

New Jersey Cases To Watch In 2024

By **Carla Baranauckas**

Law360 (January 1, 2024, 8:02 AM EST) -- In the coming year, May 6 looms large for New Jersey court watchers with two high-profile federal bribery cases scheduled to go to trial. One case — the prosecution of two former executives of Cognizant Technology Solutions Corp. — has taken years to get to trial. The other case — which accuses Sen. Robert Menendez, his wife and three businessmen of a bribery conspiracy — is proceeding much more swiftly, with the indictments having been handed down on Sept. 22.

The Garden State legal community is also closely watching a federal lawsuit Jersey City officials filed seeking clarification on whether off-duty police officers can use marijuana, two complaints in state court claiming that Hispanic defendants face systemic discrimination in a municipal court and a question pending before the New Jersey Supreme Court on whether nondisparagement clauses in employment discrimination settlements are enforceable.

Here are the New Jersey matters to watch in 2024.

An Unusual Foreign Corrupt Practices Act Case

After nearly five years of pretrial maneuvers, the USA v. Gordon Coburn et al. trial was just days from starting in October when prosecutors sought a brief delay because one of their major witnesses was unable to travel from India. But that postponement **pushed the trial date** even further because U.S. District Judge Kevin McNulty, who had been presiding over the case since February 2019, took senior status at the end of October and the case was reassigned to U.S. District Judge Michael E. Farbiarz.

In a 12-count indictment, former Cognizant chief executive Gordon Coburn and ex-legal chief Stephen Schwartz were charged with approving a \$2 million payment to an Indian government official in exchange for a permit that would speed up a long-delayed construction project in Chennai, India, in violation of the Foreign Corrupt Practices Act.

"This is a high-profile prosecution of a CEO and the chief legal officer," Brian Klein, a trial lawyer for Waymaker LLP, told Law360. "There aren't a lot of Foreign Corrupt Practices Act trials out there. Usually, the company takes a plea or enters into a non-prosecution agreement and individuals implicated in the bribery aren't prosecuted, often because they are located abroad, making them difficult to arrest and extradite. So this is a pretty unique situation that an FCPA trial of executives based in the U.S. is going to trial."

Coburn and Schwarz are also accused of trying to cover up the alleged bribery with invoices for supposed cost overruns on the 2.7-million-square-foot office complex.

The case is U.S. v. Coburn et al., case number 2:19-cr-00120, in the U.S. District Court for the District of New Jersey.

U.S. Senator Facing Second Set of Bribery Charges

U.S. Sen. Robert Menendez, a Democrat from New Jersey, will be crossing the Hudson River to face trial on bribery charges in U.S. District Court for the Southern District of New York. He has adamantly denied the charges.

Prosecutors say Menendez disrupted criminal prosecutions and helped the Egyptian government in

exchange for cash and expensive gifts. His wife and three business associates were also charged in a September indictment. A **44-page superseding indictment** was filed in early October.

Menendez, who was chair of the U.S. Senate Committee on Foreign Relations, had significant influence over more than \$1 billion in U.S. military aid to Egypt.

The gifts included almost \$500,000 in cash, gold bars, a Mercedes-Benz convertible and mortgage payments, prosecutors said. Much of the cash was found in the Menendez home, tucked into the pockets of clothes, they said.

James Roberts of Schlam Stone & Dolan LLP told Law360 that the prosecution has two major challenges in the case. First, the government needs to prove that the cash, gold and other items in the Menendezes' possession came from the co-conspirators or others and were given for the purpose of bribing Menendez. Second, the government needs to prove that Menendez violated his duty as a result of the alleged payments by taking actions to benefit Egypt and interfere with criminal investigations.

"You have to prove the entire quid pro quo — the provenance of the payments, and also the reciprocation," Roberts said. "If you're thinking of it as a defense attorney, you're going to try to attack along both axes in this case."

Having a client who is a public figure can also complicate matters for the defense attorneys, who would normally tell their clients not to speak in public because statements could potentially be used against them. In the case of Menendez, he will likely be questioned by colleagues in Congress and the press. He may feel it necessary for his political survival "to make various public statements in response to those questions," Roberts said.

This is the second time Menendez is being tried on bribery charges. In his 2017 trial, a jury was unable to reach a verdict and a mistrial was declared. The government opted not to retry the case.

The case is USA v. Menendez et al., case number 1:23-cr-00490, in the U.S. District Court for the Southern District of New York.

Can Off-Duty Cops Use Marijuana?

When New Jersey made recreational marijuana legal, it also made it illegal under state law for employers to punish workers who use cannabis off duty.

But Jersey City, the state's second-largest city, has found it difficult to square that law with the federal law that prohibits those who own or possess firearms from indulging in certain controlled substances.

The Federal Gun Control Act, passed in 1968 and amended multiple times since then, prohibits users of Schedule I drugs, including marijuana, from owning or possessing firearms or ammunition, **Jersey City said in a suit** filed in New Jersey federal court.

"The fact that the laws from the state of New Jersey directly conflict with the ATF and federal law exposes Jersey City to millions of dollars in potential liability, and that's just unacceptable for us," Jersey City Mayor Steven Fulop said when the suit was filed in October, referring to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives.

