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Insider Trading Defense May Draw On 'Varsity Blues' Playbook

By **Chris Villani**

Law360 (June 12, 2026, 4:44 PM EDT) -- After enlisting a crew of experienced attorneys, defendants charged in an insider trading case allegedly involving deal information stolen from huge law firms are preparing to use a strategy that could take some cues from the "Varsity Blues" case in the same Boston courthouse.

In its most high-profile white collar case since the scandal involving college admissions, the Massachusetts U.S. Attorney's Office says Nicolo Nourafchan, who worked at Sidley Austin LLP, Latham & Watkins LLP and Goodwin Procter LLP, and Robert Yadgarov, a personal injury lawyer, were at the center of a scheme to tip off dozens of others about huge deals involving firm clients.

Prosecutors also say Nourafchan recruited lawyers who were working at Wachtell Lipton Rosen & Katz and Weil Gotshal & Manges LLP to take part in the scheme using nonpublic information about deals their firms were working on.

Dozens of defense attorneys have joined the case representing the various defendants. Most either did not respond to requests for comment on their defense strategy, or declined to disclose too many details.

"One of the few advantages accorded to a federal criminal defendant subject to the accusations of a hugely resourced prosecution team aided by witnesses who cut self-serving deals to avoid or minimize their exposure to prison is that the rules do not compel advance disclosure of either legal or factual defenses," said Nourafchan's attorney, Martin Weinberg of Martin G. Weinberg Law, "of which, as in most insider trading accusation cases, there are many."

A lawyer for defendant Brian Fensterszaub, Aaron Katz of Aaron Katz Law LLC, noted that every defendant has to be judged individually, telling Law360 "the facts are not uniform here."

But the defense appears to be gearing up for a fight, with one lawyer who requested anonymity in order to speak frankly saying that he plans to go the distance.

"I am going to trial," he said. "My clients don't hire me to plead guilty."

Shades of 'Varsity Blues'

Although the case charging wealthy parents with bribing their children's ways into college produced dozens of guilty pleas, the legal theory that underpinned the case was largely undone on appeal. The First Circuit found the way the case was charged ran afoul of the U.S. Supreme Court's 1946 ruling in Kotteakos v. U.S. , where the justices rejected charges of a so-called "hub-and-spoke" conspiracy involving a group of disparate defendants

Jon Barooshian, a white collar litigator at Saul Ewing LLP, said the facts in the insider trading case will be different for each defendant.

"I think the defendants could take the position that this is a series of smaller conspiracies, and there isn't one, major conspiracy," he said. "If you confuse a jury enough about the actual allegations, you may create reasonable doubt."

Prosecutors charged the case in two separate indictments with 14 defendants grouped into one case, and five in the other.

Carmen Ortiz, a former U.S. Attorney for Massachusetts, agreed that the defense will likely point to Kotteakos and the more recent First Circuit ruling gutting the "Varsity Blues" case, U.S. v. Abdelaziz , to say that the conspiracy was not properly charged.

"[They will argue] it was impossible to engage in the agreement and come together because they may not have known about each other, or engaged in certain transactions individually," said Ortiz, now a partner at Anderson & Kreiger LLP.

Mark Sedlander, a white collar defense attorney at Mancini Shenk LLP, noted that the "Varsity Blues" case went a long way to further develop the case law established in Kotteakos and set the bar for what the government has to prove.

"You can't just say, 'There's a lot of smoke here, so they probably knew about it,'" he said. "Just because there is a lot of evidence that something happened that shouldn't have happened, it doesn't mean the government is going to be able to prove that each of those individuals committed a crime."

The attorney involved in the case who spoke anonymously said they expect the Kotteakos issue to be part of the defense and predicted that the government would struggle to prove the defendants engaged in one, large conspiracy.

He also said venue could be an issue, pointing to the Supreme Court's ruling this week that found that a defendant charged with obstruction was wrongly tried in a federal court in California, rather than Washington, where the "conduct constituting the offense" occurred. As in that case, several of the defendants in the insider trading matter have been charged with obstruction.

Who Knew What, When, and How?

Another, more traditional defense in insider trading matters is that the trades were made based on information already in the public domain. Michael Feldberg, a former prosecutor in the Southern District of New York and now a partner at Reichman Jorgensen Lehman & Feldberg LLP, said that the defense is likely going to scour all sources for hints that the defendants made the trades at issue because the deals had generated plenty of public buzz before they became official.

