

Court Interpreting for Deaf Persons: Culture, Communication, and the Courts

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Introduction

At some time, most people experience what it is like to be unable to hear—no sound from the television, or loud background noise that interferes with hearing what someone is saying. Imagining deafness helps a hearing person understand what it is like for people who lose their hearing after growing up in a hearing world; it does not equal the experiences of people who are born deaf or who become deaf early in life. The absence of the sense of hearing interferes with communication in ways that are more profound than simply not being able to hear.

This article offers a basic look at several interrelated issues on deafness and interpreting for the deaf that judges and court managers should know about to ensure justice and fairness in court proceedings that involve deaf or hard-of-hearing individuals: (1) cultural issues related to deafness, (2) the mechanics of visual modes of communication, (3) the skills and services professional interpreters have to offer the courts, and (4) problematic practices that experienced interpreters for the deaf routinely encounter and urge the courts to remedy.

Cultural Issues Related to Deafness

In the United States there is a large community of deaf individuals who have their own visual language, American Sign Language (ASL). Most members of this “culturally deaf” community are *prevocationally* deaf; that is, they suffered hearing loss before the end of adolescence.¹

Interestingly, persons who are *audiologically* deaf do not necessarily consider themselves part of the deaf community. This group is much larger than the culturally deaf community and consists of individuals who, despite being deaf or hard of hearing, maintain a primary language and cultural affiliation with the oral-language-speaking community. These individuals almost always developed their hearing impairment or deafness later in life or were raised as children by hearing parents who did not expose them extensively to members of the culturally deaf

community. Their inability to hear does not mean that they are unable to communicate through oral language. Deaf individuals who are members of the hearing society are more likely than culturally deaf individuals to rely on languages or modes of communication other than ASL. This group of individuals, having grown up in the hearing world, tends to prefer the society of hearing persons to that of the culturally deaf community. Hearing aids, cochlear (inner ear) implants, and intensive training in lipreading are among the adaptive mechanisms that help late-deafened people preserve their established ties to the hearing community.

Among deaf individuals who are not members of the culturally deaf community, the phrases *hearing impaired* or *hearing disabled* may be preferred to the word *deaf*. These phrases include hard-of-hearing people as well as people who cannot hear at all. But their use also sometimes reflects an effort to avoid labeling and negative connotations traditionally associated with culturally deaf persons.

Because members of the deaf culture are “outsiders in a hearing world,” they are often suspicious and wary of people who can hear. That wariness and distrust stems from a history of misunderstanding and injury to members of the deaf community by the wider dominant hearing society. For example, within the wider hearing society, there is a strong inclination to equate spoken communication skills with intellectual capacity. In general, culturally dominant hearing people tend to consider oral language as the only *legitimate* form of communication.

Since culturally deaf individuals lose their hearing ability early in life, they experience difficulty speaking English fluently and articulately or are unable to do so. Consequently, culturally deaf individuals who cannot communicate in spoken Standard English are stigmatized as unintelligent or mentally defective by people who can hear.

Deaf individuals and interpreters for the deaf are aware that such harm can be inflicted even in the relatively enlightened setting of a court of law.² Without a proper understanding of

1. Paul C. Higgins, “Outsiders in a Hearing World,” *Urban Life*, Vol. 8, No. 1 (April 1979), Sage Publications, p. 5.

2. For example, in a letter addressed to the interpreter coordinator for the state of Michigan, Attorney Roger A. Lange recounts examples of parental rights of deaf parents being terminated almost immediately after the birth of the child, solely on the basis of their deafness. He also describes a felony case in which child abuse was alleged, which “degenerated into a trial by innuendo, myth and stereotype, and included a pattern of attacks on ASL and deaf culture by the prosecutor. During this case, a deaf witness was portrayed as ‘stupid.’ The prosecutor equated deaf family dynamics with a mother to be feared by the child. The prosecutor portrayed the defendant as a person making outlandish statements

visual modes of communication, judges and lawyers can unknowingly destroy the fairness of court proceedings by constraining the work of a court interpreter for the deaf. Some judges and lawyers do not understand the seemingly strange physical behavior of deaf persons as they “speak,” and they restrict an interpreter’s use of facial grammar or body shifting. This seriously interferes with communication during the proceeding, and facts may be lost or distorted. Such rulings limit the effectiveness of the interpreter’s professional language skills and, thus, limit the effectiveness of the court.

