

## Legally Speaking



### Mind Games

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Artists, that is painters, deal in illusions. Although their drawings are on a flat piece of paper, they know how to use light and shade to create the illusion of a three dimensional object. Using converging lines, they create the illusion of distance. Artists train themselves to see what is really before them so that they can create a better illusion on canvas.

Amateur artists often paint what they think they should see. Their compositions seem flat, too busy, and without focus. That is because we do not really see everything we think we should see. We only see selective things that seem important to our mind. That is, we only really see the things we focus on. Although that focus may rapidly change, our mind puts it

all together as a seamless picture. The artist simply suggests a shape and the mind will tell us what the shape should be. Sometimes the things we think we see, that is the things we remember, are things that our mind created because, based on our training, experiences, and prejudice, our mind thinks the objects should be there even if they are not. For example, if you were painting a picture of water, what color would you use to paint the water? Most people would say blue. But water is not blue, it is clear. What we see when we look at water is a multitude of colors that are reflections of the sky, the clouds, trees, and anything else which is above, below or near the water. We have been conditioned to think that water is “blue” from the first time someone gave us a crayon and told us trees were green and water was blue.

When we look out the side window while driving a car, we see trees moving by us. Our experience tells us trees do not move. If the trees are not moving, then we must be moving. The motion picture industry takes advantage of this for their illusions. The hero of the movie is in a stationary vehicle while the scenery behind her is moving. The audience, based upon its experiences, “sees” the hero in a “moving” vehicle.

Another trick of the mind is our ability to focus on something to the exclusion of other things. This is probably a holdover from caveman days when the ability to focus was related to survival skills.

We can zone in on that rabbit in the bushes and follow it while excluding all other distractions.

Those who teach combat skills call this tunnel vision. You focus on the man with the knife, or the person holding the gun, to the exclusion of all else. In fact, studies show that you focus on the weapon itself, not on the person holding it. Victims of crime are often able to describe the weapon in great detail but are unable to describe their assailant. For those of us who might carry a gun for self-defense, this is a very significant problem. It means that you may not see your attacker’s partner coming in from the side. Or you may not see the little old lady with the grocery bag directly behind the aggressor. It means that the eye witness to an event may not see very significant things going on during that event. If his or her attention is focused on the one thing that the witness believes is important, he or she might see the gun in your hand (the gun being the more threatening object) but not see the knife in the other person’s hand. This is one of a number of reasons why eye witness testimony, although truthful in the mind of the witness, may not be accurate.

“Oh,” you say, “I am very careful and observant. That would never happen to me.” If you have not already done so, google “The Invisible Gorilla.” “The Invisible Gorilla” is the name of an attention test scientifically created. Do not read the article about the at-

attention test. Go to the YouTube site and take the attention test first. The test consists of watching a short video in which two teams of basketball players pass the ball around. You will be asked to count the number of times one of the teams passes the ball. See how close you can come to the correct answer. This is not a joke. It is a scientific test. It is, in fact such an important test about the human mind that I suggest you put this article aside and take the test before reading further.

Since 1992, the Innocence Project has been involved in overturning some 321 convictions of major crimes based on DNA and other newly developed scientific evidence. In 75% of the overturned cases, the wrongful conviction was based upon eyewitness testimony. The eyewitnesses in these cases were not deliberately telling falsehoods. They believed their statements to be true. The problem is that the way the human mind processes information can lead to false memories.

Under stress, our perception of time is distorted. Time seems to slow up. From a caveman survival point of view, this "slowing" of time gave him more "time" to figure out what to do. From the point of view of a witness to some emergency, it will seem as if the police or fire department or ambulance did not come right away. That belief will persist even if the dispatch records show that an emergency response vehicle was on site within three to five minutes of the call for help. The press is notorious for publishing eyewitness statements at face value. The complaint of a witness that the ambulance was slow in coming

quickly becomes a tabloid "fact" that will be repeated over and over without any regard to the truth.

No clearer case of tabloid "facts" can be made than the death of Eric Garner who died of a heart attack after resisting arrest in New York. A video of the incident shows Garner not only refusing to go with the police, but becoming animated in his refusal to submit to the officer. It shows an officer using what is commonly called a "choke hold" to bring Mr. Garner to the ground where he is handcuffed. The time duration of the "choke hold" is quite short, about 15 seconds as measured by the time stamp on the video which is on line. Fifteen seconds is not a long time to hold your breath. During the struggle, but after he was on the ground, Garner, who was still not complying with the officer's request that he stop struggling, complained that he could not breathe. If Garner was being choked, he would not have been able to say anything. The person taking the video kept making comments, which were recorded, about how the police were abusing Garner. The "reporter" who placed the video online billed it as a public execution of a "brother." The officers placed Garner on his side (which would aid breathing) and called an ambulance that transported Garner to a hospital where he later died of a heart attack. He was not choked to death nor did he die on the street. Shortness of breath is a classic sign of a heart attack, not a choking. In spite of these facts, many people, including veteran reporters, influenced by the comments of the person taking the video, persisted in saying Garner was choked to

death. Many people also used this as an example of white police officers killing a black man. Those people apparently did not notice that the police sergeant at the scene was a black woman.

Our mind is hard wired to make sense out of the information it receives from our senses. The less we understand about what is going on, the more the brain has to work. Sometimes it will fill in the blanks with what it feels should be there. It will come to a hypothesis of what it thinks should have happened, and it will tell our conscious mind what it should believe. That hypothesis then becomes our memory of the event.

If you ever had a close relationship with someone in the early stages of Alzheimer's disease, you probably noticed that the person's perception of reality becomes a mixture of fact and fiction as the brain's ability to retain facts diminishes but its imperative to come up with an interpretation of those facts remains. The brain fills in the missing facts with other "facts" because of its quest to make sense of what it sees.

