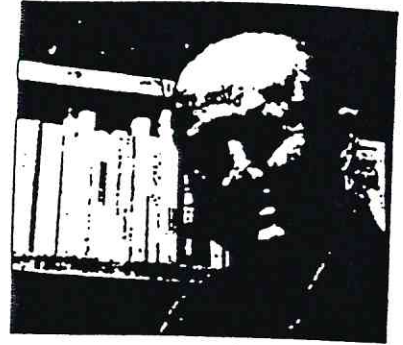


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DEAF PEOPLE AND THE CRIMINAL JUSTICE SYSTEM



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In general, educated deaf people deal effectively with the justice system. However, exceptions occur, usually involving inadequate or non-existent interpreting services or a failure to record key legal interactions on video tape. For poorly educated deaf individuals or those who lack competence in American Sign Language (ASL), serious injustices occur far more frequently (Vernon, Raifman, & Greenberg, 1996). The following case exemplifies the problem.

Mr. Suiter, age 53 at the time of his trial, was born deaf of unknown causes. His formal education consisted of three weeks in a residential school for the deaf when he was six years old. Because he cried in school, his parents removed him and kept him home. This ended his formal education. The parents were naive, uneducated people, but devoted to their deaf son. However, Mr. Suiter grew into his teens having had no interaction with other deaf people. He lived with his parents and sister, none of whom knew sign language. In their communication with him, they used only gestures, mime, mouthing words and pointing.

In his teens, an older deaf peddler got hold of Mr. Suiter and used him to sell alphabet cards. Although he was uneducated, eventually Mr. Suiter had sense enough to figure out that he could do the peddling by himself and keep all the money he had been giving to the older peddler. For the next three or four

decades Mr. Suiter's primary source of income was selling alphabet cards. When SSI became available, Mr. Suiter also received additional money from this source.

Despite his lack of communication, Mr. Suiter married three times, all to hearing women. His ability to make money peddling and later his SSI income apparently represented financial security to these women and the children they already had and those to whom they gave birth as a result of their unions with Mr. Suiter. The first wife died in an accident. The second deserted him, leaving him with two children. After each of these two marriages, his mother took him back into her home, cooked for him, washed his clothes, and, in general, cared for him as if he were a child. She also raised his two children by wife number two. The third wife left him to return to a previous husband, but then came back to Mr. Suiter when the ex-spouse was abusive to her.

In the course of this third marriage, Mr. Suiter began having sex relations with his underage step-daughter. For a period they lived together in a mobile home apart from her mother. Two children resulted from this relationship with the step-daughter. At his trial for pedophilia resulting from his relationship with his step-daughter, it was determined that Mr. Suiter knew only 150 signs, including gestures and pan-

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tomime. Despite this fact, he was tried and sentenced as a pedophile.

Primitive Personality Disorder

Mr. Suiter is a somewhat extreme example of a segment of the deaf population referred to in the professional literature as "Primitive Personalities" or "Surdophrenics" (Basilier, 1964; Rainer, Altshuler, Kallman & Deming, 1963; & Vernon, Raifman & Greenberg, 1996). Basically, these are individuals who are functionally illiterate and lack competence in sign language (Figure). They are not

FIGURE

PRIMITIVE PERSONALITY — SURDOPHRENIA

Diagnostic Criteria for Primitive Personality

At least three of the following criteria must be present:

- A. A meager or total absence of knowledge of sign language, English, or a foreign language.
- B. Corollary to the above, those with Primitive Personality are functionally illiterate, i.e., they read at grade level 2.9 or below as measured by a standardized educational achievement test, preferably the appropriate battery of the Stanford Achievement Test.
- C. A history of little or no formal education.
- D. A pervasive cognitive deprivation involving little or no knowledge of such basics as what the U.S. Constitution is, Social Security, how to make change, pay taxes, follow recipes, plan a budget, or how to function on a job.

necessarily mentally retarded as measured by performance IQ Tests. In fact, they may be of average or better intelligence.

Individuals with Primitive Personality Disorder represent an estimated 10 to 20 percent of the deaf population based on the limited data available (Center for Assessment and Demographic Studies, 1992) and on my experience in the field of deafness over the last 40 years.

Competence to Stand Trial

In order to stand trial in the United States, a defendant must be able to understand the charges against him and to participate in his own defense. Otherwise, he is judged incompetent. This law is intended to protect mentally ill and mentally retarded people.

In the case of insane defendants, the individuals are sent to a mental hospital and treated until their mental illness is cured or brought under control, at which time the person is tried and, if guilty, is sentenced. Those who are incompetent because of retardation are placed in hospitals for the mentally retarded where they usually remain for life. Until fairly recently, competency had not been considered an issue with deaf persons unless they were mentally ill or mentally retarded (Anon, 1994).

In Mr. Suiter's case, he was clearly unable to participate in his own defense on linguistic grounds alone. With only 150 signs, many of which were natural gestures or mime, and with no knowledge of the syntax of ASL or English, he could not understand what was going on at his own trial. Thus, he could not challenge witnesses, confer with his attorney, discuss issues such as plea bargaining, that is, he could not interact in any meaningful way with his attorney before or during his trial.