One compelling example of profound and hurtful misunderstanding is evident when judges and lawyers ask, and at times order, ASL interpreters to refrain from using facial grammar and body movements that are essential to ASL language. Such requests and orders are issued on the grounds that the movements are “distracting” to other court participants.³ Such rulings reinforce the deaf person’s sense that the courtroom is a hostile environment rather than a neutral forum.

Trust is an important concept within deaf culture. Most interpreters can hear and are commonly perceived by members of deaf culture to be part of the hearing society, which does not understand them. Deaf defendants, who must rely on the services of the interpreter in what they already perceive as a hostile atmosphere, are especially vulnerable to mistrust, since the court system is dominated by people who can hear.

For individuals who are members of nonwhite racial or ethnic backgrounds, these problems are compounded, because the vast majority of court interpreters are white. The number of interpreters from various racial and ethnic backgrounds needs to be increased significantly. The dynamics of race and ethnicity, as well as the interactions between hearing and deaf cultures, can profoundly undermine the trust between the interpreter and the deaf person. This, in turn, inhibits the very thing that is essential to any court proceeding: communication. What follows is a basic overview of the visual modes of communication used by deaf individuals and interpreters for the deaf.

because she used common signs for ‘I heard,’ which no deaf person associates with hearing or vocal speech.” Letter dated December 29, 1992, copy on file with William Hewitt.

3. This problem was strongly emphasized, with numerous examples, in interviews conducted by staff of the National Center for State Courts with M. J. Bienvenue and Gay Koenemann, both highly skilled interpreters. Ms. Bienvenue is deaf and a member of the deaf culture; Ms. Koenemann is a hearing person who is “wise” in the ways of deaf culture.

Modes of Communication

What people who cannot hear have in common is that they rely on “information they can see” to communicate.⁴ Beyond that, it is difficult to generalize. The preferred or most effective means of communication for deaf people varies widely, often depending on the age at onset of hearing loss, the severity of the loss, how the person has been educated in language after the hearing loss, and, importantly, what languages or modes of communication people in a given setting have in common.

Judges and other court officers should at least be aware of the several recognized methods or modes of communication used by deaf and hard-of-hearing individuals. These include speech reading or lipreading; gesturing (the most rudimentary and limited form of communication); written communication, including computer-aided real-time transcription; and sign language.

Sign language is the use of visual signs to convey information and ideas. There are three basic categories of sign languages, each with its own range of utility, depth of lexical meaning, and level of complexity: (1) independent languages such as American Sign Language; (2) speech-equivalent-signing systems; and (3) finger-spelling systems. The most advanced forms of sign language are not just manual representations of oral language; they are independent languages, such as ASL, British Sign Language (BSL), Danish Sign Language (DSL), and others. When combined with facial grammar and body shifting, as in ASL, sign language conveys rich meaning, humor, pathos, and many other subtleties of communication.

Sign languages have a structure of comparable complexity to spoken and written language and perform a similar range of functions. There are rules governing the way signs are formed, and how they are sequenced—rules that have to be learned, either as children (e.g., from deaf parents) or as adults (e.g., when working with deaf persons).⁵

Beyond the issues surrounding the complexities of any single sign language is the fact that there are many sign languages just as there are many oral languages.

4. Rita Jo Scarella, SCS “Professional Sign Language Interpreters,” *New Jersey Lawyer*, Spring 1987 (No. 119, May 1987).

5. David Crystal, *The Cambridge Encyclopedia of Language* (Cambridge: Cambridge University Press, 1987), p. 220.

As a result of linguistic change and independent creation in different parts of the world, no single sign language exists. There are many such languages (e.g., American, English, French, and Danish), and they are not mutually intelligible. They use different signs and different rules of sign formation and sentence structure. Even within an area that uses the same spoken language, the differences may be so great as to preclude mutual comprehension—as happens, for example, between British and American Sign Language.⁶

There are many forms of sign language, but among them, ASL appears to have the greatest inherent capacity for effective and efficient communication.

ASL is a highly developed language with a structure that can be described in its own terms. About 4,000 signs are used in ASL. The vocabulary, grammar, idioms, and syntax of ASL are completely different from English. The linguistic units and structure of ASL consist of facial expressions, body posture, and shapes and movements of hands, arms, eyes, and head.

There are two categories of *facial grammar* (often incorrectly referred to as facial expressions). The first category refers to the messages that are conveyed by different parts of the face. The upper part of the face conveys syntax and the type of sentence that is being communicated (e.g., interrogative, declarative, or imperative). The lower part of the face conveys descriptors, such as adjectives and adverbs. Finally, the shifting of the head, torso, and eyes can designate subject, object, and prepositions as well as references to things present and not present. The second category of facial grammar is referred to as effective display or emotions. This is the manner in which humor, anger, sadness, or even sarcasm is communicated.

