

IMPACT OF POTENTIAL RESTRICTIONS ON ANTI- DRUG MEDIA CAMPAIGN CONTRACTORS

HEARING

BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE,
DRUG POLICY AND HUMAN RESOURCES
OF THE

COMMITTEE ON
GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

JULY 26, 2002

Serial No. 107-218

Printed for the use of the Committee on Government Reform



Available via the World Wide Web: <http://www.gpo.gov/congress/house>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

87-385 PDF

WASHINGTON : 2003

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IMPACT OF POTENTIAL RESTRICTIONS ON ANTI-DRUG MEDIA CAMPAIGN CONTRACTORS

FRIDAY, JULY 26, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND
HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:39 a.m., in room 2203, Rayburn House Office Building, Hon. Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representatives Souder, Barr, Mica, Davis of Virginia, and Cummings.

Staff present: Chris Donesa, staff director and chief counsel; Sharon Pinkerton and Nick Coleman, counsels; Jim Rendon, professional staff member; Conn Carroll, clerk; Tony Haywood, minority counsel; Earley Green, minority assistant clerk; and Teresa Coufal, minority staff assistant.

Mr. SOUDER. Earlier this week, the House adopted an amendment offered by our colleague, Congressman Barr, to the Treasury-Postal Appropriations Bill. The amendment would prohibit funding for the contract recently awarded for the National Youth Anti-Drug Media Campaign. I scheduled this hearing on short notice to examine the potential ramifications of this amendment, or whatever similar provision may emerge from the conference on the appropriations bill.

I do not intend for this to be a general hearing on the operation or focus of the Media Campaign, the bidding process, or the contractor irregularities which gave rise to the legislative provision in question. These are all matters that I intend for the subcommittee to consider carefully and deliberately as part of the reauthorization process, and in due time we will hold hearings that allow for full testimony and consideration of each of these issues.

Today's hearing is intended to consider only the potential ramifications of contractor restrictions on the operation of the Media Campaign.

My primary and overriding concern with respect to this issue is to ensure the continued functioning of the Media Campaign, which is one of the most important tools at our disposal and in the President's strategy to reduce illegal drug use. I am also concerned, however, about the questions of contractor integrity which gave rise to this amendment. Particularly as we pay increasing public attention to corporate responsibility and ethics, we must ensure the accountability and effectiveness of public contractors.

The Media Campaign cannot be forced to halt or be further disrupted. It is too important a tool in preventing drug addiction as well as in meeting the President's strategy to meet specific targets in reducing youth drug abuse. Almost 20,000 Americans will die this year of drug induced causes. If the campaign can help keep even a tiny fraction of this number from starting drug use, it morally will be a worthwhile effort.

The Office of National Drug Control Policy has taken the position that the amendment would effectively cause the campaign to go dark. Other information available to the subcommittee suggests that the situation is not so dire. In any event, however, it is clear that significant logistical, administrative and contracting issues have not and must be fully reviewed prior to taking the step proposed in this amendment or one like it. Today's hearing is to review those issues and the practical ramifications of potential legislative restrictions. We have assembled excellent witnesses to do so on short notice.

From the Office of National Drug Control Policy, we will hear from Mr. Chris Marston, the Deputy Chief of Staff for Director Walters. From the Department of the Navy, which is currently the contracting officer for the Media Campaign, we have Mr. Michael Jaggard. Finally, we have Mr. Al Martin, who is an expert in transitions between advertising agencies.

I would now like to yield to the distinguished ranking member for any opening statement.

Mr. CUMMINGS. Thank you, Mr. Chairman. As the ranking minority member of the subcommittee, and as a Member of the House who represented a district which has been ravaged by drugs, and as a parent, I believe that the National Youth Anti-Drug Media Campaign is a necessary part of our national drug control strategy, and I believe that it is vital that we keep the campaign alive.

We have seen anti-drug messaging work in the past to reduce drug use among children and teens. In many places across the country it appears to be working now. Even while recent evaluations of the Media Campaign have not shown the campaign causing reductions in marijuana usage as we'd like to see, the same evaluations do show that anti-drug ads are being seen and remembered by parents and youth. Moreover, ads targeting parents have been effective in getting parents to engage their children on the issue of drugs.

In the city of Baltimore alone, there are 60,000 addicts, most of whom began to use drugs during their early teens. I firmly believe that if parents had talked to their children about drugs and drug usage, there would be a lot fewer than 60,000. I think many of my colleagues would agree with this conclusion. I think most of my colleagues want to see the campaign survive and reach its potential to reach as many children and parents as possible.

Today, the campaign is at a critical crossroads. I have pledged my commitment to working with Mr. Portman of Ohio to develop reauthorization legislation that will extend and improve the campaign, and I remain committed to work with you, Mr. Chairman, the other members of the Drug Policy Subcommittee, our counterparts in the Senate and ONDCP Director Walters to work through

the areas of the campaign that need fixing with the single aim of making it as effective and efficient as it can be.

Most of us are on the same page. But the amendment by our colleague Mr. Barr, adopted during consideration of the Treasury and General Government Appropriations Act of Fiscal Year 2003 suggests that we're not all on the same page. Mr. Barr's provision would prohibit ONDCP from expending funds to pay Ogilvy & Mather under a new contract awarded on July the 3rd.

Mr. Barr has given assurances that his intent is not to cripple or kill the campaign. But that may well unfortunately be the effect. ONDCP tells us that if Mr. Barr's provision becomes law it will effectively shut down the youth media drug campaign before a new contractor could be selected and get up to speed. There would be no activity for nearly 75 percent of the program. The Advertising Council would lose nearly 50 percent of pro bono match and the Partnership for a Drug-Free America and ONDCP will lose an additional match of \$23 million.

Additionally, the campaign would also be required to eliminate all local market and State-by-State media activity. By March 2003, simply stated, the campaign would go dark. I know that Mr. Barr disputes these representations, but if these consequences were to occur, they would be devastating to the campaign and they would be irreversible.

We are all familiar with the mistakes that Ogilvy made in the past and, to be quite frank with you, I am very concerned, and we have all heard ample testimony in the subcommittee about Ogilvy's extensive efforts to reform its billing and accounting procedures and the clean bill of health Ogilvy has received from the Navy.

The Navy, with all the facts before it, selected only Ogilvy to continue in its role as primary contractor. Some of us may wish that the contracting process had produced another result. But there is no indication that it was conducted unfairly or improperly. At this critical time, we should be focused on figuring out what we can do to improve the campaign. I believe that the amendment by Mr. Barr is simply not constructive toward this end and should not be enacted.

While it may make some members feel good to go after an easy political target in Ogilvy, the bottom line we should all be concerned about is that it will not improve the campaign. It will cause more problems, problems we may not be able to surmount.

I appreciate our witnesses being here to discuss the impact of the Barr amendment from their various perspectives. Let me say this, that I think that whenever there is an agency, a company that does criminal activity or is alleged to have done criminal activity, I think we need to look at that very seriously. My constituents pay taxes, as all of our constituents do, and they want to make sure that when government spends money, that money is being spent properly. And the thought that a campaign is being conducted with government money and that government money is not being spent the way we intend it, I think flies in the face of our constituents and it also does damage to their hopes and their dreams that they will have an additional tool in helping them to address the drug issues with regard to their children.

And so, Mr. Chairman, I certainly understand Mr. Barr's concern. I have had an opportunity to talk to him extensively. My concern is that it's the bottom line, and the bottom line being I want to make sure the campaign continues. Thank you very much.

Mr. SOUDER. Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman. I don't know quite where to start. This is a highly unusual hearing. I was not aware that this is a hearing on the Barr amendment. That would be even more unusual than this hearing appears to be. I have to express some disappointment today we have a company that despite on the record evidence of fraud, it has admitted to irregularities, there's a continuing, apparently a continuing criminal probe of this company, and in an effort to simply secure a vehicle whereby the Congress as stewards of taxpayer money, in this case up to in excess of \$700 million, could exert proper oversight at a critical point, that is in the appropriations process, the reaction of some in ONDCP is to fan out on Capitol Hill, claiming that the sky is falling, saying that a program will go dark, which is absolutely ludicrous.

The funding that we are talking about in the appropriations bill and through the so-called Barr amendment, it is not a Barr amendment. It was adopted by a voice vote. If the distinguished gentleman on the other side had such objections to it he should have voted against it, demanded a roll call vote and voted against it. The leadership on his side supported it. The reaction of some in this committee is to try and undercut what we are trying to do. It is to rally around the bureaucrats and, while I hope that is not the case, the comments of the gentleman on the other side indicating that this is an effort to stop the Barr amendment leads me to conclude that it may very well be the case. I remain open to assurances that it's not.

No program in this government is so important that we ought to overlook violations of the law, and I'm amazed that a Member of Congress would take that attitude. I have assured the gentleman on the other side, and the reason that he approached me was I thought that he would accept my assurances, his comments indicate apparently not and I'm sorry that there's something that I didn't say to him that makes it more clear. It is not my intention to stop this program. The amendment that was adopted by the full House will not stop this program. And I resent the fact that ONDCP is running around up here on the Hill and probably will sit here today and claim that the sky is falling, that a program which we all support, including myself, Mr. Cummings, will cease and we will lose the drug war if we simply stand up and say that a company that has defrauded the government of this country the people of this country and to which ONDCP is turning a blind eye should continue to receive hundreds of millions of dollars in taxpayer moneys.

The only purpose for the amendment is to make a statement to the taxpayers, to go on record as a Congress and to give us a vehicle to take a close look at this whole issue. And why in heaven's name you all are fighting me on this, to simply address this issue, why ONDCP is fighting us on this issue is beyond me. What I am trying to do is to bring honesty and integrity to this process, the anti-drug media campaign, so that it works better, for heaven's

sake. Why do you all object to that? I don't know why you all object to that.

Now, I've heard rumors that there are sweetheart deals out there. I certainly hope that's not true. But we don't have the witnesses here today, Mr. Chairman, that can answer these questions. These questions need to be answered at the same level that we posed the questions earlier, in earlier hearings at the top levels of ONDCP.

Sending up a Deputy Chief of Staff, and I have great regard for Mr. Marston, he's not in a policy or legal position to answer the questions that we have. Sending up an Executive Director for an office over at the Department of Navy, and I have great regard for Mr. Jaggard, he's not going to be able to answer the questions that we need.

So I go back, I'm not quite sure what the purpose of this hearing is. Very serious questions have been raised on the record by this subcommittee and by the full committee. And I just hope that there's not some effort out there to sweep all this under the rug, because I consider this very, very serious. Something is going on here that doesn't smell right, and I think it's going to take the very program, Mr. Cummings, that you and I both support.

I am not trying to kill the program. I'm trying to make it better, for heaven's sake. I don't know why you all don't believe me. There is demonstrated fraud that has been perpetrated by this company. All we are saying is that company at this point in time should not continue to benefit from taxpayer dollars, and there are other companies out there that can step into the breach if we need that. We're looking at 2003 fiscal year, not 2002.

I yield back.

Mr. SOUDER. Mr. Mica, do you have an opening?

Mr. MICA. Thank you, Mr. Chairman, distinguished ranking member and my colleagues. I had the opportunity to chair this subcommittee when we initiated this program. And if we review for just a second the history of all this, I proposed early on that we increase the television media, public interest contribution originally and introduced legislation to that effect. But the Clinton administration wanted to use taxpayer dollars. The compromise we reached was a program to combine donated time and services with taxpayer contribution and \$1 billion plus program. I think you all will recall that the whole program got off to a rocky start. We had the former Director of ONDCP, Barry McCaffery, step forward and tell us in the beginning they sat around and tried to figure out what to do and finally decided to let a large number of contracts out.

Unfortunately, the contracting out got out of hand on the contractors, it got out of hand. They chose Ogilvy & Mather. And we monitored the program to some extent, like you recall. I was dismayed after some time when we had a whistleblower come to us with information that astounded me that there were overbilling, fraudulent practices going on with Ogilvy & Mather in this whole program, and I believe worked with the IG and others who did the initial investigation and since then we have found fraud, we have pending criminal investigation. We've had a settlement, I believe admitting wrongdoing.

