The Bill of Rights, Due Process and the Deaf Suspect/Defendant

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Abstract

The paper focuses on a segment of deaf people, approximately 30 percent, who are classified as semilingual, meaning they are functionally illiterate (reading level grade 2.9 or below) and lack proficient English or sign language skills. These individuals can face seemingly intractable problems if they become involved with the criminal justice system at any level from arrest, interrogation, court hearings, incarceration, parole, to probation. Due to their impoverished linguistic skills and resulting lack of general information, they are denied basic rights granted them by the Bill of Rights and the Fourteenth Amendment to the United States Constitution, and by state statutes and state constitutions. We address the unique psycholinguistic, educational, interpreting and cultural issues that cause these legal problems. We take eleven legal documents designed to inform individuals of their rights and obligations and determine the reading level required to understand them. The results clearly demonstrate that semilingual deaf defendants cannot read and understand these documents. Evidence is also presented which indicates that even with a sign language interpreter, the deaf semilingual population cannot comprehend the documents.

The Bill of Rights, Due Process and the Deaf Suspect/Defendant

Since the founding of this nation, our legal system has ostensibly operated under the belief that individuals are not to be subjected to imprisonment unless and until procedural and substantive protections have been adhered to scrupulously. Deaf and severely hard of hearing persons may face jail or prison time and still be denied their basic legal rights (Miller, 2001).

The Bill of Rights

When the United States Constitution was first drafted, opponents demanded a "bill (statement) of rights" that would set out the rights and immunities of individuals (National Archives Web Site http://www.archives.gov/national-archives-experience/charters/bill_of_rights.html). Known as the Bill of Rights, these ten amendments were ratified and added to the Constitution in 1791 (Cullop, 1999). Three of those amendments, the fourth (right to be free from unreasonable search and seizure), fifth (right against self incrimination and right to due process), and the sixth (right to counsel and the right to trial by jury, which includes the right to present a defense and to confront accusers) address the rights of individuals suspected or accused of committing crimes.

As written, the Bill of Rights applied only to the federal government. However, with the ratification of the Fourteenth Amendment in 1868, and through a series of U.S. Supreme Court decisions in the 1960s incorporating substantial portions of the Bill of Rights into the "Due Process Clause" of the Fourteenth Amendment such as in the Malloy *u.* Hogan 1964 case. In most of the criminal law, provisions of the Bill of Rights now protect individuals in their dealings with state and local law enforcement agencies and court systems as well (*Malloy v.* Hogan, 1964).

Due Process

The U.S. Constitution, state constitutions and statutes are another avenue of protection for individuals forced to confront the legal system, and may in fact afford more rights than the U.S. Constitution (Greenwood v. California, 1988). Taken together, these constitutional and statutory rights are at the core of that broad concept we call due process, which has been generally defined as "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights. Due process is also known as Fundamental Fairness; or more simply, fairness (Black's Law Dictionary, 2004).

A basic tenet of due process or fairness is that an individual cannot be asked to give up his rights or be punished for failure to meet certain obligations without notice of the rights he is giving up or the obligations he is expected to meet. "Engrained in our process of clue process is the requirement of notice. Notice

is sometimes essential so that the citizen has the chance to defend charges. Notice is required before property interests are disturbed, before assessments are made, before penalties are assessed" (Lambert u. *California*, 1957). When an individual is asked to forego a right that has been afforded him, he must first be informed that the right exists and of the "consequences of foregoing it" (Miranda *v.* Arizona, 1966).

Within the criminal justice system, there are a number of situations where informingindividuals of rights and obligations, and the waiver of those rights, has become so "routine," that in the interests of both accuracy and efficiency, courts and the police rely on pre-printed forms to convey the information. These documents may either be read aloud (as in the case of the Miranda Warning) or read by the individual himself as in the case of the guilty plea form. Courts look with favor on the use of pre-printed forms to enumerate rights, obligations and the consequences of a particular action or decision. As one court observed, "People can learn as much from reading as listening, and often more. In fact, a defendant's ability to understand the rights being waived may be greater when he or she is given a written form to read in an unhurried atmosphere, as opposed to reliance upon oral colloquy in a supercharged courtroom" (State of Wisconsin u. Moederndorfer, 1987). A defendant's signature on an "informing the accused" document is ordinarily accepted as evidence that the defendant understood the contents.

The eleven documents we analyzed are of the type routinely used by law enforcement and by court systems throughout the country to inform accused individuals. The documents cover a broad range of rights and obligations, from the Fifth Amendment privilege against self incrimination, to the installation of an ignition device as a condition of bond in a drunk driving case. Unfortunately, none of the eleven documents would be comprehensible to deaf semilingual persons. In what follows, we will present data to show that rights supposedly guaranteed by notions of due process and basic fairness are not being extended to deaf and hard of hearing persons.

