

THE IMPACT OF AMERICAN SIGN LANGUAGE INTERPRETER LICENSURE
LAWS ON d/DEAF DEFENDANTS IN CRIMINAL CASES

by

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DEDICATION

This thesis is dedicated to my American Sign Language professor, Davina Snow, for building my awareness of d/Deaf rights issues and to my sister, Katrina Ray-Saulis, for her unending support.

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ABSTRACT

The Americans with Disabilities Act (ADA) is a federal law which, among many other regulations, requires that d/Deaf individuals involved in criminal cases be provided with a qualified interpreter of their language, usually American Sign Language (ASL). A qualified interpreter is not defined within the law and states are left to determine what does or does not constitute qualified. This study analyzes the various ways in which d/Deaf individuals should be treated differently within the justice system due to their differences in communication, as well as how statutes defining the qualification of interpreters may be most inclusive of the variances in communication. A qualitative approach is used to analyze specific cases in which d/Deaf defendants claimed their rights were infringed upon to present ways in which the laws may be improved going forward. Included is the Idaho case of Alan Wilding, who claims improper interpretation led to him pleading guilty to a felony grand theft charge when he believed he was pleading guilty to a misdemeanor. Another case is from Maine in which Dean Green argued that not being provided with an interpreter infringed upon his rights, though he had consented to his friend interpreting during the proceedings. I conclude that the quality of interpreters for d/Deaf individuals can have a significant impact on the outcomes of criminal cases. I further conclude that laws which look to define “qualified interpreter” are varied, which has both benefits and downfalls. We must constantly look to analyze the impact of our laws and ensure the protection of marginalized groups such as members of the d/Deaf community.

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LIST OF ABBREVIATIONS

BSU	Boise State University
GC	Graduate College
TDC	Thesis and Dissertation Coordinator
ASL	American Sign Language
ADA	Americans With Disabilities Act

INTRODUCTION

Preface: Audism and d/Deaf Culture

The Deaf community distinguishes itself in writing from the general deaf population with the use of capitalization. According to Marschark and Humphries (2009), when referring to a deaf or hard of hearing person who is a member of the Deaf community, or the community as a whole, the D should be capitalized and they are commonly referred to as “big-D Deaf” (1). Like many identities, some deaf or hard of hearing people may not consider themselves to be part of the Deaf community because they do not attend community events, do not use sign language, or have a cochlear implant. A cochlear implant is a controversial device which simulates hearing for deaf individuals so they may communicate more easily with hearing people. This may cause them to live as if they were a hearing person and not consider themselves to be d/Deaf. When referring to a deaf or hard of hearing person who does not consider themselves to be part of the Deaf community or Deaf identity, a lowercase d is used and they are commonly referred to as “little-d deaf”. When referring to both groups, the term d/Deaf is used. This small distinction is an important facet of the Deaf community and is relevant to make, showing awareness and acceptance of their culture. Although both Deaf and deaf people may be impacted by improper interpretation of sign language, it is primarily Deaf individuals who are impacted. Little-d deaf individuals often use a non-sign primary form of communication due to education decisions made for them when they were

children, isolation from education of Deaf culture due to geographic limitations, or other communication choices they or their families have made in their lives.

Deafness, particularly in the young, is not extremely common. According to estimates calculated by researchers at Gallaudet University, 13% of the total US population have been identified as having “hearing problems,” including 1.81% of the population under the age of 6 (Harrington, 2014.) Although the US Census used to collect information on the d/Deaf and hard of hearing prior to 1930, it has since stopped. As a result, d/Deaf institutions have had to rely on other, less accurate methods of polling and data collection. Similarly, the US Census does not collect information on non-spoken (manual) languages used primarily in the home, but it is estimated to be between five-hundred thousand and two million people (Harrington, 2014). This means that of the d/Deaf and hard of hearing population of the US, roughly 1.3% to 5.2% uses manual language as their primary form of communication, as estimated by Gallaudet University.

Discrimination on the basis of hearing is known as “audism.” This term was coined in the mid-1970s, around the time of the Rehabilitation Act’s inclusion of people with disabilities in protected groups under federal discrimination laws. Bauman (2004) defines audism as “the notion that one is superior based on one’s ability to hear or behave in the manner of one who hears” (240). An important distinction of this particular definition is that people who are d/Deaf or hard of hearing may also display audism. An example would be a d/Deaf person who was taught oral communication and lipreading as a child and considers themselves superior to d/Deaf people who solely use written and manual languages to communicate. d/Deaf individuals have been oppressed, abused, and discriminated against for a long time. Only recently have d/Deaf people been protected

by US federal laws and, even so, they still see unjust prejudices and audism in their everyday lives. An aspect of hearing culture is the inherent idea that people with hearing are superior to people who are d/Deaf, that those who are d/Deaf are missing something from their lives and bodies. People who are d/Deaf or hard of hearing have an entirely separate culture and way of life that cannot be replicated in hearing culture. d/Deaf and hard of hearing people are able to live fulfilling and complete lives without the use of hearing or hearing devices. Possibly because d/Deaf individuals are so few and have experienced similar oppression, a community of shared culture and experience has been built over the years. The Deaf community has many different facets, and it is not just one, but many communities which share a common culture.

Manual language is an umbrella term used to describe languages which use the hands. Sign languages (such as American Sign Language) are languages which use both hands and facial expressions. There are nearly two-hundred known manual languages, many of which are used today and others which have been used in the past and have been lost in time. These languages are robust, changing, and vastly different; both from each other and from spoken and written languages. It is a common misconception that ASL is a signed version of English and shares the same syntax, vocabulary, and grammar.

