Your Case Will Now Be Heard: Sign Language Interpreters as Problematic Accommodations in Legal Interactions

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This paper uses data from open-ended, videotaped interviews with 12 deaf people to examine their experiences negotiating access during interactions with legal authorities. In every case, these deaf persons preferred an accommodation that involved the use of an American Sign Language interpreter, and in every case, these accommodations were problematic. Three major themes emerged from the informants' narratives: difficulty obtaining the desired accommodation, dealing with a problematic accommodation, and enduring a partial accommodation. These findings suggest that accommodations involving sign language interpreters are not neutral and transparent and that they often have tangible effects on the experiences of and outcomes for deaf persons in the context of dealing with legal matters. Deaf people have very little control over the accommodation they receive and yet are held fully responsible for ensuring its efficacy. These results are discussed in relation to policies and procedures for ensuring that deaf persons have full access in their interactions with American legal institutions.

I wasn’t disabled until the accident. I grew up deaf and always just considered myself deaf. I could do anything everyone else could do. Then the accident happened. It was at that moment, having to deal with [the police, lawyers, and going to court], I felt disabled.

—Martha

Estimates of the number of people who are deaf vary due, in part, to differences in the concepts and definitions used to produce the estimate and the ways individuals (dis)identify with those constructs as they respond to survey. Hoemann (1986) states: “As many as 16,000,000 people are believed to have some kind of hearing impairment. As many as 2,000,000 of these may have losses severe enough they would be considered deaf by educators and professional workers” (p. 97). Disability is a social phenomenon that emerges in particular contexts, environments, and interactions with others, rather than a specific medical condition or an attribute of an individual. Because some deaf people, like Martha above, do not generally view themselves as “disabled,” they may not respond affirmatively to surveys aimed at ascertaining the number of deaf people in the United States.

The U.S. justice system depends on the involvement of the citizenry. People accused of a crime assist in their defense and, in some cases, may be tried before a jury of their peers. This system is only effective if all the people involved are able to participate fully by becoming familiar with the charges against them, the court, its discourse, and the impact of the adjudication. Without
appropriate accommodations, deaf people are not able to participate in such legal proceedings (Miller & Vernon, 2001).

Sign language interpreters are one such accommodation for people who are deaf. In the United States, a sign language interpreter is a person fluent in both American Sign Language, which is the language used by a majority of deaf people in the United States and Canada, and the dominant language. Although the number of persons who might benefit from accommodations is uncertain, the potential importance of accommodations for deaf persons in the context of legal proceedings suggests that it is essential to examine deaf persons’ experiences with such accommodations. Such studies have the potential to further our understanding of the extent to which deaf persons are able to exercise their rights as citizens.

To date, few studies have examined the quality of the accommodations deaf persons achieve in the context of legal proceedings from the perspective of the deaf individual, although some studies have looked at accommodations in medical (Schwartz, 2006) and educational settings (Foster, 1989; Best, Lieberman, & Arndt, 2002). In this paper, I address this gap in the literature. Specifically, I use data from open-ended, videotaped interviews with 12 deaf persons to explore their experiences with accommodations in various legal contexts and interactions with representatives of the legal system.

Background and Literature Review

Several pieces of U.S. legislation have focused on providing accommodations for people both inside and outside of legal proceedings. These laws have ranged from general laws that focused on people whose first language was not English, such as the Court Interpreters Act of 1978, to more specific laws for people who have a disability such as the Bilingual, Hearing, and Speech-Impaired Court Interpreter Act of 1979. The most recent piece of legislation, and the most relevant to this study, is the Americans with Disabilities Act (ADA), which built upon the Civil Rights and the Rehabilitation Acts. The ADA addresses the issue of access for people who are considered disabled. It outlines the rubric by which accommodations must be made (Shapiro, 1994; Clegg, 1999) and attempts to enable people with disabilities to participate fully in society.

The ADA established the protocol for both private and public entities regarding when a reasonable accommodation must be provided to people with disabilities. However, the wording allows for a flexible interpretation. Although the ADA states that a “reasonable” accommodation must be provided, it allows the person securing the accommodation—traditionally a nondeaf person—to determine what constitutes a “reasonable” accommodation. In leaving the wording vague, the framers have limited the potential authority of the law with respect to giving deaf persons the right to define their own needs for accommodation in particular circumstances.

Accommodations are provisions that aid a person to more fully participate in the larger society. Generally, they are thought to provide a specific function without affecting the circumstances in which they are used. That is, accommodations are supposed to be neutral and transparent. This ideology of the neutral accommodation is evidenced by guide dogs and inanimate wheelchairs that are considered to be extensions of the persons who use them to assist with mobility. Similarly, sign language interpreters are also supposed to be unobtrusive extensions of the focal individual; they are there to facilitate the interaction between a person who is deaf and another party without intervening in or affecting the outcome of the exchange. However, unlike guide dogs and wheelchairs, interpreters are humans; their human agency is a part of the interaction, and their presence often changes the dynamics of the situation. Thus, counter to the ideology of neutral accommodations, the experiences of the informants in this study attest that interpreters often do have both immediate and more remote effects on their access to and interactions with legal institutions.

Traditional research and literature about deaf people uses a medical model in attempting to understand their experiences (Branson & Miller, 2002). This model situates deaf people as deficient and in need of a cure. Conversely, in examining the experiences of people who are deaf, I use a cultural relativity framework (Lane, 1999). That is, the perspective used for this work is that deaf people constitute a linguistic
minority in the world. Deaf people are not in need of fixing but of an understanding that they are a group of individuals who have a culture and possess a unique understanding of the world in which they live and their own experiences. However, it must be recognized that deaf people’s understanding of the world is, in part, shaped by their access to it, which is influenced by the legislation enacted to ensure their participation and the accommodations they do and do not receive.

