

DUAL INTERPRETATION AND DISCOURSE EFFECTIVENESS IN LEGAL SETTINGS

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INTRODUCTION

It has been said that oppression takes many forms. We all recognize the violent oppression that has taken place in Bosnia, for example. But on the opposite end of the spectrum is oppression that may be so subtle it can go on for years and years, even undetected by the oppressed group itself.

In New Mexico recently, just such a situation occurred that made the whole state blink collectively. On the front page of one of the largest newspapers in the state was this statement: “For 69 years, the state flag has blared out a yellow-and red Zia symbol like a statewide brand of ownership. Now, the Zia Pueblo says, it’s time to pay up” (Nelson 1994.)

The pueblo is comprised of some 300 members and they are asking for \$45 million for the seventy-year “loan” of its sacred symbol. It’s a beautiful design – a circle buttressed by a quartet of straight lines - and derives from an ancient Zia religious icon. In 1923, the Daughters of the American Revolution held a contest to design a state flag, and an archeologist submitted a design he had seen on a Zia water jug. He won the contest. Two years later, the governor of New Mexico proclaimed the icon to be the official state symbol.

The use of the symbol spread and it is now on every conceivable New Mexico artifact. The state legislature uses it as a background for its own logo. Businesses and schools and art galleries have appropriated the Zia’s symbol as well as its name. The circle graces every New Mexico motor vehicle license plate. The Zia Pueblo’s attempt to collect “damages” from the state of New Mexico for unauthorized use of the ubiquitous symbol is being followed with great interest. The complaint is ballistic; if the suit’s successful, it will affect almost everything in New Mexico.

The point to be emphasized here is that the oppression and disregard of the Zia’s religious symbol during the past seventy years was so subtle that few people noticed. The use of the Zia circle now permeates the state, but until this spring, few of the cultural groups in the state recognized the growing anger of the Zia people. There is a parallel to be found within our legal system regarding the linguistic needs of the deaf people in America.²

DEAF COURT INTERPRETERS

When a Vietnamese citizen needs an interpreter down in the local police station, the call usually goes out for someone who is Vietnamese. When the courts encounter a Spanish-speaking monolingual and seek the services of an interpreter, the call generally goes out for someone who is Spanish. When a deaf person enters the legal system, the call goes out for a hearing person.

The concept of using a deaf person to interpret for another deaf person is inconceivable to many hearing people. The idea of deaf persons being unable to interpret effectively for their own language and cultural group is so ingrained that it is rarely considered in many of the administrative offices of the courts. In part, this is due to ethnocentricity – a nation generally feels that its own language and culture (and, in this case, linguistic modality) are superior to others. The American public school system has traditionally perceived deaf persons as being “handicapped” rather than culturally enriched (Bienvenu, 1994:1). Bienvenu believes that replacement of American Sign Language (ASL) in many schools for the deaf with the oral method almost one hundred years ago prevented deaf Americans from becoming competent bilinguals, thereby forcing us to become monolingual in spoken English. Administrators of the public school systems determined that English should be taught to deaf children and we were denied the acquisition of ASL in most schools until quite recently. In the past, we were forced to use English, with varying degrees of success and failure.

This has created a sociolinguistic impediment to the acceptance of deaf interpreters in the judicial system. Other ethnic groups and nationalities are viewed as being quite diverse educationally and linguistically, with multilingual persons being sought to interpret for those in their own group with educational or linguistic needs. Conversely, deaf people are usually grouped into one monolingual set, all in need of the interpreting services of a person who can hear. The value of deaf people’s own linguistic and cultural knowledge as potential interpreters may not even be considered.

A second reason that the courts may not have generally considered using deaf interpreters is the small percentage of deaf persons with native signing ability. A spoken language, for example Spanish, will have many thousands of people who are natives of that language and who are possible candidates for becoming interpreters for the Spanish-speaking population. ASL poses a different problem. Only about eight percent of the deaf population are born to parents who are themselves culturally deaf and therefore fluent users of ASL. Only a relatively few hearing children learn ASL as their native language from their parents either. For example, among the first 135 applicants for the University of New Mexico’s bachelor of science degree in signed language interpreting, only one claimed ASL as his native language (Valdes and Wilcox, 1986:16).

