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Views and News on Matters Offshore

Domestic Terror, Offshore Security

Since the day the twin towers of the World Trade Centre in New York tumbled to the ground, the governments of many leading nations have had the name Osama bin Laden dominate much of their political agendas. The United States, the country where the cold-blooded atrocities took place, has been traumatised; the savagery and scale of the mainland terrorist horror, concentrated within a period of hours, had no precedent. The American mainland has enjoyed an isolationism from foreign assaults since the British burnt down the White House in 1812. Even aggression during the last world war only reached the shores of Hawaii; similar in effect to the British Channel Islands (though nearer) having been bombed, rather than mainland Britain, in the last world war. Like Hawaii, the Americans again suffered a surprise attack with an enemy prepared to commit suicide, only this time the death toll was considerably higher.

The United States already spent almost \$10 billion and employed 1,000 people in its counter-terrorism campaign before September, but now the anti-terrorist funding is expected to exceed the entire GDP of Panama and Slovenia combined. Much of the new policy will make significant inroads into the American individual's privacy; attacks on Afghanistan have become attacks on privacy also. The Organisation for Economic Co-operation and Development's money laundering black list, issued by its satellite body, the Financial Action Task Force (FATF), has momentarily been eclipsed by a black list of terrorists issued by the United States government. The FATF itself, however, far from

being overshadowed, has now gained in stature as its role becomes more prominent in the search for terrorist funds, supplementing a team which the United States has assembled and which includes the Central Intelligence Agency, the Federal Bureau of Investigation and the National Security Agency. The United States Treasury Department will also play a pivotal role, employing its Office of Foreign Asset control, the Customs service and the Financial Crimes Enforcement Network in the hunt for terrorist finances. The usual suspects (offshore financial services centres) have been cited in the media, but at the time of writing just a few leading offshore centres have been found to be closely implicated.

Although the Washington and New York attacks were catastrophic, they have served to test the bona fides of all offshore centres and have revealed those whose regulatory regimes and response have been found to be wanting. Responsible centres reacted quickly in the effort to detect bin Laden funds, as evidenced by Panama's immediate willingness to assist – the degree of co-operation was readily recognised and appreciated, according to the printed comments of a spokesman for the US Embassy in Panama. The country's money laundering legislation embraces a wide range of crimes beyond the narrow confines of drug smuggling and drug trafficking such as robbery, extortion, trafficking in legal weapons and terrorism. Lists of suspect individuals and entities provided by the United States were quickly sent to Panamanian banks and trust companies for scrutiny. Had Panama's reaction been anything less than immediate, it would have been grounds



for concern and criticism because all offshore centres must recognise that criminality and confidentiality are incompatible. Despite the automatic assumption by many that offshore centres played a leading role, what has emerged so far is the appearance of a terrorist operation run on conventional business lines rather than one which had fleet-footed men with sunglasses and briefcases, stashed with cash, visiting the world's offshore centres and depositing money in bank accounts and sand on the carpet. Bin Laden studied economics and finance at King Abdul Aziz University in Jeddah, Saudi Arabia, and has clearly used this training in order to structure his finances. Many people share the concern that the erosion of domestic privacy mentioned earlier will inevitably extend to offshore centres, known already for their secret ways. Unquestionably, there will be changes in how business is conducted offshore and the tightening of controls will be probably felt in most offshore centres. One can no more realistically expect, for example, that the British Virgin Islands' own agenda would supplant Whitehall's any more than that of the US Virgin Islands would Washington's. Neither of those offshore centres is a sovereign state, of course, and so, as always, it becomes important to choose your offshore centre carefully, especially if there is a concern that existing secrecy laws could be either swept aside or compromised by order of a foreign power for political or other motives. Gibraltar's fate as an offshore centre, for instance, with all its attendant advantages, hangs in the balance as the United Kingdom and Spain attempt to reconcile their respective positions over its sovereignty. Legend has it that when the island's apes leave, so will the British and during the second world war Winston Churchill ordered that a minimum of 24 must remain at all times. The present state of play suggests, however, that the British won't mind if less than 24 offshore companies remain, reminding us that the most secure offshore centres are those with sovereignty.

