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## Legal Interpreting: Some Issues

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## LEGAL INTERPRETING: SOME ISSUES

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**Michael Chatoff**

Almost 200 years ago, Thomas Jefferson said: "Equal and exact justice to all men . . . These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation." This country has taken great strides to guarantee that equal justice is assured to all individuals — but much remains to be done. Legally, deaf individuals are among the truly disenfranchised. It is axiomatic that one who cannot hear, cannot understand legal proceedings. Lipreading is a very imprecise science — even in an ideal situation an adept lipreader can understand no more than 40 to 50 percent of words spoken on the lips, but a courtroom proceeding is far from an ideal situation — different people speak in rapid succession so that a person attempting to read the speakers' lips must swivel his head as if he were at a tennis match. Further, the tone of some communications can be gleaned from the gestures of the speaker, but frequently a deaf individual will find it difficult to determine who the speaker is at any one time. Also, it should be noted that many deaf individuals have little or no usable speech — because the development of speech requires that an individual hear his own voice as well as the voices of others.

Clearly, in a criminal proceeding, a deaf individual cannot confront (in the Constitutional sense) the witnesses against him, or consult with or assist counsel — unless his deafness is compensated for in some way. An interpreter should be appointed for him as a matter of right. A qualified interpreter can interpret the proceedings into sign language (not all deaf individuals in this country know sign language, because most schools for the deaf and many educators of the deaf are opposed to teaching deaf students any form of

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manual communication), transcribe them, or use any other technique designed to convey the meaning of the proceedings to the deaf individual and to convey the testimony of the deaf individual to the court. True, the simultaneous transcription of the proceedings will slow the legal process, but the alternative will be to deny the defendant, solely because of his deafness, the Constitutional rights that are his due. It would be ludicrous for the Federal Government or a State Government to place in jeopardy the life, liberty, or property of a deaf individual and then to deny that individual the right to defend himself, solely because of a physical disability that can be compensated for.

In a far-sighted opinion fifty years ago, a State judge noted the problems of a deaf defendant in a criminal proceeding: "In the absence of an interpreter it would be a physical impossibility for the accused, a deaf-mute, to know or to understand the nature and cause of the accusation against him, and, as here, he could only stand by helplessly, take his medicine, or whatever may be coming to him, without knowing or understanding, and all this in the teeth of the mandatory constitutional rights which apply to an unfortunate deaf-mute, just as it (sic) does to every person accused of a violation of the criminal law . . . Mere confrontation would be useless . . . bordering upon the farcical, if the accused could not hear or understand the testimony" (*Terry v. State*, 21 Ala. App. 100, 105 So.2d 386 1925).

To date, more than twenty States\* have enacted laws providing for the appointment of an interpreter for a deaf defendant in a criminal proceeding. Although those laws represent a substantial beginning, the Federal Government and more than half of the States have no statutory provisions to protect the rights of a deaf defendant. Further, not one of the existing State statutes is even arguably adequate, for one or more of the following reasons. They:

1. Provide for the translation of the proceedings into sign language only (thereby denying a deaf individual who does not know sign language his Constitutional rights, for that reason alone);
2. Require a deaf individual to request affirmatively the assistance of an interpreter (an unlikely occurrence inasmuch as most deaf individuals are unfamiliar with the law);
3. Fail to provide for the appointment of an interpreter at critical stages in the criminal processes that precede trial, i.e., arraignment, line-up (essential steps at which accused individuals are supposed to be accorded all Constitutional rights);

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\*Alabama, Arkansas, California, Florida, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Oklahoma, Rhode Island, Texas, Virginia, Washington, West Virginia, and Wisconsin.

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4. Fail to provide for Governmental payment for the services of an interpreter (thereby requiring a deaf individual, who more often than not is a low-income individual, to pay for such services, to assure him rights due him under the Federal and State Constitutions); or
5. Fail to provide for the certification and registration of interpreters for deaf individuals (thereby making it all but impossible for judges, except in large municipalities, to locate a qualified interpreter).

Although there are some similarities in the legal problems experienced by deaf individuals and by mentally incompetent individuals and individuals who speak a language other than English, the problems of individuals in the three groups differ considerably, and any attempt to assure the rights of more than one group in one piece of legislation will result most assuredly in the denial of rights to all concerned. Except in rare instances, a physical disability, such as deafness, can be compensated for if the necessary effort is made. Although I do not profess to know or understand all the problems of mentally incompetent individuals, it is my belief that little can be done in a legal setting to compensate for a mental deficiency. Of course, the problems of an individual who is unable to speak a particular language can in no way be compared with the problems of an individual who has lost one of the two major senses.

The right of a deaf individual to an interpreter in a criminal proceeding would appear to be irrefutable. Several of the above-referred-to State statutes provide for the appointment of an interpreter for a deaf individual in a civil proceeding as well. The Constitutional right of a deaf individual to the appointment of an interpreter in a civil proceeding remains unclear, although the case of *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2nd 113 (1971) and the decisions following hold that an individual cannot be denied "access to the courts" in civil matters. Inasmuch as a deaf individual who has not been provided with an interpreter will be shut out of the courtroom as surely as if the doors had been locked and the key thrown away, he may well be denied the "access to the courts" that is his Constitutional right.

Helen Keller stated on several occasions that deafness is a more severe disability than blindness because of the difficulty it creates in communications between individuals. However, it is not my purpose to pit the deaf against the blind — each reader can decide for himself which disability he considers the more severe. But either, or even both, can be lived with if others who are in a position to do so take the necessary steps to compensate for that disability. As a matter of humaneness alone, individuals capable of assuring deaf individuals an opportunity to understand proceedings that threaten to deprive them of their freedom ought to seize the opportunity. But the problem is more than one of humaneness; it seems incontestable that any legal system that seeks to deprive an individual of his liberty must accord him the chance to defend himself.