Working with Persons Involved in the Legal System Who Are Deaf

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Between 2006 and 2016, the team at Whiting Forensic Hospital saw seven defendants who were deaf or hard of hearing for restoration to competence to stand trial. As a result of this experience, the team developed expertise in understanding Deaf Culture, the effects of hearing loss on psychological development and evaluation and treatment techniques for this population. Based on the team's experiences, we discuss best practices to ensure that deaf defendants have the same access as hearing persons to fair treatment by the legal system and to the education and treatment required for restoration.

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While the number of deaf persons involved in forensic evaluations remains small relative to the hearing population, this group presents unique challenges to the legal and mental health systems. Between 2006 and 2016, the Whiting Forensic Hospital (WFH) Restoration Service in Connecticut encountered seven cases of persons who are deaf or hard of hearing and were remanded for restoration to competence to stand trial. This article places this work in the context of deafness and Deaf Culture and outlines best practices for work with this population to ensure that deaf persons have the same access to treatment and the best possibility of restoration.

Deafness and Deaf Culture

To appropriately evaluate and treat persons who are deaf or hard of hearing, it is important that the forensic team understands the effects of hearing loss on language and psychological development. Providers need to have a clear understanding of deafness and Deaf Culture. This knowledge is the foundation on which competent assessment and treatment is built.

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Defining Deaf

Deaf refers to the audiological condition of not being able to hear. Hearing loss is measured in decibels (dB), or the volume of sound, and hertz, or the tone of sound. This information is only useful, however, when understood from the perspective of language processing, or how much spoken language the listener hears, with or without amplification or technology.

Persons with normal hearing are able to detect sounds from 0 dB, such as a leaf rustling, to a whisper between 10 and 30 dB to a motorcycle at 95 dB, to a firecracker, which occurs at 140 to 150 dB. At 80 to 85 dB, the level of sound emitted by a lawnmower, damage to a person's hearing can occur if the exposure happens for an extended period of time.[1] A person with a mild hearing loss (20 to 40 dB)[2] will typically miss 50 percent of speech without amplification. This includes the inability to understand many consonant sounds, which determine what word is being said. A moderate loss, which occurs between 41 to 60 dB[2], is significant as this is the volume of typical speech. At 40 to 50 dB, the person with hearing loss misses 50 to 100 percent of what is being said. Under ideal conditions, a person with a moderate hearing loss may function adequately. Ideal conditions include the speaker being three to five feet from the deaf listener in a quiet room. Moderate to severe hearing loss (61 to 80 dB)[2] results in language delays as the deaf person will miss 100 percent of speech at 55 dB. Persons with severe

hearing loss are able to hear only loud sounds at one foot from their ear. Without amplification, the person who is deaf cannot hear speech or most environmental sounds. A profound hearing loss is defined as the inability to hear any sound at less than 81 dB.[2] This means that a person with a profound hearing loss is only able to hear a lawnmower three feet from their ear. Practically speaking, persons with a profound hearing loss are more aware of vibration than of sound. Persons with a profound loss need visual input, and speech and language do not develop spontaneously.[1]

In conducting a forensic evaluation of a deaf person, it is important to understand whether the person is pre- or postlingually deaf. By age three, persons with normal hearing understand the syntax, semantics, and grammar of their native language. In contrast, a deaf person may have only 30 percent of this understanding by age three. This deficit can be a lifelong challenge for a person who is deaf, putting them at a significant disadvantage when attempting to understand court proceedings.[3,4] It is also important to understand whether the person has a bilateral or unilateral hearing loss. Both types of hearing loss have a significant effect on localizing sound and processing language.

It is also important to understand the etiology of the hearing loss when conducting the forensic assessment of a deaf person. Many of the etiologies common to hearing loss can also result in brain damage. These etiologies include maternal rubella, cytomegalovirus, spinal meningitis, and prematurity. Deafness can also be genetically transmitted, either as part of a syndrome or as a trait inherited from parents.[5] Deaf children born of deaf parents have greater facility with language as their exposure to a manual language is similar to a hearing child born to hearing parents.

