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Charley's Corner

Rules versus Relationships at the Reference Desk

by Charles R. Dyer, Retired Director of the San Diego County Public Law Library. All views expressed in this column are my own alone.

"It takes real courage to change your clichés." – Tom Robbins

Discourse has become a term of art for postmodern scholars. They refer to French philosopher Michel Foucault's use of the term to describe the combination of language, jargon, and special meanings given to speech and writing within a field of study or a profession. Sometimes "discourse" means just a passage, and sometimes it means the general domain of all such statements for that field of study or profession. To Foucault, the term referred in part to the institutional force of the words. The term has now been broadened to apply to any group, including social sub-groups within a culture. Most scholars are still quite good about making a distinction as to which way they are using the term.

John Conley and William O'Barr, a law professor and a cultural anthropologist, refer to the two types of discourses as macrodiscourse (the general domain of a profession, including the specific passages it uses) and microdiscourse (the discourse employed within a social group). When first-year law students hear their professors tell them they are learning to "think like a lawyer," the professors are really saying that the students must learn legal discourse: not just the terms, but the preferred type of logical analysis and the forms of presenting an argument. The renowned legal positivist H.L.A. Hart remarked that people outside the profession of law cannot understand the issues as well as those within it, so he might well judge legal discourse to be a good thing. To Foucault, this socialization process that fosters legal discourse both helps one learn to work within that professional environment and excludes consideration of certain types of arguments for which the profession has no jargon and concepts. Thus, we see such developments as critical legal studies, critical race studies, and feminist studies, as scholars examine the types of arguments that are left out of legal discourse.

In their book, *Rules versus Relationships: The Ethnography of Legal Discourse* (1990), Conley and O'Barr note that lay citizens, those not versed in legal discourse, seem to cluster in two groups when speaking in court or interacting with members of the legal community. Many discuss their legal issues in terms of relationships. In telling his story about his legal dispute with his neighbor, the plaintiff will include many facts that are not relevant to the issue at hand, but are seriously important to him, for instance, other events which helped cause his loss of trust in his neighbor. Others will discuss their issues in terms of rules, demanding with great adamancy that his neighbor did not behave properly. They noted that, as litigants become more acquainted with the legal system, they tend to change their conversations from that of a relationship orientation to that of a rules orientation. The rules orientation comports more with

the type of argumentation that is successful within legal discourse, so the more practiced lay litigants begin to see what is necessary to succeed and alter their own speech and writing.

At the public law library reference desk, we librarians use the words that come out of the mouths of self-represented litigants to determine how familiar the litigants are with legal discourse. Those that give elaborate life stories have to be forced to cut down on their speech to get to the specific legal matter so that we can tell them what steps to take to proceed, e.g., find a book, use a prepared package of forms, be referred to an agency, and so on. We say things like, "What is the specific event that caused you to come to the library?" To our minds, we are asking the litigant to focus on the relevant facts, but we cannot use terms like "relevant facts" because they are terms of legal discourse. To the litigants, we are saying that they must look at only one event at a time, that the court will address only that one event, and that the court will not consider all the other slights caused by the other party or other people when ruling on that event. To the litigants, by pointing to the steps in the process, we are telling them to focus on the rules. We also (obviously to us, but not to them) are telling them that half or more of the information needs they are facing has to do with court procedure, not with their substantive complaints.

Conley and O'Barr noticed that lay litigants who interact with the justice system more often become more skilled in presenting their speech in a rules-oriented way. Landlords, insurance adjusters, sales executives, and so on will be much better litigants and witnesses because they have some inkling of the legal discourse required by the court.

We public law librarians have also seen such skills developed in vexatious litigants, even the schizophrenic obsessives, but we also see that, while they often dress their ramblings in terms of legal discourse, they don't really understand the terms. Ultimately, and this is especially true for the schizophrenic obsessives, their main complaints are still about relationships. They want someone to notice them, if even in a bad way.

