

American Sign Language Legal Interpretation Complications:  
A Comprehensive Analysis of Linguistic Barriers within the Criminal Justice System

Promise of the Declaration:  
Building on a Legacy of “Life, Liberty, and the Pursuit of Happiness”

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## **Abstract**

The founding documents of the United States of America tend to be rather universal and impartial in their vernacular. Because all citizens of a nation are deserving of the same rights and privileges regardless of age, race, ethnicity, or disability status, accommodations must be provided to the Deaf to give them equal access to information throughout interrogations, trials, and police interactions. While it may seem obvious that interpreters should be provided during legal situations involving a Deaf individual, visual communication can make legal interactions quite complicated when police or attorneys can only reveal limited details. When Deaf culture involving expansion techniques and human rights regarding legal proceedings conflict with each other, a qualified and experienced sign language interpreter must be conscious of not only mediating cultures and languages, but also facilitating lawful interactions and not violating the rights of the Deaf person. These types of unique situations can further complicate already intricate circumstances.

*Keywords:* Deaf, legal, interpreter, culture, sign language, human rights, criminal, justice

## **American Sign Language Legal Interpretation Complications: A Comprehensive Analysis of Linguistic Barriers within the Criminal Justice System**

Whether it be laying chopsticks in a bowl of rice in China, pointing with the middle finger in the United States, or eating with the left hand in Morocco, there are unique and interesting cultural taboos around the world.<sup>1</sup> To mediate between two conflicting cultural rules and avoid unnecessary conflict, interpreters who are fluent in both traditions and languages are found to bridge the gap. Cultural distinctions are not only found between different countries, but often between neighbors. This is especially common in the United States and Canada where populations of immigrants create a melting pot of diverse cultures living side by side within the same geographical area. Specifically, within the realm of Deaf culture, contextual clues including body language, facial expression, location, and size of the signs can completely alter the meaning of a message. Misinterpreting a single piece of background information could lead to disastrous consequences for everyone involved in that conversation. The stakes are much higher within a court of law than they would be interpreting a theatre production. Both are significant to interpret correctly, but one may carry with in dangerous, long-lasting, impactful consequences.

Robyn Dean, a professor at the University of Rochester School of Medicine explains that “Interpreting students receive a mixed message when educators assert a non-contextual, rule-based approach to ethics while simultaneously responding to both ethical and translation questions with “It depends” – an obvious reference to the centrality of context in decision making”.<sup>2</sup> When the meaning of words and phrases is dependent on every minor contextual change, complete fluency in subtle changes is required to master language mediation. These complications and intricacies are exponentially increased within the legal realm. Whether it be a traffic stop, interview, interrogation, or explanation of jury obligations, legal interpreting continues to be one of the most complex types of sign language interpretation because of the conflicting nature of expansion techniques within Deaf culture, and limited explanation with specific word choices to promote constitutionality and prevent the abuse of human rights.

### **Deaf Cultural Norms**

#### **Understanding Concept Over Specific Phrasing**

Within American Sign Language (ASL) are numerous intricacies surrounding grammatical structure, syntax, fingerspelling, and even facial expressions. When interpreting between signed and spoken languages, it is important to realize that specific word choices are not nearly as critical as conceptually driven translations. A direct word-for-word translation is not typical in American Sign Language unless it is used for emphasis. If the meaning behind

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<sup>1</sup> Josephine Smart, review of *Review of It's All Chinese to Me: An Illustrated Overview of Culture and Etiquette in China*, by Pierre Ostrowski and Given Penner, *Pacific Affairs* 81, no. 3 (2008): 456–57.

<sup>2</sup> Robyn K. Dean and Robert Q Pollard, “Context-Based Ethical Reasoning in Interpreting,” *The Interpreter and Translator Trainer* 5, no. 1 (March 1, 2011): 155–82, <https://doi.org/10.1080/13556509.2011.10798816>.

someone's intonation and verbiage is conveyed, then it is a successful interpretation.<sup>3</sup> Often, if confusion is present due to complex terminology, a deeper analysis is required even if the speaker did not go into depth about the topic. Occasionally this could be viewed as adding to the speaker's words or inserting opinion into the message, but this explanation is solely for the purpose of equal access. If the Deaf client does not understand what the speaker is saying, then the interpreter must give explanations, examples, and details until the concept of the message is generally understood.

