



National Consortium of Interpreter Education Centers

## FACT SHEET

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

Many deaf people involved in cases before the court are likely to struggle understanding the proceedings because they do not use or understand English. In addition, some deaf people may not have fully mastered sign language. Courts naturally expect that any sign language interpreter can effectively mitigate the language issues presented by deaf Americans. While this may be true with other languages, deaf users of American Sign Language (ASL) present different linguistic challenges for the courts and court interpreters. This document sets forth the unique circumstances of deaf Americans and how the process of acquiring language as children affects their use of it as adults.

The critical window for learning language is considered to be prior to age seven. Assuming easy access to language, the process is typically well underway by the time the child enters school. For deaf children, however, access to language is anything but easy. Studies show that a child's skillful communication with a parent is a significant predictor for positive language and academic development. It has been estimated that only ten percent of deaf children are born into families with parents who are also deaf and are able to engage the deaf child in the process of natural language development. Most parents of deaf children have no prior experience in communicating or living with a deaf individual and are ill-equipped to address the unique language and communication needs of a deaf child.

In addition, it commonly takes several months or years before a deaf child is diagnosed as having a hearing loss. This delay impacts the use of various alternatives—such as the use of sign language—to develop the language and communication skills of a deaf child. Further, before parents can use sign language to communicate with their child, they first must learn the language themselves.

As a result of these two factors—a lack of natural communication within their families and delays in finding alternative approaches to communication— deaf children commonly have tremendous language delays and enter the public school system significantly behind their non-deaf peers. This language delay is further complicated by the differing opinions of experts—such as physicians, pediatricians, audiologists, speech pathologists and teachers of deaf children—regarding the most effective way to educate a deaf child. Experts disagree on whether deaf children should have their hearing amplified with hearing aids or implants, be taught to speak and read lips, and/or be taught to use sign language. In reality, determining the most appropriate approach for teaching language and communication skills to a deaf child depends on many factors, including the age at which the child loses his hearing, the amount of residual hearing the child may possess, the motivation of the family to learn and apply a

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<sup>1</sup> *Linton v. Texas*, No. 13-05-00668-CR (13<sup>th</sup> Dist. Corpus Christi) (Aug. 2006).

systematic approach to communication with a deaf child (which might include learning sign language), and the ability and motivation of the deaf child. These differing expert opinions, coupled with the sense of loss and devastation experienced by many parents upon learning that their child is not able to hear, further compound the difficulty in raising a deaf child within a language-rich home and school environment.

Education methodology is another factor that contributes significantly to the language acquisition of deaf children. Those methodologies focusing on teaching the child to learn to speak and read lips, may impact a child's ability to learn subject matter content -- instead of sitting in a language arts class, a child may have to divide time between the class and a session with a speech teacher who is teaching the child to say and understand a few words and sentences. Deaf children placed into a mainstream public school classroom may suffer academically if placed with an interpreter who is less than competent. Many teachers of the deaf possess only limited competence in sign language and therefore, cannot provide meaningful language modeling to the deaf child.<sup>2</sup>

These same factors impact the ability of deaf people to acquire literacy in English. Without a foundation in a natural language, the ability to acquire reading and writing skills is greatly impaired. The average reading level of deaf individuals is at the 4<sup>th</sup>-5<sup>th</sup> grade level. Accordingly, written communication with deaf persons should be done cautiously and should be limited to short and simple ideas. The use of real-time transcription will be a rarity, as most deaf people do not possess sufficient English competence to benefit from this technology as their primary source of information in a courtroom.

It is imperative that courts engage in an individualized inquiry to determine the linguistic challenges and needs of a deaf individual in court, especially given the basic constitutional rights sometimes at stake. The court should actively inquire whether the deaf participant is able to understand the interpreter, asking open-ended questions designed to elicit a narrative response. In addition, the court should ask the deaf person to restate instructions to ensure understanding. Finally, the court should undertake a detailed examination of the interpreter to ensure the interpreter understands the deaf person and has a mechanism for bringing any obstacles to understanding to the court's attention.

Should you have more questions regarding communicating with deaf individuals, further information is available from the NCIEC at [www.nciec.org](http://www.nciec.org), on the Consortium's Work on Legal Interpreting subpage under the Legal Specialization link.

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<sup>2</sup> Coryell, J., and Holcomb, T. (1997). The Use of Sign Language and Sign Systems in Facilitating the Language Acquisition and Communication of Deaf Students. In *Language, Speech, and Hearing Services in Schools* Vol.28 384-394 October.