

Legal Interpreter Training

Curriculum Toolkit for Trainers

Deaf Interpreters: Law Enforcement



 **NCIEC**
National Consortium of Interpreter Education Centers

Legal Interpreter Training: Curriculum Toolkit for Trainers

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Deaf Interpreters: Working in Law Enforcement Settings

Overview of Module and Related Units

Overview

This module explores the Deaf interpreter's role in the law enforcement setting. Legal interpreting professionals agree that in high stakes legal settings, Deaf interpreters should be retained. More than any other setting, Deaf interpreters are a critical part of the team when a Deaf person is taken into a custodial interrogation or interview. The standard of interpreting accuracy in this setting is the highest and is governed by the Constitutional due process standard. The likelihood that the interpretation and the decisions made in this setting will be reviewed by an expert interpreter is higher than in any other legal setting. Deaf interpreters need to understand the law and how it will shape and define the interpretations they render. Deaf interpreters need to be able to articulate solid rationale for the decisions they make and be prepared to justify, on the stand at a motions hearing, the rationale for both their decisions and their conduct. The bar is the highest in law enforcement setting because the stakes are truly the highest. This module provides the Deaf interpreter with the tools necessary to interpret effectively in these settings.

Purpose

The module aims to inform Deaf interpreters of the law and mechanics surrounding interpreting in the law enforcement setting. The module is designed to prepare Deaf interpreters for interpreting for the police as they administer the Miranda warnings and as they conduct their interrogations. The purpose of the module is to educate Deaf interpreters about the legal mandates regarding invoking or waiving a Constitutional right. Another aim of this module is to review the relevant case law

regarding Deaf suspects and interpreting for law enforcement officers to provide insight into how the law has developed on significant points relating to interpreting the Miranda warnings and subsequent investigations. The module provides the Deaf interpreter with practical experience in interpreting for the Miranda warnings. Finally, the module offers applied guidance on interpreting protocol and proper working conditions when asked to interpret an investigation.

Competencies

- Court and Legal Systems Knowledge
- General Legal Theory
- Court and Legal Interpreting Protocol
- Interpreting Knowledge and Skills
- Professional Development

Anticipated Outcomes

Upon completion of this module, learners will be able to:

- Define the social circumstances that the Supreme Court was reacting to in issuing the opinion in *Miranda v. Arizona*.
- State the intent of the Supreme Court in drafting its opinion in *Miranda v. Arizona*.
- Describe the intent of law enforcement in advising suspects of their rights as required by Miranda.
- Define the standard of review that experts use in reviewing an interpretation under the due process clause of the Fourteenth Amendment.
- Define the standard of review that experts use in reviewing an interpretation under a negligence standard.
- State the procedural, ethical and role issues that arise for a signed language interpreter who is considering working for a law enforcement interview or interrogation.

Unit Titles and Sequence

- Unit of Learning 1: The Constitutional Basis for Miranda Warnings
- Unit of Learning 2: Interpreting Standards & Expert Review
- Unit of Learning 3: The Mechanics of the Interpreting in the Law Enforcement Process

Unit of Learning 1: The Constitutional Basis for the Miranda Warnings



Related Competency

- Court and Legal Systems Knowledge
- General Legal Theory
- Court and Legal Interpreting Protocol
- Interpreting Knowledge and Skills
- Professional Development

Purpose

The purpose of the unit is to familiarize the learner with the constitutional processes underlying the Miranda warnings. Further, the unit seeks to explore the social issues that historically had been in place and had guided law enforcement prior to the Supreme Court issuing its opinion. The unit provides learners with the opportunity to conduct in depth text analysis of the Court's opinion and the text of the warnings. Through viewing course materials, text analysis and required readings, participants will work collaboratively and independently to understand and render effective interpretations of the warnings.

Objectives

Upon completion of this unit, learners will be able to:

- Describe the social and political atmosphere in the U.S. prior to the Supreme Court's decision in *Miranda*.
- Articulate the Supreme Court's goal in requiring that a suspect be read his or her rights.
- Articulate the law enforcement officer's goal in reading a suspect his or her rights.
- Articulate the two-pronged test for waiving a constitutional right.

Key Questions

- If a confession was obtained through physical torture, how could any court trust the truth of the statement obtained?
- The Supreme Court stated that coercion can be physical as well as mental, what does mental coercion look like?
- How does reading the Miranda warnings ensure that suspects are not tortured either mentally or physically?
- How can an interpreter resolve the conflict between the intent of the Supreme Court to obtain a knowledgeable waiver and the intent of the officers to obtain an expedient waiver of rights?
- What is the difference between a knowing waiver of rights and a voluntary waiver of rights?