"Maybe there was a blog post that said some transaction is likely to happen, or there is public speculation or an analyst wrote a report that said 'it's likely that there will be a transaction involving XYZ company,'" Feldberg said. "The tippee can say, 'That was why I traded. It's public information, anyone could have had it.'"

The government has alleged that Nourafchan and Yadgarov did not make trades, but received kickbacks from those they tipped off. Feldberg said he could see them similarly arguing that they did nothing other than communicate public information.

"Let's say there is a lawyer working on a deal at a firm, and he doesn't say to his friends, 'I am working on a deal.' Instead he says, 'You know, you ought to look at a blog post on XYZ corporation,'" Feldberg said. "The lawyer is likely to argue, 'All I did is point him to public information.' The prosecution is likely to argue, 'Yeah, you did it knowing that a transaction was being worked on by lawyers.'"

Ortiz said the defense may call experts to testify that the trades that were made were based on publicly accessible data.

"There will be charts and information that will show the different arenas where there could have been information related to these deals," she said.

Added Sedlander, "In terms of trial defenses, it's going to come down to what people knew."

"The farther away they can get from the alleged source of the information, the stronger the arguments could be that they were unaware of the source of the information," he said.

A total of 30 defendants were charged across the two cases, including corporate attorneys and other financial professionals the government claims misappropriated confidential information on nearly 30 M&A deals shepherded by the major firms.

Prosecutors say the deals included some of the largest M&A transactions of the past decade, which have been listed on national and foreign securities exchanges.

The defendants and other unnamed co-conspirators tried to keep law enforcement in the dark by using burner phones, encrypted applications, coded languages and clandestine meetings without any electronics, according to prosecutors.

Feldberg said he expects an "extended back-and-forth" about what was actually communicated between the defendants.

"If the tipping was done by chat or direct message, it may be relatively easy to discern what exactly was said," he said. "But it may require some interpretation. Maybe there is shorthand, maybe there is code, maybe it's a couple of friends chatting with each other."

Barooshian recalled helping his former law firm find office space, and the real estate broker asked if they would take a different floor because a biopharmaceutical company had a new drug that was going to be approved and would need additional space.

"I said to myself, holy [expletive], I heard this from a broker," Barooshian said.

The company's stock later "blew up," he said, but he decided not to act on the information to avoid potential headaches.

"That would have been a helluva payday for me," Barooshian said with a chuckle.

Attack the Cooperators

The prosecution is expected to use cooperating witnesses to bolster its case, including Gabriel Gershowitz, a former Willkie Farr & Gallagher LLP mergers and acquisitions attorney who last month admitted to taking part in the scheme.

Ortiz said the fact that the government has cooperating witnesses will make the case challenging for the defense.

"But, at the end of the day, we don't know which ones they will use at trial and how strong their testimony will be," she said.

Going after a cooperating witness with the argument that they are simply telling the story the government wants to curry favor with prosecutors is a well-worn defense tactic. But the fact that the star government witnesses are lawyers adds a wrinkle, Barooshian said.

"How much credibility will they have?" he said. "I just think people have a hard time trusting lawyers, and you still have the issue that the defense will say, 'You are selling your soul in exchange for this testimony.'"

The number of cooperating witnesses could increase if others alleged to have been involved in the scheme cut a deal.

David Axelrod, a former federal prosecutor and attorney with the U.S. Securities and Exchange Commission who now leads the securities enforcement and corporate governance litigation group at Ballard Spahr LLP, said that the cases that appear the strongest for the government are the ones against Nourafchan and Yadgarov, who allegedly stole the information, and the so-called "first-line" tippees who they directly communicated with.

"Those are more slam-dunks," Axelrod said. "But I am guessing some of the connections to those second-and-third level tippees are going to be more tenuous and rely more on cooperators. You could see a trial on some of those."

Greg Henning of Henning Strategies, a former prosecutor, said that some defendants may roll the dice with a trial if the government is seeking too high a penalty. In the case of Gershowitz, the cooperating witness, prosecutors are seeking a two-year prison term.

"You have lawyers as defendants here and the old adage is that lawyers are always the worst clients," Henning said. "They may think they can outsmart the system."

Henning noted that, if the government's allegations are true, the defendants already took on significant risks by doing what prosecutors claim they did.

"If you have the set of church bells on you to do these types of transactions and tip people off like this," he said, "you might not look at a plea offer as logically as somebody else does."

The cases are U.S. v. Fejal et al., case number 1:26-cr-10133, and U.S. v. Nourafchan et al., case number 1:26-cr-10115, in the U.S. District Court for the District of Massachusetts.

--Editing by Adam LoBelia.