

# Linguistic Diversity in a Deaf Prison Population: Implications for Due Process

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The entire deaf prison population in the state of Texas formed the basis for this research. The linguistic skills of prison inmates were assessed using the following measures: (1) Kannapell's categories of bilingualism, (2) adaptation of the diagnostic criteria for Primitive Personality Disorder, (3) reading scores on the Test of Adult Basic Education, and (4) an evaluation of sign language use and skills by a certified sign language interpreter who had worked with deaf inmates for the past 17 years. Deaf inmates with reading scores below the federal standard for literacy (grade level 2.9) were the group most likely to demonstrate linguistic incompetence to stand trial, meaning that they probably lacked the ability to understand the charges against them and/or were unable to participate in their own defenses. Based on the language abilities and reading scores of this population, up to 50% of deaf state prison inmates may not have received due process throughout their arrest and adjudication. Despite their adjudicative and/or linguistic incompetence, these individuals were convicted in many cases, possibly violating their constitutional rights and their rights under the Americans with Disabilities Act.

This article examines linguistic diversity in a deaf state prisoner population with attention to adjudicative and linguistic incompetence, two conditions that pose fundamental barriers to the due process rights of deaf defendants.

Due process is a constitutional right of all persons with criminal legal problems. For deaf persons, these

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rights have been reinforced by the Americans with Disabilities Act of 1990 (ADA; Berko, 1992; Relyea, 1980; Smith, 1994). In its application to criminal cases, *due process* refers to the court ensuring that a defendant understands the charges against him or her, is able to assist in the development of a defense, can decide which plea to enter, is aware of the implications of his or her position as a defendant, and has an understanding of the roles of the defense, prosecution, and judge.

In addition to courtroom settings, the Fifth Amendment requires that the police adhere to due process procedures. For example, police must inform criminal suspects, including those who are deaf, of their Miranda rights (*Miranda v. Arizona*, 1966; Vernon, Raifman, & Greenberg, 1996). Much of the advocacy and research on adjudicating deaf persons with criminal legal problems has been focused on the lack of or failure to provide qualified interpreters and/or essential communication technologies in legal settings, including those involving law enforcement (Berko, 1992; Miller, 2001a; Rovner, 1992; Simon, 1992; Smith, 1994; Wood, 1984).

Linguistic diversity in the deaf population can create significant complications, even for qualified sign language interpreters (Bayley, Lucas, & Rose, 2002; Miller & Vernon, 2001a; Miller & Vernon, 2002). Due in part to variations in the educational backgrounds and language proficiencies of deaf defendants, those who communicate adequately in American Sign Language (ASL), English-based sign systems, and/or indigenous or foreign sign languages do not always demonstrate

adjudicative competence in legal situations (Miller & Vernon, 2001a). Many of these individuals can receive access to due process by using a qualified sign language interpreter (Miller & Vernon, 2001a; Miller & Vernon, 2002). For some of these persons, remedial training regarding the criminal justice system may be required in order for them to achieve adjudicative competence prior to a legal proceeding.

In contrast, those deaf defendants who are highly visually oriented, low functioning, semilingual, language disordered, or have minimal language skills (MLS) or Primitive Personality Disorder (PPD) all experience major barriers to due process (Miller & Vernon, 2002; Vernon & Coley, 1978; Vernon & Miller, 2001; Vernon & Raifman, 1997). In deaf individuals with an IQ of 70 or above, PPD is characterized primarily by a markedly restricted vocabulary in signed and spoken languages, functional illiteracy, a limited formal education, and a lack of basic life skills that are common to most people (Vernon, 1996). For example, an individual may be naïve regarding the use of money, the purpose of the Social Security system, or following directives as indicated by street signs. As outlined above, these terms are functionally synonymous, and the legal term used to describe this condition is *linguistic incompetence*.

