



Shadow of a Doubt

The Monthly Calendar of the National Capital Area Skeptics

September 2010

Shadow Light

Many members and contacts of NCAS will receive a new postal notification of this and every new monthly Shadow of a Doubt. The Shadow Light postcard will announce the monthly lecture and highlights of the electronic Shadow of a Doubt, which will be available in PDF format at ncas.org. NCAS thereby reduces Shadow production and postage costs. Members who opt out of postal notification will continue to receive e-mailed Shadow of a Doubt only. To opt out, send us an e-mail at ncas@ncas.org.

SkeptiCamp DC 2010

Skeptics are invited to Greater Washington, D.C., area's first SkeptiCamp. SkeptiCamp DC 2010 -- an informal conference focusing on skepticism, science, and critical thinking -- will be held Sunday, October 3, 2010, from 12 p.m. to 6 p.m. in the Benjamin Banneker Room of the Stamp Student Union at the University of Maryland, College Park. This grassroots event consists of a series of short talks on various topics (chosen by the presenters), with opportunities for questions after each talk to encourage the circulation of ideas among participants. Those interested in attending or presenting a talk at SkeptiCamp DC must visit SkeptiCampDC.org to register.

The first SkeptiCamp took place in Denver, Colorado, in 2007. The SkeptiCamp concept developed as a method for local communities of skeptics to gather and discuss issues of importance, without the investments of time and money required of involvement in many formal skeptical conferences. Organizers of local SkeptiCamps encourage openness, participation, and collaboration, in an attempt to foster the skeptical movement and to take its ideas to a wider audience. Since 2007, locally organized SkeptiCamps have been held across North America and, recently, in the United Kingdom. SkeptiCamp DC, the 18th event in this growing phenomenon, is being sponsored locally by UMD Society of Inquiry, National Capital Area Skeptics, and the Center for Inquiry DC.

Torn From Today's Headlines

Maryland's Highest Court Strikes Down Montgomery's Law Forbidding Fortunetelling Businesses

Montgomery County's 1951 ordinance against fortunetelling for profit has been struck down by the Maryland Court of Appeals. The June 10 opinion, authored by Judge Clayton Greene Jr., overturned a lower court's judgment upholding the ordinance's constitutionality. Fortuneteller Nick Nefedro, represented in part by the American Civil Liberties Union Foundation of Maryland, argued that the Fortunetelling Ordinance violates his right to freedom of speech under the First Amendment to the United States Constitution and Article 40 of the Maryland Declaration of Rights.

The ordinance (Montgomery County Code § 32-7, "Fortunetelling") reads in part: "Every person who shall demand or accept any remuneration or gratuity for forecasting or foretelling or for pretending to forecast or foretell the future by cards, palm reading or any other scheme, practice or device shall be subject to punishment for a class B violation...in any warrant for a violation of the above

provisions, it shall be sufficient to allege that the defendant forecast or foretold or pretended to forecast or foretell the future by a certain scheme, practice or device without setting forth the particular scheme, practice or device employed; provided, that this section shall not apply to any benefit performance..."

In the ACLU's view, the ordinance unduly burdens protected speech by forbidding remuneration for speech. Citing earlier rulings that restrictions on payment for protected speech are equivalent to absolute bans on that speech, the attorneys recognized the county's interest in preventing fraud, but argued that the county had not chosen the least restrictive means to further this interest. By this argument, the county ordinance against deceptive trade practices in consumer exchanges is sufficient, and not restrictive of protected speech. Nefedro's legal team also stated, "Rather than being narrowly tailored, the Fortunetelling Ban is substantially overbroad, in that it criminalizes payment for all fortunetelling -- whether or not actually fraudulent."