Prior Knowledge and Skills

- Demonstrated competency at a generalist level as evidenced by certification.
- Completion of foundational legal interpreting course work.
- Module 1. Deaf Interpreters: Interacting with the Players
- Module 2. Deaf Interpreters: Deaf Youth and Interpreting Considerations
- Module 3. Deaf Interpreters: Teaming with Deaf and Hearing Interpreters

Unit Plan and Activities

- Through PowerPoint presentation and in class discussion, learners will examine relevant Supreme Court case law guiding law enforcement's actions in questioning a suspect.
- Through a PowerPoint presentation of *Miranda* excerpts, learners will examine the intent of the Supreme Court in formulating the warnings and come to a deeper understanding of the constitutional protections.
- Independently and collaboratively, learners will prepare a sight translation of the Miranda warnings and will view and critique a recorded sample of the Miranda warnings.

Discussion

Prior to the Supreme Court's opinion in *Miranda v. Arizona*, there were very few protections in place to prevent law enforcement officers from abusing their power and forcing suspects to confess. Suspects were routinely beaten, interrogated for hours and days on end and left without food or water until a confession was wrenched from them. It took a Presidential Commission issuing a report on the nature of the abuses to bring the issue to the attention of the nation, and ultimately to the attention of the Supreme Court. In *Miranda*, the Supreme Court took aim at both the physical abuse and the mental abuse that rained down on suspects at the hands of the police. The Supreme Court, in *Miranda*, stated: "Coercion can be mental as well as physical, and the blood of the accused is not the only hallmark of an unconstitutional inquisition." (citations omitted) (*Miranda*, 447). Additionally, the civil rights movement of the 1960s was in full force at the time of the decision and the Supreme Court was actively interpreting the Constitution to provide greater rights for individuals interacting with law enforcement.

In describing police interrogation manuals of the time, the Court quoted: "[t]o be alone with the subject is essential and to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must patiently maneuver himself or his quarry into a position from which the desired objective may be attained. When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights." (*Miranda*, 455)

In discussing the emotional abuse aspect of interrogations, the Court stated, "[e]ven without employing brutality, the "third degree" or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals." (*Miranda*, 455).

Interrogations prior to *Miranda* were “created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity.” (*Miranda*, 457).

While not many interpreters ever read the text of the decision, these quotes provide insight into the Supreme Court’s intent behind issuing the decision and the evil they were attempting to eradicate. Prior to the decision, suspects were at a tremendous disadvantage in an interrogation. Even though both the suspect and the officer were hearing, they certainly were not on a level playing field. *Miranda* was the Court’s attempt to limit police power in the interrogation setting.

These sections of the actual text assist the interpreter by providing context to the content of the words on the paper. The intent of the Supreme Court who penned the decision and the intent of the officers administering the rights are polar opposites. The Supreme Court sought to ensure a knowledgeable waiver of rights. Law enforcement officers administering the warnings believe that a criminal sits in front of them and that the warnings are an administrative act that needs to be undertaken and the rights need to be waived expediently. In their view, as stated by one detective being interviewed, “[y]ou can tell if a suspect’s lying by whether he is moving his lips.” (*Psychology of Confessions*, 39). The tension between the two conflicting goals could not be more palpable.

For a Deaf suspect caught up in an interrogation, there are additional issues that the Deaf interpreter should recognize. In a typical interview or interrogation, the officer has all of the power. The officer decides who sits where, how long the interaction runs before a break is given, when the suspect will be offered food, water or a cigarette. The suspect is powerless to make demands. When the suspect is also Deaf, the officer is in a doubly powerful position as they represent not only law enforcement, but also the majority hearing society which has traditionally oppressed Deaf people through ignorance. While the Deaf interpreter should not aim to provide a benefit that a hearing suspect would not have, the actual interpretation should seek to put the Deaf suspect on the same playing field as if he could hear. Whether or not this can be done is open to discussion, but one basis for the best practice of requiring CDIs in law enforcement settings is the recognition of the fact that a full team of

interpreters (Deaf and hearing) is better able to realize the Supreme Court's goal of an understanding of one's rights and if there is a waiver, it is knowledgeable.

The waiver of a constitutional right is a serious matter which the Supreme Court explained long ago. In 1938, in *Johnson v. Zerbst*, the Court held that rights may be waived only upon a showing that the waiver was knowingly and voluntarily entered into by the individual. This standard applies to waiving any constitutional right but it forms the heart of the *Miranda* formula. Termed the voluntariness prong and the knowingly prong, these two elements have different meanings and separate legal standards exist to determine if a right was knowingly waived versus one voluntarily waived. Further, the consequences are different for law enforcement if they violate one prong versus the other. *Johnson* also stood for the proposition that a waiver cannot be presumed because of the failure to assert the right. (*Johnson*, 475). In other words, in the context of the *Miranda* warnings, the burden rests upon the officer to inform a suspect of his rights rather than the other way around. While there is no constitutional right to an interpreter, an officer cannot rely upon a statement that the Deaf suspect did not ask for an interpreter so one was not provided. Rather under the ADA, there is an obligation for the officer and the Deaf individual to engage in an interactive process to determine the most appropriate accommodation, most likely an interpreter in a custodial interview setting.

