Excerpt from the Newsletter of the State, Court, and County Law Libraries Special Interest Section of the American Association of Law Libraries, v. 34, #2, Spring 2008:

Charley's Corner

Cultural Competency: A Layered Problem

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.

At the Equal Justice Conference, held May 6-9, 2008, in Minneapolis, there was a session titled "Outside of Justice: Bridging the Cultural Gaps in Access to Justice Systems." Legal services and pro bono attorneys face an increasing demand for services from both non-English speaking clients and clients from cultural minorities who have difficulty understanding the American legal system. The latter could include, for instance, inner city blacks and rural folk, both black and white. The session highlighted several innovative programs, while giving some frightening statistics on the increasing numbers—frightening in the sense that the legal system, including public law libraries, needs to ramp up to be able to handle these litigants and provide them justice. The catch phrase being employed by these experts is "cultural competency." Does your legal services or pro bono program have the ability to comprehend the cultural presumptions that your clients bring with them and can you help them under the different cultural presumptions found in the American legal system?

Richard Zorza, the Coordinator of the Self Represented Litigation Network, recently related findings from an SRLN research project, wherein they videotaped some divorce trials where both parties were self represented and then interviewed the litigants and the judge to see if they understood each other. He and his fellow researchers found that there was a surprisingly high level of comprehension among the litigants, except for one group, the litigants who needed to have interpreters. It appears that the biggest problem is that word-for-word translation, and even phrase-for-phrase translation, is not good enough. The judge expects his trial to move forward at reasonable speed, so translators have to put aside the questions their clients ask when they don't understand the meaning of what's going on, even while hearing the words.

In her presentation at the EJC session mentioned above, Madelynn Herman (recently of the National Center for State Courts, now with the State Courts of Virginia) had a very good slide:

<u>Weaving Cultural Competency Into Services Means Understanding that Cultural Shapes</u>

- Beliefs and expectations about justice
- What is right, wrong, or unfair
- What is appropriate or inappropriate
- The way people communicate
- Their perceptions of authority
- Beliefs about responsibility, and
- Beliefs about people and their motivations.

I would call this the *meta-level* of our misunderstanding, as that slide applies to all cultural gaps.

Getting more specific, at a 2007 EJC session on cultural competency, one included handout was a short article by Charles Horejski and Joe Pablo, *Cultural Awareness: Practical Suggestions for Non-Indians Interacting with Indian Tribes* (http://www.nlada.org/Training/Train_Civil/Equal_Justice/2007_Materials/047_2007_Delaney_handout5), wherein they had a chart noting the following areas of cultural difference between "Contemporary U.S. Culture" and "Traditional Native American Culture":

- The meaning of time
- Competition among people
- Control
- Definition of self
- Social interaction
- Material possessions
- Personal space
- Individual freedom
- Learning process
- Family
- Children
- Older persons
- Religion and Spirituality

Here is an example (the shortest), from Personal Space: *Contemporary U.S. Culture:* "Much emphasis on having privacy and personal space. Separate space for each family member is highly valued. For example, everyone wants his or her private room." *Traditional Native American Culture:* "Highly social. Compact living is the norm. Frequent and close contact with others. The value places on sharing with others extends to the sharing of a room or house. A person who lives alone is pitied." These differences would obviously cause a Native American to question what is happening in court during a divorce and even more so in litigating against a citizen steeped in contemporary U.S. culture.

I would call this the *middle* level of cultural misunderstanding.

Milan Pham, North Carolina Lawyers for Entrepreneurs Assistance Program, at the 2008 EJC session, noted that the Hmong (immigrants from Laos during and after the Vietnam War) do not even have a word for "rape" because their sexual practices and inhibitions are different. And many immigrants do not understand zoning because in immigrant communities, economic classes mingle more.

From another discipline altogether, cognitive linguist Zoltán Kövecses has written *Metaphor in Culture: Universality and Variation* (Cambridge University Press 2005). Cognitive linguistics has found that there are many common metaphors used in all cultures because they are based on our common human capacities. Such metaphors as these are *universal* metaphors. They are so common, we don't even think of them as metaphors. Some are so common they become second meanings in the dictionary. (Try looking up the word "spring," for instance.)

An interesting example of an unexpected universal metaphor is found in such phrases as "hanging out with oneself," "being out to lunch," "being on cloud nine," and "pampering oneself." It turns out that the common metaphor is "self-control is object control," which leads to a variety of derivatives, such as "self-control is object possession" ("I lost myself in reading."), "self as container" ("I was beside myself."), and "self as child" ("I'll reward myself with a glass of beer.").

Kövecses's thesis is that there is also a level of quite common metaphors that are culturally based. They may spread over a whole culture or even several cultures, but still not be universal. For instance, we refer to a person who is enraged at something as being "steamed" about it because nearly all cultures know the "highly emotional response is like a boiling liquid in a container" metaphor. That is because all humans, except those with neurological damage, will feel a flush and rise in temperature when they are mad, and, as social beings, we can sense that in others. However, in Chinese, the metaphor is simply "hot," i.e., an increase in temperature, without the "liquid in a container" part. So, a Chinese speaker would understand that someone was "hot under the collar" about something, but have more difficulty understanding that someone was "steamed" about it.

