

## **Accessibility of Interpreting Services for Deaf Prison Inmates at Arrest and In Court: A Matter of Basic Constitutional Rights**

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### **Abstract**

Self-reports of 72 profoundly deaf, signing inmates incarcerated in the state of Texas post-ADA revealed that only 27.8% had been provided a sign language interpreter at arrest. Furthermore, almost 20% reported that they received no interpreting services in the courtroom, despite being charged with felony offenses. The average educational achievement of these 72 individuals was second grade. Specific barriers to due process that deaf suspects and defendants face when interacting with the criminal justice system are stereotypes that all deaf people can speechread (read lips) and read written English proficiently enough to preclude the use of sign language interpreters. The legal significance of linguistic incompetence in this population is addressed in this paper, as well as the ramifications that can occur when criminal justice professionals fail to recognize this condition.

### **Introduction**

There are currently no known tracking systems in use by individual states that record meaningful information about the amount or quality of contact between deaf people and the criminal justice system (Vernon & Greenberg, 1999). While much has been written about the provision of sign language interpreters as a due process right of deaf defendants, little is known about the degree of actual compliance with the Americans with Disabilities Act (ADA) when it comes to specifics such as the provision of interpreters in law enforcement and courtroom settings (Berko, 1992; McAlister, 1994; Smith, 1994; Wood, 1984).

Estimates of the percentage of deaf people with criminal legal problems who have been provided interpreters by the criminal justice system have been obtained primarily by reviewing court records to locate requests for interpreting services (Alston, 1997; Whalen, 1981), and by examining the records of interpreting agencies to determine the number of requests for interpreters in arrest and courtroom settings (Alston, 1997). An analysis of 22 post-ADA state and federal court cases involving deaf criminal defendants revealed that only 14% of deaf suspects had been provided sign language interpreters during the arrest procedure (Miller, 2001). These few, localized studies indicate that while interpreter use in the courtroom has been increasing significantly

since the passage of the ADA, it remains inconsistent and inadequate across the nation (Miller, 2001).

The purpose of this study was to learn how many individuals from a deaf prison inmate population had been provided with interpreters during their arrest and courtroom proceedings. A corollary goal of this study was to interview several deaf inmates in order to gain insight into specific communication barriers that they experienced when interacting with the criminal justice system.

### Method

This research involved an entire population of male and female deaf state prisoners incarcerated in Texas. It focused specifically on access to interpreters during the arrest procedure and throughout court proceedings. The deaf inmates were located in a centralized location because the Texas Department of Criminal Justice (TDCJ) groups all of its profoundly deaf offenders in one prison facility to promote efficacy in service provision. The Texas population of profoundly deaf offenders number about 85 inmates daily, the majority of whom were male.

Participants in the study consisted of 72 male and female deaf signing inmates incarcerated during a 90-day period in 2001, at which time this study was conducted. The following criteria were used to select participants: 1) each inmate was a sign language user, 2) each inmate had been processed by the criminal justice system post-ADA, 3) each inmate was in a disciplinary status that permitted him or her to volunteer to participate (not in administrative segregation, the infirmary, etc). 4) all 72 subjects had severe-to-profound hearing losses and used sign language as their primary mode of communication.

Each study participant provided a self-report regarding the availability of interpreters at their time of arrest and when in court. Of these participants, three were selected for an interview conducted in sign language in order to discuss their arrest and/or courtroom experiences. The results of these interviews are provided as case studies.

### Results

Of the 72 deaf participants with criminal convictions, 27.8% (20) reported that they had received the services of an interpreter during their arrest, and 83.3% (60) reported that they were provided with an interpreter in court. It is important to note that these arrests and trials were for felony offenses and not misdemeanors, meaning that most of the deaf individuals were facing significant prison time. Over 65% of the study participants (68) with educational data available scored below the third grade level on the Test of Adult Basic Education (TABE) at entry

into the prison system (Table 1). The average TABE score of this group of 68 was grade 2.5. The TABE is the educational evaluation and placement test used in the Texas Department of Criminal Justice. A TABE score represents an average score of an individual's educational achievement in reading, math, and language. The crimes of these deaf inmates were predominantly violent offenses, a category that includes sexual assaults (Table 2). Sentences ranged from one to 80 years.

**Table 1. Educational Achievement Levels of Deaf Inmates at Entry into Prison, n=68**

<b>Educational Achievement</b>	<b>Number</b>	<b>Percent</b>
Sixth grade or higher	7	10.3%
Third to fifth grade	16	23.5%
Below grade level 2.9	32	47.1%
Inmate was unable to understand testing materials or refused to participate in testing	13	19.1%

Case Study: Robert

Robert is a 40-year-old white male who has been profoundly deaf since birth. His primary means of communication is American Sign Language (ASL). Prior to incarceration he operated a classic memorabilia business from his home. He is currently incarcerated for the sexual assault of two minor females. This is his only criminal conviction. At the time of his arrest Robert was reading at the sixth grade level.