In this study, I discuss the experiences of deaf people as they negotiate their way through the judicial system. Although I specifically focus on how the immediate experience is shaped by the sign language interpreter provided as an accommodation, I also begin to point to those extra-local or remote authorities that determine the accommodation. Regardless of the role that a person occupies in a legal situation, be it defendant, plaintiff, victim, or perpetrator, the individual must negotiate interactions with legal professionals. This study is an examination of the impact of a sign language interpreter on those negotiations. I begin with first describing the methodology used to conduct this study and brief demographics of informants whose accounts will be discussed. After providing a brief introduction of each of the informants, I move to the findings and conclude with a brief discussion of the implications of these findings for policies and procedures.

Methodology

This qualitative study employed in-depth interviews with 12 deaf people living in two metropolitan cities in the southwestern United States. I conducted all the interviews in American Sign Language at the informants’ residences from May 2002 to April 2003. The average length of each interview was 1 hr and 15 min, with occasional follow-up interviews and discussions.

Because American Sign Language is a visual language, I used a digital video camera to record each interview. I sat across from the informants and focused the camera on them. The only time my voice was heard was when I verbalized, after signing, my questions or comments. Later, while I was transcribing, this allowed me to know to what question or comment the informant was responding because the camera was not focused on me.

I conducted open-ended, conversational interviews with the respondents. I began by asking each participant to tell me about his/her experiences with legal authorities. To provide a point of departure, I asked each informant to take up the following questions: What has been your experience with police, lawyers, judges, probation officers? Do you feel that your experiences were positive? As people’s accounts of their situations unfolded, other questions arose and probing questions were asked. Some of the participants discussed their experience with traffic violations and traffic stops, whereas others discussed their experiences with divorces. After the interview was complete, I watched the interviews on my television and transcribed the interviews. After I completed my transcription, I coded each of the interviews using a grounded theory approach (see Strauss & Corbin, 1990). Throughout this article, I have included direct quotes from the informants. I worked hard to preserve the spirit and intent of narrator’s statement; however, because there is no verbatim translation from American Sign Language to English, my vernacular is used in this text.

Informants

In this study, five women and seven men were interviewed. The ages of the informants ranged from early 20s to mid-60s. The sample was not racially diverse; only one person of color participated in this study. The formal education of the informants varied. All the participants had graduated from high school, but only four held a college degree. Of the four individuals who held a college degree, two also held advanced degrees. Although each of them had graduated high school, two of them stated that they did not read English well and two more stated that they were not always comfortable reading English. All the people in this study used American Sign Language as their preferred method of communication, at home and among friends, and used the services of sign language interpreters when communicating with nondeaf people. Each of the informants was given a pseudonym.
Findings

While examining the transcriptions of the interviews, three major themes emerged. The first theme is about the deaf person’s experience in obtaining an accommodation. The informants discussed the various problems they faced when they requested or as they attempted to negotiate an accommodation. The second theme focused on dealing with a problematic accommodation. Here, deaf people discussed how they negotiated situations in which an interpreter behaved in a way that negatively impacted the outcome of the situation. The final theme focused on the informants’ experience during a partial accommodation. It refers to those situations in which the hired interpreter was unable to provide access due to her or his lack of skill in the given situation.

The accounts of the informants often reflected more than one theme, and often respondents discussed more than one incident during the interview. Although there are situations in which the accommodation was both problematic and partial, I chose to code the incident with respect to the outcome of the situation. This determination was made after reviewing the transcripts and videotapes closely to gauge the context and manner in which the respondent discussed the incident and what it meant to her or him.

Obtaining Accommodations

There are various types of accommodations for people who are deaf. They range from writing back and forth to real-time captioning to the provision of a sign language interpreter. The informants in this study focused on their experiences in obtaining and working with a sign language interpreter.

There is a national certification through the Registry of Interpreters for the Deaf (RID) available to people wanting to become interpreters. In the state where this study occurred, both the national certification and a local certification are required for interpreters who want to provide sign language interpreting in legal settings. However, the state agency responsible for monitoring state certifications does not adequately enforce this rule, such that, sometimes, interpreters who are not RID certified become involved in legal proceedings. Furthermore, it is possible to find great disparities in skill among interpreters who hold the RID certification, which complicates matters for deaf persons who request that an interpreter be provided as an accommodation.

All the informants in this study mentioned the need for an interpreter with whom they are working to hold a certification from the RID. Gary is a man in his 60s who is able to read lips and can communicate in written English; however, for “serious matters,” he feels the need for an interpreter. Gary told me that he wanted an interpreter with an RID certification, but he further explained that a certification from the RID was not the only criterion he uses to determine if an interpreter is qualified:

I think interpreters should have the RID. But I really want them to understand me and be good interpreters too. But RID is really important.

