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Charley's Corner:
Some Observations on Points of View

by Charles R. Dyer, Director of Libraries, San Diego County Public Law Library
Nothing in this column represents the view of my Library or its Board of Trustees. These are just my personal opinions.

This issue's column doesn't really have a point or moral; just some anecdotes that show how we humans have different points of view. If anything, a public law library is certainly a fascinating place to observe humanity. As I continue to plan for my retirement and movement into my next phase of life, I'll have to remember what it was like "in the lab."

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At one of the San Diego County Public Law Library's Law Week events, Judge David Gill, the longest tenured member of the San Diego Superior Court, held a discussion with a small, but very receptive, audience. The topic was the American jury system. Among the many interesting things he noted was the need now for judges to disavow juries of the notion that the evidence to be presented will be anything like what they see on "CSI: Crime Scene Investigation," the television program that shows how crime labs discover physical evidence. Most of the time, there is little, if any, DNA evidence, and other trace evidence is often not available.

Indeed, I have often wondered how the discovery of some random piece of fiber in an open area, such as the side of a road, can be said unequivocally to link some poor defendant to a crime, just because he managed to have the same fiber among one of his pieces of clothing. Actually, if you watch "CSI" closely, they rarely if ever show the evidence actually being used in a court of law. Rather, such evidence is used by the lead investigator to tell the defendant that they have narrowed down the suspects to him alone and that he had better confess. In effect, its use is not much different from the outright lies, such as "Your partner has already confessed," that the police tell suspects in such shows as "Law and Order" in order to solicit confessions or admissions.

The U.S. Supreme Court has ruled that such trickery is legitimate when conducting a criminal investigation. What mostly happens as a result of duping a defendant that way is that the defendant screws himself up sufficiently that he eventually accepts a plea bargain or simply confesses. So these cases rarely go to trial. The cases that do go to trial are the ones wherein the defense disputes the facts. If the defendant is wise enough to keep his mouth shut, he may well have a good enough case to make it worthwhile to go to trial.

Yet another comment from Judge Gill was also noteworthy for this discussion: Juries often tend to think that a defendant does not testify because he is guilty, when, in fact, the reasons are usually something else. It may be that the defense wants to avoid having the prosecution bring up the defendant's prior convictions. Or the defendant is not well spoken and would come off badly compared to the police and lab technicians, who are well practiced at testifying. Or the defendant is a member of a gang, and juries may simply think, "Well, he must be guilty of something." Judge Gill noted that it is a judge's solemn duty to admonish the jury not to prescribe any guilt based solely on the defendant's refusal to testify.

Nevertheless, in the midst of this, Judge Gill stated that the one thing that a jury member really has to offer is his common sense. That common sense is to be used to determine which witness is telling the truth—truth being not what the witness believes but what seems actually more likely to be the case. Credibility of the witness is part of it, but so is the plausibility of the testimony. Would you sooner believe the school teacher who claimed to see the defendant in the dark from 50 feet away, or the fellow gang member who claimed that the brother was with him in a club on the other side of town?

Don't be so quick to make that choice. Each of us comes into a case with our own prejudices that come from our culture and experience. Should a defendant be found guilty just because none of his alibis evoke a strong sense of credibility? The numbers of mis-identified defendants, as shown by the several innocence projects in this country, is staggering.

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I just saw a review of a new book called *The Future of Religion*, written by Richard Rorty and Gianni Vattimo (Columbia University Press, 112 pages, $24.50). Rorty is a neo-pragmatist, now considered America's most influential philosopher, and Vattimo is Italy's most prominent philosophy professor, who happens to be both a believing Catholic and a leader of the Italy's gay rights movement. Each of the authors wrote a lengthy essay for the book, then engaged in a dialogue that is also included. While the material is from 2002, the timing of the book could not have been more fortuitous, with the death of Pope John Paul II and the election of Joseph Cardinal Ratzinger as Pope Benedict XVI.