Given the range and complexity of ASL and other sign languages, it is clear that culturally deaf people need neither adaptive mechanisms nor the assistance of interpreters when they communicate *with each other*. Members of the culturally deaf community view deafness as a “disability” only in contexts in which communication is required with individuals who are *not* members of the deaf culture, such as a courtroom. The range and complexity of ASL also makes it apparent that interpreters need to be extremely knowledgeable and adept at recognizing and overcoming barriers to communication. Therefore, because ASL is the primary language of the American deaf community, learning ASL is prerequisite for certification as an interpreter for the deaf.

6. Id.

Certified interpreters for deaf persons can help minimize the effects that common misconceptions about sign languages can have on court proceedings. These misconceptions interfere with the best practices that courts should follow to facilitate communication with a deaf person. Contrary to popular belief, a person who is fluent in ASL is more likely able to participate fully, and more efficiently, in court proceedings than a hearing-impaired person whose primary language is English and who does not also know ASL. For example, misconceptions about ASL such as the following are not uncommon among court officials who have some knowledge of court interpretation: “American Sign Language is not word-for-word, and should cause concern as to its use for a verbatim record.”⁷

The foregoing comment illustrates two prevalent misconceptions, the first about language and interpreting generally; and the second about ASL. The first is that proper interpretation between *any* two languages should always be “word for word.” Despite legal language that is often phrased to the contrary, acceptable interpretation from one language to another is *often* not “word for word.” In fact, some word-for-word translations between languages result in nonsense or, at least, in the loss or distortion of meaning. Idiomatic expressions are good examples. One of the specific abilities that interpreters are tested for is whether they can *conserve meaning* in such situations, rather than resorting to nonsensical or misleading word-for-word interpretations. The second and most widely unchallenged misconception is that ASL is some form of “shorthand English” rather than a separate, distinct, and fully developed language. There are signing systems that mirror spoken English language, which are referred to as speech-equivalent-signing systems.

Speech-equivalent-signing systems are less sophisticated than ASL. Generally, speech-equivalent-signing systems were developed with the aim of bringing visual communication closer to the structure of spoken language, particularly oral English. Manually Coded English, Seeing Essential English, Signed English, and other similar systems were designed to help educators communicate with and improve the academic achievement of deaf students in the “hearing world.” Each of these systems aims to reflect the structure and word order of English, but they do so in different ways; for example, the ways in which hand signs are formed.

7. Gary Cramer (Court Reporter, Los Angeles Municipal Court), personal correspondence with William Hewitt, December 22, 1992. The comment is intended to support an assertion that

However, it must be clearly understood that speech-equivalent signing systems are not equal to ASL or any other separate, distinct, and independent sign language.

Another system, which is less sophisticated than either ASL or speech-equivalent signing, is referred to as “finger spelling.” Finger-spelling systems are typically used in classrooms with young children rather than in social interactions among deaf adults. In this system, which can be applied to any language that has an alphabetic writing system, each letter of the alphabet has its own sign. The main strength of finger spelling is its scope and flexibility. It is quick to learn and can be used to sign an indefinite number of words. It is particularly useful for signing proper names, which are not given their own signs in other sign systems. However, it is a slow system to use, rarely exceeding 300 letters per minute (about 60 words), and it cannot be used at all unless one is able to spell (a problem for young children, who also have difficulty controlling the hand shapes required). It is also difficult for receivers to distinguish the hand shapes at a distance. If the rate of signing speeds up in response to rapid speech, the signer will begin to omit letters and the receiver may begin to lose comprehension. Finger spelling is best thought of as an auxiliary signing system, a convenient bridge between spoken or written language and sign language.⁸

Judges and other court officials should also be aware of other modes of communicating with deaf or hard-of-hearing individuals, particularly if the deaf person is not capable of using sign language. A deaf person may or may not be able to speech read (commonly referred to as lipreading). Under normal conditions, deaf people will be unable to comprehend most of what is being said if they rely solely on speech reading because only 26 percent of speech is visible on the lips.⁹ Facility in speech reading also varies, as does facility in any mode of communication: given two equally intelligent people with identical training, one may be an excellent speech reader, the other poor.

Hearing-impaired persons who prefer speech reading as their chosen mode of communication may require “oral interpreters,” professionals specifically trained to present

communicating with deaf individuals with the use of computer-aided real-time transcription should be preferred over the use of ASL.