Like Gary, other informants specified additional criteria other than RID certification by which they judged the suitability of an interpreter. Informants also mentioned they wanted a “good” interpreter. When Gary mentioned this, I asked him about his meaning of “good.” Gary once again said “good” and then said someone with whom he feels comfortable. It is clear from his comments that he means attributes other than the ability to interpret. Jack also made a distinction between a “qualified” and a “good” interpreter. He is a man in his 40s, who is able to read lips and is intelligible to people who know him when he speaks. He is able to read English but prefers to use a sign language interpreter when communicating with persons who are not deaf. Jack has had several experiences involving the law ranging from traffic violations to being a defendant in a landlord/tenant suit. Here, Jack recounts his experience with interpreters during recent custody hearings with his ex-wife and articulates his definition of a “good” interpreter:

I had a friend who is an interpreter and has the RID certification. He was very good. I was very comfortable with him. He knew all about my case and I wanted him to be my interpreter. He was my interpreter for the first couple of meetings with my lawyer, and then he said that he felt it could be
a conflict of interest and a violation of the code of ethics. I had to get a new interpreter.

In further discussions with Jack, he explained that if he forgot to mention something, the interpreter was able to remember his point and make it for him. Jack felt that an interpreter should be able to provide him access and assist him in the court proceedings. For Jack, it is the interpreter’s knowledge of his case, not the RID certification or the respondent’s comfort level, that is the primary criterion for defining a “good” interpreter.

Although the ADA is widely known, it is rarely completely understood by deaf people. Misunderstandings sometimes shape deaf peoples’ expectations regarding and assessments of the quality of an accommodation. In my interviews with them, most individuals referred to the ADA as the legislation that provides them with the right to a sign language interpreter. For example, Tommy, a man in his 30s, who has an intelligible voice and can understand some written communication but prefers to use American Sign Language when communicating with nondeaf people, said about an interrogation for which he was not provided an interpreter:

I have a right to an interpreter. That is my right under the ADA. Someone really should teach the police and the judges that deaf people have rights. They should get me an interpreter. I don’t have to use my voice for them.

In actuality, the ADA does not provide any such right. Although most courts provide a sign language interpreter during the court proceedings, there is nothing in the ADA or any other law that says that the court must provide an interpreter in an interrogation (National Center for Law and Deafness, 1992). In fact, with the exception of state statutes and the Bilingual, Hearing, and Speech-Impaired Court Interpreter Act, there is no requirement that states specifically that an interpreter must be provided in court either.

The ADA does state that a “reasonable accommodation” must be provided. But, as Samantha, a woman in her early 50s whose experience with the legal system has been limited to traffic violations, points out, “reasonable” is vague standard that allows for various interpretations:

There are too many loopholes. There are ways to get around the law. One of the best examples is the wording. Some people realize they don’t have to provide an interpreter because they determine the reasonable accommodation for me is writing back and forth.

Although she admits that most written communication is understandable to her, she reminds me that many deaf people are not able to understand what is written in English. She also recognizes that in allowing people to write notes to her she might be setting another deaf person up for a struggle in a similar situation.

Mike, a male in his 30s whose experiences in the courts include being a juror and a deaf interpreter, also discussed the ways in which the ADA’s standard of “reasonable” accommodation can be problematic. Mike is fluent in reading and writing English and able to read lips. At the time of the interview, Mike was studying at a local university; he subsequently worked as an adjunct faculty member in an Interpreter Preparation Program. Due to his involvement with the interpreting field on both a national and local level and jobs that required him to understand the laws related to accommodations and all of their implications, Mike was able to discuss the ADA with extensive knowledge:

The problem or the big problem, in my opinion, is that the ADA says “reasonable accommodations.” But the problem is that there are always two views of what is “reasonable.” My view may be completely different from another person’s. For example, I get the impression that they feel like it is a huge inconvenience to provide me with interpreters. It is never like: “Of course. Or … Sure.” It is always because they have to, so they will. So it is almost like they are doing me a favor. And they won’t go beyond what the law requires.

In addition to pointing out the potential problems associated with obtaining access to a desired accommodation under the “reasonable accommodation” standard, Mike also identified another problem deaf
people often face in trying to negotiate the accommodation they desire. He said:

Who pays for the interpreter? They do. I don’t. That creates a problem for deaf people. So going back to the question: “What is reasonable?” So what does that mean that I pick the person then they pay? I am sure they probably feel like I have too much control then. That is one part of it.

Under Title II of the ADA, courts are required to make their services accessible to all people who may want to take advantage of them. This means that courts must provide the accommodation. The ADA encourages courts to have a discussion with the deaf person on the type of accommodation that is needed, but it does not require it. Often, deaf persons are unable to have their definition of a reasonable accommodation (i.e., an interpreter) prevail in their negotiations with the courts in part because of the control over decision making that is assumed to go along with the responsibility for paying.

At other times, the courts and other legal institutions are ill-prepared to provide an accommodation. One court did ask Mike what type of accommodation he needed, but, according to Mike, they could not accommodate him for several months:

When I received my jury summons, there was a date on it. I filled out the form and returned it to the court. I explained that I was deaf and wanted to serve on the jury. Shortly after that I received another letter from the court postponing my jury duty. We are talking about a 2 – 3 month postponement. They said it was so they could get an interpreter. I was confused …

Even with the ADA in place, it is not always possible for deaf people to get what they consider to be “good” or timely accommodations that align with their desires. Sometimes, deaf persons are made to feel that they are being done a favor or that they are ungrateful for not accepting the accommodation that is provided and paid for by another. Each of these examples represents, from the perspective of the deaf person, a problem in obtaining an accommodation.

**Accommodation denied.** The enactment of laws does not guarantee that an accommodation will be provided, which represents another form of problem obtaining an accommodation. Most informants talked about the negative impact of not having an accommodation; however, as illustrated below, some respondents actively tried to create the circumstances under which an accommodation would be denied such that they would avoid the more severe penalty that would likely ensue if an accommodation was provided.

