

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x
:
UNITED STATES OF AMERICA
:
-v.-
:
THOMAS EARLY, and
SHONA SEIFERT,
:
:
Defendants.
:
- - - - -x

INDICTMENT

04 Cr.

COUNT ONE

**(Conspiracy to Defraud the United States, to Make False Claims,
and to Make False Statements)**

The Grand Jury charges:

The Relevant Entities and Individuals

1. At all times relevant to this Indictment, the Office of the National Drug Control Policy ("ONDCP") was a component of the Executive Office of the President of the United States, and an agency within the meaning of Section 6 of Title 18 of the United States Code. The ONDCP is responsible for establishing the nation's drug control program, the objective of which is to reduce the production, trafficking, and use of illicit drugs, as well as drug-related crime and violence. To help carry out its responsibilities, the ONDCP is conducting a nationwide media campaign entitled the National Youth Anti-Drug Media Campaign (the "Media Campaign"), the goal of which is to educate the nation's youth about the dangers of illegal drugs and to reduce

and prevent drug use and abuse among the nation's youth.

2. At all times relevant to this Indictment, Ogilvy and Mather, New York ("Ogilvy") was an advertising agency with offices located in Manhattan. Ogilvy is an operating division of Ogilvy & Mather Worldwide, Inc., which is owned by the Ogilvy Group, Inc., a New York corporation. In December 1998, Ogilvy was awarded a contract (the "ONDCP Contract" or "Contract") for Phase III of the Media Campaign, a nationwide print and broadcast campaign aimed at discouraging drug use among the nation's youth.

3. At all times relevant to this Indictment, the Program Support Center of the United States Department of Health and Human Services ("HHS") provided administrative contract support to the ONDCP in connection with the Media Campaign, including reviewing payment claims submitted by Ogilvy in connection with the ONDCP Contract.

4. At all times relevant to this Indictment, THOMAS EARLY, the defendant, was a Senior Partner and the Director of Finance for Ogilvy. In this position, THOMAS EARLY was responsible for the financial management of Ogilvy, including the ONDCP Contract.

5. At all times relevant to this Indictment, SHONA SEIFERT, the defendant, was a Senior Partner and Executive Group Director of Ogilvy, who served, at various times, as the Co-Project Director and Project Director of Ogilvy's Contract with the ONDCP. As Project Director, SEIFERT was principally

responsible for all aspects of Ogilvy's Contract with the ONDCP.

6. From on or about May 10, 1999, through in or about January 2000, a co-conspirator not named as a defendant herein ("CC-1") worked for Ogilvy as the Government Contracts Manager for the ONDCP Contract. In this position, CC-1 was responsible for the overall administration of Ogilvy's Contract with the ONDCP.

7. At all times relevant to this Indictment, a co-conspirator not named as a defendant herein ("CC-2") worked in the Media Department at Ogilvy. In this position, CC-2 had primary responsibility within the Media Department for the day-to-day operations relating to the ONDCP Contract.

BACKGROUND

8. Congress enacted the Media Campaign Act of 1998, which directed ONDCP to conduct the Media Campaign. ONDCP implemented the Media Campaign in three phases. Phase I of the Media Campaign was a pilot program featuring local television and radio advertisements which ran in twelve metropolitan cities from January through July 1998. Phase II expanded the Media Campaign nationwide, and ran from July through October 1998. Bates, U.S.A., an advertising firm in Manhattan, was awarded the contracts for Phases I and II of the Media Campaign. Phase III of the Media Campaign began in January 1999. Like Phase II, Phase III consists of nationwide print and broadcast

advertisements that are scheduled to run through December 2003. Paid advertisements have been the centerpiece of the Campaign, although Phase III has incorporated additional components, including partnerships with community groups, corporate participation, public information and news media outreach, collaboration with the entertainment industry, and the use of interactive media. Paid advertisements for the Campaign were also to be supplemented by matching advertisements donated by networks and other media outlets.