The Deaf Defendant/Suspect

Many deaf individuals who read below the 2.9 grade level are semilingual. This means these individuals are deficient in both languages--American Sign Language (ASL) and English language abilities. A semilingual is a person who has limited

vocabulary, incorrect grammar, and who finds it difficult to think and express ideas and emotions in either language. Oftentimes, these deaf semilingual individuals can neither read nor understand legal documents or their court proceeding. The largest study of such deaf persons was Miller's (2001) study of 97 deaf inmates in the Texas prison system. Their average reading achievement was grade level 3.1 as measured by the Test of Basic Education (TABE). However, when they entered prison and before receiving education there, their average TABE score was grade level 2.4, indicating second grade, fourth month (Miller: 2001). This means that when arrested, interrogated and tried prior to entering prison, over half of the deaf inmates were functionally illiterate.

It is important to point out that not all Deaf individuals are low literacy achievers. About 10 percent of the deaf school age population grows up to be literate adults reading at the tenth grade or above (LaVigne & Vernon, 2003). However, this is not the case for the majority of deaf and hard of hearing population. Thirty percent who leave school at age 18 or above are functionally illiterate, reading at the 2.8 grade level or below, and sixty percent are reading at the third to fourth grade level (LaVigne & Vernon. 2003; Traxler, 2000).

It is also important to point out that there are illiterate hearing people who cannot read legal documents (U.S. Department of Justice, 1986). However, it is possible to explain in spoken English the meaning of the document. The situation for deaf criminal defendants is more severe. Because the English language vocabulary of semilingual deaf people is poor, this severely restricts their comprehension of legal concepts. It does no good to fingerspell complex legal terms to people who are semilingual and deaf people with second grade reading levels. Usually there are no signs for these terms. In addition, the syntax of ASL is devoid of many of these constructions found in legal documents (LaVigne & Vernon, 2003).

The reasons most deaf individuals fail to develop language skills are a combination of biology, environment and education (LaVigne & Vernon, 2003). For example, language abilities including reading ability can be related to etiologies associated with hearing loss such as meningitis, rubella, cytomegalovirus, maternal substance abuse, etc. which can result in impulse disorders, behavioral problems, memory processing deficits, dyslexia, attention deficit hyperactivity (ADHD), visual

problems, and especially language and learning disabilities (Vernon, 1969; Vernon & Andrews, 1990).

While education plays a hopeful role in disrupting the deleterious cycle of semilingualism in the deaf population, the history of deaf education reveals a weak, ineffectual and politicized system that is constantly embroiled in hotly debated controversy on how to provide the deaf child language education. As mentioned above, there exists much linguistic diversity within the deaf population related to the amount of time and exposure to English and to sign language they are given. Most are exposed to a varying mixture of spoken English, signed English and ASL. Consequently, they have difficulty acquiring competence in English as well as in ASL (Andrews, 2003).

Social and Cognitive Consequences of Semilingualism

Language deficits inevitably create social and psychological problems. Deaf students may develop behavioral pathology because no one at home or at school can communicate with them on more than a superficial level. This lack of communication and resulting knowledge deprivation makes them susceptible to becoming substance abusers and gettinginvolved with the police for drunk driving, theft and assault and in some cases, rape and murder (Vernon, Steinberg & Montoya, 1999; Miller, 2001). Public school deaf students who are not making it academically or socially are often transferred to the state residential school after the age of 13 or later. The majority of these children are semilingual, reading at the second or third grade levels and having varied amounts of sign language competence. In extreme cases, when ther is evidence of psychiatric disorders due either to organically or environmentally caused conditions, consequently some of these deaf semilingual youths have to be hospitalized in residential treatment facilities (Willis &Vernon, 2002).

Interpreting and Cultural Considerations in Legal Settings:

Police, judges, lawyers and other court officials often think that, by providing a sign language interpreter, deaf individuals will automatically understand everything that happens in interactions with police as well as in court proceedings (LaVigne & Vernon, 2003; Mathers, 2006). Because of the language deprivation many deaf individuals may have, often

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Readability Assessments

Another analysis of legal documents is the use of readability assessments. These are objective standardized assessments that apply a mathematical formula to a reading passage. Such analysis tell us about the surface features of texts such as the number of syllahles in words, the average number of words in sentences, and the percentage of different words based on lists of commonly used words. They also measure one semantic factor (different words) and one syntactic factor (the difficulty of sentences based on length (Klare, 1916; Zakaluk & Samuels, 1988).

Readability formulas cannot tell us about other text features such as interest, enjoyment, composition, sentence structure, concreteness or abstractness, obscurity and incoherence, logical organization, or culture or gender bias in a text. Ideally, readability formulas should be combined with other types of assessment to determine what texts are suitable for a particular purpose or audience. Nonetheless, despite these limitations, readability formulas are an excellent device which provides the best single measure of how difficult a written document is to read and understand (Klare, 1916; Zakaluk & Samuels, 1988). In this next section, we look at a number of legal documents commonly used to inform suspects and defendants in criminal cases and present data on discourse structures, vocabulary level and reading levels of these documents using computerized readability formulas (MicroPower & Light Co., 1995).