Martha and Michelle, who are both women in their late 50s, were in separate automobile accidents. Both had limited experience in legal settings, and both told me that they were uncomfortable trying to read lips or use written English when communicating. The situations surrounding their accidents were different, but their experiences with the officers were very similar. In both cases no interpreter was provided, and the officers made no attempt to interact with the women.

Michelle’s car accident occurred while she was driving with her 70-year-old mother who is not deaf. Michelle admits she was at fault for the accident:

I didn’t stop at the light. It was my fault. There wasn’t an interpreter there. They spoke with my mom. It was my fault. I went through the red light. I didn’t mind them talking to my mom about it. I just waited.

The officers never approached Michelle; instead the officers pulled her mother aside and gathered all the information they needed for their report from her. Michelle was cited for failure to stop at a red light.

When I asked other informants about this type of scenario, I was told that it was a common occurrence for officers to talk to the nondeaf person even when they were not the driver. Other informants who had interacted with police officers during traffic accidents or violations mentioned that the officers often spoke with their young children who were in the car rather than gathering information from the deaf person. This occurred even when the nondeaf companion was not fluent in American Sign Language and was not able to accurately interpret or even ask the deaf person for details about the incident. Although some deaf people are accepting of this kind of treatment, others found it offensive.
In contrast to Michelle, Martha hoped that the officers would talk to her about the accident. Martha was in a car accident in 1995. She was alone in her car, and, with the exception of minor scrapes and bruises, she was unharmed—physically. Because there was no hearing family member or friend at the scene with whom the officers at the scene could talk about Martha’s side of the story, the officers never got her side of the story:

We all waited. I saw the police they were there. The police arrived and they were talking to the women from the other car. I was waiting because I expected the police to talk to me. I expected it! I waited and waited. Finally, the ambulance arrived. They didn’t say anything to me. I didn’t get to tell my side of the story.

Martha was cited for the accident and spent the next 2 years going to court to contest the information contained in the officer’s report. The information gathered from the other woman in the accident alleged that the accident was Martha’s fault. Martha’s insurance premium was increased, and she had to fight to get her driving record cleared. After 2 years of going to court and gathering evidence, she proved that the other driver was at fault for the accident. Although her premium was lowered, Martha was not refunded the amount of the increased premium that she had paid during the previous 2 years.

After Martha’s accident, she attempted to contact a lawyer. One lawyer responded to her with a letter, which stated that he had contacted the interpreter that Martha wanted. The letter outlined the fees for the interpreter and then suggested that another attorney handle the case because the other attorney would be “much better able to serve” her. It is difficult, and unwise, to extrapolate meaning not explicit in the text of a piece of correspondence; however, Martha told me that she believed it was obvious to her that the attorney did not want to pay for an interpreter.

Another woman, Kimberly, was also refused an interpreter when she interacted with police officers. Kimberly is a woman in her late 20s, who uses American Sign Language to communicate and is able to use her voice, although she is unable to understand communication by lip reading and is not comfortable trying to communicate using written English. Kimberly and her roommate, who is not deaf, had an argument that became physical. The police were called. When the police arrived, Kimberly asked for an interpreter but was told by the police that they were going to get one. The officers then spoke with the roommate about the situation. Without ever asking Kimberly about the specifics of the situation, the police turned to Kimberly and wrote to her that she either had to go to jail or a mental health facility:

I didn’t know what to do. I kept writing that I wanted an interpreter. I didn’t even tell them what had happened. Every time I said that I wanted an interpreter they would show me the paper that said “Jail or Hospital.” I was really scared.

Kimberly eventually ended up going to jail for the night. During her first court appearances for the incident, she told her court-appointed attorney that she did not have an interpreter during her arrest and that she was not able to tell her side of the story. Her attorney told her that the police officers were not obligated to have an interpreter unless they were reading her rights to her. The attorney then compared deafness to extreme inebriation, explaining that the police officers do not have to wait until an inebriated person is able to understand before they place him or her in jail.

Some individuals I interviewed, like Gary, had more positive experiences when the officers would not provide an accommodation. He explained that when he was pulled over by an officer, they let him go rather than provide him with an accommodation. Gary mentioned that he had been pulled over twice and released with a warning both times when the police officers realized that he was deaf.

Three other people, Samantha, Paul, and Jack, also talked about experiences in which they actively tried to use their deafness to create the circumstances under which they would be denied an accommodation and either let go or given a reduced penalty. Each of them mentioned that there were times when they made it more difficult for the officer by acting as if they did not understand anything the officer was writing or saying so that they would not receive a ticket. Paul, a man in his 50s who is unable to communicate through written English and is not able to read lips,
admitted that he was not always successful when trying to get out of a ticket for a traffic violation:

You know I would just point to my ears and shake my head. Most of the time the officers would just get frustrated and let me go. I remember one time I was trying it and the police officer started to sign. I was busted. The officer then told me that his parents were deaf and that is how he learned American Sign Language. That time he gave me a ticket. I didn’t get just a warning.

Paul giggled as he recounted this story; when he was done, he told me that he tried to get away with breaking the law and lost.

These experiences suggest that sometimes the denial of an accommodation can have significant consequences for deaf individuals. In some situations, when officers had little discretion (e.g., car accidents where a citation had to be issued), they did not provide an interpreter or seek to interact with the deaf person but held the deaf person fully, and sometimes incorrectly, accountable. In other circumstances, in which officers had some discretion, such as in stops for speeding, legal authorities exercise their decision to let deaf people go with a warning. The understanding that officers sometimes reduce penalties rather than not providing an accommodation is so well understood by the deaf individuals with whom I spoke that they sometimes use their agency to try to create the circumstances under which an accommodation will not be offered and a lesser penalty will be exacted.