I'm also concerned, like my colleague Mr. Barr, about what's gone on. I was floored when the contract was reawarded to Ogilvy & Mather given the circumstances and problems that we had seen with the contract. We have not only the unique role of being the authorizers of this program but also government reform oversight responsibilities to look at how this is operating. So it's fitting that we do see how this has come about.

I share Mr. Barr's concern that we need to know everything is above the board, that—and I think all of us don't want the program to go dark. That would be—that's not our intention. But we must find out what's taking place with this program. And this contract, as I understand it, could end up being almost three quarters of a billion with all the add-ons. So we need to know, we need to get some answers, we need to keep the campaign going and I support that. But we must protect taxpayers' interest and move the program forward.

I look forward to working with you in that regard. I yield back.

Mr. SOUDER. We're going to recess for this vote. But let me make it clear we're not going to accept point blank the word of ONDCP that the program would go dark nor would we accept the word of Mr. Barr that it's not going to go dark. The point of this hearing and future hearings is to figure out what actually would happen. I believe the witnesses before us today will provide enlightenment. We'll work through it. Because of Mr. Barr's aggressive efforts we are pursuing this. If he and Mr. Mica and others of us hadn't been persistent, we could have easily just gone on and said, well, we're going to accept this. But if we don't accept it we have to figure out how we're going to do the transition. We need to figure out whether ONDCP is preparing for any transition from the advertising community, and that is a first step in that process. Because we can't just make assertions, we have to look for the facts.

With that, we stand in recess.

[Recess.]

Mr. SOUDER. Before proceeding I would like to take care of a couple of procedural matters first. I ask unanimous consent that all Members have 5 legislative days to submit written statements and questions and that any answers to written questions provided by the witnesses also be included in the record. Without objection, so ordered.

Second, I ask unanimous consent that all exhibits, documents and other materials referred to by Members and the witnesses may be included in the hearing record, and all Members be permitted to revise and extend their remarks. Without objection, it is so ordered.

I would like to ask the panel to come forward. Mr. Christopher Marston, Mr. Michael Jaggard, and Mr. Al Martin. If you will stand, raise your right hands, I will administer the oath.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that the witnesses each have answered in the affirmative.

The witnesses will now be recognized for opening statements. I ask you to summarize your testimony in 5 minutes. Any fuller statement you may wish to make will be included in the record. Mr. Marston will begin as the representative of the ONDCP, who

is a former staff member of the subcommittee, now back in his role as deputy chief of staff. So you know how the routine goes. We welcome you in a different capacity, and we look forward to hearing your testimony.

STATEMENT OF CHRISTOPHER MARSTON, DEPUTY CHIEF OF STAFF, OFFICE OF NATIONAL DRUG CONTROL POLICY

Mr. MARSTON. Thank you, Mr. Chairman.

Mr. Chairman, Mr. Cummings, members of the subcommittee, it is a pleasure to be here. I have to admit after the opening statements that I like my old seat behind the dais better. But I appreciate your commitment to this issue and the support you have given, and everyone has acknowledged today the media campaign and its importance to the President's national drug control strategy.

I appreciate in particular, Mr. Barr, your commitment to work in conference to make sure that the campaign doesn't stop. We all are committed to that goal. And I hope that you won't take any of my representations today as a Chicken Little, sky is falling commentary. We are committed to working very hard to make sure that the campaign continues.

Our concern is over the contracting process and the difficulty in securing a new contractor and the potential liability involved in not having—in continuing this contact.

I, of course, am not a contracting expert, and I am pleased that Mr. Jaggard is here representing the Navy, which does the contracting work for the media campaign at this point. So we rely on the Navy because ONDCP, as you know, is a small office principally involved in policy work, and we have a fairly small team for our media campaign and don't have the infrastructure to support a contract this large in-house. So that is why we rely on the Navy.

I have prepared a substantial statement for the record, Mr. Chairman. I appreciate you allowing us to introduce it.

So just to summarize our concern, it is a difficulty in transition, and I understand people have different opinions about how long a transition would take and the steps. It is the contracting activity that we are principally concerned about.

The recompetition that resulted in the current contract award took 9 months. That is not necessarily how long another competition would take or the only means to secure advertising services. But our indications are that 6 to 9 months is not atypical to have a contractor in place. So that is our principal concern.

I will be delighted to answer further questions about the potential impact of an interruption of service after the other witnesses have given opening statements. Thank you.

Mr. SOUDER. Thank you.

[The prepared statement of Mr. Marston follows:]

**Statement by Christopher M. Marston,
Deputy Chief of Staff, Office of National Drug Control Policy
Before the House Government Reform and Oversight Committee,
Subcommittee on Criminal Justice, Drug Policy, and Human Resources.**

*“Programmatic implications of certain potential restrictions on funding for the
National Youth Anti-Drug Media Campaign”*

July 26, 2002

Chairman Souder, Ranking Member Cummings, and distinguished members of the Subcommittee:

I am honored to appear before the Subcommittee today to discuss the provision included in the Treasury, Postal Service, and General Government Appropriations Bill concerning ONDCP's ability to obligate Fiscal Year 2003 funds in support of the National Youth Anti-Drug Media Campaign. On behalf of the Director of National Drug Control Policy, John Walters, I want to express our sincere appreciation to the Subcommittee for its strong bipartisan commitment to developing and implementing a balanced drug control program that will achieve the President's goals to reduce drug use in America by ten percent in two years and twenty-five percent in five years.

I. Introduction

Effective drug prevention programs are critical to ensure that youth have the tools they need to resist the temptation to use illicit drugs. The President's Fiscal Year 2003 Budget requests \$180 million to continue the Campaign. The President, Congress, and the American people rightly have high expectations for the Campaign, recognizing its potential to be one of America's most important tools for addressing the national priority of reducing youth drug use. The Campaign is one of the few systematic drug prevention efforts for youth conducted by the federal government that are truly national scope to counter the many pro-drug influences confronting our children.

Recently, a great deal of attention has been paid to the latest evaluation of the Media Campaign. The evaluation contained some positive findings, as well as some troubling news. Based on that evaluation and a Task Force report¹, ONDCP and PDFA committed to jointly examine process issues to improve the overall effectiveness of the Campaign. Specifically, ONDCP has modified the Campaign as follows:

¹ On February 26, 2002, the Campaign convened a Task Force to examine strategic issues affecting Campaign performance, especially issues related to: 1) revisions to the ad testing protocol; 2) reassessing the youth age target; 3) the appropriateness of our youth message strategies; and 4) the creative development process.

- Thoroughly test all TV ads (qualitatively and quantitatively) before they are aired, based on a higher standard that would be developed after consulting with experts and our pro bono partners.
- Retain the general focus on youth aged 9-18, but amend the targeted core communication efforts to focus on 14-16 year olds.
- Increase the efforts against marijuana --- the primary illegal drug used by youth.
- Work with our pro bono partners to streamline the advertising development process and build in more ONDCP involvement, as recommended by the Task Force. Continue to use alternate means to fill critical unmet and important Campaign needs.

We believe that these modifications, coupled with the continued flexibility to manage properly and implement the Media Campaign, will maximize its ability to stop drug use before it starts.

II. ONDCP's Ability to Obligate Fiscal Year 2003 Funds in Support of the Media Campaign

Background.

As the Subcommittee is aware, on July 24th, Representative Barr offered an amendment on the House Floor pertaining to the Media Campaign. The amendment was accepted and is incorporated as part of the House-passed Treasury, Postal Service, and General Government Appropriations Bill. The provision provides as follows:

“None of the funds made available in this Act under the heading ‘Special Forfeiture Fund (Including transfer of funds)’ to support a national media campaign shall be used to pay any amount pursuant to contract number N006000-02-C-0123.”

The contract referenced in the provision was recently awarded by the Department of the Navy to Ogilvy and Mather (the Campaign’s current advertising contractor) to provide media buying, advertising, strategic planning, and a range of other services required to support the successful implementation of the Campaign (including the pro bono match). This award and procurement process were conducted in accordance with the Federal Acquisition Regulation.

The provision prohibiting ONDCP from obligating Fiscal Year 2003 funding pursuant to the recent contract will leave the Campaign without a professional, experienced entity to purchase advertising time and space. Consequently, ONDCP’s ability to implement recent modifications recommended by the Task Force, to manage the Campaign efficiently, and to sustain the continuity of effective messages necessary to combat negative social influences encouraging youth drug use will be significantly diminished.

The prohibition will have substantial debilitating effects on the media effort.

At the present time, it is extremely difficult to determine a definitive "lights out date" for the Media Campaign's advertising contract should the prohibition become law. Based on current plan parameters, objectives, and strategies, ONDCP would expect to suspend the advertising effort approximately by November, 2002. The Campaign could utilize certain forward funded obligations under the current contract to continue to run minimal advertising this fall and early winter, but only at a significantly reduced and ineffective level of activity that would not achieve the expected results of positively changing youth attitudes and behavior and would waste valuable taxpayer dollars. Advertising would not resume until the Campaign has a new contract through which to obligate effectively Fiscal Year 2003 funds.

In addition, the Campaign would be forced to:

- Eliminate all local market and state-by-state media activity (local newspapers, local radio, local out-of-home media and local television media buys).
- End the ability to field multi-cultural media and outreach efforts to the African-American, Hispanic American, Asian American and/or American Indian audiences.
- Terminate the ONDCP advertising presence on the Internet.
- Cease use of all national magazine advertising.
- Lose the important ability to track and evaluate short term Campaign performance. The current advertising contractor manages a number of internal and external feedback and evaluation systems that assesses the effectiveness of Campaign advertising, media buying/placement and youth/parent anti-drug attitudes (separate and distinct from the NIDA-managed Westat evaluation).

The prohibition will impair Director Walters' ability to implement necessary modifications to improve the effectiveness of the Campaign.

Should the prohibition become law and pending a new contract through which to obligate Fiscal Year 2003 funds:

- Resources will not be available to conduct copy test research on all advertising prior to air. This testing is critical to ensure effectiveness in conveying the appropriate message and influence the proper behavioral response.
- The plan to streamline and improve the ad development process and re-focus our efforts on older youth and marijuana consumption will be placed on hold, exacerbating delays in creating ads and affecting Campaign continuity.

The prohibition will disrupt the positive momentum the Campaign currently is building, which has the potential to damage irrevocably the program's ability to reduce youth drug use.

The Campaign is having a significant impact on parents, enhancing their belief that they can make a difference in their children's decisions about illicit drug use. The recent Westat evaluation indicates stronger positive attitudes and behaviors regarding talking to kids about drugs, belief about monitoring, and actual monitoring of their kids to help protect them from drugs. Particular progress was noted among fathers, a traditionally difficult target to affect.

The Campaign is expanding successfully the anti-drug "brands" created and implemented for both the youth and parents advertising marketing efforts. Branding consolidates communications and increases consumer recognition of anti-drug messages; maximizes the impact of advertising dollars; creates synergy between advertising and non-advertising messages; and unites the Campaign messages. The Westat evaluation demonstrates that the integrated communications effort has built anti-drug brand recall and recognition among youth to nearly 70% and among parents to 55%.

The Campaign is preparing to launch a second flight of the significant initiative underscoring the connection between Drugs and Terror. Thus far, this initiative has achieved a remarkable in-market success, with awareness of over 80% among youth 14 to 18 and 60% among all adults. The AntiDrug.com web site achieved a 165% increase in monthly page views since the advertising launch. The number of parents subscribing to a free email service providing parenting and drug prevention tips more than doubled since the Drugs and Terror campaign began.

Unfortunately, all of these positive efforts will be disrupted if the government is prohibited from obligating Fiscal Year 2003 funds to pay the current advertising contractor for the Media Campaign and is forced to re-solicit the advertising contract for Fiscal Year 2003. Furthermore, as a result of ceasing Campaign advertising during this time period, we anticipate that awareness levels will decrease dramatically among youth and parents. When the Campaign resumes its advertising effort, we estimate that it will cost approximately \$43 million to regain the same high level of awareness the Campaign is achieving currently.

The prohibition will damage public service support.

The pro bono match program required by the authorization, which requires media vendors to contribute an additional amount of communications activity of equal value to that purchased by ONDCP, would be dramatically affected. Without a media buying contractor in place to negotiate and monitor adherence to the pro bono regulations, the Campaign's ability to secure media time and space and its match will be impeded significantly.