9. On or about December 28, 1998, HHS awarded to Ogilvy the ONDCP Contract, which covered the advertising component of Phase III of the Media Campaign. HHS awarded the ONDCP Contract to Ogilvy pursuant to its agreement with ONDCP to provide administrative contract support for ONDCP's paid advertising efforts.

Certain Relevant Provisions Of The Federal Acquisition Regulations And Ogilvy's Contract With The ONDCP

10. Government contracts, such as Ogilvy's Contract with the ONDCP, are governed by the Federal Acquisition Regulations ("FAR"). In performing its contractual obligations, Ogilvy was required to comply with the terms of the Contract and the relevant provisions of the FAR.

11. The ONDCP Contract awarded to Ogilvy for a base year and four option years was a cost-plus-fixed-fee contract. Under the regulations governing this type of contract and the terms of

the ONDCP Contract itself, Ogilvy was entitled to reimbursement only for allowable costs actually incurred during the course of the ONDCP Contract. In addition to reimbursement for allowable costs incurred, Ogilvy was also entitled to a fixed fee that was negotiated before the ONDCP Contract started. With respect to labor costs, Ogilvy was entitled to reimbursement for its direct labor costs, such as the hours actually spent by its employees on the Media Campaign, as well as fringe and overhead costs associated with those labor costs. The estimated costs for the first year of the ONDCP Contract, including the labor costs that Ogilvy expected to incur, were approximately \$127,231,193. In addition, for the initial year of the Contract, Ogilvy was entitled to receive a fixed fee of approximately \$1,615,001. At the outset of the Contract, the total estimated costs for all five years was approximately \$684 million.

12. Under the relevant regulations and the terms of the Contract, to receive reimbursement for its labor costs, Ogilvy was required, among other things, to: (a) submit a voucher signed by an authorized Ogilvy representative certifying that the voucher was correct and proper for payment; (b) identify the period of performance for which costs were claimed; and (c) identify each employee's name and title, the number of hours worked, the hourly rate for each employee, and the total dollar amount claimed for Ogilvy's labor costs.

13. At all times relevant to this Indictment, Ogilvy required its employees to maintain a record of the number of hours that each employee devoted on a daily basis to a particular account. Ogilvy required each employee to record these hours on a weekly time sheet, which was then submitted to the employee's supervisor for review and signature.

THE SCHEME TO DEFRAUD THE GOVERNMENT

14. From in or about May 1999 through in or about April 2000, THOMAS EARLY and SHONA SEIFERT, the defendants, CC-1, CC-2, and other co-conspirators not named herein, participated in an extensive scheme to defraud the United States Government by falsely and fraudulently inflating the labor costs that Ogilvy had actually incurred with respect to its Contract with the ONDCP. In vouchers submitted to the Government for reimbursement, and in employee time sheets submitted as back-up documentation for those vouchers, EARLY, SEIFERT, and their co-conspirators caused Ogilvy to fraudulently inflate the number of hours that Ogilvy employees had devoted to the ONDCP Contract. To effect this illegal scheme, and to fraudulently inflate Ogilvy's net revenues under the Contract, EARLY, SEIFERT, and their co-conspirators, among other things: (a) directed certain Ogilvy employees to revise time sheets that employees had already completed to reflect falsely that the employee had devoted more time to the ONDCP Contract than was originally recorded;

(b) directed Ogilvy employees to record on their time sheets a specified percentage of their time for the ONDCP Contract whether or not the employees actually devoted that percentage of their time on the ONDCP Contract; (c) caused vouchers to be submitted to the Government claiming reimbursement for labor costs that Ogilvy had not actually incurred in connection with the ONDCP Contract; (d) caused falsified time sheets to be submitted to the Government in support of their fraudulent claims for reimbursement of labor costs; and (e) made false statements to representatives of the ONDCP in an attempt to mask the fabrication of its labor costs.

