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Assessing Linguistic Diversity in Deaf Criminal Suspects

MOST OF the available literature on deaf people and the criminal justice system focuses on Americans with Disabilities Act (ADA) compliance issues. The failure of law enforcement to consistently provide effective communication to signing deaf suspects throughout the interview and arrest process has been well documented in a number of post-ADA criminal case summaries (*Georgia v. Hendrix* 1996; *Michigan v. Brannon* 1992; *Minnesota v. Voight* 1992; *Rawls v. Florida* 1992; *Rosen v. Maryland* 1997; *Tennessee v. Perry* 1999). However, the literature rarely considers specific linguistic and functional issues of deaf criminal suspects that impede the provision of standard accommodations (Vernon and Coley 1978; Vernon and Raifman 1997; Vernon et al. 2001). Linguistic diversity in deaf suspects can create serious communication complications even for professional sign language interpreters (Miller and Vernon 2001; *Wisconsin v. Hindsley* 2000).

Diversity in sign production and language modes that deaf people use is a recognized phenomenon (Bayley, Lucas, and Rose 2000; Frishberg 1995; Valli and Lucas 1992; Woodward 1976). Linguistic diversity generally occurs as the result of an interaction of

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sociocultural factors such as educational background, the age at which language acquisition began, the age of the onset of deafness, the region of the United States in which the person resides, the presence of secondary neurological disabilities, and language deprivation (Bayley, Lucas, and Rose 2000; Miller and Vernon 2001; Newport 1990; Vernon and Andrews 1990).

This discussion divides linguistic diversity into two categories. The first category involves deaf suspects who are proficient in the use of one or more of the following languages or modes: American Sign Language, manually coded English, contact language (often referred to as Pidgin Sign English [PSE]), and indigenous or foreign sign languages. Educated deaf suspects can be relied upon to inform the interpreter of their language preferences and the languages in which they are proficient. The provision of a qualified, preferably certified, interpreter who can interpret using the language the individual requests generally establishes effective communication for these suspects.

The second category of linguistic diversity involves deaf suspects who are not proficient in any language. These people have previously been defined by terms such as *underserved*, *highly visual*, *Deaf-plus*, *low functioning*, *linguistically incompetent*, *semilingual* (Baker and Jones 1998), *possessing minimal language skills* (MLS), or as having *Primitive Personality Disorder* (Vernon 1996). Each of these labels reflects varying sociopolitical perspectives, demonstrating a range of clinical descriptions, psycholinguistic designations, and community-based attempts to recognize yet destigmatize this condition.

Linguistically diverse deaf criminal suspects who have experienced language deprivation, disruptions in language modeling, or multiple disabilities that interfere with language processing may demonstrate the use of rudimentary ASL vocabulary terms devoid of advanced grammatical features or standard syntax, often coupled with code switching between uncommon indigenous sign languages, obscure dialects, and individualized gestures. This irregular communication presents a challenge for both interpreters and law enforcement to accommodate. Miscarriages of justice or serious evidentiary mistakes most often occur with deaf

people who cannot communicate proficiently in any language (*Wilson by Branch v. North Carolina* 1996; *Wisconsin v. Hindsley* 2000); therefore, this study focuses on how interpreters identify language-use issues in deaf suspects.

Methodology

Study participants were forty-six professional sign language interpreters selected on the basis of either their known employment in the criminal justice system or their possession of a Texas Board for Evaluation of Interpreters (BEI) certification level of IV or V. The state of Texas recommends BEI certification at level IV or higher to perform legal interpreting work. Interpreters who lived primarily in Alaska, Oregon, and Texas completed an original fifteen-item survey questionnaire addressing interpreter demographics, qualifications, and practices. Participants responded using email and the U.S. mail.

Results

In order to better understand the phenomenon of linguistic diversity in deaf suspects, professional sign language interpreters working in criminal justice settings recorded how often they encountered deaf suspects with minimal language skills (table 1). The term *minimal language skills* was chosen because it commonly occurs and is readily recognized by those in the profession of interpreting. The majority (54.3 percent) of respondents stated that they “frequently” work with deaf people who exhibit minimal language skills, while 26.1 percent stated that they “occasionally” work with this group. Another 6.5 percent of respondents selected “rarely,” and an additional 6.5 percent reported “most of the time.” The remaining 6.5 percent of

TABLE 1. Reported Frequency of Interpreters’ Contact with Deaf Suspects Possessing Minimal Language Skills in Criminal Justice Settings

Frequency of Contact	Number	Percent
Frequently	25	54.3
Occasionally	12	26.1
Most of the time	3	6.5
Rarely	3	6.5
Did not respond	3	6.5

participants did not answer this question. With over half of these legal interpreters reporting that they frequently encounter deaf suspects with MLS in the criminal justice system, it is critically important to further examine the criteria by which interpreters determine the presence of MLS in their clients.

