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THE LEGAL RIGHTS OF THE DEAF AND HEARING IMPAIRED IN THE UNITED STATES

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Introduction

On September 11, 2001, the United States and indeed the entire world were stunned at the events that occurred that day. A nation once thought of as the strongest, securest nation in the world by its own people and most around the world was momentarily struck with such fear and insecurity that many wondered if it could recover fully. Well, by now it is obvious it not only recovered, but the United States is now a nation truly “united.” It has become stronger instead of weaker. It is once again a nation with a purpose and a single uniting goal. Living rooms are filled each night with reports of an ongoing war overseas, and a domestic effort in full swing to prevent further terrorists acts. These families hear, as reminder, individual stories of those who survived the attacks as well as those left behind after losing loved ones. Each story reminds us of our need to reach out to our fellow American’s and allies abroad who are looking to the United States for leadership in a world gone mad. For every sorrowful story you hear dozens of stories of heroes and survival that reinforces the belief in a nation once thought of as secure but now realising the truth and becoming even stronger in spite of those events. There are stories of firemen and employees of the World Trade Centre surviving in the stairway of the centre as it crumbles around them . . . and they survived. There are stories of law enforcement and firemen laying down their lives in exchange for the lives of thousands who, thanks to them, made it to safety. And then there are the stories of survivors which remind you of how far the United States has grown as a nation in not only caring for its average citizen but those with special needs. On Dateline NBC, a deaf couple talk of their experience in the World Trade Centre that day and how they survived. There were problems unique to them because of their hearing loss. They spoke of the difficulties they had in understanding what was going on. However, they knew they needed to leave because of flashing alarms, law enforcement officers and firemen who couldn’t communicate with them, but made certain they were not left behind. The deaf couple followed the crowd out of the building. They could not communicate with anyone until they were able to find a phone with a telecommunications device for the deaf (TDD). This experience was horrifying enough in its own rights, but to be compounded with the inability to hear what is going on must have been so surreal. Even though their experience was so surreal, they did survive. They did find out what was going on and where to go. They did get assistance much quicker than they would have had the United States not passed and enforced the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. These two major acts stand as a testament to the strength of the United States and its tireless efforts to ensure all of its citizens are protected no matter who they are or what problem they may have that makes them different. It is these two laws and how they have affected the deaf and hearing impaired in the United States that I want to focus on in this paper. I will show you specifically how the criminal justice system applies these laws and what is and should be done for victims of crimes.

A Brief Overview of the Deaf Culture

There are several things to know about the deaf community in order to understand their special needs. There are about 26 million deaf or hearing impaired people in the United States. Your chance of running into one is very high. The deaf are not unlike you and me. They can learn to do just about anything we can. They have become lawyers, doctors, pilots, teachers, and the list goes on. The only difference is their ability to hear. With a few accommodations, they can very easily overcome this problem. As a deaf speaker named Frederick C. Schreiber once said in a speech that he gave while discussing the major handicaps of being deaf, that the inability to hear is the least of the problems of being deaf. Quite simply, he meant that there are some benefits to being deaf as well as disadvantages. Deaf have a much easier time of concentrating and not being distracted by noise. They are also more alert and more sensitive to vibrations since they have lost one of their five senses. The problems associated with being deaf are not

the physical issues directly related to being deaf, but rather the misinformation and misconceptions of the hearing world toward the deaf. In the past, the deaf would be confined to a mental institute due to the belief that their deafness was a sign of mental illness. One man was even sent to a mental institute while he was 27 years old and was immediately castrated to avoid reproduction. He was well into his 90's when the hospital finally admitted they had made a mistake -- too late for him. These misconceptions have led to the deaf grouping themselves into what is called "clusters." In these clusters, they can isolate themselves from the rest of the world and remain with their own kind. Over time, the deaf have developed fragile egos and have become very paranoid about the hearing world. There is a lack of trust toward us, and we have a lack of knowledge about them. This is unfortunate for them and us. Therefore, the separation remained as such until the federal government, with the persuasion of several educated deaf lobbyists, enacted laws to assist the deaf community in their endeavours to adapt to the rest of society. These laws were entitled the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

Since the enactment of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the capability of the deaf to get an appropriate education, good jobs, complete health care, and to enjoy what most of us have taken for granted has improved unequivocally. However, the hearing world still tends to retain their misconceptions about the deaf. They assume they can't do certain jobs, or they must be treated like children. The important thing for the hearing world to remember is that the deaf can do just about anything you can do with just a few accommodations to make up for their physical loss of hearing. Their brains and bodies still work the same as ours -- no better, no worse. It is these accommodations that we in the criminal justice community need to focus on. Whenever we are dealing with a given criminal justice situation, and we bring into play the methods and procedures that have proven to reduce unfavourable statistics and thus improve our service to the citizens, we must remember that the deaf community may require a few slight changes to these procedures in order to provide them with the same type of service. These slight changes are what I mean by a few accommodations. These accommodations shouldn't just be given consideration because it keeps us faithful to the oaths we took, but they *must* be given consideration because it is the law.

