

Echoes Of 'Varsity Blues' As Harvard Bribe Trial Set To Start

By **Chris Villani**

Law360 (November 23, 2022, 7:22 PM EST) -- A trial is set to kick off in Boston federal court in December with a set of allegations and thorny legal issues that should sound familiar to many.

A wealthy businessman is charged with paying a college coach seven figures' worth of bribes to ensure his kids' spots on the coach's team and places at a prestigious university. The defendants say there was no quid pro quo and what should be, at worst, a dispute between the coach and his private employer has somehow morphed into a federal criminal prosecution.

The case against former Harvard University fencing coach Peter Brand and iTalk Global Communications Inc. chief executive Jie "Jack" Zhao is not part of the sweeping "Varsity Blues" college admissions case.

But after a **"Varsity Blues" acquittal** earlier this year, a **conviction overturned** by the trial judge, and two more guilty verdicts **potentially on the ropes** at the First Circuit, a spotlight has been placed on Brand and Zhao's trial, which begins Dec. 1 with jury selection.

"I think it's a very important case for the U.S. attorney's office in Boston," said David Schumacher of Hooper Lundy & Bookman PC, who represented two parents in "Varsity Blues" but is not involved in the upcoming case.

"On its face, it shouldn't be the biggest case in the office: It's a coach and a parent and a private transaction that's not impacting the world at large," Schumacher said. "But there is going to be a lot of scrutiny on this trial, given recent events."

"The wildly successful 'Varsity Blues' investigation looks a little different now," he added.

A Hot Tip

The story of Brand and Zhao's relationship first appeared in a 2019 Boston Globe article published just weeks after the world learned about "Varsity Blues."

According to the article, and later the **allegations brought by the U.S. attorney**, Zhao bought Brand's Needham, Massachusetts, home for nearly \$1 million, or roughly twice its assessed value.

Zhao never lived in that home and took a \$324,000 loss on the property when he sold it 17 months later. The story also reported a \$1 million gift that Zhao made to the National Fencing Foundation, which later donated \$100,000 to Brand's tax-exempt foundation. The purported donation was also included in prosecutors' complaint against Brand and Zhao.

Among the open questions heading into trial is whether the reporter, Joshua Miller, will have to **take the stand**. Miller, now an editor at the Globe, has argued in pretrial filings that his testimony "would be largely redundant" because of the evidence prosecutors already have.

Some Familiar Strategies

Schumacher said that, "on the surface," the case looks to be a fairly strong one for federal prosecutors. But if one looks closely, he said the "picture is a little more muddled."

"The emotional impact of the 'Varsity Blues' scandal was the perception that kids were getting into colleges they shouldn't have gotten into because of the cheating, but that factor is not present in this trial," he said, pointing out that Zhao's sons were accomplished fencers, academically qualified to get into Harvard and did well once they were there.

"This is not Olivia Jade with the rowing machine," Schumacher said, referencing the daughter of **actress Lori Loughlin** whose phony academic profile included a photo of her on a rower in an effort to boost her fake chops as a crew athlete. "These are legit scholar-athletes who would have gotten into Harvard all on their own. The jury may say, 'Who was really harmed here?'"

A common theme throughout the "Varsity Blues" cases was whether the government had meddled in the affairs of private universities and effectively criminalized what should have been, at worst, fireable offenses.

Harvard said it fired Brand because he violated the school's conflict of interest policy.

"The thing that jumps out at me is, what is the federal interest in a criminal prosecution of a coach at a private university?" said Anthony Fuller of Hogan Lovells LLP. "Absent the larger 'Varsity Blues' case against all those parents, would this have even been a federal criminal case?"

Fuller said he could see the defense playing up that strategy during the trial, effectively asking, "What are we doing here?"

Jousting Over Key Evidence

Tempers boiled over numerous times during the springtime trial of former University of Southern California water polo coach Jovan Vavic as part of the "Varsity Blues" cases, with the government sparring with both U.S. District Judge Indira Talwani and defense lawyers in exchanges that turned personal on multiple occasions.

In Brand's case, the conflict of interest policy has been a key component of the pretrial back and forth between the two sides. Brand signed certifications indicating he was aware of the policy, but the defense claims prosecutors have planned to combine two PDFs they received on different dates stemming from different subpoenas in order to make it seem as if Brand had the policy in front of him when he signed those certifications.

The defense says this amounts to prosecutors **fabricating an exhibit**, saying they caught the government in its "ruse, red-handed."

