



John T. Berry

I Lied!

Now that I have your attention... It was a day I shall never forget. I was a very young lad. The decade was the 50s. Mom and dad had told their young son, John, "We are going to be gone for a bit. Have fun, but whatever you do, don't go down by the lake."

I nodded my understanding and "agreement." Very soon thereafter while I was standing in the mud near the lake, concern began to build. My conscience began to ache. It was a dull ache however—one that was not enough to cause me to go home immediately, but enough to cause me to leave sooner than I wanted.

I cleaned the mud from my shoes and jeans (or so I thought) and trotted none too slowly back home, beating mom and dad by a whisper.

During my interrogation, during which I staunchly denied my misdoing, I quickly realized the three-pronged error of my ways. (This may truly have been the moment I decided to be a lawyer. It surely must be better being the interrogator than the recipient interrogated.)

First, I disobeyed. Actually, upon close analysis I first lied when I indicated to my parents that I understood their directions and would comply. It was clear in my young mind even as they gave their instructions that this was my chance!

Secondly, I "miscommunicated my whereabouts." (That's improper lawyering for "I lied and said I was nowhere near the lake.")

Last (and least), I had neglected to totally clean the mud from my jeans, thus leaving the evidence that my folks used to nail me for mistakes one and two.

Any chance this kind of event happened to you?

Later I will be talking about accountability, but for now let me say this: the sting of my dad's "accountability session" on my posterior is still with me as a memory. The sting of lost trust and lost respect to a lawyer and

our profession over even the slightest failure of honesty can last much longer.

If I were to conduct a survey... no, let's do it now, just between you and me: Have you lied within (you name the time period—your lifetime, last year, yesterday, today...)? If we're honest with ourselves, would not 100 percent of us have to say yes for one of those time periods? Note: Lying includes lying to ourselves. Sometimes that is the worst kind.

If all of us have lied, then the issue becomes where the quantity, timing, and severity of our lies places us on the "honesty continuum."

This article is in no way meaning to flip-pantly paint pathological liars and rare fabricators of the truth with the same brush. The real world that I have lived in tends to have more than two groupings: totally untrustworthy liars versus 100 percent perfectly honest folks. Grandiose speakers using much hyperbole may wish to present that survey of human conduct, but for the most part we do see a continuum of honest representations versus lies.

There are many articles directed at the dire consequences to our profession of the few pathological lawyers among us. This is not one of them. This article is aimed at the vast majority of us in a spot much closer to the honesty goal, but still in need of improvement.

Lest some think I am suggesting we give up on the notion of 100 percent honesty by all lawyers, or that this is some backhanded way of excusing serious lying if rarely engaged in, let me dispel that notion now.

The article's theme is intended to dissuade any of us from taking ourselves off the hook of striving for true honesty in everything we do by using the excuse that at least we are more honest than some, or even most, of our profession. Hopefully we all can find ways through self-evaluation and self-improvement, along with different forms of outside accountability, to move ourselves closer to that goal.

There are many traps along the way. In our profession, the forms of deviation from our ultimate goal of perfect honesty may entail deliberately making false statements by commission or omission, evasion or sleight of tongue (rather than hand).

Two recent encounters got me thinking about this subject. Each focused me on all of us as lawyers rather than just the worst of us. They reminded me that good doses of peer support and pressure are in order. It is a matter of helping each other recognize the lies, deal with them, and honoring those who are consistently the examples of the highest integrity. This cumulative effort will have a far greater overall impact on the profession's honesty level than merely relying upon selective discipline or rejected applications to admission to the Bar.

My two encounters happened worlds apart from each other.

I first received an e-mail message from a Nigerian friend of mine. We had met when I, along with William R. Wagner of Cooley Law School, visited Nigeria as part of a Justice Department team sent to help that poor, violent, and corrupt (listed by many sources as the most corrupt) nation to establish a democracy and a foundation of integrity. Our contribution was to help lawyers and judges build a judiciary the people could trust as honest.

My friend, Mr. Pam, was one of those attorneys who literally put his life on the line to accomplish that transition in Nigeria. He wrote to say the prosecution efforts were going well but said they could only prosecute so many people.

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thoughts/concerns**

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His observation? Each individual had to understand the importance of their own adherence to telling the truth and to exert pressure on others to see that importance.

My second encounter was with a lady I have known and for whom I have the utmost respect. She said that ten years ago she finally decided to make a concerted, focused effort not to lie. She has never been happier.

I was struck by the fact that this was a person whom I would have thought would have never needed such a transformation. Outside appearances are deceiving. We lawyers are good at projecting images that may not go much beyond the surface. She now walks the talk.

Under the influence of these two exceptional people I have become more convinced than ever that the key to real improvement in our profession is more than just ridding our profession of bad apples. It is about each of us looking at our own conduct and those around us even in what appears to be small breakdowns of honesty.

Warning! Like all else in life, let's be careful in the application. I did see parts of the movie, "Liar, Liar" with Jim Carey's performance as the person who always said what was on his mind. Common sense in life remains a good thing.

I, like you, have had to face the dilemma of how to honestly respond to, "Honey, do I look like I have gained any weight?" I leave that answer to your discretion based upon your life philosophy, faith, good conscience, and possible concern for your own physical safety. Common sense in life remains a good thing.

As to those other matters few of us could categorize as anything but lies, cumulatively we can make a difference.

To err is human; to forgive divine. We all have heard that. I would add though that the human memory is much harder to erase than a computer disk.

As I read back over this article (interestingly enough on April 1, April Fool's Day), it struck me that if I had the choice of being known as having the most brilliant legal mind or a good lawyer above reproach there is no contest. The great part is that only a few of us have a shot at the former anyway. All of us have a shot at the latter. That one is our

choice. It's a conscious accountable decision that will mark our personal legacy.

In the book, *The Riverkeepers* by John Cronin and Robert F. Kennedy, Jr., the authors describe an individual who had "an absolute reverence for the truth and an intolerance for all affronts to the public trust." Now that is a legacy.

This was not an easy article to write. I have spent a major part of my career prosecuting the most dishonest of us while seeking to emulate the best. I long ago recognized there is a continuum of human character that forces each of us to consistently reevaluate where we are and where we should be.

Many of us are not fortunate in our lives to have enough heroes who have established those wonderful legacies. I mention but two of many in my life. Barb, my wife, who is the shining example to me of the closest thing to perfection on this topic. The other is Mr. Pam. He has found the secret—personal integrity trumps enforcement efforts. The cumulative effect of individual lawyers committed to a "reverence" for honesty is what is needed.

That personal commitment will easily bring us to a standard far higher and far more satisfying than a legalistic adherence to formal standards and avoidance of negative consequences for failure to meet those standards.

Standards do exist. *Rule 8.4, Misconduct* subjects us to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The Ten Commandments found in Exodus, as well as most faiths and philosophies, set forth the same standard with possible accountability much more severe than lawyer discipline.

All in all, it comes down to a matter of the heart, not a matter of the rules.

Justice Norman Veasey of Delaware has challenged us as a profession and said, "We are in search for the heart and soul of our profession." Reverence for truthfulness might be the place to start.

Then-President of the ABA, Jerome Shesstack, was asked what appeared to be a loaded question. What is the state of the profession? Was it good? Was it bad? His answer? Not good enough.

Mr. Pam, looking at our profession from his vantage point in Nigeria, might say we look pretty doggone good. I think if I asked him though, he would say his greatest compliment would not be how honest we are, but our recognition of how far we have yet to go. We are not good enough.

Justice Veasey is so very right. It is a matter of our heart.

How do you see it? ◆