Suspending the pro bono match program would create a net loss in delivery of our Advertising Council/PDFA/ONDCP anti-drug messages and those of the more than 80 public health partners that participate through the match (totaling approximately \$73 million). These include such organizations as, Boys and Girls Clubs, 4-H, America's Promise, National Crime Prevention Council, Save the Children and Mothers Against Drunk Driving.

III. Conclusion

When President Bush released the *National Drug Control Strategy* this February, he articulated the Administration's position that we must have clear goals that can be measured, that we take responsibility for achieving them, and that we explain how we will meet them. The President's drug control program places a heavy emphasis on obtaining measurable results and providing accountability to the American people, to Congress, and to our international partners. As the National Youth Anti-Drug Media Campaign is a critical component in our effort to stop drug use before it starts, it must be managed in a fashion that optimizes effectiveness.

The provision prohibiting ONDCP from obligating Fiscal Year 2003 funds to its advertising contractor in support of the Campaign does not allow us to optimize the effectiveness of the Campaign. ONDCP is committed to working with this Subcommittee, the Appropriations conferees, and indeed, the entire Congress to ensure that the Campaign is an effective tool for reducing drug use in America. I thank you for this opportunity to testify and look forward to answering any questions you may have.

Mr. SOUDER. Mr. Jaggard.

**STATEMENT OF MICHAEL JAGGARD, EXECUTIVE DIRECTOR
FOR ACQUISITION AND BUSINESS MANAGEMENT, OFFICE OF
THE ASSISTANT SECRETARY OF THE NAVY FOR RESEARCH,
DEVELOPMENT AND ACQUISITION, DEPARTMENT OF THE
NAVY**

Mr. JAGGARD. Good morning, Mr. Chairman and Mr. Cummings, members of the subcommittee. I am Mike Jaggard, the Navy's Executive Director For Acquisition and Business Management. And I am pleased to be here this morning to discuss with you this contract for the antidrug media services for the Office of National Drug Control Policy, including the contracting implications of certain potential restrictions on funding for the program.

The Navy first got involved in this project in November 2000 when we assumed responsibility for the prior contract. Based on a report that was issued by the General Accounting Office, the Navy contracting officer issued a referral to our Procurement Integrity Office in July 2001 because of the alleged improper charges and possible violations of civil fraud by the incumbent contractor, Ogilvy.

At the request of the customer, in August 2001, the Navy decided that we would not exercise the next option in that particular contract and would conduct a new procurement. We issued a new solicitation in December 2001. We went through an extensive source selection process and selected Ogilvy and Mather for award of the new contract on July 3rd of this year.

On January 29, 2002, the Department of Justice entered into a settlement agreement with Ogilvy regarding the alleged civil fraud allegations. Under the terms of that settlement agreement, there was no admittance by Ogilvy of any misconduct. On April 5th of this year, the Navy's debarring official and Ogilvy entered into an administrative agreement, the purpose of which was to demonstrate that the contractor's past performance problems have been identified, constructive measures implemented, and to provide assurances that the contractor's future conduct will comply with the higher standards of business ethics and integrity that we expect from those that we contract with for the Federal Government.

The decision to award the contract to Ogilvy was made in accordance with all current law and regulation. I have reviewed the contracting officer's determination of responsibility with respect to Ogilvy, and I concur with it.

Regarding the impact of the proposed legislation on the program, of course that will ultimately depend on the final form of such legislation. However, based on what has been approved by the House this week, the first step would probably be to dispose of the existing contract.

The most likely outcome if the legislation is enacted is that the Navy would have to terminate the existing contract for convenience of the government. A termination for convenience carries with it the potential for substantial liability to the government for termination costs. The government would also have to award a new con-

tract which could require the government to start the whole process over again.

Thank you, Mr. Chairman, for this opportunity to participate in today's hearings, and I look forward to your questions.

Mr. SOUDER. Thank you.

[The prepared statement of Mr. Jaggard follows:]

NOT FOR PUBLICATION UNTIL RELEASED BY THE
HOUSE GOVERNMENT REFORM COMMITTEE
CRIMINAL JUSTICE, DRUG POLICY, AND
HUMAN RESOURCES SUBCOMMITTEE

STATEMENT OF

MR. MICHAEL F. JAGGARD
EXECUTIVE DIRECTOR
ACQUISITION & BUSINESS MANAGEMENT
OFFICE OF THE ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT, AND ACQUISITION)

BEFORE THE

CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES SUBCOMMITTEE

OF THE

HOUSE GOVERNMENT REFORM COMMITTEE

ON

PROGRAMMATIC IMPLICATIONS OF CERTAIN POTENTIAL RESTRICTION
ON FUNDING FOR THE ANTI-DRUG MEDIA CAMPAIGN

JULY 26, 2002

NOT FOR PUBLICATION UNTIL RELEASED BY THE
HOUSE GOVERNMENT REFORM COMMITTEE
CRIMINAL JUSTICE, DRUG POLICY, AND
HUMAN RESOURCES SUBCOMMITTEE

Good morning Mr. Chairman and members of the Subcommittee. I am Mike Jaggard, the Navy's Executive Director of Acquisition and Business Management. I am responsible for contract policy and oversight for the Department of the Navy. I am pleased to be here this morning to discuss with you the contract for the anti-drug media services for the Office of National Drug Control Policy, including the contracting implications of certain potential restrictions on funding for the program.

In November 2000, the Navy assumed responsibility for the contract awarded by the Department of Health and Human Services. Based on a report issued by the General Accounting Office, the Navy contracting officer made a referral to the Navy's Procurement Integrity Office in July 2001 because of alleged improper charges and possible violations of civil fraud statutes by the incumbent contractor, Ogilvy.

At the request of the customer, in August 2001, the Navy decided that we would not exercise the next option in the contract, and issued a new solicitation. Five proposals were received in December 2001, and award was made to Ogilvy and Mather on July 3, 2002. The basis for award was best value to the government. Copies of all the applicable source selection documentation have been provided to the Subcommittee. The Navy followed the same rigor and scrutiny to this contract as it does to a major defense acquisition.

On January 29, 2002 the Department of Justice entered into a settlement agreement with Ogilvy regarding the civil fraud allegations. On April 5, 2002, the Navy's Debarring Official and Ogilvy entered into an administrative agreement regarding the Contracting Officer's referral to the Procurement Integrity Officer. The purpose of this agreement is to demonstrate that the

contractor's past problems have been identified and corrective measures implemented, and to provide assurances that the contractor's future conduct will comply with the highest standards of business ethics and integrity that we expect from those who contract with the Federal government.

The decision to award the contract to Ogilvy was made in accordance with current law and regulation. I have reviewed the contracting officer's responsibility determination and concur with it.

Regarding the impact of proposed legislation on the program, that will ultimately depend on the final form of any such legislation. However, based on the current proposed legislation, the first step would be to dispose of the current contract, which is incrementally funded. Depending on the timing, the Navy would either terminate the contract for convenience or simply not exercise the next option. Termination by the government could result in liability for substantial costs. The government may also have to award a new contract, which could require the government to start the process over again.

Thank you Mr. Chairman for the opportunity to participate in today's hearing. I would be pleased to answer any questions you might have.

Mr. SOUDER. Mr. Martin.

STATEMENT OF AL MARTIN, PRESIDENT, A.J. MARTIN AND ASSOCIATES, LTD.

Mr. MARTIN. Good morning, Mr. Chairman.

Mr. Chairman, the ranking member, members of the committee, it is a pleasure to be here today to discuss the implications of certain potential restrictions on funding for the national youth anti-drug media campaign, which I will call the media campaign from here on in.

Thank you for the invitation, Mr. Chairman. I have been asked to give my opinion regarding the likelihood that such funding restrictions would cause serious disruption to the campaign's impact against its target audience, that is youth 9 to 18 years old, their parents, and other adults who may influence them.

By way of introduction, I think I should point out that I am a marketing and advertising consultant with over 30 years of experience, including 16 years managing my own consulting business. That business focuses primarily on advertising and advertising agency management issues. I have worked both on the client side of the advertising business, and on the agency side, as an employee on the client side, and the agency side as well.

I have been a senior executive in both the commercial and government sectors. My government service was as Director of Accession Policy in the Office of the Secretary of Defense, in effect working as the senior-most DOD marketing and advertising executive supporting the voluntary acquisition of all military manpower. I served in that position for the better part of a decade.

As a consultant working with some of industry's leading advertising agencies, I have been involved with many transitions as clients have changed advertising agencies. A few examples of those that I have been involved with are such large-scale and complex accounts, as Dell Computer, AT&T, BellSouth, Federal Express, Texaco, M&M Mars, Bayer Aspirin, Pizza Hut, the recruiting accounts for the U.S. Air Force and the Navy, and I am currently heavily involved with the Daimler Chrysler account, the largest advertising account in the world.

The issue, if I can restate it, is assuming if the incumbent advertising agency is barred from continuing to service the media campaign account, beginning on the 1st of October 2002, will the campaign's impact in the marketplace be seriously disrupted? Simply put, in the language that has been used here, will the campaign go dark or be seriously dimmed?

I believe with the vendor funding restriction, as I understand it, and I am not a contract expert, there is very little chance of any serious disruption to the media campaign. The hardest working part of the campaign is the core working media. This includes television, radio, print, out-of home, online advertising. This is what delivers the message impactfully to the target audience, and it is what the managerial focus must be on if the campaign's message is to be sustained against the eyes and ears of the people we are trying to reach and influence with the message.

The creative and media planning work, I am told, has been done that will carry the program well in to fiscal year 2003. That is, the

planning work and the creative is available, and there is a creative available to carry the program well into fiscal year 2003.

Two things must happen if any potential disruption to the media campaign is to be minimized or eliminated. First, a new advertising agency must be selected and awarded the contract. Second, there must be an effective transition to that new agency. The former requires aggressive management by ONDCP and its contract support. The latter requires an aggressive transition plan managed also by ONDCP with the full cooperation of the outgoing incumbent agency working with the newly selected agency.

Let's take the easy one first, transition. In the real world—let's talk about how it happens in the real world—the transition to the new agency is the relatively easier of the tasks that we are facing. Agency turnover is frequent in the private sector. Agencies turn over all of the time. All top-tier advertising agencies, and all of the ones that we are dealing with here are top-tier advertising agencies, know very well what is involved in such a transition.

Most highly complex account transitions in the private sector are accomplished in under 30 days. With the right focus on working media, this media campaign situation should be little different than that in the private sector.

The harder task is getting a new agency selected at light speed. Based on my government experience and my knowledge of the advertising agency selection process, I believe it is possible to expedite and shorten the process so as to have a new agency before the start of fiscal year 2003. Now, that would take some serious, focused, aggressive hard work in bending some of the constrictions that you have on contracting, and I have a couple of suggestions as to how you might do that.

In a worst case, if I am overestimating the ability of ONDCP and its contract support to get this critical task accomplished, I would find a way to extend the incumbent agency's contract for a short period and somehow fund it with fiscal year 2002 money. And you have to understand that the whole budget for this media campaign is not the revenue that the advertising agency gets. In order to accomplish that, or let us say for 3 months if you wanted to extend it, the agency's revenue is—I don't know exactly what is it, the contracting people can tell you that, but I would guess that it is probably 8 to 10 percent of the total amount of media spending that is going on in the account. So that means for maybe a million, a million two, a million and a half per month, for 3 months you can keep the agency on board if you can find 2002 money that you can obligate now and keep them working.

My recommendations, Mr. Chairman, this program is clearly an important national public policy program. We all certainly agree to that. It should not be disrupted because of this administrative circumstance.

To ensure that it does not have a net detrimental impact, ONDCP must manage the situation aggressively with the oversight and support of the Congress. Specifically, I recommend that a new advertising agency be selected on an expedited basis. For both speed and effectiveness, I would consider the other four finalists in the recent solicitation for this account as a selected set of prequalified vendors and select one of them. They are all highly ca-

pable advertising agencies. I believe there are four of them. If that were not possible, I would create a shortened, truncated solicitation process, possibly starting with agencies already on the GSA schedule to get a qualified agency on board in the next 45 days.

Now, there are people that would say that this guy Martin is nuts, you can't do that in the government in that short period of time. Well, this guy Martin has worked in the Federal Government and in the private sector, and I understand both sides of it, and if it were my job to get it done, I would get it done.