However, ASL is actually more closely related to French than it is to American English. It was originally developed by Laurent Clerc, who began his work in the Americas by teaching French Sign Language to American d/Deaf students. Clerc was one of the two founders of the first school for the d/Deaf in America, American School for the Deaf, which is still active today. This school paved the way for establishing Gallaudet University about fifty years later, the world's only university designed to be barrier-free

for d/Deaf and hard of hearing students. Since English and ASL are completely different languages, d/Deaf children who grow up with ASL are learning English as a second language and are growing up bilingual, learning both ASL and written English. The interpretation of ASL requires real-time translation of each sentence, not a word-for-word repetition. When interpreting ASL, the interpreter generally listens to a full sentence before translating it into ASL to allow for the variances in grammar. Word-for-word repetition would not be ASL and would actually be a separate sign language known as Signed English (Belt, 2013).

The Context of Interpretation

Following the death of South African politician Nelson Mandela, dignitaries from around the world gathered for a memorial service in December of 2013. While the world watched, an African Sign Language interpreter named Thamsanga Jantjie interpreted the presentation of speeches in a way in which hearing people noted as being “energetic.” However, the d/Deaf people in the audience and watching from around the world were confused. According to McKenzie and Gumuchian (2013), this interpreter had been hired by a private organization and his qualifications had never been properly verified. In fact, when they attempted to reach the organization that had hired him, the government stated that the executives of the organization seemed to have “vanished into thin air.” The signs that he used, although energetic and interesting (even funny) to the hearing viewers, did not belong to any known manual language. South African Sign Language is one of over twenty-five manual languages used in Africa (Kamei, 2004). South African Sign Language interpreter Francois Deysel later explained, “the signals, or the signs that he

had used, are not signs used in the Deaf community in South Africa, nor in the world” (Murphy & Thomas, 2013).

As the world watched, Jantjie stood only a few feet from the world’s greatest leaders, including sitting President Barack Obama, believing himself to be a qualified sign language interpreter but failing at effectively communicating the messages to the d/Deaf community. People around the world began to ask how this could happen. South Africa does not require that sign language interpreters for events be licensed through a specific board, which means that someone such as Jantjie can be hired for an international event without being qualified. Although the international hearing community found this situation amusing, the d/Deaf community was offended. "It was almost like he was doing baseball signs. I was appalled," d/Deaf actress Marlee Matlin told CNN (McKenzie & Gumuchian, 2013). Due to the improper interpretation, the event became inaccessible to an untold number of d/Deaf attendees and viewers. However offensive this failure to interpret was, it was not life-changing. Imagine that Jantjie had instead been assigned to interpret for a d/Deaf person who was being detained by police. When an interpreter may be the only thing standing between a d/Deaf person and a guilty verdict, the need to ensure that interpreters provided are qualified is more than just an interesting anecdote, it is a matter of justice.

d/Deaf Americans are an oft-forgotten minority in the United States with a completely different culture, history, and most importantly to this research, language from hearing Americans. These differences can have significant impacts on the way they are treated in our criminal justice system. The Americans with Disabilities Act (ADA) requires that all d/Deaf defendants be provided with a “qualified” interpreter during any

police interrogation or court case. However, the ADA does not clearly define what a qualified interpreter is and states are left to interpret the law. In order to ensure the quality of interpretation to protect the due process rights of d/Deaf individuals, some states have elected to restrict who can be an interpreter through the use of licensure. Thirty states have chosen to add additional licensure requirements for interpreters. As Table 1.1 indicates, twenty states, as well as the District of Columbia, have not elected to require licensure of any type for ASL interpreters in courts, but may or may not require licensure in state agencies or in medical or educational settings (Swarts, 2014).

Table 1.1 State Regulations on Interpreter Licensure

Additional Restrictions	States
None (12)	Delaware, District of Columbia, Florida, Hawaii, Maryland, Massachusetts, Mississippi, Montana, North Dakota, Tennessee, Vermont, Wyoming
State Agencies (1)	Indiana
Courts (3)	New York, South Carolina, West Virginia
Schools (8)	Alaska, Georgia, Idaho, Kansas, Minnesota, Ohio, Washington, Wisconsin
Schools and Courts (5)	Iowa, New Jersey, Oregon, Texas, Virginia
Courts, State Agencies, and Medical (1)	New Hampshire
Schools, Courts, State Agencies (4)	Arizona, Nebraska, New Mexico, Oklahoma
Schools, Courts, State Agencies, Medical (17)	Alabama, Arkansas, California, Colorado, Connecticut, Illinois, Kentucky, Louisiana, Maine, Michigan, Missouri, Nevada, North Carolina, Pennsylvania, Rhode Island, South Dakota, Utah

In this research, I determine the ways in which laws requiring ASL interpreters to be licensed may have an impact on criminal cases involving d/Deaf defendants. By

comparing cases where interpretation may have impacted the outcome, we can determine the impact of laws requiring that interpreters are licensed. The purpose of this study is to show whether these laws requiring additional licensing have a positive impact on the d/Deaf population, as the supporters of these laws believe they do. Through this analysis, I find that interpretation can significantly impact the outcome of cases, but that laws requiring interpreters to meet certain qualifications can vary greatly. This variation can be positive, but it can also lead to additional questions of ethics and potential infringement on rights of d/Deaf people involved in criminal cases. Existing research in the area of d/Deaf defendants in criminal courts is extremely limited and very little has been done since the implementation of the ADA in 1990. Outside of this study, research has not yet been done on the impacts of laws which require interpreter licensure. This study takes a closer look at the limited existing research and applies it to specific cases of perceived injustice, giving a yet unseen perspective on the impact of interpreter licensing in US States.

