

# Interpreting Strategies in Legal Discourse

DEBRA RUSSELL

*University of Alberta, Canada*

## Abstract

Question and answer forms of discourse are common in many legal settings. Creating cohesion and realizing speaker intentions is a challenge between participants who do not share the same language, and is even more complex when an interpreter is introduced to the interaction. Linking the linguistic and cultural elements of the message with participant's intentions builds cohesion within legal discourse. Throughout the interaction, participants create meaning by drawing on the context they bring to their messages, the context of the situation and as a result of their dialogue. In this paper I describe some of the linking strategies that interpreters use to create cohesion when interpreting between English- ASL users. I illustrate the interplay of text analysis strategies with the creation of meaning across languages. Insights from the interpreter's participating in the study are also highlighted in this paper.

## Sommaire

### *Les stratégies dans le discours juridique et l'interprète*

Dans bien des milieux juridiques, les formes de discours caractérisées par les questions et réponses sont courantes. Il est difficile d'assurer une certaine cohésion et de concrétiser les intentions du locuteur chez les participants qui ne comprennent pas la même langue. Cette tâche s'avère encore plus complexe lorsqu'un interprète est de la partie. Dans le discours juridique, l'enchaînement des éléments linguistiques et culturels du message avec les intentions du participant donne lieu à une certaine cohésion. Dans le cadre de l'interaction, les participants formulent des sens en faisant appel au contexte qu'ils prêtent à leur message, au contexte de la situation et à leur dialogue. Dans cet exposé, je décrirai certaines des stratégies d'enchaînement auxquelles recourent les interprètes pour favoriser la cohésion lorsqu'ils interprètent pour les usagers de l'anglais à l'ASL. J'illustrerai également comment s'entrecroisent les stratégies d'analyse du texte et la création des sens entre les langues. Par surcroît, je mettrai en évidence les constatations des interprètes qui participent à la présente étude.

## **Introduction**

Question and answer forms of discourse are a critical part of legal events, whether those events take place in a courtroom, a police interview, or a lawyer-client interview. Questioning techniques are used to solicit the narrative of the speaker or signer and have them retell events from a particular perspective (Witter-Merithew, 2002). This study presents a discourse-based exploration of interpreting strategies used by American Sign Language (ASL) - English interpreters in legal discourse when dealing with questions and answers presented in ASL and English. In a legal event, the interpreter is tasked with managing the words and ideas as well as the contextual variables introduced by the participants and the specific environment of the legal domain. Interpreters also have to balance participant intentions in helping them to make informed decisions about how best to present the interpreted dialogue. A third challenge is that the dialogue is constantly being constructed by the two participants through the weaving of questions and the answers to those questions.

The study of question and answer interpreting strategies described in the present investigation takes into account both the communicative functions of questions as well as how a participant's answer may be linked to the question. The study also explores the perspectives of some of the interpreters in the study about the strategies used and not used when dealing with this type of discourse. A study of the interpreting strategies is sociolinguistic in nature, exploring participant intentions and the processes used by interpreters to convey such intents, words and ideas.

In this paper, I address the strategies that interpreters use in question and answer legal discourse when working with spoken English and American Sign Language. Data will reveal that there are strategies and approaches to discourse management that interpreter's use that appear to be appropriate in legal contexts. I begin by reviewing earlier descriptions of text analysis, interpretation as interaction, the use of specific linguistic cohesion strategies and their influences on this study. I then describe the expression of cohesion by using specific strategies that function as linking devices, followed by a discussion of what this study helps us to understand about interpretation.

## **Methodology**

This study explores interpretation from the "interpreting as text" and "interpreting as activity" that Wadensjö (1998) addressed in her work on interpreter-mediated conversations. The study takes a descriptive approach to interpretation data that is situated in legal discourse in the institutional setting of a courtroom. The discourse event examined involves participants dealing with witness testimony, which is dialogically organized by the use of questions and their subsequent answers. Within the context of the legal setting, the parties are creating their own context, in order to present their perspectives. The Deaf witnesses wanted to present their perspectives on the events that led them to the court proceedings. Crown Attorneys wanted to lead the witnesses through their narrative and to emphasize the critical details of the case. Alternatively, the defense lawyer wanted to cast doubt on the witnesses credibility and to downplay some of the events being relayed by the witness. These intents and the courtroom setting shaped the context of interaction, and added to the challenge that the interpreter's faced in ensuring participant's goals were met and the interpretation represented the meaning being woven together by the participants. Given this set of complexities, the research question that framed this study was:

