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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

## Prison Suddenly Seems Inevitable For 'Varsity Blues' Parents

By Chris Villani

Law360 (September 16, 2019, 8:37 PM EDT) -- It was hard to find a "Varsity Blues" parent in a better position to avoid prison time than actress Felicity Huffman, whose 14-day sentence now dashes the hopes of others who pled guilty to more lenient sentences or perhaps avoiding lockup altogether, experts tell Law360.

The "Desperate Housewives" star received the two-week sentence Friday from U.S. District Judge Indira Talwani despite an emotional admission to "**everything**" the federal government had alleged — including paying a \$15,000 bribe to inflate her daughter's SAT score — and being less culpable than others in the nationwide fraud case. The sentence puts the 10 other parents who pled guilty in an uphill battle to avoid spending time in prison, and may well set 14 days as the floor in the case, attorneys say.

"The message is: 'You're all going to jail,'" said Patrick J. Cotter, a former federal prosecutor and longtime white collar defense attorney with Greensfelder Hemker & Gale PC. "Figure out what your size is for your jumpsuit, because you're going to jail. It's a question of how long."

The actress seemed to be in the best shape to avoid prison time of all the defendants and also had the benefit of a favorable ruling when Judge Talwani agreed with a recommendation from the probation department that found no "loss" by a victim that could be factored into the federal sentencing guidelines.

The judge also rejected an argument by prosecutors that the amount of the bribe be used as a "stand-in" figure for the sentencing calculation. But it wasn't enough to keep Huffman out of prison.

"As a practical matter, you would expect that 14 days is now the floor," said William Fick, a defense attorney and founding partner of Fick & Marx LLP. "It would be very difficult for somebody to come up with some argument for why they are less culpable or some special mitigating circumstance that would make prison inappropriate."

"It certainly spells forebodings of doom for some of the other defendants," added Boston criminal defense attorney Peter Elikann.

In a **consolidated sentencing memo**, federal prosecutors said they will ask Judge Talwani for a range of one month to 15 months for the 11 parents Judge Talwani is slated to sentence, all of whom pled guilty.

In addition to Huffman, the government recommended packaged food entrepreneur Peter Jan "P.J." Sartorio spend a month in prison. And prosecutors will recommend former Willkie Farr & Gallagher LLP co-chair **Gordon Caplan** face eight months after pleading guilty to paying \$75,000 to have his child's ACT answers corrected.

Some of the arguments parents might make going forward include showing steps taken to atone for their misdeeds since being charged or citing special health or family circumstances, experts said.

“You can say, ‘Look at where they are now in their life, in their acceptance of responsibility, things they have done in the interim that show affirmative steps to potentially make good on the crime they have committed and try to highlight all of those differences,’” said Laura Perkins, co-chair of the anti-bribery group at Hughes Hubbard & Reed LLP.

Perkins said “it is an uphill climb for no jail time, but it’s not something that wouldn’t be worth the effort, because you want to minimize the jail time as much as possible.”

And other attorneys said there are “always special circumstances,” such as a defendant who is in poor health.

“There could be unique family circumstances where someone is a sole caregiver for a child or elderly parent, something in their life that would make incarceration seem less appropriate,” Fick said.

How the other 10 parents plan to make their respective cases has not been revealed. Their attorneys either declined to comment or did not respond to requests for comment Monday.

A spokesperson for the U.S. Attorney's Office for the District of Massachusetts also declined to comment.

The government’s argument, made by Assistant U.S. Attorney Eric Rosen in hearings for Huffman and former Stanford sailing coach John Vandemoer, has been for judges to send a strong message through incarceration. Vandemoer, who did not pocket any of the bribe money he admitted to receiving, was handed down a **one-day suspended sentence** from Senior U.S. District Judge Rya W. Zobel.

Hughes Hubbard’s Perkins said that in **Huffman’s case**, Judge Talwani sent a message that “you can’t pay your way out” of responsibility.

Going forward, it's unclear how the Huffman sentence might weigh on parents still fighting the charges, like fellow actress Lori Loughlin and her husband, designer Mossimo Giannulli. Experts stressed that there are numerous circumstances that could affect an individual sentence, but agreed that Friday’s sentence may give some pause to those who have not yet pled guilty.

“This is a very bad development for [Loughlin],” Cotter said, noting that Loughlin is not an “early pleader” like Huffman and is alleged to have paid significantly more money to have her daughters admitted to the University of Southern California as crew athletes even though they did not participate in the sport at the collegiate level.

“If you’re somebody at the other end of the spectrum on this case, that’s got to be a sobering development,” he said. “I think the Latham [ & Watkins LLP] lawyers may feel ethically required to have a meeting this week, just to say, ‘Look, this is a development you need to consider and make an intelligent decision about whether you want to keep fighting these charges.’”

For those who do end up in a sentencing hearing, the best arguments may be similar to those made by Huffman in an unsuccessful bid to avoid prison.

“You want to at the same time show minimal culpability while taking complete and total responsibility, and that can be a tough tightrope to walk,” Elikann said. “I do have to say that sounds like it was Felicity Huffman’s strategy also. That defense seemed to do everything right and the court, in its wisdom, decided it still merited some period of incarceration.”

The case is U.S. v. Abbott et al., case number 1:19-cr-10117, in the U.S. District Court for the District of Massachusetts.

--Editing by Philip Shea and Alanna Weissman.