Documents which affect substantial rights

Miranda Warning

In a landmark decision, Miranda *v.* Arizona (1966), the United States Supreme Court examined police practices for interrogating suspects in criminal cases and found that law enforcement often relied on tricks, psychological ploys and unfair manipulations to extract confessions (Miranda *v.* Arizona, 1966; Charmatz, Greer, Varges, Brick, & Strauss, 2000; Hoopes, 2003). In this decision, the court stated that custodial interrogation is inherently coercive and that "the very fact of custodial isolation exerts a heavy toll on individual liberty and trades on the weaknesses of individuals" (Miranda *v.* Arizona, 1966, 455). As a consequence, the Supreme Court held that in order for the Fifth Amendment right against self-

incrimination to have any meaning, law enforcement would be required to inform a suspect who is in custody of his or her Fifth Amendment right against self incrimination before any interrogation takes place. This explanation has come to be known as the Miranda Warning.

To comply with Miranda, law enforcement must inform the in-custody suspect that he has the right to remain silent and of the consequences of the decision to give up that right; i.e. that anything he says can be used against him in court. Then the police must tell the suspect that he has the right to an attorney and if he cannot afford an attorney one will be appointed.

Knowledge of these rights is especially important to the deaf person who suddenly finds he is handcuffed, in the custody of the police, forcibly restrained, and subjected to interrogation. Such an experience can be terrifying and leaves the deaf person susceptible to misunderstandings, intimidation, incorrect statements, andmanipulation. In such an environment and being bombarded with questions that he or she may not understand, deaf suspects frequently misstate facts, unknowingly agree to statements or scenarios that imply guilt, or even make false confessions (Fulero, 2001; Hoopes, 2003; Perina, 2003).

Police, sheriff and state patrol departments everywhere make use of printed Miranda forms which officers read to suspects. In theory, these forms insure that law enforcement correctly inform the suspect and create a record of exactly what the suspect was told. A survey of Miranda forms used around the country shows that the precise wording changes from jurisdiction; however, because of the strict requirements of Miranda, they are intended to convey the same information (Helms 2003). The printed forms also contain a waiver where the suspect may state that he understands his rights and agrees to give up those rights and submit to questioning. The Warning contains a line for the suspect's signature.

A suspect can be subjected to interrogation but he must "knowingly, intelligently, and voluntarily" waive his Miranda rights (Miranda *v.* Arizona, 1966, p. 444). In order for a deaf person's waiver of Miranda to be valid, the Warning must be administered in language that can be understood by the suspect (State of Wisconsin *v.* Santiago, 1996; State of Wisconsin *v.* Hindsley, 2000). If a court finds that a deaf suspect did not understand the language and meaning of the Miranda Warning due to improper or inadequate interpretation, the suspect's

statements to the police will be suppressed as evidence (Vernon, Raifman & Greenberg, 1996; Vernon, Steinberg & Montoya, 1999).

The Miranda Warning contains the most widely-recognized legal words in the country. The late Chief Justice Rehnquist observed that the Miranda Warning have become "embedded in routine police practice to the point where the warnings have become part of the national culture" (Dickerson *v.* United States, 530 U.S. 428,443 (2000)). And the language of the Warning is, at least at first glance, relatively simple and straightforward. Therefore, it might seem logical to assume that the Miranda Warning could be readily understood by most American adults, deaf or hearing.

But, it turns out that a standard Miranda form is not as accessible as we might think. An analysis of the reading levels of Miranda Warning used in various jurisdictions revealed that reading levels ranged from grade 4.2 all the way up to grade 9.9 (Helms 2003). This places the Miranda Warning beyond the reading level of a substantial number of deaf adults. See table 2 below.

Table 2
Readability of the Miranda Warning'

Readability Formula	Reading Grade Level
Dale-Chall	5.6
Flesch Grade Level	5.8
Flesch-Kincaid	6.5
FOG Grade Level	8.1
Powers Grade Level	5.2
SMOG Grade level	8.9
FORCAST Grade level	9.9
FRY	6.0

Average reading grade *level* is 7.0

1 This is simplified version of the Miranda Warning from the training videotape, Interpreting the Miranda Warning by Sign *Media* (1992). Each state has its own version that **may** differ in form but have similar content (Helms, 2003).

Moreover, research with deaf adults indicates that the Miranda Warning is confusing to them when it is presented in printed English as well as when it is translated into ASL. Seaborn (2004) tested thirty-four deaf adults in printed English and in ASL on their comprehension of a Texas version of the Miranda Warning. Three groups of deaf adults across different reading and education levels read the Miranda Warning in English and viewed it translated into ASL by a certified legal interpreter. The deaf adults then retold the experimenter in ASL what they understood after reading and viewing it in ASL. Retelling tasks were videotaped, transcribed, back translated into English, and then scored on a five-point scale. It was expected that the deaf group who were graduate students in deaf education could comprehend the Miranda Warning both in English and ASL. It was also expected that the deaf adults who were reading at the first to the third grade level would have difficulty reading it. But it was unexpected that the deaf adults who were reading at the sixth to the eighth grade level could not comprehend the Miranda Warning even though it was written at the seventh grade level. This group had difficulty understanding it in ASL as well. Seaborn (2004) concluded that the reasons for this lack of comprehension are that most of the deaf adults who were reading at the first through the eighth grade reading level were not exposed to ASL until after age 15 when they transferred to a residential school or when they socially met other deaf adults. In addition was the fact that many of the legal concepts (i.e., right to remain silent, right to an attorney) in the Miranda Warning were difficult to comprehend because of the deaf adults' lack of background knowledge. It was also noted that it was difficult to translate many of the concepts in the Miranda Warning into ASL (Seaborn, 2004).