The Americans With Disabilities Act and its Faults for d/Deaf Individuals

The Americans with Disabilities Act (ADA) was signed into law by George H. W. Bush on July 26th, 1990 and was widely regarded as an incredible achievement for the disabled and Deaf communities. It was expected that the ADA would serve to decrease the discrimination of people with disabilities across the United States. The act outlines many different areas in which discrimination against people with disabilities must be prevented and is specific in what services must be provided for individuals with disabilities, particularly in the areas of medical, educational, and legal settings. According to Mayerson (1992), the ADA became necessary after the passage of Section

504 of the 1973 Rehabilitation Act, which “banned discrimination on the basis of disability by recipients of federal funds.” This was based on the language and previous acts to prevent discrimination on the basis of race, ethnic origin, and sex. The ban of discrimination on the basis of disability made it necessary to outline what constituted discrimination and make it clear what rights disabled people had in schools, courts, places of medicine, places of work, and more.

The ADA requires that members of the police force and justice system use “qualified interpreters to communicate with victims, witnesses, and suspects who are d/Deaf or hard of hearing” (43). However, the ADA does not define what makes an interpreter qualified. Although some understanding of ASL is expected, the officials using the interpreter would have no way of knowing whether an interpreter is qualified if they did not have ASL experience. Further, fluency in ASL is not the only thing that makes an interpreter qualified. Vernon, Raifman, and Greenberg (2001) posit that proper interpretation involves far more than just using someone who knows ASL and that d/Deaf individuals being interviewed as part of a trial must have more than just a competent interpreter. Along with being fluent in ASL, interpreters must be trained in analyzing the communication ability of the d/Deaf individual. The interpreter can then use this information to determine the most appropriate method to communicate with the d/Deaf individual. Due to education, isolation from the Deaf community, and choices made about their language by their caretakers and doctors at a young age, ASL may not be the most appropriate form of communication for all d/Deaf people. If a d/Deaf individual being interviewed for a case is unable to communicate with ASL, there may be other ways to communicate such as Signed English, written English, or another manual

language. Additionally, there may be d/Deaf individuals who have cochlear implants and do not use manual communication of any form, for which an interpreter would not be of use. Since the ADA does not define what a qualified interpreter is, it is up to the police officers, prosecutors, and court officials to ensure that the communication skills of the suspect and the interpretation skills of the interpreter are up to the standards of quality required to ensure the rights of the d/Deaf person are not infringed upon. This is a responsibility that the average person would not be qualified to determine.

Many people in the Deaf community have called for action in their states in order to ensure that the interpreters being provided by the medical, educational, and criminal institutions are indeed qualified. To achieve that end that, they call for their states to more strictly define what a “qualified interpreter” means in the context of the ADA. The National Association of the Deaf (NAD) is aware of the fault in the ADA and advocates for state legislation, but has not pushed for a change in the federal law. Efforts to more clearly define qualifications have been focused on the state level. According to a list compiled by Swarts (2014), and summarized in Table 1.1, in 17 states, the Deaf community has pushed for and succeeded in passing a law, or a combination of laws, requiring that interpreters receive specific state, national, or regional licensing (depending entirely upon the state’s law) before being allowed to interpret in situations required to have an interpreter by the ADA. However, that leaves 33 states and the District of Columbia with no licensing required, or licensing required only in specific instances. Florida, for example, which has the third-largest population of d/Deaf people in the country, does not currently require that interpreters be licensed under any instances, according to Hidalgo (2015). A proposed bill in Florida would establish requirements for

interpreters regarding proof of education and licensing. The d/Deaf community believes that laws such as this are able to reduce injustice caused by audism and ignorance about their language and culture. Furthermore, there are currently eleven states and the District of Columbia which do not require ASL interpreters to be licensed, either nationally or by their state, under any circumstances (360). There are nine additional states which do not require ASL interpreters to be licensed in order to interpret for criminal cases, but may require licensing in medical, educational, or other settings.

Although in many states, d/Deaf individuals are unprotected in medical, educational, and criminal situations from the danger of interpreters who are not qualified for their position, other states have made significant steps to provide this access. In this piece, I will analyze how the lack of qualified interpretation, particularly in relation to state licensing, may impact d/Deaf defendants in criminal cases. I have chosen to limit the analysis specifically to criminal cases because this is an area where d/Deaf individuals are uniquely vulnerable. As an unseen and unheard minority of American culture, it is important that hearing people are aware of internalized audism and take progressive measures to prevent injustices in our courts.

LITERATURE REVIEW

Educational and Language Issues for d/Deaf Individuals

One of the primary issues with incorrect interpretation for d/Deaf individuals in a legal setting is officials determining when an interpreter is considered qualified and when they are able to communicate efficiently and accurately with the defendant. Often, d/Deaf individuals may have learning disabilities that have gone undetected because most tests to assess learning disabilities are English-based and have not been properly developed to accommodate ASL (196). On top of this, since English and ASL are quite different, communication between d/Deaf and hearing children can be very limited, causing deafness to be extremely isolating. This isolation can have negative effects on social and educational development, often leading to d/Deaf children being behind their hearing peers in linguistic development. This deprivation of language can lead to a lack of general knowledge of their rights and the processes of the criminal justice system.

In 1991, Vernon, Steinberg, and Montoya reviewed the cases of 28 d/Deaf individuals who were convicted of, pled guilty to, or charged with murder. Of the defendants there were 27 males and one female, which is statistically representative of the national gender breakdown of murders. These 28 individuals were considered to be especially disabled in the area of communication. One of them had been taught to use verbal communication, but the others either did not speak, or spoke in a way that was considered to be unintelligible. Just under half of them were fluent in ASL, which meant that those individuals would be the most relevant for analysis of interpretation. The others

had difficulty in communication, relying on very basic signing or on written communication, which was also significantly impaired. Fifty-seven percent of the defendants were functionally illiterate, meaning they read lower than a third grade reading level. Only three of them had some college education, one of them at a graduate level. This demographic information on literacy and communication ability is important to consider because the majority of the d/Deaf people who are arrested may not be able to use sign language or interpreters to the best of their ability due to lack of education in communication skills, both in written English and in ASL. This means that the laws created to assist them need to consider the many possible facets of communication and education in the d/Deaf population. Since this is a very complicated demographic, that needs to be reflected in the laws which are presented to protect them.

