

VIEWS

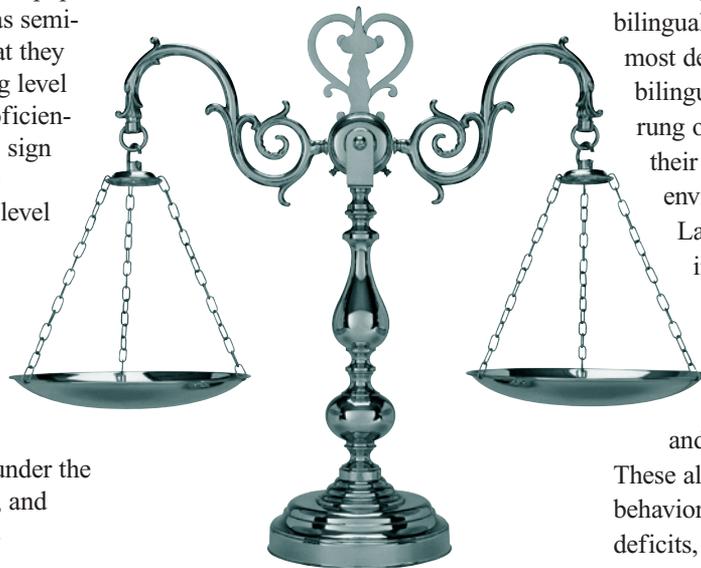


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The Deaf Suspect/Defendant and the Bill of Rights

Jean F. Andrews, Ph.D., Associate, Michigan; McCay Vernon, Ph.D., Supporting, Florida; and Michele LaVigne

About 30 percent of the deaf population can be classified as semilingual, which means that they are functionally illiterate (reading level grade 2.9 or below) and lack proficiency in English and, in most cases, sign language. These individuals face extraordinary problems at every level of the criminal justice system—arrest, interrogation, court hearings, incarceration, parole, and probation (Miller, 2001). Due to their poor linguistic skills and resulting lack of general information, they have been denied basic rights that are guaranteed under the U.S. Constitution, Bill of Rights, and other constitutional amendments (Hoopes, 2003; Cullop, 1999).



The Challenge for Legal Interpreters

Legal interpreters are all too familiar with the unique psycholinguistic, educational, interpreting, and cultural issues that cause legal problems for deaf semilinguals. However, they may not be aware of the complex linguistic structures contained in legal documents police officers use when asking deaf suspects or defendants to sign away important legal rights. These documents can yield information that the police would not have access to if the deaf individual fully understood his rights against self-incrimination.

Due to the complexity of the documents and the linguistic limitations of semilingual deaf individuals, many of the documents cannot be interpreted into sign

language in a manner that would enable these deaf suspects/defendants to fully understand them. It is the ethical responsibility of the legal interpreter to inform the police and/or the court of this critical information.

The documents referred to in Tables 1 and 2 are intended to assure suspects or defendants their legal rights against self-incrimination. However, these documents are largely incomprehensible to deaf semilingual clients.

Who is the Deaf Semilingual Individual?

Many deaf individuals are bilingual in that they use both ASL and English in their everyday lives (Grosjean, 1998). Semilingualism, or lack of proficiency in

both languages, is the initial stage of bilingualism. It is a life-long struggle for most deaf adults to go up the ladder of bilingualism. Many stay on the lower rung of semilingualism throughout their lives. The reasons are biological, environmental, and educational.

Language abilities, including reading ability, can be affected by not only intelligence, but also the etiologies that resulted in hearing loss such as meningitis, rubella, cytomegalovirus, and/or maternal substance abuse.

These also cause impulse disorders, behavior problems, memory processing deficits, dyslexia, attention deficit disorder, visual problems, and especially language and learning disabilities (Vernon, 1969; Vernon & Andrews, 1990).