This viewpoint was embraced by Judge Greene when presenting the court's majority opinion: "...the County repeatedly asserts... that fortunetelling is 'inherently fraudulent' and, as a result, should not receive any First Amendment protection. Indeed, the First Amendment does not protect fraudulent statements... We are not, however, persuaded that all fortunetelling is fraudulent [emphasis added]. While we recognize that some fortunetellers may make fraudulent statements, just as some lawyers or journalists may, we see nothing in the record to suggest that fortunetelling always involves fraudulent statements. Indeed, fortunetellers, like magicians or horoscope writers, are able to provide entertainment to their customers or some other benefit that does not deceive those who receive their speech." He went on to cite an earlier case decision opining that when people who "believe they possess the power to predict what has not yet come to pass...impart their beliefs to others, they are not acting fraudulently; they are communicating opinions which, however dubious, are unquestionably protected by the Constitution." He also referenced an earlier case in which a court "defer[red] to the legislative finding . . . that fortunetelling is inherently deceptive and, therefore, is unprotected speech," but refused to follow its lead, warning that "such deference would allow legislatures to ban any manner of protected speech by simply declaring it 'inherently deceptive.'"

In conclusion, Green wrote, "Fortunetelling may be pure entertainment, it may give individuals some insight into the future, or it may be hokum. People who purchase fortunetelling services may or may not believe in its value. Fortunetellers may sometimes deceive their customers. We need not, however, pass judgment on the validity or value of the speech that fortunetelling entails. If Montgomery County is concerned that fortunetellers will engage in fraudulent conduct, the County can enforce fraud laws in the event that fraud occurs. The County need not, and must not, enforce a law that unduly burdens protected speech to accomplish its goal. Such a law will curtail and have a chilling effect on constitutionally protected speech."

The dissenting opinion was written by Judge Glenn T. Harrell Jr.: "The Majority Opinion, in the face of a tide of judicial decisions from other jurisdictions expressing the view that the business of commercial fortunetelling is 'inherently fraudulent' and, as such, is not entitled to protection against government restriction, offers a handful of contrary opinions, endeavors to distinguish the greater body of cases on point, and hazards an inapt analogy to lawyers and journalists, the latter of which fails to recognize that, although some lawyers or journalists may make fraudulent statements, the practice of such professions without fraud is attainable. I would affirm the judgment of the Circuit Court for Montgomery County and hold that Montgomery County's election to protect its citizens (and their money and other assets) from for-profit fortunetellers, palmists, card readers, and the like, does not violate Appellant's constitutional right to free speech."

Harrell goes on to quote from earlier decisions in other jurisdictions:

"The fortune telling statute, in particular, was designed to protect against 'a prevailing species of fraud whereby its practitioners, professing occult powers of prognostication, annually bilk a gullible public of many millions of dollars.'"

"So associated with cheats, frauds, imposition upon the credulous and superstition is [the business of fortunetelling] that its absolute prohibition is generally declared to be within the police power of the state, and municipalities to which such power is delegated."

"[T]he business of fortune telling is denominated as a useless calling, and subject to police regulation. This being so, the City...had the right to so combine its police power and taxing power as to levy a license tax which would discourage, and to all practical purposes prohibit, persons from engaging in the hocus pocus of fortune telling within the limits of its police jurisdiction."

"The lawmakers are entitled to believe that no human being has the power of foretelling future events and that therefore fortune telling may be a fraudulent means of preying upon the ignorant, the superstitious, and the gullible. Consequently it has been uniformly held that the state, in the exercise of its police power, may constitutionally prohibit fortune telling altogether."

"It is within the police power of the municipality and province of the legislative body to determine that the business of fortunetelling is inherently deceptive and that its regulation or prohibition is required in order to protect the gullible, superstitious, and unwary."

Harrell also cited a case involving self-deceptive fortunetelling: "The sincerity of [the plaintiff's] beliefs is immaterial. Neither she nor anyone else can foretell the future. The law does not permit the sale of a bogus cancer remedy, for example, simply because the seller wholeheartedly believes in the efficacy of the product. The sincerity of the seller's belief does not turn a worthless product or service into a valuable one. The state is empowered to protect the public, especially the most gullible and unsophisticated members of the public, by banning the sale of valueless products and services. It must be remembered that the statutes do not ban fortunetellers from telling fortunes. The practitioner may claim to have occult powers so long as she does not charge for her services. Moreover, the fortuneteller may charge a fee so long as she does not claim to have occult powers she lacks. Fortunetelling as entertainment is entirely legal and not banned by the statutes. Accordingly, the statutes do not violate the First Amendment."

