

Entertainment, Fakery, and Ambiguity: Examining New York's 'Fortune Telling Law'

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On October 9, 2009, Tiffany Evans was arrested at the Smith Haven Mall in Lake Grove, New York, for fraudulent accosting, attempted grand larceny, and three counts of fortune telling. As I read the story in the newspaper, I was surprised that someone in New York was charged with "fortune telling." After all, psychics are prevalent in New York, with storefront businesses and advertisements in many newspapers. I wondered how someone could be charged with violating a law while so many businesses offering similar services operate in the open.

Interested in finding further details, I contacted the Fourth Precinct Police in Suffolk County, New York, where Evans was arrested to find the statute she was charged with violating. I was told that the so-called "fortune telling law" was a "class B misdemeanor" in violation of New York State Penal Law §165.35. The law 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 "fortune telling law" was clearly written to protect nonskeptical consumers from being taken advantage of by a psychic who charges for a service

and hot reading. On the other hand, psychics claim to predict the future, sometimes using the same techniques as magicians. Nonetheless, the two are different, as one entertains with mind reading while the other claims to actually look into the future. Besides that inherent difference, we should compare the fortune telling law with another that protects consumers. New York State Penal Law §190.20 concerning "false

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that has never been demonstrated with blind tests. Yet the law provides a loophole for scam artists to simply call their readings "entertainment." The Suffolk County phonebook has twenty-five listings for "psychic life readings" operating in the area where Evans was arrested. While it is necessary to separate self-proclaimed psychics from magicians and mentalists, it is important to recognize the inherent difference between telling fortunes and mentalism.

Mentalism creates the "illusion of mind reading" through various magician techniques, including cold reading

advertising" does not exempt someone from being punished for making false claims for the purposes of entertainment. The "fortune telling law" should be no different, especially considering the lack of scientific evidence for psychic ability. One who offers a service should not be exempt from the charge of making false claims by simply calling their service "entertainment." A psychic who abuses the trust of his or her clients by offering an unproven service may develop a business relationship to take further advantage of the client.

This was true in the Evans case. She

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met the victim in the Smith Haven Mall and offered to read the victim's fortune for \$25. Evans then told the client she could perform a more detailed reading for \$100 more. Subsequently, Evans said the client was cursed and the curse could be lifted for \$1,250. The victim paid \$600 and was given "a small stone and a plastic bag containing an unknown liquid." During the next meeting, Evans tried to sell the client \$550 candles to "remove the negative energy." The unproven \$25 service turned into a fraudulent accosting case, which cost the victim more than \$1,000. This crime does not account for the emotional dependency a psychic's client may develop with continued meetings even if the psychic does not sell her merchandise. (For more on this, see "Philadelphia Psychics Shut Down, Then Allowed to Reopen," SI, July/August 2007; and "Fortuneteller Allowed at Fair Despite Law," SI, November/December 2004.)

Not all psychics clearly sit on the entertainment or self-proclaimed genuine side. John Edward stars in daily broadcasts of *John Edward's Cross Country* in which he claims to have divine answers to questions for the audience's deceased relatives. Edward was born, raised, and remains a resident on Long Island. He currently tours the United States, giving readings to a paying audience, including three readings booked in the same county where Evans was arrested.¹ As the title of his show implies, filming for his series occurs in different locations around the United States; the 2006 season was recorded in Long Island, Los Angeles, Orlando, and Phoenix.² In the title sequence of his WE-TV show, Edward says, "I talk to the dead, I bridge the divide between life and the afterlife." The sequence ends with "How do I know? Because I do." Notably absent is any disclaimer that says the show or claims are mere "entertainment." In fact, Edward says that his "contact" with the dead is like talking on the phone, which is quite a real experience. The desperate people, who

cry as Edward cold reads information, are not there for "entertainment" but for answers. Edward explained this to Glenn Beck during his October 27, 2006, appearance on CNN's *Headline News*³:

Beck: You could be a fraud; you could be a miracle worker. I don't know. But would you agree with me that, if someone were in your position and making money, especially off of those that were grieving, they would be, you know, for lack of an another [sic] term, Hell-bound?

Edward: If the person was fraudulent?

Beck: Could you sleep at night knowing that you were not really on the up and up? Do you think somebody . . .

Edward: If I wasn't on the up and up?

Beck: Yes.

Edward: I wouldn't be doing this.

Beck: No, I know that. But what I'm saying is, to use this would be horrible. . .

Edward: Absolutely.

Beck: . . . if you were just an entertainment—so it's not like wrestling, where they were saying, 'No, this is entertainment,' or at first they were saying, 'No, this is real stuff,' but then they later admitted that it was entertainment. You cannot be an entertainer. In your own mind, you can't be. . .

Edward: I don't see myself as being entertaining at all. I see myself as being an educator.

Beck: And it would be wrong of you to just be an entertainer and cloak it in. . .

Edward: I don't see it—I couldn't even define that in terms, you know, especially when you're dealing with grief and loss like that. It's just not—but I'm also very clear to say to people on the flip side of that, I'm not a grief counselor, either. I'm not a therapist.

Edward's inability to define what he does as entertainment or a genuine skill was a revealing moment demonstrating the cautiousness of his claims. At the same time, Edward claimed he was on the "up-and-up" regarding the truthfulness of his claims. Like Evans, Edward

lives in New York where it is illegal to "fortune tell" or use "occult powers, to answer questions or give advice on personal matters." The ambiguity of Edward's claims makes it difficult not just for his audience to accept his acts as real but for New York authorities to charge him with violating §165.35. This is not a problem with Edward inasmuch as a problem with laws regarding paranormal claims and consumers.

No state should limit speech. However, the state does need to protect its citizens from people who offer services that have never been proven. That is why the government prohibits false advertising and other forms of fraud. Much like someone who sells a "cancer cure" that has not been confirmed by scientific peer-review, the customers of psychics must be equally protected. When a consumer pays for a good or service, he or she expects that good or service to be legitimate. A more carefully written law would prevent someone from offering a psychic reading unless that person had demonstrated he or she has a statistically significant history of predicting the future in controlled conditions. If the "fortune telling law" were written in this manner it would actually protect the consumer from unverified claims made by psychics. On the other hand, those who want entertainment can visit a mentalist or magician rather than a psychic. The ambiguity of the law allows people like John Edward to give readings without ever demonstrating he has the power to "cross over" and answer questions for the desperate. □

Notes

1. John Edward, "Events," available online at www.joh Edward.net/seminars.htm (accessed November 14, 2009).

2. "Filming Locations of John Edward Cross Country (2006)," Internet Movie Database, available online at www.imdb.com/title/tt0848540/locations (accessed November 14, 2009).

3. Glenn Beck, "John Edward Shares Insights into His Career," CNN, October 27, 2006, available online at <http://transcripts.cnn.com/TRANSCRIPTS/0610/27/gb.01.html> (accessed November 14, 2009).