Accommodations for Communicating with the Deaf

There are several things to bear in mind when attempting to communicate with the deaf. First, "paper and pencil" will not always work. The deaf person may not know how to write or read. If the deaf person does know how, he/she may write something that just confuses you completely. For example:

Let's say the deaf person you come in contact with writes the following:

" Zipper for fast fly."

What does this mean? It means the deaf person is looking for a zip code because he/she has heard that if you put a zip code on the letter, it will get there faster. This is called idioms and some deaf speak this way.

There are several other forms of language that the deaf use. These are ASL - American Sign Language, SEE - Signing Exact English, Pidgin, and home signs.

ASL -- the most important part of the sentence first followed by the next, etc.

Example: If you were saying, "I saw you yesterday."

ASL - "Yesterday, I see."

SEE -- they will sign using the exact English language adding the -ing, -er, etc.

These will be the easiest to work with.

Pidgin -- This is where they simply drop the words that are not important.

Example: If you were saying, " We are going home to see the kids."

Pidgin - "Go home see kids."

Home Signs -- Very difficult to work with. No standard form of language. Child learns gestures at home for objects and these gestures become his/her form of language. Usually only family members can communicate with them.

As if all of these different language styles aren't enough to have to be concerned with, there are also three different types of deaf. Each type of deaf will use a different type of language style. The three types are low-verbal/non-verbal, signers, and oralists.

low-verbal/non-verbal

-- deaf whose language skills are severely restricted. They will use pantomime and gestures to communicate. They may even use the "idioms" that I spoke of before. They are very difficult to communicate with. They have little education and fall into the functionally illiterate level. (Will usually use Home Signs or idioms language styles)

Signers

-- These deaf will use sign language and have very definite and precise movements. Their education level is adequate, and you will still have some trouble communicating with them. (Will usually use Pidgin or ASL language styles)

Oralists

-- These are deaf people who have learned to speak. They are usually adept at lip-reading, and you shouldn't have too much problem communicating with them. They may or may not know sign language. Of the 26 million deaf or hearing impaired in the U .S., only about 5% are oralists. (Will usually use S.E.E. language style)

What does this mean for accommodations? One of the accommodations required by law (Rehabilitation Act and Americans with Disabilities Act) for us in the criminal justice community while working with a deaf person is to provide "effective communication." This can be done through several means such as interpreters, computer assisted transcription devices, and even pencil and paper if you can prove that you were communicating effectively. But keep in mind that each one of these methods must take into account the aforementioned language styles. If the deaf person knows sign language and you call in an interpreter who uses ASL only, the deaf person must also use ASL or the interpreter is not qualified. The federal government has defined a qualified interpreter as "... one who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialised vocabulary." -28 C.F.R. 35.104. It is the ". . . necessary specialised vocabulary . . ." " part that requires you to use an ASL interpreter if the deaf person uses ASL (this will be discussed in more detail later). What does this mean to the front line criminal justice worker? It means that, while it is not required of him/her to learn sign language, it is required that he/she can provide an interpreter or a form of communication that accommodates the person's particular language style. This is important for the law enforcement officer who is attempting to investigate a crime scene in which a deaf person is involved and must be questioned. You could waste valuable time calling in different interpreters attempting to find one who can interpret using the deaf person's given style. If you can recognise the style immediately, you can contact the appropriate interpreter. This is just one of the many accommodations that must be provided by the criminal justice community. It applies across the board reaching into each and every branch of the criminal justice community.

To get a better understanding of what the United States has done via the Rehabilitation Act of 1973 and the American's with Disabilities Act of 1990, I will provide a brief overview of these laws which affect those with hearing loss or completely deaf in the United States.

The Rehabilitation Act and the ADA

In 1964, The Civil Rights Act was passed in the United States and prohibited discrimination in employment and public accommodations on the basis of race, colour, creed, national origin, or sex. This law, however, didn't go far enough to provide the same rights for disabled people. In light of this, the

Rehabilitation Act of 1973 was enacted by congress. Title V of this act was included to ensure that all programs receiving federal money would be accessible by disabled persons. There are four sections of Title V: sections 501, 502, 503, and 504.

- **Section 501:** Applies to federal employment hiring practices. It guarantees an affirmative action plan for handicapped people.
- **Section 502:** This applies to all federally funded buildings and public transportation to ensure full accessibility to everyone including handicapped individuals.
- **Section 503:** Applies to employers who have a contract or subcontract with the federal government to guarantee an affirmative action plan for employment of qualified handicapped people.
- **Section 504:** Applies to federally assisted programs such as schools, nursing homes, etc. to prohibit discrimination against qualified handicapped people. A program is considered to be federally assisted if it is provided federal funds, personnel or property.