Much like persons who are severely mentally disturbed or severely intellectually impaired, deaf defendants with linguistic incompetence cannot adequately participate in due process (Miller & Vernon, 2001a; Vernon & Miller, 2001; Vernon & Raifman, 1997; Vernon et al., 1996). For example, they may confess to offenses that they did not commit, they often make poor witnesses, and their demeanor may unintentionally create the impression that they lack remorse for their actions (*Atkins v. Virginia*, 2002; McAlister, 1994; Miller & Vernon, 2001b; Vernon et al., 1996).

In some cases, deaf defendants with linguistic incompetence are hospitalized in mental health facilities until they are deemed competent to participate in legal proceedings (Vernon, 1996). Others are released unless they demonstrate a danger to themselves or others (Vernon & Raifman, 1997). If they are judged to present a threat to society, they meet the criteria for involuntary hospitalization for mental illness. As indicated earlier, as a result of the lack of awareness

regarding linguistic incompetence by the courts and general public, a significant number of deaf defendants with linguistic incompetence have been prosecuted and incarcerated without any recognition of their condition (Davis 1993; Miller & Vernon, 2002; *Wilson by Branch v. North Carolina*, 1996).

## Method

### Participants

Participants in this study consisted of 97 deaf Texas state prison inmates serving sentences ranging from 1 to 80 years at the time this research was conducted (Miller, 2001b). Of these 97 deaf inmates, 61% were convicted of violent offenses, including sexual assault; 19% were convicted of property offenses such as theft or arson; 19% were convicted of illegal drug violations such as possession and trafficking; and 11% were convicted of other offenses (Miller, 2001b). For example, a nonviolent sex crime such as indecent exposure would be placed in the category of “other” by the Texas Department of Criminal Justice. Some deaf inmates were convicted of two or more offenses, not necessarily of the same category.

All study participants except one had a severe to profound hearing loss, with 82.4% using a visual-gestural language as the first or preferred language and 9.2% routinely using a visual-gestural language as the second language or simultaneously with English.

### Procedure

Linguistic diversity in this deaf inmate population was classified based on Kannapell's (1989) categories of bilingualism (Table 1). Categorizations were determined through the self-reports of participants regarding their language use, observations of the researcher, and preferences as conducted through interviews by a hearing signer with 10 years of experience providing social services in the Deaf community. Categorizations were corroborated by consultation with a certified sign language interpreter who had deaf parents and had worked full time with the Texas deaf inmate population in excess of 17 years. Based on her knowledge of ASL as her first language and her ex-

**Table 1** Kannappell's categories of bilingualism in deaf persons, 1989

Category	Definition
Balanced bilingual	Competent in both ASL and English and comfortable in both hearing and deaf cultures
ASL-dominant bilingual	Competent in both ASL and English but preferring to use ASL most often
ASL monolingual	Competent in ASL only
English-dominant bilingual	Competent in both ASL and English but preferring to use English most often
English monolingual	Competent in English only
Double-semilingual	Not competent in English or ASL

ASL, American Sign Language

tensive interactions with most of the study participants, she provided expertise on deaf inmates' language use in terms of ASL and foreign sign languages, dialectical differences, and MLS. Assigned categories were then cross-referenced with inmate reading scores earned on the Test of Adult Basic Education (TABE) and adjusted as necessary. For example, those who were competent ASL users were moved from the category of ASL-dominant bilingual to ASL monolingual if their reading grade levels were below 3.9.

The Texas prison school district routinely uses the TABE to obtain inmates' reading scores. Data analysis was based on deaf inmates' most recent TABE reading scores. An overall educational achievement (EA) score is obtained by averaging an inmate's TABE reading, math, and language scores. In comparing inmates' overall EA scores at entry into the prison system with more recent scores, it became apparent that some had scores up to three grade levels lower prior to attending the adult education program provided by the prison school district. Additionally, a number of deaf inmates, primarily those who were classified as ASL monolingual and/or semilingual, had no TABE reading scores on record.