However, because of the recent increase in laws stipulating that deaf persons have a right to quality interpretation in court, the demand for interpreters has increased. Since the relatively few hearing children who acquire ASL as their native language are unable to satisfactorily meet the growing demand for quality interpretation in legal processes, a deaf interpreter is occasionally requested to team interpret with another interpreter who can hear. This usually occurs under one of two possible sets of circumstances. In the first, a hearing interpreter may be new to the profession and still acquiring ASL skills and ability. Away from the larger metropolitan areas with higher percentages of interpreters certified by RID (Registry of Interpreters for the Deaf, Inc.), many courts are absolutely pressed for qualified interpreters. The available interpreters may use too much English when interpreting for a deaf monolingual party not familiar with English syntax or signing influenced by fingerspelling. A deaf multilingual interpreter can work well as an intermediary interpreter in this kind of situation. He or she can watch the deaf monolingual’s ASL message and interpret it into a form of signed English that the hearing interpreter can then render into spoken English. Of course, the reverse process

can also be used: the hearing interpreter listens to the message and signs an English-based message to the relay interpreter, who then interprets it into ASL for the deaf monolingual.

In a more ideal case, it may be that the hearing interpreter is extremely fluent in ASL but, recognizing the cultural oppression that so easily takes place in the courts, requests to team with a deaf interpreter. It is usually these interpreters who also recognize that having a deaf person by their side as an equal translator of the linguistic flow lends credence to the entire communication process and results in a richer and more accurate interpretation. Gay Belliveau (1991:2) encourages that where state laws do not specifically name relay interpreters to meet the linguistic needs of the deaf litigants, the statutes should be so amended.

DEVELOPMENT OF THE CONCEPT

The concept of deaf people interpreting for other deaf people is not really new. The RID began evaluating and certifying deaf intermediary, or relay, interpreters over twenty years ago. There has been a training program for interpreters in the American Judicial System offered at the Superior Court in Los Angeles County, in which two out of each group of 25 trainees were deaf. The Bicultural Center in Maryland offers training for relay interpreters with a focus on the complexities involved in interpreting in the legal setting. In Massachusetts, Northeastern University has an Interpreter Preparation Program for Deaf Persons in which a class of a dozen deaf persons enrolls in courses for three years. Much of the curriculum focuses on interpreting in legal settings. Other workshops or courses have been offered across the country at infrequent intervals. A few places are making strong headway into the use of deaf interpreters or deaf advocates in legal settings: Greater Los Angeles Council on Deafness implemented a deaf Advocacy Specialist for the expanded court system in Los Angeles, and in New Hampshire, the chair of the RID Deaf Caucus works half-time as an interpreter/advocate in court. Other states have a small, growing number of deaf interpreters or advocates who are beginning to create paths into their respective judicial systems.

Regardless of which cultural group is being discussed, alleviating oppression means freeing the human spirit and extending the human experience. There is a great clamor for empowerment by all the cultural groups in America today. Here in the state of New Mexico, where over 45% of the population is composed of persons from a non-English speaking background, the empowerment of each cultural group is critical for the continued smooth functioning of government.

Yet oppression does not necessarily have to mean violence or confrontation between adversaries. This misuse of power can close a door to the possibilities as well as break a bone through the use of force. Foucault (1980:212) claims that “relationships of communication can produce effects of power” and he locates the basis of power in “minute, capillary relations of domination” (ibid.: 255). He states that power is linked to knowledge, competence, and qualification. In our courtrooms absolute knowledge is usually demanded, as well as verifiable competence. Foucault (ibid.: 218) says that when communication occurs, “there is a feeling of an activity being finalized, even if only by virtue of the modification of information passing between two individuals, or the correct and successful operation of elements of meaning being comprehended.” Those who have

interpreted in the judicial system have surely experienced that successful feeling of competence.

However, in the courtroom, when a deaf or hard-of-hearing person is involved, it is the hearing interpreter who usually makes “communication” happen. Deaf people as a cultural group have traditionally been denied the experience of effectively communicating in sophisticated legal situations.

MORE THAN A CONSTITUTIONAL RIGHT

Deaf people do not desire to be included in the judicial process simply to gain constitutional rights that have been denied to us. The interpretation of discourse between English and ASL, especially in the complex interchanges found in the legal milieu, requires effectiveness that is tantamount to the right to be represented by effective counsel. Interpreters, either deaf or hearing, with native or near-native fluency in ASL, can effectively collaborate to ensure that no deaf individual will be deprived of his or her constitutional rights of due process and equal protection through erroneous or inappropriate interpretation.