Deaf Culture

In Deaf Culture, a lower case "d" refers to the audiological condition of not being able to hear. Persons born in the Deaf Culture use a capital letter "D" to designate the group of persons who are prelingually deaf and share a language, history, norms, stories, and folklore.[6] Understanding that a deaf person involved with the court may be a member of the Deaf Culture has implications for understanding their alleged offense, their response to the alleged offense, and their perception of prejudice and oppression by the larger hearing culture.

Understanding the Effects of Deafness

When a person is deaf, nonverbal communication is extremely important and viewed differently. Within the Deaf Culture, touch is a common way to get another person's attention. Facial expressions denote the tone of the message, similar to that of a hearing person's voice. In the Deaf Culture, it is common for facial expressions to be exaggerated to make the signer's point and to be certain that the tone of the message is clearly communicated. Typically, deaf persons sign in the area surrounding their face. When signs are communicated outside this area, or with an exaggerated facial expression and force, this connotes the volume of the message, similar to the raised voice of a hearing person. In addition, deaf persons view personal space differently and may stand closer to each other than hearing people do to communicate.

Most members of the Deaf Community use American Sign Language (ASL) to communicate. ASL is an iconic language, meaning that a single sign can mean a variety of things depending on the context. In court, the deaf person's understanding of the context is thus critically important for effective communication.

Schools for the deaf are often where members of the Deaf Community learn ASL. According to a 2001 special report published in the Seattle Post-Intelligencer,[7] "at least half of the nation's . . . schools for the deaf" have been involved in investigations of "sexual and physical abuse over the last two decades." Although there are no clear data regarding the rate of abuse in the Deaf Community, it is widely held that a higher percentage of Deaf Community members than hearing community members will present with significant trauma histories.[8] In addition, deaf persons may face misdiagnoses of learning and mental health problems, which can adversely affect their ability to access and benefit from the treatment and education provided in the restoration to competency process. As a result, Deaf Community members experience longer and sometimes unnecessary hospitalization, when behavior accepted in the Deaf Culture is viewed as pathological.[9]

Psychological Testing

Measuring Intelligence

The available studies suggest that on nonverbal measurements of intelligence, deaf and hearing children earn similar scores and that deaf children have a

similar distribution of scores when compared with hearing children. Deaf children generally score better on visual-spatial tasks, however, especially if they have deaf parents.[10] As a result, available studies suggest that nonverbal testing for deaf children may overestimate their cognitive potential. In contrast, verbal intelligence testing in deaf children typically results in scores of at least one standard deviation below the mean. This means that when compared with same-age peers, verbal testing in deaf children results in intelligence quotients (IQs) that are low average and below. This is because of the reliance on the English language inherent in verbal measurements of intelligence. The problem of how measurements of intelligence translate in the courtroom is quite complex.

Measurements of intelligence have become increasingly dependent on technology. The Wechsler Intelligence Scales are now typically administered with an iPad.[11] For all test takers, this administration method can be problematic. It assumes facility with technology and can negatively affect scores. The standard of practice for measuring intelligence in the Deaf Community is to use nonverbal methods. Recently, the Wechsler Scales were revised, eliminating the Verbal and Performance Scale IQs.[11] Although the Wechsler Scales still measure verbal and nonverbal skills, the Stanford–Binet, Fifth Edition, retains the Verbal and Nonverbal Domains.[12] The use of the Stanford–Binet is recommended because it allows the reporting of both verbal and nonverbal intellectual capacity. This understanding can be helpful in assisting the court in determining the likelihood of restoration.

As the etiology of deafness can be related to genetics or brain damage, screening for neurological dysfunction can be helpful in predicting the likelihood that a deaf defendant will benefit from treatment and be restored to competence. The Bender Visual-Motor Gestalt Test has a long history of being used for screening neurological dysfunction.[13] It can provide information regarding whether neurological factors are affecting functioning and whether emotional factors may also be interfering.

Academic and Language Skills

When completing testing to determine the ability to restore a deaf person, it is imperative that the team has an understanding of the deaf person's academic and language skills. There are several reasons for this, including the fact that much of the information communicated about court proceedings is in print form and English. Deaf persons typically have the language skills of persons younger than their chronological age, which results in difficulties with abstract and inferential thinking. Based on the experience of our team, in court, language and academic skill deficits can be seen in the deaf person's struggling to understand time concepts, roles of the court personnel, and the court process itself. As any plea or agreement would require the defendant's signature, it is imperative that the deaf person gives meaningful consent and demonstrates understanding of the documents being signed.