Note: In 1978, section 504 was amended to include federal executive agencies and the U.S. Postal service because the original law did not apply to federal agencies — only federally assisted programs.

This term “qualified handicapped” was first defined by the U.S. Department of Health, Education, and Welfare (Now known as the Department of Health and Human Services) and a set of standards was developed to lead the way for other agencies to follow. The term “handicapped” was determined to include any person who has a physical or mental impairment that substantially limits one or more major life activity, has a record of such impairment, and is regarded as having such impairment.

As with all laws and regulations, we must decipher them word for word. For example, “substantially limits” means as compared to the rest of society, your disability must limit you in every day activities and over a long period. That is to say, if you break your leg, you will be substantially limited in your “major life activities,” but the rest of society has shown you will recover from a broken leg over a short period of time. Therefore, you are not covered under these laws.

“Has a record of such impairment...” means he/she does not meet the first part of the definition -- that is to say they do not have a disability that substantially limits a major life activity – but they have in the past had such a problem and have been cured. For example: someone with a mental disorder, which has been cured. They may be discriminated against just based on their past. Even though they may not have a disability now, the laws will cover them based on the discrimination rooted in their history.

“Regarded as having such impairment . . .” means he/she does not have a disability (they don’t meet the first part of the definition) but they are regarded as having a disability albeit mistaken by another and discriminated based on this. For example: a woman whose spouse has the AIDS disease is not hired because the hiring person believes she may have the HIV virus as well and doesn’t want her around. Since those infected with the HIV virus are protected under the ADA, she will be protected as well even though she doesn’t actually have the virus . . . she is “regarded” as having it.

They defined a major life activity as “taking care of oneself,” such as walking, breathing, hearing, manual tasks, seeing, talking, learning, and working. This can become very complicated as well. The term “qualified” was defined by HEW as a person, who, with reasonable accommodations, can perform the essential functions as required for employment, meets the academic and technical requirements to attend a

postsecondary or vocational education service, or any other federally assisted program in which the handicapped individual meets the essential eligibility requirements for service in that program. This affects employment more than any other function of society, but it can and does reach into the criminal justice institutions as well.

If a violation of any of these four sections (501, 502, 503 or 504) were to occur, a handicapped person could file a complaint with the federally assisted agency or skip the complaint and file a lawsuit or both. A violation of these sections would leave that agency wide open for civil liability. A violation of these sections would leave that agency wide open for civil liability.

As can be seen, the Rehabilitation Act of 1973, and in particular, Title V of that act, guaranteed rights against discrimination, employment, and accessibility for federally assisted programs but that did not go far enough to assist these people in private, non-federally assisted sector. The private sector is much larger and is more frequently used than the federally assisted sector. Therefore, in 1990, congress passed The Americans with Disabilities Act.

The Americans with Disabilities Act of 1990 broadened the rights of the disabled into the private and local sectors. I am going to concentrate specifically on the rights of the deaf and hearing impaired as they correspond to the criminal justice system – specifically as it relates to the courts, attorneys, and law enforcement personnel.

The court systems are subject to Title II of the A.D.A. which requires local and state courts to provide qualified sign language interpreters and other auxiliary aids such as transcription or assistive listening systems to ensure effective communication with the deaf or hard of hearing. When providing such interpreters or auxiliary aids, it is required that the choice of which aid or interpreter is to be used be deferred to the deaf witness. The reason that the law requires deference to the deaf is because of the large variety of auxiliary aids, services and circumstances.

Taking a look at some of the pros and cons of some of the different types of auxiliary aids and services will help to understand the need for deference. A common auxiliary aid would be a computer-assisted transcript in which each word communicated in the courtroom is quickly printed out onto a screen for the deaf to read. This would be a good auxiliary aid if the deaf witness was well educated and uses signing exact English so that they could understand words as may be said by the common speaking person. This device would be bad if the deaf person could not read or used another form of communication such as American Sign Language or Pidgin. An interpreter would be good if the interpreter could communicate effectively with the deaf witness. Knowing that there exist different language styles and levels of education among the deaf, this would have its obvious drawbacks. If the interpreter could only use the American Sign Language and the deaf witness used pidgin, they may not be able to communicate effectively.

Title II defines a qualified interpreter as one who is able to “interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialised vocabulary.” -28 C.F.R. 35.104

The last part of that definition clearly explains that whatever language the deaf witness may use, the interpreter must be able to use that same language “effectively, accurately, and impartially” and must be able to do so by understanding exactly what is meant in the conversation and be able to express it accurately in the courtroom. Anything less would not be in compliance with the law. However, this law does not supersede the laws of a particular state that may require all interpreters to be certified. If a state’s interpreter standards are more stringent than the federal law, then that law must also be followed.

However, the courts must provide for the minimum requirements as spelled out in the federal regulations when providing a qualified interpreter.