When arrested an interpreter was provided, but Robert did not understand the purpose of the Miranda Waiver when he signed it. This frequently occurs in cases involving deaf suspects because of the difficulty associated with interpreting the Miranda Warnings (Vernon & Coley, 1978; Vernon, Raifman, & Greenberg, 1996). Because Robert did not understand his right to remain silent and to have a lawyer, he signed a confession at the time of his interrogation. He states that if he had understood these rights, he would have made different choices.

While reader's views on the Miranda Warning may vary, the issue is that if it is a right provided to hearing suspects, it should also be provided to those who are deaf.

Robert was released from custody pending a court date on a \$10,000 bond. However, another \$5,000 bond had been issued. As a result, police later apprehended him again at a local grocery store. No interpreter was provided this time. As Robert knew that his original bond had already been paid, he did not understand why he was back in custody. He spent the night in jail and went before a judge the following morning. Again, no interpreter was provided. Robert assumed that a second bond had been issued against him when a police officer present in the courtroom finger spelled "T-W-O B-O-N-D" to him. Obviously, the lack of an interpreter at this hearing was a violation of his rights, as was the failure to verify that he understood the Miranda Waiver that he had signed. Partly as a consequence of these denials of his rights, Robert is now serving 15 years.

**Table 2. Criminal Offenses of Deaf Inmates, n=72**

Offense	Number	Percent
Violent <sup>1</sup>	47	65.2%
Drug	14	19.4%
Property	9	12.5%
Other <sup>2</sup>	2	2.7%

<sup>1</sup> Includes sexual assaults

<sup>2</sup> Includes sex crimes such as indecent exposure

Case Study: Jesse

Jesse is a 28-year-old African American male who has been profoundly deaf since birth. He is a monolingual ASL user. Prior to incarceration, he was a low level drug-dealer. Jesse is currently serving a 15-year sentence for burglary of a habitation and is believed to be

involved in gang-related activities. He has a juvenile record and had previously been incarcerated several times. His reading level is below first grade.

At the time of his arrest Jesse had been smoking fry (marijuana cigarettes saturated in embalming fluid) on a daily basis. Consequently he has little memory of what occurred when he was taken into custody, although an interpreter was present. Initially, in court, Jesse was expected to speechread (read lips) what was being said during the proceedings. He was able to convince the court that he could not understand spoken English and that a qualified sign language interpreter was required. Jesse remained in custody for several days until an interpreter could be scheduled to facilitate communication. He was satisfied with the quality of interpreting services that he received in court.

#### Case Study: Steve

Steven is a 22-year-old white male who has been profoundly deaf since birth. He has limited communication abilities in both ASL and English. Prior to incarceration Steven lived with his mother and was a client at a local mental health agency. Steven is currently serving a 12-year sentence for indecency with a child. This is his second incarceration. Steven reads at the second grade level.

Steven maintains that the police arrested him because he was “walking by and looking in the window” of the home where the crime occurred. There was no interpreter present at his arrest, at which time he became emotionally agitated and stabbed himself with a pencil. In court Steven was not provided with an interpreter, although he had requested one. Note writing was used to communicate with him. Additionally, he signed several documents in court. During our interview he was unable to explain the meaning or purpose of any of them.

#### Discussion

Over 20 years after the enactment of the ADA a majority of study participants reported that they did not receive interpreting services at the time of their arrests. This may be largely due to a lack of training of police officers regarding the importance of accommodating deaf suspects and how to provide accommodations. As earlier indicated, during courtroom proceedings most study participants reported that they had received interpreting services. The courts appear to have a greater awareness of and concern for the communication rights and needs of deaf defendants than do the police. However, even in court, nearly 20% of deaf inmates in the study reported that they were denied their right to

an interpreter. One reason for this may be due, in part, to a critical shortage of sign language interpreters who are qualified to work in legal settings (Miller & Vernon, 2002). These cases generally involved uneducated deaf defendants with low socioeconomic status. As a result it may have been assumed that there would be no repercussions for not supplying an interpreter. Many uneducated deaf persons are unaware of their right to have an interpreter, but certainly their lawyers or public defenders should be aware of this right.

In order for deaf defendants who use sign language to receive their constitutionally-guaranteed due process rights during criminal legal proceedings a sign language interpreter is required (Miller & Vernon, 2001; Vernon & Miller, 2001). However providing an interpreter at arrest or in the courtroom does not always assure that a deaf person will understand the charges or be able to participate in his own defense (Wisconsin v. Hindsley, 2000; Miller & Vernon, 2001). It is up to the court and the interpreter to make certain that the deaf person has sufficient knowledge of what transpires in court and what the Miranda Waiver really means (Vernon & Raifman, 1997; Vernon, Raifman, Greenberg, & Monteiro, 2001).

