

Trampling *Miranda*:

Interrogating Deaf Suspects

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Society knows very well how to oppress a man and has methods more subtle than death. (André Gide, *In Memoriam Oscar Wilde*)

The government's ability to arrest and interrogate an individual suspected of having committed a crime is a police power fundamental to maintaining the social harmony of a society. But, for the individual who suddenly finds himself forcibly restrained, isolated from the outside world, and subjected to questioning by the police, police interrogation can be terrifying, rendering the individual susceptible to misunderstandings, misstatements, and manipulation. When the individual arrested is Deaf, the linguistic and cultural gulf that separates him from his hearing accusers compounds his sense of fear and isolation. As a result, the Deaf suspect is all the more likely to misstate facts, to unwittingly agree to suggested statements and scenarios that imply culpability, and to make false confessions. Such statements, even if recanted, are often used at a later trial to persuade a jury that the individual committed a crime.

In 1966, the U.S. Supreme Court recognized that an arrested individual—afraid, alone, and under the compulsive pressure of police questioning—can easily be led into making false statements. The danger that such compulsion poses to the truth-seeking process and to our rights as individuals to be free from inordinate governmental pressure during the criminal process led the Court to a landmark decision. In *Miranda v. Arizona*, (384 U.S. 436, 86 S.Ct. 1602), the Supreme Court held that prior to interrogating an individual who has been taken into custody, the police must inform the individual of certain constitutional rights. This explanation, known as the *Miranda* warning, reminds the suspect that he has the right to remain silent (per the Fifth Amendment) and the right to the assistance of counsel (per the Sixth Amendment). The Court

reasoned that knowledge of these rights, that is, knowing that one need not answer questions posed by the police and knowing that one may consult with an attorney at any time before or during interrogation, will reduce somewhat the sense of isolation, fear, and duress, which renders individuals susceptible to suggestion and manipulation.

The question this study addresses is whether Deaf Americans are afforded the same knowledge and understanding prior to and during police interrogation as hearing Americans. If a Deaf individual who uses American Sign Language (ASL) to communicate is not provided with a sign language interpreter at all during the reading of the *Miranda* rights or subsequent interrogation, he or she has obviously not been informed of his or her rights. Accordingly, any subsequent statements made by the Deaf suspect—whether written, gestured, signed, or vocalized—must be excluded from a later trial. A linguistic study is unnecessary to resolve this simple legal question.

The more difficult question is whether a Deaf person who has been provided an interpreter understands her rights and, therefore, can avail herself of their protections to the same extent as a hearing American. What effect does the level of interpreting competence have on the ability to interpret linguistically complex discourse such as the *Miranda* warning and police interrogation? Police, court administrators, and judges are largely uninformed that this is even an issue. The grave consequence of this understandable ignorance is that the *Mirandizing* and subsequent interrogation of Deaf suspects is routinely interpreted by individuals who lack the skill necessary to achieve either a clear understanding in Deaf defendants of their constitutional rights or the questions posed to them during interrogation.

This study examines the interpreted discourse of nine hearing individuals at various levels of interpreting skill—beginning, intermediate, and advanced. Their signed interpretations of the *Miranda* warning and an interrogation of a defendant by an attorney were analyzed and compared with regard to two linguistic features: (1) the number of correct lexical items produced and (2) the number of appropriate syntactic markers accomplished through nonmanual signals (i.e., through specific facial and head postures). The findings were dramatic. Skill level had a profound effect on the production of both of these linguistic features.

These findings were mirrored by a separate study of comprehensibility as determined by native Deaf signers. Ten Deaf individuals who acquired ASL as infants and who use it as their primary means of commu-

nication rated each of the signed interpretations for comprehensibility. The signed interpretations of the beginning signers were uniformly found to be incomprehensible. The signed interpretations of the intermediate signers were found to be incomprehensible at worst and confusing at best. The signed interpretations of the advanced interpreters were largely found to be fairly clear.

Finally, an ethnographic examination of a criminal case involving a Deaf suspect was conducted. This study included extensive interviews and language testing of the Deaf suspect while the case was still pending, an interview of the attorney representing the Deaf suspect, and a review of court documents relating to whether the alleged confession should be suppressed (i.e., excluded from evidence at a later trial). In short, this examination indicated that a police officer, who had taken less than ten weeks of ASL, had attempted to interpret the linguistically complex *Miranda* rights and the subsequent interrogation. The Deaf suspect did not understand the *Miranda* rights—either as it was signed or in the written English form—nor did he understand the subsequent interrogation. Nevertheless, the police in this case alleged that the defendant had understood and waived all of his constitutional rights and that he had confessed to the crime of rape. Later interviews with the attorneys, as well as certified interpreters, indicated that the practice of using policemen with limited signing skills to interpret the *Mirandizing* and subsequent interrogation of Deaf suspects is the modus operandi of the police in the Cincinnati metropolitan area.

Although this study deals with legal rights and processes, prior knowledge of law is not necessary to understand the information contained herein. Legal concepts and procedures are explained as plainly and as simply as possible. In addition, it is important that legal processes, such as police interrogation, not be viewed with too much reverence. The criminal justice system is an integral part of our culture and, as such, should reflect and give meaning to our cultural norms of fairness and equality.

THE LEGAL LANDSCAPE

Police Power and Human Rights: The Civilized Constraint of an Extraordinary Power

A civilizing bulwark of a civilized society is its criminal justice system. It is the societal institution that encourages adherence to a society's prescribed behaviors and avoidance of proscribed behaviors, a crucial

endeavor for maintaining social harmony. Enforcing a society's norms is necessarily predicated on the ability to use brute force against individuals. Arrest, incarceration, taking of property, labeling someone a criminal—all are necessary for the task of maintaining social harmony. But, these police powers, if not constrained, can be intentionally or unintentionally misused against an individual, placing citizens in constant fear of being suddenly and arbitrarily persecuted. The philosopher John Locke explains that such misuse would amount to a taking of an individual's inalienable right to be free of arbitrary persecution by the government or by other men. It is the protection of these inalienable rights that forms the basis for our submission to government's power over us. When the state no longer is constrained in such a way to protect these natural rights, the social contract between the individual and his or her government has been violated (Sahakian 1968, 154–55).

