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Rudeness in Troubled Times

It has been suggested that the economic crisis through which we are living has brought about an awareness of the importance of politeness in business. Adam Galinsky of the Kellogg School of Management at Northwestern University in the United States of America says that in times of crisis, with all the attendant uncertainty, "the best strategy is to be civil to everyone". With all due respect to Mr. Galinsky, whatever the financial climate, civility should be a given. Isn't being civil in business always the best strategy?

Sadly, politeness is in decline not just in business but socially as well, with expressions of appreciation or consideration seemingly having no place in the scheme of things. These developments run parallel to a decline in courtesy which is reflected, for example, in business when Christian names are used on first contact to address people old enough to be the culprit's grandfather.

Allied with this rougher edge to social discourse during the last few years has been a shift from long-term financial planning by individuals to a grasping, short-termism fuelled, to a great extent, by soaring real estate prices which became the launch pad for reckless spending on credit. The house of straw, however, only stood until an economic ill wind blew. This bankers' Bacchanalia, a festival of financial folly, would have been understood by Ayn Rand who, in her novel, "The Fountainhead", (as opposed to her

oft – quoted "Atlas Shrugged") explored the themes of selfishness and greed. One of the main characters declares: "I am the most offensively possessive man on earth. I do something to things". Well, sometimes things can do something to you. Just listen to the wailing on Wall Street. Then consider the remarks made after Britain's industrial revolution by John Stuart Mill, a philosopher and economist, concerning Britain's growing middle class: "The virtues of a middle class are those which conduce to getting rich – integrity, economy and enterprise". As we have seen, integrity has also been a casualty of this world recession and we have definitely strayed from the days when Adam Smith could observe that the prudent man should "not go in quest of new enterprises and adventures, which might endanger, but could not well increase, the secure tranquillity which he actually enjoys". Surrounded by today's financial despair, wise words indeed for today's muddled, rather than middle, class.

The UBS tax case in the US that has generated so much publicity (not to mention speculation) centred on tax evasion offshore. As you read on you will (unless you already realise it) appreciate that offshore is a refuge for tax-payers worldwide who declare every penny of income.

One threat to Adam Smith's prudent man are civil lawsuits that can turn out to be anything but civil and which force an innocent defendant who cannot find protection within his own system of justice to seek

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sanctuary beyond his country's borders. Nowhere on earth illustrates the point more than the United States of America. It was the late British judge, Lord Denning, in his 1983 judgement in the Smith Kline & French Laboratories Ltd. v. Bloch case, who put it best for me: "As a moth is drawn to the light, so is a litigant drawn to the United States. If he can only get his case into their courts, he stands to win a fortune. At no cost to himself; and at no risk of having to pay anything to the other side". More than 25 years have passed since those words were spoken and it's only got worse. The Offshore Pilot Quarterly has covered this subject in previous issues and new readers can find them at www.trustservices.net (June, 2002, Volume 2, number 5: Taxation and Transparency: So What?; December, 2003, Volume 6, number 4: "A Joy Named Sue"; and March, 2005, Volume 8, number 1: "The Nervous and the Naked").

Taken to the Cleaners

Most countries are proud of their legal system, and back in 1996 William Rehnquist, then Chief Justice of the US Supreme Court, declared America's courts a model for other countries; he also spoke of an independent judiciary as being "one of the crown jewels of our system of government". Yet jewels can be flawed and still sparkle.

In the US there are 39 states where some judges are elected, which can result in situations such as the one in West Virginia when a judge, despite a conflict, did not recuse himself from a case. Don Blankenship, the chief executive of Massey Energy, and the defendant in a case heard by Judge Brent Benjamin, had spent \$3 million to help elect the judge to the state's supreme court. Three years later, in 2007, Mr. Benjamin voted to overturn a \$50 million judgement against Massey Energy. The plaintiff in the case, Hugh Caperton, argued that he had been denied a fair trial and the US Supreme Court agreed.

H. L. Mencken, curmudgeon and master of mot juste, once gave his own perspective on the law: "The penalty for laughing in the courtroom is six months in jail; if it were not for this penalty, the jury would never hear the evidence". You'll understand what he meant from the next story.

An American judge, Roy L. Pearson, sued his dry cleaners for \$54 million for losing his trousers. The

basis of the lawsuit? A sign at the shop which said "Satisfaction Guaranteed". Alleging fraud, the plaintiff, applying his trained legal brain, calculated his claim first by setting \$1,500 as a reasonable fine for consumer fraud; this sum was multiplied by 12 which was the number of his complaints. The resulting figure was then multiplied by 1,200 being the number of days he was without his trousers; that total was then multiplied by three because the dry-cleaning shop had three owners. Mental anguish was then considered which produced a grand total of \$67 million; but Mr. Pearson felt this was perhaps too much so he reduced the claim to \$54 million. The case dragged on for more than 2 years until it was dismissed in 2007 and the defendants had incurred legal costs of \$100,000 (the land of the free is also the land of the fee, as litigants will know).

You might question how the legal system allowed the case to be heard in the first place; but wait, like the television offer promises, there's more. Judge Pearson appealed the decision and at the end of last year the District of Columbia's Court of Appeals upheld the lower court's decision. The judge lost his case and the defendants, South Korean immigrants, lost their business brought about not only by a loss of earnings but the emotional toll the lawsuit took on the family.