Rorty's point for some time has been that men cannot divine ultimate truths, that we must do the best with what we know that is directly pertinent for deciding ethical acts, and that religion, or even an over-reliance on science, gets in the way by seeming to make ultimate truths that cannot justifiably be used to rule society. Another way to say it is that he believes religion should stay out of politics. Rorty suggests that religion is unobjectionable only when it is "privatized."

Vattimo, employing his own postmodern thought, proclaims that "Christianity introduces into the world the principle of interiority, on the basis of which 'objective' reality gradually loses its preponderant weight." He believes the church should abandon the "literalism" it adopted in the 18th and 19th centuries, and return to embrace an idea closer to Jesus, a "call to practice" the "truth of love, of charity."

Cardinal Ratzinger, in his previous role as defender of the faith, had warned against the loss of values in the modern world. He even used the phrase "the dictatorship of the relativists," which to me is an oxymoron, but it is at least representative of his strident concern that the loss of some notion of absolute truth would somehow lead a person or a society to a path of degradation and sin.

So here we come to the crux of the matter (pun not intended). Some worry about the evil created when men surrender their powers of intellect and possibly their power to do good to pursue faith blindly, as when the Catholic Church condemns the use of condoms in HIV-infested Africa, not to mention the succor given by religion to terrorists. Others worry that, without strict guidelines, we all will fall victim to temptation—we must have limits.

I will venture the thought that this modern tug of war between the theists, the rationalists, the foundationalists, on one side, and the critical thinkers, the postmoderns, the pragmatists, on the other, is not dissimilar to the tug between legislation and constitutional limits. The very thing that tells me there are no absolute truths is that we have so many of them. (Are you aware that, as you watched St. Peter's Square fill with people who wanted to see the new Pope, there is an annual Hindu celebration in India that brings 20 million pilgrims together at one time, vastly outdoing the purportedly "huge" gathering at the Vatican.) Yet, without some laws, some order, some organization, would we not fall apart.

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Lastly, our library has been struggling with the problem of delusional schizophrenic patrons, especially those who believe they have some authority over us in our role as librarians. One believes he is a "U.S. Consul Administrator," appointed by the President, who, having been denied his office in the federal building down the street, believes he has the power to co-opt space in the library for his permanent use. Another, who believes her daughter has been kidnaped by the CIA, continues to "file" papers with the circulation desk staff as if she were filing pleadings with a court clerk—and the papers themselves are full of bizarre ramblings. She keeps asking when her case will be docketed. Another believes that he is being followed by various agencies and the library itself is bugged, and he lets out a stream of epithets to complain about noise every time he visits. And there are a couple others as well.

We have the usual posted rules and procedures for kicking out disruptive patrons for a day, but these guys never learn. They simply come back the next day and repeat their strange behavior. Several of my staff are rightly concerned that any one of these could become violent, and this reasonably placed fear now is a workplace safety issue. But, without a direct threat or act, can we exclude the person based on his status as a suspected delusional mentally handicapped individual. (I did get a restraining order against one several years ago, but he had shoved one of my librarians.) We easily tolerate a couple of quieter ones who appear to be harmless, but we are not qualified to make psychological analyses of our patrons and judge who shall stay and who shall be banned.

This is in contrast to one of our patrons who simply insists on talking about his case at the

top of his lungs to anyone who will listen. This guy is obviously not mentally ill, just obnoxious. We continually kick him out of the library, so he makes his case to that day's friend by speaking on the sidewalk, and I can hear him through my window. He is not considered a threat, but he, too, does not seem to learn to behave better. (We have a couple of attorneys who also go outside to argue loudly. I wonder how they think they are maintaining client confidentiality when they do that.)

My reference staff has been editing a draft of a request for a county counsel opinion for some time. Can we keep the scary ones out, just because they are scary? How would we do that? The most of what I am learning is the considerable difference of opinion among my staff about what to do and who should be included in the group to whom we will do it.