Environment and education play critical roles too. Most deaf individuals are born to hearing parents and are exposed to ASL at various times of their lives from childhood to late adulthood. Semilingual deaf individuals often are educated in oral programs or deaf education public schools and are not exposed to ASL until their early or late teens when they meet other deaf adults. They may sit in classes where language and the curriculum are not accessible to them. Today, with ASL/English bilingual methods in schools, this is changing to some degree (Andrews, 2003). But for the most part, the educational system has not accommo-

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Table 1: Five Documents Used to Waive U.S. Constitutional Rights

Legal document and description	Amendment providing legal rights	Reading level required	Vocabulary difficult for a fifth grader or above (Micro Power & Light, 1995)
<i>Waiver of Search:</i> states that an individual gives up his constitutional rights not to be searched	<i>Fourth Amendment</i> (rights of people to be safe from unreasonable searches and seizures, including arrests or taking of belongings)	13.6	<i>aforementioned, authorized, conduct, consent, constitutional, evidence, hereby, hereinafter, located, mentioned, otherwise, permission, police, premises, promises, property, search, signature, states, thorough, threats, understanding, violation, voluntarily, waiver, warrant, witness, written</i>
<i>Blood and Breath Test:</i> Given to a suspect when under arrest for an offense arising out of acts alleged to have been committed while he/she was operating a motor vehicle or watercraft in public place while intoxicated	<i>Fourth Amendment</i>	13.5	<i>admissible, alcoholic, alleged, beverage, certify, denial, detectable, intoxicated, offense, penalties, presumed, prosecuted, refusal, statutory, subsequent, suspension, consequences, hearing, inform, operating, permit, specimen provided, severe, whether</i>
<i>Guilty Plea Questionnaire</i> Right to a trial, and to the requirement that a guilty plea must be made knowingly, intelligently, and voluntarily	<i>Fifth Amendment</i> applies to the right to remain silent, the right against self-incrimination. <i>Sixth Amendment</i> the right to an attorney	9.7	<i>plea, penalty, defendant, attorney, convicted, testify, felony, waiver, signature, restitution, questionnaire, probation, mandatory, constitutional, voluntary, subpoenas, revoked, prosecution, presumptive, plaintiff, firearm, exclusion, cross-examine, confront, complaint, deportation, diploma, disorder</i>
<i>Miranda Warning</i> Reminds suspect of right to remain silent; suspect cannot be forced to self-incriminate; the right to an attorney	<i>Fifth and Sixth Amendment</i>	7.0	<i>right, remain, silent, anything, against, attorney, afford, proceed, lawyer, request, understand, questioning</i>
<i>Polygraph Exam</i> Rights against self-incrimination	<i>Fifth Amendment</i>	13.2	<i>hereby, submit, witness, coercion, contemporaneously, deception, detection, duress, examiners, harmless, interview, liability, polygraph, recordation, sexual, signature, submit, voluntarily</i>

dated itself to the visual learning language needs of deaf children by providing them with early models of ASL and Deaf culture (Vernon, 1969; Vernon & Andrews, 1990).

Legal Interpreting Considerations

Police officers, judges, lawyers, and other court officials usually assume that, by providing a sign language interpreter, deaf individuals will automatically understand everything that happens in verbal interactions with the police and in court (LaVigne & Vernon, 2003). Unfortunately, nothing could be fur-

ther from the truth. Because of the language deprivation many deaf individuals may have, they might not be able to understand the interpreter. A significant percentage also lack background knowledge, concepts, and legal terms found in court documents and courtroom procedures. Even a skilled, certified court interpreter may not be able to convey the legal concepts and consequences to deaf adults who are semilingual (Vernon & Miller, 2001). In these cases, a certified deaf interpreter may be needed to translate legal concepts for a deaf client.