The identification of linguistic incompetence in this deaf inmate population was based primarily on the criteria for PPD (Basilier, 1964; Grinker, 1969; Rainier, Altschuler, & Kallman, 1963; Vernon & Raifman, 1997). Although it does not appear in the *Diagnostical Statistical Manual of Mental Disorders (DSM)*, PPD is a proposed psychological diagnosis that can best be determined through a series of in-depth interviews by a qualified psychologist who is competent in sign language. No attempt was made here to formally apply the diagnosis of PPD. However, adaptation of the PPD

diagnostic criteria was found to be helpful in the identification of linguistic incompetence in this population because it provides a set of specific conditions that can be identified by an observer.

For the purposes of this study, only the first three criteria of PPD (restricted vocabulary, functional illiteracy, and limited formal education) were applied to determine linguistic incompetence. The fourth criterion (lack of life skills) was not applied because a single interview did not provide a sufficient length of time to assess each participant's daily functioning and independent living skills appropriately. To rule out the possibility of an excessive number of intellectual impairments in this group, inmate IQ scores as obtained on the Revised Army Beta test were used. This is a nonverbal test that is considered to be an appropriate type of instrument for most deaf clients (Vernon & Andrews, 1990).

## Results

Available IQ scores for this deaf state inmate population were predominantly within normal ranges (85–115) for state prison inmates ( $n = 78$ ; Matarazzo, 1976; Texas Department of Criminal Justice, 2001; Table 2). Almost half of the study participants were monolingual

**Table 2** Revised Army Beta IQ scores of deaf state prisoners,  $N = 97$ 

IQ range	Number	Percentage
Superior (131–up)	1	1.0%
Above average (115–130)	4	5.1%
Average (85–114)	47	48.4%
Below average (70–84)	20	28.5%
Mild intellectual impairment (55–69)	6	6.1%
No score available	19	19.6%

**Table 3** TABE reading grade levels of deaf prison inmates,  $N = 97$ 

Kannapell's categories	Below 3rd	Below 4th	Above 4th	Above 6th	Not tested	Total	Percentage
ASL-dominant bilingual	0	0	7	5	3	15	15.5%
ASL monolingual	30	9	0	0	8	47	48.4%
English-dominant bilingual	4	0	3	1	1	9	9.3%
English monolingual	3	1	2	1	0	7	7.2%
Spanish monolingual	1	0	0	0	0	1	1.0%
Double-semilingual	12	0	0	0	6	18	18.5%
Total	50	10	12	7	18	97	100.0%

ASL, American Sign Language

sign language users ( $n = 47$ ; Table 3). This condition was characterized by the exclusive use of ASL and/or Mexican Sign Language (LSM) to communicate. None of these participants used spoken English or were able to read and write English above the fourth-grade level, and well over half were functionally illiterate (reading at grade level 2.9 or below; Table 3). Of this group of monolingual ASL users, two had received IQ scores below 70 on the Revised Army Beta Test, indicating probable intellectual impairments.

Linguistically, the top 15.5% of this deaf inmate population was made up of ASL-dominant bilinguals ( $n = 15$ ; Table 2). An ASL-dominant bilingual can use ASL or English as needed; however, ASL is the first or preferred language, with written English as the second language. For example, all participants in this category for which EA data were on record could read and write English at varying levels above the fourth grade.

Of the ASL-dominant bilinguals, a few were able to speak some English, possibly due to progressive hearing losses that had allowed them to benefit from speech training during their early education. Regardless of speaking ability, members of this group demonstrated a clear preference for ASL when given a choice of languages for the interview. They used spoken English to communicate with correctional officers only if no other options were available. There were five individuals in the ASL-dominant group who could read at a 6.0 grade level or higher, which satisfies the minimum reading grade level for comprehension of written materials, such as the Miranda warnings and some courtroom documents (Vernon & Coley, 1978; Vernon & Miller, 2001). These individuals would be most likely to meet Kannapell's (1989) criteria for balanced bilinguals, i.e., demonstrating a high level of comfort with both signed and written communication.