15. Throughout its Contract with the ONDCP, Ogilvy was required to submit vouchers in support of its claims for reimbursement. During the summer of 1999, CC-1 oversaw the task of collecting the information Ogilvy had to submit to the Government in its initial claim for reimbursement of labor costs. At that time, Ogilvy had not yet submitted a claim for reimbursement of the labor costs that it had incurred. In the course of preparing Ogilvy's initial labor voucher, CC-1 compared Ogilvy's anticipated revenues for the first year of the Contract with its actual labor costs for the period January through in or about July 1999, and, based upon those actual costs, projected Ogilvy's labor costs through the balance of the year. That analysis revealed a shortfall of approximately \$3

million from Ogilvy's anticipated labor costs as calculated at the outset of the Contract. In late July 1999, CC-1 informed EARLY and SEIFERT about that shortfall by e-mail.

16. After recognizing this shortfall, and in an effort to falsely inflate the amount of money for Ogilvy to bill the Government for labor costs under the Contract with ONDCP, EARLY, SEIFERT, and their co-conspirators agreed to direct Ogilvy employees to falsify their time sheets by overstating the number of hours they had spent working on the Media Campaign covered by the ONDCP Contract, and to file false claims with the Government for reimbursement of those inflated labor costs.

17. In or about August and September 1999, SEIFERT, along with CC-1, identified approximately 16 Ogilvy employees who had worked on the ONDCP account. CC-1 then instructed those employees to revise their time sheets even though they had already completed them for the period January through June 1999. CC-1 instructed them to make it appear as if they had worked significantly more hours on the ONDCP Contract than they actually had worked. That effort resulted in employees' improperly adding a significant number of hours to the number of hours that had originally been recorded on their time sheets, and these fraudulently inflated labor costs were then submitted to the Government for payment.

18. In a further effort to fraudulently increase Ogilvy's revenues under the Contract, in or about September 1999 through in or about April 2000, EARLY, SEIFERT, and their co-conspirators instructed certain Ogilvy employees to record a specified percentage of their time to the ONDCP Contract, regardless of whether or not those employees actually devoted that percentage of their time to the ONDCP Media Campaign.

19. In an effort to support their fraudulent claim that Ogilvy was entitled to be reimbursed for these inflated labor costs, EARLY, SEIFERT, and their co-conspirators caused Ogilvy to submit vouchers to the Government which falsely claimed that Ogilvy had actually incurred these inflated labor costs.

STATUTORY ALLEGATIONS

The Conspiracy

20. From in or about May 1999 through in or about April 2000, in the Southern District of New York and elsewhere, THOMAS EARLY and SHONA SEIFERT, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, namely, (a) to defraud the United States, in violation of Title 18, United States Code, Section 371; (b) to make false claims against the United States, in violation of Title 18, United States Code, Section 287; and (c) to make false statements in violation of Title 18, United

States Code, Section 1001.

The Objects of the Conspiracy

To Defraud the United States

21. It was a part and an object of the conspiracy that THOMAS EARLY and SHONA SEIFERT, the defendants, and others known and unknown, unlawfully, willfully, and knowingly would and did defraud the United States, and an agency thereof in a manner and for a purpose, in violation of Title 18, United States Code, Section 371.

To Make False Claims

22. It was a further part and an object of the conspiracy that THOMAS EARLY and SHONA SEIFERT, the defendants, and others known and unknown, unlawfully, willfully, and knowingly would and did make and present to a department and agency of the United States claims upon and against the United States, and a department and agency thereof, knowing such claims to be false, fictitious and fraudulent, in violation of Title 18, United States Code, Section 287.

To Make False Statements

23. It was further a part and an object of the conspiracy that THOMAS EARLY and SHONA SEIFERT, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, in a matter within the jurisdiction of the executive branch of the Government of the United States, would and did (a) falsify,

conceal, and cover up by trick, scheme, and device, material facts; (b) make materially false, fictitious, and fraudulent statements and representations; and (c) make and use false writings and documents knowing the same to contain materially false, fictitious, and fraudulent statements and entries, in violation of Title 18, United States Code, Section 1001.