*What strategies are adopted by interpreters when dealing with participant's questions and answers in legal discourse using ASL and English?*

Witter-Merithew (2002) in her work entitled Techniques and Considerations for Lines of Questioning in Legal Discourse Events identified several linguistic techniques available to signed language interpreters for creating cohesion within legal discourse and realizing participant goals and intents. This present study examined the data to determine presence or absence of the interpretation techniques suggested by Witter-Merithew, and to see what strategies interpreters are using in actual interpretations. The techniques that Witter-Merithew articulated were *narrative weaving*, where a portion of the previous question is brought forward in the response; *response marking* which refers to marking a specific question form to indicate the specific type of response that is being elicited; *framing at the syntactic or discourse levels* which reflects the strategy of providing a clear frame of reference or context for topic; and *cultural adaptations*, which included couching, (use of the term or phrase paired with a brief explanation of meaning), generalizing (determining an inherent concept that is common to most people and expressing it as a generalization), comparing (identifying a parallel reference and using it as a comparison) and exemplifying (providing multiple examples of the concept to establish the broadest semantic range possible). The current study explored how and when these strategies emerged in natural, spontaneous interpretation taking place in courtroom, if at all.

The data were examined by both the principal researcher and also by a Deaf consultant who is a native signer and functions as an ASL instructor and Deaf interpreter.

## **Data**

The current study draws upon data from five videotaped samples of legal discourse in which interpreters were working between English and ASL. Each of these events surrounded criminal trials involving Deaf participants. Four of the trials were Canadian mock criminal trials conducted as part of an earlier study (Russell, 2000) and the fifth trial occurred in United States of America. The Deaf participants in all of the trials have ASL as a first language, which they acquired at an early age—at least by age five. All of the participants consider themselves members of a Deaf community, and others in the Deaf community also consider them as members. All are adults between the ages of 18 - 55. The interpreters in the four Canadian trials are all nationally certified interpreters, possessing the Certificate of Interpretation from the Association of Visual Language Interpreters of Canada (AVLIC) and they have had experience and training in legal settings. The interpreters in the American trial are also nationally certified from the Registry of Interpreters for the Deaf and have had prior experience and training in legal settings. Interpreters worked in teams of two for each trial.

Each of the trials included interpretation of expert witness testimony and witness testimony, and each of the discourse events examined was framed using question and answer discourse, revealing narrative structures that presented information, offered a chronological explanation for events and emphasized personal perspectives. All five trials included Judges, lawyers, interpreters, witnesses who were Deaf and non-deaf, and none of the discourse was scripted. Rather, it was natural discourse that emerged in the context of the legal event. The mock trials were conducted in the moot courtroom of a Faculty of Law, where the videotaping equipment was built into the walls and was not visible to participants, and hence did not hinder their ability to participate in the event. The American trial also used video recording equipment that was set up

in the body of the courtroom. In the United States it is common for trials to be videotaped when a signed language is one of the languages in order to have an original record to refer to, while in Canada it is not yet current practice. The researcher was not present in the courtroom during any of the trials.

## **Analysis**

I will begin with some overall impressions of the data, prior to offering examples from the trials.

The American Trial: All of the interpretation was provided using simultaneous interpretation and both interpreters showed an average processing or lag time of three to five seconds when working from English to ASL. Despite the fact that the Deaf participant is a user of American Sign Language the interpreters presented the interpretation using English-like signing, often referred to as transliteration or transcoding. This transcoding linguistic behaviour did not allow for restructuring into ASL and therefore there were almost no examples of linking strategies to build a cohesive narrative. The participants were using grammatical and pragmatic devices that created cohesion in the dialogue, however the interpretation data show only two examples of the strategy of narrative weaving during two hours of testimony. The interpretation was not successful in representing conventional ASL discourse and nor did the interpretation realize the goal of representing the created meaning between the participants. The Deaf participant watching the interpretation was not fluent in English sign systems, and therefore likely had very little access to the interpretation at the grammatical and pragmatic levels, nor access to the interaction in which the meaning was being created. The question to be asked is how did this form of interpretation service impact the Deaf persons access to the judicial proceedings. This may be a case where there is the *appearance* of linguistic access because of the presence of the two interpreters, but in reality, the interpretation has likely *prevented* the Deaf person from playing a role in the proceeding. There were times in the trial that the Judge stopped speakers in order to slow down the turn-taking of speakers, however the interpreters did not play an active role in managing the communication process. There were two instances where one of the interpreters asked for clarification, and based on the information provided by the Judge, offered an interpretation that linked the utterances in a cohesive manner, thus using the strategy identified by Witter-Merithew (2002) as narrative weaving.