## Expansion Techniques

When further detail beyond the speaker's words is required, an interpreter is trained to use expansion techniques to accurately describe the meaning behind the words. If the topic of conversation is about construction, and the word *tools* is used, then the interpreter may give examples of tools to conceptually clarify such as a hammer, screwdriver, saw, or pliers. This is not meant to give unnecessary information or add to the speaker's words, but simply to differentiate between English concepts that could be confused for one another. If the word "run" is used, then it is important to differentiate between the types of running that it could be referring to: leaking, sprinting, campaigning, or even a machine functioning properly.

Many idiomatic phrases, English phrases, and complex verbiage either do not translate well, or have no American Sign Language equivalent. Spelling a word does not explain the meaning of that word if it is unfamiliar to the receiver. Botezat explains that legal translations have their own foundation and structure dissimilar to casually spoken English.<sup>4</sup> This means that explanations of legal vernacular used in a court of law are even required for native English speakers. If English is a second language, then it makes sense that complicated terms would need further expansion. For example, an interpreter must not only understand that "DUI" is an acronym representing "Driving Under the Influence", but they also must know the difference between that phrase and "DWI" or "Driving While Intoxicated" depending on whether their state differentiates these two terms. The laws of a state or jurisdiction will change the visual picture that the interpreter must depict, which means that the interpreter must be knowledgeable in not only legal terminology, but also the ASL equivalent.

If a Deaf individual has been arrested due to suspicion that they committed a crime, and the judge at the end of the trial says that the "defendant is acquitted", then the interpreter cannot interpret that as the "defendant is free" or the "defendant is innocent". These words are close in English meaning, but the legal term *acquittal* carries a specific implication that the defendant might have committed the crime, but the prosecution has failed to provide sufficient evidence of this fact to justify the defendant being found guilty.<sup>5</sup> Subtle differences like this one may not

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<sup>3</sup> Janice H. Humphrey et al., *You Want to Be an Interpreter?: An Introduction to Sign Language Interpreting for Deaf and Hearing Students Aspiring to Become Professional Practitioners* (H. & H. Publishing Company Incorporated, 2020).

<sup>4</sup> Onorina Botezat, "The Complexity of Legal Translation: Social and Cultural Bounds Aspects," *Contemporary Readings in Law and Social Justice* 4, no. 1 (2012): 641–47.

<sup>5</sup> Nancy S. Marder, "Not Guilty: Are the Acquitted Innocent? By Daniel Givelber and Amy Farrell. New York: New York University Press, 2012.," *Law & Society Review* 47, no. 1 (2013): 242–44, <https://doi.org/10.1111/lasr.12013>.

seem substantial enough to cause harm, but any injustice within the justice system is counterintuitive to its' stated purpose and goal of giving to each what they are deserving and protecting the constitutional rights of every citizen under the law's jurisdiction. These rights do not disappear simply because of the level of auditory processing ability.

## **Legal Requirements within Criminal Justice**

### **The Letter of the Law**

Occasionally, police officers must give the same, scripted response to someone they are arresting by reading them their Miranda Rights to inform them that they have the right to remain silent, have an attorney present, and if they cannot afford a private attorney, then the court will provide them with one without charge. Because these rights are written on a laminated card that officers carry with them whenever they are on duty, the interpretation of these rights into ASL is essentially pre-established. Like the National Anthem or Pledge of Allegiance, this too is scripted, frozen, exact interpretation regardless of what state or jurisdiction the defendant finds themselves. This simplifies the job of the ASL interpreter by eliminating the possibility of misinterpretation.

While most legal interpreting is not scripted or simplified in this manner, some phrases are used so frequently that they are commonplace. Although these Miranda Rights are scripted and relatively straightforward, they are scripted for one very simple reason; A single mistake in informing someone who is being arrested of their rights could lead to a mistrial. This means that even if the defendant is under investigation for assault, battery, theft, or even murder, they could be let go and all charges dropped, because their rights were violated during the proceedings of the trial. An interpreter error could cause a criminal to be allowed back on the street without any punishment or retribution.

