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Update

Silent Voices: Preparing Deaf Children for Court

by Jada L. Warfield¹

Introduction
Properly preparing your witnesses for court is a major factor in successfully prosecuting a case. To assure that you have thoroughly prepared your victim, proper means of communication is the key. When the victim is a child, communication must be altered so that the child understands the questions. What happens when that child has a communication barrier, such as being deaf or hard of hearing? It is your job to find other means of communicating. When assigned a case where the victim is a deaf child, consider the following practical tips as you prepare for trial.

Preparing the Deaf Child for Court

Approximately twenty million people in this country are deaf or hard of hearing, one million of whom are children between the ages of three and seventeen.² To communicate effectively with a deaf person, and before adjusting an interview for a young deaf victim, an understanding of the differences in communication methods in the D/deaf community is needed.³

First, there must be an assessment of the child's communication ability. It is helpful to know when the child became deaf or lost his or her hearing. Studies show that children whose hearing-loss is identified prior to six months of age have higher language abilities than later-identified deaf children.⁴ Accordingly, if you know that your victim has been deaf since birth, there is a higher potential that the child's language skills have been developed with the hearing loss in mind. He or she may have developed communication skills using sign language or lip reading. If the child became deaf later in life or the hearing loss was not discovered immediately, there is a strong possibility that the child's language abilities were being developed through speech and hearing language. As a result, the child may not understand what was being taught, and may have delayed his or her language abilities. Once you know when the hearing loss occurred, you can adjust the level and types of questions you ask during preparation.

Second, discern whether anyone in the child's home is deaf and/or fluent in sign language. Only 12% of deaf children are born to deaf parents.⁵ Many deaf children are born to parents who cannot communicate with them and they are not exposed to formal communication skills until they attend school.⁶ If your victim has not had any exposure to formal communication, it may be more difficult initially to find someone who can communicate with the child. Services provided by the Registry of Interpreters for the Deaf, Inc. (RID), can assist you in identifying per-

sons who are skilled in the various means of communication in the D/deaf community. The Registry of Interpreters for the Deaf, Inc. (RID) is a national membership organization that provides certification programs and also has a searchable database where you can locate certified interpreters.⁷

Finally, ascertain what mode of communication this child uses. Although American Sign Language (ASL) is the fourth most used language in the United States,⁸ not all deaf people use ASL to communicate. Some deaf children communicate through "homesign," i.e., making statements and requests through pointing and gestures.⁹ Others communicate through Pidgin Sign English (PSE), which is a combination of American Sign Language and English word order.¹⁰ Yet another means of communication is Manually Coded English (MCE), which is word-for-word English signed on the hands. MCE is generally used by people who have lost their hearing later in life.¹¹ How the child communicates affects what type of interpreter is obtained. Ask any potential interpreters whether they are fluent in or familiar with any other means of communication within the D/deaf community other than sign language. Using an interpreter who is only fluent in sign language will not be effective with a child who homesigns or uses one of these other forms of communication.

Locating an Interpreter

All deaf interpreters are fluent in sign language but not all are trained to interpret in legal situations, nor are most trained to interpret with someone who homesigns. Determine what kind of interpreter would be best suited for the child's needs.

Statistics show that the average deaf student graduates from high school with a fifth-grade reading level.¹² As a result, writing notes to an adult who is deaf is not an effective means of communication and certainly is not appropriate for a young deaf child. In order to assure that your victim understands who you are and what is going to happen find an interpreter who is able to cross communication lines. Several types of deaf interpreters are available.

1. Certified Interpreter. A certified interpreter (CI) is a person who is fluent in American Sign Language. A CI, although trained in ASL, is not necessarily proficient in other means of communication such as gestures or homesign. If your victim is not proficient in ASL you may need a Certified Deaf Interpreter.

2. Certified Deaf Interpreter. A certified deaf interpreter (CDI) is a person who is deaf and has native or near-native fluency in ASL.¹³ CDIs have an understanding of D/deaf culture and are also trained in gestures, mime, and other means of communication. As a deaf person, a CDI has first-hand experience that will be invaluable to the communication process. CDIs work as a team with a hearing interpreter.

Utilizing a CDI in an advisory role is a good preparation tool. A CDI can help you formulate proper questions and can provide insight into D/deaf culture. A CDI can also suggest better ways to communicate with your victim based on the CDI's experiences as a deaf person. All interpreters are held to ethical standards similar to attorneys.¹⁴ According to the ethical standards as provided by RID, interpreters must remain neutral and must not provide advice, counsel, or opinions. Therefore, if you use a CDI in an advisory capacity, you will not be able to use the same interpreter for trial. Although it would be beneficial to always use a CDI, there are very few in the country. Consequently, for the purposes of trial you should use a certified interpreter who has a legal specialist certificate.

3. Certified Interpreter with Legal Specialist Certificate. A certified interpreter with a legal specialist certificate has specialized knowledge of legal settings and a greater familiarity with legal terminology.¹⁵ It is important to use an interpreter who is familiar with legal terminology and the court process. English and ASL do not translate word-for-word. An interpreter who is a legal specialist will be better equipped to interpret certain legal terms that do not necessarily have an ASL equivalent.