To assess academic skills and language, scores are typically reported in a number of ways including standard scores, age equivalents, grade equivalents, and percentile ranks. Although standard scores are typically preferred, they have limited value in restoration proceedings. For purposes of restoration hearings, grade and age equivalents provide the most clarity for the court. This is because most court personnel are able to understand what a child, at various ages or grade levels, is likely to achieve. In the hearing world, although levels are declining, the average reading level for a high school graduate is between the sixth and eighth grade.[14] In contrast, the average reading level of a deaf high school graduate is between the second and fourth grade, and 30 percent of deaf adults are functionally illiterate.[15] The concepts required for restoration and effective court participation are generally at the seventh- or eighth-grade level.[16] This is clearly above the average deaf person's reading and language skill levels. The court needs to understand this when making judgments about competency and restoration.

The use of the Woodcock-Johnson Tests of Achievement is recommended for deaf defendants.[17] This measurement is easy to administer, provides visuals, and takes less than an hour to complete in most cases. The reading comprehension grade and age scores can be important in designing treatment strategies. To measure language stills, the Expressive and Receptive One-Word Picture Vocabulary Tests are recommended.[18] These tests are court friendly as they yield age-equivalency scores. As part of a comprehensive evaluation, these tests, administered by a skilled evaluator, are able to provide valuable information to the court about how a deaf person functions and learns.

Personality Assessment

For deaf defendants, personality assessment and diagnosis of potential mental illness should be made through an in-depth history and completion of a mental status exam and clinical interview. The use of written tests is not recommended for deaf defendants.

This process should include questions regarding the deaf defendant's schooling and family history as well as the history of the deafness, including understanding when the deaf person was diagnosed as deaf and the history of use of amplification. In the case of family history, the hearing status of the family of origin and its capacity to communicate with the deaf person needs to be considered. For example, a deaf person born to a hearing family that does not develop adequate communication skills is likely to experience feelings of isolation and poor language skills. The type of school programming is also important. Deaf learners placed in noncommunicatively accessible schools are often less able than peers immersed in a sign language placement to master English and develop age-appropriate social and behavioral skills.[4] Reports of abuse are also more common for deaf children than their hearing peers, resulting in greater levels of depression and trauma.[8,19] This historical data may contribute to the misunderstandings and paranoia that can be causally linked to the alleged crime and are important to the diagnostic process.

Interpretation of reports of specific symptoms of mental illness requires careful questioning in the clinical interview. Blunt, direct language may be necessary to elicit signs and symptoms indicative of mental illnesses. The evaluator must be able to interpret the deaf defendant's behavior and self-report from a Deaf Cultural perspective and with a clear understanding of the psychological effects of hearing loss.

The consequence of a poorly executed clinical assessment is misdiagnosis. Deaf defendants are at greater risk for this outcome because many times, the deaf person being examined is the first deaf person with whom the evaluator has worked.

Test Administrator

Ideally, a psychologist trained in deafness and Deaf Culture, who can communicate directly with the deaf defendant, should complete the comprehensive evaluation needed to assess competency to stand trial. The psychologist should be able to communicate with deaf persons who use a variety of communication modalities, including speaking and listening in the manner of a hearing person, ASL, Pidgin Sign Language, gestures, cued speech, or any method the deaf person uses to communicate. ASL is a distinct manual language with its own syntax and grammar typically used by members of the Deaf Culture. Pidgin Sign Language refers to a combination of ASL and English language structures. Cued speech is a system of combining mouth movements/lip reading and hand placements around the face used to facilitate a deaf person's understanding of spoken language.[20]

Special Factors

As noted previously, deaf persons typically have language and cognitive skills well below their chronological age and as a result lack the ability for abstract thinking. In the restoration process, this means that many deaf defendants lack basic vocabulary and the cognitive skills needed to understand the complexities of court proceedings. As language is the way humans typically process their world, these skill deficits place deaf defendants at a significant disadvantage in the restoration process.