The voluntariness prong runs to the officer's conduct in the interrogation. Whether there was any physical or mental force or duress that made the suspect feel there was no choice other than to confess. The interrogation process is a guilt presumptive process meaning that officers believe if one is being interrogated, the suspect is guilty. According to one well known author on interrogations, four out of five suspects will waive their rights and submit to questioning. (*Psychology of Confessions*, 40). Additionally, a high percent after waiving their rights will confess. Confessions remove the responsibility of the government to prove a case at trial. As a result, interrogations and confessions are extremely valuable constructs in criminal prosecutions.

In the past, coercive methods included prolonged confinement and isolation; explicit threats of harm or punishment; deprivation of sleep, food, and other needs; extreme sensory discomfort (e.g., shining a bright

blinding strobe light on the suspect's face); and assorted forms of physical violence and torture (e.g., suspects were tied to a chair and smacked repeatedly to the side of the head or beaten with a rubber hose, which seldom left visible marks). (Psychology of Confessions, 41). In modern interrogations, officers scrupulously avoid involuntary confessions by offering coffee, cigarettes, and bathroom breaks to the suspect. While being interrogated cannot be said to be a comfortable arrangement by any means, officers today rarely err on the side of having a confession suppressed because it was involuntary.

The case of Daphne Wright made the news both in the Deaf world and in the larger South Dakota community where it was alleged that she brutally murdered another Deaf woman in a jealous rage. After trial, she appealed the conviction. Among other claims on appeal, Wright claimed her statements had been taken involuntarily. The Supreme Court of South Dakota agreed with the trial court that Wright's statements were voluntary. The Court based its decision on the following factors:

- That Detective Olson was not abusive, overly coercive or overly pressuring during the interview with [Wright].
- That [Wright] had the capacity to resist the pressure as demonstrated by her constant denial of knowledge of the disappearance of Darlene VanderGiesen and her continued profession of innocence.
- That at the time of the interview, [Wright] made no confession or admission.
- That [Wright] was inconsistent in her statements, but they were not involuntary.
- That at the time of the interview, [Wright] was 42 years old, had achieved a tenth grade education and had an IQ of 114-117.
- That the duration of the interview was 10:53 a.m. until 12:54 p.m., with breaks, although [Wright] was not allowed to walk around the [station].
- That [Wright's] will was not overborne, but was strong.
- That during the course of the interview, Detective Olson was not untruthful nor demeaning toward [Wright]. (*Wright*, 524).

In addition to these findings, the taped interview reveals that Wright asked for and received cigarette and bathroom breaks. Ultimately, the

circuit court found that "[Wright's] will was not overborne, and she freely and voluntarily answered the Detective's questions. (*Wright*, 524).

Hence, the Court's examination of the officer's conduct and the context in which any statement was made forms the basis of the review on appeal. When officers violate the voluntariness prong of the test, the consequences are more severe when they violate the knowingly prong of the test for waiver of a constitutional right. This may be the reason that officers are more scrupulous in ensuring that statements are voluntarily taken.

In regards to the knowingly prong, the Supreme Court in *Miranda* made it clear that the suspect has to understand not only the nature of the right being waived but the consequences of the waiver. In the context of *Miranda*, it means knowing how the officers will use the statements in the course of a trial and knowing the implications of the use of those statements for the suspect. This has been embodied in *Miranda's* 'used against' phraseology, and interpreters usually contextualize the process of the officer testifying in court about the suspects statements and a demonstration of some level of punishment or trouble ensuing. Deep textual analysis of both the standard language of the warnings and the text of the opinion itself are necessary for a Deaf interpreter to ensure that any waiver of rights is accurately interpreted and if waived, the waiver was knowledgeable.

Activity 1

In class review of *Miranda* excerpts PowerPoint.

Concept Review (Through in-class discussion or video logs posting)

1. Review excerpts from the decision in small groups.
2. Prepare responses to questions in small group.
3. Report out to large group and discuss similarities and differences in responses.

Activity 2

Go to www.unco.edu/marie/literature_archives.html and click on the link that takes you to an ASL translation of a segment from the TV program Homicide in which the team of detectives share their perspectives on the

Miranda Warning. Read the chapter from the book that the episode was based upon from the course materials.

Concept Review (Through in-class discussion or video logs posting)

1. In small groups, discuss your impressions of the officer's intent when questioning a suspect.
2. Compare and contrast how those intentions vary from the intentions of the Supreme Court in issuing the opinion.
3. Discuss the constitutional concepts that were included in the ASL translation.
4. Could you identify the topics in the translation that are also in the warnings?
5. Report out small group findings to the large group.

Activity 3

Prepare a sight translation of the Miranda warnings using the warnings in the course materials.

Concept Review (Through in-class discussion or video logs posting)

1. In small groups, create a context for an interrogation of a suspect and prepare a group sight translation.
2. Have each individual interpret the Miranda warnings on video.
3. Analyze and share feedback on the Miranda renditions.

Activity 4

View the Miranda Warnings video (Missy Keast) available in the course materials.