The Miranda Warning contains six statements that the reader must comprehend. It is the version done by Sign Media (1992). It contains about 73 words. The sentences are short but are complex syntactically. They contain infinitives (i.e. to remain silent, to talk to an attorney, to answer questions), which have been shown to be impossible for deaf semilingual readers to grasp. It contains pronominal references (i.e. you, him, your) which require the reader to find the referent across sentences. The Miranda also contains multiple meaning words such as *right,* silent, present and change. The words that have been shown by research to be difficult for a fifth grader include

the following words: right, remain, silent, anything, against, attorney, afford, proceed, lawyer, request, understand and questioning (Micro Power & Light, 1995). The Miranda Warning is also filled with time concepts (i.e. now, present) that could be problematic for the deaf semilingual reader (Vernon. Raifman & Greenberg, 1996; Vernon, Steinberg & Montoya. 1999).

Guilty Plea Questionnaire/Waiver of Rights

Before a defendant can plead guilty to a criminal charge, the court must find that the plea is "voluntary and knowing" (*Boykin v.* Alabama, 1969, p 243 n.5). That standard requires that the defendant understands that by pleading guilty (or no contest), he is giving up an array of rights afforded him by the Fifth and Sisth Amendments. These include the right to a trial by jury, the right to confront witnesses, to present a defense, and the right to remain silent. The defendant must also understand the nature of the offense to which he is pleading and the potential penalties (*Boykin v.* Alabama, 395 U.S. 238 (1969); Henderson v. Morgan, 1976). State law may also require that a defendant be made aware of additional consequences of a guilty plea such as restriction on firearm possession or possible deportation for non-citizens. See. for example, Wis. Stat. §971.08(1)(c).

Because so many criminal cases end in a guilty plea, and because a defendant must be apprised of aconsiderable amount of information before the plea is accepted, courts make wide use of "guilty plea forms" which list the requisite constitutional rights and consequences and purport to "inform" the defendant. These forms are used in a number of ways. In ideal circumstances, the defendant's attorney will discuss the contents of the form well before court and will have her client sign an acknowledgement of understanding only after she is certain that her client in fact understands. In less than ideal circumstances, the attorney will read the form to her client before the plea hearing, or will have him read it himself. The unrepresented defendant will generally be instructed by either the prosecutor or the clerk of court to read it for himself. During the actual hearing, the court will ask the defendant if he has read the form or discussed the contents with his attorney and whether he understands the contents and signed the form. If the defendant answers yes, the court may find that the defendant in fact understands (State of *Wisconsin v.* Moederndorfer, 1987, 828-829).

We analyzed the Guilty Plea *Questionnaire/Waiver* of Rights used in Wisconsin state courts. The document has approximately 877 words and is quite dense. It has about 47 phrases and sentences. Sentences average about eleven words per sentence. The document would be difficult for a deaf semilingual person to read. For example, it contains the use of many complex, linguistic structures mentioned ahove that are problematic for such individuals to read such as passive constructions, use of complex sentences, conjunctions, 'if-then' phrases, negation, pronominal references and complement structures (Quigley, Wilbur, Power, Montanelli, & Steinkamp, 1976). One fourth of all the sentences use the passive voice, compounding the difficulty for the deaf semilingual individual. The Guilty Plea Questionnaire is written on the 9.7 reading grade level. See table 3.

Table 3:
Guilty Plea Questionnaire/Waiver of Rights

Readability Formulas	Reading Grade Level
Flesch Grade Level	10.2
Flesch-Kincaid	7.1
FOG Grade Level	11.8
Powers Grade Level	6.1
SMOG Grade Level	11.8
FORCAST Grade Level	10.2
FRY	10.5

Average reading grade level is 9.7

In addition, the phrasal structures are idiomatic and contain multiple meanings. Thus they are not understandable to many deaf defendents. These difficult phrasal structures include the following: entering a plea, no contest, beyond a reasonable doubt, of my own free will, impose the maximum penalty, a lesser sentence, I face upon conviction.

The discourse structure is also complex. The document

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The discourse structure is also complex. The document

is made up of five sections: the plea the suspect wishes to enter; personal background information; the waiver of certain constitutional rights; the suspect's understanding of sentencing, convictions, restitution and pleas; the suspect's voluntary plea, the defendant's statement and the attorney' statement. Within each section, the document refers to prior sections. All these pieces fit together to form the Guilty Plea Questionnaire/ Waiuer of Rights. Understanding of each section is dependent on understanding of the sections prior to it.

Vocabulary in the document that would be difficult for a fifth grader include the following words: plea, penalty, defendant, attorney, convicted, testify, felony, waiuer, signature, restitution, questionnaire, probation, mandatory, constitutional, voluntary, subpoenas, revoked, prosecution, presumptiue, plaintiff, firearm, exclusion, cross-examine, confront, complaint, deportation, diploma, and disorder (Micro Power & Light, 1995).

