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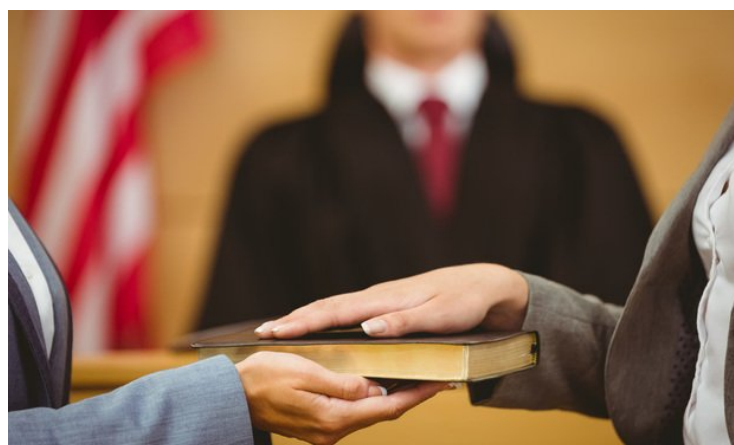
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'Jersey Jones': Ordinary Lawyers and the Quest for the Morphing Truth

As lawyers, we wear many hats. Among them is a crown designating us Keepers of the Truth. We didn't ask for it. It came with job. Good luck with the quest.

By **Marc Garfinkle** | November 08, 2018

America's systems of governance and jurisprudence require that all lawyers understand in a similar way a few basic ideas, irrespective of religion, geography, race, origin, ability, color, gender or political affiliation. As a new lawyer, whenever that was, you may not have recognized the Supreme Court's implicit faith that you would share with other lawyers a common understanding of certain fundamental concepts, but it's there.



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Look at the Common Law's "reasonable man" standard (which has become the "reasonable person" standard, finally refuting my late mother's notion that women were more reasonable). We have no problem working with it. Why *should* we? Lawyers are experts on reasonableness. It begins in law school. In Torts class we dissected and analyzed human conduct to brighten the line between reasonableness and its opposite. In Contracts class, we refined our understanding of reasonable time, reasonable delay

or reasonable compensation. Our entire criminal justice system is predicated on our determination of what is meant by a reasonable doubt, and even the RPC on fees is a mandate that we be reasonable.

On every lawyer's desk, then, sit the balance and the pennyweights that measure reasonableness. These are lawyer tools. They serve our clients, who count on us to keep their contracts fair and reasonable, their business practices reasonably compliant, their employees reasonably treated, their arguments reasonably made, their juries reasonably doubtful and so on. And we don't just do it, we do it well. That hasn't changed much in the 40 years this writer has been a lawyer.

As a new lawyer, you may also have marveled at some of the other shiny new tools in your box. The discovery process, trial, cross-examination, even post-judgment enforcement orders, were now at your fingertips in the quest for truth. Truth? Of course. It is our stock in trade. All of jurisprudence and legislation depend on the existence of certain timeless, immutable truths. Murder is bad—anywhere, any time. Helping the needy is good. Period. When you know what is true, and you can prove it, you can change the world. This search for truth compels us to establish or deny the existence of "facts."

Facts are bits of information which have importance to lawyers when they are supported by evidence. Lawyers know that evidence is better from unbiased sources. Evidence is even better when it comes from multiple sources. Often the best evidence is scientific evidence. Our courts understand this, and so scientific evidence has become the keystone in many of our constructs of truth. As a corollary skill, lawyers learn how to discern facts from a host of pretenders: falsehoods, half-truths, bluster and bravado, fake science, official proclamations, manipulated statistics, paid endorsements and social opinion.

But there is trouble afoot. Our traditional notions of truth are being challenged by social media, news media and government officials. Today, truth does not seem to exist except as one more way to spin a set of facts. News media—in print, online, or on the air—has become universally partisan. Accurate allegations of fake news and disinformation are commonplace. People—thoughtful, intelligent people—are questioning whether truth really exists at all. If it does, then how do these challenges

persist? If it does not, then haven't the underpinnings of our government and jurisprudence been fatally compromised? To answer such questions, we must go beyond the ordinary scope of the column and the limited capacity of this columnist.

