

Fiduciary Focus: The Solemn Obligations of a Fiduciary

W. Scott Simon | 7-14-04 |

My maternal great-grandmother, born six months after the Civil War ended, died when I was a child. I do, however, remember that in her very old age she instructed me on more than one occasion: "Anything worth doing is worth doing right." No doubt those words were drilled into Ida Bell Thomson by my Scottish great-great-grandfather who, among other things in his long life, witnessed (and perhaps even participated in) the burning of Atlanta in 1864 as a captain in the 79th Ohio Volunteers Infantry regiment.

So what does an oft-repeated adage from a woman born in the mid-19th century have to do with the fiduciary investment issues of the early 21st century? Just this: While we can all agree that providing investment advisory services to our clients is worth doing, we should make sure that we care about doing it right. Doing it right in our world, I believe, means living up to the high standards required of a fiduciary.

Doing it right seems particularly appropriate now that another Memorial Day has just passed, the great commemoration of D-Day is now concluded, and the 4th of July has come and gone. These historic milestones, along with the continuing death toll of our soldiers and Marines in Iraq, cannot help but bring a deepened sense of appreciation for the supreme sacrifice made by so many over the long course of our beloved nation's history.

All these events are a reminder that each of us has a solemn obligation to those who came before us and gave so much. That obligation, stated so eloquently by President Reagan in his speech at the 40th anniversary of the D-Day landings, is to show "by our actions that we understand what they died for."

Letters home written by those who have served in our country's military from the Revolutionary War to Iraq often tell us that soldiers are able to endure the terrors of combat only because they do not want to let down their comrades. Those same letters, though, *always* speak of a great feeling for our country and the ideals for which it stands. In his powerful D-Day speech, President Reagan identified those ideals as "faith, belief, loyalty, and love."

Those of us in the investment advisory profession have a special duty to be good stewards of other people's wealth. In these times when we are asking men and women in uniform all over the globe to lay down their lives to defend America and to help build a better world, is it too much to ask that each of us do our utmost to help create an America imbued with the ideals for which so many of our countrymen shed their blood through the ages?

One way to help build a better America in the world of investing is to adopt a fiduciary business model. Any efforts that we can make in achieving this goal, of course, seem wholly inadequate compared with the sacrifices made by those who died believing in the great ideals for which America stands. Nonetheless, we can honor them in our own small way by strengthening the investment advisory industry through adoption of a fiduciary way of thinking. Indeed, the scandals over the past

few years that are emblematic of the widespread corruption in many parts of our financial system would never have occurred had the lodestar of a fiduciary standard been set in place and followed scrupulously.

All fiduciaries involved in different fields of investing--including ERISA fiduciaries, fiduciaries of public employee retirement plans, fiduciaries of foundations and endowments, or fiduciaries of private family trusts--have one thing in common. They are required to live up to the standard of trust law because the assets they are responsible for are held in trust. The standard of trust law is the highest known in law.

The summary of a model law--the Uniform Management of Public Employee Retirement Systems Act--describes the special responsibilities of fiduciaries that hold assets in trust: "By declaring that all retirement system assets are held in trust...public employees are guaranteed the highest standard of conduct in the management and investment of assets for retirement that the law can establish. A trustee...carries the greatest burdens of care, loyalty and utmost good faith for the beneficiaries to whom he or she is responsible."

It is no accident, I believe, that some of these solemn obligations owed by a fiduciary are the same as the ideals identified by President Reagan in his D-Day speech and for which so many of America's best gave their lives. Carrying out these fiduciary obligations--"the greatest burdens of care, loyalty and utmost good faith"--may help us to better "understand what they died for:" the ideals of "faith, belief, loyalty, and love." And so: "Strengthened by their courage, heartened by their [valor], and borne by their memory, let us continue to stand for the ideals for which they lived and died."

No one describes the vital importance of the work we do in the investment advisory profession and the solemn obligations we owe to our clients better than David Yeske, the 2003 president of the Financial Planning Association:

- Financial planning has the power to transform people's lives.
- We are dealing, after all, with some of the most potent forces in people's lives.
- [These] forces will determine whether a couple will be able educate their children, care for aging parents, retire in comfort, travel, and do all else that might mark their lives well lived.
- We must also come to terms with the corresponding obligations. For the privilege of exercising our power over the money forces in people's lives carries with it great responsibility.
- Accepting this responsibility means accepting liability.
- Many have gone so far as to say that financial planners must step up to the plate and accept the role of fiduciary. I certainly like the concept as I understand it: putting your clients' interest above your own and being ever mindful of the responsibility engendered by their trust.
- I would like to set a higher challenge: to think and act like a fiduciary at all times, whether or not the law says you are.
- We must distinguish ourselves by conducting ourselves always as if we were fiduciaries.

Let us endeavor, then, to help create in our own small way a better America by adopting in thought and practice a fiduciary state of mind. In doing so, we honor those--so many--who came before us and sacrificed so much. Carrying out our solemn obligations to them also allows us to fulfill our obligations to those who will come after we pass from the scene. I am sure that my great-grandmother who believed that "anything worth doing is worth doing right" would approve of such efforts.

W. Scott Simon is an expert on the Uniform Prudent Investor Act and the Restatement 3rd of Trusts (Prudent Investor Rule). He is the author of two books, one of which, *The Prudent Investor Act: A Guide to Understanding* is the definitive work on modern prudent fiduciary investing.

Simon provides services as a consultant and expert witness on fiduciary issues in litigation and arbitrations. He is a member of the State Bar of California, a Certified Financial Planner® and an Accredited Investment Fiduciary Auditor™. Simon's certification as an AIFA™ qualifies him to conduct independent fiduciary reviews for those concerned about their responsibilities investing the assets of endowments and foundations, ERISA retirement plans, private family trusts, public employee retirement plans as well as high net worth individuals.

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