Miller and Vernon (2002) later conducted interviews of 46 ASL interpreters who were trained in criminal justice interpretation. In addition to ASL, these interpreters were also trained in identifying the varying language levels of d/Deaf suspects. Identifying language ability in suspects is important in order to more adequately understand what must be done to ensure that the rights of d/Deaf individuals with linguistic disabilities or differing linguistic capabilities are not infringed upon. Miller and Vernon split d/Deaf suspects into two categories. The first is suspects who are fluent in one or more languages, whether that be ASL, manually coded English, contact language (also known as Pidgin Sign English), an indigenous sign language, a foreign sign language, or written or spoken English. The second category is individuals who are not proficient in any language. These people are the most difficult to serve because laws requiring provided interpreters to be licensed are not going to help them unless they become proficient in a

sign language or the interpreters are also trained in identifying how to determine the proper method of communication. Even identifying these individuals as not proficient can be difficult because their inability to communicate may come across as lack of understanding due to any number of circumstances, not necessarily due to a lack of language.

One of the first interactions with police can already be an infringement upon d/Deaf individuals' rights through the incorrect implementation of the Miranda Warnings upon arrest. The Miranda Warnings are required to be administered, but there are few regulations on how they are administered to people who do not use English as their primary language. Often, police will administer the Miranda Warnings by speaking them aloud and expecting the defendant to lipread, also known as speechreading. However, speechreading is difficult and imprecise. According to Vernon, Raifman, and Greenberg (1996), "of the forty-two phonemes that make up the sounds of the English language, half either look just like some other sounds as formed on the lips or else are invisible" (123). Even when the Miranda Warnings are interpreted into ASL, the interpretation back to English can show that there were important aspects that were not properly conceptualized with the use of ASL. Vernon, Raifman, and Greenberg posit that this makes the Miranda Warnings inadmissible to d/Deaf suspects, which could render cases completely useless as testimonies received without the Miranda Warnings properly administered could be thrown out of criminal court. This could lead to a mistrial or to an innocent verdict of a guilty d/Deaf criminal due to improper procedures of the criminal justice system. Further, not being properly administered the Miranda Warnings is a serious violation of a defendant's due process rights and should not be taken lightly.

Similar to how a hearing person will act in a country where they do not know the language, a d/Deaf person may choose to nod in agreement when they do not understand rather than appear to be dumb or repetitively asking the police officer to repeat themselves. This can lead to them waiving their Miranda Rights in order to avoid being uncomfortable, a dangerous situation when their freedom is on the line. However, it is not up to the d/Deaf individual to fight for understanding; it is up to the police officers, prosecutors, and other administrators of the criminal justice system to ensure that the safety and rights of the d/Deaf individual are of the utmost priority. It is therefore their responsibility to administer the Miranda Warnings in the way that is best suited for the individual.

Another important right of d/Deaf defendants that can often be infringed upon due to their differences in linguistic communication is the right to a speedy trial. Miller and Vernon (2001) outline a case in which Junius Wilson, a d/Deaf black man, was imprisoned for rape in North Carolina when he was only 17-years-old and a jury found him incapable of withstanding trial due to mental deficiency. However, he was using a local sign language from the Southern US, which was not properly identified, known as Raleigh Dialect. This communication error is believed to be the reason that he was deemed unfit for trial, meaning he could not testify on his behalf or communicate with his attorney. By the time the error was detected, he had spent 69 years in a state hospital and had even been castrated without ever having been able to advocate for himself (227).

This injustice was not only the lack of a speedy trial, this was also infringement upon his bodily autonomy, which sparked public debate on the legality of forced unnecessary medical procedures on inmates. Whether or not Wilson was innocent is

completely irrelevant to the unacceptable manner in which he was treated, all because the prosecutors, police officers, and criminal justice administrators did not do their due diligence to properly communicate with this man.

The Importance of Interpreters for d/Deaf Individuals

A 1996 study by Moore evaluated the importance of interpreters by studying court proceedings which have non-English speaking persons as the defendants. These involve spoken word interpreters, not ASL interpreters, but the findings can be considered comparable for d/Deaf individuals. This study involved one proceeding where the interpreter made significant errors and another where the interpreter was conducting their interpretation correctly. The findings show a significant difference in the results of each court proceeding. This study emphasizes the importance of proper interpretation, both for non-English speaking hearing persons and for d/Deaf individuals who do not use English as a primary language. Although interpretation for hearing persons who do not speak English is comparable in some ways, it is important to remember that d/Deaf individuals are not entirely equivalent. According to Executive Director Steven Snow of the Idaho Council For The Deaf and Hard of Hearing at the 2015 hearings on the Idaho interpreter licensure, a distinction should be made between these individuals because “you can teach a hearing person to speak English. You cannot teach a d/Deaf person to hear” (Idaho, 2015).