Waiver of Search

An individual has a Fourth Amendment right to be free from a search of his or her premises by law enforcement unless the police have a search warrant or are able to meet one of the exceptions to the warrant requirement. Consent is one of the exceptions. The standard for consent is not as stringent as that for waiver of Miranda or waiver of rights for a guilty plea. Consent need not be knowing and intelligent to be effective. Technically, an individual need not be informed or even know that he or she has the right to refuse, though that is information courts will want to know (Schneckloth v. Bustamonte, 1973, Ohio v. Robinette, 1996). However, the consent must be voluntary. The person must not be merely submitting to authority, and the individual's understanding will be part of the voluntariness equation (Kaupp v. Texas. 2003).

The Waiver of Search which we analyzed is a form that a person places her or his signature. By signing it, the person gives consent for law enforcement to search anything from a car to a home, to a computer file, and even the individual's body and clothing. The Waiuer of Search document contains approximately 137 words. The form contains sentences that are long and full of complex constructions. For example, the document contains several sentences with an average of about 42 words per sentence ranging from 29 words to about 56 words. These long, syntactically complex sentences make it impossible for the semilingual deaf person to read.

The vocabulary words in this document would be difficult for a fifth grade reader or below to read (Micro Power & Light, 1995). The difficult words are as follows: aforementioned, authorized, conduct, consent, constitutional, evidence, hereby, herinafter. located, mentioned, otherwise, permission, police, premises, promises, property, search, signature, states, thorough, threats, understanding, violation, voluntarily, waiuer, warrant, witness, written.

This document contains many examples of polisemy or words that are spelled the same but have two or more meanings, which are also difficult for deaf readers (Paul, 2003). For instance the word free means freely given (agreement) in the context of the document. But the word free can also mean no charge or cost, uninhibited, or open.

There are also legalese words that signal time concepts such as hereinafter, hereby and aforementioned that would be difficult to be comprehended by deaf semilingual readers.

Further complicating the Waiver of Search are sentences written in the passive voice, a grammar construction that is problematic for deaf readers (Quigley and al., 1976). For example, 'This written permission is given by me,' the deaf readers often imposes a subject-verb-object on sentences and causing the sentence to be misunderstood as 'the police gave me written permission' (Quigley and al., 1976).

Pronoun references and substitutions are linguistic discourse features that create meaning across words and sentences. These are problematic for deaf semilingual readers who tend to have trouble knowing what or who the antecedent is to which the pronoun refers. For instance, the words I and my are pronouns that refer to the individual who is asked to sign the document. An example for the Waiver: I, Bill Smith, having been informed of my constitutional right not to have a search made of the premises hereinafter mentioned without a search and my right to refuse consent to search, hereby.... And again, in the last two sentences of the Waiuer, ...to hereby authorize Police Officer John Doe and Bill Smith, Police Officers from Anytown, USA to conduct a thorough and complete search at the Premises located at 1255 19th Street. These officers..... In this sentence, these officers refer back to John Doe and Bill Smith listed in the preceding sentence.

Using five computerized readability formulas, table 4

shows the average reading grade level required to read and understand the Waiuer of Search document. It is written at a college reading or 13.6 grade reading level.

Table 4:
Readability of *Waiver* for Search

Type of Readability Formula [2]Calculation	Reading Grade Level
Dale-Chall Grade Level	14.1
Flesch-Kincaid	12.0
Powers Grade Level	15.7
FORCAST Grade Level	11.2
FRY	15.0

Auerage reading grade *level* is *13.6*

Polygraph Exam

The polygraph, or "lie detector," is used by law enforcement in the investigation of offenses. Any person who submits to a law enforcement polygraph is waiving his or her Fifth Amendment right against self-incrimination, although Miranda warnings will not be required if the person is not in custody. The polygraph also raises due process questions relating to the voluntariness of the individual's statements regardless of whether the individual is in custody or not. (Rogers *v.* Richmond, 1961). Even though polygraph data are generally not admissible at trial, the potential for abuse is significant because the polygraph can be used in extremely intimidating, coercive ways. A polygraph administered in an intentionally coercive way that "overcomes the will" of an individual, can render a statement; including a confession, involuntary (Rogers *v.* Richmond at 543, Colorado

2 There are various types of readability formulas. ***The Dale-Chall Formula uses a*** list of 3000 words well known to most American eight **year** olds, plus the formula factors in the total number of words and sentences. The *Flesch-Kincaid Formula* is used to evaluate adult materials. ***The Flesch Grade Level Formula*** is used for materials for upper elementary and secondary grades. The ***FOG formula*** takes into account the total number of words, polysyllabic words, and sentences. The ***Fry and*** the *Powers-Sumner Kearl* ***Formulas are*** most often used for assessing materials in primary grades (Readability Calculations, MicroPower & Light Co., 1995, p. 8-9.

v. Connelly, 1987).