English-dominant bilinguals comprised 9.3% of the population ( $n = 9$ ; Table 3). For these deaf inmates, spoken English was the preferred language, with sign language as the second language. These individuals knew various forms of sign language but most often communicated using spoken or "mouthed" English and sign language simultaneously, a practice typically referred to as *Simultaneous Communication* (SimCom), or sign-supported speech. These individuals chose to use spoken English with the interviewer, who used sign language or SimCom consistently throughout each transaction. Several of these deaf inmates were later observed using sign language unaccompanied by speech to communicate with deaf inmates who did not use English. Half of this group was able to read and write English at the fourth-grade level or above, as demonstrated by their TABE reading scores (Table 3). The TABE reading scores of the remaining half of this group indicated functional illiteracy.

Approximately 7.2% of participants were English monolinguals, and one was a Spanish monolingual ( $n = 7$ ; Table 3). Language use among these inmates was exclusively spoken English or spoken Spanish, with no understanding of ASL or any sign communication systems. Many of these individuals demonstrated speech impairments. The majority of these individuals were functionally illiterate, including the Spanish-speaking deaf inmate who had been given the Spanish version of the TABE but had not been able to complete it (Table 3).

Semilinguality, also referred to as MLS, was evident in 18.5% of participants ( $n = 18$ ; Table 2). Two individuals in this group obtained IQ scores below 70 on the Revised Army Beta Test. As indicated earlier, these individuals were intellectually impaired, precluding them from the diagnostic criteria for PPD but

not from the category of linguistic incompetence. One third of deaf inmates in this category had no reading scores available because they did not have the minimum reading skills required to take the TABE.

Interviews with the MLS study participants revealed markedly restricted English and ASL vocabularies. Although a few had a significant talent for mime and mimicry useful in communicating their rudimentary needs, all lacked a fully developed signed, spoken, or written linguistic means of communication, which was particularly evident during discussions concerning past events. All members of this group were functionally illiterate, reading below grade level 2.9 (Table 3). Half of these individuals self-reported that they had never attended school or that they had not attended school beyond the sixth grade (Table 4). Two individuals were unable to comprehend questions about their past educational experiences, even when rephrased and/or explained.

Over half of the semilingual group clearly met the three study criteria set forth for linguistic incompetence. Remaining members of this group for which the available data met only the first two criteria were nevertheless classified as linguistically incompetent by consensus of the sign-competent interviewer and expert sign language interpreter consultant. This determination was made because relying solely on self-reports to obtain the education histories of deaf inmates with MLS was problematic. Some of the deaf inmates with MLS required extensive explanations in order to comprehend questions relating to past events, such as, "What is the final grade level that you completed in school?" A number reported completion of a high school diploma, yet this was not confirmed by reports from their former school districts.

Of the available self-reports of this population of deaf inmates ( $n = 75$ ), 81% indicated that they had received sign language services or some other accommodation in court (Miller, 2001b). However, these services were ineffective for many. In some cases, the provision of an interpreter in court consisted of a 15-minute sentencing phase in front of a judge (J. Lee, personal communication, April 12, 2001; Miller, 2001b). Another offender reported that in his opinion, the interpreter was skilled but he simply did not understand the legal terminology presented (Miller,

**Table 4** Self-reported formal education of deaf state prison inmates with minimal language,  $n = 18$

	Number	Percentage
Never attended school	5	27.7%
Left school prior to sixth grade	4	22.2%
Left school after seventh grade	7	38.8%
Unable to comprehend the question	2	2.5%

2001b). One offender who reads at the second-grade level had been provided with Computer-Assisted Realtime Translation (CART), which was inaccessible. Several offenders reported that a hearing family member had either signed or written notes for them during legal proceedings.