Problematic Accommodations

Obtaining a preferred accommodation—a sign language interpreter—is not the only issue that deaf people must face. All the informants explained that having an interpreter is ideal for them to have full access. However, their narratives made clear that getting an interpreter did not alleviate all their problems. In fact, once the service is secured, deaf persons must deal with a variety of other issues. Some informants discussed times when the interpreter who was hired arrived late, did not show at all, or had to leave early. Problematic accommodations create an additional burden for deaf people, who have to manage their relationship with the interpreter while simultaneously participating in the situation. Problematic accommodations also include those issues related to interpreters who blur the boundaries between communication facilitator and social worker in ways that the respondent did not want.

Scheduling mishaps. Convincing the courts and other legal authorities to provide an interpreter is only part of the dilemma faced by deaf people. Due to scheduling conflicts or unforeseen events, a hired interpreter may not always show up after they are hired. Tommy, introduced earlier, explained that there were several situations in which the interpreter did not arrive or arrived late to interpret for him. It was always the same interpreter, who had a contract with the probation office:

The interpreter didn’t show up at my probation officer meeting. I hate writing back and forth. Then the interpreter would show up and she would always have an excuse. I never really cared. I told her it was her responsibility to have an interpreter there if she accepted the work.

Deaf people are often at the mercy of the interpreter’s schedule. Given how interpreting work is organized, interpreting agencies and interpreters take work that fits into their schedules. These jobs are often scheduled back to back, and the interpreter is hoping that the first assignment will end on time so that they can make it to their next appointment. These practices can result in problematic accommodations for deaf people but few consequences for the interpreter because there are so few interpreters available. As Tommy notes, when interpreters fail to arrive, it is the deaf person who must sometimes bear the consequences:

I was on intensive probation for a total of 11 months. It was supposed to be for only 6 months. But it was for 11 months. Then, it was extended 2 months more because the interpreter didn’t show twice. So my PO did not [consider] those meetings.

Another issue related to scheduling arises when an interpreter is unable to stay with the deaf person for the duration of the appointment. Like other
respondents, Scott, a man in his 30s who is not able to read lips and does not understand written English well, expressed his desire for a “good” interpreter. However, at the same time, he noted that sometimes, “good” interpreters do not provide “good” accommodations because of time constraints:

I don’t care about certification. The most important thing is that they understand me and I understand them. I have had interpreters who are RID certified and they have made me sound stupid. This is because they don’t understand me. I also had one interpreter who is a good interpreter, but during my appointment with the court, she was looking at her watch. She had to leave early so I wasn’t able to tell my side of the story. I didn’t like it at all.

Interpreters are usually scheduled for at least 2 hr. However, there are occasions when the courts will contact an interpreter at the last minute and the interpreter and courts will negotiate how much time the interpreter has available. Sometimes, this may mean that an interpreter is only available for an hour and must rush to get out of one appointment in enough time to arrive at his/her next appointment on time. Depending on the circumstances, once the assignment begins, an interpreter may not have the opportunity to explain her or his scheduling limitations to the deaf person. Consequently, the deaf person could be the only person in the situation who is unaware of how much time the interpreter has available.

Blurred boundaries. The relationship between a deaf person and the interpreter who is hired to provide an accommodation is unique. Although there is always at least one other person involved in the interaction—a nondeaf person—the deaf person and interpreter are the only people who understand the dynamics of the relationship they are in. As such, the onus of responsibility is often on the deaf person to ensure his/her needs are being met and the interpreter is behaving appropriately. To complicate this relationship, the interpreter and deaf person may know one another, albeit casually, outside the immediate interaction.

Often, people unfamiliar with the work of sign language interpreters assume that the interpreter will “help” the deaf person. That is, the interpreter will provide guidance if the deaf person is unsure of what to do. This type of guidance is expressly prohibited in the tenets of the Code of Ethics from the RID (Frishberg, 1986) and in the recommended canons for legal interpreters (Hewitt, 1995). Even if no such prohibitions in the guiding principles of the field of interpreting existed, few interpreters hold law degrees. Therefore, providing legal advice is still problematic. Despite the fact that they are not trained to provide legal advice, interpreters sometimes take it upon themselves to do so. For example, Tommy mentioned a time that the interpreter provided legal advice during his hearing:

Then my interpreter told me that I couldn’t talk to the judge until he talks to me. So the judge asked me if I had a lawyer. I said yes. I told them I did have an attorney and my interpreter told me that I shouldn’t say that because if I had a lawyer they were going to put me in jail. Which they did. My interpreter came by later while they were taking me to my cell and said that if I had said that I did not have an attorney, then the court would have let me go. I didn’t realize it. It was too late.

Tommy does not remember what else happened in the hearing; he only remembers the interpreter telling him not to say anything. In fact, Tommy did not even know what the exact charges against him were until the next time he saw the judge. Like some of the other respondents who did not mind when police officers did not talk with them during traffic stops, Tommy was not concerned about the interpreter providing guidance or advice initially, even though he knew it was inappropriate. Only later, when he realized the advice was erroneous, did he seem to become upset about the fact that the interpreter had tried to advise him during the hearing.

