

LEGAL BIAS AND THE DEAF COMMUNITY

by

JACOB DE VRIES

A THESIS

Presented to the Department of Psychology
and the Robert D. Clark Honors College
in partial fulfillment of the requirements for the degree of
Bachelor of Science

June 2020

An Abstract of the Thesis of

Jacob de Vries for the degree of Bachelor of Science
in the Department of Psychology to be taken June 2020.

Title: Legal Bias and the Deaf Community

Approved: *Valentino Vasquez*
Primary Thesis Advisor

This paper aims to review the existing literature regarding deaf persons serving as jurors. Due to the limited research in any given locale, this review will include research from countries around the world. It will then centralize focus on the United States' legal system, identifying areas where further research is needed. Finally, this paper will propose two methods for future studies which would begin to start filling the gaps in this largely unexplored field, addressing methods and implications for each.

Acknowledgements

Thank you to everyone who supported me in the process of writing this thesis.

Jo Larson, for sparking my interest in ASL and Deaf culture, and for answering my questions with further questions that made me really consider the issues. Valentino Vasquez, for many discussions on potential research methods in an unresearched field and for helping shape the early stages of this thesis. Dare Baldwin, for being willing and eager to be involved in this process from our first meeting and continuing to offer support throughout this process.

Adrienne, Kadi, Jack, and Michelle, for making me love ASL in the first place. Brendan, for talking me back into finishing this process when I was ready to bail on it.

My brother, Spencer, for ridiculously insightful questions and discussions despite a complete lack of knowledge on the subject. My grandparents, for continuously being supportive of me during this process, regardless of what decision I was making. And my parents, for pushing me to finish this project at every stage, for giving me the confidence that it could be done, and for making me believe it would be worthwhile in the end.

Thank you.

Table of Contents

Introduction	1
Defining Deafness	1
History of Deaf Jurors	3
Sign Language Interpretation	4
Future Studies	6
Research Goals	6
Research Design	6
Proposed Study One	7
Potential Questionnaire Outline	8
Study One Implications	9
Proposed Study Two	9
Study Two Implications	10
Conclusion	11
Bibliography	12

Introduction

Jury duty is an essential, though sometimes unwanted, right for United States citizens. However, despite the apparent randomness of the juror selection process, there are many segments of the population which are unfairly discriminated against. Their discrimination is most clearly evidenced by an unequal representation rate on final juries. The Deaf community is one of these groups, potentially due to the added costs the courts face in accommodating them with sign language interpretation, though this accommodation is required and should not be a barrier in a Deaf individual's ability to be selected to a final jury. It is important to note that the necessary linguistic accommodation comes primarily from the mode of the language, manual instead of verbal.

Defining Deafness

The meaning of the word "deaf" is much broader than simply the inability to hear. Written "Deaf," the word encapsulates a culture with a distinct language and values. This distinction between "deaf" and "Deaf" is important to be clear on, as they do represent very different segments of the population.

First, not all deaf people communicate through signed language. There are those who communicate through oralism, which relies on lipreading and vocalization. While they are deaf, these people are not part of the core of Deaf culture because of this decision to not use ASL. This is a choice often made by the parents of deaf children when they are first learning language, though research has shown that language tends to develop on the same general timeline regardless of mode (Petitto & Marentette, 1991).

Second, even if someone is going to use sign, there are many options on a spectrum from English to American Sign Language (ASL), which is a separate, developed language with its own grammar and syntax. First on this spectrum is Signed Exact English (SEE), which has manual representations for each syllable of an English word. SEE follows English grammar rules and sentence structure; it is a visual form of English. Next is the Rochester Method, which is originally based in fingerspelling and a small amount of vocalization and lipreading. It was created in the late 1800s with the stated goal to make the communication as similar to English as possible to better allow deaf participation in the hearing world (McLaughlin, 1920). Next, Pidgin Sign English, Signed English, and Conceptually Accurate Signed English (CASE) are all blends between ASL and English. They combine the grammatical structure of English with the signs of ASL. ASL on the other hand is not based in English. Of these linguistic options, ASL is the defining language of the Deaf community.

Third, one's involvement in Deaf culture can be affected by when they became deaf. A person who is born deaf is viewed differently by the Deaf community than someone who becomes deaf from old age or even someone who becomes deaf at a young age from illness. From a hearing perspective, it is easy to view deafness as one-dimensional and not think about the complexities of deafness from a deaf, or Deaf, perspective. These complexities are key to understand from a cultural standpoint but will be largely grouped together here as a population which requires, and deserves, interpretation for complete involvement in the United States legal system.