Research suggests that some deaf persons can be diagnosed with a theoretical condition known as primitive personality disorder.[15] Primitive personality disorder is characterized by severely limited vocabulary skills, functional illiteracy, and a history of limited or no formal education. The result is severely impoverished day-to-day functioning. The deaf person with primitive personality disorder has extremely limited life skills, resulting in significant difficulties completing simple adult tasks. These deaf defendants may be viewed as incompetent to stand trial and unable to be restored based on the effects their language deprivation has on other areas of cognitive functioning, which render them unable to comprehend even basic concepts and terminology associated with the court process.[15]

As language is a cognitive skill, deaf persons identified with primitive personality disorder present with at least a mild level of cognitive impairment. This cognitive impairment may affect other areas of cognitive functioning, including general knowledge and reasoning, as well as behavioral regulation.[15] In our experience, deaf defendants do best with concrete, visual information and struggle to comprehend the more abstract concepts of right versus wrong and responsibility for one's actions inherent in the restoration process.

More recent research identifies some deaf persons with a condition similar to primitive personality disorder known as language deprivation syndrome.[21] In this syndrome, there are adaptive behavior skill deficits and behavioral skill challenges similar to primitive personality disorder. The authors propose a causal link between early language deprivation and the social, behavioral, and cognitive challenges experienced by some deaf persons. For deaf defendants, language deprivation syndrome may explain the lack of behavioral regulation skills that lead to their alleged offenses and the perception that the deaf defendant is mentally ill. In both proposed diagnoses, the common observation is language deprivation that appears to be causally linked to skill deficits, potentially leading to involvement in the mental health and legal systems.

It is important to understand that neither primitive personality disorder nor language deprivation syndrome are recognized mental illnesses in the Diagnostic and Statistical Manual, Fifth Edition or any of the previous editions of this manual.[22] But the effects of language deprivation on members of the Deaf Community have been discussed in the literature since the 1960s.[21] In addition, although beyond the scope of this article, the effects of hearing loss, which may result in some level of cognitive impairment as people age, lends support to the theoretical concepts underlying both of these proposed diagnoses.

Persons with either primitive personality disorder or language deprivation syndrome will typically require an interpreting team to ensure their understanding of court proceedings. Interpreting teams include a Certified Deaf Interpreter (CDI) and an ASL interpreter, who work together to ensure that deaf persons understand everything being said and can express themselves adequately. A CDI is a deaf person, whose native language is ASL. To help a deaf defendant understand, the CDI works with an ASL interpreter to expand, clarify, and modify language. Deaf persons with either primitive personality disorder or language deprivation syndrome have significant information gaps and little awareness of hearing social norms. The result of language deprivation may be a finding that the deaf defendant is incompetent to stand trial. As noted previously, these deaf defendants may also need to be viewed through the lens of cognitive delay caused by language deprivation.

Some studies indicate that deafness and the accompanying language deficits have an effect on the criminal behavior of deaf defendants. A study by Miller, Vernon, and Cappella[23] concluded that deaf defendants are more likely to commit violent or sexual offenses and less likely to commit robbery. This is because robbery requires using language to confront a potential victim and issue demands, while the other types of offenses do not require this type of interaction. Although not directly related to the restoration process, this study highlights the effects of language deficits on deaf defendants.

Interpreters

Case Law and Rules

Deaf persons have a right to communicate effectively and participate in proceedings conducted by all state and local courts. Specifically, they are entitled to have courts provide and pay for auxiliary aids and services to enable them to understand and be understood.[24]

Despite the obvious injustice of trying criminal defendants in a language that they cannot understand, it was not until 1970 that the right to an interpreter was clearly established by a federal court. The case involved Rogelio Negrón, a Puerto Rican farm laborer in Suffolk County, New York, who killed a coworker during a drunken brawl. Although no effort was made to translate the trial into Spanish, Mr. Negrón's only language, he was convicted of second-degree murder and sentenced to 20 years to life. The U.S. Court of Appeals for the Second Circuit overturned the conviction, establishing the constitutional right to an interpreter.[24] The decision led Congress to pass the federal Court Interpreters Act of 1978.[25]

The Americans With Disabilities Act of 1990 supports the right of deaf or hard-of-hearing people to communicate effectively and participate in all court-related proceedings at no cost to them.[26] The implementation of this mandate has been less than ideal. Especially at the time of arrest, many of the deaf defendants seen at WFH reported there was not an interpreter present, and as a result, they had no idea of the charges against them.

