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Charley's Corner

Prototypes, Metaphors, Clichés, and Service of Process

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

Ted Smith, Law Librarian for the North Dakota Supreme Court Law Library, was the trivia quiz winner of my question posed in the last issue. I asked in which book did Tom Robbins write, "It takes real courage to change your clichés." Ted wrote:

> The quote [is] from "another roadside attraction", slightly different than you quoted:
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> You risked your life, but what else have you ever risked? Have you ever risked disapproval? Have you ever risked a belief? I see nothing particularly courageous in risking one's life. So you lose it, you go to your hero's heaven and everything is milk and honey 'til the end of time, right? You get your reward and suffer no earthly consequences. That's not courage. Real courage is risking something that you have to keep on living with, real courage is risking something that might force you to rethink your thoughts and suffer change and stretch consciousness. Real courage is risking one's clichés.
> --Tom Robbins

I had heard the whole quote on the radio just before I wrote the previous column, and it seemed to fit in with what I was planning to express in the column. Unfortunately, although my wife is an avid reader of Tom Robbins, we couldn't determine the source, since he says so many good things throughout his writings.

Last time I spoke about the hard work that law librarians face, getting self-represented litigants to learn to express themselves in the rule-oriented terms and logic of legal discourse, rather than their natural relationship-oriented terms and logic. This time, I'd like to speak about how it is that we naturally think in relationship terms and have to learn to think like lawyers. Why aren't we born to think like lawyers?

Over the last twenty-five years, cognitive linguistics has grown as an academic discipline and developed some theory that has withstood scientific testing. Indeed, it is rooted in cognitive psychology studies in the 1960s and 70s dealing with semantic prototypes and categories. I have spoken previously about these findings and their relevance to law in my column two issues ago, called "Some Cognitive Science for the Reference Staff."

A prototype, as used by cognitive linguists, is the meaning usually given to a word by a person when context is excluded. For instance, the word "mother" in the abstract sense refers most commonly to a birth mother who provides love, care, and training for a person when he or she is

young. When thinking about mothers abstractly, we have a sort of neutral sense that everyone's mother is just like this common sense of the term mother. We don't think of the wide variants unless required to do so in the context of the conversation. An adopted person may think of his adoptive mother as his "mother" and the unfamiliar person who actually gave birth to him as someone needing further defining, e.g., "my birth mother." But his sense of the term "mother" generally will not be far from that of people who are not adopted.

From this prototype, a person "radiates" outward to make new senses of the word. So there are "birth mothers," "adoptive mothers," "step-mothers," "gentle mothers," "cruel mothers," "mothers of other animals," "mother countries," "mother of all battles," and further removed senses of the word. If you were to try to establish the set (in the mathematical sense) of all uses of the term mother, the "edges" would be fuzzy. Indeed, we could make up new meanings, using mother as a metaphor for all sorts of concepts. And the variants of word choice for the term provide an even broader range of uses. The expletive "Yo Mama!", said in a harsh tone, has little to do with the prototypical use of "Mama," except to be a pejorative statement about one's clan relationship.

Our legal discourse requires that the class of things that a legal rule affects should have a specific boundary, that it not be a fuzzy set. Recall my discussion two issues ago of the debate between Frederick Schauer and Steven Winter over the legal rule, "No animals allowed on the bus." Schauer maintained that the rule must apply to the guy bringing a small fish in a plastic bag on board, because a rule must apply, even when not reasonable. But Winter points out that Schauer's application is no more logical, because "no animals" applied literally would be silly, e.g., even people would not be allowed on the bus. Winter calls for using the cognitive linguistics approach and suggests that the court's duty is to determine the extent to which the rule is meant to radiate beyond the prototypical meaning in this context. The prototypical meaning would be something like the large, rambunctious dog that would bother the passengers. The utility of the rule is the prevention of mishap aboard the bus, and that becomes obvious when one thinks of the prototypical application.

Prototypes from our sensory experience become our sources for metaphors that we use to describe our abstract concepts. There are basic metaphors that nearly every culture uses, such as those based on the cognitive metaphors LIFE IS A JOURNEY, TIME IS MOTION (along a line), HAPPY IS UP, and SAD IS DOWN. There are metaphors based on cultural frames, such as MORE IS BETTER, which means something to Americans, but not to many third world cultures. There are legal metaphors, such as the infamous A CORPORATION IS A PERSON.

Although our development of abstract concepts and higher levels of thought require our use of prototypes and metaphors, we also seek a regularity in the application of these concepts. Thus, we have precedent, *stare decisis*, and formalist logic within the legal system in an attempt to create sufficient knowledge among its users to make application more apparent. The bus driver wants some rigidity in the application of the rule "no animals allowed on the bus," if for no other reasons than that he does not want to be second-guessed and possibly blamed for making a wrong choice in its application. The bus driver will be smart enough not to apply the rule to particular people trying to get on the bus, even if they seem to dress "like animals," because he

know he will be blamed for a bad decision and he doesn't want the hassle. But he is not too sure what to do with a rider who wants to bring a fish in a plastic bag on board. Would he then have to allow a person on board who had a Chihuahua in a large handbag?

In a court of law, with the application of a rule in the prototypical case, most of the work of the court is to weigh the evidence to see if it can be proven the incident actually took place as described. Much of criminal law consists of this. When appealed, these cases are usually given perfunctory rulings, such as per curium affirmative decisions. The real decisions in court reporters are about the extension of a rule to a situation that is not prototypical. Indeed, were it not for our need to establish more rigid limits on fuzzy sets, we would not even have law libraries.