A certified deaf interpreter (CDI) is a deaf or hard-of-hearing

Table 2: Six Legal Documents Protected by Due Process

Legal document and description	Reading level required	Difficult words
<i>Order Setting First Court Appearance:</i> right to be properly notified of court appearance. Failure to show up warrants an arrest.	9.7	<i>Montgomery, hereby, defendant, warrant, surety, attorney, sureties, rearrest, notified, misdemeanor, lieu, forfeited, arraignment, Conroe, Davis</i>
<i>Ancillary Condition of Bond: Installation Order Ignition Device:</i> the defendant has the due process right to notice. The requirement for notice is because there are penalties for failure to comply with bond conditions.	12.8	<i>Offender, installation, above-named, probation, interlock, ignition, tamper, subjects, pursuant, noncompliance, Montgomery, impractical, ethyl, deep-lung, circumvent, calibration, ancillary</i>
<i>Ignition Device: Reporting Instructions:</i> explains to individual that he or she must use device (breath analyzer).	10.8	<i>Interlock, probation, Montgomery, ignition, ancillary, defendant, warrant, supervision, siris, signature, installation, guardian, dragegar, custody, court, corrections, comply, acknowledgement</i>
<i>Financial Liability Disclosure:</i> if a person is in custody of police and has requested medical treatment, when he/she enters a facility, the police do not accept financial responsibility for any treatment that is rendered to the person.	11.7	<i>Administrator, authorizations, Beaumont, comply, construed, custody, disclaimer, intermediary, implied, liability, render, therefore, validity, verify, withhold</i>
<i>Release for Liability for Services Rendered:</i> an individual agrees not to hold the police liable for any damages incurred to his/her property while an officer is performing a gratuitous act of changing tire, starting a car, unlocking a car, or other actions in a search.	10.6	<i>Description, gratuitous, hereby, incurred, liable, recipient, rendered, specify, tire, undersigned</i>
<i>Notice of Supervision of Temporary Driving Permit:</i> person's license is suspended because person refuses to give a specimen or person has given a specimen and it shows he/she is under the influence of alcohol or controlled substance while driving a vehicle.	10.6	<i>Austin, birth, bureau, confiscated, copy white, copy yellow, description, detectable, driver's, faxing, intoxicated, later, notified, offense, officer's, presumed, prohibiting, reinstatement, signature, specify, statutory, submit, suspension, waiver, watercraft</i>

individual who has proficient communication skills and general interpreter training. In addition, the CDI has specialized training and experience in the use of gesture, mime, props, drawings, and other tools to enhance communication. The CDI has knowledge and understanding of deafness, the Deaf community, and Deaf culture and also possesses native or near-native fluency in American Sign Language. CDIs work in teams with a hearing interpreter. The hearing interpreter translates the English voice to ASL, then the CDI breaks down the ASL using gestures, mime, etc. (RID, 2005). In some cases, having a CDI in the courtroom is not enough. Some deaf individuals may require extensive training in legal concepts before their trial so they will be able to understand legal documents that are conveyed to them in sign language.

Judges and district attorneys often misunderstand the role and function of the CDI in the courtroom. They may believe that the CDI is leading or coaching the deaf suspect, but, in reality, the CDI is meeting the deaf client's linguistic needs by expansion (i.e., breaking down the concepts in a visual fashion and providing examples, analogies, etc. that are comprehensible to the deaf client) (LaVigne & Vernon, 2003). The CDI assists the deaf client in being "linguistically present" in the courtroom (Mathers, 2005). To be linguistically present often requires a CDI as guaranteed by the sixth amendment of the Constitution (*United States vs. Negron*).

Semilingual deaf people will habitually nod their heads after reading a complex legal document and even place their signature on it when they do not understand it. One reason for this is that

Deaf people do not want to appear stupid by revealing that they cannot read well. The CDI can assist the Deaf client, the court, and the attorneys in clarifying whether or not the Deaf client is comprehending the proceedings. When the Deaf client simply acquiesces to police and legal authorities without understanding what the charges are, which is typical with semilingual clients, it can be fatal to the deaf person's freedom and a violation of their rights (LaVigne & Vernon, 2003).

Legal Documents: Legal Register and Discourse

Deaf semilinguals are often asked to sign their name on legal documents they do not understand. These legal documents are filled with legal register, a highly specialized vocabulary with specific semantic, syntactic, and discourse structures. Legal register is so complex linguistically that even bright college students have to engage an attorney to explain it to them. Even lawyers may disagree on the meanings of documents in legal register.