History of Deaf Jurors

To give some brief background on the legal aspect of this research, juries in the United States are constructed through the assembling of a jury pool, which is supposed to be representative of the community from which the jury is being drawn. This jury pool is narrowed to twelve people through a questioning process called *voir dire* which is designed to eliminate bias from the trial.

Historically, deaf people around the world have been excluded at both stages of this process. For example, in Australia it is still illegal for a deaf person to be selected to a jury (Napier & McEwin, 2015). In New Zealand it became legal for deaf people to serve on juries in 1981 but, despite that change, there is only one documented case of a deaf person serving on a New Zealand jury in those thirty-nine years (Napier & McEwin, 2015).

As far as the United States' interactions with deaf jurors, there is a history of discrimination despite the lack of a law against it. A prime example of this unequal treatment in the US came in 2014 when Michelle Koplitz's jury assignment was changed from grand-jury, eighteen months of service, to petit-jury, two weeks of service, when they found out she was deaf (Lopez, 2015). She initially sued the court over this change but withdrew the suit after an apology from the judge. Unfortunately, there's nothing that indicates what her service ended up being or if it occurred at all. Though U.S. law does not expressly ban deaf jurors, forty-one states require jurors be able to read, write, speak, and understand English. This requirement means that deaf individuals would need an interpreter, since we've established that ASL is a completely distinct language from English. As seen with Ms. Koplitz, this accommodation didn't

become an issue until the final jury selection process, indicating that the research focus should be on the percentage of deaf persons selected to final juries rather than on the percentage who are called to jury duty but may be dismissed during the selection process.

Sign Language Interpretation

Sign language interpretation is a necessary accommodation not only for communicating literal meaning, but also for conveying information about non-lexical aspects of speech. Tone, inflection, emotion, and general “spirit of the speaker” must come across and these requirements are reflected in the Interpreter’s Code of Ethics (Goldbas, 1981). However, while there is a code of ethics, there is no universal standard for the qualifications of interpreters and the level of training available or required greatly varies from one country to another. A 2017 study by Napier and Haug surveyed deaf organizations in Europe, receiving responses from groups in 21 countries. Through these surveys, it was discovered that around two-thirds of interpreter training programs do not include a legal aspect in the training. However, it is good to note that half of the respondents mentioned that there is training for legal professionals on how to interact with interpreters. For a bit of perspective, this study estimated that the deaf population of the Czech Republic was somewhere in the range of 10-15,000 people. The estimate for the number of interpreters was 50-100, with “a maximum of 20 interpreters for legal settings (recognized and registered by the courts)” (Napier & Haug, 2017). That means there may be as many as 750 deaf people per legal interpreter. This may not be a constant issue because the average person does not need a legal interpreter on a frequent basis, but it still represents a larger problem: lack of interpreter availability.

Examining juries specifically, Napier has also been involved in studies looking at juror comprehension for deaf and hearing jurors. A 2017 study determined that all jurors, regardless of hearing ability, misunderstand quite a bit of the rhetoric in court cases, likely due to the unfamiliar legal terms (Spencer, Roque, Napier & Hale, 2017). Significantly, this research found that the difference in comprehension between deaf and hearing jurors was less than 3%. The need for an interpreter and the controversial issue of an interpreter's presence in the jury deliberation room complicate the participation of deaf and non-English speakers in the judicial system. Convictions have been overturned for the mere presence of a thirteenth person in the deliberation room, yet studies have shown there is no effect of an additional person on the final outcome of the case (Goldbas, 1981). These conflicting precedents further complicate the idea of a sign language interpreter being present throughout the jury process.

It has been demonstrated that deaf individuals can successfully fulfill the duties of a juror when an interpreter is made available (Spencer et al., 2017), yet both their inclusion and the involvement of an interpreter is controversial and leads to fewer deaf people serving on juries. However, there is no research describing the higher-than-average rate at which deaf persons are dismissed from jury duty.

Future Studies

Research Goals

Much of the existing research and related literature is focused on Europe and Australia, indicating a need for studies in the United States. The following study design proposals will only consider deaf juror rates in the United States in order to avoid the complications of dealing with multiple court systems. Additionally, this decision allows simpler focus of ASL interpretation, whereas considering European countries could introduce additional variables, such as multiple sign languages in the same country and difficulties finding interpreters in a non-native nation. Examining U.S. cases exclusively also focuses the exploration of discrimination and disability laws. In the United States, the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) (1990) both protect the rights of not only deaf people, but all people with “disabilities.” The Rehabilitation Act states that no person with a disability who is otherwise qualified for a federally funded program can be excluded based on this disability. The ADA clarifies that the person also has a right to request “reasonable accommodation” which the presence of an interpreter would certainly fall under.

