

# President's Message

FERN C. BOMCHILL

## “F’s” and Gorillas

**S**OME SAY THERE are two different types of people in the world—those who like opera and those who do not, or those who like coconut and those who do not. I myself believe that the more appropriate division is between those who like riddles and those who do not.

I am not talking about computation puzzles or one-line jokes, but rather about stories or mysteries that usually require the application of deductive reasoning as a result of yes-or-no answers to selected questions. Some less complicated ones are:

- A man is found dead in a desert with a pack on his back. How did he die?
- An ambulance-chasing lawyer arrives at an accident site and finds a man and woman sitting in a sports car. The lawyer shoots the man. Why?
- A man is found dead in a cabin in the woods. How did he die?

The trick to solving these mysteries is to listen to all the facts provided without any preconceived perceptions or assumptions. If you appreciate that every word is relevant, you will arrive at the correct answer by asking specific questions to eliminate variables, such as

- Did the man hike into the desert? (No)
- Was there food or water in his pack? (No)
- Was the lawyer related to either the man or woman? (Yes)
- Was the cabin made of wood or brick? (No)
- Were there other people in the cabin with the man? (Yes)

I enjoy the brain exercises and the challenge of these stories, but I also believe that my puzzle-solving experience has helped me hone necessary skills. I believe that when delving into a problem, the better lawyer makes no assumptions; rather, he or she designs questions to elicit the pertinent facts. Armed with those facts, the lawyer can better craft a satisfactory solution or winning strategy.

By dissecting and solving these silly mysteries, I have learned the importance of listening and not assuming where the facts will lead. The same is true of visual perception. Being aware of the imperfection of what you think you see may help in the practice of law as well as in every day life interactions.

Perception differs from individual to individual

because of a variety of factors, including prior experience and cultural differences. I am confident that there is no female attorney over the age of 40 who has not been mistaken for a secretary, paralegal, or the “lawyer’s wife.” Similarly—and unfortunately—we continue to hear tales of persons of color who have had to deal with someone erroneously assuming the kind of job that person holds in an organization.

Many lawyers and other professionals truly believe that their perception skills are unaffected by preconceived bias. Some simple tests, however, may demonstrate that your perception quotient is not as flawless as you think.

Here’s a short example. Read the following sentence through *once* and count the times you see the letter f.

Finished files are the result of years of scientific study combined with the experience of years.

If you answered three, four, or five times, you are in the majority, but you are wrong. You may get to the right answer the second or third time you read through the sentence, but that is only because you have been told that you missed something. (The correct answer is six times. Did you get it the first time?)

Some psychologists refer to this as perceptual blindness: a person sees only what he or she expects or is told to see. The Basketball Perception Test, designed in the 1990s by Daniel Simons, a professor at the University of Illinois, illustrates the point. A presenter tells audience members that they will be watching a video of young men and women in a hallway passing a basketball among one another. Some will be wearing white shirts; others will be dressed in black. The presenter instructs the audience to count the passes among those dressed in white. At the end of the video, the audience is asked the number of passes they counted. The answers usually range from 14 to 16, but notably only 50 percent of the audience



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raise their hands when asked if they noticed a gorilla who walked through the group halfway through the video. When the presenter reruns the video, it is startling that anyone would miss that gorilla. (I missed it the first time although I got the number of passes correct.) Professor Simmons updated his work with a new video, in which young women dressed in white and black passed a basketball to one another on a stage. Of course, once you know about the gorilla, you don't miss him. But when the video is over, the presenter points out that, while we were looking for the gorilla, we probably missed (I did!) that, when the gorilla crossed the stage, one of the ball passers had left and the back curtain had changed colors. (If you want to try this yourself, the videos are available at [www.invisiblegorilla.com](http://www.invisiblegorilla.com).)

So whether or not you enjoy deductive mysteries and illusion tests as much as I do, please consider that, at first blush, you may make erroneous assumptions and see only what you expect to see. Take the time and steps to try to get the complete and accurate picture. I think this makes us better lawyers and better people. **TFL**

*Few C. Bonchill*

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*of Virginia School of Law, Conrod clerked for Hon. B. Waugh Crigler of the U.S. District Court for the Western District of Virginia. He is the president-elect of the FBA Tidewater Chapter and can be reached at [rjconrod@kaufcan.com](mailto:rjconrod@kaufcan.com). © 2012 Johan Conrod. All rights reserved.*

**Endnotes**

<sup>1</sup>Even though the time constraints faced by federal courts and the need for efficient disposition of pretrial matters are serious issues, the trend in civil cases away from oral argument and in favor of deciding motions on the briefs is one that should be reversed.

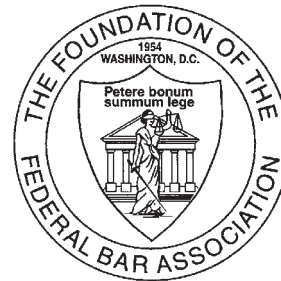
<sup>2</sup>*Card v. D.C. Dept. of Corrections*, No. 2:00cv631, 2005 WL 2260167 (E.D. Va. Sept. 13, 2005) (granting motion for partial summary judgment and ordering the government to absorb costs of transporting plaintiff to Virginia for trial).

<sup>3</sup>Notably, because my client prevailed in the case, the government was required to pay attorney's fees, so in the end the case wasn't pro bono after all.

<sup>4</sup>*Turner v. City of Fredericksburg*, 534 F.3d 352 (4th Cir. 2008).

<sup>5</sup>The injunction hearing occurred in a state court matter.

<sup>6</sup>The particulars of this latter case can be found in *Hickman v. Jackson, CA*, No. 2:03cv363, 2005 U.S. Dist. LEXIS 44007 (E.D. Va. Aug. 3, 2005).



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