While the agency selection process is ongoing, I would have ONDCP and the incumbent agency prepare a comprehensive and efficient transition plan to be kicked off the day the new agency is identified. Last, I would keep the management focus on the hardest-working elements of the campaign; that is, the working media.

Now, I am not questioning the fact that if you did not have an advertising agency, that this would be disruptive. The issue here is, how do you get the resources you need to keep the campaign running? I believe with effective and aggressive and focused management of the media campaign, that there is little risk of serious disruption to the campaign. The creative is not a problem, you have it. In the worst case you might have to use some of it that you have used before.

The creative is not a problem. The media is planned well into fiscal year 2003. The support from the Partnership for a Drug-Free America is rock solid. The ONDCP staff is in place. The incumbent agency is a highly competent firm who surely will aid in the transition. You even have a preselected set of potential agencies. The program is key to the Nation. All that is required is focused hard work by everybody concerned and the will to get it done, to get the support resources you need to keep the program running.

Mr. Chairman and members of the committee, thank you for this opportunity to discuss this really important program.

[The prepared statement of Mr. Martin follows:]

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STATEMENT OF

ALBERT J. MARTIN, Ph.D

PRESIDENT

A. J. MARTIN AND ASSOCIATES, LTD.

IMPLICATIONS OF

RESTRICTIONS ON FUNDING FOR THE NATIONAL YOUTH

ANTI-DRUG MEDIA CAMPAIGN

HEARING BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE

ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN

RESOURCES

JULY 26, 2002

Mr. Chairman and members of the committee. It is a pleasure to be here today to discuss the implications of certain potential restrictions on funding for the National Youth Anti-Drug Media Campaign (NYADMC). Thank you for your invitation.

I have been asked to give my opinion regarding the likelihood that such funding restrictions would cause serious disruption to the campaign's impact against its target audience, youth (9-18 years old), and their parents and adult influencers.

By way of introduction, I should point out that I am a marketing and advertising consultant with over 30 years of experience, including 16 years managing my own consulting business. That business focuses primarily on advertising and advertising agency management issues. I have worked both on the client side of the advertising business and on the agency side. I have been a senior executive in both the commercial and government sectors. My government service was as Director of Accession Policy in the Office of the Secretary of Defense -- in effect working as the senior most "DoD marketing and advertising" executive supporting the voluntary acquisition of all military manpower.

As a consultant, working with some of the industry's leading advertising agencies, I have been involved with many transitions as clients have changed advertising agencies. A few examples

include such large scale and complex accounts as: Dell Computer, AT&T, Bell South, Federal Express, Texaco, M&M Mars, Bayer Aspirin, Pizza Hut, recruiting for the U.S. Air Force and Navy, and Daimler Chrysler.

The Issue

Assuming that the incumbent advertising agency is barred from continuing to service the NYADMC account beginning on October 1, 2002, will the campaign's impact in the marketplace be seriously disrupted? Simply put, will the campaign "go dark or be seriously dimmed"?

I believe, with the vendor funding restrictions, there is very little chance of any serious disruption to the media campaign. The hardest working part of the campaign is the core working media. This includes television, radio, print, out-of-home, and on line advertising. This is what delivers the message impactfully to the target audience. And it is what the managerial focus must be on, if the campaign's message is to be sustained against the "eyes and ears" of the people we are trying to reach and influence. The creative and the media planning work, I am told, has been done that will carry the program well into FY 2003.

Two things must happen if any potential disruption to the media

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campaign is to be minimized or eliminated. First, a new advertising agency must be selected and awarded the contract. Second, there must be an effective transition to that new agency. The former requires aggressive management by ONDCP and its contract support. The latter requires an aggressive transition plan managed by ONDCP, with the full cooperation of the out-going incumbent agency working with the newly selected agency.

The transition to the new agency is the relatively easier of these two tasks. Agency turnover is frequent in the private sector. All top tier advertising agencies know well what's involved. Most highly complex account transitions in the private sector are accomplished in under 30 days. With the right focus on working media, this NYADMC situation should be little different.

The harder task is getting a new agency selected "at light speed". Based on my government experience, and my knowledge of the advertising agency selection process, I believe it possible to expedite and shorten the process so as to have a new agency before the start of FY 2003. In a worst case, if I am

overestimating the ability of ONDCP and its contract support to get this critical task accomplished, I would find a way to

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extend the incumbent agency's contract for a short period and somehow fund it with FY 2002 money.

Recommendations

Mr. Chairman, the NYADMC is clearly an important national public policy program.

It should not be disrupted because of this administrative circumstance. To ensure that it does not have a net detrimental impact, ONDCP must manage the situation aggressively with the oversight and support of the Congress.

Specifically, I recommend that a new advertising agency be selected on an expedited basis. For both speed and effectiveness, I would consider the other four finalists in the recent solicitation for this account as a selected set of qualified vendors and select from among them. They are all highly capable advertising agencies. If that were not possible, I would create a truncated solicitation process, possibly starting with agencies already on the GSA schedule, to get a qualified agency on-board in the next 45 days.

While the agency selection process is on-going, I would have ONDCP and the incumbent agency prepare a comprehensive and efficient transition plan to be kicked-off the day the new agency is identified.

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Lastly, I would keep the management focus on the hardest working elements of the effort, the working media.

Conclusion

I believe, with effective and aggressive and focused management of the NYADMC, that there is little risk of serious disruption to the campaign. The creative is not a problem. The media is planned well into FY 2003. The support from the Partnership for a Drug-Free America is solid. The ONDCP staff is in place. The incumbent agency is a highly competent firm who surly will aid the transition. You even have a pre-selected set of potential new agencies. The program is key to the nation. All that's required is focused hard work and the will to get on with it.

Mr. Chairman and members of the committee, thank you for this opportunity to discuss this most important program.

Mr. SOUDER. Possibly the most significant thing in your testimony, in a joking way, is that you said incumbent agency is—there is a typo—it says surly rather than surely.

Mr. MARTIN. That is a typo. I didn't say that.

Mr. SOUDER. You said it correctly.

A couple of things. First, for Mr. Marston, that one thing we understand is that Ogilvy may have already purchased time for this fall and into 2003. Is that true?

Mr. MARSTON. Mr. Chairman, they have, in what is called the up-front buying season, made reservations for the whole buying season, which is a July to June season. Those reservations have not all been funded. At this point only the first quarter of that period, so July through September has been committed and funded. Those reservations would have to be funded for the subsequent quarter, would need to be funded on August 30 to get September through December, and then succeeding dates through the year. So we have only actually purchased time for the first quarter of that buying season.

Mr. SOUDER. You are talking about the first quarter of the buying season out of the government funding?

Mr. MARSTON. That is correct.

Mr. SOUDER. Do you have 2002 funds such that can purchase into 2003?

Mr. MARSTON. We don't believe that we could purchase into 2003—the fiscal year 2003, yes, but not into calendar 2003.

Mr. SOUDER. We have a different understanding from Ogilvy. Our understanding is that when Ogilvy says that they have purchased into January, you are saying that they have committed for the time, but they have not paid for the time. Is that your understanding?

Mr. MARSTON. That is correct, they have reserved the time. Commitment is when you actually pay for it. So they have made those reservations.

Mr. SOUDER. Having been in the private sector advertising, I know there is that difference in the public sector. We can't do that. It is cash on the barrelhead.

Mr. Martin, you have—you had an interesting statement. In your statement you said that your—I forget the exact. You said creative and media plan work, I am told that—have you heard anything about this particular question, whether it is reserved?

Mr. MARTIN. The obligation of the funds versus the media availability?

Mr. SOUDER. Yes.

Mr. MARTIN. To me the important word in my testimony is "plan." What you do is have as the advertising agency plan for you how to expend your resources against target, and so they create that plan. When they create that plan, they are looking to reserve that time for the things that they have in the particular vehicles that they want to fund in the plan.

It is my experience in the private sector is that one is really planning forward and in a sense committing current money to that, currently budgeted money to that plan.

You would have to ask the contracting folks exactly what they are doing with their fiscal year 2002 money. My suspicion would

be that you obligate 2002 money in, let's say the—the current quarter, and that money would be used then to actually buy the time and space in—in the first quarter.

I think that is what was meant by the fact that we can sort of cover the first quarter. I think if you can cover the first quarter, that is what I meant by—

Mr. SOUDER. First quarter being October to December?

Mr. MARTIN. Yes. Of 2003. That would allow you, in my view, plenty of time.

Mr. SOUDER. Mr. Jaggard, is that your understanding, that the fiscal year 2002 can cover the buy for the first quarter?

Mr. JAGGARD. The \$37 million that we obligated at contract award was intended to cover the commitments and obligations of the contractor during the remainder of this fiscal year. If those include buying of the time for the next quarter, then, yes, that would be correct, but I don't know that for a fact myself. I would ask if Mr. Marston did.

Mr. SOUDER. Do you know?

Mr. MARSTON. There is a question as to what other purposes we may have to use the funds for. If we were to terminate the contract for convenience, there would be termination costs and we would be unable to use 2003 funds to pay those costs. So we would have to use some the money—fiscal year 2002 money that is currently allocated. For termination costs, I am not sure how much would be available and how far into the October-December we could buy. Our estimate is that we would be able to fund through late October or possibly early November.

Mr. SOUDER. So if I understood—let me make sure I understand what you are saying. Is that, yes, the funds would normally be used to pay out of 2002 for October and December, but—because if there is a termination charge, you would have to use some of those funds you would have paid for for October to December, unless, of course, Congress gave you additional funds to cover the termination?

Mr. MARSTON. That is correct.

Mr. SOUDER. So theoretically do you know a case like that, Mr. Martin, where there would have been—do you know of any case, by the way, when there is a termination—did you have any case when you were at the Department of Defense where there was termination and there were lawsuits or termination costs?

Mr. MARTIN. To my knowledge, on the major accounts there has never been such a situation.

Mr. SOUDER. Mr. Jaggard, you said we could be exposed. Is that something that is automatic in the contracting process, or is that something that would be the discretion of whether Ogilvy chose to pursue? And if an ad agency chose to pursue, of course, there may be different attitudes for future contracting. Would that not be a detriment for somebody seeking that, unless it is mandatory?

Mr. JAGGARD. Mr. Chairman, the terms and conditions of contract specify the termination procedure. There is a clause in the contract that specifically lays out those costs that the contractor is entitled to claim in the event that the government terminates the contract.

Mr. SOUDER. Do you know what that is in this case?

Mr. JAGGARD. No, sir. The process would be for us to first notify the contractor that we had terminated. We would also have to notify any subcontractors. Then he would have to prepare a proposal and submit it to us, and it would include the proposals from the subcontractors as well. To try to estimate that in advance would be a difficult thing to do.

Mr. SOUDER. Well, I want to ask one other supplement with that. Did—in the Navy's consideration of the bidding, did they at all factor in that this 5-year contract, that—that Congress might choose to abrogate that contract, which could expose the terminations costs? Do those things get considered in the bidding process?

Mr. JAGGARD. It is not part of the actual source selection process, Mr. Chairman, because we normally don't go into the source selection assuming the possibility that this kind of action might occur. We do structure the contract, however, with base periods and options so that we have some protection on the liability of the government. The contract also contains a clause called the limitation of funds clause, which limits the government's liability to the total amount currently obligated on the contract.

Mr. SOUDER. Mr. Cummings.

Mr. CUMMINGS. Mr. Martin, is this an unusual situation where you have a contract, but a situation where the funding might not be there because of congressional action?

Mr. MARTIN. I think it is unusual, yes, sir.

Mr. CUMMINGS. And the—in listening to what you had to say about a substantial portion of the funds in the contract going to—to go to the purchase of the media; is that correct?

Mr. MARTIN. Yes, sir. If I can explain that.

Mr. CUMMINGS. Let me just put a little tail on that so that you can answer me completely.

So I would imagine if one were to look at damages, one would have to conclude that damages would certainly not include money that would be normally spent for the purchase of the advertising?

Mr. MARTIN. That would be a surprise for me.

Mr. CUMMINGS. So I am trying to see—to see how limited the liability would be, do you follow me, if any?