## Discussion

The ASL-dominant bilingual and balanced bilinguals (15.5%; Table 3), who were grouped together in this analysis, would present the least difficulty in the provision of due process. Each had a well-developed first language in which they could communicate effectively, and all were able to read English at the fourth-grade level or above. Of the five deaf inmates in this group who could have been classified as balanced bilinguals based on their reading scores, one or two might have expressed a preference for live captioning technology such as CART to access their due process rights. However, the use of a qualified sign language interpreter would have allowed for effective participation in due process activities for those who were ASL-dominant bilinguals or balanced bilinguals.

The ASL monolingual, English/Spanish monolingual, and English-dominant bilingual groups (65.9%) were those most obviously at risk for adjudicative incompetence. Of the 64 deaf inmates who comprised these four categories as listed in Table 3, only two demonstrated the minimum necessary reading grade level to use CART technology adequately during courtroom proceedings (sixth grade). Despite time constraints so often evident in the courtroom, a qualified sign language or oral interpreter with a legal background would probably have been able to mitigate the advanced language register for the five deaf inmates in these groups who were reading at or above the fourth-grade level.

For the 50 deaf inmates in this study (51.5%) who demonstrated functional illiteracy (reading below third-grade level; Table 3) the use of legal terminology clearly would present a barrier to due process during legal proceedings, where time allotments for lengthy interpretations are limited. Because each of these groups had an adequately developed first language in which they could communicate competently, they would have been ideal candidates for remedial training if the barrier of adjudicative incompetence had been identified and actively addressed by the criminal justice system.

Preadjudicative training would need to be interactive, one-on-one instruction with a sign-competent educator familiar with legal terminology. The provision of instructional reading materials would be ineffective for members of this group. Although there was probably some overlap between the ASL monolingual group and those with MLS, it seems reasonable to conclude that upon completion of remedial training, many of these inmates could have been deemed competent to participate in legal proceedings using a qualified sign language interpreter with legal experience or possibly with the assistance of a qualified deaf interpreter. Deaf interpreters typically work as a team with a sign language interpreter, translating English-based signing into ASL. A few deaf inmates in this category would require an oral English/Spanish interpreter.

The double-semilingual group, or those with MLS, comprised the category that presents the most persistent challenge to the provision of due process during legal proceedings (18.5%; Table 3). Essentially, this group was made up of deaf inmates who did not have an adequately developed first language with which they could communicate competently. The use of CART technology in the courtroom requires intermediate to advanced reading skills and is clearly useless in a situation involving a deaf person with linguistic incompetence. Similar barriers exist even with the use of a qualified sign language interpreter.

For individuals with linguistic incompetence, an involuntary hospitalization is an indefinite one if they lack the capability to learn sign language. Even with extensive remedial training, some may never achieve the level of language required to understand adequately and participate in the legal proceedings

against them. The risk of permanent and unwarranted institutionalization is of particular concern for deaf persons with MLS who are hospitalized as a result of a minor charge such as a traffic violation (Davis, 1993) and has been ruled out as an option (*Jackson v. Indiana*, 1972). It has since been suggested that regional training centers should be developed specifically to educate deaf defendants with adjudicative and/or linguistic incompetence who are awaiting adjudication (Davis, 1993).

Occasionally, a qualified deaf interpreter is provided for the deaf defendant who has been identified as linguistically incompetent. Ideally, one-on-one remedial training with a sign-competent educator is provided prior to each legal proceeding. During the proceedings, the deaf interpreter then works in conjunction with a sign language interpreter who has a legal background. This has been a successful approach in at least one known case but is not a viable solution for all persons with linguistic incompetence (Vernon & Raifman, 1997). It is not a method typically utilized by the courts because it is costly and constitutes a time- and labor-intensive endeavor both prior to and throughout a legal proceeding. Interpreters who are qualified to perform legal interpretations at this level are scarce. However, if permitted by the court, sign language interpreters can also be instrumental in providing orientation for the judge and attorneys regarding the heterogeneity of deaf people, their diverse language use, and how these factors relate to linguistic incompetence to stand trial.