Title II also cautions against using family members or friends as interpreters. They are often not skilled enough in the legal terms and court procedures, and even when they are skilled in these areas, they may be personally or emotionally involved with the witness and may create confidentiality concerns. The worst case scenario would be if it were a child abuse case and the only people who could communicate with the deaf witness were family members – mom may not want to incriminate dad.

According to the Rehabilitation Act of 1973 section 504, the fees for an interpreter may not be included in the court costs or be assessed to the deaf witness. Federal regulation has determined that where a court has the responsibility to provide qualified interpreters, it also has the responsibility to pay for these services. This is often paid for out of the witness fees.

The second part of the criminal justice system that will need to be discussed is the need for a defendant to be provided with legal council. Title III of the A.D.A. requires places of public accommodation to be accessible to individuals with disabilities. Places of public accommodation would include but not limited to:

1. Accountant's office
2. Pharmacy
3. Insurance office
4. Professional office of a health care provider
5. Attorney's office
6. Any other service establishment

-28 C.F.R. 36.104

Under Title III, lawyers and other professionals have an obligation to communicate effectively with their clients. Without effective communication, the attorney runs the risk of not fully understanding his/her client's needs or problems and of giving incorrect or improper service or advice. If the proper advice is given, the client may not understand it. Auxiliary aids and services may be used. However, remember the pros and cons of such devices or services and make every effort possible to ensure your communication is sufficient enough to provide them with complete and proper representation. Realize that the deaf most often do not understand "concepts" in which we take for granted. For example, if you tell a deaf person that they have a certain "right under law," they may understand the word "law," but the words "right" and "under" will be taken literally as right hand/left hand and under something. It is important to have someone assist in the communication process who can understand the legal terms and express them to the deaf in terms that they understand without losing their legal meanings.

Under 28 C.F.R. 36.301, the cost of these auxiliary aids cannot be charged to the client. The cost of these auxiliary aids and services is considered by the department of Justice as doing business and is viewed as being no different than the requirements of a handicapped parking place, elevator, or ramp which cannot be assessed to the clients with disabilities. There is somewhat of a relief for some businesses in that if the requirement to provide an auxiliary aid or service is such a burden that it will significantly alter the nature of the service being provided or would result in a serious financial burden, the lawyer or public accommodation is not required to provide such auxiliary aid or service. However, bear in mind that the burden of proof of such hardship remains solely on the business. As a rule of thumb, the hourly fee of an interpreter would probably not be viewed as a financial stress for a successful law firm.

The last part of the criminal justice system I'm going to discuss is usually the first step in the criminal justice system. The part is the law enforcement officer/agency. Under the A.D.A., state and local law enforcement agencies will be required to provide a "qualified interpreter" and other auxiliary aids to

ensure effective communication with the deaf and hard of hearing. The same regulations apply to law enforcement agencies as applies to the courts and attorneys in that deference must be given to the deaf person when choosing what auxiliary aid or service is to be utilised.

The Department of Justice makes it clear that the A. D. A. requires emergency telephone access to be provided for the deaf who utilise a TDD (telecommunication device) or computer modem in place of telephones. If there is a 9-1-1 service in the area, the A.D.A. disallows the use of a seven-digit number to replace the 9-1-1 numbers for the deaf. A non-emergency number is also required to be available for use by the deaf. Because the TDD is required by all law enforcement agencies, it is also required by law that they remain in working order. If one goes down and needs repaired, another one must be put in its place until it has been repaired. TDD's can be purchased with or without printers. It is highly suggested that they be purchased with printers. This will allow a dispatcher to answer a call and go back to the radio if needed to communicate with the road officers. Without a printer, the dispatcher must give priority to the TDD and watch the screen since only a few words at a time roll across it and usually cannot be retrieved. The printer will allow the dispatch to return to the TDD, read the printed tape, then continue with the call or tell the deaf person to hold. The printed tape also serves as a written record of a phone conversation if there happens to be a misunderstanding on either end of the line. The paper can also be kept for court cases and it serves as written record of employee proficiency.

These are the three major areas of the criminal justice system and their requirement as spelled out by the Rehabilitation Act of 1973 and its amended version in 1978 and the Americans with Disabilities Act of 1990. If a violation were to occur under the ADA, the same enforcement provisions as provided for under the Civil Rights Act of 1964 as it was amended to the Civil Rights Act of 1991 Title VII would apply. An employer found to be in violation of the A.D.A. may be required by the justice department to correct the problem. If the violation is found to be intentional, the employer will be required to provide compensation and punitive damages under the Civil Rights Act of 1991 Title VII.

