

## Don't Blame the System

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The science of how we paint our individual realities, and the lawyer's art of bringing people together.

# The Myth of "One Truth"

The legal myth of "one truth" has led us astray. According to the myth, litigation and trials are a search for "one truth." But if there is only "one truth," why do we need 12 people to find that "one truth" and why are we satisfied if

only nine agree on "one truth"? More interestingly, how can we expect 12 lay people—in a matter of days—to find this "one truth" when that "one truth" eluded the opposing lawyers for years in pretrial discovery and continues to elude them at trial? If there is only "one truth," why is the same product (with the same design, same documents, same witnesses, and nearly identical jury instructions) sometimes found defective and sometimes not? And if our system is designed to find "one truth," why is it so error-prone? In the breast implant litigation, *after* several plaintiff verdicts, the bankruptcy of a major silicone manufacturer, and the creation of a multi-billion dollar settlement fund, several highly respected epidemiological studies and several judicially appointed expert panels conclusively found no causal connection between the silicone breast implants and the autoimmune diseases that they allegedly caused. On the criminal side, DNA evidence has exonerated nearly 300 people

(17 on death row) who were convicted beyond a reasonable doubt and there have been more than 600 other people exonerated without DNA evidence in the last few years. Even on the appellate level, the U.S. Supreme Court has a long list of 5-4 decisions. If there is only "one truth" why can't the highest justices in our land agree on that "one truth"?

Is our system broken?

No. The myth is false. There is no "one truth."

### Different Realities

We are all different and do not see and experience the world identically. Each of us sees the world through lenses grounded by our own life stories. A color-blind person perceives the environment differently than one who can see colors. A seasoned hunter notices small marks in the dirt, disruptions of leaves, and faint smells in the air that may be completely unnoticed by a novice hunter. Even people with similar



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backgrounds may interpret what they see and hear in unique ways. Two small town students may enter a major state university and feel completely different about the experience. One may feel intimidated by the size and anonymity. The other may feel free from the prying eyes and strict mores of small town life.

### Stories Paint the Individual Realities We Believe and See

From the beginning of time, stories have given us a convenient feeling of control over an otherwise random environment. It feels good to be certain. In ancient Greece, stories of fights between gods and mortal men explained the scary sounds of thunder. In primitive societies, ritual sacrifices were thought necessary to appease the gods and control rain, harvests, and other phenomena. In Pacific island communities, fertility was thought to be influenced by touching certain phallic shaped rocks. With the periodic birth of children of certain sexes, the mythical power of these objects and the stories accompanying them were reinforced and retold with increasing authority. But no one stopped to measure how many times touching a rock resulted in pregnancy or the failure to touch rock resulted in no pregnancy. Like Pavlov's dog, occasional reinforcement of the story was sufficient to sustain belief in the story. What social scientists call "confirmation bias" caused believers to look for and remember only those instances supporting the story and forget those instances when the connection was not evident.

### Invisible Gorilla

The power of stories to frame and limit what we see has been established in a number of laboratory and field experiments. In one such experiment, two scientists at Harvard set up an experiment in which students with white shirts and black shirts passed basketballs to each other and moved around. The scene was videoed and observers were asked to count how many times the white shirt students (and not the black shirt students) passed the basketball.

As the white shirt and black shirt students moved and passed the basketball, a student in a black gorilla suit walked into the middle of the scene, turned to the camera, beat her chest, and walked off cam-

era. The entire gorilla sequence took nine seconds.

After viewing the video, viewers were asked how many times the white shirt students passed the basketball. The viewers were then asked whether they saw the gorilla. Fully 50 percent of those viewing this basketball passing video did not see the gorilla. When shown the video again, many were convinced the video was changed. Christopher Chabris and Daniel Simons, "The Invisible Gorilla: How Our Intuitions Deceive Us" (2009); see also <http://www.theinvisiblegorilla.com/>.

