

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

TOBY MACFARLANE,

Defendant

) Criminal No. 19cr10131
)
) Violation:
)
) Count One: Conspiracy to Commit Mail
) Fraud and Honest Services Mail Fraud
) (18 U.S.C. § 1349)
)

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U.S. DISTRICT COURT
DISTRICT OF MASS.

INFORMATION

At all times relevant to this Information:

General Allegations

1. The defendant, TOBY MACFARLANE (“MACFARLANE”), was a resident of Del Mar, California.
2. The Edge College & Career Network, LLC, also known as “The Key,” was a for-profit college counseling and preparation business based in Newport Beach, California that was established in or about 2007 and registered in California in or about 2012.
3. The Key Worldwide Foundation (“KWF”) was a non-profit corporation founded in or about 2012 and based in Newport Beach, California. In or about 2013, the Internal Revenue Service (“IRS”) approved KWF as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, meaning that KWF was exempt from paying federal income tax, and that individuals who contributed to KWF could deduct those contributions from their taxable income, subject to certain limitations.
4. ACT, Inc. was a non-profit organization headquartered in Iowa City, Iowa that administered the ACT, a standardized test that is widely used as part of the college admissions process in the United States.

5. The College Board was a non-profit organization headquartered in New York, New York. Together with Educational Testing Service (“ETS”), a non-profit organization headquartered in Lawrence Township, New Jersey, the College Board developed and administered the SAT, a standardized test that, like the ACT, is widely used as part of the college admissions process in the United States. The College Board and ETS also developed and administered SAT subject tests, which are also used as part of the college admissions process.

6. Georgetown University (“Georgetown”) was a highly selective private university located in Washington, D.C.

7. The University of Southern California (“USC”) was a highly selective private university located in Los Angeles, California.

8. William “Rick” Singer was a resident, variously, of Sacramento and Newport Beach, California. Singer founded and, together with others, operated The Key and KWF.

9. Mark Riddell was a resident of Palmetto, Florida. Riddell was employed at relevant times as the director of college entrance exam preparation at a private college preparatory school and sports academy in Bradenton, Florida.

10. Igor Dvorskiy was a resident of Sherman Oaks, California. Dvorskiy was employed as the director of a private elementary and high school located in West Hollywood, California (the “West Hollywood Test Center”). Dvorskiy also served as a compensated standardized test administrator for ACT, Inc. and the College Board.

11. Niki Williams was a resident of Houston, Texas. Williams was employed as an assistant teacher at a public high school in Houston (the “Houston Test Center”). Williams also served as a compensated standardized test administrator for ACT, Inc. and the College Board.

12. Gordon Ernst was a resident of Chevy Chase, Maryland and Falmouth, Massachusetts. Until January 2018, Ernst was employed as the head coach of men's and women's tennis at Georgetown.

13. Donna Heinel was a resident of Long Beach, California. Heinel was employed as the senior associate athletic director at USC.

14. Ali Khosroshahin was a resident of Fountain Valley, California. Until November 8, 2013, Khosroshahin was employed as the head coach of women's soccer at USC.

15. Laura Janke was a resident of North Hollywood, California. Until January 10, 2014, Janke was employed as an assistant coach of women's soccer at USC. Janke reported to Khosroshahin until his departure from the university.¹

General Background on Standardized Testing and the College Admissions Process

16. Most selective colleges and universities in the United States require prospective students to submit standardized test scores—typically, either the ACT or the SAT—as part of their application packages. When submitted, standardized test scores are a material part of the admissions process.

17. The ACT includes sections on English, mathematics, reading, and science, and is scored on a scale of 1 to 36

18. The SAT includes sections on writing, critical reading, and mathematics. Between 2005 and January 2016, the SAT was scored on a scale of 600 to 2400. As of March 2016, the SAT has been scored on a scale of 400 to 1600.

¹ The individuals identified in paragraphs 8 through 15 have been charged separately in connection with the conduct set forth herein.

19. The ACT and the SAT are typically administered to large groups of students on specified dates and under strict time limits. In some instances, however, students with certain learning or other disabilities may qualify for testing accommodations, including extended time, and, in such circumstances, may take the test alone, under the supervision of a test administrator retained by ACT, Inc. or the College Board or ETS.

20. Compensated ACT and SAT administrators owe a duty of honest services to ACT, Inc. and/or the College Board.

21. Prior to administering the ACT, test administrators must typically certify that they will administer the test in accordance with the ACT Administration Manual, and that they will ensure that the “test materials are kept secure and confidential, used for this examinee only, and returned to ACT immediately after testing.”

22. Similarly, prior to administering the SAT, test administrators must typically certify that they will administer the test in accordance with the SAT coordinator’s manual, that the SAT test is the property of the College Board, and that no one other than the student can “open the test book and see the test content.”

23. The ACT tests are typically sent to and from the testing sites via Federal Express, a private, interstate commercial carrier.

24. The SAT tests are typically sent to and from the testing sites via United Parcel Service (“UPS”), a private, interstate commercial carrier.