Along with the justice department's penalisation, the employer will also be open to a civil law suit by the deaf person. A good example of that occurred in California where a deaf man sued a law enforcement agency for false imprisonment and violations of his civil rights. He was awarded \$100,000. The department was not following the requirements that we just discussed. The man went to a bank that had just been robbed the week before. The bank teller thought he was the same man who had robbed the bank. She contacted the police who questioned him extensively. The man requested an interpreter several times but was denied. The police officers felt they were communicating fine with him through written notes. The deaf man said the notes confused him. At one point, the officers ask the man if he knew the bank robber. The man responded with, "I know robbery." The man stated later, through an interpreter, that he was referring to his employer, whose name was Robert. The police incarcerated the man over night. Two months later, another man was arrested for the robbery and pleaded guilty to the crime. This is just one example from literally hundreds. With the A.D.A. becoming better comprehended by the deaf, and as they begin to learn what their rights are under it as well as other federal laws, more and more law suits will become common. It is best to take the steps to alter your existing policy and procedure, train your employees, and familiarise your entire agency to ensure you are within the guidelines of these mandates. Many law enforcement agencies receive federal funds, but if you violate these laws, you run the risk of losing those funds.

I would like to take all the above information and apply it to the United States criminal justice system. I will walk you through a typical arrest first as it occurs with an individual without a disability, then the same arrest with a deaf person.

The Arrest

In order to get a complete understanding of the arrest phase, it will be necessary for me to walk you through a typical arrest in the United States. For this I have randomly chosen a driving under the influence of alcohol/drugs (DUI) since it covers a wide variety of law enforcement and civil rights issues in the United States. I must however, stress that you can insert just about any type of arrest in its place for all arrests in the United States must adhere to certain constitutional principles.

Before we discuss what you would do for a DUI arrest involving a deaf person, I think it is imperative that you understand what is actually involved in a DUI arrest of a person who is not deaf. This is crucial for those reading this that are not familiar with the process. So, I will take you through a normal arrest (keeping in mind that there is really no such thing as a *normal* arrest) step by step in order for you to understand what I am talking about when I compare this to the deaf driver.

A typical DUI arrest may go something like this:

You observe a vehicle ahead of you in the right lane of a four-lane highway (two lanes going opposite directions with a median in between). The vehicle is travelling in and out of its lanes. It first goes onto the berm and back across the other lane onto the shoulder. You observe this for about a mile until you are satisfied you can articulate you observed a driving style that was indicative of a driver who may be under the influence of alcohol or drugs. You make the decision to stop this car. When you do, you observe a lot of movement in the vehicle including the driver reaching under his seat. As you walk up on the vehicle, your eyes are scanning the entire vehicle for anything out of the ordinary while simultaneously looking for something that might pose a threat to your safety. You keep your body back out of sight of the driver or at least so that he must really twist around in order to see you. You ask him to let you see his hands because you recall he was reaching under the seat for something and you don't want him to surprise you with a weapon. He lifts his hands up so that you can see them. The only thing in his hands is a wallet that had fallen on the floor (this is what he was reaching for). Satisfied that he doesn't have a weapon in his hands, you ask to see his license and registration. While he is getting these items, you are observing his movements: are they lethargic; does he have difficulty removing his license from his wallet; does he sway in his seat and seem to pause a moment as if attempting to recall what he was in the middle of doing? You listen to his speech: is it slurred; does he continuously fragment his sentences (or start a sentence and stop in the middle to start another one); does he display sudden mood swings? You observe his eyes and determine if they are red or bloodshot. You determine if you can smell an odour of alcoholic beverage such as beer, wine, etc. These are all signs or indicators of possible drug or alcohol use.

Once you have observed some of these abovementioned indicators, coupled with the driving style that you witnessed on the road, you have begun to build a case for DUI. You decide to ask the driver to step out of the vehicle. You are now watching for the driver's ability to get out without assisting himself by leaning on the door for balance or stumbling toward the roadway. As he walks back to the rear of your car: does he stagger as he walks; is he very unsteady on his feet; can he stand and talk with you without swaying his body back and forth? These are additional indicators to help build your case. You ask the driver if he has had any alcoholic beverage to drink. He may or may not answer. The usual answer is two; regardless of whether they have had three, four, ten, twenty or two fifths of liquor, the answer is almost always "two." Nevertheless, you are okay with this answer because it still helps your case; the driver admits to drinking. With all of the indicators that you have observed in this case, you determine that you have enough evidence to go court and articulate to the judge/jury that you indeed needed to request the driver to submit to some field sobriety tests to assist in your determination that drugs or alcohol may be the reason for the poor driving.

Now that you have determined that you will administer some standardised field sobriety tests, you have to recall the exact steps and procedures that you were taught when administering these tests. Why the exact

steps? Quite simple. First, you should always perform your business in the exact manner that you were trained in order to keep yourself covered if someone files a law suit against you. Second, the courts have shown that if you do not administer these tests exactly as the manual you were taught from dictates, the tests are not valid. Therefore, if you fail to do this, all of the work you have completed up to this point will have been wasted. The details on administering these tests are so precise, that it is necessary to memorise the steps. For example, when explaining to someone how to perform the “walk-and-turn” exercise (the famous walk the straight line test), it is very important that you explain how they should perform the test all the way down to the most minute detail of how they should turn when turning around : “With your left foot still on the line, take small steps to your right foot pivoting on your left foot until you bring your right foot back in front of your left foot on the line.” You must also briefly demonstrate what you are explaining. *How* you demonstrate this is also important for court purposes.