Although the court had excellent experienced legal interpreters and a skilled deaf relay interpreter, with Mr. Suiter's vocabulary of 150 signs it was absolutely impossible for him to understand what was happening at his trial. Nor could he adequately grasp the nature of the charges against him. For example, Mr. Suiter could not understand the difference between various degrees (categories) of sexual offenses, their respective sentences, the issues involved in plea bargaining, or other critical dimensions of his case. The interpreters made a maximum effort to convey what was transpiring during the trial, but made no secret of the fact that the task was impossible.

Despite his linguistic incompetence, and the clear demonstration of it by his attorney, Jim Lindblad, Mr. Suiter was found guilty of two counts of third degree rape (Fraser, 1996). This was a direct violation of his civil and legal rights and a gross miscarriage of justice on the grounds of linguistic incompetence. This is not to imply Mr. Suiter was innocent, but it is to make clear that his constitutional rights to appropriate due process were violated.

Ten to 20 percent of the deaf population meet the criteria for Primitive Personality Disorder. These individuals are linguistically incompetent to stand trial. The justice system does not adequately understand the problem nor has it decided how to deal with it. Until the issue is resolved legally, this segment of the deaf population is in a state of limbo and subject to serious victimization when charged with or suspected of a felony.

Another issue present in the Suiter case and in some other situations involving deaf defendants with Primitive Personality Disorder is the extent to which they know

right from wrong. When Mr. Suiter moved into the mobile home with his step-daughter, it was with his wife's knowledge and apparent consent. Considering his background and lack of adequate access to information, there is legitimate doubt that he knew what he was doing was wrong or illegal. This is a form of cognitive inability to know right from wrong which, although present in many deaf defendants with Primitive Personality Disorder, has not been recognized or dealt with by the justice system.

The Donald Lang Case

A classic case that illustrates the legal problems of a deaf person with Primitive Personality Disorder is that of Donald Lang (People v Lang, 1975; and People v Lang, 1978). Mr. Lang, an Afro-American deaf man, has been incarcerated either in jails, prisons, or mental hospitals for most of the last three decades. He has not been convicted of any crime. Nor is he mentally retarded or insane (Tidyman, 1974). How can this be?

For most of his life, Mr. Lang has been totally without language—he has had no vocabulary or syntax. He never attended school or had exposure to other deaf people or to ASL prior to the crimes with which he is charged. Since he has no verbal system, he cannot participate in his own defense, nor can he understand the charges against him. Mr. Lang has been charged with the murder of two prostitutes. Originally, he was convicted of killing one prostitute and sentenced for the crime. After several years the conviction was appealed by a deaf lawyer, Lowell Myers, on the grounds that Mr. Lang had neither understood the charges against him nor had he been able to participate in his own defense (Tidyman, 1974). As a result of the appeal, Mr. Lang was released. About six months later another prostitute was murdered. Mr. Lang was once again charged with the offense.

This time the public was more frightened. Two women had been killed. Because Mr. Lang, in addition to his incompetence, functioned at an extremely primitive level of psychological adjustment, the McNaughton Rule—the law requiring competency to stand trial, was applied. This time Mr. Lang was found to have a mental disorder but not to be insane. As a result of these findings, he was ordered confined in a mental hospital until he was competent to stand trial. With a hearing mental patient this would have meant placement in a psychiatric hospital until the psychosis or mental disorder subsided to the point that the person was no longer a danger to others. However, in Mr. Lang's case the court ordered that while confined in a mental hospital to treat his mental disorder that he also be taught sign language and English until he developed the linguistic skills needed to understand the

charges against him. Once this was done, he would be found competent and able to stand trial.

Given this very cursory presentation of Mr. Lang's case, what is its generality and what are the issues it represents? First, Mr. Lang is not alone in being an adult with no verbal system—no language. There are other deaf people in our society who do not have a mental disorder and are not mentally retarded, who, by virtue of educational and cultural deprivation, have little or no language (Vernon & Andrews, 1990). In addition there are groups who are not deaf, such as some brain-damaged persons and certain feral individual hidden from society by their families, who have little or no language.

What is the answer in cases where the deaf defendants cannot understand the charges against them nor help in their own defense yet are not mentally ill? There are four choices: First, let them go free regardless of their crime. Second, put them away until they learn language which, in many cases, will be never. For example, Lang has had intensive ASL and reading instruction by deaf tutors for over 20 years and still has not learned ASL and never will. The third choice is to put these individuals on trial, even though they are unable to understand the charges, participate in their defense, and/or may have a mental disorder. Fourth, special accommodations can be set for certain of these defendants which make it possible to proceed with a trial. These accommodations are too complex for discussion here, but have been described elsewhere (Vernon & Raifman, in press).

The courts have yet to make a definitive choice among these alternatives. Thus, Mr. Lang and other deaf defendants may spend the balance of their lives in confinement for crimes for which they have not been tried and of which they may not be guilty. However, if the ruling in the Jackson case is upheld, the incompetent defendant could not be held any longer than the sentence for the charge against him would be were he found guilty (Jackson v Indiana, 1972).