25. The ACT and SAT tests, and the scores students earn on those tests, are the intellectual and physical property of ACT, Inc. and the College Board, respectively.

26. The athletic teams of Georgetown and USC (collectively, the “Universities”) compete in most sports at the Division I level, the highest level of intercollegiate athletics sanctioned by the National Collegiate Athletic Association (“NCAA”).

27. Many selective colleges and universities in the United States, including the Universities, recruit students with demonstrated athletic abilities, and typically apply different criteria when evaluating applications from such students, with the expectation that recruited athletes will be contributing members of the Universities’ athletic teams once enrolled. Typically, the admissions offices at the Universities allot a set number of admission slots to each head coach of a sport for that coach’s recruited athletes. At each of the Universities, the admissions prospects of recruited athletes are higher—and in some cases substantially higher—than those of non-recruited athletes with similar grades and standardized test scores.

28. University athletic coaches and administrators owe a duty of honest services to the Universities where they are employed.

29. At each of the Universities, admissions slots, the determination of which students to admit, and the resulting composition of undergraduate classes are important assets of the University.

The Conspiracy

30. From in or about 2011 through in or about February 2019, the defendant, TOBY MACFARLANE, conspired with others known and unknown to the United States Attorney to use bribery and other forms of fraud to facilitate the admission of applicants to colleges and universities in the District of Massachusetts and elsewhere.

Objects and Purposes of the Conspiracy

31. The principal objects and purposes of the conspiracy were to commit mail fraud and honest services mail fraud, in violation of Title 18, United States Code, Sections 1341 and 1346, by, among other things:

- a. Cheating on college entrance exams, including in many instances by bribing exam administrators to permit such cheating;
- b. Bribing university athletic coaches and administrators to designate applicants as purported athletic recruits—regardless of their athletic abilities, and in some cases, even though they did not play the sport they were purportedly recruited to play;
- c. Having a third party take classes in place of the actual students, with the understanding that grades earned in those classes would be submitted as part of the students' college applications; and
- d. Submitting falsified applications for admission to universities in the District of Massachusetts and elsewhere that, among other things, included the fraudulently obtained exam scores and class grades, and often listed fake awards and athletic activities.

Manner and Means of the Conspiracy

32. Among the manner and means by which the defendant and others known and unknown to the United States Attorney carried out the conspiracy were the following:

- a. Seeking extended time for applicants on college entrance exams, including by having the applicants purport to have learning disabilities in order to obtain the medical documentation that ACT, Inc. and the College Board typically require before granting students extended time;

- b. Changing the location of the exams to one of two test centers: the West Hollywood Test Center or the Houston Test Center;
- c. Bribing college entrance exam administrators at the West Hollywood Test Center and the Houston Test Center to permit cheating, in violation of their duty of honest services to ACT, Inc. and/or the College Board;
- d. Paying Riddell or another third party to pose as an ACT or SAT exam proctor, or as a student purportedly taking the exam, so that he could secretly provide students with answers during the exam, replace the students' exam responses with his own, or simply take the exam in place of the students;
- e. Submitting the fraudulently obtained ACT and SAT scores as part of the college admissions process, including to colleges and universities in the District of Massachusetts.
- f. Bribing university athletic coaches and administrators to designate students as purported athletic recruits or as members of other favored admissions categories;
- g. Fabricating athletic "profiles" containing falsified athletic credentials—including fake honors the students purportedly received, elite athletic teams they purportedly played on, and staged photographs of the students purportedly engaged in athletic activity—to submit in support of the students' college applications; and
- h. Explaining to clients and prospective clients of The Key that these fraudulent schemes were tried-and-true methods of improving exam scores

and gaining admission to college that had been successfully employed by many other clients.

Acts in Furtherance of the Conspiracy

33. On various dates from in or about 2011 through in or about February 2019, the defendant and others known and unknown to the United States Attorney committed and caused to be committed the following acts, among others, in furtherance of the conspiracy:

34. Beginning in or about 2013, MACFARLANE agreed to pay an amount, ultimately totaling \$450,000, to facilitate the admission of MACFARLANE's children to USC as purported athletic recruits.

35. On or about October 3, 2013, Singer e-mailed MACFARLANE's daughter's high school transcript and SAT scores to Khosroshahin and Janke, writing, "1st of 2 players."

36. On or about October 17, 2013, Singer caused KWF to wire \$50,000 to a private soccer club controlled by Khosroshahin and Janke.

37. On or about October 25, 2013, Janke e-mailed Singer requesting "a profile and list of current work in progress" for MACFARLANE's daughter, so that Janke could "turn in everything by Monday" for MACFARLANE's daughter to be presented to the USC subcommittee on athletic admissions.

38. Singer thereafter sent Janke information on MACFARLANE's daughter, including a falsified soccer profile and a photo of MACFARLANE's daughter playing soccer.

39. On or about November 4, 2013, MACFARLANE's daughter was presented to the USC subcommittee for athletic admissions as a purported soccer recruit.