Concept Review (Through in-class discussion or video logs posting)

1. Discuss the constitutional concepts as set forth in Keast's rendition of the warnings and share your reflections of the interpretation.
2. In small groups, prepare a back translation of the warnings into written English.
3. In Keast's version, under what circumstances is the Deaf suspect allowed to have an interpreter? Is this consistent with the text of the warnings?

4. In Keast's version, under what circumstances is the Deaf suspect required to lipread without an interpreter? Is this consistent with the text of the warnings?

Assessment

Formative assessment:

- Student responses to teacher's posted questions.
- Small group discussions and reporting out to large group.
- Activities could be assigned as homework and papers or video logs created.

Resource Materials

- PowerPoint course materials.
- Dassin, Saul M., and Gudjonsson, Gisli H. (2004). *Psychology of Confessions: A review of the literature and issues*. Psychological Science in the Public Interest. Vol. 5 No. 2. Journal of American Psychological Society.
- *Johnson v. Zerbst*, 304 U.S. 458 (1938).
- *Miranda v. Arizona*, 384 U.S. 436 (1966).
- *State v. Wright*, 768 N.W.2d 512 (S.D. 2009).
- Video of Miranda Warnings. Missy Keast. Signs of Intelligence.



Unit of Learning 2: Interpreting Standards & Expert Review

Related Competencies

- Court and Legal Systems Knowledge
- General Legal Theory
- Court and Legal Interpreting Protocol
- Interpreting Knowledge and Skills
- Professional Development

Purpose

The purpose of this unit is to acquaint Deaf interpreters with the standards by which their work interpreting the Miranda warnings and any subsequent interrogation or interview will be judged. A defense attorney has an ethical obligation to provide a zealous defense of his or her client. In a case in which interpreters are involved, the interpretation often becomes the focus of the defense's efforts to have incriminating statements suppressed. Given that it is best practice to have a full team of Deaf and hearing interpreters present for a reading of the rights and to have the interaction preserved on video, there is a high likelihood that the interpretation will be challenged in a pre-trial motion and that the Deaf interpreter will need to testify regarding their interpretation. Several legal standards have been developed in case law and in the literature in the legal interpreting field. The purpose of this unit is to familiarize Deaf interpreters with those standards and to reflect upon how those standards will impact the interpretation.

Objectives

Upon completion of this unit, learners will be able to:

- Define the due process standard for judging the adequacy of interpretations;
- State the two factors that an expert will review in examining the effectiveness of any interpretation of the Miranda warnings.
- State the elements of interpreter negligence (malpractice) in interpretation.

Key Questions

- What significance does the requirement that the suspect's rights must be explained to him in a language he understands have in the case of Deaf suspects?
- How would an expert witness use the standard set forth in *U.S. v. Cirrincione* to judge the effectiveness of an interpreted Miranda warning?
- To date, what are the standards that have been developed by case law and literature in the field of legal interpreting?
- If the defense attorney wants to challenge an interpretation from an investigation, what avenues could they pursue?
- If you were subpoenaed to testify about a prior law enforcement assignment, how would you prepare?
- What is the benefit of judging an interpretation using an objective standard rather than a subjective standard?
- Who creates the reasonable interpreter national standard of care?
- How should an interpreted interaction be conducted to ensure that any waiver of rights was knowingly and voluntarily made?

Prior Knowledge and Skills

- Demonstrated competency at a generalist level as evidenced by certification.
- Completion of foundational legal interpreting course work.
- Module 1. Deaf Interpreters: Interacting with the Players
- Module 2. Deaf Interpreters: Deaf Youth and Interpreting Considerations
- Module 3. Deaf Interpreters: Teaming with Deaf and Hearing Interpreters
- Unit of Learning 1: The Constitutional Basis for the Miranda Warnings

Unit Plan and Activities

- Learners will review the lesson PowerPoint and classroom discussion concerning the standards used by experts to review an interpretation.

- Learners will read literature on interpreting for law enforcement and engage in guided discussion of the points made.
- Learners will take the role of the expert witness in reviewing a rendition of the Miranda warnings and apply the negligence standard of review of the interpretation and prepare an expert report on the effectiveness of the interpretation.

Discussion

A number of important cases involving ASL interpreters have been decided and provide a framework for understanding the quality of interpretation required for a Deaf suspect to competently waive their constitutional rights. In a Michigan case, the Court stated that

Before utilizing a statement made by a hearing-impaired (sic) defendant either with or without the assistance of an interpreter, it must be established that the defendant comprehended his *Miranda* rights and intelligently waived them before making the statement. A waiver is intelligently made when the *Miranda* warnings are explained to the defendant by an interpreter familiar with and competent in the defendant's primary language. (*McBride*, 561).

The baseline requirement then is that the interpreter must be competent in the language used by the defendant. This is an important requirement. Interpreters should anticipate in any hearing to suppress evidence that their knowledge, skills and abilities in ASL and interpretation will come under close scrutiny. In *McBride*, the Court held that the interpreter was not competent enough in the defendant's primary language for the waiver to be valid.

In an earlier Wisconsin case, additional guidance was provided by the Court's opinion in terms of what further competencies, other than language competencies, the interpreters were required to possess to effectively interpret in law enforcement and to ensure any waiver was knowledgeable.