Interestingly, the right to an interpreter was first established in the Federal Rules of Criminal Procedure in 1966. These rules state that "the court may select, appoint, and set reasonable compensation"[27] for an interpreter. This rule further states, "compensation must be paid from funds provided by law or by

the government, as the court may direct."[27] This rule, which was amended in 1972, 1975, and 2002, also notes that "Interpreters may also be needed where a witness or a defendant is deaf."[27]

Although interpreters are an important accommodation for deaf defendants, the case of *Jackson v. Indiana*[28] highlights the fact that even the provision of interpreters may not allow a deaf defendant access to the restoration process. In this case, Theon Jackson, described as "a mentally defective deaf mute with a mental level of a preschool child," (Ref. 28, p 406) was charged with robbing two women, one of her purse valued at four dollars, and the other of five dollars in cash. Mr. Jackson was found unable to be restored to competence, and the state of Indiana did not have any facility equipped to educate him. Despite this, Mr. Jackson was held for more than three years before his case was heard, with no plan for release. It was argued that this amounted to a "life sentence" for crimes for which a defendant without Mr. Jackson's disabilities would have already been released. In this case, the U.S. Supreme Court ruled that Mr. Jackson could not be held to a different standard than defendants in other protected groups, such as those found to be "feeble minded." Further, the Court ruled that a defendant cannot be committed "without a finding of dangerousness," and even with this finding can only be held for a "reasonable period of time" to allow restoration or a "cure" (Ref. 28, p 406). The Court also held that defendants in Mr. Jackson's situation, for whom there is a substantial likelihood that restoration will never be possible, cannot be held indefinitely without due process.

Jackson v. Indiana has particular relevance for deaf defendants, who are language deprived and lack the communication skills necessary to comprehend the charges against them and to aid in their defense. It is important that evaluators working with deaf defendants consider the historical factors that influence a defendant's ability to process and comprehend language outlined in this article (e.g., the degree and etiology of hearing loss, use of amplification, language exposure, and competency). In the experience of the WFH team, deaf defendants who are nonrestorable after the typical restoration period used for hearing defendants are not likely to become restorable with additional time. Instead, restoration team members should consider what is needed for the safety of the deaf defendant and the community if the defendant is released into the community, and attempt to secure the needed services.

Interpreting Considerations

Interpreters are the most common accommodation provided to a deaf defendant, yet in most states there are no meaningful data collected by the courts about interpreting services. In Connecticut, the Judicial Branch does not presently report any data on how often interpreters for the deaf are utilized in court. In fact, ASL or sign language is not even listed as a part of the state website statistic for interpreting services. This means that there are no data to indicate the type of interpreting services provided to deaf defendants and other deaf consumers, which has a direct impact on budget and availability. The deaf defendants at WFH experienced multiple continuances because of the lack of availability of interpreters. Despite a large deaf population in Connecticut that communicates using sign language, there are presently only five CDIs and only one Specialist Certificate Legal interpreter.

When using interpreters, more time is always required to allow for the relay of information, and time outside the courtroom is needed to allow for expansion and clarification. It is important to understand that expansion of concepts and clarification is not allowed in the courtroom. This may necessitate frequent breaks in the proceedings to ensure that the deaf defendant fully understands what is happening in court.

Interpreters are not educators. It is not their role to explain communication, language difference, or Deaf Culture to the court. Interpreters are responsible to relay to the best of their ability exactly what all persons present say. They cannot stop interpreting at the request of hearing persons wanting to say something in front of the deaf defendant that they do not want the deaf person to know. In addition, the use of the same interpreter or interpreting team has distinct advantages. This allows the deaf person and the interpreters to feel comfortable with each other, which can facilitate clear communication.