In fact, it is more likely that we (contemporary U.S. culture) share certain metaphors with western European cultures (especially those with Romance or German languages) than with many of our immigrant communities within the United States. Kövecses uses English and Hungarian (which is neither Romance nor Germanic) for most of his comparisons, in part because he and most of his graduate students speak both languages and have been immersed in both cultures, and he notes that, even as a linguistic scholar, he could not divine the roots of the cultural differences in metaphor without that familiarity. He and his group base most of their findings on both corpus studies (i.e., studying large data files, such as newspapers, etc.) and subject testing (the traditional asking undergraduates to respond to questions, as in psychological testing). But without their privileged background, they would not even know where to begin to pick the collocations (key words in context) for the corpus studies or construct the test questions for their subjects. (In his book, Kövecses also borrowed from other studies of language comparisons, so his conclusions are more broadly based than his own studies.)

I would call this the *base* level of cultural misunderstanding.

But wait. There is one more. Milan Pham also cautioned her audience that "Legalese translated is still legalese. We still have to make it accessible." Plain language forms help, provided the Plain English form is somehow well translated into the other plain language, given all the pitfalls already noted. To help overcome some of those pitfalls for their Spanish clients, the North Carolina Lawyers for Entrepreneurs Assistance Program developed a series of telenovelas with law themes. An example would be property law in the U.S. They play on Univision. They are also using comic books, podcasts, and DVDs. The point is to use narratives and story telling. They also develop peer to peer programs, which is another way of saying that they hire someone who is versed in the culture to serve on their staffs. The point of designating this as a specific program is that, with the additional feature of cultural competency, you might otherwise have to lower the eligibility requirements in order to get candidates. (At the San Diego County Public

Law Library, we often used support staff with language proficiencies to help out at reference. Now we have a name for that.)

As a researcher, I have been on the lookout for linguistic studies that have something to say with regard to our problem of legalese. In linguistics, the study of professional speech primarily comes under discourse studies, and, recently, several scholars have begun to combine cognitive linguistics with discourse studies. Unfortunately, there have been no such studies that I know of that have focused on the American legal profession or legalese, or "legal discourse," as they would call it. There are, to be sure, some law professors who are versed in cognitive linguistics, but they have tended to spend most of their time writing on the problems of meaning generally, i.e., for lawyers and judges and judicial interpretation, rather than for non-law-trained people. There are also some law professors, such as John Conley, who have done admirable work in discourse studies and law, but without the cognitive linguistics.

Another problem is that the field of discourse studies is divided in two groups. The Europeans tend to combine discourse studies with a desire to get at the underlying political meaning of the discourse, taking a postmodern stance toward such work because they were inspired by Foucault and Derrida. Their work goes under the names "discourse studies" or "critical discourse analysis." The Americans do not see displaying the underlying political meaning as a necessary element of their work. Conley, for instance, would fall within that group. That group goes under the name "discourse analysis." The Europeans are more inclined to study professions like law because they can see the possibility of serving their political analysis through such studies. In the United States, cognitive linguistics is not so common as in the rest of the world, with most of the linguistics departments devoted either only to practical language studies, as opposed to theoretical, or still clinging to the older theoretical linguistics of Noam Chomsky and his generative grammar. While cognitive linguists see generative grammar as a necessary intermediary step between the even older theories and their theories, they reject its notion that semantics (i.e., the study of meaning) should be left solely to pragmatics (the study of language used in context). (As you can see from Kövecses's work, there are comprehensible meanings at the universal and cultural levels, not just in context. And meaning is the main reason that I have looked at linguistics at all.)

Anyway, trying to get something that I can use, i.e., something not European and not political, has been difficult. I am doing better with materials produced by front-line workers through their own trial and error. (Greg Hurley recently posted 64 folders on plain language on selfhelpsupport.org.)

In what is certainly a bit of irony, the American cognitive linguists who want to do discourse analysis in the United States have gravitated toward an analysis of political speech. It seems that the Republican juggernaut that has been so good at framing our political speech the last few decades has raised the ire of these academics. (George Lakoff, whom I mention in my other article on legislative advocacy in this issue, is the most prominent among them.)

This last level of our cultural misunderstanding, that of translating legal discourse, I call the *hidden* level. I wanted to use the word "subordinate" because it comports with the use of that

word in the cognitive linguist's theory of prototypicality, but I realized that I would be using it in a jargon way, i.e., with discourse meaning that you would not have.

So, I have spent my whole column lining up the problem and giving you the lay of the land. I'll get back to you when I have something more to impart.

When next you direct a person to the "circulation" desk, think of all that is implied in that phrase. Does "circulation" arise from a metaphor to our own body's circulatory system? And, while we librarians might see books as circulating through our "body" of users, do the users themselves see it that way? (That has got to be a professional discourse metaphor if there ever was one.) And what do we do with the Native American who is just as likely to think that the book we handed him is a gift, rather than a loan?