Inappropriate Responses

Clearly, accurate identification of deaf suspects with minimal language skills cannot be based on a single behavior. Interpreters selected the indicators that they most frequently rely upon to determine MLS in deaf suspects (table 2). As expected, 80.4 percent of the survey respondents identified inappropriate responses as a significant cue in determining comprehension. Inappropriate responses by deaf suspects may result from a variety of causes including but not limited to noncomprehension of syntax, impoverished socialization, emotional reactivity, inadequate vocabulary, and attempts to respond to the apparent situation or those portions of the communication that they understood. Many of these issues overlap, as an analysis of the following question demonstrates:

Police officer: If you saw the theft occur, why didn't you report it?

This question is both syntactically complex and heavily reliant on sociocultural knowledge that most people take for granted. Several interpreters indicated in their responses that a lack of background

TABLE 2. Indicators Reported by Interpreters Assessing Minimal Language Skills in Deaf Suspects, $n = 46$

Description of Indicator ^a	Number	Percent
Comprehension		
Inappropriate responses	37	80.4
Difficulty with time concepts	30	65.2
Lack of response	28	60.8
Repeating the last sign interpreted (echolalia)	26	56.5
Pleasing behaviors		
Excessive head nodding, smiling	23	50.0
Affirms final choice offered (agreement)	16	34.7

^aMost respondents reported the use of multiple indicators by which to assess minimal language skills.

knowledge of the legal system in deaf clients with MLS posed a problem in the provision of legal interpretations. To clarify this issue in relation to the preceding example, a deaf suspect with MLS may not be aware of the legal duty of reporting a crime, which behaviors constitute a criminal act, or the procedures that one uses to report a crime. Thus, a deaf suspect with MLS would not comprehend this question.

Additionally, when suspects who have limited understanding of the roles of law enforcement and the criminal justice system are faced with authority figures with whom they cannot communicate effectively, they often become fearful or feel intimidated (Vernon, Raifman, and Greenberg 1996). They may respond to questions emotionally when they do not really understand, as the following exchange illustrates:

Police officer: When he picked up the TV, where did he . . .

Deaf suspect: TV BAD. HUSBAND WASTE TIME. WATCH TV ALL DAY.

Other inappropriate responses may appear as an attempt to answer questions based on the situation without comprehension of the question. For example:

Police officer: Did you steal the TV?

Deaf suspect: STEAL BAD.

The suspect here demonstrates minimal recognition of the situational context but does not comprehend the question.

Difficulty Understanding Time

According to studies of psycholinguistics and cognition, our ability to code and store information in long- and short-term memory is closely allied with language (Marschark 1993). Thus, for most people who exhibit minimal language skills, discussion of past and future events is often insurmountable and almost always time consuming. For 65.2 percent of study participants, difficulty understanding time concepts was a significant cue in the distinction between varying levels of language use and irregular language use in deaf suspects. One respondent stated that each time she works with a client who has MLS, it is necessary to take the time to develop a set of common,

mutually understandable concepts with which to refer to past events. Of particular difficulty for deaf suspects with MLS is the concept of time within time (Vernon and Miller 2001), as used here in a chemical dependency assessment:

Service provider: How many days out of the past month have you used alcohol?

Questioning deaf suspects with minimal language skills regarding past events presents unique communication barriers for both police and sign language interpreters (Shepard-Kegl, Neidle, and Kegl 1995). Interpreters often require substantial additional time or assistance from a deaf interpreter (often referred to as a *relay interpreter*) to establish communication regarding the occurrence, frequency, and sequence of a past event (Frishberg 1995; Wilcox 1995).

Lack of Response

For 60.8 percent of respondents, lack of response was a factor in assessing minimal language skills in deaf suspects. For this discussion, a lack of response is defined as the failure to make a relevant response at a socially appropriate moment. Not making any response at all is a universal indicator of noncomprehension in general. However, many deaf suspects make some attempt to respond when confronted by an authority figure. One method by which the deaf suspect may fail to respond meaningfully is by making unrelated comments, as the following example shows:

Police officer: Where is the TV now?

Deaf suspect: COP CAR WOW. SEE GO FAST.

The suspect here does not make any coherent connection whatsoever to what is occurring. This failure to address the question is the result of noncomprehension as well as a lack of sociocultural awareness and a significant indicator for those assessing the language of the deaf suspect.