Our quest for the truth about truth drew this writer first to consider John Keats' timeless proclamation in *Ode on a Grecian Urn*, that, "Beauty is truth, truth beauty, - That is all ye know on earth, and all ye need to know." A moment's reflection however, debunked that poetic notion. There is more to truth than beauty, and we *do* need to know more. Thank you, John, but we'll have to look to other thinkers and writers from other times and places whose insights into truth can help our quest. Here are a few selections you might enjoy, dear reader.

"The truth is rarely pure and never simple." Oscar Wilde, *The Importance of Being Earnest*

"Everything we hear is an opinion, not a fact. Everything we see is a perspective, not the truth." Marcus Aurelius, *Meditations*

"Facts do not cease to exist because they are ignored." Aldous Huxley, *Complete Essays 2, 1926-29*

"Men occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing ever happened." Winston S. Churchill

"Truth never damages a cause that is just." Mahatma Gandhi

"There are two ways to be fooled. One is to believe what isn't true; the other is to refuse to believe what is true." Soren Kierkegaard

"Above all, don't lie to yourself. The man who lies to himself and listens to his own lie comes to a point that he cannot distinguish the truth within him, or around him, and so loses all respect for himself and for others." Fyodor Dostoevsky, *The Brothers Karamazov*

"The truth,' Dumbledore sighed. 'It is a beautiful and terrible thing, and should therefore be treated with great caution.'" J.K. Rowling, *Harry Potter and the Sorcerer's Stone*

"A lie can travel half way around the world while the truth is putting on its shoes." Mark Twain

“Never be afraid to raise your voice for honesty and truth and compassion against injustice and lying and greed. If people all over the world ... would do this, it would change the earth.” William Faulkner

“People think that a liar gains a victory over his victim. What I’ve learned is that a lie is an act of self-abdication, because one surrenders one’s reality to the person to whom one lies, making that person one’s master, condemning oneself from then on to faking the sort of reality that person’s view requires to be faked The man who lies to the world, is the world’s slave from then on There are no white lies, there is only the blackest of destruction, and a white lie is the blackest of all.” Ayn Rand, *Atlas Shrugged*

“Rather than love, than money, than fame, give me truth.” Henry David Thoreau, *Walden*

“The truth is not always beautiful, nor beautiful words the truth.” Lao Tzu, *Tao Te Ching*

“I’m for truth, no matter who tells it. I’m for justice, no matter who it is for or against.” Malcolm X

“If you look for truth, you may find comfort in the end; if you look for comfort you will not get either comfort or truth only soft soap and wishful thinking to begin, and in the end, despair.” C.S. Lewis

“The only thing that permits human beings to collaborate with one another in a truly open-ended way is their willingness to have their beliefs modified by new facts. Only openness to evidence and argument will secure a common world for us.” Sam Harris

“Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.” John Adams

“False facts are highly injurious to the progress of science, for they often endure long; but false views, if supported by some evidence, do little harm, for everyone takes a salutary pleasure in proving their falseness.” Charles Darwin

“All credibility, all good conscience, all evidence of truth come only from the senses.” Friedrich Nietzsche

“Democracy is not just about voting but about informed voting. If democracy doesn’t have access to reliable sources of information and instead relies on social proof, then there is no way of distinguishing between junk evidence and actual knowledge.” Jens

Martin Skibsted

“The fact that an opinion has been widely held is no evidence whatever that it is not utterly absurd.” Bertrand Russell

There is often a fine line between what is true and what is not. Attorneys in almost all areas of law make a living on that line. Our society lives on that line, too. Democracy and justice demand that we never deny the importance of truth nor abandon our quest to unearth, recognize and venerate it. When lawyers doubt the existence of truth or share in the denial of its importance, we will lose our value to society, and society will be degraded, perhaps destroyed.

As lawyers, we wear many hats. Among them is a crown designating us Keepers of the Truth. We didn't ask for it. It came with job. Good luck with the quest. Glad I could help.

Marc Garfinkle practices in Morristown, focusing exclusively on legal ethics, attorney discipline, bar admission and judicial misconduct. He is also an adjunct professor at Seton Hall University School of Law.