Mr. MARTIN. Yes, sir. I don't know the terms of the termination clause in the contract. I can tell you what is the typical situation in the private sector. On a big contract such as this, agencies have—there is a termination clause, and the termination clause is usually 90 days to—if it were liberally agreed to, maybe 6 months where the agency continues to get paid its revenue for performing that service.

The reason that is done is because human beings are involved here. It is a personal service business. We have staffed up, and you terminate the contract, you have people that are affected by that. Agencies want to cover some risk—they want to cover the risk of the harm to those folks.

Mr. CUMMINGS. I take it that 3-month period is like a wind-down?

Mr. MARTIN. Yes, sir. That is the way it is done in the private sector. I really don't know about the termination in this contract, what the clause is.

Mr. CUMMINGS. Could you comment on that, Mr. Jaggard?

Mr. JAGGARD. Yes, sir, I would. The normal process of terminating a government contract, we first notify the contractor, and you ask him to take all action necessary to preclude incurring any additional costs. That is to the best of his ability. And then we give him a 30-day period to prepare and submit to us a termination proposal.

We then go through the process of evaluating and negotiating the proposal and come up with a settlement. And I would emphasize again that our liability, the government's liability, is limited to the money that is actually obligated on the contract.

Mr. CUMMINGS. Now, when we have a situation where—when you all were looking at the bids, is it illegal for you all to take into consideration—I am trying to figure out how we got here. Is it illegal for you all to look at allegations or possible settlements or whatever criminal—regarding criminal activity when you are looking at the bids themselves?

Mr. JAGGARD. It is not only not illegal, but it is actually required, and we did do so in this situation.

Mr. CUMMINGS. Now, if you—if I have got five, six companies, and assuming all of them are on somewhat of an equal plane, does the fact that there are pending investigations or things that look like it is imminent that you are going to have some kind of settlement involving criminal activity, does that take away points from the—that contract?

Mr. JAGGARD. In the case of the ongoing criminal investigation, no, sir. We are not allowed to consider that in the source selection process. We did consider the settlement agreement regarding the civil fraud allegations as part of our evaluation of the proposal, but we have no information whatsoever regarding the criminal investigation.

Mr. CUMMINGS. Now, let's go back to the fraud. You can imagine what it sounds like to my constituents when someone says that somebody has entered into an agreement, and these are companies—Ogilvy is a company with high-powered lawyers, and they have got all kinds of resources. And my constituents will conclude that if they—if there was not a problem here, they probably would not be entering into a settlement. And so I am trying to figure out, how does that look? I mean, you follow what I am saying? It is just—for me to explain that would be incredible.

And I can understand where Mr. Barr is coming from, because when our constituents see this kind of thing, they say, well, what about all of those honest guys? We are talking about fraud. You can call it criminal. Call it whatever you want to call it. Fraud is fraud.

I mean, how does that—I mean, how do you jive that, because that is basically, I think, pretty much why we are here.

Mr. JAGGARD. Yes, sir. The Justice Department settlement agreement specifically specifies that Ogilvy did not admit to any wrongdoing. Under the terms of the settlement agreement, they agreed to settle for a certain sum and to take other actions to correct the deficiencies, but did not agree to admit to any wrongdoing. The primary reason that they entered into the settlement agreement was to avoid the costs and other issues associated with extended litigation of the issues.

Mr. CUMMINGS. But also—but could one of those reasons be to make sure that they were able to get this contract?

Mr. JAGGARD. At the time that they were entering into the settlement agreement, I do not know, since I was not party to the discussions. I don't know if that came into consideration, but clearly they were working very hard with both the Navy and the Office of Drug Control Policy to try and fix the problems that had been identified from 1999 and 2000.

Mr. CUMMINGS. Last question. The fact that they had the contract already, did that have a bearing?

Mr. JAGGARD. Only with respect to the fact that it was considered in part of the source selection process; i.e., we considered their performance under the prior contract in the awarding decision to award the new contract to them.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. SOUDER. When the new restrictions require you to file accurate time cards because you weren't, that is an admission of wrongdoing. I know the legal difference.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

There were five bidders?

Mr. JAGGARD. Yes, sir.

Mr. MICA. Has the subcommittee gotten copies of their offers?

Mr. JAGGARD. Yes, sir. We have responded to the chairman's request for all of the documentation concerning the source selection process.

Mr. MICA. And did any of them indicate that they could provide the same services within the same cost range, on, say, an immediate basis?

Mr. JAGGARD. All of the offerers proposed to provide the services at a cost that was within the price range, but it was higher.

Mr. MICA. What about the time? If something happens here, and Ogilvy and Mather are excluded, my concern is how long would it take someone to assume the contract and move forward.

Mr. JAGGARD. Sir, that presents a couple of issues to me. One is the fact that—

Mr. MICA. You would have to rebid?

Mr. JAGGARD. Well, in February of this year, we notified the Office of National Drug Control Policy that the Navy was not going to be providing their contracting support beyond this fiscal year. We did that because we need to devote our resources in the Navy for fighting the war on terrorism and supporting our sailors and marines.

So there is a period of transition that needs to occur to a new contracting organization. It is my understanding that the—

Mr. MICA. Well, the problem is—well, I guess you could pass the baton, but you sort of started this. And I guess my followup question would be, you don't think that you could finish the reawarding?

Mr. JAGGARD. I don't believe it could be done in the timeframe that Mr. Martin described. One, it assumes that cooperation by Ogilvy and Mather to turn over the responsibilities; and, two, we would face the possibility if we tried to contract with somebody else

that Ogilvy and Mather might consider protesting the issue before the General Accounting Office, which would bring us to all stop.

Mr. MICA. Mr. Martin, what is your opinion about the ability to move forward on the basis of—

Mr. MARTIN. Well, I said in my testimony that I would look for some way, in the worst case—and some of this information I didn't have about the change in contract organizations, for example, which is another complexity that I guess if it were my responsibility, what I would do is I would say, look, I need an advertising agency. And I would—since I can't use 2003 money, for that small portion of this funding that is the agency's revenue—you have to keep that in mind that they only get a small amount of money here—I would look for some money in the program or someplace or from Congress. I would reprogram some money if I had to to extend them for a quarter, and I would rebid the damn thing, doing that, take advantage of that time, and get a new person on board.

If you believed that there was no other way to do it, I would do it in an extremely truncated and expedited fashion. And I know that causes the people that work in the government, who are good folks and who have got a lot of constraints, to operate under a lot of concern.

But if it were my responsibility, I would get this done. I would get a new contractor on board. I would use 2002 money if the language in the amendment didn't let me use 2003 money. I would use that time to run another solicitation, and you could do that very expeditiously because you have already—you could cut down how difficult this RFP was, which it was a very difficult RFF for the agencies to respond to. There are ways to do it in which you could really speed it up.

Certainly I am absolutely confident that if you had another quarter in which Ogilvy was sitting there and funded, that you would have absolutely no problem in that period of time; if you focused your management skills on it, and got the right people to tell you how to do it, that you could have it surely done in the first quarter of fiscal year 2003.

Mr. MICA. Mr. Marston, given the nature of the situation we find ourselves in, does ONDCP have a plan B? And I understand there is also an urgency clause in the contract. What is—what is your back-up plan? Do you have the discretion to move forward to keep the—to keep the ad program on, and, if not, what would it take? Do you have to come back to Congress? Do you have to reprogram? What is your—someone has to be thinking about plan B. Tell us what that is.

Mr. MARSTON. Absolutely, sir. We are committed to doing everything we can to keep the program running. The concern that we have is with being able to have a new contractor in place before Ogilvy ceases performance.

The problem with Mr. Martin's scenario, though I appreciate his suggestions, is that it requires the cooperation of Ogilvy. At the point at which they know that they are going to be terminated and entitled to termination fees, their incentive to work hard on a transition with us is not going to be very strong. I can't speak to what they would do, but there is the possibility that they would have an action for breach against the government and a number of other

complications. So I just—I can't be sure that they are likely to continue performance at all during the transition period or resolicitation.

Mr. MICA. So what about plans? Do you have discretion to use other funds; can you use another part of these funds, assign the contract, a new contract, to somebody else while that dispute is being settled?

Mr. MARSTON. We can certainly attempt to do so. We are transferring contracting office responsibilities to the Department of Interior, some Franchise Fund, Govworks. We will work with them on any kind of contracting option that we can develop.

Mr. MICA. Has that already been transferred?

Mr. MARSTON. We are finalizing the interagency agreement to do that right now.

Mr. MICA. Do you have to come back for reprogramming? Do you have enough discretion, or do you need discretion in one of these appropriations measures to use funds to keep things going if this program or arrangement—program arrangement with Ogilvy and Mathers turns south?

Mr. MARSTON. At this point the only funds that we have available are those that have been appropriated for the media campaign. We will use whatever funds aren't required for Ogilvy's performance or termination costs to fund another contract if there is money available.

Mr. MICA. Thank you, Mr. Chairman.

Mr. SOUDER. I apologize. They don't have an agreement to roll votes on the floor, so we are having to go over here in between, and we will be back shortly and reconvene with Mr. Barr's questions. We stand in recess.

[Recess.]

Mr. SOUDER. We now come to order. I now recognize Mr. Barr.

Mr. BARR. Thank you.

Mr. Marston, who is the new contract administrator?

Mr. MARSTON. We are in the process of arranging an interagency agreement with the Department of the Interior's Franchise Fund, Gov.Works.

Mr. BARR. When did that process start?

Mr. MARSTON. We started looking for a new contracting officer when Navy notified us, I believe in April.

Mr. BARR. You have been in negotiations actively with the Department of the Interior since February?

Mr. MARSTON. We contacted them then, and they indicated their willingness to proceed. We don't need to have them in place until the end of the fiscal year when Navy stops performing.

Mr. BARR. But, wouldn't you want to have everything ready so you can have a seamless transition?

Mr. MARSTON. Absolutely. I anticipate we will sign the interagency agreement early next week.

Mr. BARR. Does it normally take 6 months to do that? The Navy notified ONDCP in February that they would no longer administer the contract?

Mr. MARSTON. That is correct.

Mr. BARR. Since February?

Mr. MARSTON. That is correct.

Mr. BARR. Is that standard operating procedure? Is that how long it takes?

Mr. MARSTON. I have no experience with replacing contracting offices, but since we don't have to have them in place until the beginning of fiscal year 2003, in fact, they can't start earlier than that. Navy continues to that date. We didn't see any need to expedite that process.

Mr. BARR. Isn't there a need to expedite every aspect of this?

Mr. MARSTON. In light of the current situation, absolutely.

Mr. BARR. This isn't a current situation that just cropped up. This has been going on for 3 years now.

Mr. MARSTON. The Navy was in place to do the contract award for this current contract, and the new contracting office wouldn't have had a role in that, so we didn't see the need to expedite that particular part of the process.

Mr. BARR. Is it ONDCP's position that Ogilvy Mather has committed fraud against the government?

Mr. MARSTON. We don't have a position on it. The Department of Justice represents the government in those matters.

Mr. BARR. You don't have a position on it?

Mr. MARSTON. Well, the Department of Justice reached a settlement with Ogilvy by which the government is bound.

Mr. BARR. I know. ONDCP does not have a position on whether or not a company that has entered into a settlement agreement, as to which there is an ongoing criminal investigation—the terms of the settlement agreement are such that it is the position of the U.S. Government that Ogilvy did submit, knowingly submit, false claims and unjustly enriched itself, committed negligent misrepresentations and so forth. That is in the document, and ONDCP doesn't have a position on it?

Mr. MARSTON. We fully support the settlement agreement.

Mr. BARR. In other words, it is the position of ONDCP that Ogilvy has and did knowingly submit false claims to the U.S. Government in connection with this contract?

Mr. MARSTON. Yes.

Mr. BARR. Then why in heaven's name wouldn't you be doing absolutely everything in your power to ensure that they don't enrich themselves \$1 more at the taxpayers' expense?

Mr. MARSTON. The decision was made last year in August that we would not want to exercise the option on the Ogilvy contract, because we were concerned about contract administration issues. We worked with the Navy to conduct a fair and open, competitive process. There was nothing that barred Ogilvy from competing in that process, and we didn't have any basis on which to exclude them from participating in the competition.

Mr. BARR. How about the fact that in the opinion of the Government, based on evidence, they have knowingly submitted false claims? That is not a reason?