According to a June 11 *Washington Post* report, Montgomery County Council spokesman Patrick Lacefield was uncertain whether the

county will appeal the court's decision.

References (the first two are PDF files, which require download of the free Adobe Acrobat Reader):

<http://tiny.cc/npoqpd>

<http://tiny.cc/qbacj>

<http://tiny.cc/tpzke>

Comment (by Scott Snell of the NCAS board of directors):

Many jurisdictions have successfully regulated fortunetelling in the same way that New York has. Its penal code (§ 165.35, "Fortune telling") states, "A person is guilty of fortune telling when, for a fee or compensation which he directly or indirectly solicits or receives, he claims or pretends to tell fortunes, or holds himself out as being able, by claimed or pretended use of occult powers, to answer questions or give advice on personal matters or to exorcise, influence or affect evil spirits or curses; except that this section does not apply to a person who engages in the aforescribed conduct as part of a show or exhibition solely for the purpose of entertainment or amusement"

The disclaimer "for entertainment purposes only" is widely used in the psychic industry, and may be the happy medium (pardon the pun) that informs the consumer of evidence-based views about the industry while leaving First Amendment protections for psychics intact.

Meanwhile, many or perhaps all psychics privately or publicly hold that their readings are genuine insights, but present them solely as entertainment due to government regulation. This admittedly oppressive situation could be changed by demonstrably successful fortunetelling, even if presented only in an entertainment context at first. Successful forecasts would eventually pose a problem for any lawmakers intent on restricting the industry to the entertainment field.

New Board Member Elected, Officers Chosen

A new board member was elected in the recent voting: Brian Gregory. Re-elected and incumbent members are: Tom Bridgman, Nelson Davis Jr, Chip Denman, Grace Denman, Bing Garthright, Renee Madden, Melissa Pollak, Eugene W. Ossa, Scott Snell, Gary Stone, and Jamy Ian Swiss. Officers are: Marv Zerkowitz, president; J. D. Mack, vice president; Walter F. Rowe, secretary; and Curtis Haymore, treasurer.

Time to Renew?

Be sure to check your renewal date above your postal address on Shadow Light, or send e-mail to ncas@ncas.org to inquire.

Is the Radiation from Your Cell Phone a Health Hazard? Risk vs. Reality



Prof. Christopher Davis

**Professor, Department of Electrical and Computer Engineering,
University of Maryland**

Despite an overwhelming preponderance of evidence to the contrary, there continues to be some public concern that human exposure to radio frequency (RF) radiation from cell phones and base stations, even at relatively low levels, can constitute a health hazard. The media seize on any report of a possible health risk based on occasional reports of biological effects being produced by RF radiation, but ignore the much larger number of studies that find nothing. This talk will review the science underlying our understanding of how RF radiation can interact with biological systems and discuss why public concern about the health risk from cell phones and base stations is irrational. The claimed connection between cell phone use and cancer will be examined, and some of the legal cases that have kept the cell phone health controversy alive. A specific interaction mechanism that will be discussed is the possibility of nonlinearity in cells and tissue that might demodulate an RF carrier.

Christopher C. Davis is Professor of Electrical and Computer Engineering at the University of Maryland, College Park. He received the B.A. degree (with Honors) in Natural Sciences from the University of Cambridge in 1965, the M.A. degree from the University of Cambridge in 1970, and the Ph.D. degree in Physics from the University of Manchester in 1970.

He has served as a scientific consultant to several US Government agencies and industry. He is a member of the IEEE Standards Coordinating Committee SCC-34 SC2, which deals with RF exposure from wireless devices.

**Saturday, Sept 18, 2010
1:30 pm**

Bethesda Library, 7400 Arlington Rd.,
Bethesda, Maryland
Near Bethesda metro

**FREE admission – Everyone welcome,
members and non-members**

For more information, call the 24-hour NCAS
Skeptic Line recording at 301-587-3827.
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www.ncas.org



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