Linguistically, the polygraph document is extremely complex. It contains approximately 200 words. It contains six sentences with 20 or more words per sentence. It contains vocabulary that would be difficult for a fifth grader to read. For example, the follow words: hereby, submit, witness, coercion, contemporaneously, deception, detection, duress, examiners, harmless, *interview,* liability, polygraph, recordation, sexual, signature, submit, *voluntarily* (Micro Power & Light, 1995). There are words that refer to time concepts (ie, hereby, contemporaneously) that are hopelessly difficult for deaf semilingual readers. See table 5.

Table 5:
Readability of the Polygraph Test

Readability Formula	Reading Grade Level
Dale-Chall	10.3
Flesch Grade Level	18.2
Flesch-Kincaid	12.0
Powers Grade Level	8.8
SMOG Grade level	17.9
FORCAST Grade level	12.0

Average reading grade level is *13.2*

The macrostructure of this written document is also complex. The reader suspect or defendant must agree that he or she understands what the polygraph test does, how the examination is conducted, and then to release the officials from any liability coming from operating the device. In addition, the suspect must agree to discuss their sexual conduct during the interview and actual testing. Each section relates to and builds on the other.

Statutory Warning: Blood and Breath Test **(DIC-24** in Texas)

This document is given or read to a suspect when a person

is under arrest for operating a motor vehicle or watercraft in a public place while intoxicated (OWI). In this form, a driver arrested for OWI is asked to give a specimen of his or her breath and/or blood to be analyzed to determine the alcohol concentration or the presence of a controlled substance, dangerous drug or other substances in the blood. If the person refuses, he or she is informed that his or her operator's license will be suspended.

Although informing an accused driver about breath, blood or urine tests implicates constitutional rights (including the Fourth Amendment right to be free from unreasonable searches and seizures), ubiquitous implied consent laws mean that simply by operating a vehicle, drivers agree to submit to the test if arrested for OWI or else face license suspension. This "implied consent" changes the equation for the level of understanding of the document or the information contained in it. "Knowing, intelligent, and voluntary" waiver is not the standard. Instead, a typical standard imposed by courts is that the officer "use reasonable methods to convey the...warnings." (State of Wisconsin v. Piddington, 2001) Despite its lower due process threshold however, this procedure affects substantial rights for any driver arrested for Driving Under the Influence of Alcohol (DUI).

The Texas version of the statutory warning that we analyzed has approximately 399 words. It has 14 sentences with each sentence containing at least 20 words per sentence. The clause and phrase structures of the sentences are complex containing verb processes, determiners, pronouns, conjunctions, the passive voice, gerunds, infinitives, relative clauses, nominal, complement and 'if-than' structures — all of which have been found to be confusing for deaf readers in general (Quigley and al., 1976) and deaf semilinguals in particular.

The document is filled with vocabulary that would be difficult to read for a fifth grader including the following words: admissible, alcoholic, alleged, beverage, certify, denial, detectable, *intoxicated,* offense, penalties, presumed, prosecuted, refusal, statutory, subsequent, suspension, consequences, hearing, inform, operating, permit, specimen provided, severe, and whether (Micro Power & Light, 1995).

The document contains numerous idioms and multiple meaning or polisemous words. Idioms include: under arrest, the taking of a specimen, and arising out of acts. Polysemous words

include: hearing and under. A hearing can be a meeting or it can mean the sensory ability to hear. In this particular legal document, the word under occurs as under arrest and under Section 106.041 *Alcoholic* Beverage code, both having very different meanings. The average reading level of this document is 13.5 reading grade, far beyond that of most deaf adults. See table 6.

Table 6
Readability of Texas DIC-24 Blood/Breath Test

Readability Formulas	Reading Grade Level
Dale-Chall	9.8
Flesch Grade Level	16.5
Flesch-Kincaid	12.0
FOG Grade Level	19.3
Powers Grade Level	7.9
SMOG Grade Level	17.0
FORCAST Grade Level	11.0
FRY	15.0

Average reading grade level is ***13.5***

Review of syntactic structures

In table 7, we provide a table of the frequency of occurrence of nine syntactic structures that deaf readers have difficulty reading (Quigley and al., 1976). It is also noteworthy to add that conditionals are difficult structures for deaf semilinguals to understand. See table 7.

Table 7
Frequency of occurrence of the nine syntatic structures contained in the five legal documents that are problematic for most deaf readers, impossible for many semilinguals

9 Syntactic Structures	Search and Seizure	Blood/ Breath	Guilty Plea	Miranda Warning	Polygraph
Negation	1	4	13	1	0
Conjunction	4	9	18	2	7
Determiners	9	19	40	7	16
Question Formation	0	0	0	2	0
Verb Processes	12	22	75	14	13
Pronominalization	4	17	75	12	10
Relativization	1	3	9	0	0
Complementation	2	2	0	3	4
Nominalization	0	0	0	0	0
Total	33	76	230	41	50

Other Documents Related to Procedural Matters

Order Setting the First Court Appearance

The First Court Appearance informs an individual when he is due to appear in court. This has due process implications because failure to appear may result in an arrest warrant or in some cases, additional charges.