Although not educators, interpreters can play an important role in the restoration process. At WFH, it has been crucial to use the same interpreter or interpreting team, which allows for consistency in communication. Interpreters can help facilitate the transfer of gestures used in the restoration process to formal signs that would be known by the court interpreters or

Table 1 Signs with the Same Meaning

English Words	Signed the Same As
Appeal	Complain
Accuse	Blame
Complain	Blame
Court	Trial

interpreting teams. Interpreters can help the forensic team understand the spatial- and time-orientation misunderstandings that often come with limited language skills and suggest ways to overcome these concerns. A limitation of the restoration process is the lack of educational tools about the court. In the case of deaf defendants, the use of actual pictures of the courtroom and the persons involved would provide the best chance for allowing the deaf defendant to truly understand the proceedings. It is not known whether this procedure has been tried in other jurisdictions or whether there would be any legal challenges to this.

Another serious complication in the interpreting process is that in ASL one sign often has multiple meanings, and that some English words do not have a sign-language equivalent (see Tables 1–3). The words without a signed equivalent must be fingerspelled, that is, spelled through the use of hand shapes that represent letters of the alphabet. Given the language and reading level of the average deaf defendant, this means that expansion and clarification are the only ways to ensure comprehension.

Other Accommodations

In addition to providing court-trained interpreters, the court should move hearings to smaller courtrooms with better acoustics to assist those using hearing aids. Trials may need to be interrupted more frequently to permit a deaf criminal defendant to consult privately with an attorney. This is because sign language communication is not private in the same way that whispered conversations between hearing defendants and their lawyers can be. The use of ASL or other signed communication is visible to everyone present in the courtroom, including victims, witnesses, and prosecutors.

Table 2 Words Needing Fingerspelling

Burglary
Constitution
Crime
Felony
Misdemeanor
Rights

Table 3 Rights Forfeited for Plea Agreements (as Interpreted in American Sign Language)

English Words	Signed As
Forfeit right to trial	Give up trial
Forfeit right to appeal	No more, or finish court
Forfeit right to call witnesses	No more, or give up witnesses
Forfeit right to testify on own behalf	Give up testify, or no talk self
Right against self-incrimination	Give up, or say guilty I did it

While in the process of restoration, the forensic team should plan for at least double the amount of time allocated with hearing defendants involved in the same activity. When using interpreters, this allows appropriate scheduling and the time for expansion of concepts to increase the likelihood that the deaf defendant will understand. Even if the forensic team is fortunate enough to employ a clinician who is fluent in ASL and knowledgeable about Deaf Culture, additional time will still be needed. Deaf defendants are often isolated from other hearing-impaired people for long periods of time. Understandably, the deaf defendant will want to talk about a variety of topics, both pertaining to the court proceedings and other life experiences when afforded the opportunity. Interpreters and clinicians skilled in deafness and able to communicate with the deaf defendant provide this opportunity.

Many hospitals and courts have outdated technology such as teletypewriters. The best practice for deaf defendants is, at a minimum, access to a videophone. This device allows deaf persons to communicate in sign language through an interpreter to hearing professionals such as their attorneys. It should be noted that the interpreters involved in videophone services might not be familiar with the communication style of the deaf person. Therefore, when the deaf defendant and the hearing professional meet in person, the content of videophone conversations should be reviewed to ensure that the deaf defendant understood what was communicated on the videophone.

A simple accommodation for a deaf defendant is the removal of handcuffs to allow the deaf person to sign. Although this may not be possible in all cases, steps should be taken to provide a secure environment that allows the deaf defendant the ability to communicate effectively. Another simple accommodation is making sure that court personnel know that a defendant is deaf. For example, this would allow a marshal to hold up a paper with the defendant's name on it, rather than call the person's name when