An interpreter is important for d/Deaf individuals who use ASL as their primary form of communication during every stage of the criminal justice process. Vernon and Miller (2005) analyzed the many different steps of the process in which d/Deaf people’s rights are infringed upon in their piece entitled *Obstacles Faced by Deaf People in the*

Criminal Justice System. During the arrest process, there is a communication barrier that can result in a loss of civil rights. Although many d/Deaf individuals have a reading level lower than the average population, they can possibly understand their rights and why they are being arrested from the moment they get picked up through alternative communication forms, such as ASL. The lack of an interpreter or basic awareness of d/Deaf individuals' needs can be extremely costly for them, and sometimes even deadly. In August of 2016, an unarmed d/Deaf man by the name of Daniel Harris was killed by a police officer outside of his home after he was pulled over for a traffic violation. The North Carolina police officer did not understand that his arm movements were him attempting to communicate through the use of ASL and he was shot and killed (King, 2016). This deadly situation could have been avoided if the police officer had been properly trained on what to look for to determine whether someone might be d/Deaf and what to do once that has been established. The proper action might have been contacting an interpreter or using a video conferencing method of interpretation, a service often available to d/Deaf individuals across the US for free. Even the use of written communication would have been an acceptable solution if not interpreting service was available for a routine traffic stop.

Even in states where interpreters are required to be licensed there can still be infractions, which further exemplify the importance of the laws. For example in the medical field, in Colorado a d/Deaf couple was attending medical group sessions in order to learn about others' experiences with infertility in hopes of guiding their own journey. Niki Runge, the d/Deaf woman attending these meetings hired an interpreter who turned out to be improperly interpreting the sessions. Niki said that she noticed periods of time

when interpretation was not happening but someone was speaking. She also noticed the use of signs she did not recognize. These instances prompted her to ask the interpreter if they were licensed and the interpreter said no (Cheek, 2015). Because their state requires that interpreters provided in medical situations be licensed, Runge could sue the organization that had hired an unlicensed interpreter regarding this situation. Without the law requiring that interpreters be licensed, they would not have a viable lawsuit and could not press criminal charges against the organization for knowingly providing inadequate interpretation for a situation which was important for Runge's health.

There are numerous difficulties in ensuring that d/Deaf individuals are safe and their rights are not infringed upon throughout the legal process. Between the varying levels of communication abilities and numerous manual languages used, no single law imposed across all states could eliminate these issues with our current system. However, through a study of individual instances in which improper interpretation allegedly affected the outcomes of criminal cases and by analyzing the information we have about linguistics in d/Deaf individuals, I will show that laws requiring ASL interpreters be licensed for use in legal settings can have an impact. Even though the impact may not be applicable to all d/Deaf individuals, it will have an impact on some, allowing for justice to be swift and safe. Further, I will make suggestions as to what else these laws can entail to provide the best service possible for each individual. Through continual research of the laws enacted, they can be altered and improved to protect the rights of all d/Deaf individuals.

METHODOLOGY AND CONCLUSIONS

Issues With Quantitative Research of d/Deaf Defendants

In order to study the impacts of interpreter licensing on criminal cases, I perform a qualitative study comparing case details between varying states. In researching how a study of case outcomes could be done quantitatively, it became instantly evident that cases involving d/Deaf defendants could not currently be categorized in any reliable way. Different courts in the US have their own system for codifying and gathering information from cases, which may or may not line up with others. Even when data from multiple states' cases can be compiled into one dataset, there is no information on whether the defendant was d/Deaf, as disability is not something that is recorded by every state or court. For example, Miller (2001) explains that New York, which does gather this information, only gives a binary "yes" or "no" for whether or not an interpreter is requested, but does not specify who the interpreter is for. The interpreter could be for the defendant, a witness, a plaintiff, or even a jury member (329). Since most states do not gather this information at all, it makes it extremely difficult to quantify how many cases in a year involve d/Deaf defendants.

According to Miller (2001), the current estimates of how many d/Deaf people interact with the criminal justice system are based on administering hearing screenings of individuals in jails and prisons (329). This means that they can only identify those who have been convicted of their crimes, as well as those whose crimes resulted in jail or prison time. Although no studies have been conducted on whether d/Deaf individuals

receive lesser sentences than hearing individuals, through other studies we may hypothesize that this result is likely. In a study conducted by Gibbons, Sawin, and Gibbons (1979), they found that people attribute behavior of disabled adults differently than non-disabled adults because they perceive them as incompetent and having little control over their lives (129). This is known as the patronization effect, where the belittling of a person's competency has an impact on their perception of guilt, which was shown to result in lower sentences and more not-guilty verdicts. This study was retested by Najdowski, Bottoms, and Vargas (2009) in a case study looking at jurors' perceptions of guilt of juveniles with mental disabilities; the same conclusions were reached for juveniles (402). Although not all d/Deaf defendants in criminal cases have mental disabilities, there is a greater chance of mental disability than their hearing peers, according to Young, Monteiro, and Ridgeway (2000). These researchers posit that the mental health difficulties of d/Deaf inmates may be increased by combining the already stressful and isolating situation that is incarceration with the communication difficulties and isolation caused by inadequate services and lack of others who use their language (560). Even if the individual does not have mental disabilities, the perception of mental disability is often still prevalent when people who are unaware of the realities and interact with a d/Deaf person for the first time. Even the commonality of the phrase "deaf and dumb" could contribute to the patronization effect felt by d/Deaf people. This incorrect perception of mental disability or incompetence could impact the outcomes of a case. In England and Wales, for instance, a significantly higher number of d/Deaf defendants are deemed unfit to plead on their cases compared to hearing defendants, which Young, Monteiro, and Ridgeway (2000) attribute to incorrect perceptions based on their deafness

(563). These contributing factors all affect the outcomes of cases, which could result in the cases not being listed in searches due to case dismissal, inadequate interpreting services, being forbidden from giving testimony, or the patronization effect giving them lesser or no jail time.