In *State v. Hindsley*, the appellate court determined that the Deaf suspect's waiver was voluntary because the police had not physically or mentally coerced the waiver, but that the waiver was not knowingly given because of the interpreter's inability to convey the warnings in the defendant's primary language. Several experts were hired in the case to

review the interpreter's rendition. Their opinion was that many of the signs used by the interpreter did not convey the legal meaning of the words in English. As a result, it was their opinion that the defendant could not have known the nature of the rights he was waiving. In *Hindsley*, the interpreter was RID certified, but was not legally trained, and consequently did not convey the content of the warnings using an equivalent meaning-based interpretation. The conclusion to be drawn is that for a waiver to be valid, the Deaf interpreter practitioner also needs to have legal training to accurately convey the concepts in American Sign Language.

The accuracy of the interpretation of the Miranda warnings as rendered by the law enforcement interpreter will be challenged in a pre-trial motion to suppress any statements made to law enforcement. Typically, defense counsel will claim that the accuracy of the interpretation of Miranda fell below the constitutional floor and that the defendant could not have made a knowledgeable waiver. The evidence of the interpretation will be reviewed by an expert. Both sides may retain experts to review the interpretation and provide an opinion as to 1) whether it was sufficient for the particular consumer and 2) whether it was an accurate interpretation of the text.

There are different legal standards that will be used either by expert witnesses or appellate courts to review the effectiveness of an interpretation. The standards may be grounded in the Constitution, such as the Fourteenth Amendment's due process clause or in the typical negligence standard (malpractice) used in civil cases. The procedural due process standard for accuracy under the Fourteenth Amendment was set forth in *U.S. v. Cirrincione*. The court there held a defendant in "a criminal defendant is denied due process when: (1) what is told him is incomprehensible; (2) the accuracy and scope of a translation at a hearing or trial is subject to grave doubt; (3) the nature of the proceeding is not explained to him in a manner designed to insure his full comprehension; or (4) a credible claim of incapacity to understand due to language difficulty is made and the district court fails to review the evidence and make appropriate findings of fact." (*Cirrincione*, 634).

Under the standards as adapted from negligence law, the interpreter will be judged by an objective standard. The question is, when faced with a similar situation, what a reasonably competent interpreter would do?

Would the reasonably competent interpreter accept this assignment? What factors would go into the decision of whether to accept the assignment? An objective test differs from a subjective test. A subjective test looks at what this particular interpreter was thinking at the moment the decisions involved in the interaction at issue were made. The interpreter's decisions from initially accepting the assignment, to the interpreting decisions made, and to the behavioral or conduct based decisions made are all open to scrutiny. They will be evaluated based on what a reasonably competent practitioner would do, not based on what this particular interpreter was thinking.

The elements of any professional negligence tort include that there was 1) a breach of a recognized duty, 2) the breach of duty was the proximate or legal cause of 3) damages to the end consumer. Here the duty is established as the objective standard of care that a reasonable interpreter would use in rendering an interpretation. That standard of care should be a national standard since there is national legal certification for ASL interpreters. In other words, the standard is not necessarily what resources are available locally. Again, the standard is objective in terms of whether a reasonably competent interpreter would engage in the conduct or render the interpretation as was given in the case being examined.

The expert will examine various elements to determine whether the interpreter's conduct fell below the standard of care required by the reasonable interpreter. The expert will offer an opinion on whether there was a breach of duty to interpret accurately or in accordance with national standards.

In *Tennessee v. Jenkins*, the Deaf defendant was charged with first degree murder and aggravated arson. Through a legally certified interpreter, Jenkins gave a statement that implicated him in the house fire and resultant death of another Deaf man. In a preliminary motions hearing, the defense hired Anna Witter-Merithew as an expert to examine the efficiency and effectiveness of the interpreter's rendition of Miranda. Witter-Merithew spent several hours interviewing Jenkins and reviewing his limited school records and concluded that he used conversational ASL and lacked native fluency in ASL. Witter-Merithew further reviewed a sample of the interpreter's work with Mr. Jenkins to determine whether the fit between the interpreter and Mr. Jenkins was adequate. The expert's examination of the interpretation through a back translation

demonstrated the inadequacy of each of the enumerated rights required to be in the warnings. Based upon Witter-Merithew's testimony, and even though the prosecution's expert attempted to rebut it, the court found that Mr. Jenkins had not knowingly waived his constitutional rights.

The burden to demonstrate that one's rights were knowingly and voluntarily waived falls squarely upon the shoulders of the prosecution who seeks to use the statements taken by law enforcement. As a result, many states require that interrogations be videotaped in order to preserve the interaction for review. In the case of an interpreted interrogation, best practices require that the interaction be video-recorded and that both the interpretation and the suspect's language be captured on video.

While the burden is typically on the state to demonstrate that rights were knowingly and voluntarily waived, the knowingly prong of the test should weigh heavily in the mind of the interpreting team at a law enforcement interview or interrogation. Further, in making conduct-based decisions and interpretation-based decisions, the full team of Deaf and hearing interpreters in law enforcement should keep close in mind the objective standard of what a reasonably competent interpreter would decide when faced with the similar circumstances.

