

Deaf People and the Law

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There are many completely deaf and hard of hearing people who, for a variety of reasons, do not use sign language to communicate. This includes those who lose their hearing late in life and a small group who are totally reliant on lip reading or who, because of isolation, never learn sign language.

Those who rely on sign language, however, make up the deaf community. The deaf community has its own culture which is isolated from the rest of American society. As with many sub-cultures, the deaf community's culture is defined by its language. For purposes of this article, "deaf" means members of the deaf culture.

The hearing lawyer is faced with many challenges when dealing with a deaf client, witness, or juror, based on lack of understanding or plain misunderstanding of the culturally deaf. The first rule in dealing with deaf people is to remember that they are unique individuals just like hearing people. The second rule is that to insure effective communication with deaf people, you must have a qualified sign language interpreter. Do not rely on handwritten notes. It is a mistake to assume that all interpreters are equally able to interpret for a deaf person. When a deaf client makes an appointment, the first order of business is to provide, at your expense, a capable interpreter for the deaf person. Most deaf people have interpreters that they use regularly and those persons should be used. When the preferred interpreter is not available, one should be selected who is registered. The most skilled interpreters belong to R.I.D., Registry for the Interpreters for the Deaf. There are many interpreters who do not have this level of competence. Most deaf use *American Sign Language* (ASL). Each local deaf community is likely to have many signs that are dialectical. In the Springfield-Urbana area, for example, the sign language letters "SP" mean "Springfield" and "UO" mean "Urbana". These signs would not be readily recognized elsewhere in the state. A further complication comes from the fact that the schools teach a different sign language called *Sign Exact English*. This language has some utility in teaching English, but is ignored by deaf students when they are outside the classroom.

Family members should not be used as interpreters. For one thing, regrettably, many family members of the deaf are not very good signers themselves. More importantly, the attorney-client privilege is difficult to maintain if a relative, especially a parent, is present when the lawyer needs to ask questions like, "Have you ever used drugs?" This problem is greatly attenuated by the use of a professional interpreter whose code of ethics forbids revealing the confidences of their client.

Deaf etiquette dictates that the lawyer should look directly at his client when asking questions, not at the interpreter. Don't shout; your client is deaf. You do not need to speak too slowly since the interpreters are fast. Learn a few signs such as "thank you" and "good" to build rapport with your client. Good interpreters say it takes 5 years to become well qualified.

Once you have mastered the foregoing simple rules, you will realize that most people don't attempt to follow them at all, and this can create issues in your case. A confession from a deaf person in a criminal case should always be suspect. Deaf people often try to please, and like many of us who don't always understand what someone else says, they frequently go along with what is suggested. Police do not always obtain the proper interpreters and should be challenged when they do not. Jurors and judges also need to be educated about the deaf. Some judges are hostile to interpreters. An interpreter is to translate what is said. He is not to transliterate or repeat each word in order. If the witness signs, "Car truck hit", the interpreter must be allowed to say, "The car hit the truck" or "The truck hit the car" depending on the meaning the witness gives. No language, including *American Sign Language*, has the same syntactical structure as English. In many languages the verb, even a transitive verb, is the last word of a sentence. That does not mean the English translation should require the interpreter to use the verb at the end. ASL does not have signs for the words "a", "an", "and", "the", which after all are ordinarily vapid parts of speech in English. The interpreter can place them in the sentence to give proper translation. The judge may need to have this explained carefully or he may insist on an awkward or incomprehensible translation.

At trial, the court should appoint interpreters of the witness' choosing. It is often necessary to have two interpreters since signing all day long is physically demanding. The fees will add up. They will probably be \$25.00 to \$35.00 per hour or more. The court may not tax interpreter fees as court costs any more than it charges wheelchair-bound litigants for the use of the elevator. Under the Americans With Disabilities Act, 42 U.S.C. 12131, public entities including courts, 28 CFR 35.104, are required to furnish auxiliary aids to individuals with disabilities, 28 CFR 35.160. A sign language interpreter is an auxiliary aid to a deaf person, 28 CFR 35.104. A disabled person may not be charged for this service, 28 CFR 35.130(f). Under the Supremacy Clause of the Constitution, no state law may conflict with this provision.

Many deaf have Test Telephone Yoke (TTY) machines that will enable you to call them over a specialized telephone. This is an operator-assisted call that lets you speak while the operator types your communication to the deaf person. The deaf persons types his response, which the operator relays back to you. If your client has a TTY, you should call him instead of just leaving messages with his friends or relatives.

Deaf people are also increasingly exercising their right to jury service. A deaf juror who knows ASL is not incapable of understanding English nor is she unable to appreciate a witness' demeanor. An interpreter is allowed in the jury room to assist the deaf juror as long as he takes an oath not to participate in the deliberations himself. *People v. Guzman* (1990), 76 NY2d 1, 555 NE2d 259. If any party has advance knowledge that a deaf person will be called for jury service, an interpreter should be arranged for the juror before she arrives at court.

An excellent resource center for deaf issues is the National Association of the Deaf Law Center. Their telephone number is (301) 587-7730. A lawyer with compassion and a willingness to learn can be an excellent advocate for the deaf.