

COMPENSATION UNDER THE MICROSCOPE

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Right now, in a courtroom in New York, agency compensation, indeed the entire basis of client-agency relationships, is on trial. The results will have ramifications not only in the US, but throughout Asia as well.

For the prosecution is the Office of National Drug Control (ONDCP), part of the US government, who claim that specific individuals at their agency, Ogilvy, criminally falsified timesheets in order to secure more than US\$3m in income. For their part, Ogilvy settled the civil suit after FBI investigations with a \$1.8m payment three years ago. But early last year, two employees were indicted for a criminal trial, now ongoing as this magazine is published.

The trial is going into minute detail of the workings of the agency, and at its heart, the timesheet process. The accusations suggest that agency staffers were unable to spend the hours on ONDCP they had anticipated and that these two 'padded' time reports in order to show percentages as planned. In the witness box has been a cast of characters from both sides, each with their own unique spin. There is the media director with the \$150,000 Ferrari bought with cash. In what feels like an episode of "The Practice", there is the client accountant that claims Tippex and scribbles matched by handwriting experts on original timesheets show clear evidence of fraud.

In this case, no-one will win. Hardworking agency staff could go to jail – but even if they don't, there is a smear over the industry and its processes. As one agency staffer said 'creative people are terrible at tracking their time' – and this concept is usually the fundamental basis of any fee agreement. Where did all this go wrong?

Winston Churchill once said 'Democracy is the worst possible way to choose a government....apart from all the others.' And so here we are on agency compensation. Commissions are inappropriate given the growth of integrated marketing and the separation of media and creative agencies. Project fees are inaccurate and don't allow the agency to secure the best talent. Labor-based fees are simply 'the best of the worst ways' we have right now.

The industry is in transition – from volume based compensation (commission) to input based (fees) to finally an output based model (performance-linked compensation) – and this is clearly one of the bumps on a rocky road.

Several enlightened marketers in Asia are on their way already. By paying compensation with a large incentive (or penalty) based on the performance of the agency, the advertising and the advertiser, they are at least re-focusing the exercise on results, not only on counting time.

Agencies need to realize fee based compensation is not a taxi meter. Clients, need to realize it is also not an ‘all you can eat buffet.’ Both parties need to focus on the bigger prize of performance based compensation and be more honest with each other. Surely we all have better things to do than spend all this time in court and jail.

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CAREERISM & GREED MADE SEIFERT & EARLY DO IT, SAYS PROSECUTOR

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By [Matthew Creamer](#)

NEW YORK (AdAge.com) -- Careerism and greed were the reasons two former Ogilvy & Mather executives conducted a large-scale effort to defraud the national anti-drug advertising program in 1999, a federal prosecutor told the jury in U.S. District Court today.

Conspiracy's 'architects'

Summing up the government's case against Shona Seifert and Thomas Early, U.S. attorney Lauren Goldberg said testimony and evidence showed the two were the "architects and leaders" of a conspiracy to over-bill the Office of National Drug Control Policy for the ad work performed by the WPP Group agency.

Ms. Seifert, now president of Omnicom Group's TBWA/Chiat/Day, New York, and Mr. Early, former finance director at the New York Ogilvy office Ogilvy, could face up to five years in prison if convicted of defrauding the government as charged. They have pleaded not guilty.

In her closing arguments, Ms. Goldberg said the conspiracy to revise timesheets and inflate hours, which involved many past members of Ogilvy's media department, was set in motion by the projected \$3 million revenue shortfall discovered just months after the agency won the highly coveted account.

'About hitting their numbers'

"For Tom Early and Shona Seifert, it was about hitting their numbers," Ms. Goldberg said. "It was about bringing in the revenue they'd committed to."

In his own closing argument, Ms. Seifert's attorney Gregory Craig countered with a two-pronged approach, first painting his client as a hard-working, successful business leader who cared deeply about the ONDCP work and then lashing out at the government's evidence. In particular, he hammered away at key witnesses Robert Zach and Peter Chrisanthopoulos, former Ogilvy media executives who pleaded guilty to similar charges and are cooperating with the government.

When the jurors begin their deliberations tomorrow, after Mr. Early's attorney sums up, they will have to sift through a mountain of physical evidence in the form of timesheets, invoices, e-mails and memos, as well as the testimony of the defendants' former colleagues, many of whom have either pleaded guilty or agreed to testify in return for not being charged with similar crimes. The jury watched many of those witnesses get picked apart in cross-examinations designed to cloud their credibility.

In her briskly paced summation, Ms. Goldberg walked the jurors through the government's most pointed pieces of evidence, urging them not to disregard the testimony of those witnesses if other evidence corroborates that testimony. She also criticized Mr. Early's and Ms. Seifert's testimonies, saying, "You should scrutinize their testimony very carefully, and it makes absolutely no sense."

Defense downplays revenue shortfall

On the witness stand this week, the defendants tried to play down the revenue shortfall's impact on Ogilvy. They painted the timesheet revisions as a harmless activity designed to correct documents that didn't meet government regulations or had been filled out incorrectly.

Ms. Goldberg mocked that version of events. "Of course, that's the way corporate America works," she said. "Senior managers don't care about multimillion-dollar shortfalls." Earlier in the trial, prosecutors put Ogilvy's New York president, Bill Gray, on the stand. He testified he was angered after learning about the shortfall. More generally, the prosecution has tried to make the case that the executives' bonuses and those of their subordinates were at stake because of the shortfall