40. On or about November 12, 2013, MACFARLANE's daughter's application was submitted to USC. The application falsely indicated that MACFARLANE's daughter was, among other things, a "US Club Soccer All American" in the 10th, 11th, 12th grades.

41. On or about March 26, 2014, USC mailed MACFARLANE's daughter a formal acceptance letter.

42. On or about April 15, 2014, an employee of Singer sent MACFARLANE an e-mail with the subject line "Placement Fees \$200K." The e-mail stated that the employee would coordinate the placement fees for MACFARLANE's daughter and asked how MACFARLANE would transmit the payment.

43. On or about April 17, 2014, MACFARLANE sent Singer an e-mail with the subject line "Real Estate Consulting Invoice." In the e-mail, MACFARLANE asked Singer to "provide an invoice for the entire amount due."

44. On or about May 2, 2014, MACFARLANE issued a \$200,000 check to The Key, Singer's for-profit entity, with "Real Estate Consulting & Analysis" written in the memo line.

45. On or about May 12, 2014, Singer caused The Key to issue a \$100,000 payment to a private soccer club controlled by Khosroshahin and Janke.

46. On or about November 15, 2016, Singer asked MACFARLANE's spouse for a photo of MACFARLANE's son playing basketball in his high school basketball uniform.

47. On or about November 27, 2016, Singer directed Janke to create a fabricated basketball profile for MACFARLANE's son.

48. In or about December 2016, Singer e-mailed the falsified basketball profile to Heinel.

49. On or about January 26, 2017, Heinel presented MACFARLANE's son to the USC subcommittee for athletic admissions as a purported basketball recruit.

50. On or about February 9, 2017, USC issued a letter to MACFARLANE's son, notifying him of his conditional admission to USC as a student-athlete. The letter stated: "Your

records indicate that you have the potential to make a significant contribution to the intercollegiate athletic program as well as to the academic life of the university.”

51. On or about February 13, 2017, MACFARLANE issued a \$50,000 check to USC Athletics.

52. On or about March 23, 2017, USC mailed MACFARLANE’s son a formal acceptance letter.

53. On or about April 18, 2017, MACFARLANE issued a \$200,000 check to KWF. MACFARLANE wrote “Real Estate Consulting” in the memo line of the check.

Other Co-Conspirators

54. In addition to the athletic coaches and university administrators Singer bribed on behalf of the defendant, as set forth above, Singer likewise bribed athletic coaches and university administrators on behalf of other co-conspirators known and unknown to the United States Attorney to designate the children of those co-conspirators as athletic recruits. As an example:

- a. Between 2012 and 2018, Singer paid Ernst bribes falsely labeled as “consulting” fees totaling more than \$2.7 million.
- b. Singer typically made the payments to Ernst from one of the KWF charitable accounts and sent them to Ernst via U.S. Mail, including in at least one instance to Ernst’s residence in Falmouth, Massachusetts.
- c. In exchange for the bribes, Ernst designated at least 12 applicants as recruits for the Georgetown tennis team, including some who did not play tennis competitively, thereby facilitating their admission to Georgetown.

55. Singer also paid Riddell to cheat on the SAT and ACT for the children of other co-conspirators known and unknown to the United States Attorney and, in many of those instances, bribed exam administrators Dvorskiy and Williams to permit Riddell to do so. As examples:

- a. In or about October 2011, Riddell provided Student 1, a high school student in Florida, with answers to her SAT subject tests while purporting to proctor Student 1's exams.
- b. On or about October 3, 2015, Riddell secretly corrected SAT answers for Student 2, a high school student in California, who later submitted those scores to Boston University, Boston College, and Northeastern University, all of which are located in the District of Massachusetts.
- c. On or about December 9, 2017, Riddell corrected SAT answers for Student 3, a high school student in California, who later submitted those scores to Northeastern University.

COUNT ONE
Conspiracy to Commit Mail Fraud
and Honest Services Mail Fraud
(18 U.S.C. § 1349)

The United States Attorney charges:

56. The United States Attorney re-alleges and incorporates by reference paragraphs 1-55 of this Information.

57. From in or about 2011 through in or about February 2019, in the District of Massachusetts and elsewhere, the defendant,

TOBY MACFARLANE,

conspired with others known and unknown to the United States Attorney to commit mail fraud and honest services mail fraud, that is, having devised and intending to devise a scheme and artifice to defraud and to obtain money and property, to wit, ACT and SAT tests and test scores, and admission to the Universities, by means of materially false and fraudulent pretenses, representations, and promises, and to defraud and deprive, variously, ACT, Inc., the College Board, ETS and the Universities, of their right to the honest and faithful services of their test administrators, athletic coaches and university administrators, through bribes and kickbacks, did, for the purpose of executing and attempting to execute the scheme, deposit and cause to be deposited any matter and thing whatever to be sent and delivered by any private and commercial interstate carrier, in violation of Title 18, United States Code, Sections 1341 and 1346.

All in violation of Title 18, United States Code, Section 1349.

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