use of bribes and kickbacks. Eleven parents, including Abdelaziz and Wilson, were also charged with conspiracy to commit federal programs bribery. See 18 U.S.C. Section 371 and 666(a)(2). Wilson was charged with substantive Section 666 and wire fraud counts and a single count of filing a false tax return.

The government alleged that Singer helped Abdelaziz and Wilson secure their children’s admission to Stanford, Harvard and USC by means of false athletic profiles. According to the government, Singer told Abdelaziz and Wilson that their payments would go to university program accounts. This contrasted with the co-defendants, who understood that the money would go to the personal accounts of university officials. In addition, Abdelaziz and Wilson were not alleged to have paid Singer to falsify test scores; some of their alleged co-conspirators had paid Singer for that service.

Conspiracy

Conspiracy is among the most elastic of charges available to federal white-collar prosecutors. The U.S. Supreme Court established an important limitation in *Kotteakos v. United States*, 328 U.S. 750 (1946), though one that has not often defeated a prosecution. In *Kotteakos*, the Supreme Court held that a conspiracy requires interdependence among its members, not a pattern of “separate spokes meeting at a common center ... without the rim of the wheel to enclose the spokes.” The government had charged in a single conspiracy 32 defendants who had separately worked with a single individual to facilitate loans through fraud. The government acknowledged that the “defendants did not have any relationship with one another, other than [the broker’s] connection with each transaction.” The court distinguished a properly charged conspiracy from separate conspiracies that might have a common “hub,” finding it was prejudicial to join in the same conspiracy “different persons who did not know or have anything to do with one another.” To be charged properly as co-conspirators, the members (or spokes) must be connected to one another as if by the rim of a wheel.

Abdelaziz and Wilson argued that the indictment charged a “rimless wheel” conspiracy

forbidden by *Kotteakos*. Singer and his associates were the “hub,” and the parents were the “spokes” who engaged in separate conspiracies with Singer without a “rim” that tied the separate conspirators together. The district court denied a motion to dismiss on that basis and admitted evidence at trial as to parents who had made payments directly to university insiders’ personal accounts and payments to alter standardized test scores—conduct not attributed to either Abdelaziz or Wilson.

On appeal, the First Circuit concluded that the government’s evidence fit *Kotteakos*’s “rimless wheel” model and, after applying a three-factor test formulated in *United States v. Glenn*, 828 F.2d 855 (1st Cir. 1987) (Breyer, J.), vacated Abdelaziz and Wilson’s convictions of conspiracy. Under *Glenn*, the relevant questions are whether the evidence was sufficient to permit a jury to find the conspiracy charged in the indictment; if not, whether the evidence was sufficient to permit a jury to convict the defendant of a related conspiracy that violates the same statute; and if so, whether the variance between the charged conspiracy and the proved conspiracy affected the defendant’s substantial rights. The parties did not dispute the second question. To answer the first *Glenn* question, the court considered three factors: the existence of a common goal among the alleged participants in the charged conspiracy; interdependence among the alleged participants; and overlap among the alleged participants. Abdelaziz and Wilson did not contest overlap among Singer and the parents. Throughout its analysis the court emphasized that it was “particularly important” to find evidence that Abdelaziz and Wilson joined the broader conspiracy, versus a narrower one. Abdelaziz, 68 F.4th at 42-43.

Common Goal and Interdependence

For both the common goal and interdependence factors, the government argued that the

“hub-and-spoke” nature of the scheme in and of itself supports a reasonable inference that the “spokes” share a common goal and were interdependent on each other. The court rejected that position. Concerning common goal, the facts led more readily to the opposite conclusion: Abdelaziz and Wilson were indifferent to (and possibly in competition with) other parents’ children being admitted to the competitive schools in question. The court did not rule out the possibility that on different evidence another parent who sought services from Singer may have adopted a common goal, but the evidence as to Abdelaziz and Wilson did not support that position.

The government’s key witness, Bruce Isackson, a parent who pleaded guilty to conspiracy and fraud charges, testified that “he thought it was ‘good’ that lots of parents worked with Singer because ‘most of these people have very complicated tax returns,’ which ‘would make it pretty hard for the IRS to figure things out.’” However, the government did not show that either Abdelaziz or Wilson ever spoke with or even was aware of Isackson’s dealings, or that they shared his view.

The court also found insufficient the government’s “defendant-specific” evidence that Wilson referred other parents to Singer and that Abdelaziz knew his daughter’s profile would be used as a model for other students. In that court’s view, that evidence demonstrated at most that Abdelaziz and Wilson were aware of other parents’ involvement in Singer’s operation.

The court also rejected the government’s argument for interdependence—namely that Abdelaziz and Wilson must have understood themselves to be interdependent on other alleged co-conspirators because interdependence was necessary for the scheme’s success. The government cited a phone call between Singer and Agustin Huneus (another parent who had pleaded guilty) to show that Huneus was motivated to participate in the

scheme because of the scheme's track record and another parent's positive experience with Singer. The court reasoned that even if a parent chose to work with Singer based on his past success with other parents, that did not necessarily mean that they viewed their children's admission as dependent on Singer's work with other parents. And even if it did, a fact finder could not reasonably infer from Huneus' understanding that Abdelaziz and Wilson had the same view. In sum, any overlap among participants was heavily outweighed by the lack of genuine interdependence or a common goal. This conclusion was reinforced by the dissimilarity between the types of misconduct in which different parents engaged.

Prejudice

Having concluded that the conspiracy proven at trial varied from the one charged in the indictment, the court turned to the third *Glenn* question—whether the variance resulted in prejudice to the defendants. Abdelaziz and Wilson argued that because the government charged, but failed to prove, an overarching conspiracy, “mountains of inflammatory evidence about markedly different conduct by other parents” was admitted against them. The court agreed.

The government sought to prove Abdelaziz's and Wilson's culpable state of mind by introducing evidence of intent on the part of other parents, but that strategy in the court's view presented a “pervasive risk” of prejudicing the jury's assessment of Abdelaziz and Wilson's specific intent. For example, Isackson testified that he knew the money would go directly to Singer. But Singer told Abdelaziz and Wilson that it would go to the university programs. Others testified about payments that went directly to university officials' personal accounts, but Singer did not tell that to Abdelaziz and Wilson.

The government also introduced testimony and recordings of calls between Singer and other parents that showed “clearly fraudulent” conduct such as payments to alter test scores, but Abdelaziz and Wilson were not alleged to have engaged in that behavior.

In sum, the evidence of other parents' intent and conduct, along with the “sheer number” of co-conspirators, created a significant risk of evidentiary spillover that prejudiced defendants and denied Abdelaziz and Wilson a fair trial.

Conclusion

The First Circuit's rejection of the government's overbroad conspiracy charge is a reminder of the importance of charging decisions and how they can affect defense strategy and outcomes. Had the government charged the parents with separately conspiring with Singer, the charges may have been proper, at least as to conspiracy to violate Section 666, but that would have led to an unwieldy set of cases and would have limited the evidence available to the government. Perhaps, as to Abdelaziz and Wilson, prosecutors recognized that their proof was thin without the evidence that could be admitted only under a broad conspiracy theory. That interpretation is suggested by the government's motion last week to dismiss the charges against Abdelaziz and Wilson in light of the First Circuit decision.

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