Means and Methods of the Conspiracy

24. Among the means and methods by which THOMAS EARLY, SHONA SEIFERT, and their co-conspirators would and did carry out the conspiracy were the following:

a. EARLY, SEIFERT, and their co-conspirators directed Ogilvy employees to have time sheets revised to falsely and fraudulently record an inflated number of hours purportedly spent working on the ONDCP Media Campaign, although Ogilvy employees had not actually spent those hours working on the ONDCP Contract.

b. EARLY, SEIFERT, and their co-conspirators directed Ogilvy employees to reflect that they had worked a specified percentage of their time on the ONDCP Contract, whether or not they actually spent that high a percentage of time on the Media Campaign covered by the ONDCP Contract.

c. EARLY, SEIFERT, and their co-conspirators caused Ogilvy to file with the Government fictitious and fabricated claims for reimbursement that significantly and fraudulently overstated Ogilvy's actual labor costs.

d. EARLY, SEIFERT, and their co-conspirators caused Ogilvy to submit to the Government false and fraudulent employee time sheets that were in support of Ogilvy's claims for inflated labor costs.

e. EARLY, SEIFERT, and their co-conspirators caused Ogilvy to submit false information and to make fraudulent representations to representatives of the ONDCP in connection with its claims for reimbursement of its labor costs.

Overt Acts

25. In furtherance of the conspiracy and to effect its unlawful objects, THOMAS EARLY and SHONA SEIFERT, the defendants, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about September 1999, in New York, New York, THOMAS EARLY met with certain managers of the Media department concerning the labor billings on the Media Campaign covered by the ONDCP Contract.

b. In or about September 1999, in New York, New York, SHONA SEIFERT met with CC-1 and CC-2 concerning the labor billings on the Media Campaign covered by the ONDCP Contract.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH ELEVEN

(False Claims)

The Grand Jury further charges:

26. The allegations of paragraphs 1 through 19, 24, and 25 are repeated and realleged as though fully set forth herein.

27. From in or about May 1999 through in or about April 2000, in the Southern District of New York and elsewhere, THOMAS EARLY and SHONA SEIFERT, the defendants, unlawfully, willfully, and knowingly did make and present to a department and agency of the United States claims upon and against the United States, and a department and agency thereof, knowing such claims to be false, fictitious, and fraudulent, namely, on or about the dates listed below, EARLY and SEIFERT caused to be filed with the ONDCP vouchers seeking reimbursement for Ogilvy's labor costs, and in connection with those vouchers submitted time sheets of Ogilvy employees that falsely and fraudulently represented that each employee had worked the hours reported on the time sheet on the Media Campaign, when in truth and in fact, as EARLY and SEIFERT well knew, Ogilvy had not actually incurred all of the labor costs claimed, and the employees had not actually worked all of the hours reported on their time sheets:

COUNT	RELEVANT VOUCHER	APPROXIMATE DATE OF SUBMISSION
TWO	Voucher 0010-1-0009	October 1, 1999

THREE	Voucher 0010-1-0014	November 24, 1999
FOUR	Voucher 0010-1-0016	December 22, 1999
FIVE	Voucher 0010-1-0019	February 23, 2000
SIX	Voucher 0010-1-0020	March 28, 2000
SEVEN	Voucher 0010-1-0021	March 28, 2000
EIGHT	Voucher 0010-1-0023	April 25, 2000
NINE	Voucher 0010-1-0026	June 8, 2000
TEN	Voucher 0010-1-0027	June 8, 2000
ELEVEN	Voucher 0010-1-0032	July 27, 2000

(Title 18, United States Code, Sections 287 and 2.)

FOREPERSON

DAVID N. KELLEY
United States Attorney