### Significance to Courts

Consistent with this and other recent social science research, the Innocence Project <http://www.innocenceproject.org/> and Exoneration Project <http://www.exonerationproject.org/#!home/mainPage> have demonstrated that judges and jurors are equally subject to the illusions of attention/perception, memory, confidence, knowledge, and causation as described in the Invisible Gorilla. The exoneration from wrongful convictions beyond a reasonable doubt of more than 800 people, 17 of them while waiting on death row, has shaken our intuitive belief in confident eyewitness testimony. Writing for a unanimous New Jersey Supreme Court, Chief Justice Rabner, with the assistance of a Special Master, extensively examined recent scientific research on perception and memory and observed that "eyewitness [m]isidentification is widely recognized as the single greatest cause of wrongful convictions in this country." *State v. Henderson*, 208 N.J. 208, 231 (2011). While "eyewitnesses generally act in good faith" "human memory is malleable." *Id.* at 234. The court recognized that "there is almost *nothing more convincing* [to a jury] than a live human being who takes the stand, points a finger at the defendant, and says 'That's the one!'" *Id.* at 237. But the court found that "[r]ecent studies—ranging from analysis of actual police lineups, to laboratory experiments, to DNA exonerations—prove that the possibility of mistaken identification is real, and the consequences severe." *Id.* "We are convinced from the scientific evidence in the record that memory is malleable, and that an array of variables can affect and dilute memory and lead to misidentifications." *Id.* at 218, see also Jennifer Thompson-Cannino, Ron-

ald Cotton, Erin Torneo, "Picking Cotton: Our Memoir of Injustice and Redemption" (2009) (A very confident Jennifer Thompson identified and convicted Ronald Cotton for rape twice only to learn years later through DNA evidence that Ronald Cotton was innocent and not the perpetrator of the crime against her.); [http://www.cbsnews.com/2100-18560\\_162-4848039.html](http://www.cbsnews.com/2100-18560_162-4848039.html).

## How can we expect 12

lay people—in a matter of days—to find this "one truth" when that "one truth" eluded the opposing lawyers for years in pretrial discovery and continues to elude them at trial?

### Rethinking Unconscious Feelings

The revelations of DNA evidence and the acknowledged fallibility of eyewitness testimony have been accompanied by new insights about our brains derived from functional magnetic resonance imaging (fMRI). Since the 1990s, scientist using fMRI tools have peered into the unconscious processes of our brains and revised our thinking about human decision-making. Western philosophers have generally assumed humans are logical creatures who are sometimes led astray by emotion. This has sometimes been characterized as the battle between good and evil. Recent scientific investigations suggest a more integrated relationship, with our unconscious feelings playing a larger role in dictating what we see and decide.

In Jonah Lehrer's 2009 book, "How We Decide," he describes how quarterback Tom Brady throwing a critical Super Bowl pass, pilots avoiding a crash, radar operators distinguishing between a hostile incoming missile and friendly low flying air craft, firefighters surviving a firestorm, and other individuals forced to make split-

second decisions commonly cannot rationally explain their decisions other than that they had a feeling. These anecdotal examples and more extensive studies have shown that the human brain has a remarkable ability to learn from trial and error, improve itself, and express complex instantaneous calculations in feelings. When the part of the brain controlling emotions is

Our legal system does not have the luxury of research, experimentation, and time to find “one truth.”

removed due to injury, scientist found the subject still capable of rationally evaluating choices but incapable of choosing. And in evaluating mass-murder sociopaths, scientists have found a consistent absence of emotional response in these individuals. They are very rational but show no feelings of compassion, empathy, guilt, shame, or embarrassment. With the help of fMRI technology, scientists have found activity in the prefrontal cortex of the brain supports this external picture of unconscious feelings modulating rational decision-making.

Leonard Mlodinow in his 2012 book, *Subliminal: How Your Unconscious Mind Rules Your Behavior*, expands on this “new science of the unconscious” and describes how our brains create “truth” with a lawyer-like “confirmation bias” that draws on our pre-conceived feelings to cause us to see what we want to see:

As the psychologist Jonathan Haidt put it, there are two ways to get at the truth: the way of the scientist and the way of the lawyer. Scientists gather evidence, look for regularities, form theories explaining their observations, and test them. Attorneys begin with a conclusion they want to convince others of and then seek evidence that supports it, while also attempting to discredit evidence that doesn't. The human mind is designed to be both a scientist and an attorney, both a conscious seeker of objective truth and an unconscious, impassioned advocate

for what we *want* to believe. Together these approaches vie to create our worldview.... As it turns out, the brain is a decent scientist but an absolutely *out-standing* lawyer.