The civilizing nature of a criminal justice system is determined by its procedures, that is, how a person suspected of a crime is processed through the truth-seeking process, starting with arrest and ending with the completion of punishment. When it appears a crime has been committed, the criminal process seeks to accomplish three fundamental goals. First, investigators search for relevant evidence to determine what occurred and who is responsible. Second, if from the evidence it appears, or in legal terms there is “probable cause to believe,” a crime has been committed and that a particular individual committed it, there must be an analysis of the relevant information. In the United States, this is accomplished by trial, whereby a jury analyzes the relevant information (i.e., the evidence) presented to them, aided by the lawyers' elucidating (or obfuscating) reviews of the evidence (closing arguments). Third, if the trial indicates the defendant has committed a crime, punishment must be meted out. Punishment can take the form of a confiscation of property (a fine), liberty (imprisonment), or life (execution).

Clearly, the ability of the government to investigate crime, determine guilt, and punish offenders is crucial to maintaining social harmony. But it is also a power that permits the government to unleash its awesome resources, including the use of brute force, against a single individual.

The Power to Arrest and Interrogate

Imagine . . . you are stopping for gas on your way home from work. You're in a hurry. It has been a busy and tiring day. But the kids will

be home from school and will be alone if you don't get there soon. You buy gas as quickly as you can. But, just as you are pulling away, a police car pulls in front of you, blocking your path. You sit, confused and staring at the flashing police lights. Two officers get out of the police cruiser and approach your car. As you are fumbling to roll down your window, you hear one of the approaching police officers say in a loud, stern voice, "Get out of the car!" "OK, but why?" you ask. "Get out of the car now!" is the response. You get out, and the officer tells you to put your hands on top of the car. Confused and stunned, you feel the officer's hands move down your body as he searches you. "You're under arrest," he says. Arrest? You feel the handcuffs on your wrists and hear the snap as they lock. You try to think about what is happening, but fear and shock have washed over you. You have a vague sense of people staring as you are placed in the back of the police cruiser. You stare out the window as the cruiser pulls out of the gas station where your car is still sitting at the pump. You think about your kids. And questions start running through your mind. Why is this happening? What will happen next? What should I do?

Several things happen at the moment a police officer takes a person into custody. The individual immediately, and without warning, loses important freedoms—to move about, to speak with others, to associate with others—depriving him of the social, emotional, and physical resources of his own individual world and of the larger world. Arrest also initiates an adversarial relationship between the individual and the government. Suddenly, the incredible resources of the government are directed against the individual for the purpose of obtaining a confession or conviction of the suspected crime. Arrest immediately places the individual's future liberty in jeopardy. The individual may realize that if innocence cannot be shown, he or she may be labeled a criminal, fined, incarcerated, and, in some circumstances, killed.

The focusing of governmental power, the acutely unequal social dynamic of an individual being isolated and confronted by police, and the risk of a criminal penalty can loom over an individual like a raised fist over a frightened child. These dynamics have made police interrogation such an effective tool in law enforcement, allowing police to ferret out information from individuals who would otherwise be unwilling to provide any. But its compulsive nature renders the individual vulnerable and easily led into agreeing to things which later, when viewed suspiciously through the lens of alleged criminality, may appear quite incriminating.

In sum, arrest and interrogation are invaluable and indispensable tools for law enforcement. But, by its very nature, interrogation is also subject to overreaching, and even abuse. Even absent overreaching, the coercive nature of interrogation while being held in police custody can lead innocent individuals into making untoward statements that later can appear to be incriminating.

Constraining the Power to Interrogate: The Fifth and Sixth Amendments

The Bill of Rights provides American citizens with a breathtaking spectrum of individual freedoms and protections from governmental interference. Two of these rights—the Fifth Amendment right against self-incrimination and the Sixth Amendment right to counsel in criminal proceedings—are particularly relevant to the interrogation of an individual in police custody.

The ultimate goal of the police in interrogating an individual is to obtain a complete confession to the alleged crime. If a complete confession cannot be obtained, the secondary goal is to obtain incriminating statements that may be used with other evidence to later convict him or her. The Fifth Amendment, however, guarantees that no person shall be compelled in a criminal case to be a witness against himself. Within the context of interrogation, this right means that the individual being interrogated need not speak or cooperate with the police. He or she has a right to remain silent.

Also highly relevant to custodial interrogation is the right to counsel. The Sixth Amendment provides that an individual accused of a crime has a right to counsel, that is, the right to consult with an attorney during all criminal proceedings. Since custodial interrogation of a suspected individual IS a criminal proceeding, an individual has the right to speak with an attorney before or at any time during police interrogation. As pointed out previously, arrest immediately isolates an individual from the outside world, cutting him off from informational, emotional, and physical resources. But the ability to speak with an attorney before or anytime during interrogation goes a long way to bringing the individual back from such isolation, and therefore, removes some of the coercive nature of the procedure. An individual has the right to the effective assistance of counsel even if she cannot afford the fees charged by private attorneys. In these cases, the government must appoint one for her

free of charge (*Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 [1938]).

Clearly, the Fifth and Sixth Amendments provide protections that help to level the very un-level playing field of custodial interrogation. But, rights unknown are no better than no rights at all. For the protections contained within the Fifth and Sixth Amendments to be meaningful, the individual must be aware of what they are vis-à-vis police interrogation, when they may be exercised, and how they must be asserted. It was precisely this point which led the U.S. Supreme Court to its landmark 1966 decision: *Miranda v United States*, 384 U.S. 436, 86 S.Ct. 1602. The Court held that police must inform individuals of their Fifth and Sixth Amendment rights prior to interrogation. The litany that police officers recite is known as the *Miranda warning*. An individual who has been read these rights is sometimes described as having been *Mirandized*.

The *Miranda* warning (with slight modifications in certain jurisdictions) is as follows:

You have the right to remain silent.

Anything you say can and will be used against you in a court of law.

You have the right to talk to a lawyer and have him present with you while you are being questioned.

If you cannot afford to hire a lawyer, one will be appointed to represent you before questioning, if you wish.