Unfortunately, it is common for the criminal justice system to incarcerate deaf defendants with linguistic incompetence (Vernon, Steinberg, & Montoya, 1999). In the past, the significance of linguistic incompetence has rarely been recognized by the courts, partially due to the relatively small numbers of defendants classified in this way, which is almost exclusive to deaf people. However, this condition is not so rare in the deaf population, in which an estimated 20–40% of prelingually deaf persons are linguistically incompetent (Vernon, Steinberg, & Montoya, 1999). In some cases when the issue of linguistic incompetence in a deaf defendant has been introduced by an attorney, the response has been to produce other evidence against the defendant that is independent of a Miranda

waiver or written confessions. These individuals are often convicted regardless of the defendant's inability to receive due process during the proceeding (*Jackson*, 1972; *Wisconsin v. Hindsley*, 2000). This is a gross violation of the constitutionally guaranteed due process and ADA rights of linguistically incompetent deaf defendants.

## Conclusion

As indicated by the language use and educational achievement scores of the 97 deaf state prison inmates in this study, an estimated 20–50% may not have received due process throughout their arrests, trials, and other legal proceedings, even with the provision of qualified sign language interpreters. These figures are based on the nearly 20% of deaf inmates who were categorized as linguistically incompetent and the 50% of deaf inmates who were reading below grade level 3.0, which is viewed here as an indicator of adjudicative incompetence (Table 3). The functional illiteracy evident in this deaf inmate population dramatically reduces the likelihood that most would understand complex legal terminology if they were not familiar with the American criminal justice system.

However, many individuals from the ASL monolingual group who were functionally illiterate ( $n = 30$ ; Table 3) were prime candidates for remedial training sessions. They had the potential to acquire adjudicative competence prior to criminal proceedings in which a qualified sign language interpreter who had legal experience was provided. The majority of the semi-lingual group ( $n = 18$ ; Table 3) would have required extensive re-education and courtroom accommodations, such as a team consisting of both qualified sign language and deaf interpreters. Due to their linguistic incompetence, they demonstrated minimal potential for attaining adjudicative competence.

Deaf individuals with linguistic incompetence should not be summarily pardoned from the consequences of criminal acts that they commit. Until a recent Supreme Court decision (*Atkins*, 2002), it was legal to execute intellectually impaired persons in 23 states. The potential for similar sentencing to be passed on deaf defendants with linguistic incompetence

remains despite this landmark decision because the majority of deaf persons with linguistic incompetence have normal IQ scores. Yet when the courts fail to recognize the significance of their linguistic incompetence, they may not have any more access to the adjudication process than an intellectually impaired person would. It is apparent that alternate and equitable approaches to the identification and management of deaf defendants with linguistic incompetence needs to be established so that they can receive due process or, at the very least, a humane and fair alternative to incarceration or the death penalty.

In the United Kingdom, the condition of linguistic incompetence in deaf defendants has been recognized and effectively addressed by the establishment of linguistic criteria for those who are unfit to plead. Deaf defendants who meet these criteria are given a "trial of the facts," which is intended to establish the likelihood of guilt in cases where it has been determined that the individual is linguistically unfit to plead. It also provides for a range of dispositions, including supervised probation, conditional or absolute discharge, or hospitalization as necessary. This practice distinguishes the inability to understand the legal process from a mental illness or intellectual impairment requiring psychiatric hospitalization.

The United Kingdom provides other safeguards, such as the appointment of an "appropriate adult" to be present at arrests, interrogations, and trials. That system deserves to be given strong consideration for implementation in the United States and in other countries. It is too complex for a full discussion in this article but is fully described by Young, Monteiro, and Ridgeway (2000).

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