Providing advice violates the ethical and normative boundaries that structure the role of the interpreter. In a field in which a third party is privy to delicate information, the practitioners should be extra vigilant in maintaining strict boundaries. Kirsten is a woman in her 40s, who is able to read lips and feels comfortable writing in English but stills prefers to use a sign language interpreter. She told the courts she did not want
a particular interpreter anymore and classified the interpreter's subsequent behavior as a “breach of confidentiality.” Further discussion revealed that Kirsten was more concerned about an invasion of privacy, which signaled clearly that the interpreter did not understand the boundaries of the interpreter–client relationship:

The next day, I arrived home and my son told me that the interpreter from court stopped by. I couldn’t believe it! Why would she stop by? I was really mad! She came by again the next day and I wasn’t home. I decided to stay home on Sunday and wait for her. She came by to see why I didn’t want her as an interpreter any more. I couldn’t believe it. I don’t think that was right. I just told her that I wasn’t comfortable and that I wanted another interpreter.

Another form of failure to understand boundaries occurs when an interpreter appropriates the information she or he interprets and shares that information with others. Some of the informants were embarrassed about their interaction with the legal system. These individuals who choose not to disclose their private matters to friends and family are often quite upset when an interpreter breaches their confidentiality:

I heard from a friend that she [the interpreter] had been talking about me having to go to court. I was really mad. The next time I saw her, I told her that she should not talk about my business to other people. She said she hadn’t told anyone about it. I know she did. How else would people find out about it? I didn’t tell anyone.

After Tommy talked to the interpreter, there were no additional problems.

The interpreter’s role is to provide communication access between a deaf person and a nondeaf person—a neutral role. In these examples, the interpreters assumed responsibility for the outcome of some of the interactions and in others appropriated the information as theirs to share. In doing so, these interpreters not only violated tenets of the professional code of conduct but also whittled away at the agency of the people for whom they were interpreting.

Partial Accommodations

There are times when the courts have hired an interpreter as an accommodation for the deaf person and the deaf person still does not receive complete access. This occurs when the interpreter does not possess the skills necessary to accommodate the deaf person. It also occurs when an interpreter is provided, but additional accommodations to the situation are not made to allow the deaf person to take advantage of the interpreter’s services.

Skill. Skill is difficult to assess, and it may be assessed differently by deaf persons who are basing their assessments on their own subjective experiences with an interpreter. When informants discussed their concerns about the skills of the interpreter, they often talked about how their interpreter’s lack of skill in a particular situation was consequential for them. For example, Kirsten explained a situation when she had to go to court as a victim and present her Victim’s Impact Statement in regards to her home being robbed:

The letter I received from the court said that I could either provide my Victim’s Impact Statement orally or written. I wanted an interpreter and the court said that they would provide one. When I showed up, there was an interpreter there I knew. I wasn’t really comfortable with her interpreting for me but I didn’t want to have to come back. Luckily, I had written my statement down. When I began to give my statement, the interpreter asked me to slow down again and again. I finally gave up. I handed my statement to my lawyer and she read it to the court. This was because the interpreter didn’t understand me.

Kirsten also discussed two other times when an interpreter’s skills interfered with the accommodation and resulted in partial access. On one occasion, she went to court to testify after her car was stolen. She was initially happy that the courts had provided an interpreter for her and her husband, who is also deaf:

I can hear a little bit. If I turn my hearing aid up all the way I can hear pretty well. When the interpreter was interpreting for me, I knew she didn’t understand me. I began to slow my signing
down. Then it was my husband’s turn to testify. My husband is harder to understand than me. I was listening and telling my husband that the interpreter wasn’t doing a good job.

On another occasion, Kirsten’s son was in trouble with the law. What follows is her account of her experience with the court-appointed interpreter:

I can hear with my hearing aids. I was signing and the interpreter wasn’t saying what I said. I didn’t think she was certified for court interpreting. I stopped and told her that she had made a mistake in her interpretation. We argued for a little while. I was really glad when that was over.

Kirsten did not let the situation end there. She wanted to make sure that that interpreter would not be hired for her case again:

The next day I called the court and told them that I wanted another interpreter. They told me that they only had one. I told them I didn’t want that interpreter again. I didn’t explain that I didn’t think she had a certification or that she didn’t understand me, I just told them I wasn’t comfortable.

Kirsten’s request for the courts to hire another interpreter was not honored.

Kirsten’s experience is similar to other informants I interviewed, who indicated that they had little input regarding who was hired to interpret for them and often had interpreters who were not adequately skilled to provide them access. In their accounts, these respondents indicated that the partial accommodations they received sometimes had negative consequences for them. Kirsten’s experience shows that the issue of access does not disappear once an accommodation is provided. Although it was not clear to Kirsten if the interpreter who was unable to understand her enough to interpret the Victim’s Impact Statement held any certification from the RID, she was sure the one who interpreted her testimony in regards to her car being stolen had certification from the RID but was not certified by the state to provide interpreting in a legal setting. Thus, Kirsten’s account indicates that even when they receive an accommodation, deaf people must still struggle to ensure they are receiving access from the accommodation. Her account of her experiences reinforces the notion that certification alone is not enough to ensure access for deaf people at least in part because of variation in the skills of interpreters.

Organization of the accommodation. As noted previously, deaf people do not pay for the accommodation, so they often have little input into how it is organized. Sometimes, partial accommodations result from the way the accommodation is organized. For example, when Mike was finally able to take up his civic responsibility to participate as a juror after a few months delay, his experience with the interpreting services provided to him in this legal setting limited his access:

There was only one interpreter there. For assignments that are longer than two hours, there are usually two interpreters. This is because one interpreter will become tired. I was shocked that there was only one interpreter. I am not sure if she was tired or not, but during the deliberation, she wasn’t able to understand me. I was trying to make a point about why the person should be found guilty. Each time I said something, she would ask me to repeat it several times. I finally gave up and just sat there. In the end, it all worked out. The guy was found guilty, but I didn’t really get a say in the matter.