You can decide at any time to exercise these rights and not answer any questions or make any statements.

If an individual understands these rights, he knows that the police are adverse to his interests and that any statements made could jeopardize his liberty. He should know that he could remain silent without suffering any consequences; police questioning need not be faced alone and isolated, but instead can be done with the help and presence of an attorney.

The Deaf People among Us

The Deaf people among us are Americans, contributing to our society each day through their work, creativity, devotion to their children, help for those less fortunate, and so forth. As vibrant and productive mem-

bers of our national community, as citizens of this country, and as human beings, Deaf individuals deserve no less than the full spectrum of freedoms and protections guaranteed all Americans. This includes the protections guaranteed citizens when they are in the greatest peril of losing their liberty, that is, when they have been arrested and are subjected to police interrogation. As outlined above, the rights of an individual who has been taken into custody and subjected to police interrogation arise from the Fifth and Sixth Amendments. For these rights to have any real meaning, a Deaf or other non-English-speaking defendant must be linguistically present to understand what is being said so that he or she knows what the rights are, how to exercise them, and when to exercise them (Berk-Seligson 1990; Morris 1967). Thus, Deaf and other non-English-speaking defendants must be provided with a competent interpreter to be afforded the same fundamental fairness as English-speaking defendants. The failure to do so deprives Deaf Americans of their life or liberty without the due process guaranteed by the Fifth and Fourteenth Amendments (*U.S. ex rel. Negron v. N.Y.* [1970, 2d Cir], 434 F.2d 386, 389).

In short, the rights guaranteed in the Fifth and Sixth Amendments can only be realized by a Deaf individual if he or she understands the *Miranda* warning and subsequent interrogation. These constitutional rights obviate the need for an interpreter during all criminal proceedings. In 1978, the federal government codified this constitutional right in the Federal Court Interpreters Act (U.S. Public Law 95-539). Many states have since passed similar legislation. Nevertheless, regardless of whether or not a state passes such legislation, the right to an interpreter in federal and state criminal cases is a fundamental right of Deaf and other non-English-speaking defendants, which arises from the Fifth, Sixth, and Fourteenth Amendments.

THE LINGUISTIC LANDSCAPE

Like all of the world's natural human languages, ASL is an engineering marvel, crafted unconsciously by the human minds of its users over hundreds, or perhaps thousands, of years. And, like all human languages, ASL is capable of expressing an infinite number of thoughts by utilizing a finite set of rules and meaningful units.

But, despite functional similarities between ASL and other human

languages, a basic structural difference is highly relevant to this study. Specifically, visual signals known as nonmanual signals, which co-occur with the articulation of signs, comprise an integral component of the syntax of ASL. They are crucial to comprehensibility and fluency. But production of these signals in a manner that is syntactically correct is one of the most difficult components for second-language learners of ASL to master. Consequently, these signals are often lacking or used ungrammatically in the signed output of interpreters.

A Crucial Difference: The Co-Occurrence of Meaning through the Use of Nonmanual Signals

The human apparatus capable of producing and receiving rapid and varied sound signals differs from the apparatus capable of producing and receiving rapid and varied visual signals. For a sound-based language, the mouth is employed for production and the ear for reception. Since humans possess only one mouth, spoken languages are necessarily linear, constructed by producing one meaningful unit after another. Even if a human possessed more than one mouth, the grammar of spoken languages would necessarily remain linear since the ear and auditory nerve are only capable of processing a single unit at a time.

The human apparatus available for producing and receiving a visual-based language is quite different. For producing visual signals, ASL makes use of at least eight articulators: (1) dominant hand for signing; (2) nondominant hand for signing; (3) eye gaze; (4) eyebrow posture; (5) cheek posture; (6) mouth posture; (7) head movement and posture; and (8) shoulder posture. The postures for each of these articulators are very specific to affect the intended syntactic function or lexical meaning. At any given moment in the production of an ASL sentence, one or more of these articulators produce nonmanual signals at the same time the hands are producing manual signals. Thus, unlike spoken languages that can only produce a linear chain of meaningful units, ASL chains together clusters of meaningful and syntactic units.

For receiving visual signals, ASL uses the eyes. Unlike the ear, which is limited to processing one meaningful sound “bit” at a time, the eyes are powerful receptors capable of processing multiple visual bits and their interrelationship simultaneously.

Because ASL uses multiple articulators to simultaneously produce multiple units of meaning, one might assume that it can express thoughts

(or “propositional” content) more quickly than spoken languages. But there is one more piece to this engineering puzzle. Signs produced on the hands (the manual signs) require gross motor movement. Words spoken, on the other hand, are articulated using the fine motor movement of the tongue, jaws, and vocal cords. This fine motor movement for articulating a spoken word is much more rapid than the gross motor movement used for producing signs. The cumulative effect is that speech, although limited to a single channel for communication, uses a channel that is quite rapid. ASL uses slower gross motor movement but simultaneously combines multiple units of meaning. The net result is that spoken language and ASL express propositional content at more or less the same rate.

Syntactic Nonmanual Signals

Nonmanual signals are of two types: lexical and syntactic. See both Liddell (1980) and Metzger and Bridges (1996) for detailed descriptions of lexical and syntactic nonmanual signals in ASL. For the purpose of this study, I have chosen to focus on syntactic nonmanuals since such signals are a crucial syntactic component of nearly every ASL utterance. In particular, I have focused on the following syntactic signals (for which there is widespread agreement among linguists, native Deaf signers, and other researchers as to form and function):

1. Affirmation
2. Negation
3. Yes/No Question
4. Wh- Question
5. Conditionals
6. Listing
7. Topicalization
8. Comparative Structure
9. Role Shift

(Liddell 1980, 10–63; Valli and Lucas 1992, 277–84; Bridges and Metzger 1996, 13–20)

A F F I R M A T I O N

Affirmation of a proposition is signaled by head nodding throughout the sentence being affirmed. For example, the proposition *I am going home* would be signed:

Head: head nodding
Hands: PRO. 1 (“I”) GO HOME

N E G A T I O N

Negation of a proposition is signaled by head shaking throughout the sentence. Thus, the proposition *I’m not going home* would be signed:

Head: head shaking
Hands: PRO. 1 (“I”) GO HOME

Q U E S T I O N S

ASL distinguishes between two types of questions. A question that simply seeks confirmation of the information contained within it is known as a “Yes/No Question.” This is in contrast to a “Wh- Question,” which seeks new information from the listener.