Ancillary Condition of Bond: Installation Order Ignition Device

A defendant released on bond will be subject to a number of conditions set by the trial court. These may range from no contact with a complaining witness to reporting to a bail monitoring agency to no consumption of alcohol. Notice of the conditions of bond is required by due process because failure to comply with those conditions can result in forfeiture of bond and new charges (sometimes known as "bail jumping"). If these often complex conditions and penalties are not made clear to the deaf defendants, they can unknowingly violate them and suffer severe penalties. **As** the United States Supreme Court observed, due process is offended "where a person, wholly passive and unaware of any wrongdoing, is brought to the bar of justice for condemnation in a criminal case" (Lambert v. California, 1957). One condition of bond in the case of DUI involves installing a breath analyzer in the car. This form stipulates that if suspects do not use the breath analyzer as stipulated by bond conditions, then they can be called back to court and the bond can be revoked.

Ignition Device: Reporting Instruction

A similar form is the Ignition Device: Reporting Instruction. When a person is proven to have been intoxicated while driving, in some states, they may be required to have a breath analyzer in their car. The individual blows into this device, which is installed in the car. If the person's breath has a certain alcohol content, then the ignition will not work and the car will not start. This ignition device permission document explains to the individual that he or she must use the device. If the defendant does not use the breath analyzer the judge may bring the suspect back to court. If the person was on probation for a DUI charge, then that probation could be revoked for failure to use the breath analyzer and the suspect may be incarcerated.

Miscellaneous Disclosures and Releases

We also analyzed several other related legal documents that are in common use in criminal cases. While they may not involve rights and obligations traditionally associated with due process in criminal cases, they can have significant impact. We are providing an analysis of their readability should any of them be involved in a case of a deaf suspect or defendant.

Linguistic Analysis of Six Procedural Documents: A Summary

Like the five legal documents described in detail above, the six documents below contain multiple meaning words, long complex sentences, and complicated syntactic and discourse structures that are difficult for deaf readers (Quigley and al., 1976). In table 8 (page 30), we present these documents and the vocabulary contained within them that would be difficult for a fifth grade or below to comprehend. In table 9 (page 31), we present the difficult syntax structures deaf readers would have difficulty reading.

Table 8:
Vocabulary assessment of six legal documents: words that fifth graders or below would find difficult and reading level required to understand (Micro Power & Light, 1995)

6 Legal Documents	Reading Level Required to Understand	Difficult Word List
Order Setting **First Court Appearance**	**9.7**	*Montgomery, hereby, defendant, warrant, surety, attorney,* **sureties, rearrest,** *notified,* **misdemeanor,** *lieu, forfeited, arraignment, Conroe, Davis*
Ancillary Condition of Band: Installation Order Ignition **Device**	12.8	*Offender, installation,* **above-***named, probation,* **interlock,** *ignition,* **tamper,** *subjects, pursuant, noncompliance, Montgomery, impractical, ethyl,* **deep-lung,** *circumvent, calibration, ancillary*
Ignition Deviee: **Reporting** Instructions	**10.8**	*Interlock, probation, Montgomery,* **ignition.** *ancillary, defendant, warrant,* **supervision,** *siris, signature, installation, guardian, dragegar, custody,* **court, corrections, comply.** *acknowledgement*
Financial Liability Disclosure	11.7	*Administrator,* **authorizations, Beaumont, comply,** *construed,* **cusiody, disclaimer, intermedlary, implied,** *liability,* **render,** *therefore, validity, verify, withhold*
Release far Liability for **Services** Rendered	10.6	*Descrlption, gratuitous,* **hereby, incurred,** *liable,* **recipient, rendered,** *specify, tire, undersigned*
Notice of **Supervision of Temporary Driving** Permit	10.6	**Austin. birth,** *bureau,* **confiscated,** *copy white, copy yellow, description, detectable,* **driver's.** *faxing, intoxicated, later, notified, offense, officer's, presumed. prohibiting, reinstotement, signature, specify, statutory, submit, suspension, waiver, watercraft*

Table 9:
Frequency of Occurence of the nine syntactic structures contained in six legal documents that are problematic for deaf readers

9 Syntactic Structures	Order Setting the First Court Appearance	Ancillary Condition of Bond: Installation Order Ignition Device	Ignition Device: Reporting instruction	Financial Liability Disclosure	Release from Liability for Services Rendered	Notice of Suspension of Temporary Driving Permit
Negation	**2**	**i**	**0**	**4**	I	5
Conjunction	1	11	4	5	4	**18**
Determiners	**3**	**16**	**5**	**23**	7	**56**
Ouestion Formation	**0**	0	0	0	0	0
Verb Processes	13	25	**15**	**17**	**16**	52
Pronominal ization	6	0	7	9	3	13
Relativization	0	0	**0**	1	1	**0**
Complementation	4	**2**	3	**4**	**3**	11
Nominalization	0	**0**	0	**0**	0	**0**
Total	**29**	**59**	**34**	**53**	**35**	**150**

Recommendations

Few judges, attorneys and court officials understand the concept of linguistic incompetence and the deaf semilingual client (LaVigne & Vernon, 2003; Vernon & Miller, 2001). Some steps to remedy this injustice are suggested.

