

The Journal of the Section of Litigation

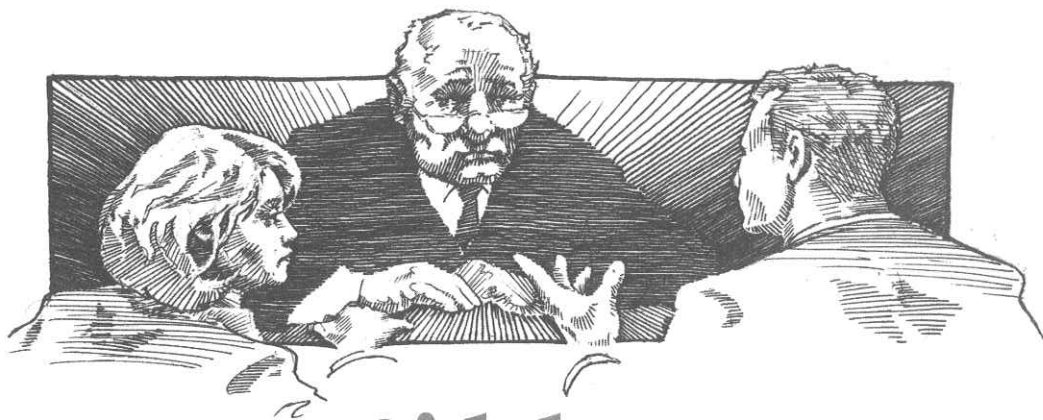
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Decisions



Sidebar

The Real World

by **Kenneth P. Nolan**
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It's finally happened. Just like my father and all his buddies at McFadden Bros. American Legion Post always predicted. Maybe it's only a miserable recession rather than another Great Depression like they lived through and vowed one day we brats would experience. So I grew up with my mom's tales of walking the mile and a half to school to save the nickel bus fare, the Saturday nights playing cards because no one could afford a movie, and how my Dad quit high school so his family could eat.

And when that greatest generation spoke of those dire days, respect was in their voices, anxiety in their eyes. And that's what I see and hear from my children and their friends when I ask, "How's work?" "I still have a job" is said with relief and trepidation. But not confidence.

Our world has changed. And that includes us. Law firms imploding, attorneys, support staff on the street. Fear that made my mother never turn on a light until it was totally dark has infected our world of education and privilege, of sirloin and Bordeaux, the world where sacrifice was for the other guy, the Mexican or Chinese or Haitian, those who clean houses, mow lawns, slice salami. The poor who struggle all their lives, working two jobs, just like our ancestors did so we could sit at a warm desk rather than dig ditches in the biting rain.

It's easy to blame the SEC or some politician in Washington. But the greed that caused this collapse was not isolated in bureaucrats or those who promised a chicken in every pot. It was in us—me and you—and it was celebrated and publicized and romanticized. More money, more fame, more stuff. And we didn't want to sacrifice, not really. Sure we worked like maniacs, but only so we could make partner, own the Benz, live in the McMansion. Not because it made us or society better, but because it made us more.

And when I say greed, I don't merely mean financially. I mean in spirit, in daily action, in philosophy. A certain selfishness of "what's in it for me—who cares about you. I want it and don't care how I get it." It's a loss of soul, community, respect. For oneself and others. In the *New York Times*, a woman wrote of her elderly mother who made a practice of returning items to Zabar's and other stores weeks or months after purchase. She'd break something, or eat some of the wedge of cheese and make up a story to get her money back. Her daughter thought it hilarious, and ended the article with her sister starting the same dishonest practice. No regard

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for the merchant or the public. And the daughter celebrated this selfishness in print. In her world, it was acceptable to lie and cheat.

I'm a plaintiff's personal injury lawyer, so avarice and deceit, especially my own, is familiar. Yet the greed of my world is mostly the Lotto type, a one-time thing. For some clients, this is their shot at the condo outside Orlando, the new Acura, the diamond studs. An opportunity to have a few bucks in the bank, not to dread the telephone and electric bill each month. For most, it ends when the case ends. But for those who ran Lehman or Bear or Merrill or Citigroup, it wasn't "let's make a quick buck and then return to our boring business." It was "I want more. Yeah, I know I have enough. So what. There's still an extra quick one to make. And I want it."

Reminds me of the client who was offered a ton of money. "So whatcha thinking?" I asked. "It's a good offer, right?" He looked out the window. "So what do you want to do?" I continued. "More," he answered simply. "More?" "Yep, more," he responded. "That's fine, how much more?" "More" was again the answer. "How much," with a slight edge in my voice. "More, a lot more."

And the obvious example is Bernard Madoff. Except for John Gotti, most mobsters made sure their children never entered the life. Madoff involved not only his children and family, but also

friends, neighbors, even charities that did good. And from what I read, he doesn't even seem to care.