A Yes/No Question is formed by raising the eyebrows throughout the entire sentence. Thus, the proposition *Are you quitting?* is signed as follows:

Eyebrows: raised-----
Hands: QUIT PRO. 2 (“YOU”)

A WH- QUESTION, ON THE OTHER HAND, IS FORMED BY LOWERING THE EYEBROWS THROUGHOUT THE ENTIRE SENTENCE. ACCORDINGLY, THE PROPOSITION *What’s your name?* is signed as follows:

Eyebrows: lowered-----
Hands: YOUR NAME

C O N D I T I O N A L S

A conditional relationship between two clauses is signaled in ASL by two constellations of nonmanual signals, one for each clause. During the condition clause, the eyebrows are raised, and the head, upper body, and hands move slightly to the right or the left. During the result clause, the eyebrows, head, upper body, and hands move into a neutral position with the addition of a head nod or headshake. Whether the head is nodded or shook during the result clause depends on whether the result clause is an affirmative or negative clause. Below is an example of a conditional sentence in ASL:

If you’re going to quit, then I’m not going to quit.

Body: lean right --, neutral---
 Head: lean right --, shake-----
 Eyebrows: raised-----, neutral----
 Hands: QUIT PRO. 2 (“YOU”), QUIT PRO. 1 (“I”)

L I S T I N G

To signal for the listener that a list of items, phrases, or sentences should be taken as a group of related items and to demarcate one item from another, a listing function is used. In English, this is accomplished by rising intonation at the end of each sentence, phrase, or item in the group with the exception of the final item, which is accompanied by falling intonation. In ASL, it is accomplished by leaning the upper body forward at the end of each sentence, phrase, or item. For example, the proposition *Can you buy milk, bread, and twelve cookies?* is signed as follows:

Upper Body: lean lean lean
 Eyebrows: raised
 Hands: CAN BUY MILK EGG TWELVE COOKIE

T O P I C A L I Z A T I O N

Topic-comment structure is the notion of placing a topic first and then commenting on it. ASL uses this structure to place focus on something of heightened importance in an ongoing discourse. Consider the following stretch of English discourse:

*I don't really care for a lot of meat. Like, I don't like steak or pork or even chicken. But I like **liver**. Really, I do! With onions and green peppers, it's really tasty. I take it you don't like liver?*

In this stretch of discourse, a native English speaker would likely have placed emphatic stress on the word *liver*. In ASL, the same focus can be accomplished by a topic-comment structure. Diagrammed, the sentence would be as follows:

Eye Gaze: to dom. hand---,neutral ----
 Eyebrows: raised -----,neutral -----
 Head: back and tilt---,nod_-----
 Hands: LIVER PRO. 1 (“I”) LIKE, PRO. 1 (“I”)

Topic-comment structure for this sentence requires a change in the word order. The basic word order of ASL is subject/verb/object (SVO), but to create the required focus, *LIVER* would be signed first, followed by the subject and verb. The nonmanual signals accompanying this topic portion of the sentence would be: head tilt back and slightly tilted away from the dominant hand, eyebrows raised, and eye gaze toward the dominant hand. There would then be a pause. For the remaining comment portion of the sentence, the head, eyebrows, and eye gaze return to a neutral position.

It should be noted that subjects and verb phrases might also be topicalized. If the subject is topicalized, no change in word order is necessary. To topicalize a verb phrase, the word order would be verb/object/subject; however, regardless of which syntactic category is topicalized, the nonmanual signals remain the same.

COMPARATIVE STRUCTURE

To compare and contrast in ASL, the signing space in front of the signer is visually divided into two segments—the right half of the signing space and the left half of the space. An item to be compared or contrasted is placed in its own space to the right or left. This is done by leaning the head, upper body, and hands toward one side as the item is introduced into the discourse. Any subsequent comparative or contrastive discourse relating to that item is signaled by leaning the upper body to the respective side and forming the signs in that area. Thus, as a signer moves through comparative or contrastive characteristics of two items, he or she moves the upper body and signs back and forth between the respective sides. The result is a visually iconic diagram of the comparison and contrast. In addition, the signer can efficiently relate discourse to either item without constantly restating the item as the subject of the relevant sentences.

The Crucial Role of Nonmanual Signals in Accurate Interpreting

In this study, the signed interpretations of the subject interpreters were analyzed for their use of the syntactic nonmanual signals described above. ASL utilizes many more nonmanual signals—lexical and syntactic—than those described. Bridges and Metzger (1996), for example,

describe and illustrate several other nonmanual signals. But the description above of the limited set of nonmanual signals relevant to this study provides insight into the pivotal role they play in the grammatical mechanics of ASL. As mentioned, these signals tell the listener how a grouping of signs should be taken—as a question, a negated statement, a conditional, and so forth. Moreover, because nonmanual signals can cluster together and co-occur with manual signs, they provide an economy, which results in the production of propositions in ASL at more or less the same speed as spoken languages.

Unfortunately, nonmanual signals are lacking to varying degrees in the signed output of second-language learners of ASL. A lack of this syntactic information can be catastrophic to the Deaf individual's attempt to discern meaning from an interpreter's signed output, which is somewhat akin to a hearing person trying to make sense of the indecipherable word salads of schizophrenics. In addition, an interpreter who lacks the time efficiency of combining nonmanual signals with manual signs will fall behind the English speaker who is turning out propositions at a faster rate. The interpreter who falls behind must catch up, either by deleting information (to the detriment of the Deaf individual's understanding) or by interrupting the speaker to gain more time. In legal settings, interpreters rarely feel they have the standing to repeatedly interrupt police, judges, or lawyers in order to complete their interpretations. Consequently, information deletion is the unfortunate norm.

