

Excerpt from the Newsletter of the State, Court, and County Law Libraries Special Interest Section of the American Association of Law Libraries, v. 34, #1, Winter 2008:

Charley's Corner

Profiling at the Reference Desk

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.

I received an interesting comment from a reader of my recent article, "The Queen of Chula Vista: Stories of Self Represented Litigants and a Call for Using Cognitive Linguistics to Work With Them," 99 *Law Library Journal* 717 (2007). In it she suggested that my characterization of different types of self represented litigants whom we see at the reference desk seemed to her to be "profiling." I did characterize them as falling into a spectrum or along a line, whose individual understanding of the law was either closer or farther away from the accepted normative concepts understood by those who understood legal discourse. I said it was our job to help these litigants gain the ability to understand the legal discourse as it applied to their cases.

The term "profiling", of course, has a bad reputation due to its use as a label for the process used by Homeland Security to judge who might be more likely to be a terrorist simply by their appearance. People are detained for long periods at airports and border crossings because they look Arabic and "act suspicious." Such simplified profiling of course leads to the deprivation of civil rights of people for whom the security personnel have no other reason to detain. Such detentions do not have just cause.

The term "profiling" was borrowed from the police practice of trying to determine who might be likely suspects in various crimes so as to eliminate the numbers of suspects that have to be culled through in order to solve the crimes. Several popular television programs show psychologists, mathematicians, or other trained personnel supposedly employing statistical patterns in order to accomplish such profiles. The real experts who do this know that they are dealing with probabilities and arrests are not made until subsequently revealed facts can corroborate who among the selected few is the probable criminal.

At the reference desk, we too use profiling, but for good purposes. When a person at the counter appears to be a little uneasy and out of place and perhaps dressed more casually than most lawyers, an initial presumption that the person might be a self represented litigant would be reasonable. Upon hearing the patron's question, a reference librarian will then continue with or correct the initial guess, making it a bit more educated. As the reference transaction continues, the reference librarian can fairly well determine how familiar the patron is with law practice generally and the area of law being discussed. The librarian will then respond with that knowledge in mind, taking more time and using more basic terms to answer the question for a person who is less familiar.

Profiling is actually rooted in our common ability to recognize faces and assess friends and foes that humans and other higher animals developed through evolution. Humans primarily use visual

cues, coupled with some auditory cues, to recognize friends, but we still have the residual recognition of olfactory cues that is more highly developed in many other higher animals. We develop our sense of recognition as we mature. One-year old babies quickly recognize adults that they see regularly, such as parents and siblings. But they remain, or rather become, fearful of faces they don't know. My own granddaughter, whom I see about once a month, was at first fearful of me. Now, as a three-year old having seen me regularly, she looks forward to seeing me, even asking to speak to me when she is talking to my wife on the phone.

At some point, children grow to make distinctions in broader categories. People in uniform might be perceived as either friend or foe, depending on the reaction the child sees her parents make. Eventually, the child learns to distinguish the mailman from the traffic cop, and later learns to distinguish when the traffic cop may be friendly from when he may be about to give you a ticket. As children grow, their profiling advances until they begin to perceive people in larger categories, rich or poor, handsome or ugly, thin or fat, ethnically similar or ethnically dissimilar.

This process is so common in humans that neuroscientists assume it and build empirical studies based on it. Some scientists have been searching for animals that develop a "theory of mind", which is considered a component of higher consciousness. In other words, they are looking for animals that have the capacity to try to determine what another animal might be thinking. The notion of these scientists is that, for a species to develop a theory of mind, an animal must first develop a sense of self. But that sense of self must come from developing a sense of "other," including others who are similar to the creature, and others who are dissimilar. Obviously, lower animals are able to recognize members of their own species (called "conspecifics" in their jargon), if for no other reason than to mate and propagate the species. Animals with social interaction, such as most mammals, must be able to recognize members of their own family. So they profile their own conspecifics.

There was a recent study of capuchin monkeys (the "organ grinder" monkeys), the most intelligent of the New World monkeys. Capuchin monkeys express a great empathy toward the fellow monkeys in their clan and usually react to other capuchins outside their clan with either hostility or fear. They also use tools and learn from each other. A capuchin monkey that is taught a trick (e.g., somersaulting for a reward) will teach other capuchin monkeys that trick. They will teach others how to use tools. A capuchin will not necessarily train a conspecific out its clan, but capuchins are smart enough to learn from other animals, even non-conspecifics, just by observation. Capuchins have been known to observe macaws cracking nuts with their beaks and then taking stones and cracking the nuts themselves. In other words, they can see what the other animals are doing and figure out why they would do that, and then emulate or even expand on the knowledge gained.

A test of the theory of mind is to place a mirror before an animal to see how it reacts. An animal with a full theory of mind will come to understand that the reflection is a reflection of itself. An animal without a theory of mind will usually act in a hostile manner to the reflection until bored, whereupon it ignores the reflection. Capuchin monkeys, which are right on the cusp, recognize the reflection not only as a conspecific, but also as one possessing physical traits similar to those

within its clan. Perceiving the reflection as an unknown clan member, the monkey reacts with confusion and attempts at friendly gestures. Capuchins are close to having a theory of mind, but not quite there.