The Canadian Trials: During the Mock Trials, some of the strategies proposed by Witter-Merithew emerged in both the consecutive interpretation and the simultaneous interpretation data, however the use of the strategies was more consistently represented in the consecutive interpretation data. During the two trials that were conducted using simultaneous interpretation, the interpreters processing time averaged between eight and fifteen seconds. Among the four interpreters, the interpreter who had Deaf family members used more of the linguistic strategies than did the three other interpreters who do not have Deaf family members.

The following are examples of the interpreting strategies that emerged from the data:

**Narrative Weaving:** Portion of response from previous question(s) into current question

*Example 1:*

- Lawyer using spoken English: At anytime did you indicate to the accused he would be welcome to join you in bed?
- Interpreter working into ASL: **THAT AFTERNOON OR NIGHT - BEFORE YOU GO BED - YOU TELL JASON COME BED WITH YOU?**

This was the most common strategy used in direct evidence in the four mock trials and by contrast it was not seen at all in the data from the American trial. In the above example the interpreter provides context that situates the time frame in the afternoon or night, drawing on contextual information that was present in earlier evidence. A further example of narrative weaving represented the strategy of the interpreters using words that link meaning among utterances by providing a common subtext. In the example below the interpreters have chosen to repeat information used by the Deaf person in order to create cohesion among the utterances.

*Example 2:*

- Deaf witness: ME SURPRISED WOKE UP HE WAS THERE!
- Interpreter: When I woke up I was surprised to find him there.
- Lawyer: Did you know who this person was?
- Interpreter: **YOU WOKE UP SURPRISE+++ PERSON WHO?**

**Response Marking:** Marking a specific question form to indicate the specific type of response that is being elicited, whether it is open, semi-open, or a closed question

In the following example we see that the interpreter provide information that tells the addressee that the answer desired is a short response. The interpreters made this decision based on their awareness of the linguistic and cultural differences between the two languages. One of the interpreter's reported after the event that she made this decision knowing that the Deaf person may choose to interpret the question as asking for all of the details of the day prior to the event being highlighted in the testimony. It is not uncommon for some Deaf communicators to provide a long, detailed narrative that is typically used by ASL communicators, while this type of answer can be annoying to participants who do not share the same discourse style, and are expecting a short answer to this question. The interpreter indicated that this strategy allows for Deaf persons to engage in the telling of their narrative in the format that is expected by the listeners in this context.

*Example 1:*

- Lawyer: How did it happen that you were at the cabin that day?
- Interpreter: YOU DECIDE GO CABIN THAT DAY - TELL **MESSAGE-SHORT** HAPPEN BEFORE ARRIVE CABIN

In the next example the interpreters explicitly mark the question specifically as a "yes or no" question type, based on their knowledge of the question type being used and the institutional setting, offering insight into the discourse conventions that may not be known to the Deaf witness.

*Example 2:*

- Lawyer: I suggest to you that you had had too much to drink, had sex with my client, and when your boyfriend found out, you accused my client, right?
- Interpreter: I SUGGEST - TELL - YOU DRUNK, GO-AHEAD SEX WITH MY CLIENT, BOYFRIEND

FOUND OUT, MAD, YOU DO-DO? ACCUSE MY CLIENT. ME, RIGHT? **YES OR NO**

**Framing:** *Providing a clear frame of reference or context for topic*

*Example 1:*

- Lawyer: You trusted that Mr.. B. could accurately judge his own level of intoxication?
- Interpreter: YOU THINK B-NAME SIGN - GOOD JUDGE - KNOW HIMSELF **DRIVE CAN, DRIVE CAN'T YOU CONFIDENT?**

In the previous example, the interpreter refers back to an earlier topic of driving to buy more alcohol. The driving reference was not present in the source message, but had come in the previous questions, so by bringing it forward in the question currently being asked the interpreters created cohesion and a context for the question.

The next example presented showed the interpreters using discourse framing as the strategy to provide the Deaf witness with the larger context surrounding an objection stated by the defense lawyer, and the ruling provided by the Judge. This strategy appears to be similar to what Wadensjö (1998) suggests that interpreters do when they are interactionally oriented, coordinating both the interpretation at the textual level and at the level of observing and coordinating the blend of language and interaction in the courtroom. In this example the interpreter presents a summarized interpretation of the interaction among lawyers and the Judge when dealing with the objection, using her body and eye gaze as a way of signaling to the Deaf participant that the dialogue did not include them directly, then returning to address the Deaf witness directly once the Judge stated his ruling.