Although Mike states that it “worked out,” it is clear that because of this partial accommodation he was not able to participate fully in the deliberation process. Only 11 decided the outcome of a case that was heard by 12 jurors. Additionally, Mike’s statement that he “dealt with it” is a common response to these kinds of partial accommodations among deaf people.

Mike was not the only respondent who discussed how their access was undermined by a partial accommodation. As discussed previously, in the context of his custody hearing with his ex-wife, Jack’s friend who was interpreting for him and filling in missing pieces because of his knowledge of the case decided that he was no longer comfortable providing interpreting services because he saw it as a potential conflict of interest. As Jack continued his account, he noted
how his new interpreter’s lack of knowledge of the case rendered her services partially effective:

The other interpreter was good. I didn’t have any problems with her skill. The problem was that she didn’t know any thing about my case. I had to explain everything from the beginning and we didn’t have a lot of time. The other interpreter knew what I meant and was able to voice it correctly. The new interpreter didn’t know what I was talking about. It was frustrating.

From Jack’s statement, it is clear that he feels that he received a partial accommodation because he had to transition to a new interpreter who was not familiar with his case. Although Jack’s case represents a special circumstance, it is likely that the limited supply of interpreters and scheduling constraints result in fragmentation and discontinuity in interpreting services, which may result in the kind of frustration and partial accommodation similar to that which Jack experienced in this case.

Tommy also experienced a partial accommodation resulting from the organization of the accommodation. He was placed in custody for a drug violation. During a court hearing, he had a meeting with his attorney about the charge and the court provided an interpreter for the meeting. However, as Tommy explains, he was unable to participate in the accommodation because the court officers were unwilling to grant him an accommodation that would allow him to use sign language:

An interpreter was hired, but Tommy was unable to sign because the bailiff refused to remove the handcuffs. Tommy explained another time when he called the police to ask for assistance:

I told them I was deaf and they had to bring an interpreter. I was trying to explain some problems I was having with my ex. When the police arrived there they said that they would not hire an interpreter. They said that I should have a friend interpret. I told them that my friends were not interpreters. They didn’t care. We had to write back and forth.

Assumptions about the equality of modes of communication. Sometimes, partial accommodations occurred because of incorrect assumptions by hearing people about the equality of modes of communication for deaf people. It is often incorrectly assumed by the uninformed person that American Sign Language is a form of broken English. This misconception stems from the history of languages other than English in the United States. Languages, other than English, have been eradicated such as has been seen with certain Native American languages or “dialectized” (Lane, 1999). Dialectizing occurs when a “language is considered to be a dialect of the dominant language” (p. 109). With the notion that American Sign Language is a dialect of English, people attempt to use written communication and assume that the American Sign Language user will understand.

It has been my experience that writing notes is the preferred method by most nondeaf people. It is the cheapest, in the short term, of all the accommodations. However, employing this method of communication assumes that both people involved share a common language and that the delivery of the message is the only variation. Although it is true that some deaf people, such as Samantha, are able to understand messages written in English, a large percentage of deaf people are only able to understand brief statements or words (Lane, 1999; Miller & Vernon, 2001). Legal explanations are problematic for deaf people when not interpreted into American Sign Language.

Perhaps the best example of a partial accommodation emerging from assumptions about language was provided by Peter. In this instance, the assumption
was made by the interpreter, which underscores the potential pervasiveness of this problem. Peter is a man in his 40s and has had several interactions with the police. Peter is unable to understand written English, and his voice is not intelligible. When communicating, Peter uses American Sign Language. He admits that he has problems controlling his temper and has been in court several times for various issues related to his temper. During one of his court appearances, Peter’s interpreter provided him with advice that Peter accepted:

The interpreter told me that I was arrested and charged with INDECENT EXPOSURE. That is what the court said I did. I told them I was guilty [on the advice of his interpreter] so I could go home. I know that I get upset very easy and people get scared. I need to be careful about my temper.

Peter perceived pleading guilty as a means to going home, but, because the charge was spelled out to him in English, he did not understand the charge against him or the ramifications of pleading guilty. He continued:

The interpreter never told me that. She said that I should just say guilty so I can go home. She is RID certified.

The first interpreter relied on Peter’s comprehension of English when interpreting the charges. Therefore, the interpreter provided Peter with the words and expected him to understand. Again, because American Sign Language is not a visual form of English, the interpreter relying on Peter’s comprehension of the English words “indecent exposure” was not interpreting. This partial accommodation led to Peter pleading guilty to something that he did not understand and claimed he never did.

Discussion and Conclusion

From the point of view of deaf people, it is often difficult to obtain an accommodation in legal settings, and, even when a desired accommodation is obtained, it is often problematic or partial. Often, the quality of the accommodation that deaf people received influenced the degree of access they achieved and the outcome of the interaction. Sometimes, the outcome was quite negative for the deaf person, who ultimately had to bear the consequences of the series of events that unfolded.