8. Crystal, *op. cit.*, p. 225.

9. New Jersey Department of Human Services, Division of the Deaf and Hard of Hearing, “Deafness and Interpreting,” October 1991, p. 4.

information through mouth movements only. Oral interpreters do not use sign language; instead, they use clear mouth movements and rephrase words that are difficult to speech read. For example, the words *green* and *red* sound different, but they look the same on the lips. If the words *red* and *green* appeared in the same sentence or paragraph, an oral interpreter might replace the word *red* with *maroon*, *mauve*, *dark pink*, or another synonym for red.

Written communication is a way to communicate with a deaf person, providing that the deaf person knows English (or some other oral and written language) *and can read*. Because English may be a second language for many deaf persons, some have limited competence in writing and reading English. In these cases, the use of concrete images and simple sentence structures is important. A deaf person will usually want important information, such as appointment dates and times, confirmed in writing.

Computer-aided real-time transcription (CART) also can be used to communicate with the deaf. A skilled court reporter keys the shorthand notes of spoken language into a stenotype machine, and the words spoken in court are concurrently translated into English text. CART systems send the shorthand output from the stenotype machine directly into a personal computer that translates the shorthand instantaneously and displays it on a monitor. This makes it possible for courtroom observers to read a written version of courtroom speech while the record is being made. It also makes it possible to print the transcript at a moment's notice. This method of communication is both efficient and effective for hearing-impaired individuals who are comfortable reading English.

Courts need to be vigilant, however, to avoid a misuse of CART. CART work is usually done by court reporters. If CART communicative assistance is done by the same person who is the official court reporter, special arrangements will be required for the hearing-impaired person to communicate with counsel during the proceeding. The official reporter cannot both make the record and assist the deaf person. This is not a problem if a special reporter is brought in solely for the purpose of assisting the hearing-impaired person.

Gesturing is the most rudimentary form of visual communication. While sign language can express the same range of meaning as speech, gesturing is far less systematic and comprehensive. There are very few hand gestures, and these are used in an ad hoc way to express a small number of basic notions.

Some deaf people have never forged meaningful ties in either the culturally deaf or the oral language cultures. They have learned so little language that they are identified as “minimally language competent” (MLC). MLC deaf people have *no* systematic means of communicating ideas or feelings through the use of conventionalized signs. They have no ability to communicate in American Sign Language or in Sign English, they have no lipreading abilities, and they cannot read or write English. MLC people communicate through their own idiosyncratic gestures, which are usually unfamiliar to anyone but the MLC deaf person, his or her family, and others with whom the MLC deaf person has substantial contact. MLC individuals may know isolated signs or be able to write or recognize a few specific written English words, but they have no meaningful understanding of books, telecaptioning, or newspapers. Their world is restricted to personal experience; therefore, communication is subject to the confines of a limited and personal frame of reference. Consequently, the ways in which MLC deaf people communicate vary widely, reflecting modes specific to each individual’s frame of reference.

The inability of MLC people to communicate meaningfully excludes them from membership in both the deaf and hearing communities. While some MLC people may not be totally isolated from a deaf community, others may have no contact with a deaf community whatsoever.

The court must give special consideration in communicating with MLC people. Even when special consideration is given, however, MLC deaf people are often unable to participate in court proceedings or assist counsel to any meaningful degree, given their limited ability to understand a concept, process, or action. In fact, it is unlikely an MLC deaf person will understand the purpose of an oath; the function of the judge, attorneys (including the distinction between a defense attorney and prosecutor), or the jury; the roles of ancillary courtroom personnel, including interpreters, courtroom clerks, or court reporters; or the meaning and practical significance of probation, parole, and diversionary programs.

Establishing meaningful communication with MLC individuals, especially in a court, requires extraordinary measures that are beyond the scope of this article. However, professionally trained interpreters for the deaf can identify MLC individuals and advise the court

about the best ways to establish communication.¹⁰ The use of “relay” or intermediary interpreters will always be required. Relay interpreters may be either lay people who have special knowledge of the “home signs” of an MLC person, or they may themselves be deaf individuals who have special training and skills in both ASL *and* in other modes of visual communication.