Excessive Compliance

For 56.5 percent of respondents, suspects with MLS exhibit characteristics of *echolalia*, that is, a repetition of the last concept that has

been presented to them. This is a coping technique some individuals with MLS use to elicit a repetition of the information in a different format so that they can determine more about what is transpiring. In addition, interpreters reported a variety of excessively pleasing behaviors as a potential indicator of MLS. Inappropriate smiling, head nodding, or excessive agreement with an officer's comments and questions may be a conditioned response to authority or an attempt to convince the interrogator that the suspect has understood the question (Turner 1995; Vernon, Raifman, and Greenberg 1996). Bluffing and guessing behaviors may also appear in clients who are inordinately compliant. Fifty percent of interpreters reported that they look for excessive or reactive head nodding as a cue to identify MLS, and 34.7 percent reported that suspects with MLS were likely to agree with the final choice of a series offered to them. These three components of noncomprehension often work in conjunction with each other and are particularly perilous in terms of administering the Miranda warnings. For example:

Police officer: Would you like to request an attorney . . .

Deaf suspect: (nodding)

Police officer: . . . or talk to me now?

Deaf suspect: TALK NOW?

Police officer: You want to waive your right to an attorney?

Deaf suspect: (nodding)

In this situation and others like it, further assessment of a suspect's comprehension is essential. Interpreters often find that at this juncture, police officers are anxious to proceed with the interview because the suspect appears to comprehend and to have given consent. However, officers need to be alerted to the fact that the suspect does not understand, and they also need information and guidance about how to further investigate comprehension. Regardless of the professional pressures that an arrest situation presents, it is important for the interpreter to be confident on this point and avoid proceeding until it has been determined that the suspect understands the questions. Proceeding with an interrogation based on a deaf suspect's apparent consent in the form of head nodding, smiling, or bluffing

his way through the Mirandizing process can lead to serious evidentiary problems and is a violation of the person's civil rights (Vernon and Coley 1978; Vernon, Raifman, and Greenberg 1996).

Interpreters working within criminal justice settings should be prepared to administer field tests of language comprehension, legal knowledge, and literacy (Frishberg 1995). They can evaluate language comprehension by asking clients for their addresses, the cross streets near their homes, and whether they live in an apartment or a house, for example (Whalen 1981). They can determine legal background and knowledge by asking the client to define various terms such as "homicide" or "felony" and by asking questions such as "Who is your probation officer?" (Vernon et al. 2001; Whalen 1981). If print material is to be used, interpreters can determine reading levels by providing clients with a daily newspaper and asking them to read a specific article and summarize it in their own words (Vernon, Raifman, and Greenberg 1996). Newspapers target readers in the general public, therefore providing a reasonable gauge by which to determine literacy skills when out in the field.

Interpreters carry a monumental responsibility in their roles in the legal system. Not only must they attain superior levels of training and experience, but they must also recognize and mediate complex linguistic and social issues, advocate for their profession in terms of what they need to do their job effectively, and guide law enforcement in providing field assessments of the language of deaf suspects whenever they deem further evaluation to be necessary. The MLS deaf suspect is in a vulnerable position when being interrogated by law enforcement. The interpreter is often the only person at the scene with the appropriate level of knowledge of deafness and familiarity with ADA mandates to facilitate fairness in such a situation.

Participants in the study indicated there are a number of systemic barriers to the provision of interpretation to this population. They cited time constraints during arrests and other legal proceedings as arduous for interpreters to manage (table 3). Another barrier is resistance to advocacy and education by the criminal justice system, which can be especially frustrating to a conscientious interpreter.

TABLE 3. Barriers Reported by Interpreters Serving Deaf Suspects with Minimal Language Skills

Write-In Comment	Number	Percent
Criminal justice personnel		
Lack of awareness of deafness	5	10.8
Lack of awareness of interpreter role	4	8.6
Do not allow enough time to provide interpretation	3	6.5
Do not understand language competency issues	2	4.3
Deaf (relay) interpreters		
Lack of acceptance or use	5	10.8
Lack of availability	4	8.6
Clients		
Lack of knowledge of legal system	3	6.5
Nonassertive behaviors	1	2.1
Interpreters		
Lack of training opportunities	1	2.1
Afraid to ask if not understanding legal concepts	1	2.1
No system to share or standardize legal signs	1	2.1
Other		
Lack of deaf legal advocates	1	2.1

Other factors include limited legal training opportunities for interpreters, a shortage of deaf or relay interpreters, and constricted social and legal knowledge present in deaf suspects with MLS.

Study participants expressed concern about the lack of knowledge on the part of police, judges, attorneys, and other professionals. Coupled with the attitude of derision toward suspects and offenders that is evident among some in the criminal justice professions, it is exceedingly stressful for interpreters to attempt to educate representatives of the criminal justice system; consequently, many deaf suspects are left disempowered in the process.

Summary

This article has reviewed several of the indicators that experienced interpreters currently use to identify client language levels, as well as some of the barriers that interpreters in the criminal justice system must continually mitigate. In order to ensure the constitutional and civil rights of deaf suspects, communities must advocate not only for the provision of interpreters during criminal proceedings but also for partnerships between interpreters and law

enforcement in the identification, assessment, and accommodation of linguistic diversity in deaf criminal suspects.

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