Yeah, you could say he's an anomaly, an aberration, a rotten apple, but he probably loved the wealth, the notoriety, the whispers at the country club—maybe I can get Bernie to take your money. He doesn't take everyone. Never hits a home run but always double digits, good times and bad. Madoff may have even started legit, but then investments soured so we'll use the new money until the market turns. Never happened, of

course. The inability to admit failure, to tell the truth, destroyed many lives, including his family's. And those who invested are not without blame. They wanted that 10 percent return when everyone else was getting four.

A loss of courage. The courage to admit fault, failure. To acknowledge that your adversary has a strong case, to respect another's argument, to avoid Rambo litigation tactics. If you watched 10 minutes of Chief Judge John Roberts's confirmation hearing, you realized his brilliance. He spoke without

notes, citing cases, precedent in coherent and eloquent fashion. You don't have to agree with his judicial philosophy to recognize competence. Yet 22 senators, including Biden and Obama, voted against him. If he's not with us, he's agin' us. The focus was narrow, parochial. If he doesn't agree with me on my issue, he's no good. Even if a position is thoughtful and sincere—no difference. He's wrong. Destroy him. Which leads to retribution until the only politics is extreme and partisan.

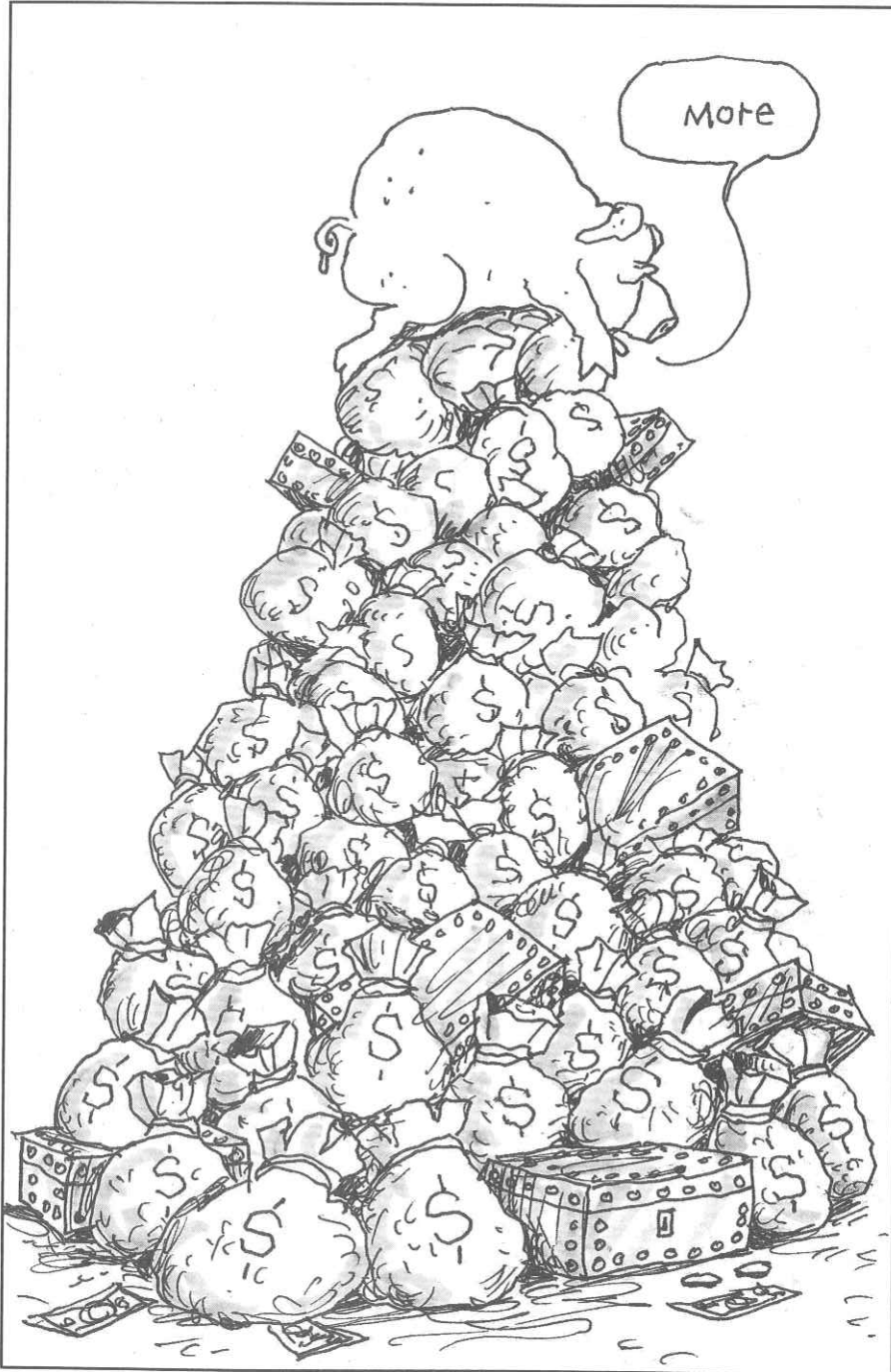
Yeats writes in "The Second Coming":

Turning and turning in the widening
gyre
The falcon cannot hear the falconer;
Things fall apart; the centre cannot
hold;
Mere anarchy is loosed upon the
world,
The blood-dimmed tide is loosed,
and everywhere
The ceremony of innocence is
drowned;
The best lack all conviction, while
the worst
Are full of passionate intensity.