Leonard Mlodinow, “Subliminal: How Your Unconscious Mind Rules Your Behavior,” 5, 200 (2012).

Like the Invisible Gorilla example above, our feeling and the stories in our head provide a preconceived map of what we expect to see—white shirts passing—which causes us to look for only those things in the environment that confirm our map and to disregard and not even see those things that contradict our map, e.g., a gorilla in the middle of the screen.

### Unconscious Feelings Create Natural Polarization

Polarization of the truth we choose to see should come as no surprise. Research and observations described in Mlodinow's book demonstrate our natural tendency to categorizes the world we see. We group things as “animals” or “plants,” furniture as “antique” or “unfinished,” and people as “enemy” or “boring.” Much of this categorization is unconscious. Even when we think we are unbiased, our decision-making and actions often belie this belief and we instantly create stories to “fill-in-the-blanks” about situations, things, and people about which we have little information. Saying a person is a lawyer, professional athlete, public school teacher, Republican, Southerner, Californian, immigrant, or Canadian instantly conjures a framework of pictures and judgments about the person's appearance, ethnicity, income, and intellectual capacity that causes us to be surprised or not surprised when we meet the person and can test whether they measure up to our imagined profile. See Arin N. Reeves, *The Next IQ: The Next Level of Intelligence for 21st Century Leaders*, (2012) (Dr. Reeves uses “crowd sourcing” and other recent social science research to explain how diversity and inclusion avoids unconscious bias and group blindness.). In 1998, three scientists—Tony Greenwald, Mahzarin Banaji, and Brian Nosek—collaborated to develop a test of this unconscious bias—“Implicit Association Test” (“IAT”)—and found such stereotyping to be the rule rather than the

exception. Leonard Mlodinow, *Subliminal: How Your Unconscious Mind Rules Your Behavior*, at 153–57. You can test your own unconscious bias at <https://implicit.harvard.edu/implicit/>. Our unconscious feelings color our categorizations and polarize our separate viewpoints. Our different life stories and feelings drive different visions of the world and “truth” we see.

### Unconscious Feelings Are Derived from Group Identity

Mlodinow notes that the subliminal feelings influencing our worldview and unconscious decision-making are greatly influenced by our sense of group membership. He recounts an interesting study involving Asian American women at Harvard who were given a difficult math test. As Asian women, the subjects were ostensibly a part of two in-groups with conflicting norms: Asians, a group typically thought to be good at math, and women, a group commonly thought to be poor at math. Before taking the test, one-third of the group were given a questionnaire about their families to trigger the group's Asian identity. One-third were asked about coed dormitory policies to trigger their identity as women. And one-third were asked question about their phone and cable service (a control) and given the test. While all of the subjects indicated the questionnaires had no effect on them, the group manipulated to think about their Asian identity did the best, the control group was second, and the women identity group did worse. Apparently, how the women viewed themselves affected their confidence in their intuitions and choices during the math exam. *Id.* at 169–70.

### Group Identity Binds and Blinds

Breaking from the mental biases of our group is difficult. Since the *lawyer* in our mind does an *outstanding* job using *confirmation bias* to pick out from reality only those things consistent with our unconscious feelings (and discounts and ignores everything contradicting that feeling), there is little opportunity to change minds once we identify with a group unless we can find a way to alter, augment, or join a person's group identity.

Jonathan Haidt, in his 2012 book, *The Righteous Mind: Why Good People Are*

*Divided by Politics and Religion*, expands on these thoughts at length and notes the importance of sincerely embracing another's perspective before being able to understand and change their point of view.

If you really want to change someone's mind on a moral or political matter, you'll need to see things from that person's angle as well as your own. And if you do truly see it the other person's way—deeply and intuitively—you might even find your own mind opening in response. Empathy is an antidote to righteousness, although it is very difficult to empathize across a moral divide.

Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion*, 57 (2012); see also <http://www.your-morals.org/>.

Haidt praises the brilliant insights of Dale Carnegie in his classic book, *How to Win Friends and Influence People*, because it urges readers to avoid direct confrontations and instead engage in respectful, warm, and open dialogue (“begin in a friendly way,” “smile,” “be a good listener,” and “never say ‘you’re wrong’”). As Haidt points out, our groupings generate trust within our group but also create a distrust of those we view as outside of our group. The morality of the group both “binds and blinds.”

### Significance to Lawyers

By accepting that we each see and derive different meanings from the same stimulus, we can appreciate the comment of anarchist Dick the Butcher in Shakespeare's *Henry VI*, “The first thing we do, let's kill all the lawyers.” With just words as tools, lawyers daily pry us from our separate group identities (employee, employer, consumer, parent, crime victim, insider, outsider, etc.) to remind us of our joint membership in a common societal group that believes in consistent justice and fairness for all. We can trust. We can collaborate. And we can build together because of this unifying foundation of fairness crafted and maintained by lawyers. The violent and selfish darkness promoted by anarchists like Dick the Butcher cannot be quelled by just a coercive police or military presence. That would simply replace one darkness for another. Only a belief—nurtured by lawyers—in a common flame of justice and fairness can push back the darkness.

Killing the lawyers kills the glow and reach of our common sense of justice and fairness for all and thereby loosens the bonds between us. When we no longer feel a commonality it is easy to separate from and demonize others.

### Art of Lawyering

Keeping the flame of justice and fairness bright is an art, not a science. Unlike science, law is a practical art that imperfectly fashions fair solutions now so that we—as a tribe—can live together and move forward without killing each other or permanently dividing our tribe. Our legal system does not have the luxury of research, experimentation, and time to find “one truth.” Nor do we have the patience to obtain complete consensus in every matter dividing us. When a dispute is brewing, we need a solution—now. We cannot wait years and centuries to craft “one truth” or gain universal agreement about that “one truth.” We must deal with the realities of the moment—we each have different life stories that have molded our feelings, which in turn dictate the reality we create and see through lawyer-like confirmation bias. We are not seeing the same reality, but lawyers must somehow bridge that divide.

Think about what we really do. We talk about fighting and going to war against our opponents. Clients talk about wanting the meanest and most uncompromising SOB to destroy the other side. And we describe our activities in litigation as battles in which we seek to kill our adversaries. But in reality, we do not kill anyone. We use words. We persuade. We cajole. We enlighten. We inspire. And we ultimately find agreement with the other side and settle 98 percent of the cases filed. Even with respect to the two percent of cases that go to trial, experienced trial lawyers know they are seeking agreement and approval by the court or jury. It is not a war. Berating, embarrassing, or undercutting the opposition is not enough and is not persuasive. We are not soldiers. No matter how much we overspend and overpower our opponent, if our position lacks credibility, justice, and fairness we will not find agreement and we will lose.

In short, we—unconsciously—are focused on the root of the divide between us. When we are successful, at some point—in our negotiations with opponents

or our presentations to judges and juries—we establish enough credibility for our opponent or the trier of fact to trust us. For at least a brief moment, we become a part of one of our opponent's or the trier of facts' identity group (e.g., American, fair-minded, compassionate, believable, officer of the court, etc.). We are sufficiently “like” them in some small way for them to

Whiteboards and apologies demonstrate an art of lawyering that is consistent with the recent science of how our unconscious feelings guide our decisions.

feel safe listening to us and opening their minds to our ideas.

Indeed, this is the essence of our profession. We use our credibility to bring people together—not divide them. We step beyond our client's group to remind all of the parties of what we have in common. Transactional lawyers collaborate to craft integrated stories in the present that build to a compatible story in the future. Litigators use facts from the past to build a story in the present that allows the parties to step out of the past. People need not view or interpret every detail of the story identically. Lawyers artfully create enough agreement—with opponents or with a judge or jury—to allow us to move forward together. Our skill at creating stories that bring people together is the reason why anarchist Dick the Butcher would say, “The first thing we do, let's kill all the lawyers.” We are the primary obstacle to anarchy. We create common stories—common visions of reality—that keep us together.

