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**UNSAFE HAVENS II:
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IN THE PROSECUTION OF
ONLINE CRIMES AGAINST
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Learning to Read the Signs: Prosecution Strategies for Child Abuse Cases with Deaf Victims and Witnesses

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Working with children, child abuse professionals learn to overcome seemingly insurmountable problems of communication. Prosecutors qualify children as young as three, four and five years old to testify in a court full of strangers, often in front of a defendant who has hurt that child. Investigators, forensic interviewers and prosecutors ask young children to describe in detail events that occurred months, and sometimes years, earlier. Problems of memory, suggestibility, language skills and developmental capacity affect our ability to understand and, ultimately, to protect children. These issues are compounded when a child victim is deaf or hard of hearing² and our professionals are unprepared.

Effective prosecution of child abuse cases involving deaf victims and witnesses requires planning, flexibility and a willingness to take the steps needed to understand these particularly vulnerable victims. Multidisciplinary teams should consider appropriate protocols so that child abuse professionals are prepared to effectively investigate and prosecute these cases. Ideally, deaf professionals will assist with the development of linkages between law enforcement, advocacy agencies, mental health organizations and the deaf community. Professionals in remote jurisdictions should identify in advance regional sources of expertise and work closely with these individuals to develop appropriate protocols.

This article considers eight issues that prosecutors and allied professionals should address: (1) recognizing that deaf children are abused at higher rates than hearing children; (2) learning how to communicate effectively with deaf victims and witnesses; (3) ensuring the victim's safety throughout the criminal proceedings; (4) ensuring that a full and thorough investigation is conducted; (5) educating the court regarding any communication issues that might affect a trial; (6) confirming that the physical layout of the courtroom accommodates signed communication if needed; (7) focusing on the abuse and not the child's communication skills during trial; and, (8) acknowledge the diversity within the deaf community and be sensitive to these issues in any outreach to deaf victims.

1. *Recognize the Higher Incidence of Abuse of Deaf*

Children. The first step in protecting these victims is recognizing that deaf children are sexually abused at a much higher rate than their hearing counterparts are. The University of North Carolina at Greensboro's Center for Abuse Prevention and Education for deaf/hard of hearing children reports that as many as 65–90% of deaf children have been sexually abused.³ Deaf and hard-of-hearing children experience maltreatment at least 2.5 times more often than their hearing peers do.⁴ Recent studies

confirm the increased vulnerability of disabled children to sexual abuse.⁵ Preliminary studies in the 1980's supported findings of significant abuse of deaf women.⁶ Research focusing exclusively on hearing-impaired women found much higher rates of sexual abuse than in their hearing counterparts.⁷

2. *Assess your Victim's Communication Skills.* After instances of abuse have been identified, understanding how to communicate with deaf children is the next and, certainly, the most important piece of this process for any criminal investigation. The initial investigation should include an assessment of the child's language skills. Learning that a victim is deaf is only the first, and very small, step in this analysis. Language in the deaf community is highly variable and deaf children can use a host of tools to communicate and multiple modes of communication. Investigators and forensic interviewers should work closely with experts on deaf communication to identify how this particular child communicates and to document the child's linguistic skills and abilities so that investigators, interviewers, advocates, prosecutors and other professionals can work with the child more effectively. The linguistic issues are complicated by the age of many of the victims and witnesses in child abuse cases.
3. *Safety First.* Given the insular nature of many deaf communities and a potential lack of familial support for the deaf child, prosecutors handling child abuse cases need to carefully examine the circumstances surrounding the child's placement pending trial. Close coordination with advocates and child protection professionals may also ensure that this child and non-offending caregivers receive protection and support throughout the criminal process. Safety is always the primary concern and identifying supportive adults who can protect this victim is critical. Since deaf children of hearing parents so often have communication barriers with their parents, these children are likely to receive even less protection than their hearing counterparts. Child abuse professionals need to also understand the ambivalence of many in the deaf community to participate in investigations which undermine deaf institutions. Criminal investigations of child sexual abuse have prompted the closing of a number of institutions for deaf education. Many deaf adults decry the loss of their schools even while deploring the abuse of deaf children within the schools. Prosecutors and allied professionals need to monitor closely the child victim's environment to ensure that the child receives appropriate support and protection.