*Example 2:*

- Defense Lawyer: The statement Ms. M gave to the police is not in evidence and if it is to be examined then it must be tendered as an exhibit.
- Crown Attorney: It was part of the Crown's production.
- Judge: I have no problem with the question and Ms. M can respond as she wishes to whether she said or didn't say that to the police officer.
- Interpreter: Presented a summarized interpretation of the dialogue while shifting her body away from direct eye contact with the witness, then turned back to witness...**OBJECTION TURN DOWN. QUESTION PERMIT...NOW QUESTION...**

**Cultural Adjustments:** *Provide background information to create frame of reference for culturally rich concepts*

The following example shows the interpreter framing a piece of discourse so that it will make sense to the English speakers who are not initiated about Deaf people and some of the technical devices, in this case a text-based telephone known as a TTY, that are commonly used by Deaf persons. This example appears to reflect the interpreter's orientation towards understanding that the specific lexicon of the Deaf witness may not make sense to those unfamiliar with Deaf people and adapts the utterance to allow for cultural bridging across the languages and cultures, thus achieving meaning-making among the participants.

*Example 1:*

- Deaf Witness using ASL: AT CABIN NO TTY FRUSTRATING CAN'T PHONE-TO POLICE EASY? NOT! FRUSTRATING+++
- Interpreter: There is no **telephone communication device for the deaf** at the cabin, so I couldn't phone out, which made it very hard to reach the police. It was so frustrating.

**Couching:** *Use of the term or phrase paired with a brief explanation of meaning.*

In the following example the Deaf witness had been asked if she smelled marijuana being smoked at the party she was referring to in a previous utterance.

- Deaf Witness: I HAVE A DEAF NOSE
- Interpreter: I don't have a well-developed sense of smell - I like to say I have a "deaf nose" - meaning that my nose doesn't work well just like my ears don't work to hear...

In the above example the interpreter seems to know that in this context if she only deals with the utterance at the text-level, and presents the phrase "deaf-nose" without any explanation that its meaning will be lost on the participants. The interpreter chooses to add the necessary context that makes the utterance appropriate in achieving the intent of the Deaf witness to answer the question in a playful manner using a form commonly used in ASL.

The final categories of cohesion strategies described by Witter-Merithew (2002) are:

**Generalizing:** *Determining an inherent concept that is common to most people and expressing it as a generalization (Ex: a residential school: a school where the students and teachers all used the same language)*

**Comparing:** *Identifying a parallel reference and using it as a comparison (I viewed being deaf as an ethnic identity - like someone who is Jewish or Italian)*

**Exemplifying:** *Providing multiple examples of the concept to establish the broadest semantic range possible (I was educated in a method that focused on teaching students to speak, to use speech, read lips, to strive to be like the majority society, to use language in the same way as ....)*

In the data described in this study there were no examples of these three techniques found in any of the five trials. It may be that the content of the trials didn't include cross-cultural and linguistic references that were culturally embedded to the degree that may need this strategy. Alternatively, it may be that when the interpreters used simultaneous interpretation that there was simply no time to make such adjustments. However, these strategies were also not observed in two of the trials in which the interpreters used consecutive interpretation. Further insight into this issue comes from an important comment made by an interpreter after the interpretation. She felt that the strategies of generalizing, comparing and exemplifying were more like "explaining" to her and didn't fit her view of interpretation. As Wadensjö (1998) suggests, this comment may reflect the interpreter's stance about interpretation as text and words, versus interpretation as activity. As well, it may be that this category of strategies are reflective of "ideal" interpretation and that in practice the strategies are not used to the degree that is theorized about by educators and interpreters.

