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## Linguistic Considerations of Deaf Litigants<sup>1</sup>

### FACT SHEET

It may come as a surprise to learn that deaf people you encounter in court may struggle understanding the interpreted proceedings. This is true because many deaf people do not use or understand English well and may not have fully mastered sign language either. Courts naturally expect that any sign language interpreter can effectively mitigate the language issues presented by deaf Americans. While this may be true with other languages, deaf users of American Sign Language (ASL) present different linguistic challenges for the courts and for court interpreters. This paper is designed to help you understand the unique circumstances of deaf Americans and how the process of acquiring language as children affects their use of it as adults.

Language learning normally starts in early childhood. Assuming easy access to language, the process is typically well underway by the time the child enters school. For deaf children, however, access to language is anything but easy. The critical window for learning language is considered to be prior to age seven. It has been estimated that only ten percent of deaf children are born into families with parents who are also deaf and are able to engage the deaf child in the process of natural language development during this critical time. Studies show that parental communication skill is a significant predictor for positive language and academic development in deaf children. However, the majority of deaf children born in America are born to parents who can hear and who do not know sign language. Most of these parents have no prior experience in communicating or living with a deaf individual and therefore are ill-equipped to address the unique language and communication needs of a deaf child. As a result, the majority of deaf children are deprived of exposure and access to a language-rich family environment.

As well, it is common for it to take several months or years before a deaf child is diagnosed as having a hearing loss. This delay impacts the use of various alternatives—such as the use of sign language—to develop the language and communication skills of a deaf child. Further,

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<sup>1</sup> Much of this fact sheet is adapted and derived from information contained in an amicus brief drafted by the same authors. The case was *Linton v. Texas*, No. 13-05-00668-CR (13<sup>th</sup> Dist. Corpus Christi) (Aug. 2006).

before parents can use sign language to communicate with their child, they first must learn the language themselves.

The result of these two factors—a lack of natural communication within their families and delays in finding alternative approaches to communication—is that deaf children commonly have tremendous language delays and enter the public school system significantly behind their non-deaf peers.

This delay in language is further complicated by the differing opinions of experts—such as physicians, pediatricians, audiologists, speech pathologists and teachers of deaf children—as to what is the most effective way to communicate with and educate a deaf child. Expert opinion includes perspectives that all deaf children should have their hearing amplified with hearing aids or implants, and/or all should be taught to speak and read lips, and/or all should be taught to use sign language, and/or any number of other combined approaches. In reality, determining the most appropriate approach for teaching language and communication skills to a deaf child depends on many factors—such as, the age at which the child loses his or her hearing, the amount of residual hearing the child may possess, the motivation of the family to learn and apply a systematic approach to communication with a deaf child (which might include learning sign language), and the ability and motivation of the deaf child. When these differing expert opinions are coupled with the sense of loss and devastation experienced by many parents upon learning that their child is not able to hear, the difficulty in raising a deaf child within a language-rich home and school environment is even further compounded.

Another factor that contributes significantly to language acquisition of deaf children is educational methodology. Education for the deaf confronts a central fact—it is the sense of sight instead of hearing which conveys language symbols to the person who cannot hear. For example, if the educational methodology involves the focus on teaching the child to learn to speak and read lips, the time required for such instruction can impact the time available to teach content knowledge in subject matter. So, instead of sitting in a language arts class, a child may have to divide time between the class and a session with a speech teacher who is teaching the child to say and understand a few words and sentences. Or, if the deaf child is placed into a mainstreamed public school classroom with an interpreter who is less than competent, he or she will continue to suffer from a lack of language-rich exposure, and subsequently academic performance will suffer. “Preliminary evidence indicates that interpreters have difficulty expressing the speaker’s register and indicating who is speaking. In a sample of approximately 1,300 interpreters who have been evaluated using the Educational Interpreter Performance Assessment, the ability to communicate prosodic aspects of the classroom discourse was difficult for all the interpreters but particularly those who were evaluated for interpreting in the elementary school setting.”<sup>2</sup> And, many teachers of the deaf

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<sup>2</sup> B. Schick (2004). How Might Learning through an Educational Interpreter Influence Cognitive Development? In E. Winston (Ed), *Educational Interpreting: How It Can Succeed*. Washington, DC: Gallaudet Press. p. 77.

possess only limited competence in sign language and therefore, cannot provide meaningful language modeling to the deaf child.<sup>3</sup>

It is the combination of these factors, among others, over time that has such a devastating consequence on language acquisition in deaf children. A deaf child who has limited to no meaningful communication within his or her family, enters public school significantly delayed and without a foundation for handling the rigors of the educational system. If that child, once in the system, is confronted with educational professionals who are less than fluent in sign language, he or she grows into a deaf adult with significant language, knowledge and performance gaps.

These same factors impact the ability of deaf people to acquire literacy in English. Without a foundation in a natural language, the ability to acquire reading and writing skills is greatly impaired. The average reading level of deaf individuals is at the 4<sup>th</sup>-5<sup>th</sup> grade level. In short, the ability of deaf people to read and write English varies greatly and is impacted by a wide range of factors. So, when written communication is used with deaf and hard-of-hearing persons, it should be done cautiously. Generally, it should be for short and simple communication and should be assessed for its effectiveness. The use of real-time transcription will be a rarity, as most deaf people do not possess sufficient English competence to benefit from this technology as their primary source of information in a courtroom.

It is the systemic and accumulative effect of language and information deprivation that creates a unique set of challenges when determining the communication and interpreting needs of deaf individuals. These challenges are compounded further when a deaf individual is in a court setting and basic constitutional rights are at risk. In such instances, it is imperative that the court engage in an individualized inquiry to determine the constellation of factors that impact a particular deaf person in a particular matter. The court should actively inquire whether the deaf participant is able to understand the interpreter. The court should ask the deaf person open-ended questions designed to elicit a narrative response from the deaf person. The court should ask the deaf person to state back any instructions to ensure understanding. Finally, the court should undertake a detailed examination of the interpreter to ensure the interpreter understands the deaf person, and has a mechanism for bringing any obstacles to understanding to the court's attention.

Should you have more questions regarding communicating with deaf individuals, further information is available from the NCIIEC at [www.nciiec.org](http://www.nciiec.org), under the Projects tab at the Legal Interpreting Work Group link.

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<sup>3</sup> Coryell, J., and Holcomb, T. (1997). The Use of Sign Language and Sign Systems in Facilitating the Language Acquisition and Communication of Deaf Students. In *Language, Speech, and Hearing Services in Schools* Vol.28 384-394 October.

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