Philip K. Howard is a campaigner for legal reform in the US who has written a book on the subject: "Life without Lawyers". The trousers case appalled him, but the problem is not in the courtroom where judges, after all, only administer the laws. (I have not addressed the matter of simple justice which, unlike the law, is always far less complex.) Consider the position with US generally accepted accounting principles that run to more than 4,500 pages of detailed rules but which were still not either Enron or Madoff-proof. Europe, on the other hand, places the emphasis on clarity and general principles. Perhaps the prevailing belief in the US is that problems can be solved by more detailed rules: if lawmakers and bureaucrats believe this, one can only shudder at what lies ahead following the financial asteroid that has hit Wall Street and wiped out an entire species of money men. It might take more than the Amazon rainforest to meet the supply of paper needed if events in 2009 are anything to go by.



Common sense and individual judgement are smothered under the weight of laws: the US government's Federal Register has over 70,000 pages of new rules every year; correspondingly, the proportion of lawyers in the workforce has almost doubled between 1970 and 2000. Both the case for US Tort(ure) Law reform and the motives for Americans moving assets offshore to protect them have never been stronger. Perhaps you are one of the fishermen who has come across a particular five-inch fishing lure on the American market that has a three-pronged hook which comes with the written warning "Harmful if swallowed". No kidding. Speaking about things hard to swallow, pity American Christopher Ratte, a professor of archaeology, who bought his seven-year-old son a bottle of lemonade at a baseball game. Mistakenly, he was given a bottle of Mike's Hard Lemonade, which is an alcoholic drink. Officials at the game noticed the boy sipping the drink and immediately rushed him to the hospital. Although the child was alright, his family certainly wasn't and what followed suggests a legal system that has lost any sense of proportion. The professor's son was placed in a foster home and a judge ruled that he could only return home if his father moved out. After several days of legal squabbling, the case was finally resolved and the family could get on with its life.

Going to the Trenches

Once the apprehensive individual has managed to get those assets offshore, it is important for him to know that he is in competent hands. One thing that his own country's financial woes has shown him, however, is that the appearance of skills can be just a veneer with no quality beneath. Lazy people especially make mistakes (some of them disastrous) when selecting offshore service professionals and none of them have my sympathy. It is music to my ears when a prospective client tells me he has done his homework; I'm even more delighted when he recites a list of questions.

Parsimony, as opposed to prudence, can be false economy if the sticking point is fees; if the only difference between two professionals is costs, then who wouldn't take the lower fees? It seems, however, that often the research does not go beyond

comparing fee schedules, which would account for many of the casualties out there.

Professor Richard Sennett has written a book entitled "The Craftsman" dedicated to those whom he describes as having "the desire to do a job well for its own sake". The title conjures up thoughts of men with grey hair and sleeves rolled up as they work at their trade rather than, for instance, bankers or lawyers in both smart suits and offices. If only. By definition, however, to become a craftsman you must be dedicated to specialising in a particular field and be continually striving to improve the necessary skills, which can only be achieved by years of constant application.

There is a gardening tip that reveals how to produce perfect asparagus: "first dig a trench three years ago". Skilled people have been subjected to years of training whereas Sir Allen Stanford, the billionaire banker indicted for fraud, certainly did not dig many (if any) trenches other than a hole for himself. His investment committee included one member whose business experience was in cattle ranching and car sales; and Laura Pendergest-Holt, in her thirties, who was also the chief investment officer of Stanford Financial Group, had no previous financial services or securities experience; she has also now been indicted.

Two members of parliament in the United Kingdom have been appalled by the display of banking incompetence in the UK during the current financial crisis and they have tabled a motion demanding that banking executives should have a recognised banking qualification. I am continually surprised when I study the background of some senior financial service executives, who are clearly acquiring their skills as they go along, but nevertheless, are not shy about giving their opinions. Now in my sixties, I agree with Oscar Wilde: "I am not young enough to know everything".

Shoemaking is a craft and I have two stories to relate about it. The Greek artist, Apelles, who lived in the time of Alexander the Great, made a mistake in his drawing of a shoe and the fault was brought to his attention by a shoemaker. He appreciated that, but then the shoemaker criticised the way Apelles had painted the subject's legs. The artist reminded him to keep to his trade: "you know about shoes but not

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anatomy". From this tale, incidentally, the well-known admonition "stick to your last" was derived, a last being the shoemaker's block that is shaped like a human foot.

I have my own experience with shoes. Perhaps in Panama (where both sophistication and the rudimentary often rub shoulders) there is still an abundance of traditional tradesmen running their own businesses, and who, incidentally, along with the majority of Panamanians, prove that courtesy and politeness are still in abundance in some places. I wished to save a pair of expensive, but defective, shoes that had plenty of wear left in them and I found a cobbler who did just that. This craftsman's enthusiasm and competent manner was a pleasure to experience. He also displayed a willingness and commitment which, normally, it must be said, only ownership of a business evokes in an individual.

Professionalism and the personal touch: you just can't beat it. As an exclusive watchmaker once remarked: "... it is more of a pleasure to do 250 watches [a year] than 2 million because, with those numbers, you no longer have any contact with the

individuals who buy watches or the people who make them". There are many wise craftsmen who stick to their last. Look at Faber-Castell pencils with a reputation for quality since 1856; Vincent van Gogh extolled their virtues. This old-fashioned family firm has needed no outside financial stimulus or diversification from its core business – and presumably would never dream of commenting on how Vincent van Gogh drew with its pencils. The firm has stayed within its sphere of confidence and has not strayed into businesses that it does not understand.

Those fortunate enough to be able to identify what's important in offshore financial business relations will always have a head start on those who only want things presented in an attractive package, a fast-food version, if you will, of financial services. It's when you untie the pretty bow, however, remove the colourful wrapping paper and peer inside the box that the trouble can start. There are many offshore service providers with sins to answer for but, of course, I am too polite to point a finger.

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Engaging an offshore representative is an important decision and we advise all persons to seek appropriate legal and tax advice from professionals licensed to render such advice before making offshore commitments.

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