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Charley's Corner

Writing in Prototypes is Different from Speaking in Them

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.*

My article, "The Queen of Chula Vista: Stories of Self Represented Litigants and a Call for Using Cognitive Linguistics to Work With Them," will be published in the Fall 2007 issue of *Law Library Journal*. It is an extensive revision of the article that won the 2006 AALL Lexis-Nexis Call for Papers. Due to the heavy volume of articles that *LLJ* Editor Frank Houdek already had in the pipe, it was nearly a year since I first submitted it that he had a chance to look at it and decide to publish it. That year gave me time to make considerable changes, mostly additions, as I continued to learn more about cognitive linguistics and related fields.

In the article that I had originally submitted to the Call for Papers, I consistently referred to self represented litigants in the singular, as in "The self represented litigant is faced with...." In part, this was because I used examples of real self represented litigants, some male and some female, and then blended those with scenarios of prototypical self represented litigants that I used to describe larger groups of them. I chose to use the pronoun "he" to represent this prototypical self represented litigant. As I originally wrote it, I also decided to use the pronoun "she" to represent the prototypical reference law librarian at a public law library. Before submitting the article for consideration by the Call for Papers committee, I added a footnote, noting that I had no intent to be writing in a sexist manner and indeed had used the female pronoun for the educated professional. One of my early reviewers, a female, was at first set upset with my use of the pronouns in that fashion, but felt better after reading the footnote. So I thought I was okay.

Frank Houdek, however, chose to change all the uses of pronouns in this prototypical fashion into plurals, thus avoiding any implicit sexism. Of course, he removed my footnote about this as well. Frankly, he did a very admirable job. It always helps to have someone else do a good close edit on a paper. As I read through the article after he returned it to me for review, I did not even notice the change until I got to a specific scenario, whereupon I then compared it to my original and realized what he had done. I decided to go with his changes, not only because they removed a potentially serious flaw with enabling readers to appreciate the article, but also because his work is an expression of consistent *Law Library Journal* style, one that I should have been more aware of myself.

I did, however, add a footnote to the scenario that had first alerted me to the changes he had made. The scenario was one that described how self represented litigants often go to several justice system agencies where they are turned away before coming to the law library, so that they often arrive frustrated and somewhat angry. The footnote noted that not all self represented litigants go to every agency possible before going to the law library and that the suggestion to go to the law library is often given by other agencies several times before they do decide to go

there.

The article is fine, and the sense that I was trying to convey is retained throughout the article. Nevertheless, something felt strange about it.

It struck me that what had happened is that the change from a narrative about a singular prototype to one about a group of people also changed some of the underlying logic. In informal conversation or even sometimes in a teaching situation, we often use singular prototypes when speaking. “The so-and-so will typically do this-and-that.” In fact, it is such a common pattern that people who are talking about themselves will change from first person singular to second person singular in order to create a sense of commonality about their individual experiences. “You know you just can’t get going in the morning without a cup of coffee.” We hear this all the time and know that the speaker is not literally telling us how we ourselves are, but is trying to convey a sense of sharing the experience.

When using prototypical speech patterns to describe something in a pedagogical statement, as I first did while writing my article, we choose that pattern because it is easier to describe someone who is acting in a manner that is the most obvious so as to prove our point. Describing a large group as doing the same thing requires acknowledging that not all members of that group will act in precisely the same way. This reminds me of the explanations used in places like physics classes, wherein they use a special case to describe a phenomenon so that the irrelevant variables are reduced to zero in order to make clear the principle the professor is trying to display.

My point in the article was to highlight the barriers to understanding the legal analysis that self represented litigants face. In writing my narrative employing a prototypical self represented litigant, I was avoiding the time consuming and obfuscating fact that there are actually some self represented litigants who are smart enough and experienced enough to do their own legal representation very adequately. (Without our help, thank you.) Speaking in a statistical way, you could say that I was speaking more to the mode of my results and avoiding those examples beyond the standard deviations.

With the change to a plural pronoun for the self represented litigants in my article, I now had to worry that my statements might not be accurately representative of all of the members of the class. In other words, my induction of my experiences over the years with self represented litigants would create a class with fuzzy edges. I could not fairly say that all the members of the class exhibit similar behaviors.

My logic had changed from the kind of prototypical logic that I have espoused in previous columns as being the more typical logic of ordinary folks into the more classical logic that we try to employ in court and when giving legal opinions.

In other parts of the article, I describe a “spectrum” of self represented litigants who differ in the degree that they can grasp what the justice system can do for them and how to comport themselves in order to obtain the best they can get. So in those sections, I am deliberately trying to avoid setting up a well-defined class, where every occupant has the same relevant

characteristics. In terms of Aristotelian logic, I am trying to show that self represented litigants do not really have any essential characteristics except the obvious, that they are not represented by counsel. So the problem for the reference librarian is in part to determine just where the particular self represented litigant who stands before the librarian is located on this spectrum so that the librarian can deal with him or her. Or, to say it in *Law Library Journal* style: Reference librarians must determine where individual litigants stand on the spectrum in order to determine how to handle them. (In writing in that style, I had to include the word "individual" in order to indicate that the determination is made on a case by case basis, and not for the class as a whole.)

What is truly scary about these observations is that I did not knowingly make them while I was writing the article. It took Frank Houdek's "slap up the side of my head" to cause me even to think about this. As a former editor of several journals and newsletters myself and a teacher of legal writing, I am somewhat more attuned to making observations about writing styles, especially those that confuse the reader. But so much of how we write and think and act happens so unconsciously that we don't even know what we are doing.

Richard Zorza, in summing up his early observations from interviews of self represented litigants after they had appeared in court, noted that there was a high appreciation from litigants when judges would explain what they were up to, i.e., why they would rule one way or another or what they would expect the litigant to show. He also found the litigants to be more sophisticated than he thought they would be. (See my article on news of the Self Represented Litigation Network elsewhere in this issue.) They also were very observant of gestures and facial expressions and could tell sincerity and falseness.

Much of this is due to that core of cultural understanding that goes on between members of a society. We Americans have all heard the use of the second pronoun as I described above, and we know the hidden meaning behind such use. Indeed, Zorza went on to observe that litigants who required translators did not understand what was going very much at all, even with the aid of the translator. I submit that the reason is that there is so much within a culture that is implicit meaning that we learn by growing up within the culture.

But even culturally understood implicit understanding can lead to mistakes. My use of singular pronouns in the article before Professor Houdek corrected it would undoubtedly be read as writing from a sexist viewpoint to some of those who might be more sensitive to that. Since seventy percent of our profession would be my likely guess of those who might be more sensitive to my sexism than I am, I had better learn to think out what I am doing. While desiring to use the kind of prototypical statements that we routinely use as shorthand in conversational speech, I missed the other way that such statements can be interpreted.

At least now, while I may have missed the problem in the first place, my study of cognitive linguistics has helped me develop a fuller explanation for my stupidity. Language is inherently much more complex than we think it is. We human beings just happen to be so good at using language that we forget that.

Let me know what you think of the article when it comes out.