Research Design

Future research should begin by investigating the rates at which deaf people are selected for jury duty compared to the rates at which deaf people are chosen for final juries. The hypothesis is that despite the legality of deaf people serving as jurors, their inclusion in jury pools does not correlate to their selection to final juries. If this is the case and deaf people are being dismissed from jury duty at higher rates than hearing

people, an argument can be made for their inclusion. The literature supports adequate comprehension ability with an interpreter and an apparent lack of effect of an interpreter at courtroom proceedings.

A major limitation of this type of research is the lack of data available, or even collected on jury pools. Barring some revelation of a way to view demographic information for jury pools and selected juries, the data may need be collected in a somewhat roundabout way.

Proposed Study One

The primary focus area is on ASL interpretation in courts, so accounting for the entire deaf population is not necessary. Instead, one design would be for a questionnaire to be distributed through the National Association of the Deaf, or similar organizations at a state-level.

The National Association of the Deaf is an organization focused on supporting the deaf and hard of hearing community in the United States. Additionally, they support the use of ASL over other methods. As such, it is likely their members predominantly use sign, though this would be clarified in a questionnaire. The first questionnaire items would narrow the population of respondents to those who use sign as their primary means of communication, as well as those who would require an ASL interpreter to fully perform the duties of a juror. After this narrowing, questions would focus on past jury duty experience, both in the jury pool and the final jury. Next, the focus would be on specifics of the interpretation. It would explore if it was provided, how it was paid for, and its quality, with the acknowledgement that this last item is at least somewhat

subjective. Finally, the logistics of having an interpreter in the court room would also be addressed.

Potential Questionnaire Outline

First, it is important to note that only ASL interpretation would be considered at this stage, ruling out those whose primary means of communication is neither ASL nor English. Second, many of these questions have a subjective component to them; the clearest example of this is question six below, which asks about the quality of the interpreter. While subjective questionnaire items come with their own set of difficulties, it is crucial for this item to be subjective from the Deaf person's perspective. It is safe to assume that the person who chose the interpreter thought they were adequate but confirming, or overturning, this perspective from the person who needs the interpreter will be informative regarding Deaf jurors' personal experiences. As part of this focus on personal experience, the questionnaire should be available both in ASL and written English to best accommodate responses.

Questions

1. How do you identify in terms of hearing ability?
2. If you are deaf or hard of hearing, what is your primary method of communication?
3. Have you been summoned to jury duty? If so, was an interpreter provided for the selection process?
4. Were you selected to serve on the final, twelve-person jury? If so, was an interpreter provided? If not, why were you dismissed?
5. If an interpreter was provided, who paid the interpreter?
6. Was the interpretation adequate?

7. Was the interpreter allowed in the jury deliberation room? If not, how did you communicate in the deliberation room?

Study One Implications

This first study design approaches the lack of data from the perspective of the deaf individuals and would provide valuable information as a collection of case studies. This type of experiential study may be more useful in the future to evaluate the experience of all jurors who require some type of accommodation. Similarly, this type of study would be beneficial as a test of change in the court system over time.

Proposed Study Two

A more time consuming, though more accurate measure of the rate at which deaf persons are selected to jury duty would be to use extensive data collection. Picking a defined geographical area would be the first step. A county which contains a school for the deaf would be an ideal starting point, as the larger overall deaf population would allow for more efficient data collection. The county's deaf population percentage would then be compared to the compiled demographic information of final juries in the county over a period of time. This would be the time-consuming piece of the study because a substantial amount of data would need to be collected. Ideally, this system of data collection would be put into place and evaluated on a yearly basis in addition to being compiled and analyzed as a whole. If those who require an ASL interpreter are selected to the final jury at the same rate as those who do not, the selection rate reflected in the juries should not be different at a statistically significant level for any given year or for the complete data set.

Study Two Implications

This second study provides the clearest answer to the original question because it addresses only two numbers: the percentage of deaf people in a county's population and the percentage of deaf people in that county's final juries. Both of these numbers could be collected at any scale over any period of time, though collecting them at a county-level makes the most sense, even if the data is then aggregated for state or national evaluation.