There's no center in much of our nation and lives. Things have fallen apart. It's "what's best for me, rather than the client. What's best for my reelection, not my country." The refusal to concede that another's position has validity. To respect not only the letter but also the intent of the Federal Rules. To refrain from disrupting a deposition through specious objections and irrelevant argument. To avoid hyperbole and deceit in discovery disputes, to make measured and credible arguments rather than throw manure against the courtroom wall.

So this harsh crack-in-the-face recession will force many to pause, consider priorities, the way we live, our relationships. And, perhaps, change.

Live simply. Big shot Marc Dreier was arrested for fraud, which led to the disintegration of his 250-lawyer firm. Luxurious homes in Manhattan, the Hamptons, and LA; huge yacht; parties with celebs; artwork lining his Park Avenue office. John Thain, former head of Merrill, reportedly spent \$1.2 million on office decorations. His company loses \$10 billion that quarter, and this



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Sidebar

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Master of the Universe spends \$35,000 on a commode (which I thought was a toilet). Reminds me of Dennis Kozlowski of Tyco fame whose birthday party in Sardinia cost \$1 million. He even had an ice sculpture of David urinating vodka, which my teenage boy side finds hilarious.

I love a party, but plenty of wine, a few pigs in a blanket, some loud Motown—bingo, everyone has a blast. Yeah, I'd like to have a beer with Springsteen or get hit on by Angelina Jolie, but I'm not spending thousands so I can meet JLo. I'm way too cheap.

Up the street in my Brooklyn hood, someone is building a humongous home that looks like a sullen fortress, all stone and glass. At least 10,000 square feet right next to a home that's probably 1,000 square feet. And down the road from me on Shelter Island, there's an 11,000-square-foot summer home going up. Great for the economy, but who you trying to impress with all those rooms you'll never set foot in? Don't get me wrong, I like nice things, but only those I can afford and use. And I don't care if my neighbor's house is bigger or better. As Veep Biden would chirp, God love 'em.

Things don't make me feel important. Twenty Porsche convertibles won't make me cool. Maybe it's because I hang with those like me, who value the individual rather than the bank account. One bright, personable college senior always pays with a debit card because he doesn't want coins in his pockets. His dad, son of a longshoreman, shook his head with a chuckle, "When did it become so hard to carry change?"

Respect others and yourself. I love the Internet, the freedom, the instant information. I can find the answer to Ballerina Karsavina in seconds, which helps me with the rest of the crossword puzzle. I can e-mail colleagues and friends all over the globe. I have access to photos or videos of every sort, so I can watch Boston College's last-second winning touchdown passes over and again.

Yet, it also allows anonymous comment on blogs, news articles. Often caustic, even cruel, there's a lack of civility. You can author the most degrading words without consequence.

It's a cowardly freedom. There was even a website, JuicyCampus, which encouraged criticism on college students' looks, behavior. And usually directed to women.

Words, like actions, have consequences. We all remember too vividly hurtful nicknames from elementary school. "Go out with you, I don't even know you," is still repeated among my friends 45 years after a buddy, goaded by us, asked a girl to the movies. And this is one of the few G-rated taunts. I googled one of Obama's appointments and found scathing comments as to his teenage daughter's looks. I can only imagine what would have been said about me when I was 16.

Be kind and mature even when anonymous. Do not use the excuse, which I often do, that my adversary's tactics forced me to respond in kind. And take responsibility. If I lost my life savings with Madoff, I'd be angry with the SEC, which was told for a decade that it was a Ponzi scheme. Madoff's investors, educated and sophisticated, should have done their due diligence, particularly banks and charities. If you invest in a hedge fund, don't complain when it goes belly-up. And why anyone would entrust hard-earned cash to strangers is beyond me. Too often life savings disappear through incompetence or theft.

Be courageous. No one gave Barack a shot when he announced for president. Inexperienced, black with a Muslim name running against a Clinton is generally not a recipe for success. Yet he persevered and through intelligence and eloquence, he changed history. You do the same. If you don't want to practice, try another profession. A law school education is not wasted if you decide to teach or write or raise children. Find a dream and then follow it.

Even in these bleakest times, be optimistic. "I hear America singing, the varied carols I hear," Whitman proclaimed. Through effort and cooperation, life will be better. During the days that Lehman disappeared, one Goldman guy, as reported in the *Wall Street Journal*, noted that he couldn't take another day of meltdowns and pressure. Lloyd Blankfein, the CEO of Goldman, aptly responded, "You're getting out of a Mercedes to go to the New York Federal Reserve—you're not getting out of a Higgins boat on Omaha Beach."

Keep these terrifying times in perspective. You'll be fine. □