## Discussion

What this data seems to suggest is that interpretation in practice uses a blend of both text-based analysis strategies and strategies that reflect an awareness of the intentions of participants and the meaning that is creating during a given interaction. While the strategy that Witter-Merithew (2002) called narrative weaving was the most commonly used in the four Canadian trials, it was only seen twice in the American trial. This may be due to the particular American interpreter's orientation and understanding of what interpretation means in a legal setting. If the interpreter holds a view that interpretation in a legal context revolves only around the words (text-based interpretation) then this may account for the lexical-based, word-sign transcoding behaviour. An alternate view holds that interpretation is an activity that assumes the inclusion of context found in the words, participants' intents and the larger institutional context ( Wadensjö, 1998). The Canadian data show interpreters who seem to place a special emphasis on using American Sign Language while the American data had interpreters who provided transliteration throughout the interaction – the equivalent of spoken English to English-coding. While it was not possible to interview the American interpreters about their perspectives on interpreting, it is clear that the transcoding is also due in part to the very short processing time used by the interpreters when presented the simultaneous interpretation. Regardless of the views held by the interpreter, the impact of the decision on the Deaf consumer was that they could not follow the court proceedings, nor be a true participant in the interaction.

The interpreters in the Canadian study were interviewed after providing the interpretation and three out of the four interpreters reported they felt uncomfortable with the response marking strategy, despite using it in their interpretation. The interpreters questioned if the court would be satisfied that this was equivalent interpretation or if it would be seen as leading the witness in ways that non-deaf witnesses are not led.

By contrast, one interpreter said she felt the response making strategies provided the implied question form in an explicit manner and witnesses could ignore or choose not to respond to the cue, as can a non-deaf witness. These divergent perspectives highlight the multiple views held by interpreters about natural language use, the constraints of interpretation and what it means to provide equivalent forms of interpretation.

When the Deaf witnesses were interviewed after the mock trial experience, the commented that they had observed the differences among interpreters when using discourse framing and response marking in both the direct and cross-examination

When the strategies were used consistently, Deaf witnesses commented they followed the questions easily and they knew what was expected, which then allowed them to feel more confident that their testimony would be understood. The witnesses also commented that the interpreter with the most natural, convention use of ASL was more comfortable to watch throughout the proceedings, and the interpreter they hoped would be working with their testimony from ASL to English.

The strategies put forth by Witter-Merithew (2002) provide us with excellent material to consider as interpreters and educators, and it would appear from this data set that interpreters with strong understanding of conventional ASL appear to use many of the strategies without an awareness of it. There are other times that interpreters use the strategies but with a sense of "guilt" for using them in a legal context where they fear courts will not accept this form of interpretation. Clearly, there are opportunities for further discussion among practitioners and the consumers of our services about the nature of interpretation and how best to realize the

intentions and communicative context of participants. The data also showed the absence of some of the cultural adaptations suggested by Witter-Merithew (2002), which may highlight the discrepancy between what we teach interpreters to do, and the reality of their work.

In the data presented here, it would appear that some of the interpreters in these interactions are managing the complexity of interpretation that Wadensjö (1998) has drawn our attention to: focusing on the participant's understanding of various parts of the interaction, the content of the language used, and the progression of the interaction, drawing on the context that participants bring and the meaning that is created throughout the interaction.

## **Summary**

This study has presented data that shows ASL-English interpreters managing two orientations simultaneously, namely the text or words and ideas, as well as the contextual variables introduced by the participants and the specific environment of the legal domain. Like spoken language interpreters, it would appear that some of the signed language interpreters participating in this study are also balancing participant intentions in helping them to make informed decisions about how best to present the interpreted dialogue.

The study has also raised the question of the appearance of access to the judicial proceedings versus meaningful access for Deaf participants. When the process of interpretation yields work that is transcoding in nature it doesn't allow Deaf participants who require ASL as the language of meaning to be true participants in the interaction. This has tremendous ramifications for Deaf participants and for the legal system.

It would also appear from the data that we can conclude that some of the strategies put forward by Witter-Merithew (2002) are in fact being used by ASL-English interpreters and the use of such strategies serves to promote cohesion within the narrative and to create meaningful exchanges between parties that do not share the same language and culture. These conventional linguistic strategies that are currently taught to interpreters working in legal settings, could also be taught to interpreters working in other settings. The strategies that did not appear in the data also provide a starting place for conversations among interpreters and educators about why the strategies may not be widely used in real interaction.

As we continue to follow Pochhacker's (2004) suggestion of examining linguistic interactions from "language use in context" and "discourse as a situated process" perspectives (p. 203), we find that the study of interpreting strategies used in natural discourse can lead to a greater understanding of the complexity of interpretation and the kinds of decisions interpreters make when dealing with interpreted interaction. Further studies on interpreted interaction will foster our understanding of the nature of interpretation when working in naturally occurring signed language discourse.

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Debra Russell  
6-102 Education North  
University of Alberta  
Edmonton, Alberta, Canada T6G 2G5  
Email: Debra.Russell@ualberta.ca