In Tables 1 and 2, specific legal rights are matched with each document that obtains a waiver to the right and data is presented on the document's readability levels, vocabulary level, and syntactic and discourse structures. These legal documents are ones that defendants are most likely to be asked to sign. A computerized readability and vocabulary assessment software program (Micro Power & Light, 1995) was used that takes five-to-seven readability formulas and applies them to the documents. We averaged these readability levels for each document.

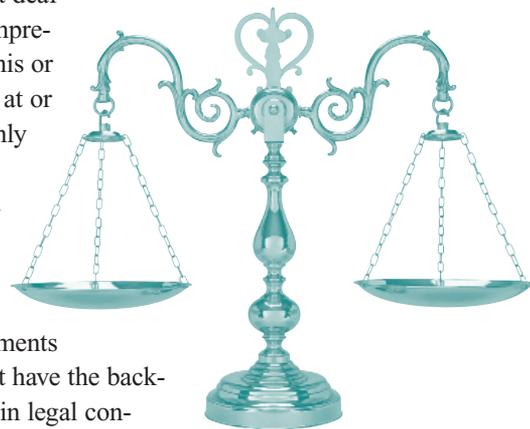
Table 2 deals with the Fifth and Fourteenth Amendments. The part of the Fourteenth Amendment that is relevant here has to do with the fact that to imprison, fine, or have his life taken, the person must be found guilty of a crime in court by due process of law (Cullop, 1999).

Syntactic and Discourse Complexities

In addition to high reading levels, the 11 legal documents are filled with complex clauses and sentence structures that are impossible for the deaf semilingual to comprehend. They contain verb processes, determiners, pronoun references, conjunctions, the passive voice, gerunds, infinitives, relative clauses, nominals, if-then structures, conditionals, and time concepts—all of which the deaf semilingual readers are unable to read (Quigley, Wilbur, Power, Montanelli & Steinkamp, 1976; Vernon, Raifman & Greenberg, 1996; Vernon, Steinberg & Montoya, 1999). The documents contain idioms (for example, under arrest, the taking of a specimen, arising out of acts) and words with multiple meanings (such as hearing, under, right, silent, and present).

Discourse structures refer to cohesive links in the document that tie the meanings together. For example, each sentence builds on the next sentence for the overall meaning (or macrostructure) of the document. Each sentence is dependent on others in the document. By using conjunctions, comparisons, substitutions, among other inter-sentence relationships, the meaning of the document makes one coherent whole meaning (Halliday & Hasan, 1976; Crystal, 2004).

Tables 1 and 2 show that most of these documents are written at a high school reading level or higher, making them nearly impossible for most deaf semilinguals to comprehend, especially if his or her reading level is at or below 2.9. It is highly doubtful that deaf semilinguals would adequately understand a sign language translation of these legal documents because they do not have the background knowledge in legal concepts, nor do they have skills in ASL to understand a signed translation (Seaborn, 2004). One of the most important problems legal interpreters must deal with is that ASL does not have signs for many abstract legal terms and fingerspelling the words is essentially useless to a semilingual deaf person.



Recommendations for Legal Interpreters

Instructors in interpreter training programs as well as legal interpreters may wish to collect legal documents, such as the documents in Tables 1 and 2, and practice interpreting these abstract legal concepts in preparation for working with deaf clients in the criminal justice system. Using a CDI to break down these concepts may be useful as well. These documents and others could be translated on DVD or placed on the web for court and police officials to use in the event a deaf person is asked to waive their rights. Viewing mock trials can also assist the deaf with understanding legal register.

Even with all of these efforts at remediation, many of these documents will never be made understandable to many semilingual deaf defendants or suspects. When this is the case, it is incumbent on the interpreter to inform the court and/or police of the situation. Often, this can result in the deaf individual being declared linguistically incompetent to stand trial. Also, evidence gathered as a result of the deaf defendant having signed a document he or she did not understand, must be deemed inadmissible in court (Vernon & Miller, 2001).