Mr. MARSTON. The Federal Acquisition Regulation doesn't provide for taking any action based on a settlement.

Mr. BARR. I am not saying taking any action based on a settlement, but this settlement is based on something. That something is evidence that the company has, in fact, unjustly enriched itself, knowingly submitted false claims.

Mr. MARSTON. Respectfully I suggest that Mr. Jaggard would be in a better position to answer. That was part of the source selection process.

Mr. BARR. Is ONDCP comfortable dealing with this company?

Mr. MARSTON. We believe that we have an obligation to use the fair and open acquisition process and abide by its results.

Mr. BARR. What is it that a company would have to commit in order for ONDCP to feel uncomfortable with dealing with them?

Mr. MARSTON. Certainly any action that would lead to a disbarment or suspension of the contract.

Mr. BARR. Why don't you be aggressive instead of being a bunch of pussycats? Why doesn't the government take a position that this is a bad egg, this is a bad company, they have knowingly submitted false claims, they unjustly enriched themselves, they have basically—to use an old legal term—ripped off the taxpayers of this country? Why doesn't the government take the position, particularly on a contract that deals with legal issues, that we are not going deal with this company; if you don't like it, sue us? Isn't it the position of the government, Mr. Jaggard, that these are not the sort of things that we would want in a company as to which is receiving benefit of millions if not hundreds of millions of dollars of taxpayers' money?

Mr. JAGGARD. If I understand that—

Mr. BARR. Does it bother the Navy?

Mr. JAGGARD. It bothered the Navy. That is why we conducted an investigation of the matter.

Mr. BARR. Is that why you awarded up to an additional \$762 million contract to them, because it bothered you so much?

Mr. JAGGARD. No, sir.

Mr. BARR. What was the basis on which that contract was awarded then?

Mr. JAGGARD. The basis of the contract award is that Ogilvy submitted the proposal which represented the best value to the government.

Mr. BARR. Is the best value to the government represented by dealing with a company that knowingly submits false claims, unjustly enriches itself, and negligently misrepresents itself to the government?

Mr. JAGGARD. No, sir. In the evaluation process we took into consideration the Justice Department's settlements of those allegations and the contractor's efforts to put in place a system of controls that will prevent it from happening in the future.

Mr. BARR. Are you aware of the fact that they still are under criminal investigation?

Mr. JAGGARD. I am aware that there is an investigation, but I have no details of the nature of the investigation.

Mr. BARR. I mean, none of us do, but that—does that bother ONDCP?

Mr. MARSTON. We can't take action on the basis of investigations. Certainly should there be an indictment, we would refer that to the debarring official. But just knowing that there is on ongoing investigation is not something that we can take action on. It wouldn't be proper under the Federal acquisition regulations.

Mr. BARR. Define substantial evidence to me, Mr. Marston.

Let me define it for you. Substantial evidence in 48 CFR, Chapter 1 means information sufficient to support a reasonable belief that a particular act or omission has occurred.

Do you not think that there has been substantial evidence that this company has submitted false claims, for example?

Mr. MARSTON. Certainly the settlement suggests that is the case.

Mr. BARR. Well, then, why wouldn't it be the position of ONDCP that according to the Federal regulations, that is, in fact, a basis on which not to deal with a company—

Mr. MARSTON. As I understand it—

Mr. BARR [continuing]. And then let them come in and prove that they haven't done all of these things?

Mr. MARSTON. I believe that was the information that was submitted to the debarring official at Navy who conducted a full investigation and decided that debarment was not warranted, and rather entered into an agreement that would ensure that such actions would not continue in the future.

Mr. BARR. Well, I mean, to me the sooner we can get the Navy out of this, the better. This is ridiculous. This really worried me about the Navy. Now they are turning all of their attention to all of those other matters. Do they take the same approach with regard to these other matters, Mr. Jaggard, that it is OK to deal with companies that knowingly submit false claims, engage in negligent misrepresentations and unjustly enrich themselves?

Mr. JAGGARD. No, sir. We follow the process and procedures for suspension and debarment that are based on the assumption that one is innocent until proven guilty and that if we had—

Mr. BARR. No. No. No. No. This is not a criminal proceeding. No, that is not the standard for awarding government contracts, and I hope you're not maintaining that it is. Are you?

Mr. JAGGARD. No, sir. If—

Mr. BARR. Let's not muddy the waters. The standard is substantial evidence, is it not? If there is substantial evidence that a company has committed fraud or engaged in misrepresentations that is a proper basis on which to nullify or stop payment or contract, is it not?

Mr. JAGGARD. It's the basis for a referral to the Procurement Integrity Office for investigation and resolution of potential suspension and debarment.

Mr. BARR. I don't want to take all the time, Mr. Chairman. I have other questions but I certainly want to defer to the chairman, and if we have additional time I do have some other things I'd like to go into.

Mr. SOUDER. We'll have a second round. Let me ask Mr. Jaggard, under the—what are the options under the current contract that would allow for rebidding? Is there an urgency clause that would enable that to be expedited?

Mr. JAGGARD. There's nothing in the current contract that would address the issue of rebidding, Mr. Chairman. There are provisions within the Federal Acquisition Regulations which would provide for various alternatives to conducting either a new competition or in some cases a sole source contract award. There are exceptions to the Competitions and Contracting Act, and there are a total of seven of them, one of which is on the basis of an urgent and com-

selling national need that you could skip some of the otherwise statutory required steps in the procurement process.

Mr. SOUDER. Is there—one of the things that was discussed would be to award it to one of the other people who had previously bid. In your opinion, is that—would that be the sole source clause or would that be a rebid? How would you do that? You have that flexibility?

Mr. JAGGARD. The flexibility is there theoretically to do either of those. Given the fact that we just completed the competition and we have four other interested offers, the most sound approach would be to conduct some kind of limited competition among those four offers, and those provisions of the exceptions to the Competition and Contracting Act could provide the basis or the foundation for doing such an action.

Mr. SOUDER. Is—Mr. Martin, if you could comment on this, but let me ask Mr. Jaggard first, I assume the bidding was sealed. I know that Ogilvy's bid has been made. Isn't it possible that one of the other bidders would match that bid?

Mr. JAGGARD. The original competition was on the basis of best value. It wasn't a sealed bid. However, Ogilvy's awarded amount is the only dollar value that has been made public and will be made public. The other bidders now know what that number is. It is completely feasible that, you know, based on that they could sharpen their pencil and beat it.

Mr. SOUDER. What's your reaction to that, Mr. Martin, and what do you think the likelihood would be in a situation like that?

Mr. MARTIN. I would assume that the other four advertising agencies very much would like to have this account. They've already made a significant investment to get to the point that they've gotten to in terms of effort. I think that in my testimony I said that, you know, look at them as a selected source and you've already done all this work. I agree with what Mr. Jaggard said, just give them a very defined task, something that doesn't take 6 months to figure out, give them a little test. It's no different in my mind than a best and final offer. And give them—you know, a task and that's why I said in my testimony that I thought you could get this done by the first of October. Now, that's what I'd prefer to do as opposed to—if it were my business to run, as opposed to extending the contract because that sort of runs contrary to what the intent of the legislation is under consideration.

Mr. SOUDER. I apologize for not knowing this because I can't remember, it's always dangerous to ask a question that you don't at least have some range of the answer. But are you allowed to say who the other four contract bidders are?

Mr. JAGGARD. Yes, sir.

Mr. SOUDER. Can you say who they were? Were they major advertising agencies?

Mr. JAGGARD. Yes, they were four major advertising agencies. I have the list of names here with me if you'll bear with me a minute.

Mr. SOUDER. In other words, we're not—Ogilvy, I would argue, is one of the most distinguished names in the advertising business regardless of what's happened with this particular contracting, but that we're not arguing that it's a choice between Ogilvy—I mean,

one of the earlier things we had heard in an earlier hearing was Ogilvy has the clout of being a national advertising agency, they have a tremendous reputation in the industry, all of which is true, but my understanding was the other bidders also did.

Mr. JAGGARD. The other competitors were McCann-Erickson, Foote Cone & Belding, Bates, and Sacci & Sacci.

Mr. SOUDER. Which are four of the largest names in the world of advertising. Certainly would be able to bring large clout by having other clients that they could leverage—I mean, those were arguments that we had heard in previous hearings as we've looked at the ad campaign. But as far as placement they're all going to have similar buying power. Would that be true, Mr. Martin?

Mr. MARTIN. Absolutely. Those four advertising agencies are four of the finest advertising agencies in the country. And without knowing anything about the specifics of their bid, you would assume that they would all be capable of this. It's hard to distinguish them from Ogilvy in a general sense.

Mr. SOUDER. Mr. Marston, I'm sure one of the arguments on best value has to do with experience with the campaign, creative working with this issue. Do you know whether off the top of your head any of these other four agencies have had representatives in the past involved with partnership or other anti-drug efforts that would suggest that they actually have some experience as well in the anti-drug field?

Mr. MARSTON. I do not know off the top of my head, but I would imagine given their prominence that they have at some point been involved with the Partnership.

Mr. SOUDER. When you looked at best value, Mr. Jaggard, what would be the, other than cost, the other main things you were looking at?

Mr. JAGGARD. In this acquisition the other two evaluation factors were their technical capability and the their past performance, and cost was the third and least important of the three factors.

Mr. SOUDER. And by the—if cost is third, past performance was one of the first two, are you saying there's an edge given to the person that had the previous contract?

Mr. JAGGARD. No, sir. What I'm saying is that in order of precedence in the evaluation the three factors were technical capability, past performance and then cost. That was just an order of precedence. That was not to imply anything else.

Mr. SOUDER. And past performance is not including that they would have had a settlement for altering—not charging enough, to try to adjust the amount that they received?

Mr. JAGGARD. Past performance evaluation was conducted by the contracting officer and it's an assessment of prospective risk of the performance of the new contract. He did in fact take into consideration the settlement agreement by the Department of Justice and the administrative agreement from the Navy's barring official, but he also weighed those against the actions the company took to correct the problems and the ethics program they put in place and the contract, the cost accounting system that they re-established and had certified by the auditors to preclude recurrence of those kind of problems on the future contract, which is what he's looking at for the evaluation process.

Mr. SOUDER. If you had five major advertising firms and one had had past problems even though now they have procedures to fully correct that, would that not put them in the weakest position in the five in the past performance category at least if that is the second biggest criteria?

Mr. JAGGARD. Not necessarily because during the—the past performance evaluation includes the past performance of other relevant types of contracts, not just any one particular contract. It would be viewed as a negative or a portion of the past performance but not the overall.

Mr. SOUDER. Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman. Just for the record, I'd like each of witnesses to indicate whether they're here representing Ogilvy Mather. Are any of you all representing Ogilvy Mather?

Mr. MARSTON. No, sir.

Mr. JAGGARD. No, sir.

Mr. MARTIN. No, sir.

Mr. BARR. Let the record reflect all three have indicated no.

Therefore, in the questions I'm going to ask, I'm not interested in the explanation of Ogilvy Mather or their defense or their position. Let me tell you something that still bothers me greatly about what we're looking at here. It seems to me that the government, and this is what—I'm not quite sure why, but this is what doesn't smell good—it seems to me that the government has gone out of its way to deal with this company. I don't know whether it's because of its past dealings with the DNC and, you know, the huge amounts of money that it got and its relationship with the DNC or something else, some other sweetheart deal we've heard about. But these are certainly things that will be looked into.

We have a company as to which our government believes knowingly submitted false claims, knowingly submitted false claims. We have a company that the United States believes that it has a case, a cause of action against that company for breach of contract, unjust enrichment, negligent misrepresentation, and so on and so forth. These are statements representing the government's position in the settlement agreement. And yet the government has gone to this company and given them the opportunity which may very well prejudice our ability to go after them.

In the agreement between the Department of the Navy and Ogilvy Mather, for example, it goes on at great length about the company setting up a written code of ethics. I mean, this is just great. You have a company that the government believes has done all of these things and then we go to them, we go out of our way to go to them and give them an opportunity to get themselves off the hook and we can't even get ONDCP to say that bothers them. That bothers me.