Ideally, every state should have sufficient numbers of CDIs and CIs with legal specialist certificates. That is not always the case. If you are unable to secure a specialized interpreter, make an effort to develop relationships within your local D/deaf community to further your knowledge and understanding of communication within the D/deaf culture.

Communicating with Your Deaf Victim

Once you have gained an understanding of how the child communicates, there are some other basic tips to remember when communicating with the child.

First, do not attempt to communicate when the child is reading or looking at something. Communication in the D/deaf community is *visual*; therefore, if your victim is looking at something he or she cannot see you. It is important that you wait until the child is looking at you or the interpreter before you begin communication again.

Second, do not forget that your victim is a person. Although you have to communicate through an interpreter, be mindful that you are speaking to the child. Try to remember not to tell the interpreter to “ask him or ask her” because pursuant to their code of ethics, interpreters are required to interpret everything you say and those statements seem as if you are not talking directly to your victim.

Third, be mindful of how you ask questions. Try not to ask compound questions. Also, try not to speak at a rapid pace. You do not want to overwhelm the interpreter.

Fourth, position yourself in the room so that the witness can see you and the interpreter clearly. Body language is an important tool in D/deaf communication.¹⁶

Finally, do not forget to educate the court, opposing counsel, and the jury about the communication differences of your witness.¹⁷ Most people have very little exposure to the D/deaf community and may be watching someone interpreting for the first time. You do not want the focus to be

on the interpreters. This child is a victim of a crime and the focus should be on the child's statements, not how they are conveyed.

Conclusion

As with all witnesses, particularly child victims, preparation by the prosecutor, as well as all allied professionals assisting with the prosecution, is essential to effective presentation of the evidence. Implementing the aforementioned suggestions will help facilitate better communication between you and the child and will help ensure that the child is prepared for court and the proceedings to come.

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- ¹ Jada L. Warfield is a Staff Attorney with the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse.
 - ² See Gallaudet University's Library of Deaf-related resources at <http://library.gallaudet.edu/dr/faq-statistics-deaf-us.html>.
 - ³ For the purposes of this article, the term D/deaf will be used for both deaf and hard of hearing children. D/deaf also indicates both physical deafness and identification with Deaf culture. The term hearing-impaired gives an inference of a disability which is not culturally appropriate and should not be used.
 - ⁴ Christine Yoshinaga-Itano et al., *Language of Early and Later-Identified Children with Hearing Loss*, 102:5 PEDIATRICS 1161, 1169 (1998).
 - ⁵ Sharon M. Ridgeway, *Abuse and Deaf Children: Some Factors to Consider*, 2 CHILD ABUSE REV. 166, 167 (1993).
 - ⁶ Tyron Woolfe et al., *Signpost to Development: Theory of Mind in Deaf Children*, 73:3 CHILD DEVELOPMENT 768, 769 (2002). (“Deaf children who are born into families with a deaf communicative partner who uses a sign language are ‘native signers’. They have access to language even before school owing to the presence in their household of at least one fluent user of a sign language....”)
 - ⁷ RID has chapters around the country and a listing of those chapters can be found on their webpage at <http://www.rid.org/index.html>.
 - ⁸ Mickey Flodin, *SIGNING ILLUSTRATED: THE COMPLETE LEARNING GUIDE 9* (Berkley Publishing Group eds., 1994).
 - ⁹ Rachel I. Mayberry, *Cognitive Development in Deaf Children: The Interface of Language and Perception in Neuropsychology*, in HANDBOOK OF NEUROPSYCHOLOGY 71, 78 (S.J. Segalowitz and I. Rapin eds., 2002).
 - ¹⁰ Jo Anne Simon, *Symposium: The Use of Interpreters For the Deaf and the Legal Community's Obligation to Comply with the A.D.A.*, 8 J.L. & HEALTH 155, 162 (1993-94).
 - ¹¹ *Id.* at 164.
 - ¹² See Yoshinaga-Itano, *supra* note 4, at 1161. [Emphasis added].
 - ¹³ For more information about CDIs, please visit <http://www.rid.org/cdip.html>.
 - ¹⁴ <http://www.rid.org/codeofethics.pdf>
 - ¹⁵ <http://www.rid.org/expl.html>
 - ¹⁶ For more information about body language, deaf victims, and trial, please see Suzanna Tiapula, *Learning to Read the Signs: Prosecution Strategies for Child Abuse Cases with Deaf Victims and Witnesses*, APRIL'S NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE UPDATE NEWSLETTER 18: (5) (2005).
 - ¹⁷ A good resource for educating the court is The National Child Traumatic Stress Network's *Facts on Trauma and Deaf Children*. For more information please visit http://www.nctsn.org/nctsn_assets/pdfs/edu_materials/FactsonTraumaandDeafChildren.pdf.

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