

What If Your Client Is Deaf?

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Published in: Atrium Experts Monthly Newsletter, Volume 9, Issue 4; October 2, 2014

Serving a client who is deaf is an uncommon experience for most attorneys. Here are some essential issues that are relevant to providing competent legal assistance to deaf individuals.

My focus here is on persons deaf from birth, or for most of their life, rather than persons who lost their hearing in later youth or adulthood. Further, my focus is on the sign language-using deaf population, thought to number about a half-million people in the U.S., though estimates vary widely. Decades of research have clearly established that the Deaf community (usually capitalized, as in the terms Hispanic or Black community) has a rich and unique culture, and their own language, which differ in many ways from the culture and language characteristics of “hearing” Americans.

American Sign Language (ASL) differs markedly from the English language. Furthermore, other countries have their own signed languages which differ from ASL. ASL differs from English in all key linguistic elements: vocabulary (the signs), grammar, syntax, and discourse pattern. Like Spanish, ASL adjectives follow the words they modify (e.g., “a car red”). Like German, ASL verbs are usually at the end of the sentence. Like Hebrew, ASL does not have individual vocabulary words (signs) for *is*, *are*, *was* and *were*. (Hebrew and ASL accomplish those linguistic functions in ways other than vocabulary.) As in Japanese, certain feedback signals are expected from the “listener” in an ASL conversation. Time concepts are used very judiciously in ASL, not repeated often, as in English. Once a time comment is stated (e.g., “last week”) the past, present or future tense is presumed to remain the same in an ASL conversation until tense is specifically changed whereas English often uses grammar to indicate tense (e.g., “went”). Most unique of all, the space around a signer’s body is frequently assigned linguistic meaning, which “stays there” during an ASL conversation, so that pointing to that space or even glancing at it is the same as re-stating that word or concept. All these differences point to the complexity of communicating in ASL and the importance of ASL fluency or working with a qualified sign language interpreter when serving deaf people.

Yet, unlike hearing people, who virtually always develop fluency in their preferred language, a sizable number of deaf people never develop fluency in ASL nor in English because, first, learning English through “lipreading” (speechreading) is a tremendously difficult task that few deaf people master beyond a rudimentary level and, second, deaf persons cannot master ASL unless they are exposed to it early enough and long enough in life to acquire that language – an opportunity frequently denied deaf persons born to hearing parents and educated in mainstream programs that don’t teach sign language. In my experience, these “minimally language skilled” deaf individuals are over-represented in the population of deaf persons who eventually end up in legal difficulty or in mental health facilities.

Another common problem impeding communication between attorneys and deaf clients involves “fund of information.” From the entire “fund” of factual things you know, imagine removing

everything you ever learned from the radio or a television or movie soundtrack (unless you were reading subtitles). Now remove most of the information you heard from hearing people talking around you (but not directly to you), including anything you ever overheard. Finally, remove from your fund of information everything you ever read that was above a 4th grade reading level, the average for deaf high school graduates in the U.S. Acquiring English literacy is a lifelong challenge for many deaf people since most arrive at school with no solid language base in English or ASL through which to learn how to read and write, although this skill, too, varies widely.

In my experience conducting competency evaluations with deaf persons, it is extremely common for this fund of information problem to leave a deaf client ignorant of key legal concepts such as a charge (vs. a specific behavior), a plea (vs. simply telling your story), plea bargains, and even one's basic legal rights. It often requires a talented, sign-fluent instructor to teach these concepts to a deaf client, something that is not easy to accomplish with a sign language interpreter who is typically constrained to translating what a lawyer is saying when the lawyer has an insufficient grasp of deaf issues to be an effective teacher.

Cases involving deaf persons run the gamut of American law and related topics, including competency (complicated by linguistic, fund of information, or other issues), criminal responsibility, mental health questions, interpreter competency in legal situations (e.g., the Miranda warning), many types of Americans with Disabilities Act cases and more. Sadly, the number of deaf or sign-fluent hearing attorneys and the number of deaf or sign-fluent hearing psychologists, psychiatrists and other potential expert witnesses is quite low.

[The original draft of this article included a final paragraph listing a number of resources relevant to forensic work with deaf persons. The newsletter edited this paragraph out.]