Many years ago I represented an elderly couple whom I will call Mr. & Mrs. X. Several weeks after Mr. X died, Mrs. X called and said she wanted a divorce. "But Mrs. X," I questioned with some hesitancy, "Your husband is dead." "I know," she said, "but I still want a divorce." When I asked her why, she said that her husband was running around with other women. When I asked her why she thought that, she said it was because he was never home. The pain felt by Mrs. X of being abandoned by her husband was real. Her mind had processed one fact:

that the husband was not home. It had not processed a second fact, that he was dead. Based upon her experience and prejudices, her mind formed a theory that the reason he was not home was that he was “running around” with other women. It discarded any information that did not support its theory.

Studies show that memory can be affected by suggestion, even unintentional suggestion. When a police officer shows a victim a photo array of potential perpetrators, best practice now suggests that the officer should not know who the suspect is because the witness can pick up on body language and other subtle hints by the officer which can reinforce a false memory in the witness. That is, the officer can unknowingly suggest the witness pick out a particular photo. For the same reason, when several witnesses talk about an event amongst themselves, they are apt to come to a consensus of what occurred influenced by the group rather than the event.

False memories are easier to implant than most people think. The 1974 Loftus and Palmer study demonstrated how a witness's memory may be affected by information he or she hears after the event. Groups of students were shown movies of events and then asked questions about the events. The study showed that how the questions were asked influenced what the students thought they remembered.

Of more interest is the 1998 work of Lindholm and Christiansson in Sweden which suggested that not only does the mind not process all of the information it sees, but that it will subconscious-

ly pick information to process which supports deep seated beliefs while rejecting other information which might be contrary to those preconceived beliefs. Even witnesses that see only part of an event will have a full “memory” of the entire event. Their minds will be filling in the blank spots based upon what the mind thought should have happened.

This can be demonstrated by answering the following questions: Do you remember the attack on the World Trade Center in New York? If yes, How much time elapsed between the time you SAW (not heard about) a plane hit the first tower (the North Tower) and when the tower collapsed? A) about one hour later B) about two hours later C) not more than four hours later D) (you fill in some other answer.)

There are many other factors that impact what we see or what we think we see. As light fades, so does our ability to distinguish color, distance or details. A light blue car might look white. A bright red car may look black. The source of light also impacts our ability to see. Someone silhouetted against a bright light might have a distinctive shape, but you will not be able to see the details of that person's face, clothing or objects held. Reflections of light, shadows, movement, objects between us and the thing we are trying to observe, may all impact our ability to see something or understand what we are looking at.

The implications of these studies on eyewitness testimony have enormous implications for criminal defense attorneys. Eyewitness testimony is key to many criminal prosecutions. The frailty of eye-

witness testimony is exacerbated by media coverage of events and by those who, for political reasons, wish to place a political spin on events to promote personal agendas.

Courts of law are not the only places where tricks of the mind can play havoc with us. If we expect people to be prejudiced against us, then our mind will interpret the “facts” to find prejudice. When the police and the community they serve mistrust each other, negative incidents between the police and the community go up. It becomes a self-fulfilling prophecy. Each fact misinterpreted by the mind will support the conclusions that people have been led to believe they should find. This is why it is so extremely important to bring people in a community together. It is important that knowledge replaces those voids that cause our minds to make up “facts.”

Most people asked about how long it was between the time they saw a video of the plane hitting the first tower and the tower collapsing will say it was a couple of hours. Those of us who lived through that event have vivid memories of it. In spite of what your memory tells you, however, there were no news videos broadcast of the first plane hitting the first tower (the North Tower) on September 11th before the tower collapsed. There was video from a film maker who had been making a documentary on firefighters. He captured the first plane hitting the tower but he then followed the firefighters to the North Tower. That video was not available until after the North Tower collapsed. The North Tower was the first to be struck but collapsed after the South Tower. Most

people did not see the video of the first plane striking the North Tower until September 12th. The North Tower was struck at 8:46; the South Tower was struck at 9:03. The South Tower collapsed at 9:58 (56 minutes after being hit). The North Tower collapsed at 10:28, 1 hour and 42 minutes after being hit.

What about the basketball players and the gorilla? Like most people who took the attention test, I watched the video very closely. I counted the basketball being passed thirteen times. It was actually passed 15 times. I totally missed, however, the most important thing that happened during the video. Even after I was told, I did not believe it. I had to take the test a second time.

What did I miss? Well, take the test and see if you can count the ball being passed 15 times. You will see how an honest person can have a false memory of an event.

**W&G**

## Hornady Co-Founder Passes at Age 102

Marval Hornady of Grand Island, NE, died Feb. 20 at age 102. With her husband, Joyce, Marval co-founded Hornady Ammunition in 1949.

After raising a family, she was encouraged by her husband to become more involved at the company and did so in the early 1970s. When Joyce was killed in a plane crash in 1981, she took over as chairman of the board and secretary of the corporation, and with her son, Steve, and daughter, Margaret, helped the company not only survive but thrive to become the success story it is today.

**W&G**

## NJ Antique Pistol Charge Dismissed

A felony gun charge against a Port Elizabeth, NJ, resident arrested by police last November for possessing an unloaded 300-year-old handgun has been dismissed by the Cumberland County Prosecutor's Office.

Prosecutor Jennifer Webb-McRae announced that the state will exercise "prosecutorial discretion to dismiss" the second-degree unlawful possession of a

weapon charge against Gordon N. Van Gilder.

"Accordingly, the public should be forewarned about the prescriptions against possessing a firearm — even an antique — in a vehicle," she continued.

The defendant, a 72-year-old history buff, faced a possible 10-year prison sentence under Garden State law.

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