Table 4 Recommendations for Working with Persons Who Are Deaf

Allow at least double the time for all court-related activities
Whenever possible, work with professionals familiar with deafness and Deaf Culture
Use only appropriately certified interpreters. Do not use family members
Do not use writing to convey or solicit information
To measure intelligence, rely on nonverbal tests for the best estimate of overall skill
Use verbal testing to help the court understand how the deaf person may understand court proceedings or communication
Do not use written personality tests to diagnose mental illness. Use a Clinical Interview and Mental Status Exam and blunt, direct language
Test basic academic skills and report as grade levels or age equivalencies to assist the court in understanding what the deaf person is likely to understand
Provide concrete or literal information and questions. Avoid abstract or inferential information
Ask the deaf person to repeat what was said
Review information frequently with the deaf person to ensure understanding
Review phone conversations with the deaf person during the next in-person meeting
Use the same interpreters whenever possible
Ask about the etiology of the person's hearing loss to understand language, social, and cognitive limitations
Remember that American Sign Language (ASL) is not English. The syntax and grammar are not the same and there is no written form of ASL
Move proceedings to smaller courtrooms for better acoustics
Use a sign with the person's name to call the deaf person to court
Remove the deaf person's handcuffs to facilitate use of sign language and gestures
Take breaks during court proceedings to allow the deaf defendant to ask questions and get clarification about what has happened in court
Use actual pictures to educate deaf defendants about the participants' roles in the courtroom
Provide deaf defendants access to a videophone or similar device

they are needed for appearances. (See Table 4 for a list of recommended practices.)

Institutional Concern

For many institutions, there is limited exposure to deaf defendants. This means that the forensic team may erroneously rely on spoken and written communication, limiting deaf defendants' chances of truly understanding the court proceedings or aiding in their defense. In addition, the forensic team's lack of exposure to this population may lead to diagnostic difficulties and limited awareness of the influence of Deaf Culture on accurate evaluation and education. A lack of experience in working with interpreters and interpreting teams may lead to challenges in providing education and treatment. Forensic teams are likely to find it difficult to make groups and activities accessible to deaf persons, even with the use of interpreters. Some institutions may not have the appropriate technology in place and may have challenges finding experts in deafness for consultation and testing.

In Connecticut, an additional concern is the lack of data regarding deaf consumers by any of its major agencies, including vocational rehabilitation, child protective services, and corrections. It appears that this lack of data has had an effect on funding. The state's interpreting unit was eliminated in 2016 to save money. This led to privately contracted interpreting services statewide. To date, it is not clear what the effects of this have been on the provision of services to the Deaf Community or whether there have been any significant cost benefits for the state.

Conclusion

When culturally competent evaluations are not undertaken, deaf defendants are at risk for remand to a variety of institutional settings, such as prison or psychiatric hospitals, when it is not needed. They may be labeled as mentally ill, when they are not. Under some circumstances, this is essentially because the deaf defendant has been accused and cannot be found restored to competency by the court. In addition, the lack of adequate services in the community makes some deaf defendants appear to need an inpatient level of care for the safety of society.

The deaf defendant faces cultural and communication difficulties with respect to competency matters and can face difficulty with access to appropriate evaluations and treatment. In many states, there are limited resources to provide deaf defendants with restoration opportunities. In addition, restoration of deaf defendants has not been well researched. As a result, much of the clinical and restoration work for the deaf population is improvised. This article is an attempt to capitalize on the experience the WFH team has gained through trial and error and to suggest best practices for ensuring deaf defendants have

communication, education, and treatment access that is important to restoration work.