If, even with an interpreter, deaf defendants cannot understand their charges or participate in their own defense they must be declared linguistically incompetent to stand trial, just as if they were mentally ill or mentally retarded (Vernon & Miller, 2001). This concept of linguistic incompetence is unique to semilingual deaf defendants and often has to be explained to judges and other officials who are unfamiliar with deafness and its linguistic implications for uneducated deaf individuals. For deaf defendants capable of learning the terminology required to understand trial proceedings or a Miranda Waiver, their linguistic incompetence can sometimes be remedied by providing instruction on legal terminologies and courtroom procedures. However these levels are often well above the capabilities of many deaf individuals (Table 3). Once a deaf defendant has been prepared linguistically he is no longer incompetent. He can then return to court and participate in the proceedings (Davis, 1993; Vernon & Raifman, 1997).

The significance of linguistic incompetence in deaf defendants has been upheld in the courts (Jackson v. Indiana, 1972; People v. Lang, 1975, and People v. Lang, 1978; Steven Holmes v. State of Florida, 1986). In addition to these and other legal cases acknowledging the presence of linguistic incompetence in deaf defendants, a series of recent articles have appeared in forensic journals, publications on deafness, and in the Journal of Interpretation, all recognizing and addressing linguistic incompetence in deaf defendants (Vernon & Raifman, 1997; King &

Vernon, 1999; Miller & Vernon, 2001; Vernon & Miller, 2001; Vernon, et al., 2001). These papers are intended to educate legal and sign language interpreting professionals about the necessity of providing qualified interpreters in court in order that a majority of deaf defendants can actively participate in the proceedings per their Constitutional rights.

**Table 3. Reading and Vocabulary levels Required to Understand the Four Major Types of Criminal Trials**

Type of Trial	Reading Level Required (Based on Trial Transcripts)
Jury Trial	6.9
Guilty Plea	9.2
Sentencing Hearing	9.2
Motion for Suppression Hearing	8.4

As indicated earlier, since the passage of the Americans with Disabilities Act in 1990, accommodations are usually made for deaf defendants in court. Such accommodations do not appear to be the practice with arrest procedures. Indeed, most law enforcement and criminal justice professionals are not aware of linguistic incompetence as a relevant issue that impacts 20-40% of deaf defendants. This condition renders defendants unable to understand the Miranda Waiver, their legal charges, or to participate in their own defenses (Vernon, Steinberg, & Montoya, 1999). For example, of the 68 cases of deaf inmates in Texas for whom we obtained data on educational achievement, over 65% had scores below the third grade level (Table 1). Each of these offenders is probably linguistically incompetent to stand trial, yet each was convicted and sentenced to terms ranging from one to eighty years without the issue of linguistic competence ever being raised. It is our position, based on research on the language level of the typical jury trial, plea and sentencing hearing, or motion for suppression hearing, that a reading level of at least third grade level, as measured by standardized testing, is required for a deaf person to understand the language used in court trials. To try and convict such individuals represents a miscarriage of justice for

the 65 percent of deaf men and women now serving time in Texas prisons and other correctional facilities throughout the United States (Vernon, et al., 1999).

Another consideration involves the Miranda Waiver (Vernon, et al., 1996). The Waiver is extremely difficult to interpret in sign language and requires a sixth-to-eighth grade reading level to understand in its printed form (Vernon & Coley, 1978). The majority of deaf inmates in this study were not provided an interpreter at the time of arrest. This is a critical issue because it is at the time of arrest that the questioning of suspects often begins. Prior to questioning a deaf suspect, by law, a qualified interpreter must first present the Miranda Waiver to most deaf suspects using sign language, otherwise, evidence gathered from the questioning is not admissible in court. When no interpreter is present law enforcement officers will often expect the deaf person to speechread (read lips), or ask the deaf person to read and sign the Waiver. As the best deaf speechreaders can decipher only 5% to 25% of what is said, speechreading is clearly not an acceptable way to administer the Miranda Warnings to profoundly deaf signing individuals (Vernon & Andrews, 1990). In such situations the police should refrain from questioning the deaf suspect until a qualified sign language interpreter is obtained.

In the event that no sign language interpreter was present and a printed form of the Miranda Warnings was provided to a deaf defendant, based on an average second grade educational achievement of these deaf inmates, the warning is incomprehensible to over half of them, and probably to only about ten percent of them (Table 3). Any evidence gained during the questioning of these individuals should have been deemed inadmissible by the judges administering these cases (Vernon, et al., 1996).

In previous cases involving deaf defendants in states other than Texas, failures to administer the Miranda Waiver to deaf suspects in an understandable format have resulted in the evidence gathered being determined inadmissible and individuals being released or convicted of a lesser charge. Three of these cases were homicides (Maryland v. Barker, 1977; Oregon v. Mason, 1980; State of Minnesota v. Gary Lester Goering, 1992).

Under the ADA, it is the legal obligation of law enforcement and the courts to provide a sign language interpreter to deaf suspects and defendants whose primary language is ASL. Police officers, judges, and attorneys must be ever vigilant in recognizing linguistic incompetence and in taking the proper measures to ensure that deaf suspects and defendants receive their constitutionally guaranteed due process rights.



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