Since information on cases involving d/Deaf defendants is not easily available across states, searching for individual cases seems the best way to gather cases to include in a study. In an attempt to gather information on cases which involved d/Deaf defendants, my hope was to search a collection of cases across the country (e.g. Westlaw) for criminal cases using keywords such as “deaf” and “sign language interpreter.” Although this would result in plenty of returned cases, it would not be a representative sample of cases involving d/Deaf defendants for a few reasons, including the exclusionary reasons listed above, as well as others. For example, cases in which their interpretation was not questioned or they did not need to appeal to receive an interpreter may not include information about their deafness unless pertinent to the case.

It is my hope that as research is furthered in the area of the treatment of d/Deaf individuals in criminal cases, state courts will begin to see the necessity of coding in their case information whether cases involved physically or mentally disabled people. This will pave the way for future studies to answer the questions posed here without the scientific issues presented in this section with using quantifiable data. However, since we are currently without quantifiable data, the best way in which to determine the impacts of interpreter licensing laws is by using a qualitative method to analyze cases relevant to interpreter qualifications. Additionally, since there is such a vast range of needs for d/Deaf individuals in the lines of communication, analyzing individual cases where issues

are presented will give us a strong picture of what types of policies will assist the greatest number of people.

Methodology

The main question I will answer through this analysis is whether interpreter licensure impacts d/Deaf defendants in criminal cases. The best way to answer this question is through qualitative means, as it will provide us a more direct look at instances when interpretation is believed to have impacted cases. As Brady and Collier (2004) explain, “Case-oriented researchers... treat cases as singular, whole entities purposefully selected, not as homogeneous observations drawn at random from a pool of equally plausible selections” (125). By this, Brady and Collier mean to say that case-oriented research has the baseline assumption that situations that occur in like settings have parallels, which allow them to be compared and conclusions on the large-scale impact to be drawn. In order to answer the question of how interpreter licensing impacts d/Deaf defendants in criminal cases, I will use this principle to compare criminal cases where interpretation may have impacted the case. This comparison allows us to draw conclusions on how these situations differ based on the qualifications and licensing of the interpreter provided.

In order to select cases that would show a direct comparison between laws, I looked for one case in a state with no regulation, and one case in a state with regulation. I was aware of *State of Idaho v. Alan Spencer Wilding* before I began my research as his story was part of the 2015 testimonies for House Bill 152 being shared in the Health and Welfare Committee hearing I attended. To find a case in a state which had regulated sign language interpreters, I searched for cases that involved d/Deaf individuals using

Westlaw. *State of Maine v. Dean Green*, was selected because at the time of the case, Maine did not have ASL interpreter certification requirements. However, unlike the Idaho case, Maine did have other relevant requirements for ASL interpreters. This allowed for a direct comparison of the impact of no interpreter requirements and the impact of having some interpreter requirements that do not go far enough. Maine is also particularly relevant because they have altered their laws since *State of Maine v. Dean Green*, becoming a state with one of the most stringent laws for interpreter certification. By analyzing the issues of Maine's previous law and the successes of their current laws, in conjunction with the details of the cases, I am able to draw conclusions on what an ideal certification law would look like.

It is difficult to say with certainty that the experiences of an individual are applicable across a broader spectrum, but I argue that the reach of a particular part of the law is not important. As Dr. Martin Luther King Jr. (1963) said in his *Letter From Birmingham Jail*, "injustice anywhere is a threat to justice everywhere." It is important that we are aware of and identify injustices around us and that the legislature create policies to prevent these injustices. Social impact theory, as explained by Fink (1996), is a theory that the greater impact of a social phenomenon is based on the strength of the source of the phenomenon, the number of people impacted, and the immediacy of the phenomenon (6). The theory also implies that as more people experience the impact, it will eventually even out. This means that as more d/Deaf people experience injustice in the criminal justice system, the more it will be considered commonplace and a norm in our society, making it harder to change. Showing continual support and making a change that affects even a single case sets precedent for the future. By creating laws which

require interpreters to be licensed, this allows for d/Deaf people and the government to bring interpreters who are unqualified to court, keeping the injustice of the situation in the public eye. This can also have a greater impact outside of the d/Deaf community by bringing attention to injustices of other language barriers. For example, ensuring that travelers, naturalized citizens, and natural-born citizens who speak English as a second language and are provided with a qualified interpreter of their own language. Although large-scale impact is difficult to prove in qualitative research such as this, the large-scale impact is less important because specific instances of injustice in our system have happened without repercussion and actions must be taken to remedy this. If justice is too late for those individuals, then actions may be taken to prevent future cases of injustice. Through the qualitative analysis of these cases, I will prove that the improper interpretation for d/Deaf defendants can impact their cases, which shows a necessity for laws to be put in place across all states to protect these marginalized individuals. Further, I will show through these examples that simply having a law is not enough; it needs to be the right law and we need to be willing to continually evaluate these laws for their quality and effectiveness.

Case 1: Alan Wilding in Idaho, Without Licensing Requirements

In the state of Idaho, there is currently no law which identifies what a “qualified interpreter” means in reference to the ADA. This means that when Alan Wilding was detained on grand theft charges in 2011, he requested an interpreter and was provided one, but this interpreter was not licensed or certified. Wilding gave personal testimony at a hearing on a proposed bill on interpreter licensure in February 2015 where he stated that the interpreters he was provided with were not properly trained in ASL. The first

interpreter was someone who was only able to use fingerspelling, a portion of ASL where words are spelled in English rather than translated into ASL. This is slow, menial, and easy to misinterpret since English and ASL are two different languages. Wilding stated that he persistently asked for a qualified interpreter to which the judge asked him how the courts would know who was qualified. When Wilding told the judge that he would know, the judge informed him that he had no right to tell them who was qualified.