To successfully obtain an accommodation, deaf people must rely on people who have little understanding or interest in the various pieces of legislation that focus on the subject of accommodations. Deaf people are not always accurate in their reading of the ADA and when asserting their rights are often ill-equipped to obtain the accommodation they desire. In addition to the widespread ignorance about the ADA, the legislation is vague. Thus, “reasonable” accommodation becomes synonymous with “inexpensive” or “convenient” accommodation, and deaf people have little or no immediate remedy. As Pfeiffer (1994) points out: “Undue financial hardship is a defense in the refusal of an accommodation” (p. 537). In those instances in which the ADA is clear, the wording provides authority to the courts, which have little or no understanding of deaf people’s needs. Because deaf people have little input in the type of accommodation they receive, they are made dependent on the courts and other legal institutions, which organize and pay for the accommodation.

The field of sign language interpreting is relatively new. Few courts have mechanisms in place to assess the performance of interpreters. Often it is the burden of the deaf person to deal with both the situation that brought them to court and the interpreter’s behaviors. When the interpreter arrives late or must leave early, the accommodation is problematic at best. Having to rush through one’s appointment because of schedule constraints is stressful; however, perhaps more stressful is when the interpreter fails to show at all.

Due to heightened awareness of accommodations and successful accommodation lawsuits, I suspect that the occurrence of denial of an accommodation has
diminished somewhat over the last decade. Probably, more common are those instances when the legal officials with whom they had to interact provide an ineffective accommodation.

Providing advice to a deaf person, even when the interpreter’s intentions are benevolent, is also problematic. The interpreter’s role is to provide access, not to provide counsel. Unfortunately, only the deaf person and the interpreter know that advice is being given, so this is difficult to monitor. Moreover, in some cases the deaf person wanted and benefited from the advice given. However, when the advice is erroneous, the deaf person often does not realize it until it is too late.

Assessments of skill are quite subjective. Deaf people may prefer a certain interpreter because of her or his personality rather than ability to interpret. However, when an interpreter does not possess the requisite capacity to provide access to the deaf person he or she is working with, only a partial accommodation is provided. Once again it is the charge of the deaf person to monitor her or his interpreter to guarantee that access is occurring.

It is obvious that the addition of a third party, such as a sign language interpreter, changes the dynamics of a situation. This is because interpreters are not transparent accommodations. When no interpreter was provided, the outcome was detrimental to the deaf person who was not allowed to participate in a situation that concerned him or her. This made the deaf person the object of the situation instead of an actor in it. In those situations where no accommodation was provided and the deaf person was absolved of any wrong doing, there was an injustice to the larger society because unequal treatment occurred and the decision was made out of convenience rather than justice.

It is noteworthy that although each informant was asked to talk about the broad category of legal situations, each of them chose to focus on accommodations. Deaf people in this study demonstrated a clear understanding of the qualities of the accommodations they used. Even when deaf people provided their expertise as to which accommodation should be used for their legal interaction, their suggestions were often ignored.

In this study, the gravity of the legal context sometimes seemed to be secondary to deaf people because structural forces created situations in which they had to attend carefully to obtaining an accommodation and negotiating the interaction between themselves and the interpreter. Often it was not the legal situation that was the determining factor of their experience, but the immediate concern about getting access by attempting to get and then use an accommodation. Each time an interpreter was provided as an accommodation, situations arose that created additional circumstances for the deaf person to overcome.

This study demonstrates that enacting the ADA was insufficient in accomplishing full participation of deaf people in legal interactions. Not only is the language of the Act vague but it also does not give the decision-making authority to the most knowledgeable individual—the deaf person. The provision of an accommodation as well as the behavior and skill of the interpreter are all factors that contribute to the efficacy of the deaf person’s participation in her or his everyday. As knowledgeable agents, deaf people must be able to determine not only whether an interpreter should be provided but also which interpreter.

It is important to note that not all people with a hearing loss use the services of a sign language interpreter. A person’s decibel loss, primary language, fluency in English, and previous experiences with interpreters all influence a person’s decision to use or not use interpreters. Although the majority of deaf people in the United States and Canada use some form of sign language, there are those deaf people who choose to communicate using other mediums. Some deaf people prefer an English-based signed system. This system is visual, like American Sign Language, but follows the grammatical rules of spoken English. Other deaf people may rely on the services of an oral interpreter and lip reading. In this scenario, the oral interpreter mouths, without sound, each word to the deaf person (Stewart, Schein, & Cartwright, 1998). Still others prefer to rely on real-time captioning (Humphries & Alcorn, 1994). This method is similar to the text at the bottom of a television screen. A captioning machine and laptop are the most common devices used in small settings. The real-time captioner types everything that is said, which appears on the
screen of the laptop, and the deaf person reads it. Each of these systems requires and presupposes that the deaf person has fluency in English.

Until such time as policy that takes into account the heterogeneity of deaf people and their communication needs are created, a policy that makes deaf people part of the decision-making process rather than a victim of it, deaf people must begin to demand that courts, police, and other legal authorities videotape all proceedings in which there is a sign language interpreter. This will provide deaf people and the courts with recourse when the interpretation is in question. However, before this can occur, individuals who make the decisions in legal arenas must be informed of the rights and services available to deaf people; the power of access still lies with them.

Notes

1. It is customary to put the person first, that is, person who is deaf; however, the people in this study consider themselves to be members of a linguistic minority, and as such, I place the minority marker first (see Padden & Humphries, 1988; Lane, 1992; Branson & Miller, 2002).

2. Deaf interpreters work with nondeaf interpreters in legal proceedings when the deaf participant has additional barriers to communication.

3. This is a 2-year interpreting training program at a Community College.

4. This format represents words that are finger spelled and no “interpretation” is provided.

References


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