Inaccuracy and Infinity

Winston Churchill (who has become very popular with President Bush since September) counselled that "truth must be surrounded by a dense thicket of lies" in wartime. It is very clear that some

journalists regard themselves constantly at war with the offshore financial services industry; their battleground is large. Back in 1998 it was estimated that there were about 4,000 offshore banks licensed in almost 60 offshore jurisdictions and that they controlled perhaps \$5 trillion in assets. About 44 per cent of those banks were said to be located in the Caribbean and Latin America. Statistics, however, often contain a questionable degree of accuracy, much like some articles written about offshore centres. It has been suggested, for instance, that 8 spiders will be eaten accidentally at night during the average lifetime and that if a snail isn't disturbed it can sleep for up to 3 years (I suspect that some bureaucrats in Brussels could compete with the snail). I read that you should look at statistics like you would a bikini: what they reveal is suggestive, but what they conceal is vital – much like the man who drowned crossing a stream where the estimated average depth of water was six inches. In the event, however, when it comes to banking skulduggery, it does seem to me that the Caribbean and Latin America have always received more than a 44 per cent share of journalistic criticism – even, unlike the drowned man, making necessary allowance for exceptions. Certainly some of the initial reports connecting Panama with bin Laden's funds were inaccurate in the same way as the Washington Post at the time got it wrong in an article concerning the creator of PGP encryption software, Philip Zimmerman. The Washington Post printed an article by Ariana Cha which said that Zimmerman was overwhelmed by feelings of guilt because his software may have been used by the twin-tower terrorists. Zimmermann refuted the inaccurate characterisation and has since issued a statement saying that "strong cryptography does more good for a democratic society than harm, even if it can be used by terrorists". Such a remark, incidentally, surely draws a parallel with offshore bank accounts? Some international crime experts, in fact, have argued that precisely because of the higher profile of both PGP and offshore bank accounts, many criminals – including terrorists such as bin Laden – are more likely to try and avoid both. It seems that bin Laden has.

The Internet has not helped matters because its very nature is such that dissemination of news,



accurate or not, is rapid via electronic newsletters, newsgroups and e-mails. The web edition of the Dallas Morning News was first to wrongly announce that a secret-service agent had seen Monica Lewinsky and President Clinton alone together. But before the newspaper's website was able to make a retraction, the information was broadcast by ABC. In 1996 when TWA 800 crashed into the Atlantic just off the coast of the United States, Pierre Salinger, former press secretary to President Kennedy, claimed at a news conference that a missile had brought the aeroplane down. He had based his assertion on information found on a web page of questionable origin.

The Internet, in fact, presents two distinct dangers: its capacity to host inaccurate content and its seductive quality. The risk of being duped by skilful presentations found on web pages is real, as many have discovered to their cost. Considerable amounts of money can be spent on a very impressive website, but "web" is the operative word: don't be the fly caught by the spider. The Internet, of course, is only one of the tools used to create illusions which sometimes not only fool the gullible and the naïve, but those who, like bad journalism, foolishly pay little attention to detail or research. One can only wonder how Clark M. Clifford got sucked into the Bank of Credit and Commerce International's financial debacle back in the 1980s. Here was the quintessential Washington insider and, more significantly, one of those who helped establish the CIA as well as the NSC. Still, we should remember Albert Einstein's words: "only two things are infinite – the Universe and human stupidity and I'm not sure about the former". Perhaps the Universe is not infinite, but in the world of offshore finance the many ways in which one can be deluded are limitless unless scepticism overrides stupidity – particularly when it comes to what you read.