So we librarians must become skilled at dealing with legal discourse, and translating as much as we can to self-represented litigants, who themselves often speak in the microdiscourses of their social groups. (Perhaps those alternative realities maintained by our schizophrenic patrons are really simply microdiscourses known only to one person.) All this can be very wearing on us.

Charles R. Figley, Director of the Institute of Traumatology at the Florida State University College of Social Work, was the speaker on a program entitled, "What do YOU Want? The Hidden Problem of Compassion Fatigue," at the 2006 AALL Annual Meeting in St. Louis. Amy Hale-Janeke was the coordinator and moderator for the program. Compassion fatigue is a real syndrome, suffered by professionals who deal with a demanding clientele. Trying to meet their expectations is stressful and emotionally exhausting. It can change your physical health, so it needs to be recognized and dealt with. Dr. Figley distinguished compassion fatigue from burnout. Burnout is the loss of meaningfulness for one's job that can develop over a long term. Compassion fatigue can come on more quickly and wear you down. The "cure" for burnout is a change of job or of occupation. The cure for compassion fatigue is to learn one or more useful techniques that will relieve your mind of the problems of the office at the end of the day. Meditation exercises, yoga, and similar activities that are specifically meant to put your mind in

a different place were highly recommended, but even reading entertaining books, doing physical exercise that you enjoy, playing music, dancing, or painting will help.

Dr. Figley did not talk in terms of translating discourses. Rather, his concern was that the natural altruistic concerns and efforts of librarians and other caring professionals will cause one to empathize with his clients to the point of stress. Eventually, one develops a shell so as to avoid emphasizing with them. In other words, his concern was about the relational component of our interface with our patrons. Patrons who speak in relationship-oriented terms exacerbate the problem, and we tend to tune them out. In doing so, we are actually avoiding the work we were meant to do. We have to discuss their relationships with them to the extent necessary so that we can point them in the proper direction and begin to give them some rule-oriented understanding.

If we are navigators on the information highway, then our first question at the reference desk is some version of "Where do you want to go?" Some of our self-represented litigants will start off with some statement that translates to, "You know, if he hadn't been so mean about that other event, I would have let this matter go, but he's got me so riled up that I can't." In other words, half his claim is about an issue he can't do anything about, so he really wants to go to two places at the same time, or maybe three or four.

I don't really have a pithy closer for this column. What I am wondering is whether any of this resonates with you. I realize that I had to simplify a lot in order to get the concepts across. Obviously, self-represented litigants coming in for divorce have relationship issues, some of which are germane and some of which will not be relevant in court. Sometimes their shock is finding out that the system wants them to deal with their relationship when they want to stop that and get on to the rules. "What do you mean that I have to go to mediation to get a divorce. I want to stick it to him (or her)." (See Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (1990).)

I researched the two books I mentioned while doing a re-write of my article, "The Queen of Chula Vista: Stories of Self-Represented Litigants and a Call for Using the Cognitive Theory of Metaphor to Work With Them." The article was a winner in the 2006 AALL Lexis-Nexis Call for Papers, and I recently submitted a revised version to the *Law Library Journal*. I would be very much interested in any pat phrases or expressions that you use when, during a reference transaction with a relationship-oriented litigant, you are trying to get the litigant to focus on the specific matter at hand so that you can give the litigant some direction. I would also like to know, if you can put it into words, how you determine when it is appropriate to use the pat phrases and how well they work. If I can collect enough of these examples from different sources to see a pattern, we will have learned something, possibly something I can use to help justify grants for research on this. My email is charlesrdyer@clearwire.net. Also, check out my new website at www.charlesrdyer.com .

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In a way, this column is a continuation of my previous column in the May 2006 issue. If you

plan to send me a comment, that column might also help.

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Trivia quiz: Who can tell me where the quote at the beginning of the article came from and the rest of the quote? Send your replies to my email address. Winners will be announced next time, and I'll explain how the quote is relevant to the column.

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Lastly, be sure to vote this November. I had planned to write a column on the upcoming elections, but decided not to, as I know you are wise enough to check out the candidates and the issues yourself and vote as you should. After all, you were smart enough to read this far.