Jersey City has terminated the employment of five police officers who were found in drug tests to have used marijuana, Jersey City officials said. The officers appealed to the New Jersey Civil Service Commission, which ordered two officers to be reinstated. The appeals of the three other officers are still pending.

Not everyone views Jersey City's litigation as an effort to get clarification. In November, two police officers who were fired, then reinstated, after drug tests were positive for marijuana said in a suit in November that Jersey City's policy was politically motivated.

An attorney watching the case, Joshua S. Bauchner of Mandelbaum Barrett PC, told Law360: "Jersey

City is engaging in rank hypocrisy in targeting police officers — often former military with PTSD and related issues — seeking relief from medical marijuana. On the one hand, the city claims it cannot determine whether officers are impaired when reporting for duty. On the other, it commissions Drug Recognition Experts, recently endorsed by the New Jersey Supreme Court, as qualified to determine whether an individual is impaired, warranting arrest. In doing so, the city undermines its own credibility and the credibility of police throughout the state engaged in making impairment determinations all to inexplicably punish those who serve."

The case is *Shea et al. v. State of New Jersey et al.*, case number 2:23-cv-21196, in U.S. District Court for the District of New Jersey.

Allegations of Latino Discrimination in Court

Two cases — Judge Jason Witcher v. the State of New Jersey et al. and Matthew J. Platkin et al. v. City of Millville — take on the question of systemic discrimination in the court system.

Judge Witcher filed suit in June against the state and the Administrative Office of the Courts. His case stemmed from a widely publicized allegation he made in late 2022 that the Millville Municipal Court discriminated against defendants with Hispanic-sounding last names by disproportionately scheduling them for in-person court, when an interpreter would be present, rather than virtual court.

He alleged the office then retaliated against him by requiring him to work in person, revoking a previous arrangement in which he worked virtually when he was having a Crohn's disease flare-up. One flare-up in February 2023 caused him to have "seizure-like responses" in court, and he resigned effective Aug. 1, saying in his complaint that he was "constructively discharged."

In August, Attorney General Matthew J. Platkin and the New Jersey Division on Civil Rights **filed suit against Millville**, claiming, "In maintaining a practice of scheduling litigants who were actually or perceived to be Spanish-speaking for in-person rather than virtual sessions, Millville discriminated against Hispanic or Latinx litigants based on their actual or perceived national origin."

Lisa M. Wayne, executive director of the National Association of Criminal Defense Lawyers, told Law360 that fairness in these proceedings hinges on equal access, which is "fundamental."

"Disparity in access is never justified. We are pleased to see that the New Jersey Attorney General's Division on Civil Rights is taking these accusations seriously," Wayne said.

Is Nondisparagement the Same as Nondisclosure?

The New Jersey Supreme Court is weighing a case testing the **validity of nondisparagement clauses** in settlement agreements in employment cases.

In September, the state high court granted a motion by Christine Savage, a former police sergeant for Neptune Township, for leave to appeal part of the Appellate Division's ruling upending a lower court's finding that she had violated the nondisparagement clause in a settlement agreement that ended her sex discrimination case against the township.

When Savage said in a TV interview that the police department was "the good ol' boy system," she was commenting about present or future behavior and had not violated the nondisparagement clause barring remarks about "the past behavior of the parties," appellate Judge Michael J. Haas wrote in May for the panel.

But Savage fell short in arguing that the nondisparagement clause was "against public policy and unenforceable" under a 2019 state law that barred nondisclosure agreements in employment contracts and settlement agreements.

Plaintiff-side employment law attorney Nancy Erika Smith, whose clients include former Fox News anchor and #MeToo luminary Gretchen Carlson, predicts the justices will side with Savage.

"Savage is significant because silencing victims of harassment, discrimination and retaliation perpetuates the trauma of abuse, protects abusers, and perverts the legal system into one that sells

silence instead of dispensing justice," Smith, of Smith Mullin PC, told Law360.

"[Now-retired] Sen. Loretta Weinberg's law making nondisclosure agreements (NDAs) unenforceable in New Jersey was the first in the nation to give victims their voices back," Smith said. "Clearly, it was intended to prevent back-door NDAs, called non-disparagement clauses. New Jersey Attorney General Matthew Platkin agrees and has filed an amicus brief. Having read his amicus and the other briefs, I believe the Supreme Court will agree."

Savage has brought legal action against the township several times alleging sex discrimination. The parties reached the settlement at issue in July 2020, when Savage was on paid administrative/medical leave, the appellate opinion said. Under the deal, the defendants agreed that after Savage was medically cleared, she could return to work until her retirement date. They also agreed to pay her various amounts, including \$175,000 for pain and suffering and about \$23,206 for retroactive pay, the opinion said.

The nondisparagement provision stated in part, "The parties agree not to make any statements written or verbal, or cause or encourage others to make any statements, written or verbal regarding the past behavior of the parties, which statements would tend to disparage or impugn the reputation of any party," according to the opinion.

A few weeks after the case was settled, Savage was interviewed by reporter Sarah Wallace of NBC4 New York and made the comments in question, the opinion said.

The case is Christine Savage v. Township of Neptune et al., case number A-1415-20, in the Superior Court of the State of New Jersey, Appellate Division.

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