**Whiteboards as a Physical Demonstration of the Art of Lawyering**  
Whiteboards are a convenient illustration of the art of lawyering.

At an all-day-all-night settlement conference, we finally came to an agreement

on key settlement terms in a major class action involving attorneys who had been acrimoniously at war with each other for years. There was no love, no respect, and no trust among the attorneys. The disdain and vitriol for others ignited the air of the settlement conference and burned the mediator as he shuttled between the parties, desperately looking for at least one moderate among polarized true-believers in each camp.

Near midnight, the mediator pulled together a small group willing to listen to someone other than themselves and their comrades in arms. On a sheet of paper he outlined a compromise on incomplete terms.

Money and a few key terms were agreed upon and sold to the respective camps after several more hours of heated debate and discussion. In the cool of the early morning, there were actually a few smiles. A few handshakes. A few kind words for the other side. The parties thought they had a settlement, except for a few minor terms that needed further discussion and consideration.

For the next three months, heated e-mails, telephone calls, and conference calls, with and without the mediator, stoked the flames of the dispute back into an inferno. Every “minor term” became a goal-line-stand among entrenched opponents who refused to give an inch.

Finally, during a holiday week between Christmas and New Year’s, all of the attorneys and principals converged in a large conference room—traveling from Hawaii and New York and many parts in between—for a meeting to hammer out the final terms of the settlement.

Within an hour, all of the terms were agreed upon.

The secret? A floor to ceiling whiteboard in the conference room that outlined all of the terms for all to see.

In an oil spill that closed the Port of Los Angeles for five days and contaminated seven miles of shoreline and thousands of pilings, more than 2,000 claims arose from individuals and commercial entities for damages and losses suffered as a result of this spill.

Within three days of the spill, an outdoor meeting was convened at one of piers. People were angry. Blobs of black goo was

everywhere in the Port. People gathered hours before the meeting commiserating and collectively pumping up their fury. A group gathered contact information from those present to commence a mass action against the stupid foreign shipping company that caused this mess.

As the meeting started, the vocal anger of the crowd could not be contained. People shouted and demanded answers. Then, a fellow at the back of the crowd stood and yelled, “We don’t give a damn about any of this. Where is my money!” At that, a woman sitting in the front row who had been collecting contact information for a mass action against the shipping company, stood up, turned to the back of the crowd, and shouted, “Sit down and shut up! These guys are trying to help.” And with that comment, the group organizing against the ship owner became a liaison with all of the claimants. 600 claims were settled and paid within two weeks of the spill and all 2,000-plus claims were settled and paid within three months of the spill—with only one small claims action being filed as a result of this spill.

The secret? A whiteboard used during the course of the meeting to record all of the claimants’ complaints and suggestions.

In a heated union recognition meeting, disgruntled drivers crowded into a conference room to hear why they should not sign union cards to create a union to fight on their behalf against management. The president of the company was late, which further angered the crowd. The delayed meeting commenced and multiple grievances were raised.

But in the end, despite the growling meeting and a month-long picket, the drivers rejected the union.

The secret? A whiteboard used during the driver meeting that recorded all of the drivers’ grievances and some possible solutions.

### Visual Message of Unity

Why did whiteboards make such a difference in resolving the heated differences in each of the foregoing cases? How did the whiteboard bring people together? What was on the whiteboard that made the difference?

In each case, the whiteboard served a very simple but critical function. The unfiltered physical display of what people

were saying demonstrated that the opposing parties heard and understood what the other said. It did not mean agreement. But the whiteboard effectively conveyed an appearance of respect for the other and a sincere attempt to see the world through the eyes of the other. All sides were now part of a single group. A common story. A common vision of reality. The attorneys were no longer warring gladiators representing different groups on a battlefield. Like the events of 9/11 that drew out the empathy of New Yorkers for each other and made them feel united as one group helping others like themselves, the whiteboard subtly redefines the grouping. The physical display of one board for all sides makes all sides one group interested in the same enhancement of trust between the members for a common end—a just and fair agreement.