THE STUDY

This study explores the relationship of interpreting skill to the comprehensibility of signed interpretations of the *Miranda* rights and interrogation. Three approaches were used to explore this issue. First, signed interpretations of the *Miranda* warning and an interrogation were analyzed to determine the frequency of certain syntactic nonmanual signals and the number of lexical items that were signed. Second, the signed interpretations were viewed by ten native Deaf signers. Each Deaf individual was asked to give his or her judgment as to comprehensibility. Third, ethnographic means were used to investigate a case where a Deaf man was charged with rape to determine how the interpreter's skill level affected his understanding of the *Miranda* warning and the subsequent interrogation. In addition, ethnographic interviews of interpreters and

lawyers representing Deaf clients in the Cincinnati area explored common police practices for “processing” Deaf suspects who have been arrested.

QUANTITATIVE ANALYSIS OF NONMANUAL SIGNALS AND NUMBER OF WORDS SIGNED

Method

The *Miranda* warning and an interrogation were interpreted by interpreters at varying levels of skill. Their signed output was then analyzed to determine the frequency of certain syntactic nonmanual signals and the number of lexical items (i.e., words) produced. Below, I describe the methods of choosing subjects, data collection, and data analysis.

S U B J E C T S

Participating in this study were nine interpreters at various interpreting skill levels: beginning, intermediate and advanced. Each skill level group was composed of three interpreters.

The beginning interpreters were college students nearing completion of their second ASL course at an accredited interpreter training program. The students who participated in the study were randomly selected from the class roster. The subjects had a hearing instructor for their first course and a Deaf teacher for their second course. *Signing Naturally, Level I* by Vista was the curriculum used for both of their sign courses.

The intermediate interpreters were also college students in an interpreter training program. They had completed at least eight five-credit-hour ASL-interpreting college courses. The subjects were randomly selected from a roster of all students enrolled in a yearlong interpreting practicum course.

The advanced interpreters—two holding full Registry of Interpreters for the Deaf (RID) and National Association of the Deaf (NAD) certifications and one who was also the oldest son of Deaf parents—were selected from the Cincinnati area on the basis of their credentials. One of the certified interpreters had no experience interpreting in legal settings. The other certified interpreter had a moderate amount of experience interpreting in legal settings. The interpreter with Deaf parents had extensive experience interpreting in legal settings.

DATA COLLECTION

The interpreters were asked to interpret the spoken discourse played for them from an audiotape. The audiotape discourse was composed of the five stretches of discourse that are charted in figure 1.

Each section of the audiotape included a brief description of the upcoming stretch of discourse. The description included the setting for the discourse (e.g., witness oath, an interrogation, etc.) and the participants (e.g., lawyer, person suspected of entering country illegally, etc.). The subjects were not told which stretches of discourse would be the focus of the study.

Of the five stretches of discourse, only the *Miranda* warning (section C) and the interrogation (section E) were analyzed. A transcript of section C (the *Miranda* warning) and section E (the interrogation) are set forth in Appendices B and C of this paper. The text for section E was based on an actual interrogation of a defendant by a lawyer, which was related in *The Bilingual Courtroom* by Susan Berk-Seligson. Two actors performed the interrogation on the audiotape—one taking the role of the lawyer and the other taking the role of the defendant.

The room monitor took each subject into a room for videotaping. Each subject was told to interpret, to the best of his or her ability, the five sections of discourse they were about to hear on the audiotape. Each subject was then left alone to interpret. The interpretations were all cold, that is, subjects could not stop the audio- or videotape or repeat any portion of either.

DATA ANALYSIS

The signed interpretations of the *Miranda* warning and the interrogation were analyzed for two linguistic elements deemed crucial to comprehensibility: (1) number of appropriate lexical items; and (2) fre-

Section	Topic	Duration
A	Warm-up narrative—farm story	five minutes
B	Swearing in and perjury penalty— “Do you swear to tell the truth . . .”	thirty seconds
C	<i>Miranda</i> warning	one minute
D	Defense closing argument excerpt of Louise Woodward “nanny” trial	five minutes
E	Interrogation of Robert Lopez	three minutes

FIGURE 1. *The five stretches of discourse from the audiotape*

quency of syntactic nonmanual signals. All data analysis was performed by the same analyst, myself, eliminating the skew that can arise from subjective differences between multiple analysts.

The number of appropriate lexical items refers to the number of correct words for each stretch of discourse. Two characteristics of lexical items are important to analyzing the number of correct words in a stretch of discourse. First, what is a word? Second, should lexical nonmanual signals counted as words?

The concept of a word in ASL is somewhat similar to that of English. In English, a word such as *refried* (as in *refried beans*) is a single word even though it is composed of two meaningful units: *re-* and *fried*. In linguistic terms, it is a morphologically complex word composed of two morphemes. Although it is composed of two meaningful units, native English speakers nonetheless recognize it as a single word.

Likewise, ASL has words, some that are morphologically complex and some that are morphologically simple. For example, the concept of *against you* is signed in ASL using a single sign that is morphologically complex. Part of the sign indicates the verb *to be against*, and the other part of the sign indicates the object of the sign, that is, *you*. Although morphologically complex, it is nonetheless recognized as a single sign by native ASL signers. Accordingly, morphologically complex words were counted as single lexical items. In addition, fingerspelled items such as M-E-X-I-C-O were counted as a single word.

The next question is whether lexical nonmanual signals should be counted as words. As already discussed, whereas many nonmanual signals in ASL are syntactic, many carry lexical meaning (e.g., *careless*, *small*, *recently*, etc.). These are part of the lexicon (or vocabulary) of ASL. For the purpose of this study, however, word counts were limited to manual signs (signs formed with the hands) to achieve clear comparisons between interpreters. But, it is recognized that the word counts for each interpreter might change slightly if lexical signals were also included in the word counts.

A word count was calculated for each interpretation of the two stretches of discourse—the *Miranda* warning and the interrogation. From these individual counts, average word counts by skill level group were also calculated for both.

The second factor analyzed was the frequency of syntactic nonmanual signals. The signed interpretations were analyzed for the frequency of the following syntactic signals:

1. Affirmation
2. Negation
3. Yes/No Question
4. Wh- Question
5. Conditionals
6. Listing
7. Topicalization
8. Comparative Structure
9. Role Shift

The specific facial, head, and body postures necessary for articulating each of these nonmanual signals were previously described.