Activity 1

Read the RID Views series of articles (Subpoenas & Testifying) on being subpoenaed to testify available from the course materials.

Concept Review (Through in-class discussion or video logs postings).

1. Discuss in small groups your thoughts about the article.
2. Why does the author suggest that interpreters should be professionally prepared to testify in court about a prior interpretation?
3. Explain the difference between being called to testify to authenticate a prior interpretation and being called to testify to defend a prior interpretation.
4. Report out to the large group the salient points you discussed.

Activity 2

View the Miranda Warnings video (Missy Keast) available in the course materials that was used in the last unit.

Concept Review (Through in-class discussion or video logs posting)

1. From the powerpoint lecture, identify the standards by which an interpretation will be reviewed by an expert.
2. Review the rendition as if you were retained as an expert witness to examine its effectiveness under the negligence standard of review.
3. Prepare an expert report to share in class regarding your conclusions.

Activity 3

Review [this](#) version of Miranda:

You have the right to remain silence. Anything you say can be used against you in the law. You have the right to talk to a lawyer and to have him present with you during the interview. If you don't have the money to pay for a lawyer, you have the right. One, who is free, could be given to you.

In *United States v. Botello-Rosales*, the United States Court of Appeals held that this language failed to convey the rights as required by Miranda. D.C. Appeal No. 12-30074, 3-4 (9th Cir. 2013).

Concept Review (Through in-class discussion or video logs posting)

1. Why do you think the Court held that this version was ineffective?
2. Discuss in small groups.
3. Prepare a sight translation of what this Miranda actually suggests.

Assessment

Formative assessment:

- Student responses to teacher's posted questions.
- Paper or video logs assignment for expert witness reports
- Paper or video logs assignment for analysis of *Botello-Rosales*.
- Sight translation of Miranda given in *Botello-Rosales*.



Resource Materials

- Miranda Warnings. Missy Keast. Signs of Intelligence.
- Powerpoint from course materials
- *People v. McBride*, 729 N.W.2d 551 (Mich. App. 2006),
- *State v. Hindsley*, 614 N.W.2d 48 (Wis. App. 2000).
- *U.S. v. Cirrincione*, 780 F.2d 620 (7th Cir. 1985).
- *U.S. v. Botello-Rosales*, .C. Appeal No. 12-30074, 3-4 (9th Cir. 2013).



Unit of Learning 3: The Mechanics of Interpreting in the Law Enforcement Process

Related Competencies

- Court and Legal Systems Knowledge
- General Legal Theory
- Court and Legal Interpreting Protocol
- Interpreting Knowledge and Skills
- Professional Development

Purpose

The purpose of this unit is to assist the Deaf hearing interpreting team in understanding strategic approaches to analyzing a request to interpret for law enforcement. The high stakes nature of interpreting for law enforcement matters indicates that the case can be investigated most effectively for the police if a Deaf-hearing interpreting team is procured. This unit assists the Deaf interpreter in preparing the officers and the Deaf individual for the interpretation of the custodial interview or witness interview. The unit examines the types of questions that Deaf interpreters should prepare for interacting with both the officer and the Deaf individual. The unit examines the requirements that Deaf interpreters should insist upon prior to accepting a law enforcement assignment. Through small group work and large group discussion, learners will develop a road map for navigating through a law enforcement assignment.

Objectives

Upon completion of this unit, learners will be able to:

- State three key requirements that law enforcement officers must agree to before the interpreting team will accept the assignment.
- State three topic areas that can be discussed with a Deaf individual prior to interpreting in order to conduct a language and communication assessment.
- State five questions that a linguist might ask to determine whether a Deaf individual is linguistically competent.

Key Questions

- What can the interpreting team do proactively to make it less likely their work will be impeached by an expert?
- What should the interpreter do if law enforcement officers refuse to provide the names of the Deaf individuals involved? What could be said to convince them of the need for this information?
- What should the interpreter do if law enforcement officers refuse to provide a video recording of the interpretation and the Deaf individual's statements?
- Does the interpreters' approach to the preparatory meeting differ for a Deaf individual who may have very little cultural knowledge or experience with law enforcement?

Prior Knowledge and Skills

- Demonstrated competency at a generalist level as evidenced by certification.
- Completion of foundational legal interpreting course work.
- Module 1. Deaf Interpreters: Interacting with the Players
- Module 2. Deaf Interpreters: Deaf Youth and Interpreting Considerations
- Module 3. Deaf Interpreters: Teaming with Deaf and Hearing Interpreters
- Unit of Learning 1: The Constitutional Basis
- Unit of Learning 2: Interpreting Standards & Expert Review

Unit Plan and Activities

- Learners will review the lesson PowerPoint and classroom discussion of the process of accepting law enforcement work.
- Learners will read relevant articles examining the role of the interpreter in law enforcement settings and discuss salient points in small and large group settings.
- Learners will apply principles learned in the unit to small group ethical scenarios.