### Apologies like Whiteboards

Like whiteboards, sincere apologies create an appearance of respect and sympathy that opens an opportunity for the parties to drop their swords and view themselves as part of a common group with common values, a common problem, and a common interest in building sufficient trust between themselves to solve the problem by agreement. See Sidney Kanazawa, “Apologies and Lunch,” *For The Defense* (July 2004).

### Key Elements

Whiteboards and apologies demonstrate an art of lawyering that is consistent with the recent science of how our unconscious feelings guide our decisions. Both address those unconscious feelings by demonstrating an empathetic concern for the other. They demonstrate, at least, an effort to see the world from the viewpoint of the other. These small acts create a sense of commonality between the parties rather than a hostile distance and incompatibility. The two essential elements of this empathetic display of commonality are sincerity and respect.

### Sincerity

Without sincere interest in and curiosity about the viewpoint of another, neither a whiteboard nor an apology will make a difference. Writing or mouthing **“One Truth”**, continued on page 90

## “One Truth”, from page 60

the right words is not enough. There must be credibility behind those words. The message is the entire communication—body, eyes, and words. A betrayal of any part of that communication as less than sincere changes the entire meaning of the whiteboard and the apology.

### Respect

With respect, there is an old saying in the sales world that “like buys from like.” People feel most comfortable and safe buying and doing business with people who are like themselves. We trust people like ourselves. Respect brings people together with a sense that they share, at least, one common value—the adult humility to be publicly polite toward others unlike themselves (which also holds the possibility of a willingness to listen to the other).

### Message of Uncompromising Advocacy

By contrast, a lack of sincerity and respect signals a need to be wary of the other. To distrust. Yelling “I am right and you are wrong” is not a prescription for trust and changing minds. It may be sincere but it is entirely based on the myth of “one truth” and disrespectfully assumes there can be no other legitimate “truth.” Closing our eyes, holding our hands over our ears, and jabbering “I’m not listening” has never been the recipe for deal making or dispute resolution. Yet in our polarized world we seem to believe this is the only way to be true to one’s self and one’s beliefs and one’s stories and perceptions of reality. Incredibly, lawyers who “take no prisoners,” “eat glass,” and “are tough as nails”—*i.e.*, champions who can aggressively promote their side and dismissively refute the other side—are often thought to be ideal advocates and warriors by both clients and other lawyers. No one seems to question whether this uncompromising narrative makes any sense at all.

### Art of Agreement

As discussed above, this perception of lawyering as uncompromising advocacy does not square with reality. Dale Carnegie and social scientists studying the unconscious mind have repeatedly found that in-group members tend to trust their own but not

those outside of their group. Groups “bind and blind.” Being a part of a group generates trusting and supportive behavior. “You are one of us.” Criticism from outside a group is quite different. Sports teams often use derisive comments of opponents to stir up their own team to fight harder and to be more committed to their own cause. Outside comments do not change minds. They cement differences. There must be a feeling of identity and comfort with the speaker before anyone will listen and reevaluate their own position. As noted by Jonathan Haidt, “Intuitions can be shaped by reasoning, especially when reasons are embedded in a friendly conversation or an emotionally compelling novel, movie, or news story.”

Vicious and hostile letters, abrupt and abrasive phone calls, curt and condescending e-mails, and mean and dogmatic pleadings selfishly may make us feel superior, but they are unmistakably disrespectful and unlikely to engender feelings of trust. Depositions, courtroom appearances, and settlement conferences where each side touts their strengths and ignores their weaknesses are similarly unlikely to address feelings and viewpoints. Nor is the miserly exchange of discovery with more objections than substance a good means of developing the trust needed to find common ground.

Just as the stories of gods comforted but misled the Greeks, and stories of sacrifice comforted but misled ancient people, and stories of phallic symbols comforted but misled Pacific islanders, stories about “one truth,” “toughness,” and “no compromise” may be comforting but they are misleading us.