The bilingual-bicultural competence and sophisticated cognitive processing skills possessed by any certified court interpreter are effective only to the extent that the competencies and abilities are allowed to function. When a fluent hearing interpreter is coupled with an equally competent deaf interpreter, the cognitive and modality load of that communicative assignment is shared. This allows for a greater focus on the many subtle or not-so-subtle differences found between American mainstream culture and the deaf culture. Smith (1991) points out numerous disparities between the two cultures. American society is competitive, a very individualistically oriented society. Deaf culture is communal, with a more collective approach that focuses on the process rather than the event. Multiculturally aware deaf interpreters can help the legal process remain just and fair, and prevent the deaf consumer from becoming inadvertently swallowed up by a legal system that may not readily understand the cultural implications behind a deaf person’s compliance or desire for appeasement.

In addition to cultural differences, there are linguistic differences that need to be attended to during discourse exchanges: utterance boundaries; turn-taking procedures; topic flow control; appropriate register selection. Discourse analysis also recognizes what is known as a principle of local interpretation (Brown and Yule, 1983:59). This principle instructs the person not to construct a context any larger than is needed in order to arrive at an interpretation. Brown and Yule (*ibid.*: 61) assert that it is “the experience of similar events which enables [one] to judge what the purpose of an utterance might be.” A person’s knowledge of the world enables him or her to constrain his or her local interpretation of an utterance. Who would be able to infer and grasp an interpretation better than a cultural peer? In few other situations would an institution send in opposing cultural members to determine and interpret the most critical information necessary. A competent deaf relay interpreter can lend linguistic comfort to what may otherwise be a stressful or incomprehensible communication exchange for the deaf consumer.

Many new hearing interpreters vow that they will not interpret in a courtroom, yet end up accepting assignments such as probation meetings, court mandated family mediation sessions, initial inquiries with the attorney, even depositions or arraignments.

These situations can provide rich resources of information and exchange and should not be delegated to entry-level interpreters. Just because these situations do not take place inside a courtroom or squarely in front of a judge, they should not be considered less important linguistically. A relay interpreter can be a valuable team player in situations like these.

EMPOWERMENT

My personal interpreting experience derives from comprehending ASL as a source language and rendering it into the target language, spoken English. That has me working into what Seleskovitch (1978) calls the A language, or native language. Deaf consumers are then free to interject their comments at any point in the exchange and judges and attorneys become startlingly aware at times that the deaf person is effectively attempting to take charge or add comments. Deaf people can, and do, become empowered by this kind of participation.

Other deaf interpreters are native signers and work into their B language, or second language. Their advantage is an absolute knowledge of the source language, so a perfect understanding of what is being signed enables the interpreter to ensure that the message is reconstructed in a dynamic and accurate rendition.

Gay Belliveau (1991) notes that each state is having to struggle individually to get ASL recognized as a legitimate language of the courts. This struggle actually means that there are two types of oppression taking place. One is linguistic and has to do with depriving deaf consumers of their just representation in the legal process. The other has to do with the cultural suppression of deaf people being denied equal status as users of a language.

This latter is a form of oppression that may have only recently begun to surface into our deaf consciousness. We are a lot like the Zia Pueblo tribe who for many years silently watched as their religious symbol swept across the state of New Mexico, not even sure what that proliferation of the symbol was doing to their self-esteem and their identity as a Native American tribe. ASL is now slowly being embraced in the courts. Our court systems recognize and seek out each nationality and ethnic group to interpret for its own kind, except for the deaf population.

In the larger cities, headway toward linguistic and societal acceptance is being made, but there are still some questions that need to be asked in many parts of our country. Why aren't we doing what we know will result in the best possible interpretation in legal and quasi-legal situations? Why are deaf people being excluded from the most ritualized settings in our society? Why are deaf people being denied a rightful place within the highest legal structures of our land?

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Notes

1. Phyllis Wilcox, assistant professor in the Department of Linguistics at the University of New Mexico, is coordinator of the baccalaureate degree program in Signed Language Interpreting. Her Ph.D. dissertation on "Metaphorical Mapping in American Sign Language" passed with distinction.
2. This author will not make distinctions between "Deaf", "deaf", and "hard of hearing" populations throughout this article. While the author recognizes the cultural and linguistic differences among these groups, shifting between the lower and upper cases of the letter "d" will not be used.