Discussion

The law enforcement interpreter must be prepared to testify at a pre-trial hearing regarding the sufficiency of their prior interpretation. The law enforcement interpreter should expect that their prior interpretation will be critically reviewed by one or more experts. Because of the serious nature of the setting, law enforcement teams must ensure that they carefully examine any assignment prior to accepting it. Further, there are a number of strategic approaches that legal interpreting professionals agree should be implemented in law enforcement settings. These approaches function to protect the suspect's rights as well as the interpreting team's integrity. Further, the role of the law enforcement interpreter has been limited by the court interpreter's code of conduct. Law enforcement interpreters are conflicted out from accepting the proceedings work; however, they may perform a role at the prosecution's table as a monitor and to interpret witness preparation activities for the government.

Law enforcement interpreters have important preparation duties to engage in prior to actually interpreting any interactions between the police and a Deaf suspect or witness. When contacted by a law enforcement officer to interpret, it is critical that the interpreter get all relevant information from the contact person. Relevant information includes the officers' names and badge numbers as well as the names of all of the Deaf or hard of hearing people involved. Badge numbers are important because in a large metropolitan police department, there may be more than one officer with the same name. Interpreters need to conduct a conflicts check even though they will not be interpreting for the record because in a small Deaf community, the Deaf interpreter might know one or more of the individuals involved quite well. In that case, it would be better not to accept the assignment. Only names are necessary this early in the process because if the interpreter is conflicted out of the assignment, they do not need to have any other potentially sensitive information about the case.

Additionally, the interpreting team should ask for the roles of the Deaf people involved – are they suspect, witnesses, bystanders? If the investigation includes a group of Deaf people without an identified

suspect, two teams may be indicated to keep the same interpreters with the witnesses and a different set with the suspect(s). This will depend on the nature of the case.

Once the interpreting team has accepted the assignment, there should be a discussion of the subject matter of the case to determine which members have the most experience and what further research needs to be undertaken. For example, in a weapons case, the interpreting team needs to know what kind of weapon is at issue. If it is known that the weapon was a handgun, then some internet research can be done to easily view different handguns to assist the team in predictions and in creating equivalent linguistic constructions in ASL.

With the officers, even prior to arriving, it is essential that the interpreting team obtain agreement that the interview will be videotaped. According to the NCIEC, videotaping “allows for the preservation of a clear record of the proceedings which may assist the court in later determining whether the deaf individual fully comprehended and sufficiently waived his constitutional rights.” (NCIEC Fact Sheet). The video must be positioned in a manner which permits the recording of both the Deaf individual and the interpreter. (*Id.*).

The interpreting team needs also to inform the officers that a short meeting with the suspect/witness will need to conduct a language and communication assessment of the Deaf person. While this meeting can be led by the Deaf interpreter, the hearing team mate can keep the officer apprised of what the interaction is about through a summary indication of the topics being discussed by the Deaf interpreter and the suspect. This meeting should take no longer than necessary to ensure comprehension with the suspect and to inform him/her of the interpreter’s role.

This meeting should be handled carefully. It is critical not to discuss the case with the suspect even though the suspect may very well want to talk to the interpreter about the case. The interpreter needs to politely inform the Deaf individual that they will have a chance but that the interpreting team needs to go over some details first. The Deaf interpreter should introduce the interpreters and get some background about the Deaf individual to gauge language use only. Innocuous topics should be broached such as where the individual went to school, where they work and the like. If a deeper linguistic assessment is needed because the

individual uses non-standard signs, linguists have suggested discussing current event type topics such as:

- Where do you live?
- How do you get there?
- Do you know how to ride the bus? Metro?
- Tell me how the bus works.
- Do you know how to write a check? Online banking?

The caveat remains that any topics discussed must be non-case related in nature.

In the event a more in-depth linguistic competency type of issue has arisen, the interpreter must be careful not to put herself in the position of becoming an expert in the case as well as interpreting. Some linguists who examine Deaf individuals for language competency and fund of knowledge issues have suggested the following questions:

- What is a judge?
- How does a jury work?
- Who is on a jury?
- What is a police officer's job?
- Tell me what detective means?
- What does a lawyer do?
- How do people get put in jail?
- What is a trial?
- Do you know what a lie is?
- Is it okay to lie to a policeman?
- Have you seen police shows on television?
- Tell me what happens when they arrest someone? (Johnson, n.d.)

Interpreters may want to take notes on the content of the responses insofar as the content may assist in the interpretation later. For example, if a Deaf individual grew up in Texas, that factor might influence the interpretation to some extent given that there are a number of regional signs used by Deaf Texans.

In interpreting an interaction between the police and a Deaf individual, the interpreter needs to be hyper-sensitive to their own level of skill and

familiarity with the law and the content. More work will necessarily be done for a Deaf person who has little experience or familiarity with the system. Pragmatically, interpreted renditions may necessarily be expanded to convey the legally equivalent content.