Through eleven different meetings with officials of the courts, Wilding claims that he was given improper interpretation that was lengthy, difficult to understand, or inaccurate. On his eleventh meeting, he was provided with an interpreter with more knowledge of ASL, but still not fluent. Through this interpreter, he was told that he had been charged with a felony but if he pled guilty with an Alford plea (a plea where a guilty plea is entered but the defendant maintains that they are innocent), they would charge him with a misdemeanor. If charged with a misdemeanor he would pay fines but serve no jail time. Wilding states that he is innocent, but says he agreed to the guilty plea because he wanted the case to be concluded.

At Wilding's twelfth meeting, he was finally given an interpreter he considered to be qualified. Wilding informed the interpreter that he had agreed to plea to the misdemeanor, but the interpreter said that he had agreed to plea to the felony at his last meeting. Wilding tried to change his plea to be for a misdemeanor or revoke the plea entirely but was told that he could not reverse his previous plea. Wilding states in his explanation of events that his agreeing to a felony charge was the direct result of improper interpretation leading to a misunderstanding that significantly impacted his case. Due to the felony charges, Wilding is no longer allowed to teach in the state of

Idaho, which he had done for sixteen years, and he says that the charges have significantly impacted his livelihood.

Although this information is based on personal testimony, when analyzing the Idaho Repository public information of *State of Idaho v. Alan Spencer Wilding* (2010) I found that the records do not indicate any information regarding interpretation. Where future cases involving Wilding show record of a request for interpretation and list the interpreter provided, the 2010 case in question lists no such information. Over the course of the five months it spanned, Wilding's case showed a significant lack of understanding in the Idaho criminal justice system of d/Deaf defendants' needs and provides a case for bills such as Idaho House of Representatives Bill No. 152 from the 2015 legislature. This bill would have made it a misdemeanor for someone to interpret in instances that require an interpreter be provided per the ADA, which includes educational, medical, and criminal settings, if they were not licensed with the state of Idaho (Idaho, 2015). This bill passed through the Idaho legislature, but was vetoed by Governor C. L. "Butch" Otter on April 21st, 2015. In his letter to the Secretary of State, Otter states that he vetoed the bill due to "limited resources" (Otter, 2015).

A new version of the bill, HB46, has been proposed and is making its way through the Idaho legislature as of Spring, 2017. Representative Kelley Packer, who also backed the original bill, says that she has "worked with officials to courts in rural areas to ensure they could use video-chat with a licensed interpreter if that area did not have [one] readily available" according to the Idaho Statesman (Kruesi, 2017). The availability of video-chat for interpreters allows for interpreters in the more populous area of the state to still provide interpretation for the rural areas, thus addressing Governor Otter's concern

of resources. There were additional concerns from legislators about there being punitive measures against business owners who accidentally hire unqualified interpreters. This wording from the 2015 bill was removed so now the only punitive measures are affecting unlicensed interpreters.

Case 2: Dean Green in Maine, With Additional Restrictions

According to Maine state law, when a d/Deaf person is involved with the court, then the presiding officer must, “in consultation with the deaf or hearing impaired person, appoint a qualified interpreter.” This means that if the interpreter provided does not meet the needs of the d/Deaf person, then a new interpreter may be provided (Title 5 M.R.S.A. 48, 1989). A request for a new interpreter can be repeated until the d/Deaf person is satisfied. Maine is notably ahead of the curve in creating this law as they were addressing the issue of interpretation before the ADA was even created, providing their own restrictive guidelines for d/Deaf rights in the courts. Further, rather than create a restriction regarding interpretation licensure, they created a restriction regarding approval from the d/Deaf individual. In *State of Maine v. Dean Green*, this wording allowing for the d/Deaf person to choose the qualifications of the interpreter was especially important because it resulted in an appeal of the case by Green.

Dean Green was convicted of rape and submitted an appeal claiming that the court did not adhere to Title 5 M.R.S.A 48, requiring that an interpreter be provided (1989). In the Maine State Supreme Court’s analysis of the case, they admitted fault and non-compliance with the statute, but deemed that the non-compliance did not “rise to the level of obvious error denying the defendant a fair trial” (1989). In an instance where the Maine State Title 5 requires that an interpreter be provided, a d/Deaf individual is

allowed to waive their right to an interpreter. Green argued that he did not waive his right to interpretation. The court posits that since he did not request to have an interpreter during the part of the trial where his interpreter was not present, they can only look at whether the error caused enough issue to taint the proceedings and lead to an unfair trial.

The court became aware of Green's deafness when he noted that Benjamin Garcia, a witness for the defense, was unavailable to attend the trial date and Green requested that the trial be stayed. Since Garcia was a key witness and also acting as an interpreter for Green, this was granted. However, in a different instance, when Green and Garcia were both in attendance, it was made clear that Garcia was interpreting for Green when it was described as "not a real formal interpretation" and "kind of a quasi-interpretation." Garcia was by no means trained as an interpreter, but he was being used as one because he was a friend of Green and the court considered him to be able to communicate with Green "better than others immediately available".

Although Green should have been provided with a trained interpreter, the wording of the law in Maine resulted in Green having a perceived injustice, allowing him to appeal his case. The court recognized this, admitting that an interpreter should have been provided. However, since he did not request additional interpretation, did not claim to misunderstand, and did not have confusion based on interpretation, the court ruled that the improper implementation of the interpretation requirement did not result in an unfair trial. Since he considered Garcia to be a qualified interpreter in every other instance along his case, his claim that Garcia was not a qualified interpreter appears to be unfounded and a last-ditch attempt to overrule the results of his case.