References

1. Central Institute for the Deaf. Familiar sounds audiogram. [Internet]. Available from: cid.edu/wp-content/uploads/2016/05/CID-AUDIOGRAM-ENGLISH.pdf. Accessed June 1, 2022
2. InformedHealth.org. Cologne, Germany: Institute for Quality and Efficiency in Health Care. Hearing loss and deafness: Normal hearing and impaired hearing [Internet]; 2006. Available from: https://www.ncbi.nlm.nih.gov/books/NBK390300/#:~:text=Mild%20hearing%20loss%3A%20Hearing%20loss,of%20more%20than%2081%20decibels. Accessed August 22, 2022
3. Coplan J. Normal speech and language development: An overview. Pediatrics in Review. 1995 Mar; 6(3):91–100
4. Levine D, Strother-Garcia K, Golinkoff RM, Hirsh-Pasek K. Language development in the first year of life: What deaf children might be missing before cochlear implantation. Otol Neurotol. 2016; 37(2):e56–62
5. Better Health Channel. Deafness—A range of causes [Internet]. Available from: www.betterhealth.vic.gov.au/health/conditionsandtreatments/deafness-a-range-of-causes#bhc. Accessed August 22, 2022
6. Padden C, Humphries T. Deaf in America. Cambridge, MA: Harvard University Press; 1990
7. Teichroeb R. Sex abuse plagues schools for the deaf nationwide. Seattle Post-Intelligencer [Internet]; 2001 Nov 27. Available from: https://docplayer.net/29666385-Sex-abuse-plagues-schools-for-the-deaf-nationwide.html. Accessed August 22, 2022
8. Sebald A. Child abuse and deafness: An overview. American Annals of the Deaf. 2008; 153(4):366–83
9. Vernon M. Fifty years of research on the intelligence of deaf and hard-of-hearing children: A review of literature and discussion of implications. J Deaf Stud Deaf Educ. 2005; 10(3):225–31
10. Parasnis I, Samar VJ, Bettger J, Sathe K. Does deafness lead to enhancement of visual spatial cognition in children? Negative evidence for nonsigners. J Deaf Stud Deaf Educ. 1996; 1(2):145–52
11. Wechsler D. WISC-V Administration and Scoring Manual. Bloomington, MN: PsychCorp; 2014
12. Roid GH. Stanford-Binet, Fifth Edition. Austin, TX: WPS Publishing; 2003
13. Reynolds CR. Koppitz-2 Developmental System for the Bender-Gestalt Test, Second Edition. Austin, TX: Pro-Ed; 2007
14. Center for Plain Language. What is readability and why should content editors care about it? [Internet]. Available from: https://centerforplainlanguage.org/what-is-readability/#:~:text=Readability%20is%20about%20making%20your%20digital%20content%20clear,be%20a%20natural%20part%20of%20your%20content%20management. Accessed January 29, 2023
15. Vernon M, Raifman LJ. Recognizing and handling problems of incompetent deaf defendants charged with serious crimes. Int'l J Law & Psychiatry. 1997;20(3):373–87
16. DuVivier KK. Writing help at your fingertips—Readability scale. Colo Law. 2001 Mar; 30(3):39: Available from: https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1391&context=law_facpub. Accessed July 20, 2022
17. Mather N, Schrank F, Woodcock R. Woodcock-Johnson III, Tests of Achievement Form C/Brief Battery. Rolling Meadows, IL: Riverside Publishing; 2007
18. Martin N, Brownel R. Receptive one-word picture vocabulary test and expressive one-word picture vocabulary test. Novato, CA: ATP Assessments; 2011
19. Schenkel L, Burnash D, Rothman-Marshall G. Abuse rates higher among deaf and hard-of-hearing children compared with hearing youths, study finds. ScienceDaily [Internet]; 2011 Feb 7. Available from: https://www.sciencedaily.com/releases/2011/01/110118154733.htm. Accessed July 20, 2022
20. North Carolina Division of Services for the Deaf and Hard of Hearing. Communication methods used by individuals who are deaf and hard of hearing [Internet]. Available from: https://www.ncdhhs.gov/media/227/open. Accessed June 4, 2022
21. Hall WC, Levin L, Anderson ML. Language deprivation syndrome: A possible neurodevelopmental disorder with sociocultural origins. Soc Psychiatry Psychiatr Epidemiol. 2017 Jun; 52(6):761–76
22. American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). Washington, DC: American Psychiatric Association; 2013
23. Miller KR, Vernon MCay, Capella ME. Violent offenders in the deaf prison population. J Deaf Stud Deaf Educ. 2005; 10(4): 417–25
24. United States ex. rel. Negron v. State of New York, 434 F.2d 386 (2nd Cir. 1970)
25. Court Interpreters Act of 1978, Pub. L. No. 95-539, 92 Stat. 2040 (1978). Available from: https://www.congress.gov/95/statute/STATUTE-92/STATUTE-92-Pg2040.pdf. Accessed July 20, 2022
26. U.S. Equal Employment Opportunity Commission. Americans with Disabilities Act of 1990 [Internet]. Available from: https://www.eeoc.gov/americans-disabilities-act-1990-original-text. Accessed July 20, 2022
27. Federal Rules of Criminal Procedure. Rule 28. Interpreters [Internet]; 2016. Available from: https://www.law.cornell.edu/rules/frcrmp/rule_28. Accessed August 31, 2022
28. Jackson v. Indiana, 406 U.S. 715 (1972)