Mr. Chairman, I'd like unanimous consent to include in the record the settlement agreement as to which we've been referring, dated, I believe, January 30th—whatever the date is. The document itself is not dated, but the settlement agreement between the United States of America and Ogilvy Mather North America and the agreement between the Department of the Navy and Ogilvy Mather of North America.

Mr. SOUDER. Fine. Hearing no objection, so ordered.

Mr. BARR. That just really bothers me. Maybe we ought to just let bygones be bygones. But as a former prosecutor that sticks in my craw. I wish it stuck in the craw of the Department of the Navy and ONDCP and it bothers the heck out of me that it doesn't.

Mr. Martin has testified from probably about as objective a viewpoint as there is in all this, certainly more objective than mine because I think something very wrong is happening here and smells to high heavens and I'm going to pursue it. But he has indicated that there is, Mr. Marston, some very reasonable and workable ways to get us out of this problem. It may take a little hard work on the part of ONDCP, it may take some imaginative thinking on the part of ONDCP, it may take some legal positions that represent the government and not Ogilvy Mather. But it seems to me that there is a way out of this if the government has the will, and that I think was the key word in Mr. Martin's testimony, the will to do it.

Does ONDCP have the will to clean this business up, get rid of Ogilvy Mather and get this program back on track with a company that the U.S. Government doesn't believe knowingly submitted false claims and engaged in all these other things?

Mr. MARSTON. Sir, we're not adverse to hard work and we'll do whatever we have to keep the campaign going. And that's in everyone's best interest and we will do so. If a law is passed prohibiting us from obligating funds to Ogilvy we will certainly not obligate funds to Ogilvy and do what we can to keep the campaign going. However, we have no present plans to take action on our own to terminate the current contract that was just awarded.

Mr. BARR. So the will is not there.

Mr. MARSTON. We don't believe at this point we have a legal basis to terminate the contract.

Mr. BARR. What constitutes a legal basis? What in the heck—what are your lawyers telling you? You have a document here, a legal document that states that it is the position of the U.S. Government, of which ONDCP last time I checked into is a part, clearly stating that it is the position of the U.S. Government that Ogilvy Mather knowingly submitted false claims and that the United States of America believes that it has a competent civil cause of action against this company for these things and as to which there apparently is an ongoing criminal investigation. What more does it take?

Mr. MARSTON. That document also settles all claims arising under those allegations. And so the FAR is not a tool for further punitive action. So we don't see that provides us a basis to terminate the contract.

Mr. BARR. Mr. Martin, help me out here. Is there any hope at all with that kind of attitude to resolving this?

Mr. MARTIN. I think that you've got to get yourself into a position where you select from the other advertising agencies that are out there and that you've already preselected in my view.

Mr. BARR. But ONDCP has just told us they're not interested in that. They see no problem with this company.

Mr. MARTIN. Well, I think the management—

Mr. BARR. I don't mean to put words in your mouth Mr. Marston. If you disagree with anything I'm saying, speak up.

Mr. MARSTON. Thank you, sir.

Mr. MARTIN. I think the focus should be on—in all of my testimony when I'm talking about aggressive management and focusing on the media aspects of the program and not—what I mean by that is don't worry about ancillary elements of the thing that you could let slip a little, focus on keeping the media out there in front of the eyes and ears of the people out there and aggressive management is required on the part of ONDCP.

Mr. BARR. Which is not there at this point. Apparently, Mr. Chairman, I think we're at the point where probably if anything is going to be done it has to be Congress that does it. And the language that we included at my request and which was adopted by voice vote a couple of days ago as part of the Treasury-Postal Appropriations Bill we crafted and then recrafted it, as you know, Mr. Chairman, to try and make it appropriate language not subject to a point of order. If, in fact, in light particularly of what Mr. Martin has said this morning as an expert in this area, there is a way that we can modify that language to ensure that there is—that there is or are or will be adequate funds to create a seamless transition here, I certainly think that we ought to do that. I certainly have no problem doing that if that is what it takes to light a fire under ONDCP.

I can't tell you how disappointed I am in ONDCP that they see nothing wrong in dealing with this company. But in light of Mr. Marston's statement that they—and I'm glad to hear this—that they certainly will abide by the law if we pass a law requiring them to deal with another company, I think that the government is in a very strong position here, Mr. Chairman, to go to another company or companies. I am willing to pay what seems to be a reasonable or minimum price for that, and that is to make sure that funds are available into at least the beginning of fiscal year 2003 to ensure that we have funds to assure a transition.

But I really think in light of ONDCP's attitude, Mr. Chairman, that the ball really is in the Congress' court. I appreciate very much your holding this hearing today to begin the inquiry into looking for a solution. I think that it is important that Justice pursue these matters. I intend to insofar as I am able to. But I do appreciate your beginning to look into finding a way out of this. I think it's very clear based on the testimony today, and there really is only one way out and that is through some congressional action. I appreciate your leadership in that regard and like forward to working with you.

Mr. SOUDER. If the panel will hold for one more time, Mr. Cummings actually debated on the last amendment. Let me check with him to see if he has any other questions. I have just a couple on the technical, and then we'll adjourn. But for right now the hearing is suspended.

[Recess.]

Mr. SOUDER. I thank you for your patience as we go through all this. I couldn't find Mr. Cummings, so I'm going to ask a couple of questions and if he doesn't come we'll go ahead and adjourn and submit any additional questions.

Reconvene the hearing. I had a couple of questions I wanted to ask about some of the technical aspects. That was criteria No. 1,

I understand, in contracting that are there—I assume the terrorism ads are continuing, Mr. Marston, for the rest of this year?

Mr. MARSTON. That's correct. We actually are in the process of developing a second flight of drugs and terror ads that would carry through the rest of the year.

Mr. SOUDER. So the creative basically will be done by the end of August?

Mr. MARSTON. That's our hope.

Mr. SOUDER. That would, then, be for the first quarter of the next fiscal year?

Mr. MARSTON. That would be part of the campaign that was running. That wouldn't be the whole campaign. We also have some plans to run some ads related to marijuana.

Mr. SOUDER. Are the—

Mr. MARSTON. Those are also in development.

Mr. SOUDER. The creative, then, that would be first quarter would predominantly be for the second quarter of the fiscal year?

Mr. MARSTON. Oh, yes, sir.

Mr. SOUDER. In the new contract of 2003 funds that were awarded the creative question is predominantly for the second quarter of the fiscal year?

Mr. MARSTON. Yes, sir. The creative is primarily done, as you know, by the Partnership for a Drug-Free America. And what the advertising contractor does is supplement what they do. So for instance, if they do television and radio, then the advertising contractor supplements that with print and Internet advertising. So that's the part that the contractor would perform.

Mr. SOUDER. So theoretically, there are multiple options here as far as how could you cover creative in a short term vacuum. In other words, you wouldn't necessarily go dark if the Partnership which did the creative on the TV was willing to do the creative on the print in an interim situation.

Mr. MARSTON. Correct. Our largest concern is not about the production of the creative but the actual mechanics of getting the creative distributed to networks to play on TV. And the process is much more complicated than what I understand of trafficking advertising, they call it, kind of ironic given the subjects that we're advertising on. But it's their expertise in that and linking up between the creative provider of the partnership and all the networks that are going to play the ads through the buying process.

Mr. SOUDER. You had also I believe in the written testimony raised here will not be able to conduct copy test research.

Mr. MARSTON. Right. As you know, we were disappointed in the results of our evaluation, particularly as they pertained to youth ads. One of the solutions that Director Walters has proposed is to implement more rigorous testing for all advertising. We'd like to be able to test all of our advertising before it goes on the air, and the testing is done by our advertising contractor.

Mr. SOUDER. Mr. Martin, let me ask you because one of the key questions, you said you worked with transition, is let's assume, and I think it's a fairly safe assumption, that at a minimum there's going to be some kind of adjustment in this contract. The will of the House was pretty clear the other day, I understand the will of the Senate is strong, so it now becomes more—which is why we're

doing this hearing—more of a technical question of do you have a short term, at what point do we option it, what are the potential liabilities, how do we cover those liabilities? But we want to make sure that the technical hand-off procedures are covered as well.

And let me ask you a couple of those. This is a national campaign with a, “trafficking,” to use that term, placement of the ads and just the logistics of moving them is more complicated than usually anything that I’ve certainly dealt with, which would be mostly regional, and is a problem but is basically not that hard to hire. How hard do you think that is? In other words, if you had a major agency take that over—

Mr. MARTIN. It would be very hard for a lot of people that didn’t know anything about it but it’s routine for advertising.

Mr. SOUDER. Because they have people in each market area around the country?

Mr. MARTIN. Of course. That’s what they do. They’re experts in doing that. In my testimony when I said that transition is not the most important element of this, it’s the contract, agencies know how to do transitions. And transitioning this account is not dramatically different. I’m speaking now as a guy who’s worked in the government a lot, worked on both sides, there’s a lot of people who will contend that a government contract is a lot more complicated. But if you focus on the things that matter, I have difficulty seeing why this would be difficult to transition.

Mr. SOUDER. And if in fact Ogilvy went from surely to surly—I’m not going to let you away from that, but let’s say they weren’t as cooperative, that the trafficking part, the placement part of this is actually public record, it’s information they’ve already placed already for the fall—I mean they’ve reserved the time.

Mr. MARTIN. First of all, you’re way ahead of the game by virtue of work that’s already been accomplished by Ogilvy. This has to be handed off to the new agency and the hand-off is a relatively routine agency function that the outgoing and the incoming agencies know how to do very well. There was some concern expressed earlier that you might not get full cooperation from Ogilvy. Ogilvy, and from everything I know about them, and putting aside the issues here of fraud, from the standpoint of people who can perform advertising agency functions, Ogilvy is one of the finest advertising agencies, most professional, most competent, to do those functions in the country.

And in addition, I would be shocked if it were not seen at Ogilvy as in their best interest to be fully cooperative in whatever transitioning process was to take place here. They’re interested in their image in their marketplace. And I’m sure that they will do everything they can to minimize the negative impact of this, having this contract, and surely they would be nothing less than stupid not to be fully cooperative with every step of the transition. What they don’t want to see are headlines that Ogilvy has been recalcitrant or surly with respect to that. And because what they care about is their image in the minds of other potential advertisers who read the advertising publications like Advertising Age and Ad Week, they don’t want to see headlines that say Ogilvy is not cooperative in the transition. My heaven’s.

Mr. BARR. Would you yield, Mr. Chairman? I wish I could share your optimism. I think with the cozy relationship that Ogilvy Mather has worked out with the government here I can't see them doing anything other than fighting tooth and nail to, you know, keep this contract and keep the money. I mean the whole basis may very well have been for what's gone on here is contained in testimony that we had in October 2000, evidence that Bill Gray then and now the President of Ogilvy Mather, "held a meeting with the most senior account staff and complained about the lack of revenue with this contract," this contract being this contract that we're talking about here. And then you see the altered time sheets, the additional time sheets and so forth. Apparently the most important thing to this company is not reputation, it's certainly not the taxpayers of this country, it's money, it's getting revenue from these accounts.

I enter into this thing at the point we are now presuming that Ogilvy Mather will not cooperate. So what I have in mind, what I anticipate is trying to move forward to remove a bad company, get this program back on track with more integrity and improve its chances for success, notwithstanding the fact that we're probably going to have to fight the company. But what I would love to see on the part of the government is a proactive stance, not, you know, this sort of just caving in to this. I'd like to see some backbone on the part of ONDCP.

And I know that this subcommittee and hopefully the full committee stands behind that and certainly believes likewise. But I think this boils down to revenue. And that's what Ogilvy Mather needs. That's what they want. I think that's what gave rise to the problems here.

Mr. MARTIN. My only comment to that would be I'm just viewing revenue in a different way than you are. I'm viewing their future revenue from the perspective of other clients as very important to them. I agree that revenue—

Mr. BARR. Do they have other clients as to which they stand to—and I know all that \$700 million is not money that goes to the company, but a contract of that size, that's a pretty hefty contract.

Mr. MARTIN. It is a sizable contract in the advertising industry. It is by no means in the category of the top 10 percent of the largest account.

Mr. SOUDER. Where would you place this contract? Roughly.

Mr. MARTIN. I think would you find in the publicly available information that it's on the order of something like \$2.1 billion per year as opposed to this \$150 million per year.