Under the Influence

Thomas Bayes, an 18th century Presbyterian minister, devised a mathematical rule which explained how you should change your existing beliefs in the face of new evidence. But some people don't play by the rules, no matter how compelling the evidence. This becomes damaging when those who abandon the rules are influential

forces in the publishing business – whether that involves the Internet or the printed world. Edward L. Bernays, for example, a master of public-relations in the first half of the last century, was instrumental in changing the government of Guatemala through pernicious propaganda. The United Fruit Company, an American business, saw its large plantations threatened by a government which it felt might expropriate some of its properties and give them to the peasants. So Bernays established the Middle America Information Bureau (the forerunner of today's classic front organisation) whose purpose was to publish "information" for distribution to the American press about communist infiltration in Guatemala. The ensuing newspaper stories stirred public concern in the United States to such an extent that eventually the CIA backed an insurrection which replaced the Guatemalan government with a right-wing totalitarian regime.

Another persuasive publishing force was William Randolph Hearst, the press tycoon, who famously said: "You furnish the pictures and I'll furnish the war". That was in the cable message which he sent to his illustrator, Frederick Remington, ahead of almost single-handedly causing the United States to enter into a war with Spain after the American naval vessel, the *Maine*, blew up in Havana harbour in 1898. Hearst's effective inflammatory press coverage helped convince an American tribunal that the cause was a Spanish mine whereas a similar Spanish tribunal determined that the warship's own ammunition was to blame. Despite Voltaire's observation that "history is a trick the living play on the dead", a majority of historians today agree with the Spanish finding.

The often opaque nature of the offshore financial services industry has made it a soft target, but even when publishers and their salaried acolytes, journalists, do not harbour preconceived views their breadth and depth of knowledge concerning offshore financial matters can be such that they do not need any bias for their reporting to be still flawed. In previous issues of the *Offshore Pilot Quarterly* I have discussed the paucity of knowledge and skill sometimes exhibited offshore by both practitioners and those who regulate them, but poor journalism plays its part as well. Ignorance and inaccuracy can become a toxic



combination, the result of which can be a distorted and damaging picture. Sadly, there are many journalists today writing about offshore financial services who have scant knowledge of the subject and so, like agents provocateurs from the past, such as Bernays and Hearst, they can cause mischief in tropical climes. To be fair, it should be said that many inexperienced journalists do make an attempt at research before putting either pen to paper or fingers to keyboard; even so, reviewing the information which is available still entails its proper interpretation and this, by definition, requires proper analysis. All well and good when the analysis is done by a seasoned financial journalist (a badge to be cautiously bestowed these days) with years of offshore exposure and whose knowledge has been gained gradually but thoroughly. Unfortunately, it seems that since tax harmonisation, financial transparency and money laundering have become offshore tags, they are the topics which have attracted those who masquerade as financial journalists: they may not wish to start a war with Spain, but the end result, nonetheless, is incitement rather than enlightenment.

It can never be argued that there are not situations offshore when the only conclusion to be drawn will be a negative one, such as when offshore

politicians or regulators claim that their particular jurisdiction has the finest banking controls in place, even though they are still on the FATF's money laundering black list. No offshore centre can claim Utopia, but neither should journalists have mental myopia when covering a story or writing an article about one of them. Mary Williams, who is the chief financial officer at the Isle of Man's Treasury, recently observed that if you are associated with the words tax haven and offshore you are often "seen as suspect, whatever the rights or wrongs". Negativity is the ill-informed journalist's common tool, one which was identified by Hegel, the prominent German philosopher, who recognised how criticism was the soft option and commented that "in passing negative judgements, one looks down on the matter on hand with a superior and supercilious air" and that this approach "is a sign of extreme superficiality". That is certainly the position of those journalists who write about offshore centres and who swap objectivity for subjectivity, making Randolph Hearst's prediction that "government by newspaper" would be something that "will be realised in the 20th century" all the more disturbing.

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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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