Interpreters must be vigilant as well not to let their own emotional state interfere with their interpretation. As much as interpreters may want to regulate the officer's conduct, the legal system has a structure in place to combat and penalize unconstitutional conduct by the police. There are too many variables for the legal interpreter to be able to judge what conduct on the part of the police falls below a constitutional floor. With that said, if an interpreter feels unable to interpret in a law enforcement setting for any reason, the best course is to remove oneself and assist the officers in locating replacement.

Cross suggests that interpreters should not be hesitant about recognizing their limitations, whether emotional or linguistic, and removing themselves from the situation if they are unable to provide effective services. (Cross, n.d.). As an attorney for a Deaf man charged with murder, Cross suggests that the role of the interpreter is to assist the Deaf client given the language of the statute in effect at the time of his case. In his article, he argues that the statutory language "to assist" means the law enforcement interpreter, through effective interpretation, functions to level the playing field for Deaf people with little experience interacting with law enforcement officers.

Cross suggests, consistent with best practices, that the interview should be conducted in the consecutive mode. The interpreter should check in with the Deaf individual to ensure he or she is following the interpretation. Officers and the Deaf person should be informed in advance of how the interpretation will proceed and obtain agreements. Once the rights are read, the Deaf interpreter may want to ask the suspect to repeat back what the rights mean in order to gauge comprehension.

Once the custodial interview or other interaction is completed, the interpreting team may be asked to sign a document indicating that they interpreted the interaction accurately. Pay close attention to the wording of any statement and make sure that what is signed reflects what happened in the interaction. Some statements actually have the interpreter signing as a witness, and this would not be a proper signature

to make. Some forms might make statements about the level of comprehension of the Deaf individual and these should be reviewed carefully for accuracy.

Once the interaction is completed, the interpreting team should provide their contact information to the officers. There may need to be a short debrief session by which the interpreting team process out the interaction. If anything out of the ordinary occurred during the interpreted interaction, it is wise to make a note of what happened in order to have a record in case the interpreter is subpoenaed later to testify.

Activity 1

Read “A Lawyer’s View of the Role of the Interpreter in the Criminal Process” by Mark Alan Cross available in the course materials.

Concept Review (Through in-class discussion or video logs postings)

1. What do you think of Cross’ suggestion that the ‘conduit’ model of interpreting constitutes interpreter malpractice?
2. What kinds of behavior decisions made by the interpreters in the case he is describing did you recognize that could have been challenged on appeal?
3. List two to three points that Cross believes must be explained to officers prior to interpreting in order for the interaction to be effective.
4. How does Cross suggest that the interpreter should ensure the Deaf suspect understands the Miranda warnings?

Activity 2

You have been hired to interpret an investigation at a Deaf school. The officers have 20 individuals who were present at a fight that broke out at a football game. Some of the individuals have been identified as suspects and some are simply witnesses.

Concept Review (Through in-class discussion or video logs postings)

1. What factors do you consider in determining whether you should take this assignment?
2. What factors do you consider in staffing this assignment?

3. Would it make a difference if it was a sexual assault case and the officers wanted you to interpret for the witnesses and the suspects?
4. How would you staff the fight case?
5. How would you staff the sexual assault case?

Activity 3

You have been contacted to interpret an interview of a potential witness in a bank fraud case.

Concept Review (Through in-class discussion or video logs postings).

1. In small groups, discuss what more information you need to obtain, and when, from the law enforcement officers.
2. List out your questions and any factual assumptions you make about the assignment.
3. List out what general instructions you will give to the officers prior to interpreting.
4. List out what general instructions you will give to the witness prior to interpreting.
5. How would the checklist here differ from a preparation checklist for a court proceeding?

Activity 4

Review the Department of Justice brochure advising officers how to interact with Deaf individuals.

Concept Review (Through in-class discussion or video logs postings)

1. In small groups discuss what additional points you would add to the brochure to assist officers in conducting an interview or interrogation through a CDI.
2. Prepare your checklist in writing and share in large group.
3. Note the similarities and differences in each group's list of points.

Assessment

Formative assessment:

- Student responses to teacher's posted questions.
- In class activities discussing assessing and accepting law enforcement assignments.

- In class activities discussing staffing law enforcement assignments.
- Checklists of points to be added to the DOJ brochure.

Resource Materials

- PowerPoint from course materials
- Cross, M. (undated). A lawyer's view of the role of the interpreter in the criminal process. (unpublished).
- Johnson, R. (n.d.). Issues in Interpreting for Deaf People Charged with Serious Crimes. Workshop handout.
- NCIEC (n.d.). Fact Sheet. The use of interpreters in law enforcement settings. National Consortium of Interpreter Education Centers. Available at www.unco.edu/marie.
- Stewart, K., Cobb, M., Witter-Merithew, A. (2009). Best Practices. American Sign Language and English Interpretation within Legal Settings. National Consortium of Interpreter Education Centers. Available at www.unco.edu/marie.
- U.S. Department of Justice. (2006). Communicating with People who are Deaf or Hard of Hearing. Available at www.ada.gov.