Part of administering any field sobriety tests includes asking some very important questions. “Do you have a glass eye?” This is important because you will be administering a test to see how well their eyes can follow or track an object (usually a pen) that you hold in front of them and move side to side. This is called looking for a “...lack of smooth pursuit.” Another question is, “ do you have diabetes?” Very important question because you will need this in order to determine if all of the preceding indicators that you have observed, including the driving, was not due to diabetic shock which can resemble a drunken driver. You will also need to ask if they have had any injuries to their legs or back that would prohibit them from performing these tests. I do not plan to discuss these tests in detail; I just wish for you to understand their complexity.

Now let’s assume that you have administered the tests, and through your training and experience, you determine that you believe the driver is under the influence of alcohol. You decide to place the driver under arrest. You handcuff him behind his back, and you inform him that he is under arrest for DUI. You must also advise the arrestee of his *Miranda Rights*. Miranda is a case law requiring law enforcement officers to advise the individuals they arrest or are interrogating with the potential of being arrested of their rights under the Constitution. The way these rights are advised may differ throughout the United States, but they all contain the same principles. The following is an example of the one utilised by the Ohio State Highway Patrol in Ohio, United States:

You have the right to remain silent.

Anything you say can and will be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions, and to have him present with you during questioning. If you are unable to afford an attorney, one will be appointed for you prior to any questioning, if you so desire. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering questions at anytime until you talk to a lawyer.

The Supreme Court has ruled that you must inform a suspect of his/her *Miranda rights* because the presence of a law enforcement officer is coercive in nature, and the defendant may feel compelled to talk even though they do not wish to. Therefore, since the Constitution of the United States under the Fifth Amendment protects an individual from self-incrimination, the suspect must understand that he/she does not have to talk to a law enforcement officer and does have the right to counsel. The law enforcement officer must advise the suspect of these rights prior to interrogation or interviewing. If the officer does not, anything he/she learns from the suspect afterward is subject to being suppressed as evidence in court.

Now that you have placed this person under arrest for DUI, you transport him to a place where you keep a machine that can test his breath to see how much alcohol is in his blood. Before you can test him on this machine, you must make it clear to him that you can’t force him to take the test. This is accomplished by

reading a form to him commonly referred to as the “Implied Consent Form.” This form is very complex and must be read word for word to the driver. It reads something like this:

You are now under arrest for operating a motor vehicle while under the influence of alcohol, drug of abuse, or both alcohol and drug of abuse and will be requested by a police officer to submit to a chemical test to determine the concentration of alcohol, drugs of abuse, or both alcohol and drugs of abuse in your blood, breath, or urine. If you refuse to submit to the test, or if you submit to the test and are found to have a prohibited concentration of alcohol in your blood, breath, or urine, your license, commercial driver’s license, or permit, or non-resident operating privileges will immediately be suspended for the period of time specified by law by the officer on behalf of the registrar of motor vehicles. You may appeal this suspension in court at the time of your initial appearance and your initial appearance will be held within 5 days of the date of this arrest or the issuance of a citation to you. . . .

This is just a small portion of the form used in Ohio in the United States but enough to again show the complexity of the process.

Now that this form has been read to him, you must ask him if he is willing to submit to a test of his breath. You may get a response like, “I want to talk to my lawyer,” in which case you must provide them with a phone and leave the room to give him privacy with his attorney. Eventually, though, you must receive an answer to your question. If he says no, then your case as far as gathering evidence for your case is concerned unless he makes some voluntary statements to you or is willing to answer more questions. If he states he is willing to submit to the test, you must explain in detail how to perform it. The machine that we use requires 51.2 cc of breath to be blown into the machine at one time. This is necessary for the machine to get what is referred to as “deep lung air” and convert it to grams of alcohol per 210 litres of breath. This is not the only way to accurately test the amount of blood-alcohol in your body, but for the purpose of this paper, it is sufficient. If he does not blow long enough or takes breaths in between, the machine cannot function properly. Sometimes they will not blow hard enough or not make a seal around the mouthpiece, which allows air to escape from the sides. Occasionally, a driver will attempt to appear as if he is blowing very hard but not allowing any air to go through the tube (they puff out their cheeks and put on a show). All of these issues must be addressed prior to the driver attempting to blow into the machine. If done incorrectly, it may feel to the person blowing into the machine as if their lungs are going to collapse. This of course cannot happen, but it gives them a reason to quit. Nonetheless, you must eventually receive a sample from them, or it will be determined that they have refused the test. As if all of the aforesaid matters weren’t enough, all of this must be completed within two hours of the time that they were stopped (in Ohio).