The CDI is recommended for use with deaf semilingual clients. The CDI is an individual who is deaf or hard of hearing. In addition to proficient communication skill and general interpreter training, the CDI has specialized training and experience in the use of gesture, mime, props, drawings and other tools to enhance communication. The CDI has knowledge and understanding of deafness, the Deaf community and Deaf culture. The CDI possesses native or near-native fluency in ASL. CDIs work in teams with a hearing interpreter. The hearing interpreter takes the English voice and translates it to ASL. The CDI breaks down the ASL using gestures and mime, using a process called expansion. This is a difficult and time consuming process (Mathers, 2006). In addition to the CDI in the courtroom, in some cases, deaf individuals may have to be

provided extensive additional training to teach them the legal concepts before they can participate in their trial or even to be able to read the simplest legal documents. Such documents will have to be interpreted to the person who is the deaf suspect using expansion techniques.

Judges, prosecutors and police often misunderstand the role and function of the CDI. They may believe that the CDI is leading or coaching the deaf person. But in reality, the CDI is meeting the deaf client's linguistic needs by expression (i.e., breaking down the concepts in a visual fashion and giving examples and analogies that are comprehensible to the deaf client) (LaVigne & Vernon, 2003).

More sophisticated police departments already make use of CDIs when they question a deaf suspect. They want the Miranda waiver to be valid, and they want to make sure they get the correct information. Unfortunately, courts and attorneys are lagging behind.

But CDIs are not always effective with deaf semilingual persons. Court officials need to be informed that a CDI teamed up with an ASL interpreter may (but not always) provide the deaf defendant access to court proceedings as well as to legal documents. Training videotapes could be made to demonstrate to judges, attorneys, and the police, correctional, probation and parole officials the differences between translations with an ASL interpreter, with an English transliterating interpreter and with a CDI interpreter.

The eleven legal documents described in this article could also be translated by sign language interpreters, including CDIs. These videotaped recordings could be placed on DVDs and distributed to court houses and police stations or even placed on a public Web site so they could easily be accessed when a deaf client needs them. Along with providing these materials, training for policemen, courts officials and criminal justice personal could be provided to ensure these public officials better understand the complexities involved in deaf semilinguals understanding basic legal documents as well as the rationale for presenting the documents in English, ASL and a sign version using a CDI, depending on the preference of the semilingual deaf suspect or defendant.

Teachers, particularly at the high school level, could use these legal documents as classroom instructional materials. While most of the legal documents presented in this article

are written at tenth grade and above reading levels, deaf high school students would benefit from discussions about the concepts and vocabulary in their social studies or civic classes presented both in English print, through ASL and through a CDI. Such reading instruction using the documents would be useful for deaf semilingual youth who later get caught up in the criminal justice system and could very well provide them with access to their constitutional rights. Mock trial programs such as that at the Wisconsin School for the Deaf are another important option.

Summary

We carefully documented the huge problem faced by individuals who are prelingually deaf. Their linguistic levels are then compared, based on research findings with the linguistic levels of the hearing population. It is important to keep in mind that with hearing suspects who have low reading levels, these waivers and legal documents often can be explained orally. However, as we pointed out in this paper, due to the constricted vocabulary and syntax of ASL, it is often not possible to do this in sign language.

The paper focuses primarily on the segment of deaf people, approximately 30 percent, who are classified as semilingual, meaning they are functionally illiterate (reading level grade 2.9 or below) and lacking good sign language skills. These individuals face incredible problems if they become involved with the criminal justice system at any level, including arrest, interrogation, court hearings, incarceration, parole and probation. Due to their impoverished linguistic skills and resulting lack of general information, they are denied basic rights granted them under the Constitution and other sources of due process unless special methods are used to help them understand. Even then, the present legal system in the United States fails to protect deaf people's legal rights to the same degree that it does their hearing counterparts.

We examined eleven frequently used legal documents, such as the ***Search and Seizure, Miranda Warning,*** and ***Guilty Plea Questionnaire,*** and determined the reading level required to understand these documents. The documents are intended to assure suspects or defendants that their fundamental rights will not be violated. The results clearly demonstrate that semilingual deaf defendants cannot read and understand these

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We examined eleven frequently used legal documents, such as the ***Search and Seizure, Miranda Warning,*** and ***Guilty Plea Questionnaire,*** and determined the reading level required to understand these documents. The documents are intended to assure suspects or defendants that their fundamental rights will not be violated. The results clearly demonstrate that semilingual deaf defendants cannot read and understand these

documents. Evidence is also presented which indicates that even with a sign language interpreter, most of this segment of the deaf population cannot grasp the meaning of such documents.

Unfortunately, few judges or attorneys know anything about the linguistic limitations of the semilingual deaf population. As a consequence, many of these individuals are convicted despite the absence of fair procedures (Miller, 2001).

Even with all of these efforts at remediation, many of these documents will never be made understandable to many semilingual deaf defendants or suspects. When this is the case, it is incumbent on the interpreter to inform the court and/or police of this situation. Often this can result in the deaf individual being declared linguistically incompetent to stand trial or suppression (exclusion) of evidence obtained as a result of the deaf defendant having waived rights he or she did not understand (Vernon & Miller, 2001).

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