The linguistic issues represented by Mr. Lang are more theoretically interesting than the legal ones. Congenitally deaf people who are never exposed to education, sign language, or to other deaf people until adulthood represent a unique life circumstance. They enter adulthood with no verbal symbol system—no language. They have not heard spoken language, they have not seen sign language, and they have not been taught written language. They do not know the names of the foods they eat, the clothes they wear, or, for that matter, their own name. Nor do they have any understanding of syntax or awareness that it even exists. Yet they may have high performance

test IQs (Sullivan & Vernon, 1979) and generally have no mental illness in the conventional sense (Vernon & Andrews, 1990).

These "feral" deaf persons are an experiment of nature for the study of two fascinating linguistic issues: One is the critical or optimal stage theory of language development. In essence this theory states that if language is not learned during ages two to four years or thereabouts it will never be learned fluently (Atkinson, Atkinson, & Hilgard, 1983). If learned at all, it will be a slow, laborious, only partially completed process in most cases. The critical stage theory would posit that at his advanced age Mr. Lang will probably never learn language (ASL). If he does develop any significant ASL skills, it will be over an extended period of time and then only imperfectly. Thus, under current competency rulings, he will be confined for the balance of his natural life, which is evidently what is going to happen as he is still in a mental hospital over 30 years after the murders occurred for which he is charged. He has still not been tried, partly because he is still linguistically incompetent.

In addition to being a test of the critical stage theory of language development, the other theoretical linguistic issue raised by Mr. Lang and other "languageless" deaf adults confronts the relationship of language to thought. From the study of congenitally deaf people, we have learned that language, which is a verbal symbol system, is not the mediating process of thought (Vernon, 1967, 1972; and Vernon & Coley, 1978). We as human beings do not think in words despite what we might believe. Samuel Taylor Coleridge stated this fact over a century ago in the following quotation: "I believe that the process of thought might be carried on independent and apart from spoken language. I do not in the least doubt that if language had been denied or withheld from man, thought would have been a process more simple, more easy, and more perfect than at present."

Mr. Coleridge's insight was not discovered by psychologists for another hundred years. Even now it is hotly disputed (Vernon, 1967; and Vernon & Andrews, 1990).

Legal Issues and Educated Deaf People

For an educated deaf person there are some general considerations of importance, should the deaf individual be charged with a felony.

First, it is almost always advisable to demand an attorney if you are identified as a suspect. Until one is provided, it is important not to answer any questions or volunteer information. If you do not have money for a lawyer, one

will be supplied at no charge. Until this is done, you do not have to submit to questioning.

Second, if the police or others want to question you, remember you are entitled to a competent sign language interpreter, ideally one who is legally certified and/or a CODA (Child of Deaf Parents). If necessary, a deaf relay interpreter should also be present. If you cannot understand the interpreter or do not feel the individual is competent, do not proceed. Wait to answer questions until you have an interpreter you can understand or unless you have discussed the issue with your attorney and the attorney is present and advises you to proceed.

Third, if a deaf person is using an interpreter to have Miranda Rights, Rights to Search and Seizure, and permission to be polygraphed administered, the entire procedure should be videotaped, making sure all persons signing are fully covered by the video camera such that everything that is signed is recorded on the video tape. Remember, video tape is to sign language what audio tape is to spoken language. Only when a sign language interaction is videotaped is there a full and valid record of what was said, signed and interpreted into sign language.

Fourth, the exact same procedures described above for videotaping the signing of documents, such as waivers, should be followed in any police interrogation of a deaf suspect and at trial. The deaf person should insist upon it; otherwise there is no adequate record of what transpired. In the case of a trial, the video tape has often been successfully used by deaf defendants to appeal unfavorable verdicts (Vernon & Raifman, in press). While a deaf person may not wish to go through all of this in the case of a minor crime, it is the safe course of action to take. If charged with a serious felony, these four procedures can be critical.

Summary and Conclusions

Deaf people with severely limited reading and signing skills are often unable to understand what transpires in the courtroom. Nor can they adequately communicate with their lawyer in preparing their defense even through an interpreter. Furthermore, such persons are frequently unable to understand the charges against them. Known in the psychological literature as Primitive Personalities, these deaf individuals are linguistically incompetent to stand trial. Courts have not understood this problem, nor have they decided how to deal with such defendants.

As a consequence, a significant number of deaf people have been denied their rights in court and in police inter-

rogations. In other cases they have been released even when evidence indicated they were guilty (Vernon & Coley, 1978; and Vernon, Raifman, & Greenberg, 1996). Until the courts recognize linguistic incompetence and decide what to do about it, the legal needs of deaf persons with Primitive Personality Disorder will not be appropriately adjudicated.

For educated deaf individuals charged with a crime, the key precautions they should consider demanding a competent sign language interpreter if they are a suspect and are to be interrogated by the police or if they intend to waive any legal rights, such as the Miranda Rights. Second, they should make certain all police interviews or rights waivers are videotaped in order to assure a full and accurate record of what transpired. If this is not done, the deaf person should terminate the interview. Finally, it is recommended that any deaf (or hearing) person suspected of a crime have a lawyer present before and when answering questions related to the crime.

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