Now that the test is complete, and you determine that he is going to be charged with DUI, you must make certain that he understands what he is getting charged with, that his license is suspended, and how he can go about posting bond to get out of jail. He will need to be able to understand what his options are in court, as explained by the judge, and he must be able to consult with an attorney and participate in his own defence as guaranteed by the 6th Amendment to the Constitution of the United States.

This was an abbreviated version of what actually occurs. It could take a lot more time depending on whether you must first investigate a crash the driver was involved in, how long they consult with their attorney, or if the driver gives you a lot of problems. Nevertheless, this is somewhat how a typical DUI arrest may go. Now I want to associate that with a deaf driver. How is it similar? How is it different? What will you need to know and do in order to accomplish all of these requirements? These questions are what I plan to answer.

I was very detailed with this process in order to prove a point. From reading the *typical DUI* section, it should become apparent to you the complexity of the process of arresting someone that you *can* communicate with. Now when we compound that with a person who you *cannot* communicate with, you can see how difficult it can be for someone not prepared to handle it. The worst-case scenario of not being prepared would be someone could lose their life and the best-case scenario would mean only losing your court case. Consider the difficulty that you already had with a hearing person, or at least the intricacy of the process, and ask yourself “how would I accomplish all of that with a driver who only knew sign language and the style was ASL?” Remember the initial stop, and the problems encountered when you first approached. Remember you wanted to see the driver’s hands for safety, yet the driver could not see you. How would the driver *know* to show his hands? How would he even know you were standing there. Could a driver be pretending not to see you or hear you while reaching for a gun? Absolutely. So how do you handle this situation? By being prepared. Reading this paper is the first step.

There are a few things that I must state before beginning to explain the significance of the deaf driver. It is my belief that the most important thing for police officers when dealing with anyone, not just the deaf, is officer safety. In no way should anything that you read in this paper be placed above that if you are a police officer. I say this because officers can immediately forget everything they normally would do in a given situation when faced with a deaf person. They immediately attempt to remember what they are supposed to do. They try so hard to accommodate this person, they begin to get “tunnel vision” and forget everything they were trained to do to keep themselves safe. While I have repeatedly said the deaf were no different than the rest of society excluding the physical loss of hearing, it should be stated that the deaf community is also *reflective* of the rest of society. By that I mean, there are honest, tax-paying citizens in the hearing world and there are the law-breaking sinister people as well. That is the same for the deaf world. It is very important to remember this. However, once you are confident with what you are supposed to do in order to accommodate the deaf according to the law, I am convinced you will remember to keep the officer safety issues at the forefront of your operations.

When you first contact the driver of a vehicle that you have stopped, you are supposed to approach with caution and watch the interior of the vehicle for any movement that may appear threatening to you. If you see these types of movements, you will tell the occupants to let you see their hands. All hands must be visible at all times. However, the deaf driver will not hear you. It may appear as if he/she is ignoring you. Before you over-react and point your gun at the side of their heads telling them to freeze, bump the vehicle with your leg to get their attention. The vibration will get them to look back at you if they are deaf. The feeling of touch is one of the only things the deaf person has to alert them to someone’s presence. You might even flash your flashlight onto their steering wheel or interior to get them to look back. They will almost always respond to lights or vibrations if they are truly deaf. When you get their attention, point to their hands so that they may bring them up for you. They will be concerned themselves and most likely inform you that they are deaf by pointing to their ears and mouth or something similar. You can use pantomime or gestures to let them know what you want them to do. This will work most of the time for obvious things like motioning them to get out of their vehicles. Now if you stopped them for DUI, and you can smell an odour of alcoholic beverage on them, and you have every other sign that they have been drinking and are drunk (remember the indicators that we observed prior to the field sobriety tests -- many will still be valuable). You may want to place them under arrest right there and wait for an interpreter to arrive at the station for further field sobriety tests. The reason is simple, you must be able to testify that they understood the instructions of the field sobriety tests, and if you can’t communicate with them, that will not be possible. Have your dispatcher contact an interpreter in advance to meet you at the station. It is important for you to attempt to identify the language style used by the deaf person as previously mentioned. If you know some sign language, attempt to communicate with them to see if you recognise the language style (referring to the deaf culture section), if not, allow them to write if they can (keep in mind the dangers of providing a potentially violent person with a pen/pencil). You may just have to rely on your interpreter to determine this, but it is much quicker if you can do it in advance so you can request

the appropriate interpreter especially if you are on a time limit. In any case, you may have enough to arrest the person based on the evidence that you have already independently observed. However, keep in mind that the deaf person's co-ordination skills may be poor due to an inner ear problem that affects their balance. This should not affect your decision to at least take them in for further evaluation, but it should certainly be in your mind when evaluating them later. If you determine you will need to handcuff them before taking them in, be prepared for a fight because the handcuffs are going to restrict the deaf person's ability to communicate -- much similar to you and I having a piece of tape placed over our mouths. This does not mean that you shouldn't handcuff them; it just means to be prepared when doing so. You might just call for backup from another officer. Nevertheless, every attempt should be made to let them know what is going on or what is happening to them. While I understand that you are dealing with a drunk driver, you are also dealing with a person who would be extremely frightened if he/she weren't drunk because of their inability to assess what's going on around them; the alcohol will only compound the situation.