State of Maine v. Dean Green is distinctly different from *State of Idaho v. Alan Spencer Wilding*. The primary reason that it is different is that, while Green was inherently trusted, as guided by the law of the state, to know who had the proper qualifications to interpret for him, Wilding was told that he did not have the right to judge who was a qualified interpreter. This assumption hurt Wilding and affected his case in a significant way. Alternatively, the protection of the additional law in Maine and guidance from that law allowed the judges to rule that it had not affected Green's case since he had agreed to the interpretation along the way and the law specifically allowed for that. The lack of sufficient interpretation for Wilding negatively impacted him, but they would not review his case for additional issues since they perceived someone fingerspelling and someone with basic ASL knowledge as a qualified interpreter and the state provided no additional protections for Wilding to argue that this was not sufficient. Wilding's only option would have been to pursue the case in higher court, which he was unwilling to do since he wanted to put the event behind him.

Since *State of Maine v. Dean Green*, the law in Maine has been altered to require very specific types of interpreters based on the d/Deaf person's needs. For example, a "deaf interpreter," such as Garcia in Green's case, would be allowed if the d/Deaf person has only a limited amount of communication skills. A deaf interpreter in this instance means someone who is d/Deaf but is able to understand English on a different level than the person being interpreted for, such as through the combination of hearing devices and lipreading. However, if the d/Deaf person is fluent in ASL, then a "qualified legal interpreter" must be provided (Title 5 M.R.S.A 48, 2003). A qualified legal interpreter is someone who is licensed and certified as an interpreter, who may be either d/Deaf or

hearing according to the certification allowances, but must pass requirements to prove their ability to properly interpret English into ASL. This was expanded and clarified in 2003 to help ensure the most communication coverage and that the proper interpretation is provided to fit the needs of the d/Deaf individual. The Maine law states today that the interpreter is appointed “after consultation with, and giving primary consideration to the request of, the deaf person” (2003). It further states that as many interpreters as necessary may be provided to meet the needs to the d/Deaf person. This means that the power to define what qualified means, outside of the scope of licensure, falls on the d/Deaf person to ensure their rights are upheld.

The Ideal Interpreter Licensure Law

In *State of Idaho v. Alan Spencer Wilding*, a d/Deaf man claims he was unjustly charged because there was no protection beyond the ADA. The ADA is currently insufficient because it does not define what a qualified interpreter is and does not specify who determines who is qualified. This resulted in Wilding being unable to advocate on his own behalf by requesting a new interpreter when an unqualified interpreter was provided. The ADA is a great start to provide basic protection, but it does not go far enough. In *State of Maine v. Dean Green*, he was provided with an interpreter of his own choosing, but argued later that this was not enough. Maine’s law today is exemplary and far above much of the country, possibly due in part to their addressing the situation before the ADA was enacted, putting them into a proactive position. I do believe that Maine is currently in the position of holding the ideal law, but that is only if their licensure and training is at a standard sufficient enough for them. Vernon, Raifman, and Greenberg (2001) believed it extremely important to identify the form of communication

to best be used by each individual. Although this is something trained interpreters may learn to do naturally as part of their job, it is possible that some may not have been trained to do so. They may be interpreting for someone without awareness that the interpretation is not ideal, which could harm the individual. Although the licensure law and surrounding guidelines are written extremely well, addressing the vast majority of the issues presented in this study, that is only if the interpreter training is training more than just ASL and is also training in identifying the best form of communication for each individual. I believe that the ultimate goal should be to amend the ADA to provide a better framework for what a qualified interpreter means. I believe that research should be done to analyze the Maine law to determine where it may have additional holes to be filled and hope to apply the best possible version of this law into the ADA to protect d/Deaf Americans in every state.

Conclusion

d/Deaf individuals have significantly different experiences in the criminal justice system when compared to the general hearing population. The most important of these differences is their access to and abilities regarding language and how they can communicate with those investigating the crimes which they may or may not have committed. It is important that their rights are not infringed upon and that they are treated with respect and dignity in the criminal justice system, which includes both providing interpreters and ensuring that the interpreters are properly educated and licensed in order to handle the situation. It is not good enough that a law require an interpreter and that a law require the interpreter be licensed; each situation must be held to the highest standards of ethical analysis.

Through this study, I have concluded that situations in which an interpreter is unlicensed can result in a loss of liberty for d/Deaf defendants, but more research should be conducted. When handling a small population with diverse needs, new laws which impact them should be researched thoroughly, with the input of the community affected, in this case both interpreters and d/Deaf people. Whether parties involved in a case have a disability or use a language other than English as their first language is important information that I believe should be recorded by all courts, which would help to further studies and allow for a quantitative approach to questions involving interpretation. For example, the use of this information would allow us to answer the question of whether deafness may lead to lower incarceration rates and lengths of sentences because there is a perceived weakness. In the meantime, however, there needs to be more qualitative analysis of cases involving d/Deaf defendants and their access to quality interpretation. These studies should expand upon the questions presented in this study and answer other questions such as does national licensure of interpreters provide a better quality of service for d/Deaf defendants than state or regional licensure?

While laws requiring interpreters to be licensed are extremely useful and important and should be implemented, each state considering a licensure bill should evaluate what will best serve their state's d/Deaf population's needs. For example, the use of video-chat interpretation in the state of Idaho may further assist the passing of the law and ensures the highest quality interpretation, even in rural areas with limited resources. These decisions made by states can further advise a potential chance to ADA for maximum completeness. Beyond the law's requirements, it is important that those involved in the justice system receive adequate training on identifying d/Deaf needs,

from the police officers who first interact with them to the judges who rule on their cases. Training that educates on the needs of d/Deaf individuals could save lives, such as that of Daniel Harris, and could prevent serious injustices due to misinterpretation such as the case of Alan Wilding. By continually evaluating and altering our laws, in constant communication with members of the d/Deaf community, we can ensure that the rights of this marginalized group are not infringed upon and that they receive a fair trial.

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