A strongly worded reply signed by U.S. Attorney Rachael Rollins and her top deputy, Josh Levy, pushed back by saying, "As the trial has approached in this case, it has become clear that a central defense strategy is to attack the government."

"It's going to be a heated, disputed issue of fact as to whether he had actual knowledge of the policy," Hogan Lovells' Fuller said. He added that there could be ways for the government to show Brand knew his arrangement with Zhao was wrong even without the specific policy, such as having other Harvard witnesses testify that no one would have thought this deal to be above board.

"I wonder if they will elicit evidence that says, 'You can't take money from a parent, or an overvalued home, that's just common sense,'" Fuller said.

Also at issue is the credibility of a star government witness, Alexandre Ryjik, the head of a Virginia fencing charity. The defense wants the jury to hear what it says is evidence of Ryjik's fraudulently obtained pandemic-related loans and a messy divorce that included allegations of infidelity and abuse by Ryjik's wife, which she later recanted.

The government has argued that most or all of this evidence is irrelevant, and the issue is still pending before U.S. District Judge George A. O'Toole.

Witness credibility factored heavily into the three "Varsity Blues" cases that went to trial. An alleged

middleman took the stand in the trial of parent Amin Khoury, which resulted in a not guilty verdict. "Varsity Blues" ringleader William "Rick" Singer's credibility was so heavily damaged by the time trials rolled around that he sat out both cases he was alleged to be involved in.

Trial Teams Take Shape

Both Brand and Zhao have local defense attorneys. Douglas Brooks of Libby Hoopes Brooks PC is representing Brand and recently represented a priest who beat the U.S. Securities and Exchange Commission's claims of **a short-and-distort scheme**. He also represented a state court judge who **entered into a deal** to avoid prosecution for allegedly obstructing justice by helping an undocumented immigrant evade custody.

Leading Zhao's team is William Weinreb of Quinn Emanuel Urquhart & Sullivan LLP, a former acting U.S. attorney who recently represented a former MiMedx Group Inc. executive in a securities fraud case and a California parent who cooperated in "Varsity Blues."

Judge O'Toole, best known for presiding over the trial of the **Boston Marathon bomber**, will call the balls and strikes for this case.

The prosecution team will be made up of "Varsity Blues" veterans Stephen Frank, Ian Stearns and Mackenzie Queenin, the former two of which were part of the Vavic trial team.

"The prosecutors were taken to task a little bit by Judge Talwani in the Vavic case and they butted heads," Hooper Lundy's Schumacher said. "It's the same prosecutors and that's another thing that people are going to be watching. Will they overreach? Will Judge O'Toole take them to task in a similar way? There is a lot of scrutiny on this prosecution."

Feds Under Pressure

Evaluating the evidence in its entirety, Schumacher said the defense appears to have an uphill climb in trying to explain away claims that Zhao not only made a donation and bought Brand's house, but also paid to have Brand's Cambridge, Massachusetts, condo renovated, paid his son's college tuition, and bought the coach a car.

"At bottom, it's going to be challenging for the defense to convince the jury that all of these payments were just payments to a friend," Schumacher said. "The jury is likely going to be inclined to believe there was a nefarious motive. But, on the other hand, so what? Was Harvard harmed?"

It's been **a bumpy year** for the U.S. attorney's office, with dwindling case numbers and talk of low morale. Hogan Lovells' Fuller said the media attention will put added stress on the government, even though this case is distinct from the "Varsity Blues" cases that have run into recent legal and factual hurdles.

"When it's a publicized case, the individual prosecutors feel it even more, and I can say that from personal experience from back in my time as a prosecutor," Fuller said. "Frankly, it's Harvard University, it's a well-publicized case, and there is always pressure to get it right, and pressure to win."

Counsel for the defense and a government representative declined to comment.

The government is represented by Stephen E. Frank, Ian J. Stearns and Mackenzie A. Queenin of the U.S. Attorney's Office for the District of Massachusetts.

Brand is represented by Douglas S. Brooks and R. Matthew Rickman of Libby Hoopes Brooks PC.

Zhao is represented by William D. Weinreb, Michael T. Packard and Jessica Reese of Quinn Emanuel Urquhart & Sullivan LLP.

The case is U.S. v. Brand et al., case number 1:20-cr-10306, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Brian Dowling. Editing by Kelly Duncan and Emily Kokoll.

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