At the jail or station where you keep your breath testing equipment, you should have the forms available for you to advise them of their *Miranda rights* with the assistance of the interpreter. Be sure to video the whole process if possible, and you may determine to have an attorney present for the suspect though that is not actually required if you feel comfortable enough with the process that you can articulate in court that the suspect understood the process completely and the consequences he/she was facing. Your interpreter can walk the deaf suspect through each of the field sobriety tests as you explain them, he/she can interpret for you as you read all your forms and explain the process of testing their breath as well as assist the deaf person through the booking process if that becomes necessary. Your interpreter will be the ears and mouth for the deaf person as long as he/she is indeed a qualified interpreter.

The Deaf Victim

A victim is defined by *Webster's* as a person who is harmed or killed by another. While our criminal justice system rarely is responsible for "killing" a person thus making them a victim, it is often argued that the criminal justice system is responsible for continued or added harm to already existing victims. Once a victim's attacker enters the criminal justice system, it often seems as if the defendant has more rights than the victim due to the nature of the Constitution. The United States and its founders made it clear they were more concerned about not punishing an innocent person than they were about punishing a guilty person. Therefore, to make certain the innocent are protected, the Constitution had provided specific rights to those accused of a crime. Arguably, these rights often overshadow the rights of the victim. In light of this, we in the criminal justice system must make a concerted effort to assist the victims as much as possible. The ride they will experience throughout the court process is a very emotional ride indeed. Often a rape victim will have to endure probing personal questions by the defence attorney's who are trying to get their client, the perpetrator, acquitted of the charges. This process quite often makes the rape victims feel as if they are being raped all over. Indeed, many say their experience through the criminal justice system was worse than the initial crime. This is an unfortunate component in the criminal justice system of the United States. The Constitution is attempting to balance the need for safety of the public and the need to control a government from having the power to incarcerate the innocent. It takes a strong victim to face their assailant, and this cannot be accomplished alone most often. That is why the United States has a "Victim/witness assistance program" established as part of the criminal justice system. The responsibility of this program is to ensure the victim is given as much information about their rights and the pending case as possible. Information is power, and it is utterly vital the victim begin to feel powerful again. This is important in the healing process of a victim.

The healing process is repeatedly a losing battle for the deaf victim. If information is key, what happens to the individual whose ability to gather information is severely limited? They do not heal; they continue to be victims time and time again. It is essential that the victim/witness programs become familiar with deaf culture, the deaf in their community and how to communicate effectively enough that information flows to

the victim as it would if they were not deaf. If this sounds like something impossible to accomplish, it shouldn't because under the American's with Disabilities Act and the Rehabilitation Act as well as a handful of other civil rights laws these agencies are required to do this.

Many of these organisations receive some form of federal grant money. If this is the case, then Section 504 of the Rehabilitation Act requires them to provide the same service to the deaf as they do the hearing. If they fail to do this, they can lose all of their federal funding as well as be held liable civilly. If they receive state funding, they are bound by the same standards under Title III of the A.D.A. Repeatedly, the American's with Disabilities Act as well as the Rehabilitation Act make it clear the need to ensure the rights of deaf in all aspects of society including the criminal justice system.

Ultimately, those working in the criminal justice should have as their mission to guarantee the rights of all victims including the deaf. Being a victim is bad enough, being a deaf victim should not be twice as bad. There should be a continuous support group throughout the process and afterward to make sure the deaf victim is all right both physically and emotionally. It is the job of the victim/witness program to make every effort to restore the deaf victim's life back to as close to normal as possible and to show them ways to avoid becoming a victim again.

The Affect of the A.D.A. and the Rehabilitation Act on the Deaf

Life for the deaf and hearing impaired in the United States has greatly improved thanks to these two laws. It could be much better and will be as the United States finds better ways through technology and tolerance to make life as good for the deaf community as it is for the rest of its citizens. Without the assistance of these two laws, the deaf people who survived the attack on the World Trade Centre may not have even been given a job in that building in the first place. They may not have been given the access to the services of that building if it weren't for the laws requiring equal access. And they may not have been able to survive and acquire information the way they did had it not been for the dedication of the police, firemen, telecommunications companies and private sector companies who through their combined dedication to the laws of the United States and to the enhancement of their fellow man made the tragedy for the deaf in this event a little less tragic than it was.

RESOURCES

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