In a way, this too is a tale about profiling. An animal with a more fully formed theory of mind can abstract to some extent to recognize conspecifics outside the clan as either harmful or helpful, depending on how the other conspecific acts toward them. Gestures, calls, and body language help great apes determine the intent of approaching apes.

For human beings, our abstraction can go farther. We can consider the possibility that someone who does not know us or has not even ever met us may wish us good or ill. Indeed, we do it so naturally that we do it all the time without thinking about it. We profile our political leaders pretty much on the basis of how their political philosophy matches our own. In a sense, our individual political philosophies are somewhat like an abstracted version of our clan mentality. When the political philosophy is based on ethnic or religious identity, then it becomes even more viscerally similar to clan identity.

Our ability to empathize with our fellow humans, to understand what other humans are probably thinking, leads to another of our advanced traits, the ability to influence others. Our communication with other humans, our social nature, is considerably more complicated than just developing a clan hierarchy (like dogs and similar social animals) or protecting territory (like cats). We also develop extremely refined ways of working together. With the development of language, we considerably outpaced other animals in this regard. But language also gave us another trick. We can now create mental images of things and events without having seen them firsthand. We can study history and speculate about metaphysics and cosmology. We can even invent scientific theories that run counter to our normal observations. (I wonder if monkeys sent into space look back at the Earth and think to themselves, “My goodness, I always thought the Earth was flat.”)

At the apex of this development, from an evolutionary point of view, is the reference librarian at a public law library aiding a self represented litigant. Here is the trained professional, able to delve into the literature of the law, itself a long-term compilation of reasoned normative patterns of prescribed behavior, helping another human who is not a member of the librarian’s own clan and perhaps not even a citizen of the librarian’s country. The librarian, using reference transaction training and experience, comes to understand what the litigant wants and needs. The several levels of profiling are performed almost instantaneously—indeed almost at the speed that an animal in the wild makes the decision between flight or fight.

The value of profiling is that it can help a person know how to talk with another. As the conversation continues, the speakers begin to rely on common terms that both can understand. When librarians talk with self represented litigants, librarians know to avoid jargon words and to avoid presuming frames of reference that most such litigants do not understand yet. Librarians rely on more widely known concepts. Some may be basic terms that most people know. Others may be terms or concepts that the librarian believes the litigant might know. For instance, when speaking to a younger patron, the librarian may likely presume that the patron is familiar with

doing word searches in Google. If so, then the librarian can explain how to search the online catalog a bit faster.

The ethical component of profiling comes into play when the librarian decides what to do with the profile. Do we help this patron? At what level of involvement do we help this patron? Do we ignore this patron? Do we call the police? Regardless of our response, we always profile. And there are two decision points in the process of profiling: (1) Is our profile correct? We librarians should be good at reassessment when our initial guesses are wrong. (2) Is our action appropriate, based on the profile? We librarians should also be good at not presuming too much, based on a small amount of profiling.

There is no doubt that experience at the reference desk improves profiling generally. Unfortunately, a few bad experiences can sometimes add the emotional content that burns in memories and makes some profiles a bit biased. Some librarians are rather cold to “urban irregulars” because one or two were abusive or threatening. Our job in those instances is to refine our profiling so that we can distinguish when different appropriate actions are needed.

Each person we serve is an individual. We profile in order to aid them faster. When we profile too fast, we can sometimes make mistakes.

From what I said above, it would seem that we should try to err on the side of taking too much time to profile, but when we don’t profile fast enough, we also make mistakes. I see two kinds of problems:

(1) Time is money. Time management at the reference desk requires that we not spend all day with one patron. Also, most patrons (those who seek information, as opposed to those who seek psychological succor) want to get their business done promptly as well. This is a judgment call, based on context, on what is happening around you.

(2) Sometimes you need to call for help, and the sooner that decision is made, usually the better. Fortunately, in my experience, most patrons who become true threats take a while to do so. They are usually repeat users who exhibit signs of frustration or mental illness in prior visits. These factors should be taken into account when profiling. The problem is keeping staff informed. A log book on patrons should be kept at the reference desk, and staff should inform the next shift of issues they are seeing. (You’re already doing this? Thought so.)

To the evolutionary neuroscientist, profiling is a routine part of the adaptive nature of our brain, a technique we as humans use to survive, both on an individual level and as a species. In our modern times, how we use what we learn through such devices gets more complicated than what our prehistoric ancestors saw. When you look in the mirror, what do you see? Sometimes, we profile ourselves.

For those of you interested in further study of the neuroscience discussed here, I highly recommend a recent compilation of good articles in the field: *Evolutionary Cognitive Neuroscience* (Steven M. Platek, Julian Keenan Paul, and Todd K. Sheckelford, eds., MIT Press,

2007). A book on much the same material, but with more theory and fewer case studies, is David C. Geary, *The Origin of Mind: Evolution of Brain, Cognition, and General Intelligence* (American Psychological Association, 2005). Another evolutionary neuroscience approach can be found in Gerald M. Edelman and Giulio Tononi, *A Universe of Consciousness: How Matter Becomes Consciousness* (Basic Books, 2000) and several other works by those authors.