The interpreted output was analyzed separately for each of the syntactic nonmanual signals. For example, an interpreted discourse would be analyzed repeatedly and solely for the occurrence of affirmation before it would be analyzed for another syntactic nonmanual signal.

One point relevant to the analysis of syntactic nonmanual signals deserves mention. Many of the nonmanual signals require that the requisite postures of the face, head, or upper body be maintained for an entire clause or sentence. Thus, a syntactic nonmanual signal must be articulated correctly both in terms of facial posture and duration. Both had to be present to be counted as an occurrence of a nonmanual signal. Aborted attempts at forming a syntactic signal were not counted.

Findings and Discussion

The analysis of both the number of lexical items and the frequency of syntactic nonmanual signals revealed dramatic similarities among interpreters of the same skill level (within the group) and dramatic differences between interpreters of different skill levels (between groups).

NUMBER OF LEXICAL ITEMS PRODUCED

With regard to the number of lexical items signed, the beginner interpreters signed an average of only four lexical items during the entire reading of the *Miranda* warning. The intermediate interpreters produced more than nine-fold the number of lexical items for the same stretch of discourse, averaging thirty-eight lexical items. The advanced interpreters produced an average of fifty-two lexical items, a 73 percent increase over the intermediates and a thirteen-fold increase over the beginners.

Equally striking is the consistency within each group. The range of lexical items produced by the subjects of each group was extremely narrow: The beginner group ranged between two and seven lexical items, intermediates ranged between thirty-five and thirty-nine, and advanced interpreters ranged between forty-nine and fifty-five.

The number of lexical items for each interpreter and the average for each group are displayed in table 1.

Table 1 illustrates that the number of lexical items produced increased dramatically as interpreting skill level increased for both the *Miranda* warning and the interrogation. The intermediate group average of 117 was approximately a four-fold increase over the beginner interpreters' group average of 31. The advanced interpreters' group average of 168.6 was over a five-fold increase over the beginners and a nearly 70 percent increase over the intermediates. And again, there was remarkable consistency within each group.

These findings demonstrate dramatic differences in lexical output based on interpreter skill level. During the *Miranda* warning and the

TABLE 1. *Number of Appropriate Lexical Items*

	Miranda Warning	Interrogation
Beginner Signers/Interpreters		
1	3	12
2	2	36
3	7	45
Group Average	4	31
Intermediate Interpreters		
1	35	115
2	40	125
3	39	111
Group Average	38	117
Advanced Interpreters		
1	55	147
2	49	170
3	52	189
Group Average	52	168.6

interrogation, advanced interpreters produced nine times and five times more words respectively than did their beginner counterparts. Moreover, the advanced interpreters produced 70 percent and 73 percent more meaning than even the intermediate interpreters. I would suggest that omitting 70 to 73 percent of the words contained in either the *Miranda* warning or the interrogation might render them incomprehensible to the Deaf defendant.

N U M B E R O F S Y N T A C T I C N O N M A N U A L S I G N A L S P R O D U C E D

The production of syntactic nonmanual signals also closely correlated with skill level, and, again, the differences between skill level groups were quite striking. Table 2 displays, by skill level, the average number of occurrences of each nonmanual signal. The average of the total number of nonmanual signals produced by each skill level group is also shown. (For the frequency of each nonmanual signal by each interpreter, please see the individual subject score sheets set forth in Appendix D.)

The findings displayed above indicate that the beginner interpreters produced no syntactic nonmanual signals during their interpretation of the *Miranda* warning and a negligible number during their interpretation of the interrogation. Thus, the beginner interpreters produced very few lexical items and even fewer nonmanual signals.

The intermediate interpreters articulated an average of 2.66 syntactic nonmanual signals during the *Miranda* warning and 57 during the interrogation. The advanced interpreters, however, articulated 6.33 and 76 respectively, an increase over the intermediates of nearly two-and-a-half times during the *Miranda* warning and a 75 percent increase during the interrogation. Thus, although the intermediate interpreters successfully articulated a great deal more syntactic signals than the beginners, their signed interpretations lacked a significant amount of syntactic information when compared with the advanced interpreters.

Knowing whether a proposition is a statement or a question, a negative statement or an affirmative statement, a hypothetical or a command, etc., affects one's comprehension of what is being said, and the syntactic signals lacking in the interpretations of the intermediate interpreters had a profound impact on comprehensibility. Consider the difference in meaning if a proposition is not properly negated.

You cannot afford an attorney. vs. You can afford an attorney.

TABLE 2. *Frequency of Appropriate Nonmanual Signals*

	<i>Miranda</i> Warning	Interrogation
Beginner Signers/Interpreters' Group Averages		
Affirmation	0	0.33
Negation	0	1.33
Yes/No question	0	0
Wh- question	0	0.66
Conditionals	0	0
Listing	0	0
Topicalization	0	0
Comparative structure	0	0
Role shift	0	3.33
Totals	0	5.65
Intermediate Interpreters' Group Averages		
Affirmation	0.33	3.33
Negation	1	4.66
Yes/No question	0	8.66
Wh- question	0	2
Conditionals	1.33	0
Listing	0	0.33
Topicalization	0	0
Comparative structure	0	0
Role shift	0	38
Totals	1.66	56.98
Advanced Interpreters' Group Averages		
Affirmation	1.66	5
Negation	1.33	7
Yes/No question	0	10.66
Wh- question	0	9.33
Conditionals	2	0
Listing	1	0
Topicalization	0	2.33
Comparative structure	1	0
Role shift	0	41.66
Totals	6.99	75.98

Similarly, consider the effect on meaning if the conditional nonmanual signal is not articulated:

If you cannot afford an attorney, one will be appointed for you at government expense.

vs.

You cannot afford an attorney. One will be appointed for you at government expense.

The proposition without the conditional marking leads a defendant to believe that a determination has already been made of his or her indigent status and that the appointment of an attorney is in progress. In reality, an indigent Deaf defendant must assert his desire to speak with an attorney before such a process is initiated. But, unmarked for their conditional relationship, the propositions will lead the Deaf defendant to believe that he or she only need to wait quietly for an appointed attorney to appear.