Conclusion

These studies could be expanded upon to compare the selection rate for any group in the population. This creates the possibility of comprehensively evaluating, at two different levels, the jury selection process that is central to the United States judiciary.

While jury duty is often portrayed as an unwanted obligation, it is also a civil duty that every citizen should be allowed to perform. By unfairly excluding deaf people from this process, the courts not only violate the rights established by the ADA but also tarnish the possibility of a truly representative jury. Increasing ASL interpretation in the court system would be more expensive and add a layer of complexity that is not currently there, but both of these are worth it to make the jury a true reflection of the diversity of culture and values represented in the conglomerated American culture. By evaluating the individual experiences of those who need additional accommodation on the jury, the success of the accommodation itself would be evaluated, not by those making the decisions in the judicial system, but by those experiencing the effects of those decisions. By comparing the final jury selection rate to percentage of the population, the success of the jury selection process would be examined. These two study designs address the deaf community, both as individuals and as a part of the larger population, creating a clearer picture of the deaf juror's experience than is currently available anywhere else in the world.

Bibliography

- Amandes, R. B. (1957). Jury challenge in criminal cases: When, how, and group membership bias as basis therefor. *Wayne Law Review* 3(2), 106-124.
- Goldbas, M. B. (1981). Due Process: The Deaf and the Blind as Jurors. *New Eng. L. Rev.*, 17, 119.
- Goodwyn, S.W., Acredolo, L.P., & Brown, C.A. (2000). Impact of symbolic gesturing on early language development. *Journal of Nonverbal Behavior*, 24(2), 81–103.
- Grabau, C. M., & Gibbons, L. J. (1995). Protecting the rights of linguistic minorities: Challenges to court interpretation. *New Eng. L. Rev.*, 30, 227.
- Karton, J. (2008). Lost in translation: International criminal tribunals and the legal implications of interpreted testimony. *Vand. j. Transnat'l L.*, 41, 1.
- LaVigne, M., & Vernon, M. (2003). Interpreter Isn't Enough: Deafness, Language, and Due Process. *Wis. L. Rev.*, 843.
- Lopez, C. (2015). Providing American Sign Language Interpreters to Prevent Deaf-Juror Discrimination. Retrieved from <https://www.ncsc.org/sitecore/content/microsites/trends/home/Monthly-Trends-Articles/2015/Providing-American-Sign-Language-Interpreters-to-Prevent-Deaf-Juror-Discrimination.aspx>
- McCaffrey, A. (1999). Don't get lost in translation: Teaching law students to work with language interpreters. *Clinical L. Rev.*, 6, 347.
- McLaughlin, C. (1920). The Rochester Method. *American Annals of the Deaf*, 65(4), 403-413.
- Miller, K. R., & Vernon, M. (2001). Linguistic diversity in deaf defendants and due process rights. *Journal of deaf studies and deaf education*, 6(3), 226-234.
- Monteoliva-Garcia, E. (2018). The last ten years of legal interpreting research (2008-2017). A review of research in the field of legal interpreting. *Language and Law=Linguagem e Direito*, 5(1), 38-61.
- Napier, J., & Haug, T. (2014). Justidesigns: A European overview of sign language interpreting provision in legal settings. Unpublished research report.
- Napier, J., & McEwin, A. (2015). Do deaf people have the right to serve as jurors in Australia?. *Alternative Law Journal*, 40(1), 23-27.

- Napier, J., & Spencer, D. (2017). Jury instructions: comparing hearing and deaf jurors' comprehension via direct or mediated communication. *International Journal of Speech, Language & the Law*, 24(1).@ast
- Petitto, L.A., & Marentette, P.F. (1991). Babbling in the Manual Mode: Evidence for the Ontogeny of Language. *Science*, 251, 1493-1496.
- Smith, D. M. (1994). Confronting silence: The constitution, deaf criminal defendants, and the right to interpretation during trial. *Me. L. Rev.*, 46, 87.
- Spencer, D., San Roque, M., Napier, J., & Hale, S. (2017). Justice is blind as long as it isn't deaf: excluding deaf people from jury duty—an Australian human rights breach. *Australian Journal of Human Rights*, 23(3), 332-350.
- Thompson, R.H., Cotnoir-Bichelman, N.M., McKerchar, P.M., Tate, T.L., & Dancho, K.A. (2007). Enhancing early communication through infant sign training. *Journal of Applied Behavior Analysis*, 40(1), 15–23.