Certification of Interpreters for the Deaf

As is true in the case of foreign language interpreters, courts often compromise best practice and use individuals who have no formal training in legal procedure or interpreting for deaf persons. This adds to the distrust and alienation that deaf persons generally feel when they are thrown into unavoidable communication with hearing society and culture. This mistrust affects communication and the quality of evidence during the proceedings. The irony here is that using an incompetent interpreter could result in having a deaf person *talk down* to the court. For example, if a deaf person determines that the interpreter is minimally skilled or incompetent, he or she may try to help the interpreter by avoiding the use of linguistically complex ideas and sentences. The deaf person may also attempt to aid the interpreter by leaving out details, subtleties, nuances, or even subtextual information, knowing that the interpreter is likely to either misunderstand what they are communicating or render an inaccurate translation or miscommunication.

A problem related to using unqualified interpreters is that intermediary interpreters are not used enough when they are needed. Most highly skilled interpreters will request or insist upon having intermediate interpreters when necessary, but less skilled professional interpreters often will not. It is suspected that less skilled interpreters may believe that the use of a relay interpreter could be misconstrued as a sign of incompetence.

Unfortunately, there is an extreme shortage of *competent* court interpreters for the deaf. Because many states establish requirements for the qualifications that interpreters for the deaf must possess, certified, highly skilled interpreters are in great demand. Advance notice of

10. For detailed information about working with MLC individuals, see Sharon Neumann Solow, “Interpreting for Minimally Linguistically Competent Individuals,” *Court Manager*, Spring 1988, and Court Interpreting, Legal Translating, and Bilingual Services Section of the New Jersey Administrative Office of the Courts, *Working with Minimal Language Competent People in Court* (draft document), May 1989.

several weeks is usually required to secure the services of a qualified interpreter. The longer the proceeding, the more notice is required.

The most common requirement that states have established for interpreters for the deaf is certification by the National Registry of Interpreters for the Deaf (NRID). NRID certification is based on a rigorous evaluation of the candidate's interpretation skills and knowledge of the NRID Code of Ethics by a group of professional peers. The NRID certification system establishes minimum levels of achievement, representing a starting point for interpreters, varying according to certification area and level of competence. Certified interpreters are expected to improve their skills by attending workshops and training seminars and through frequent use of sign language.

Current NRID certificates include the following:

Certificate of Interpretation (CI): ability to interpret between ASL and spoken English in both sign-to-voice and voice-to-sign.

Certificate of Transliteration (CT): ability to transliterate between signed English and spoken English in both sign-to-voice and voice-to-sign.

A series of other certification classifications have been used in the past by NRID. While these certificates are no longer being awarded under the new testing system, they continue to be recognized as valid assessments of specialized skills.¹¹

Many states refer to the NRID certification in their laws, and NRID certification is generally recognized in the policies of agencies that are responsible for establishing standards for the qualification of interpreters for deaf persons. In Massachusetts and New Jersey, for example, NRID certification is the basis for general interpreter certification. When an individual who does not hold a valid NRID certificate applies to work as an interpreter for the deaf in these states, the agencies screen the interpreters using their own screening standards. Standards for referrals to interpret in court and legal settings usually exclude interpreters who do not hold an NRID certificate. For example, standards for court and legal interpreting referrals in Massachusetts require:

11. For a detailed review of these certificates, see New Jersey Department of Human Services, *op. cit.*, pp. 15-17.

- NRID certification,
- graduation from an interpreter-training program (preferably a two- to four-year bachelor degree program),
- several years of interpreter experience, and
- completion of specialized, intensive legal interpreting training.

California's *Guidelines for Approval of Certification Programs for Interpreters for Deaf and Hard of Hearing Persons* defines a qualified court interpreter as someone who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for the deaf and hard of hearing.¹² The certification process stresses a comprehensive knowledge of all aspects of the court interpreting process, including:

1. Translation and transliteration competency that includes:
 - a. American Sign Language competency
 - b. English Language competency
 - c. Competency in interpreting language and terminology common to court proceedings
2. The role, function, and techniques for working with an intermediary interpreter or other intermediaries, or for working as an intermediary interpreter
3. The understanding of social, cultural, and linguistic aspects of the local, state, and national communities of deaf people
4. The role and function of court interpreters, including court etiquette
5. The various court proceedings that commonly and frequently require the use of interpreters
6. A code of conduct and professional ethics

Conclusion

12. The guidelines referred to in this article are based on an undated report obtained from the Judicial Council on February 24, 1993.

Judges routinely contend with cultural differences among people who come before them, and they cannot be experts on all cultures. However, judges are better prepared to ensure the fairness and integrity of court proceedings when they understand the effect that cultural factors have on how people communicate. In particular, judges will recognize the importance of both securing the services of properly trained sign language interpreters and relying on them for advice regarding how communication with deaf persons can best be effected.

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