The results here indicate striking differences in the linguistic output of interpreters based on skill level—both in terms of the number of lexical items and the number of nonmanual signals. I have suggested that the syntactic and lexical deficits in the signed outputs of the beginner and intermediate interpreters have a profound impact on comprehensibility.

NATIVE JUDGMENTS OF COMPREHENSIBILITY

Method

The number of lexical items and syntactic nonmanual signals in the signed interpretations were analyzed because they were deemed to be crucial to the comprehensibility of the signed output. As reasonable as it may seem to assume that the frequency of appropriate lexical items and the frequency of syntactic nonmanual signals are correlates of comprehensibility, it is nonetheless an assumption. Therefore, the signed interpretations were submitted to native ASL users for their judgments of comprehensibility.

SUBJECTS

A total of ten subjects provided comprehensibility judgments. Each of the subjects was a native signer of ASL. A native signer is a Deaf individual who acquired ASL as their first language prior to the age

of seven. All of the Deaf subjects use ASL as their primary means of communication. Other social characteristics of the ten subjects are set forth in the table 3.

The social characteristic *Institution* refers to whether a subject had attended a Deaf boarding school for their primary and secondary educations. Except for the small minority of Deaf individuals who have Deaf parents, Deaf boarding schools are the primary loci of ASL acquisition for native signers. To ensure only native signers provided comprehensibility judgments, the subject judges in this study were limited to individuals who had attended such Deaf institutions.

DATA COLLECTION AND ANALYSIS

The signed interpretations were recorded onto videotape in random order. Only the signed interpretations of the *Miranda* warning and the interrogation were included. An instruction in ASL followed each signed interpretation instructing the subject to stop the video and record his or her judgments regarding comprehensibility onto the accompanying score sheet. In addition, because Deaf individuals' command of English is variable, the signed instructions on the video also explained the scores set forth in English on the accompanying score sheet.

The score sheet asked judges to rate each signed interpretation on a scale of 1-4, with 1 being the least comprehensible. Figure 2 shows the scoring system and labels used on the scoring sheet:

Prior to viewing the videotape, subjects were told in ASL that they were participating in a research project relating to courtroom interpreting. Deaf subjects were told that they would be asked for their "overall

TABLE 3. *Sociolinguistic Characteristics of Deaf Subjects*

Subject	Age	Sex	Deaf Parents	Deaf Siblings	Race	Education
1	20	M	No	No	Black	Institution
2	60	F	No	Yes	White	Institution
3	61	M	No	Yes	White	Institution
4	35	M	Yes	Yes	White	Institution
5	22	M	No	No	White	Institution
6	20	F	Yes	No	White	Institution
7	42	F	No	No	White	Institution
8	31	F	Yes	Yes	White	Institution
9	33	M	Yes	Yes	White	Institution
10	45	M	No	No	White	Institution

1	2	3	4
Incomprehensible	Confusing	Fairly Clear	Very Clear

FIGURE 2. *Scoring sheet for comprehensibility judgments*

gut reaction” about the comprehensibility of the *Miranda* warning and the interrogation, and that they need not concern themselves with a grammatical analysis of the signed interpretations.

Findings

A tabulation of the comprehensibility judgments again demonstrated dramatic differences in comprehensibility as a function of interpreter skill level. The signed interpretations of all the beginning interpreters were found to be incomprehensible. This included their interpretations of the *Miranda* warning and the interrogation.

Comprehensibility judgments of the intermediate interpreters’ signed output varied by the type of discourse. Intermediates’ interpretations of the *Miranda* warning were consistently found by the judges to be confusing, with the exception of two judges who found one of the interpretations of the *Miranda* rights to be incomprehensible. Intermediates’ interpretations of the interrogation were uniformly found to be confusing. None of the judges found these interpretations to be very clear.

The interpretations of the advanced interpreters were generally found to be fairly clear. With regard to the *Miranda* warning, three of the judges found the signed output to be confusing. The remaining judges found them to be fairly clear. With regard to the interrogation, six of the judges found the advanced interpreters to be fairly clear. Four found them to be very clear.

Like the intermediate interpreters, the advanced interpreters fared slightly better at conveying the content of the interrogation than they did conveying the content of the *Miranda* warning. I would suggest that the slight differences here in comprehensibility might be related to differences between the two pieces of discourse. One difference is that the *Miranda* warning is a written text, which is read to a defendant, whereas the interrogation arose as an oral interaction, which was orally reproduced for this study. Written discourse is more “compact” than spoken discourse, perhaps due to greater planning time and lack of “visibility” (Chafe 1982). It is more compact in that it has fewer repetitions than

oral discourse, is denser in meaning, and exhibits a greater number of syntactically complex structures (Kroll 1977; Chafe 1982; Beaman 1993).

Second, conceptually, the *Miranda* warning is much more complex than the “How did Robert Lopez get to the United States?” theme of the interrogation discourse. Consequently, it may be that a basic understanding of how the legal process works is necessary to understanding the *Miranda* warning. Because of decreased access to written information due to the third- and fifth-grade reading abilities of most Deaf individuals and decreased access to spoken information due to deafness, Deaf individuals as a group probably have less understanding than hearing individuals of how the legal system works. This is consistent with findings by Vernon (1978), who examined how well Deaf college students at Gallaudet understood the *Miranda* warning interpreted by RID-certified interpreters. Vernon found that the students possessed less than a full comprehension of their constitutional rights. Similarly, Fant, Smith, Solow, and Witter-Merithew (1992) have discussed a disparity between hearing and deaf individuals’ understanding of the criminal process. Therefore, they suggest that an interpretation should include information implicit in the spoken text to increase the likelihood of authentic understanding of one’s constitutional rights. This technique is certainly supported by the *Miranda* decision and its progeny, for it was the arrested individual’s actual understanding of the Fifth and Sixth Amendment rights that the Supreme Court sought to achieve through the *Miranda* warning, as opposed to a dogmatic adherence to frozen text regardless of understanding.