### **Fifth Amendment Protections Against Self-Incrimination**

A common phrase in American television shows is “pleading the fifth”. This often-misused phrase is derived from the fifth amendment to the United States Constitution guaranteeing each person the right to not disclose information to the police or any other legal authority that could possibly incriminate them. If a Deaf individual is under the impression that an attorney knows more about the situation than they are explicitly sharing because the interpreter expands upon the exact wording of that attorney, then the Deaf person might be inclined to share incriminating details that the otherwise would not have shared. A Deaf person not only has the right to an Attorney and Interpreter, but also a qualified defense that supports their fifth amendment right against self-incrimination.

## **Conflicts Between Deaf Culture and Criminal Justice**

### **Casual Police Interaction**

Not all police interactions are in a legal or official setting like a court room. Most of the time, they are simple traffic stops, inquiries on the street, or more casual settings.<sup>6</sup> If an

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<sup>6</sup> Anette Bringedal Houge, “Narrative Expressivism: A Criminological Approach to the Expressive Function of International Criminal Justice,” *Criminology & Criminal Justice* 19, no. 3 (July 1, 2019): 277–93, <https://doi.org/10.1177/1748895818787009>.

interpreter is requested by a Deaf individual, then the police must acquire one, but if the Deaf person is not under arrest, then the interpreter is not bound to the stringent rules of official legal interpretation. Until the individual has officially been arrested and read their Miranda Rights, interactions between the police and other individual are nothing more than a regular conversation. This means that subtle intricacies of facial expressions, sign choice, expansion, and body language are not crucial, because the Deaf person has not formally entered the criminal justice system.<sup>7</sup> Once their constitutional rights have been read to them, those rights supersede and are valued above cultural norms within the justice system.

### **Criminal Legal Situation**

According to McEntee, at least one of every sixteen Americans has some degree of hearing loss that could cause them to need a variety of communication methods including spoken English and American Sign Language.<sup>8</sup> These needs do not disappear when they enter the legal system, but just the opposite. Their need to comprehend what is being said and what their rights in those situations are exponentially grows, because they are now facing prosecution in what might not be their primary language. If the defendant is in court for a cultural misunderstanding, it is the job of the attorney and not the interpreter to clarify that for the court and jury. An interpreter cannot add to the Deaf individual's statement to clarify Deaf culture and customs even if they are well-versed in the law.

### **Deaf Within Criminal Justice System**

#### **Legal Knowledge**

Deaf individuals are not only in the Criminal Justice System as defendants or criminals, but also to fulfill their societal obligations of Jury duty. Providing equal access for these people can often be more complicated than other legal interpreting jobs. Napier and Spencer detail a study of thirty Deaf and thirty hearing jurors to study critical thinking and understanding legal material using combining quantitative and qualitative approaches.<sup>9</sup> The results showed that Deaf and hearing people equally misunderstood content of jury instructions. This provided evidence that Deaf people are not at a disadvantage to understand complex legal information if instructions are given via sign language interpreter. Obviously not being able to hear does not directly impact one's ability to process and understand information, but if information is not given through accessible means such as sign language, then it will be far more difficult to understand.

#### **Deaf Jurors**

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<sup>7</sup> Marjory A. Bancroft et al., "Interpreting in the Gray Zone: Where Community and Legal Interpreting Intersect," *Translation & Interpreting* 5, no. 1 (April 3, 2013): 94–113.

<sup>8</sup> Maureen K. McEntee, "Deaf and Hard-of-Hearing Clients: Some Legal Implications," *Social Work* 40, no. 2 (1995): 183–87.

<sup>9</sup> Jemina Napier and David Spencer, "Jury Instructions: Comparing Hearing and Deaf Jurors' Comprehension Via Direct or Mediated Communication," *International Journal of Speech, Language and the Law* 24, no. 1 (June 14, 2017): 1–29, <https://doi.org/10.1558/ijssl.30878>.

While the Americans with Disabilities Act of 1990 was an extraordinary leap towards equality, no single law, act, or movement can guarantee perfection. Brunson conducted a study using Deaf individuals within the justice system to determine how necessary interpreters truly were.<sup>10</sup> Originally, he was hoping to use this study to save the Criminal Justice System financially and cut costs. The results of the trial were that in every case, these Deaf individuals preferred an accommodation that involved the use of an American Sign Language interpreter, and in every case, these accommodations were deemed “problematic” or “inconvenient” to the court, because of the additional cost and possible distractions that it might cause the rest of the jury.