Mr. BARR. So it's a lot more than that. That's in the contract itself. The value of the contract is 762.

Mr. MARTIN. That's over 5 years. My point, Mr. Barr, is that I agree that Ogilvy is concerned about revenue and return to their stockholders. My emphasis or my conclusion would have to be based on my experience in the advertising industry that they would be very concerned about their future business opportunities as a function of taking an image hit, a further image hit with respect to how they behaved with the rest of this program. I would be shocked if they did not cooperate because it's in their best interest from a long term revenue point of view to do so.

Mr. BARR. Could I ask just one other question of Mr. Marston, Mr. Chairman?

Mr. SOUDER. Yes, and then I'll conclude.

Mr. BARR. Who's Alan Levitt?

Mr. MARSTON. Alan Levitt is the Program Manager for the Media Campaign.

Mr. BARR. And how long has he been with ONDCP?

Mr. MARSTON. I don't have the answer to that, sir, but I'd be happy to followup.

Mr. BARR. It goes back to the previous administration?

Mr. MARSTON. Yes, it does, sir.

Mr. BARR. Does he have also have a relationship with the DNC?

Mr. MARSTON. Not to my knowledge.

Mr. BARR. Would you check into that because we believe otherwise?

Mr. MARSTON. Yes, sir.

Mr. BARR. And apparently he's a key person in this whole scenario, is he not?

Mr. MARSTON. As the Program Manager he's involved in all aspects.

Mr. BARR. Is he providing some of the legal advice that astounds me today?

Mr. MARSTON. He does not provide legal advice. Our General Counsel's Office does that.

Mr. BARR. I thought he was with the Counsel's Office.

Mr. MARSTON. No, he's the Program Manager of the Media Campaign at ONDCP.

Mr. BARR. But isn't he also—isn't he with the Counsel's Office?

Mr. MARSTON. No, sir, he's not.

Mr. BARR. He's not. OK. I thought he was. OK. Well, we certainly will look forward to hearing from Mr. Levitt as well. Thank you.

Thank you, Mr. Chairman.

Mr. SOUDER. Was he on the Review Committee?

Mr. MARSTON. He was on the—one of the three panels for the review of past performance, yes, sir.

Mr. SOUDER. Could you explain—

Mr. JAGGARD. He was an alternate member of the Technical Evaluation Board.

Mr. SOUDER. So he didn't have an input into the decision?

Mr. JAGGARD. No, sir.

Mr. SOUDER. We may have some followup questions with that. Because one of the—could you explain who made—the Navy doesn't actually make the decision, is that correct?

Mr. JAGGARD. No, sir. The Navy Contracting Officer was the deciding official of the award of the contract.

Mr. SOUDER. And so multiple people input into the deciding official?

Mr. JAGGARD. Yes, sir. He received separate inputs from the Technical Evaluation Board that was chaired by Maple from ONDCP and he received the past performance evaluation with himself and one of his contract specialists and then he had the Defense Contract Audit Agency do audit reports on all of the cost proposals.

Mr. SOUDER. For determining who could do the technical side best, were there outside opinions other than ONDCP?

Mr. JAGGARD. The Contracting Officer did hire an advertising consultant to serve as an advisor to the Technical Evaluation Board from outside ONDCP.

Mr. SOUDER. And did that person ever work with ONDCP before?

Mr. JAGGARD. Not to my knowledge, no, sir.

Mr. SOUDER. I'd like to just conclude with a couple other things for Mr. Martin. Just so I have it in my head, that one of the things those of us who are supportive of the program are very concerned about are some of the recent research which suggested that at least in some categories there were problems of sustaining the successes of the ad campaign. And we've had a hearing on showing that. And that's a part of the reason that we've looked at the pretest question and testing the ads before they go up. And I have some concerns that sometimes advertising agencies are asked to do one thing and then measured on another. For example, we may be very successful in this current campaign identifying drugs with terrorism, but that doesn't necessarily mean that drug use would drop just because somebody made the assumption. If you asked an ad campaign to identify it with terrorism, you haven't precisely asked the question to ask them in their opinion what reduces drugs. That's one of the problems with getting the measurements is sometimes there's a setup before a final.

Do you believe that if there is a transfer that—and I would also like to think that this is more likely or because of future business concerns to be not necessarily a friendly transfer but that Ogilvy understands the advantage of a transfer—that we would have much of a setback in the copy research, the transition of market research data? As someone who's worked in transition programs, that does concern me that some of the creative loss could be the understanding of the data they've been working and some of the past experiences or some of the market research.

How serious a problem has that been in your experience?

Mr. MARTIN. In my experience it varies by individual case, as you would expect. But again, the ability to do that kind of work, the research component of the contract is relatively routine work for all of these agencies. And I don't see that this would be in any way a particularly more difficult thing to do. And you also have the advantage, the huge advantage that hasn't been talked about much here, of the brain power and the resources and the willingness of the Partnership for a Drug-Free America to help you with these things.

Mr. SOUDER. Which is a coalition of ad agencies?

Mr. MARTIN. Yes.

Mr. SOUDER. So they're not inexperienced?

Mr. MARTIN. They are not inexperienced at all.

Mr. SOUDER. One last question on reprogramming dollars, that one possibility would be presumably to transfer some from strategic planning over to help cover some of the cost for the placement. But one of the things I believe you said in your testimony is that you felt that the most important part of what an ad agency performs is to some degree the strategic planning.

Mr. MARTIN. The strategic planning is important. But what we're really talking about here is if this administrative problem will lessen our effectiveness in the marketplace. Even if it were a mild disruption, which I don't think it will be, you're only talking about a relatively short period of time that would be a problem. This is not as if you were going to turn everything off, you're not going to shut the lights out and go away for a generation and then come back and try to start it over again. This is kind of a bump in the road. And if it is aggressively managed by the client, that's ONDCP, that bump ought to be either very small or eliminated in my view.

Mr. SOUDER. And wouldn't the bump likely be more like if the Partnership has multiple ads in the can, it's just the bump would be not that we would go dark, that we might not—

Mr. MARTIN. You might have to use some ads that you used previously.

Mr. SOUDER. Or one that you didn't retest, bottom line?

Mr. MARTIN. I wouldn't even say that. I mean, you could I'm sure—I haven't talked to anybody at the Partnership about this but I know what their general capabilities are. I mean, there are many ways to skin a cat. The cat doesn't like any of them, but there are many ways to skin this. And having pretesting done of the ads, yes, it's an important thing and it should be done but it certainly can be done. And I thought that Mr. Barr's comment earlier about we need some innovative looking at this as to how to get this thing accomplished creatively—not creative advertising but creatively from a managerial point of view, is right on. I mean, if I had to get the copy testing done and I didn't have an agency tomorrow, I'd go to the Partnership and say, hey, help me with this, how do we get this done, and they'd stand up and help you for a short period of time if you had a serious issue.

I'm at a loss to understand even why that's a serious issue because I've got advertising sitting on the shelf that in the interim might not be optimum but it's already been tested, I can pick the ones that have worked well and run them for a little while.

Mr. SOUDER. I know from the written testimony that the ONDCP believes it's more difficult than that. But I would encourage you during this period to be coming up with an alternative plan because clearly something is going to happen with this and I, from the beginning, have had some doubts about how difficult it is to do the transition; in other words, I think that in fact if there's a will that we can try to make this happen and we at the very least need ONDCP to be preparing for it, not knowing the end of the day outcome.

Mr. Barr, do you have any comment?

Mr. BARR. No. Again I appreciate the hearing. I think we've laid some good ground work. I think it's very clear where we stand and I look forward to moving forward to again strengthen the program by removing a company that has engaged in highly improper activities and the government knows that it has done this.

Mr. SOUDER. I thank you each for your testimony. This is a very difficult issue to work through. I appreciate the time that you spent here. We may have some additional written questions. And do any of you have any closing comments you'd like to make?

Mr. MARSTON. Mr. Chairman, if I could respond briefly to your last statement. We certainly have the will to make this work and are going to work diligently both now and when the final outcome of this is known. But in the interest of giving you a full picture of the transition, which I think you're looking for, there are a couple of complicating issues. They certainly aren't things that can't be overcome but unlike a lot of other contracts this one has some unique issues. One of those is our work with the Partnership for a Drug Free America and the Ad Council, who are our key partners. So it's not a single client relationship with some campaigns.

We had planned a 3-month transition period as part of Ogilvy's old contract should a new contractor receive this award. I'm sure we can compress that time scale. And we'll do everything we can to do so. But that was the sort of parameter we were looking at. Additionally, the up-front buying period, Ogilvy negotiated that and that's part of a total package for all their clients that they negotiated, including the part they negotiated to have pro bono to match everything that we would pay for. That negotiation is something that, the results are something that belongs to Ogilvy. So that would go away in a transition period. And we'd have to negotiate those again, which would likely result there in increased cost for purchasing the time and space.

Again, it's not an issue that can't be overcome, but I wanted you to be aware of it as part of the transition issue.

Mr. SOUDER. We may ask some followup questions, but I assume—I mean, the implied assumption would be that in the—I mean, I understand the technical part of what you just stated; in other words, Ogilvy in the—and Mr. Martin, you correct me if I misstate, but in my basic understanding of advertising if you had a negotiated and complete package and Ogilvy negotiated a comp time in effect with that, whoever is the next placement agency is also going to have a large combination and even if in the transition period it was—let's just hypothetically say it was a partnership representing all the major advertising firms, it's unlikely that NBC or whoever they were placing with or regional market station is suddenly going to say we take back what we had negotiated with because the people they're in effect dealing with are going to make future placement decisions there. It's a public service related to the ad campaign. We're likely to call them on the carpet and in here immediately all if of a sudden they pulled back. So I understand there are risks involved with that but the likelihood of losing the match time unless we took either a really tiny company, or they thought we weren't going to call them in here the second they tried to take back their comp time, I just don't think that's a real threat.

I understand that there is some risk to Ogilvy in that if that in fact in the full package had helped them, but I think that's unlikely too. Ogilvy is a huge company and that's what we were establishing earlier. These are big contracts, but they're a small part of their big contracts. And all four of the other bidders are also huge companies. So I understand those are there, but that's why I say just on the face of it as somebody who basically had—I mean, I wasn't a management major but marketing in depth, dealt with our furniture store and lots of different media campaigns and politics as well as our own retail business, there are some of the things

that I just—I think that they're easier than have been let out to be and I think actually some of these smaller parts other than the other media buys are more complicated.

At the same time that Congress has shown that we're more skeptical about the other parts of the Media Campaign and believe that lots of money has been in effect, diverted from the original intent of what Congress wanted to do, and I think we'll see in this reauthorization, we saw it already in the appropriations bill, that we believe there needs to be an advertising threshold that gets enough frequency to the target market. And that when we start worrying about product placement over here, running around with a magazine over here, some concert over here, some group over here, pretty soon your frequency goes down even if your reach is there, and then we get a study back that says, oh, we're not having as much effect. And we believe that's because of some of what has happened in the campaign.

So speaking as someone who was chair of this committee, I would not be crushed if I was told well, some of the tangential media was lost in this process and we took those dollars instead and put that into the main TV buy. That's kind of what we just voted on the other day anyway. Appropriators feel that way, the authorizers feel that way, and that makes—and I do believe and it's clear in your written testimony, too, that's what ONDCP probably legitimately feels is the highest risk, is not the major TV buys but all the tangential.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Marston, I think there are two basic type of decisionmakers. One is the decisionmaker that you go to to solve a problem and it gives you 10 reasons why he can't solve it. The other is a person that looks at the problem and looks for a reason and a way to solve it. What I've heard today is that ONDCP falls into the former category. I'd like to see at least with regard to this problem, this is not just about an advertising company, it's about lives of 20,000, more than 20,000 of the last figure we had was 3 years old in 19,648 drug induced deaths in the United States. Let's not be bureaucratic about this.

Let's stop worrying about Ogilvy Mather and let's worry about America, the anti-drug war that we're trying to fight, and work with us to find a way to solve this, not constantly come up with reasons why it's difficult, reasons why it can't be done. There are ways that it can be done. You've heard them here today. Maybe there are others. That's the attitude that I hope we see on the part of ONDCP.

Thank you.

Mr. SOUDER. Thanks again to each of you, and with that this hearing stands adjourned.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]