In summary, the comprehensibility findings further demonstrate that interpreting skill level dramatically affects the comprehensibility of the *Miranda* rights and interrogation. Only the signed interpretations of the advanced interpreters were found to be fairly clear or clear. I would suggest that the interpretations of the beginner and intermediate interpreters—which Deaf subjects found confusing at best—would not produce an authentic understanding of the Fifth and Sixth Amendment rights.

A CASE STUDY OF INTERROGATION OF A DEAF SUSPECT

Method

What follows is an ethnographic description of a criminal case involving the interrogation of a Deaf defendant, which I investigated as it was

still unfolding. On October 27, 2000, police arrested a young Deaf man on the suspicion that he had raped a hearing woman. I will refer to him as Jason White. Jason's attorney contacted me a few weeks after the interrogation. At that point, I conducted several interviews with Jason and his attorney. As part of the interviews, I assessed Jason's ASL and English language skills. I obtained and reviewed a transcript of what was spoken (not signed) during the interrogation. I also obtained a *Miranda* waiver form that Jason had signed and reviewed it with him. Finally, because a police officer had attempted to act as Jason's interpreter during the reading of the *Miranda* rights and subsequent interrogation, I obtained and reviewed the teaching materials and syllabus for the beginning ASL course the police officer had taken.

ETHNOGRAPHIC DESCRIPTION AND FINDINGS

What follows is a description of the legal linguistic aspects of the arrest and interrogation of Jason White, who was arrested on October 27, 2000, on the suspicion of having raped his girlfriend.

Jason was born in a small town in southwest Ohio. His parents were hearing. Consequently, Jason's first exposure to ASL occurred when he began attending elementary school. The school provided him with a sign language interpreter. Although he had never seen ASL before, Jason began acquiring the language by watching the interpreter sign. Despite this less-than-optimal language acquisition process—with the student only having access to a second-language learner who interprets only classroom discourse—Jason acquired ability sufficient for him to communicate on a basic level with the interpreters at his school. There were no other Deaf students at his school.

Jason was less successful at gaining competence at English. At the time of his arrest, his reading and writing skills were approximately at a third-grade level, within the norm for most Deaf adults. This is not surprising given that he could not hear English, in contrast to the hearing children who only needed to learn a written form of their native English language and have phonetic cues to help them master the writing system.

Jason had graduated from high school, was nineteen, and was living on his own when the police arrested him on suspicion of rape. He was alone in his apartment when the police suddenly arrived, handcuffed him, and took him to the local police station. Once there, Jason was

provided with an interpreter, a police officer who had completed less than ten weeks of a beginning sign language class. The police officer proceeded to interpret the *Miranda* rights. After the interpretation, Jason was provided with a printed waiver form, on which he placed his initials. In English, the form states that by signing the document, the undersigned understands and waives the constitutional rights contained in the *Miranda* warning.

The police then interrogated Jason for several hours. During his interrogation, the police officer interpreter attempted to voice in English what Jason was signing. Out of frustration, Jason tried to communicate with the police by attempting to speak to them while he signed. Jason attempted to understand what the police were saying to him by trying to read the lips of the police officers and to decipher the signs that the signing police officer was attempting to form. At the conclusion of the interrogation, the police officer interpreter wrote a summary of what he believed Jason had said. The summary was tantamount to a confession. Jason was then held in jail, initially unable to post the bond set by the court.

This scenario raises three important questions. Did Jason truly understand his Fifth Amendment right to remain silent and his Sixth Amendment right to consult with an attorney both prior to and during the interrogation? If he understood those rights, did he actually intend to waive them by signing the form? If Jason understood his rights and knowingly waived them, did he really confess to the crime of rape as the interpreting police officer alleged?

I interviewed Jason several times subsequent to his arrest but prior to trial. We used ASL to converse. During those interviews, I focused on Jason's understanding of his interpreter's signing, his understanding of his Fifth and Sixth Amendment rights, and his understanding of the waiver form that he signed. I also assessed Jason's speechreading, reading, and ASL skills. I did not explore anything relating to the allegations against him since this information is irrelevant to whether the *Miranda* rights had been understood.

Talking with Jason, I found him to be confused about what was happening and about the legal process. He was adamant about one thing, however: He had not raped anyone. Why then did he waive his rights and allegedly confess?

In terms of understanding his rights, Jason told me that the interpreting police officer did not know how to sign and that speechreading did not increase his understanding. Jason did not know that he did not have

Dt. Hickey: OK The
Jason: ;;;;;;;;;; ;;;;;;;;;; ;;;;;;;;;;
Dt. Hickey: Second Street Bridge
Jason: ;;; ;;;;;;;;;; ;;;;;;;;;; ;;;;;;;;;; ;;;;;;;;;;
Dt. Hickey: The Lion Bridge
Jason: ;;;; ;;;;;;;;;;
Dt. Hickey: OK

The communication difficulty between Detective Hickey and Jason is apparent. Something as simple and concrete as a location required numerous turns. Moreover, none of Jason's speech was comprehensible. Nor did the interpreting officer voice anything Jason signed. In fact, throughout the thirty-one pages of transcript, all of Jason's utterances were encoded as incomprehensible. And the interpreting officer only voiced one statement on behalf of Jason, which was "Just pavement."

Unfortunately, Jason White's experience is not the exception in Ohio. Ethnographic interviews with area attorneys who have represented Deaf clients arrested on criminal charges, Deaf Cincinnatians, and interpreters in the Cincinnati area indicate that Jason's experience is unfortunately the norm in Cincinnati. Police officers who are not trained as interpreters and who hold no interpreting certification typically interpret the *Miranda* warning and interrogation of Deaf suspects. The consequence is that Deaf individuals in the Cincinnati area, by not being informed, are denied their constitutional right to remain silent and their right to counsel. The resulting confusion and duress render these Deaf Americans susceptible to signing waivers that they do not understand, which waive rights that they do not know they have. But, for a judge or jury, the Deaf person's name or initials on the bottom line makes a waiver damning evidence.

It is doubtful that the trampling of Deaf Americans' constitutional rights in this manner is unique to these two jurisdictions. But, trampled they will be until judges, who ultimately control police practices by virtue of excluding tainted evidence, begin to think about the effect of interpreter skill level on the ability to interpret linguistically complex information.

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