When 98 percent of our cases settle and require a modicum of trust between the parties to find common ground for an agreement, stories about our role as uncompromising warriors and zealous advocates are not helpful.

### Listen More Than Talk

We need to listen more than talk. Hear the life stories, acknowledge the feelings, and respect our opponent’s perspectives of reality. There is no “one truth.” It is a myth. Our life stories and our perspectives are not universal. Not appreciating that there are other life stories shaping different perspec-

tives is like counting passes and not seeing the gorilla in the middle of the screen.

### Art of Agreement Includes Agreements with Triers-of-Fact

The art of listening, understanding, and seeking agreement includes agreements with judges and jurors. If an opponent is unwilling to mutually listen, understand, and participate in crafting a fair and just resolution of a dispute, the art of lawyering and the art of creating an agreement should go beyond the short sighted opponent and be addressed to the trier-of-fact. The goal is justice and fairness. An unjust or unfair agreement achieves nothing at all.

### Action Items

Here is what you can do right now to avoid the blindness of the “one truth” myth.

- **Have Lunch.** Before exchanging pleadings that yell “you’re wrong, we’re right,” invite your opponent to lunch. Listen. Learn the life stories of the attorney and her client. Seek to understand sincerely and respectfully and see the world through their perspective.
- **Show Respect.** With the kindness you would show to those you love, show the same respect and more to an opponent. Regardless of whether that respect is reciprocated, the demonstration of respect will instill trust in your word by the other side giving your voice more volume and meaning in the ears of your opponent. Disrespectful behavior does not generate that same effect and only encourages the other side to stop listening.
- **Reserve Judgment.** Reserve judgment and try to understand and see the opponent’s perspective before discounting it. You cannot understand the feelings and viewpoint of the other without reserving judgment.
- **Show Understanding.** Using whiteboards, apologies, and public displays of sincere and respectful empathy, show that you understand and heard the other’s position. This does not mean agreement. It is simply an honest recognition of another perspective.
- **Talk to and Listen to Others.** There is only one way to attack the myth of “one truth.” Talk to and listen to others. Anyone and everyone. On the street. In a plane. In a

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cab. On a train. In court. In the office. On the beach. With ear buds, hundreds of television channels, and thousands of Internet sites, we can immerse ourselves 24/7 in our own groups, with our own music, and with our own politics. We can associate in groups with only those like us. We do not need to listen to anyone with whom we disagree. We can limit ourselves to associating with only those who share a similar life story to our own. Who have feelings like ours that causes them to see the world with our viewpoint. But this freedom of multiple and separate realities exists only because we share a basic common set of values about fairness and justice. Without this base of fairness and justice, we cannot plan and collaborate for the future and we cannot extricate ourselves from past disagreements. “One truth” is a myth. But the failure of lawyers to

repeatedly remind us of our joint membership in a common group devoted to fairness and justice for all invites the tyranny of “one truth” becoming a reality. There are many totalitarian regimes in our history that have tolerated only “one truth.” Devotion to and failure to appreciate the mythical nature of “one truth” in our current society can lead to the darkness sought by Shakespeare’s Dick the Butcher. Attack the myth. Talk to people.

- **Show Bullying Jerks the Art of Agreement.** If an opponent is too selfish and too shortsighted to engage in creating a mutually just and fair agreement, take them to trial. The goal is a just and fair resolution. If you have sincerely and respectfully attempted to understand and see the world from the perspective of your opponent, you can confidently enroll judges and jurors to help

you reach that just and fair consensus, even when your opponent refuses to cooperate. The trier of fact has the power to create just and fair resolutions when opponents fall short. Trials—not capitulation—before judges and juries are usually the best alternative to a negotiated agreement.

“One truth” is a myth. As lawyers, we can either be part of the problem or part of the solution. We can either help our clients see the world through the eyes of others or we can faithfully close our ears and stoke our clients’ separate “one truth” beliefs. If we choose the latter path, there will be no need to “kill all the lawyers.” The myth of “one truth” will become a reality for every separate group and individual and will immobilize us and eventually tear us apart. Let us not be so blind. “The best way to defeat an enemy is to make him a friend” —Abraham Lincoln. 