Legal interpreting is unlike every other interpretational field. Because of this, it is known as the “third-space” when culture and laws conflict. It is not a simple fix of choosing to ignore one area and focus solely on the other; Interpretation in this field involves finding the perfect balance of both sides without excluding either one. Changing American Sign Language to Signed Exact English (SEE) or even Conceptually Accurate Signed English (CASE) to focus solely on respecting the legal setting while completely ignoring the cultural aspects of language could lead to critical meaning being lost in translation.<sup>11</sup> Modifying sign language to such an extent that true meaning is lost, and the Deaf individual does not understand what is happening defeats the purpose of acquiring an interpreter in the first place. Balancing the needs of a community with the financial capacity and ability of each district, appellate and civil court can be a challenge.

### **Importance of Correct Legal Interpretation and Integrity**

#### **Requires Specific Certification**

If legal interpreting was not a unique sub-section of interpreting, then it would not require additional certifications. Lysenko and Barbakov detail what certifications are legally required in the United States and abroad.<sup>12</sup> Many countries require specific certifications in not only sign language interpreting, but also a certification in law, and a legal interpretation certification that all must be updated every few years to remain current. Unfortunately, additional requirements and time commitments in any field tends to deter people from entering it and developing that skill set. With understaffed interpreting agencies, delays in finding qualified interpreters can impact the Deaf individual’s constitutional right to a fair and speedy trial guaranteed under the

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<sup>10</sup> Jeremy L. Brunson, “Your Case Will Now Be Heard: Sign Language Interpreters as Problematic Accommodations in Legal Interactions,” *Journal of Deaf Studies and Deaf Education* 13, no. 1 (2008): 77–91, <https://doi.org/10.1093/deafed/enm032>.

<sup>11</sup> Aleksandra Matulewska and Anne Wagner, “Third Space of Legal Translation: Between Protean Meanings, Legal Cultures and Communication Stratification,” *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 34, no. 5 (November 1, 2021): 1245–60, <https://doi.org/10.1007/s11196-020-09796-5>.

<sup>12</sup> Olga A. Lysenko and Oleg M. Barbakov, “A Review of Problems in Legal Interpreting,” *Journal of Advanced Research in Law and Economics* 7, no. 5 (December 12, 2016): 1103–9.

Sixth Amendment.<sup>13</sup> Unfortunately, this is a dilemma that is all too common within the American Justice System.

### **Facilitating Communication while Respecting Rights and Procedure**

Chamusco tells the story of a Deaf man who found himself in the hospital, and an interpreter was not deemed necessary since his young son was present.<sup>14</sup> The doctors, nurses, and medical staff decided that the son was fit to become an interpreter for his own father. The family eventually sued the hospital, because they compelled the son to interpret for his father and learn new medical vocabulary even though it forced him to miss school lessons and classes to be the voice for his father. The son now had to watch his own father suffer in pain, and be his voice through it all, afraid that any mistake in interpretation could harm him. Although he was physically capable of being some sort of intermediary, without the proper qualifications, he did not do himself, his father, or the medical staff any real service. In a similar fashion, incorrect interpretation will often do more harm than if there was no interpreter at all.

The roles of legal interpreters go beyond simply mediating a conversation, but in the words of Napier and Banna, “They become a participant in interaction and co-structor of meaning”.<sup>15</sup> Legal and moral limitations are typically quite clear for interpreters, but this normally clear line is often blurred during legal interpreting. Interpreters must not only meet the linguistic needs of their clients in court, but simultaneously adhere to their responsibilities as perceived by the justice system. While so many legal complications can be complex, they can also add beauty, because they reveal differences between every person that are unique and worthy of the same access and human rights as any other individual who finds themselves in the Criminal Justice System.

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<sup>13</sup> Bringedal Houge, “Narrative Expressivism.”

<sup>14</sup> Bianca G. Chamusco, “Revitalizing the Law That ‘Preceded the Movement’: Associational Discrimination and the Rehabilitation Act of 1973,” *The University of Chicago Law Review* 84, no. 3 (Summer 2017): 1285–1324.

<sup>15</sup> Jemina Napier and Karin Banna, “Walking a Fine Line – the Legal System and Sign Language Interpreters: Roles and Responsibilities,” *Journal of Applied Linguistics and Professional Practice* 13, no. 1–3 (2016): 233–53, <https://doi.org/10.1558/japl.31859>.

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