Jean F. Andrews is a professor of deaf education in the Department of Communication Disorders and Deaf Education at Lamar University in Beaumont, Texas. McCay Vernon is a professor emeritus of McDaniel College in Westminster, Maryland and chairman of the board of the National Deaf Academy in Mt. Dora, Florida. Michele LaVigne is a professor of law at the University of Wisconsin Law School in Madison, Wisconsin. For additional information, contact Jean Andrews at jandrews47@aol.com.

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References

- Andrews, J. (2003). Bilingual Language Approaches for Deaf Students. *Speech and Hearing Review*, 3, 277-310.
- Crystal, D. (2004). *The Language Revolution*. Malden, MA: Polity.
- Cullop, F.G. (1999) *The Constitution of the United States*. England: Penguin Putnam, Inc.
- Grosjean, F. (1998). Living with two languages and cultures. In I. Parasnis (Ed.). *Cultural and Language Diversity and the Deaf Experiences*. (pp. 20-37). New York: Oxford University Press.
- Halliday, M.A. K, & Hasan, R. (1976). *Cohesion in English*. London: Longman.
- Hoopes, R. (2003) *Interrogating Deaf Suspects*. In Lucas, C. (Ed.). *Language and the Law in Deaf Communities*. Washington, D.C.: Gallaudet University Press.
- LaVigne, M. & Vernon, M. (2003). An Interpreter is Not Enough: Deafness, Language and Due Process. *Wisconsin Law Journal*, 5.
- Mathers, C. Personal Communication, August 8, 2005.
- Micro Power & Light Co. Readability Software (1995). Micro Power & Light Co., 8814 Sanshire Avenue, Dallas, Texas, www.micropowerandlight.com.
- Micro Power & Light Co. Vocabulary Assessor Software (1995). Micro Power & Light Co., 8814 Sanshire Avenue, Dallas, Texas. www.micropowerandlight.com.
- Miller, T. (2001). *The Forensics Study of Deaf Criminal Offenders in Texas*. Unpublished doctoral dissertation. Beaumont, Texas.
- Miller, T. & Vernon, M. (2003). Deaf Sex Offenders in a Prison Population. *Journal of Deaf Studies and Deaf Education*, 8(3), 357-362.
- Quigley, S., Wilbur, R., Power, Montanelli, D. & Steinkamp, M. (1976). *Syntactic Structures in the Language of Deaf Children*. Urbana, Ill.: Institute for Child Behavior and Development.
- Registry of Interpreters for the Deaf (RID). Certified Deaf Interpreters (CDI). Last retrieved, November 25, 2005. <http://www.rid.org/cdip.html>
- Seaborn, B. (2004). *The Comprehension of the Miranda Warning in English and American Sign Language by Postsecondary Deaf Adults*. Unpublished dissertation, Lamar University, Beaumont, Texas.
- Vernon, M. (1969). *Multiply Handicapped Deaf Children: Medical, Educational, and Psychological Considerations*. Washington, D.C.: Council for Exceptional Children.
- Vernon, M. & Andrews, J. (1990). *The Psychology of Deafness: Understanding Deaf and Hard of Hearing People*. White Plains, N.Y.: Longman.
- Vernon, M. & Miller, T. (2001). Linguistic Incompetence to Stand Trial: A Unique Condition in Some Deaf Defendants. *Journal of Interpretation*, 99-120.
- Vernon, M. Raifman, L.J. & Greenberg, S. (1996) *The Miranda Warnings and the Deaf Suspect*. *Behavioral Science and the Law*, 14, 121-135.
- Vernon, M., Steinberg, A. & Montoya, A. (1999). Deaf murderers' clinical and forensic issues. *Behavioral Science and the Law*, 17, 495-516.
- Wisconsin v. Piddington. (2001). State of Wisconsin v. Michael S. Piddington, Criminal Case #No.99-1250 CR. 2001 WI24; 241 Wis, 2d 754; 623 N.W.2d 528;2001 Wisc. LEXIS 103.

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