So how does the quote at the beginning apply to all this. A considerable part, and some would say almost all, of imagination and creativity is based on the creative use of metaphors. We understand more by applying patterns and categories from what we already know to novel things and situations. We do this through metaphor. In analytic philosophy, a metaphor is considered to be the linguistic expression of a connection between source object and a target object that have no relation at all. "Death is the mother of beauty." That is referred to as a "live metaphor." When a metaphor is used too much, it becomes a pat phrase, losing its artistic, i.e., creative, i.e., instructive, appeal. "Trying to get the reference department all on one page is like herding cats." "All on one page" and "herding cats" become clichés.

Eventually, the cliché becomes so common that the use of the word is simply thought of as an alternate definition, or a "dead metaphor." "The economy is up." In this orientation metaphor, we do not think of our use of "up" as metaphorical, but it is. To cognitive linguists, all these uses are metaphorical. The use of "up" in "The economy is up" refers back to our sensory experience that UP IS GOOD and DOWN IS BAD, because, when people are healthy, they stand erect, and, when they are sick, they lie down. When metaphors are used so commonly, they become a central part of our understanding of the world, as we soon begin to develop other radiating metaphors based on these new "meanings."

Sometimes, we lose sight of the use of language to promote values that we had not noticed. Republicans have a notion that paying taxes is not a good thing, even though there are many useful activities that cannot be conducted by private enterprise. In trying to win over the minds of voters, they have, for instance, started to call the estate tax "the death tax." By invoking the emotional reaction we all have to death, we now have a knee-jerk reaction to this tax, even though it affects only a very small percentage of people, the very rich. Thirty years ago, corporations used to pay some 23 percent of taxes to the federal government, and now they pay just 7 percent, and most state income taxes are dependent on the federal rules. So governments are now strapped for funds, and we see county law libraries in dire financial straits. With language such as "The economy is up," people link the "up" part of that phrase to the increase in the stock market averages, yet they also invoke their gut feelings that somehow this up means that conditions are healthier than they were. Those who have lost their higher paying jobs with small companies and now work for mega-stores like Wal-Mart, with low pay and poor benefits, don't think so. Yet, as the value of Wal-Mart increases, it is reflected in stock market averages,

while smaller companies going bankrupt is not reflected at all.

Buried within our clichés are hidden beliefs we do not realize we espouse unwittingly, even when we ought to think them over.

Now let's look at a jargon term used in law that seems so innocuous to us: "Service of process." The word "service" is a metaphor radiated out from the ordinary meaning of "serve," which is to give someone something that he needs or desires, as in "Mother just served dinner." Most people who receive service of process are not happy at all about that, even though they certainly would be more upset if the case went forward without their hearing about it. Also, people are not excited about having to "serve" someone in a lawsuit, because it is a lot of effort with unusual rules—certainly different from serving dinner.

The word "process" is a metonymy, which is to say that it is a linguistic device using a part to represent the whole. In the sentence "The Pentagon gave out a casualty report," the actual building didn't do anything at all. "The Pentagon" represents the Department of Defense, and it was a spokesperson for the Department who gave out the casualty report. In context, a metonymy sounds perfectly natural. A waitress might say to her co-worker, "The ham sandwich on 8 needs more coffee," meaning the person sitting at table 8 who ordered a ham sandwich needs more coffee. "Process" in "service of process" represents the whole procedure, including hiring the right person to do the service, his work in handing over the copies of all the different papers being served, the recipient's signing the return form, and having the return form properly filed with the court. "Process" actually refers to the act of getting the signature of receipt from the right person. It becomes the focus, since finding the right person and getting that signature is the most difficult part of the operation—at least to those of us familiar with the procedure.

Other words, like "summons" or "subpoena," also entail significant linguistic content that is hidden from us. We learn by doing what these words mean, rather than finding their meaning in the dictionary.

Service of process is one of the significant barriers that face self-represented litigants. They don't understand it. At our reference desks, we spend hours helping them learn the procedure and explaining why they can't do the work in some seemingly more practical way, like just mailing the other party a copy. We create research guides, checklists, and sample forms for them. Some self-represented litigants get so discouraged just from service of process that they drop their lawsuits. A much higher percentage of lawsuits by self-represented litigants are dropped at this stage than by those pursued by lawyers, so much that some court systems are studying the phenomenon to look for better practices. In some other countries, service of process has been taken over by the courts, and the cost is simply added to court fees. Such an obvious solution. Why can't we do that here? I submit that our first problem is risking our clichés.

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When I reread the column just before sending it off, I saw that I was not clear about what

cognitive linguists think about the approach of analytic philosophers to the issue of the use of metaphor in thinking. Cognitive linguists vehemently disagree with analytic philosophers, who wish to downplay metaphor as a component of our thinking process, precisely because metaphor creates fuzzy sets. Metaphor causes emotional and subjective content to be involved in our normal course of thinking. Analytic philosophers would like to limit thinking to "rational thought," i.e., Aristotelian logic or even just mathematical logic, based on rigid sets. Cognitive linguists believe that rational thought would not exist without metaphor, and that. Like it or not, emotional and subjective content, invades all our thoughts. Similarly, they also disagree as to how sensory experience contributes to our knowledge. But that is another column.