4. *Dedicate Resources for a Full and Thorough Investigation.* Once the case is identified and the safety issues are addressed, the investigation needs to be carefully conducted. Navigating the evidence minefield may be difficult for investigators who may not be able to easily communicate with the victim and the available witnesses. For example, visiting a deaf person at home for a follow-up interview may require multiple interpreters. Planning can be required for seemingly mundane logistics (e.g. knocking on the door of a home that does not have tools for letting the deaf occupant know that someone is at the home). Prosecutors and investigators need to be aware of the potential for extraordinary measures needed to fully and thoroughly investigate these cases. Some local child advocacy centers employ individuals who are familiar with Deaf culture and have access to expertise within the deaf community.¹⁰ Law enforcement professionals that have a rapport with members of the deaf community are more likely to enjoy support and assistance with criminal prosecutions because the deaf community recognizes them as a potential resource to protect children.
5. *Be Prepared to Educate the Court.* With the abuse identified, the child victim protected and the investigation thorough and complete, the prosecutor can focus on educating the court about potential communication issues. In many jurisdictions, prosecutors routinely file pretrial motions asking that defense counsel be required to ask developmentally appropriate questions for young children. Similar consideration is appropriate for a deaf victim who may need comparable accommodation by the court. At the very least, these filings serve to inform the court of the child's linguistic skills and prepare the court for potential prosecution objections. Prosecutors might also consider specific jury instructions related to the child's testimony and interpretation. Finally, the prosecutor should consider having an expert explain to the jury specific communication issues as needed. A jury might not understand the need for multiple interpreters and might benefit from an easily understood explanation of the interpretation process.
6. *Trial Issues and Interpretation.* The prosecutor needs to understand enough about the language/mode of communication being used during trial to protect communication between the victim and the interpreter. For example, signed languages are expressive. The American Sign Language sign for "angry" includes a facial expression. Expert testimony can be offered to rebut defense objections to facial expressions by the interpreter. The prosecutor also needs to consider carefully the physical layout of the courtroom, given the interpretation requirements of his or her particular victim. Signed languages require space, typically a square "box" encompassing all of the space from the top of the signer's head to the signer's waist. The witness box usually engulfs small children and covers much of the "boxed" area even for an average sized adult. The child witness needs to be able to see the signer's body and the signer needs to be able to see the child's upper body. Both must be able to see each other's eyes. For example, a signer often indicates positional references (e.g., "in front of," "he said," etc.) by looking in a specific direction. Many courts' designs block much of the communication that needs to occur for accurate interpretation. These problems are multiplied when relay interpretation¹¹ is required. Therefore, practice the interpretation with all interpreters and your witnesses before the trial; do not wait for the direct examination of your child victim to discover that the signer can't "read" your victim's signs. As with all child victims, sightlines are an issue whenever the defendant is in a position to visually intimidate the child victim. With deaf children, the defendant may have very specific "signs" that have meaning for the child witness but are not necessarily obvious to the observers. Children should be told to let the prosecutor know if the defendant is, however subtly, trying to communicate during the course of proceedings by slight gestures or signs.
7. *Child Abuse as the Focus of the Criminal Proceeding.* Finally, the prosecutor must remember to focus the criminal case on the physical or sexual abuse. Unless the defendant used the child victim's vulnerability to gain access, this victim's communication skills (or the lack thereof) are peripheral to this child's victimization. The criminal case is about the act of abuse. It might be helpful to remember that prosecutors, so often in trial, try to show and not tell. With a signing victim, we are often in the position of actually "showing" our jury what happened. As noted above, many signs are expressive. The physical movement associated with many signs can reinforce for your jury the reality and, often, the brutality of the abuse as it occurred.
8. *Acknowledge Diversity Within the Deaf Community in any Attempts to Reach Out to Deaf Victims and Witnesses.* After reviewing feedback from two focus groups of adult deaf women, one researcher described the deaf victim's "almost complete lack of understanding [from] community-based service providers."⁸ Hearing impaired and deaf children, with fewer communication and inter-personal skills than their adult counterparts, receive even less institutional attention. This lack of understanding on the part of child abuse professionals all too often extends to the Deaf⁹ culture itself and underscores the importance of cultural competence.

With a little planning, a lot of flexibility and a focus on our child victim, we can all help the jury read the signs so that they too can protect our child victims.

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² Hereinafter references to deafness will include both deaf individuals and individuals who are hard of hearing.

³ Center for Abuse Prevention and Education- Deaf/ Hard of Hearing, Description, at <http://www.uncg.edu/ses/cape/description.html> (last visited Aug. 12, 2005).

⁴ Bennet, S. and Baladerian, N., Children with Disabilities and Child Maltreatment, 14 (2) The Official Newsletter of the International Society for Prevention of Child Abuse and Neglect (2005).

⁵ Stimpson, L. & Best, M. (1991), *Courage Above All: Sexual Assault Against Women with Disabilities*, DAWN, Toronto, Ontario; Obinna, J. (January/February 2005) *Researching Sexual Violence in the Deaf Community*, Sexual Assault Report, Vol. 8 No. 3, Kingston, New Jersey.

⁶ Sullivan, P.M., Scanlon, J.M., and LaBarre, A. (1986). Characteristics and therapeutic issues with abused deaf adolescents, Afton, Oklahoma. Also, Sullivan, P.M., Vernon, M. and Scanlon, J.M. (1987). Sexual Abuse of Deaf Youth. *American Annals of the Deaf*, 132(4), 257-262

⁷ Sullivan, P.M., Scanlan, J.M., Knutson, J.F., Brookshouser, P.E., & Schulte, L., The Effects of Psychotherapy on Behavior Problems of Sexually Abused Deaf Children, 16 (2) *Child Abuse and Neglect* (1992).

⁸ Obinna, pg. 33

⁹ Although it is beyond the scope of this article to explore at length cultural issues within the deaf communities, this author will adhere to the convention of using the small "d," deaf, to refer to individuals who are deaf or hard-of-hearing while big "D," Deaf, will be used to refer to the community of deaf individuals who ascribe to deafness as an identifying cultural characteristic.

¹⁰ For example, the AETNA Foundation Children's Center in Hartford, Connecticut and the Family Peace Center in San Diego, California both coordinate ASL and other interpretive services as needed.

¹¹ Relay interpretation involves the use of multiple interpreters for a single witness.

The National Center for Prosecution of Child Abuse is a program of the American Prosecutors Research Institute, the non-profit research, training and technical assistance affiliate of the National District Attorneys Association. This publication was prepared under Grant No. 2003-CI-FX-K008 from the Office of Juvenile Justice and Delinquency Prevention, US



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